



BRECKENRIDGE TOWN COUNCIL REGULAR MEETING

Tuesday, July 23, 2013; 7:30 PM

Town Hall Auditorium

I	CALL TO ORDER, ROLL CALL	
II	APPROVAL OF MINUTES - JULY 9, 2013	3
III	APPROVAL OF AGENDA	
IV	COMMUNICATIONS TO COUNCIL	
	A. CITIZEN'S COMMENT - (NON-AGENDA ITEMS ONLY: 3-MINUTE LIMIT PLEASE)	
	B. POLICE DEPARTMENT LIFE SAVING AWARDS	
	C. BRECKENRIDGE RESORT CHAMBER UPDATE	
	D. USA PRO CHALLENGE/BRECKENRIDGE STAGE LOC UPDATE	
V	CONTINUED BUSINESS	
	A. SECOND READING OF COUNCIL BILLS, SERIES 2013 - PUBLIC HEARINGS	
	1. COUNCIL BILL NO. 28, SERIES 2013 - AN ORDINANCE SUBMITTING TO THE REGISTERED ELECTORS OF THE TOWN OF BRECKENRIDGE AT A SPECIAL TOWN ELECTION TO BE HELD ON NOVEMBER 5, 2013 THE QUESTION OF WHETHER, COMMENCING JANUARY 1, 2014, THE TOWN OF BRECKENRIDGE SHOULD IMPOSE AN EXCISE TAX OF FIVE PERCENT (5%) ON THE SALE OF RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS BY LICENSED RETAIL MARIJUANA ESTABLISHMENTS AS A NEW TAX PURSUANT TO ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION; REQUIRING REVENUES COLLECTED BY THE TOWN FROM THE NEW TAX TO BE USED ONLY FOR DESIGNATED PURPOSES; SETTING FORTH THE BALLOT TITLE; AND PROVIDING FOR THE CONDUCT OF THE ELECTION	6
VI	NEW BUSINESS	
	A. FIRST READING OF COUNCIL BILLS, SERIES 2013	
	1. COUNCIL BILL NO. 29, SERIES 2013 - AN ORDINANCE SUBMITTING TO THE REGISTERED ELECTORS OF THE TOWN OF BRECKENRIDGE AT A SPECIAL TOWN ELECTION TO BE HELD ON NOVEMBER 5, 2013 THE QUESTION OF WHETHER THE TOWN'S GENERAL FUND MILL LEVY SHOULD BE INCREASED TO PROVIDE FUNDS TO PAY A PORTION OF THE COST OF OBTAINING CHILD CARE FOR QUALIFIED RECIPIENTS; SETTING FORTH THE BALLOT TITLE; AND PROVIDING FOR THE CONDUCT OF THE ELECTION	14
	2. COUNCIL BILL NO. 30, SERIES 2013 - AN ORDINANCE REPEALING AND READOPTING WITH CHANGES CHAPTER 1 OF TITLE 3 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE "TOWN OF BRECKENRIDGE SALES TAX ORDINANCE"; AND MAKING RELATED AMENDMENTS TO THE BRECKENRIDGE TOWN CODE	20
	B. RESOLUTIONS, SERIES 2013	
	1. A RESOLUTION APPROVING A SECOND AMENDED AND RESTATED ANNEXATION AGREEMENT WITH MAGGIE PLACER, LLC, A Colorado Limited Liability Company	66
	2. A RESOLUTION AUTHORIZING THE EXECUTION AND RECORDING OF A DENSITY TRANSFER COVENANT FOR TOWN-OWNED REAL PROPERTY (McCain Parcel To Pence Miller Parcel)	85
	C. OTHER	
VII	PLANNING MATTERS	
	A. PLANNING COMMISSION DECISIONS	92

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

B. PLANNING COMMISSION REPORT (MS. MCATAMNEY)

VIII REPORT OF TOWN MANAGER AND STAFF

IX REPORT OF MAYOR AND COUNCILMEMBERS

- A. CAST/MMC (MAYOR WARNER)
- B. BRECKENRIDGE OPEN SPACE ADVISORY COMMITTEE (MR. BREWER)
- C. BRC (MR. BURKE)
- D. MARKETING COMMITTEE (MS. WOLFE)
- E. SUMMIT COMBINED HOUSING AUTHORITY (MR. DUDICK)
- F. BRECKENRIDGE HERITAGE ALLIANCE (MR. DUDICK)
- G. WATER TASK FORCE (MR. GALLAGHER)
- H. LANDFILL TASK FORCE (MS. WOLFE)
- I. PUBLIC ART COMMISSION (MR. GALLAGHER)

X OTHER MATTERS

XI SCHEDULED MEETINGS

104

XII ADJOURNMENT

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

CALL TO ORDER, ROLL CALL

Mayor Warner called the meeting of July 9, 2013 to order at 7:39pm. The following members answered roll call: Mr. Burke, Mr. Brewer, Mr. Dudick, Ms. McAtamney, Ms. Wolfe, Mr. Gallagher and Mayor Warner.

APPROVAL OF MINUTES - JUNE 25, 2013

With no changes or corrections to the meeting minutes of June 25, 2013, Mayor Warner declared they would stand approved as submitted.

APPROVAL OF AGENDA

Mr. Gagen stated there were no changes to the agenda. Mr. Gagen further stated there was one item not covered in Executive Session. Council discussed and decided to hold that item for the next meeting's Executive Session.

COMMUNICATIONS TO COUNCIL

A. Citizen's Comment - (Non-Agenda Items ONLY: 3-minute limit please)

Mayor Warner opened Citizen's Comments. Ms. Caddie Nath, reporter for the Summit Daily News, announced that she will be leaving Breckenridge and will no longer be the Summit Daily Breckenridge representative.

There were no other comments and Citizen's Comments were closed.

CONTINUED BUSINESS

A. Second Reading of Council Bills, Series 2013 - Public Hearings

1. COUNCIL BILL NO. 26, SERIES 2013 - AN ORDINANCE DESIGNATING CERTAIN REAL PROPERTY AS A LANDMARK UNDER CHAPTER 11 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE

(Lot 4 Block 7, Yingling and Mickles Addition)

Mayor Warner read the title into the minutes. Mr. Berry stated a condition of the development of the property was to designate it as a historic landmark. Mr. Berry further stated there were several changes from the first reading that are reflected in the version included in the packet. Mayor Warner opened the public hearing. There were no comments and the public hearing was closed.

Mr. Dudick moved to approve COUNCIL BILL NO. 26, SERIES 2013 - AN ORDINANCE DESIGNATING CERTAIN REAL PROPERTY AS A LANDMARK UNDER CHAPTER 11 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE (Lot 4 Block 7, Yingling and Mickles Addition). Ms. McAtamney seconded the motion. The motion passed 7 – 0.

2. COUNCIL BILL NO. 27, SERIES 2013 - AN ORDINANCE AMENDING VARIOUS SECTIONS OF THE BRECKENRIDGE TOWN CODE CONCERNING REQUIRED INSURANCE LIMITS

Mayor Warner read the title into the minutes. Mr. Berry stated three sections in town code require revisions to required insurance limits. Mr. Berry further stated there are no changes from first reading. Mayor Warner opened the public hearing. There were no comments and the public hearing was closed.

Mr. Dudick moved to approve COUNCIL BILL NO. 27, SERIES 2013 - AN ORDINANCE AMENDING VARIOUS SECTIONS OF THE BRECKENRIDGE TOWN CODE CONCERNING REQUIRED INSURANCE LIMITS. Ms. McAtamney seconded the motion.

The motion passed 7 – 0.

NEW BUSINESS

A. First Reading of Council Bills, Series 2013

1. COUNCIL BILL NO. 28, SERIES 2013 - AN ORDINANCE SUBMITTING TO THE REGISTERED ELECTORS OF THE TOWN OF BRECKENRIDGE AT A SPECIAL TOWN ELECTION TO BE HELD ON NOVEMBER 5, 2013 THE QUESTION OF WHETHER, COMMENCING JANUARY 1, 2014, THE TOWN OF BRECKENRIDGE SHOULD IMPOSE AN EXCISE TAX OF FIVE PERCENT (5%) ON THE SALE OF RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS BY LICENSED RETAIL MARIJUANA ESTABLISHMENTS AS A NEW TAX PURSUANT TO ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION; REQUIRING REVENUES COLLECTED BY THE TOWN FROM THE NEW TAX TO BE USED ONLY FOR DESIGNATED PURPOSES; SETTING FORTH THE BALLOT TITLE; AND PROVIDING FOR THE CONDUCT OF THE ELECTION

Mayor Warner read the title into the minutes. Mr. Berry stated this ordinance deals with one step of the implementation of Amendment 64. Mr. Berry further stated this ordinance refers to the voters whether the existing tax on medical marijuana be extended to retail marijuana. The estimated amount of money to be realized in the first year will be filled in

before the second reading.

Mr. Brewer moved to approve COUNCIL BILL NO. 28, SERIES 2013 - AN ORDINANCE SUBMITTING TO THE REGISTERED ELECTORS OF THE TOWN OF BRECKENRIDGE AT A SPECIAL TOWN ELECTION TO BE HELD ON NOVEMBER 5, 2013 THE QUESTION OF WHETHER, COMMENCING JANUARY 1, 2014, THE TOWN OF BRECKENRIDGE SHOULD IMPOSE AN EXCISE TAX OF FIVE PERCENT (5%) ON THE SALE OF RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS BY LICENSED RETAIL MARIJUANA ESTABLISHMENTS AS A NEW TAX PURSUANT TO ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION; REQUIRING REVENUES COLLECTED BY THE TOWN FROM THE NEW TAX TO BE USED ONLY FOR DESIGNATED PURPOSES; SETTING FORTH THE BALLOT TITLE; AND PROVIDING FOR THE CONDUCT OF THE ELECTION. Mr. Gallagher seconded the motion.

The motion Passed 7 - 0.

B. Resolutions, Series 2013

1. A RESOLUTION APPROVING THE "TOWN OF BRECKENRIDGE 'FREE RIDE' ANNUAL DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION LEVEL GOALS FOR FEDERAL FISCAL YEARS 2014, 2015, AND 2016"

Mayor Warner read the title into the minutes. Mr. Berry stated the memo included in the packet details the requirement of this resolution.

Mr. Gallagher moved to approve A RESOLUTION APPROVING THE "TOWN OF BRECKENRIDGE 'FREE RIDE' ANNUAL DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION LEVEL GOALS FOR FEDERAL FISCAL YEARS 2014, 2015, AND 2016". Mr. Burke seconded the motion.

The motion Passed 7 - 0.

C. Other

PLANNING MATTERS

A. Planning Commission Decisions

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

B. Planning Commission Report (Ms. McAtamney)

Ms. McAtamney stated she attended the meeting but had to leave after she gave her report.

REPORT OF TOWN MANAGER AND STAFF

Mr. Gagen stated his report was covered in Executive Session.

REPORT OF MAYOR AND COUNCILMEMBERS

A. Cast/MMC (Mayor Warner)

Mayor Warner stated he wanted to speak regarding the Beaver Run Road. Mr. Bob Barto of Beaver Run Resort suggested having cars drive up Silverthorne ski run. Mayor Warner further stated there are several different options on the table at this time, including routing the road further to the South and building a berm. Mayor Warner stated there was recently a Beaver Run/Ski Area conflict with two weddings on the same day and issues with a road closure.

B. Breckenridge Open Space Advisory Committee (Mr. Brewer)

Mr. Brewer stated there was no report.

C. BRC (Mr. Burke)

Mr. Burke stated there was no report, but the annual meeting is on Thursday, July 11.

D. Marketing Committee (Ms. Wolfe)

Ms. Wolfe stated there was no report.

E. Summit Combined Housing Authority (Mr. Dudick)

Mr. Dudick stated there was no report.

F. Breckenridge Heritage Alliance (Mr. Dudick)

Mr. Dudick stated July is a busy month for the BHA.

G. Water Task Force (Mr. Gallagher)

Mr. Gallagher stated there was no report.

H. Landfill Task Force (Ms. Wolfe)

Mr. Wolfe stated there was no report.

- I. Public Art Commission (Mr. Gallagher)
Mr. Gallagher stated the minutes from the most recent meeting were sent to Council Members. Mr. Gallagher stated PCC meetings are suspended for the remainder of the summer due to it being the peak of the season.

OTHER MATTERS

- A. Public Art Commission Appointment
Mayor Warner stated there are two candidates to fill one vacancy on the Public Art Commission, Mr. Tony Wilson and Mr. Rick Hague. Mr. Dudick stated he supports Mr. Wilson. Mr. Burke questioned why we couldn't include both on a voluntary board. Ms. McAtamney stated it would be good to give other people the opportunity to serve. Ms. Wolfe stated she is attracted to Mr. Wilson's marketing experience as it would benefit the Commission. Mr. Burke stated he would vote for Mr. Wilson. Mr. Gallagher stated seven people is sufficient on the commission and would vote for Mr. Wilson. The Council would also like to see the BHA work in concert with the PAC to tell the story of Breckenridge through art.

Mr. Dudick moved to appoint Mr. Wilson to the Public Art Commission. Ms. McAtamney seconded the motion. All voted in favor of the motion.

- B. Other
Ms. Wolfe stated she wants an open discussion about the F-Lot Development with the community, as it doesn't seem to be getting all of the information. Mr. Gagen stated the Town should be receiving two proposals for the F-Lot by the end of the summer. Mr. Dudick spoke in relation to the impact of development on smaller lodging companies. Mayor Warner stated he would like to work on better public engagement on this topic. Mr. Dudick recommended the creation of another website to distribute the information and make it easier to find.

Mr. Burke asked about construction in the Stillson Lot on the Solar Panels. He stated the Excel substation is blocked by pine trees, but the trees are dying and he recommends planting new trees.

Mr. Dudick stated he enjoyed Avenue Q at the Backstage Theater. He also stated he wants to explore mandating defensible space. Mr. Dudick then spoke about the BRC board and how the representative seats are determined.

Mr. Brewer stated a float in the 4th of July Parade was themed around the renovation of the skateboard park, and there seems to be citizen interest in a new park. Mayor Warner stated we need to direct citizens to the Recreation Department for this matter.

SCHEDULED MEETINGS

ADJOURNMENT

With no further business to discuss, the meeting adjourned at 8:43pm. Submitted by Helen Cospolich, Town Clerk, Municipal Services.

ATTEST:

John Warner, Mayor

MEMORANDUM

To: Mayor and Town Council
From: Rick Holman, Assistant Town Manager
Date: July 16, 2013
Subject: Ordinance Approving a Ballot Question for a Retail Marijuana Excise Tax
(2nd Reading)

This is the second reading for an ordinance that will place the retail marijuana excise tax question on the November 5, 2013 ballot. There are no changes to this ordinance from the first reading except for section 2 of the revised ordinance that describes the ballot question. In the ballot question it is necessary to list the maximum amount of dollars that can be raised by the 5% excise tax in the year 2014. We have listed that amount at \$750,000. As a reminder, any amount of additional taxes raised after 2014 can be retained by the Town for the purposes described in the ordinance.

The Town Attorney and I will be present at the work session for any questions you may have.

1 **FOR WORKSESSION/SECOND READING – JULY 23, 2013**

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

5
6 COUNCIL BILL NO. 28

7
8 Series 2013

9
10 AN ORDINANCE SUBMITTING TO THE REGISTERED ELECTORS OF THE TOWN OF
11 BRECKENRIDGE AT A SPECIAL TOWN ELECTION TO BE HELD ON NOVEMBER 5,
12 2013 THE QUESTION OF WHETHER, COMMENCING JANUARY 1, 2014, THE TOWN OF
13 BRECKENRIDGE SHOULD IMPOSE AN EXCISE TAX OF FIVE PERCENT (5%) ON THE
14 SALE OF RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS BY LICENSED
15 RETAIL MARIJUANA ESTABLISHMENTS AS A NEW TAX PURSUANT TO ARTICLE X,
16 SECTION 20 OF THE COLORADO CONSTITUTION; REQUIRING REVENUES
17 COLLECTED BY THE TOWN FROM THE NEW TAX TO BE USED ONLY FOR
18 DESIGNATED PURPOSES; SETTING FORTH THE BALLOT TITLE; AND PROVIDING
19 FOR THE CONDUCT OF THE ELECTION
20

21 WHEREAS, the Town of Breckenridge (“**Town**”) is a home rule municipal corporation
22 organized and existing under Article XX of the Colorado Constitution; and

23
24 WHEREAS, the electors of the Town adopted the Breckenridge Town Charter on April
25 1, 1980; and

26
27 WHEREAS, Section 12.1 of the Breckenridge Town Charter provides that the Town
28 Council of the Town (“**Town Council**”) may, by ordinance, levy and collect excise taxes for
29 municipal purposes; and

30
31 WHEREAS, on November 1, 2011 the electors of the Town approved the imposition of a
32 local excise tax on the sale of medical marijuana and medical marijuana-infused products; and

33
34 WHEREAS, on November 6, 2012 the voters of the State of Colorado approved
35 Amendment 64 adding Section 16 of Article XVIII to the Colorado Constitution; and

36
37 WHEREAS, the Colorado legislature passed and the governor signed into law
38 HB13-1317, entitled “An Act Concerning the Recommendations Made in the Public Process For
39 the Purpose of Implementing Retail Marijuana Legalized By Section 16 of Article XVIII of the
40 Colorado Constitution, and, In Connection Therewith, Making an Appropriation”; and

41
42 WHEREAS, HB13-1317 became effective May 28, 2013; and

43
44 WHEREAS, HB13-1317 adopted the “Colorado Retail Marijuana Code”; and
45

1 WHEREAS, the Colorado Retail Marijuana Code authorizes the issuance by the state and
2 local authorities of licenses for the lawful sale of retail marijuana by licensed retail marijuana
3 establishments; and
4

5 WHEREAS, the Town Council intends to adopt its own local regulations for the sale of
6 retail marijuana and retail marijuana products pursuant to its home rule authority and the
7 authority provided in the Colorado Retail Marijuana Code; and
8

9 WHEREAS, the Town Council anticipates that, commencing on or about January 1,
10 2014, retail marijuana and retail marijuana products will be sold within the Town by licensed
11 retail marijuana establishments; and
12

13 WHEREAS, the Town Council believes that the local excise tax on the sale of medical
14 marijuana and medical marijuana-infused products that was approved by the electors of the
15 Town on November 1, 2011 should be extended to cover the sale of retail marijuana and retail
16 marijuana products under the Colorado Retail Marijuana Code; and
17

18 WHEREAS, Section 31-11-111(2), C.R.S., authorizes the Town Council to refer a
19 proposed ordinance and question to the vote of the registered electors of the Town; and
20

21 WHEREAS, Section 1-41-103, C.R.S., provides that a local government question
22 involving a matter arising under Article X, Section 20 of the Colorado Constitution (known as
23 the "TABOR Amendment"), including, but not limited to, approval of a new tax, may be
24 submitted to the voters of the municipality at a local election to be held on the first Tuesday of
25 November in each odd-numbered year; and
26

27 WHEREAS, the Town Council finds and determines that there should be submitted to the
28 registered electors of the Town, at a special Town election to be held on November 5, 2013 in
29 conjunction with the coordinated election to be held on that date, as a referred measure, the
30 question of whether effective January 1, 2014 the Town should adopt a new five percent (5%)
31 excise tax on the sale of retail marijuana and retail marijuana products within the Town by
32 licensed retail marijuana establishments, with the revenues collected by the Town from such new
33 tax to be used only for those purposes designated in this ordinance; and
34

35 WHEREAS, Section 31-11-111(2), C.R.S., provides that the Town Council or its
36 designee shall fix a ballot title for the referred measure set forth in Section 2 of this ordinance;
37 and
38

39 WHEREAS, the Town Council has determined that it should fix the ballot title for the
40 referred measure set forth in Section 2 of this ordinance.
41

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

45 Section 1. Chapter 9 of Title 3 of the Breckenridge Town Code is amended to read in its
46 entirety as follows:

CHAPTER 9

MARIJUANA EXCISE TAX

SECTION:

- 3-9-1: Definitions
- 3-9-2: Tax Imposed
- 3-9-3: Collection and Enforcement Procedures
- 3-9-4: Use of Collected Tax Revenues
- 3-9-5: Rules and Regulations

3-9-1: DEFINITIONS:

A. The definitions contained in the Colorado Medical Marijuana Code, the Colorado Retail Marijuana Code, the state administrative regulations adopted pursuant to such statutes, and the Town’s medical marijuana and retail marijuana licensing ordinances, each as amended from time to time, are incorporated into this Chapter by reference.

B. As used in this Chapter the following words shall have the following meanings:

COLORADO MEDICAL MARIJUANA CODE: Article 43.3 of Title 12, C.R.S., as amended from time to time.

COLORADO RETAIL MARIJUANA CODE: Article 43.4 of Title 12, C.R.S., as amended from time to time.

DESIGNATED REVENUES: All of the revenues received by the Town from the collection of the Town’s marijuana excise tax imposed by Section 3-9-2.

LAWFUL SALE OF MARIJUANA: Includes all sales within the Town of: (1) medical marijuana and medical marijuana-infused products by persons licensed pursuant to the Colorado Medical Marijuana Code and applicable Town ordinances; (2) retail marijuana and retail marijuana products by persons licensed pursuant to the Colorado Retail Marijuana Code and applicable Town ordinances; and (3) medical marijuana, medical marijuana-infused products, retail marijuana, and retail marijuana products by persons concurrently licensed pursuant

to the Colorado Medical Marijuana Code, the Colorado Retail Marijuana Code, and applicable Town ordinances.

MEDICAL MARIJUANA:

Has the meaning provided in Section 12-43.3-104, C.R.S., which is part of the Colorado Medical Marijuana Code.

MEDICAL MARIJUANA -
INFUSED PRODUCT:

Has the meaning provided in Section 12-43.3-104, C.R.S., which is part of the Colorado Medical Marijuana Code.

RETAIL MARIJUANA:

Has the meaning provided in Section 12-43.4-103, C.R.S., which is part of the Colorado Retail Marijuana Code.

RETAIL MARIJUANA
PRODUCT:

Has the meaning provided in Section 12-43.4-103, C.R.S., which is part of the Colorado Retail Marijuana Code.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

3-9-2: TAX IMPOSED: A tax is levied and shall be collected upon the lawful sale of marijuana within the Town at the rate of five percent (5.0%) of the price paid by the purchaser thereof rounded off to the nearest penny. The tax shall be collected by the licensed person and paid to the Town. The tax imposed by this section is in addition to, and not in lieu of, the sales tax owed to the Town in connection with the sale of medical marijuana and retail marijuana.

3-9-3: COLLECTION AND ENFORCEMENT PROCEDURES: Except for those provisions that by their terms cannot apply, the procedures for the collection and enforcement of the Town's sales tax as provided in Title 3, Chapter 1 of this Code shall apply to the collection and enforcement of the marijuana excise tax imposed by this Chapter.

3-9-4: USE OF COLLECTED TAX REVENUES: The Designated Revenues shall be used to pay or reimburse the Town for direct and indirect costs incurred for: (i) adequate training, enforcement, and administration of the Town's medical and retail marijuana regulations not otherwise covered by the fees collected by the Town under the Colorado Medical Marijuana Code, the Colorado Retail Marijuana Code, and the Town's ordinances, (ii) monies expended by the Town in connection with drug or drug and alcohol prevention programs and facilities (including, but not limited to, expenditures for the local detoxification center), and for (iii) other general purposes of the Town.

3-9-5: RULES AND REGULATIONS: The Financial Services Manager shall have the authority from time to time to adopt, amend, alter and repeal administrative rules and regulations as may be necessary for the proper

1 administration of this Chapter. Such regulations shall be adopted in accordance
2 with the procedures established by Title 1, Chapter 18 of this Code.
3

4 Section 2. A special Town election is called and shall be held on Tuesday, November 5,
5 2013 in connection with the coordinated election that is to be held on that day. At such election
6 there shall be submitted to the vote of the registered electors of the Town, as a referred measure
7 under Article X, Section 20 of the Colorado Constitution and Section 31-11-111(2), C.R.S., the
8 ballot issue hereinafter set forth (the “**Ballot Issue**”). At the said election, the official ballot shall
9 state the substance of the Ballot Issue to be voted upon and, as so stated, shall constitute the
10 ballot title, designation, and submission clause. At such election each registered elector voting at
11 the election shall be given the opportunity to indicate his or her choice on the Ballot Issue (either
12 “Yes/For” or “No/Against”), which shall be in the following form:

13 SHALL TOWN OF BRECKENRIDGE TAXES BE INCREASED BY SEVEN
14 HUNDRED FIFTY THOUSAND DOLLARS (\$750,000) IN THE FISCAL
15 YEAR COMMENCING JANUARY 1, 2014 AND ENDING DECEMBER 31,
16 2014, AND BY WHATEVER ADDITIONAL AMOUNTS ARE RAISED
17 ANNUALLY THEREAFTER, BY IMPOSING, EFFECTIVE JANUARY 1,
18 2014, A NEW EXCISE TAX ON THE SALE WITHIN THE TOWN OF
19 RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS AS
20 DEFINED IN THE COLORADO RETAIL MARIJUANA CODE AND
21 APPLICABLE TOWN ORDINANCES, AT THE RATE OF FIVE PERCENT
22 (5%) OF THE PRICE PAID BY THE PURCHASER OF THE RETAIL
23 MARIJUANA AND RETAIL MARIJUANA PRODUCTS, IN ACCORDANCE
24 WITH ORDINANCE NO. 29, SERIES 2013, WHICH IS HEREBY
25 APPROVED; AND SHALL THE REVENUE RECEIVED BY THE TOWN
26 FROM THE COLLECTION OF SUCH NEW TAX BE USED TO PAY OR
27 REIMBURSE THE TOWN FOR DIRECT AND INDIRECT COSTS
28 INCURRED OR EXPENDED BY THE TOWN FOR ADEQUATE TRAINING,
29 ENFORCEMENT, AND ADMINISTRATION OF ALL APPLICABLE
30 MARIJUANA LAWS AND REGULATIONS, TO SUPPORT LOCAL DRUG
31 AND ALCOHOL PROGRAMS AND FACILITIES, AND FOR OTHER
32 GENERAL PURPOSES OF THE TOWN; AND SHALL THE TOWN BE
33 AUTHORIZED TO COLLECT AND SPEND SUCH REVENUE AS A VOTER
34 APPROVED REVENUE CHANGE UNDER ARTICLE X, SECTION 20 OF
35 THE COLORADO CONSTITUTION ?

36
37 YES _____ NO _____
38

39 Section 3. In connection with the fixing of the ballot title for the Ballot Issue, the Town
40 Council of the Town of Breckenridge finds and determines as follows:

41 A. The Town Council has considered the public confusion that might be caused by
42 misleading ballot titles.
43

44 B. The general understanding of the effect of a “yes” or “no” vote on the Ballot Issue
45 will be clear to the electors.

1
2 C. The ballot title for the Ballot Issue will not conflict with those titles selected for any
3 other measure that will appear on the municipal ballot at the November 5, 2013 special Town
4 election; and

5
6 D. The ballot title for the Ballot Issue correctly and fairly expresses the true intent and
7 meaning of the measure.
8

9 Section 4. If a majority of all the votes cast at the election shall be for the ballot issue set
10 forth in Section 2 of this ordinance, the amendments to the Breckenridge Town Code set forth in
11 full in Section 1 of this ordinance shall be deemed to have been adopted and shall become
12 effective January 1, 2014, and on such date the Town of Breckenridge shall be authorized to
13 collect, retain, and expend the full amount of the tax revenues collected by the Town as a result
14 of the new excise tax approved by the Ballot Issue separate and apart from any other
15 expenditures of the Town which may be limited pursuant to Article X, Section 20 of the
16 Colorado Constitution, or any other state restriction on the Town's fiscal year spending, and the
17 increased tax revenues authorized for collection, retention and expenditure by the passage of the
18 Ballot Issue shall not be counted in any such spending limitation. If a majority of all the votes
19 cast at the election shall be against the Ballot Issue the amendments to the Breckenridge Town
20 Code set forth in full in Section 1 of this ordinance shall be deemed to have been defeated, and
21 such amendments to the Breckenridge Town Code shall not become effective, but the excise tax
22 on the sale of medical marijuana and medical marijuana-infused products approved by the
23 electors of the Town on November 1, 2011 shall continue in full force and effect notwithstanding
24 the defeat of the Ballot Issue.

25 Section 5. The special Town election on November 5, 2013 to consider the Ballot Issue
26 shall be conducted as a coordinated election with Summit County. The Summit County Clerk
27 and Recorder shall conduct the special Town election on behalf of the Town. Pursuant to Section
28 1-12-6 of the Breckenridge Town Code, the election shall be conducted under the Uniform
29 Election Code of 1992. The cost of the election with respect to the Ballot Issue shall be paid
30 from the general fund of the Town.

31 Section 6. The officers of the Town are authorized and directed to take all action
32 necessary or appropriate to effectuate the provisions of this ordinance. All action previously
33 taken by the officers of the Town with respect to the Ballot Issue is ratified, confirmed, and
34 approved.

35 Section 7. The Town Clerk, or the coordinated election official if so provided by
36 intergovernmental agreement, shall give or cause to be given the notice of election required by
37 Section 1-5-205, C.R.S. Additionally, the Town Clerk shall cause the notice required by Section
38 20(3)(b) of Article X of the Colorado Constitution to be prepared and delivered in accordance
39 with the requirements of applicable law.

40 Section 8. The Town Clerk shall serve as the designated election official of the Town the
41 purposes of performing acts required or permitted by law in connection with the election on the
42 Ballot Issue, and shall take such action as may be required to comply with all applicable laws
43 pertaining to the conduct of the election.

1 Section 9. The Town Council finds, determines, and declares that this ordinance is
2 necessary and proper to provide for the safety, preserve the health, promote the prosperity, and
3 improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants
4 thereof.

5 Section 10. The Town Council finds, determines, and declares that it has the power to
6 adopt this ordinance pursuant to the authority granted to home rule municipalities by Article XX
7 of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.

8 Section 11. Pursuant to Section 6.1(b) of the Breckenridge Town Charter, this ordinance
9 is not subject to the people's reserved power of referendum because it calls a special election.

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

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

17
18 TOWN OF BRECKENRIDGE, a Colorado
19 municipal corporation
20

21
22
23 By _____
24 John G. Warner, Mayor
25

26
27 ATTEST:

28
29
30
31 _____
32 Helen Cospolich
33 Town Clerk
34

TO: Breckenridge Town Council
FROM: Laurie Best-Community Development Department
RE: CHILDCARE MILL LEVY ORDINANCE –FIRST READING
DATE: July 16, 2013 (for July 23rd)

An Ordinance to place the Childcare mill levy on the November 5, 2013 ballot has been prepared and is scheduled for first reading on July 23rd. The Ordinance is attached to this memo for your review. If approved, the Ordinance will place the mill levy question on the November 5th ballot and voters will be asked to increase Breckenridge taxes beginning in 2013 (collected in 2014). The revenues collected by the Town as a result of the mill levy will be placed in a Childcare Fund to offset the cost of providing childcare assistance and early childhood education for qualified recipients and to offset cost of grants for equipment and other capital expenditures for qualified providers.

The Council should be advised that Staff will also be working on a separate Ordinance regarding the operation of the Childcare Fund. That will include policies for governance of the fund including use of the fund, oversight, and management.

Staff recommends approval of the Ordinance to place the mill levy on the ballot and will be available to answer questions at your meeting.

1 **FOR WORKSESSION/FIRST READING – JULY 23**

2
3 Revisions To The Ordinance As Reviewed On July 9, 2013 Are Marked

4
5 COUNCIL BILL NO. 28

6
7 Series 2013

8
9 AN ORDINANCE SUBMITTING TO THE REGISTERED ELECTORS OF THE TOWN OF
10 BRECKENRIDGE AT A SPECIAL TOWN ELECTION TO BE HELD ON NOVEMBER 5,
11 2013 THE QUESTION OF WHETHER THE TOWN’S GENERAL FUND MILL LEVY
12 SHOULD BE INCREASED TO PROVIDE FUNDS TO PAY A PORTION OF THE COST OF
13 OBTAINING CHILD CARE FOR QUALIFIED RECIPIENTS; SETTING FORTH THE
14 BALLOT TITLE; AND PROVIDING FOR THE CONDUCT OF THE ELECTION
15

16 WHEREAS, the Town of Breckenridge (“**Town**”) is a home rule municipal corporation
17 organized and existing under Article XX of the Colorado Constitution; and
18

19 WHEREAS, the electors of the Town adopted the Breckenridge Town Charter on April
20 1, 1980; and
21

22 WHEREAS, Section 12.1 of the Breckenridge Town Charter provides that the Town
23 Council of the Town (“**Town Council**”) may levy and collect general ad valorem property taxes;
24 and
25

26 WHEREAS, Article X, Section 20 of the Colorado Constitution (“**TABOR**”) requires the
27 Town to submit certain questions to the electorate in the manner prescribed therein; and
28

29 WHEREAS, November 5, 2013 is one of the election dates at which ballot issues may be
30 submitted to the eligible electors of the Town pursuant to TABOR; and
31

32 WHEREAS, Section 31-11-111(2), C.R.S., authorizes the Town Council to refer a
33 question to the vote of the registered electors of the Town; and
34

35 WHEREAS, Section 1-41-103, C.R.S., provides that a local government question
36 involving a matter arising under TABOR, including, but not limited to, a mill levy above that for
37 the prior year, may be submitted to the voters of the municipality at a local election to be held on
38 the first Tuesday of November in each odd-numbered year; and
39

40 WHEREAS, the Town Council finds and determines that there should be submitted to the
41 registered electors of the Town, at a special Town election to be held on November 5, 2013 in
42 conjunction with the coordinated election to be held on that date, as a referred measure, the
43 question set forth in Section 1 of this ordinance; and
44

1 WHEREAS, Section 31-11-111(2), C.R.S., provides that the Town Council or its
2 designee shall fix a ballot title for the referred measure set forth in Section 1 of this ordinance;
3 and
4

5 WHEREAS, the Town Council has determined that it should fix the ballot title for the
6 referred measure set forth in Section 1 of this ordinance.
7

8 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF
9 BRECKENRIDGE, COLORADO:
10

11 Section 1. A special Town election is called and shall be held on Tuesday, November 5,
12 2013 in connection with the coordinated election that is to be held on that day. At such election
13 there shall be submitted to the vote of the registered electors of the Town, as a referred measure
14 under Article X, Section 20 of the Colorado Constitution and Section 31-11-111(2), C.R.S., the
15 ballot issue hereinafter set forth (the “**Ballot Issue**”). At the said election, the official ballot shall
16 state the substance of the Ballot Issue to be voted upon and, as so stated, shall constitute the
17 ballot title, designation, and submission clause. At such election each registered elector voting at
18 the election shall be given the opportunity to indicate his or her choice on the Ballot Issue (either
19 “Yes/For” or “No/Against”), which shall be in the following form:

20 | SHALL TOWN OF BRECKENRIDGE TAXES BE INCREASED BY \$800,000
21 | ~~ANNUALLY, COMMENCING~~ IN 2013 FOR COLLECTION IN 2014, AND
22 | BY SUCH AMOUNT AS MAY BE DERIVED ANNUALLY THEREAFTER
23 | BY THE IMPOSITION OF AN ADDITIONAL AD VALOREM MILL LEVY
24 | OF ~~NOT MORE THAN~~ _____ MILLS ~~(PROVIDED THAT THE _____ MILL~~
25 | ~~LIMIT SHALL BE ADJUSTED UP OR DOWN TO ACCOUNT FOR~~
26 | ~~CHANGES IN STATE LAW OR THE METHOD BY WHICH ASSESSED~~
27 | ~~VALUATION IS CALCULATED PURSUANT TO STATE LAW~~
28 | ~~OCCURRING AFTER 2013, SO THAT, TO THE EXTENT POSSIBLE, THE~~
29 | ~~ACTUAL TAX REVENUES GENERATED BY THE MILL LEVY, AS~~
30 | ~~ADJUSTED, ARE NEITHER DIMINISHED NOR ENHANCED AS A RESULT~~
31 | ~~OF SUCH CHANGES);~~ AND SHALL THE REVENUES COLLECTED BY
32 | THE TOWN AS A RESULT OF SUCH MILL LEVY BE USED TO OFFSET
33 | THE COST OF PROVIDING CHILD CARE ASSISTANCE AND EARLY
34 | CHILDHOOD EDUCATION FOR QUALIFIED RECIPIENTS, INCLUDING,
35 | BUT NOT LIMITED TO, PROVIDING SCHOLARSHIPS TO OFFSET A
36 | PORTION OF THE COST OF CHILD CARE FOR QUALIFIED RECIPIENTS
37 | AND GRANTS FOR EQUIPMENT AND OTHER CAPITAL EXPENDITURES
38 | FOR QUALIFIED PROVIDERS OF CHILD CARE ASSISTANCE AND
39 | EARLY CHILDHOOD EDUCATION; AND SHALL THE PROCEEDS OF
40 | SUCH TAXES AND INVESTMENT INCOME THEREON BE COLLECTED
41 | AND SPENT BY THE TOWN AS A VOTER-APPROVED REVENUE
42 | CHANGE WITHOUT REGARD TO ANY SPENDING, REVENUE-RAISING,
43 | OR OTHER LIMITATION CONTAINED WITHIN ARTICLE X, SECTION 20
44 | OF THE COLORADO CONSTITUTION , OR ANY OTHER LAW?
45

46 YES _____ NO _____

1
2 Section 2. In connection with the fixing of the ballot title for the Ballot Issue, the Town
3 Council of the Town of Breckenridge finds and determines as follows:

4 A. The Town Council has considered the public confusion that might be caused by
5 misleading ballot titles.

6
7 B. The general understanding of the effect of a “yes” or “no” vote on the Ballot Issue
8 will be clear to the electors.

9
10 C. The ballot title for the Ballot Issue will not conflict with those titles selected for any
11 other measure that will appear on the municipal ballot at the November 5, 2013 special Town
12 election; and

13
14 D. The ballot title for the Ballot Issue correctly and fairly expresses the true intent and
15 meaning of the measure.

16
17 Section 3. If a majority of all the votes cast at the election on the question to authorize
18 the levy of ad valorem property taxes submitted at the election shall be in favor of incurring the
19 levy of the ad valorem property taxes as provided in such question, the Town, acting through the
20 Town Council, shall be authorized to proceed with the necessary action to levy ad valorem
21 property taxes in accordance with such question.

22 The authority to levy ad valorem property taxes, if conferred by the results of the
23 election, shall be deemed and considered a continuing authority to levy the ad valorem taxes so
24 authorized at any one time, or from time to time, and neither the partial exercise of the authority
25 so conferred, nor any lapse of time, shall be considered as exhausting or limiting the full
26 authority so conferred.

27 Section 4. The special Town election on November 5, 2013 to consider the Ballot Issue
28 shall be conducted as a coordinated election with Summit County. The Summit County Clerk
29 and Recorder shall conduct the special Town election on behalf of the Town. Pursuant to Section
30 1-12-6 of the Breckenridge Town Code, the election shall be conducted under the Uniform
31 Election Code of 1992. The cost of the election with respect to the Ballot Issue shall be paid
32 from the general fund of the Town.

33 Section 5. The Town Clerk is directed to enter into one or more intergovernmental
34 agreements with the Clerk and Recorder of Summit County, Colorado pursuant to Section 11-7-
35 116, C.R.S., and Section 1-12-7 of the Breckenridge Town Code. Any such intergovernmental
36 agreements heretofore entered into in connection with the election are hereby ratified and
37 approved.

38 Section 6. The Town Clerk, or the coordinated election official if so provided by
39 intergovernmental agreement, shall give or cause to be given the notice of election required by
40 Section 1-5-205, C.R.S. Additionally, the Town Clerk shall cause the notice required by Section
41 20(3)(b) of Article X of the Colorado Constitution to be prepared and delivered in accordance
42 with the requirements of applicable law.

1
2
3

400-11\Child Care Ballot Ordinance_6 (07-15-13)(First Reading)

MEMORANDUM

TO: TOWN COUNCIL
CC: TOWN MANAGER, TIM GAGEN; ASSISTANT TOWN MANAGER, RICK HOLMAN
FROM: TAX AUDITOR, LESLIE FISCHER
SUBJECT: TOWN TAX CODE REVISIONS
DATE: 7/18/2013

The attached modification to the Town of Breckenridge Sales Tax Ordinance proposes new exemptions and addresses other housekeeping items needed in order to bring our code up to date. These changes were brought for discussion at the July 9 work session and are outlined in the memo included in today's work session packet.

The intent of these revisions is simply to update our code to provide clarification on current policy and add practical exemptions to the code. It is important to note that these revisions will not garner new net tax revenues for the Town. This item is up for first reading tonight.

1 ***FOR WORKSESSION/FIRST READING – JULY 23***

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

5
6 COUNCIL BILL NO. ____

7
8 Series 2013

9
10 AN ORDINANCE REPEALING AND READOPTING WITH CHANGES CHAPTER 1 OF
11 TITLE 3 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE “TOWN OF
12 BRECKENRIDGE SALES TAX ORDINANCE”; AND MAKING RELATED
13 AMENDMENTS TO THE BRECKENRIDGE TOWN CODE

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

17
18 Section 1. The Town Council finds, determines, and declares as follows:

19 A. The Town of Breckenridge Sales Tax Ordinance imposes a tax on the sale of tangible
20 personal property at retail and the provision of certain taxable services as authorized by Colorado
21 law.

22
23 B. Section 3-1-38 of the Breckenridge Town Code, which is part of the Town of
24 Breckenridge Sales Tax Ordinance, provides as follows:

25
26 AMENDMENTS: The Town Council may amend, alter or change any provision
27 of this Chapter, except as to two and one-half percent (2½ %) rate of tax herein
28 imposed, by ordinance duly adopted in accordance with the Town Charter. Such
29 amendment, alteration or change need not be submitted to the electors of the
30 Town for their approval.

31
32 C. This ordinance does not change the sales tax rate established by the Town of
33 Breckenridge Sales Tax Ordinance, or expand the sales tax base of the Town.

34
35 D. The Financial Services Manager has certified to the Town Council that he reasonably
36 anticipates that this ordinance will be revenue neutral, in that the ordinance is not necessarily
37 expected to result in a net tax revenue gain to the Town.

38
39 E. This ordinance is enacted primarily to update the Town’s sales tax administration,
40 collection and enforcement procedures, and not to raise additional taxes.

41
2013 SALES TAX ORDINANCE

1 F. The adoption of this ordinance does not result in a new tax, a tax rate increase, or a tax
2 policy change directly causing a net tax revenue gain to the Town within the meaning of Article
3 X, §20 of the Colorado Constitution.
4

5 Section 2. Chapter 1 of Title 3 of the Breckenridge Town Code is repealed and readopted
6 with changes to as to read in its entirety as follows:
7

8 CHAPTER 1

9 SALES TAX

10 SECTION:

11 3-1-1: ~~PURPOSE~~ LEGISLATIVE INTENT

12 3-1-2: DEFINITIONS

13 3-1-3: TAXABLE TRANSACTIONS AND ITEMS

14 3-1-4: ITEMS EXEMPT FROM TAX

15 3-1-5: SCHEDULE OF TAX

16 3-1-6: SALES TAX, NONAPPLICABILITY

17 3-1-7: RETAILER RESPONSIBLE FOR PAYMENT OF TAX

18 3-1-8: ACQUISITION, INCEPTION, AND CESSATION OF BUSINESS

19 3-1-9: RETAILER TO COLLECT TAX

20 3-1-10: TAX ON CREDIT SALES, ETC.

21 3-1-11: SALES TAX, CREDIT FOR SALES OR USE TAXES PREVIOUSLY PAID TO
22 ANOTHER MUNICIPALITY

23 3-1-12: CLAIMS FOR RECOVERY

24 3-1-13: EXEMPTION; BURDEN OF PROOF

25 3-1-14: EXCESS COLLECTIONS

26 3-1-15: UNLAWFUL TO ASSUME OR ABSORB TAX

27 3-1-16: SPECIAL ACCOUNTING BASIS FOR REMITTANCE OF TAX

28 3-1-17: DUTY TO KEEP BOOKS AND RECORDS

29 3-1-18: INVESTIGATION OF BOOKS

30 3-1-19: COORDINATED AUDIT

31 3-1-20: STATUTE OF LIMITATIONS

32 3-1-21: SUBPOENAS

33 3-1-22: LICENSES FOR RETAIL SELLERS

34 3-1-23: SALES TAX LICENSES; APPLICATION AND CONTENT

35 3-1-24: DENIAL OF LICENSE

36 3-1-25: SALE AT RETAIL WITHOUT LICENSE

37 3-1-26: REVOCATION OF LICENSE

38 3-1-27: APPEAL

39 3-1-28: WHEN LICENSE NOT REQUIRED

40 3-1-29: MAP OR LOCATION GUIDE OF ~~CITY~~ TOWN BOUNDARIES

41 3-1-30: COLLECTION AND REFUND OF DISPUTED TAX

42 3-1-31: REFUNDS

2013 SALES TAX ORDINANCE

- 1 3-1-32: RECOVERY OF TAXES, PENALTY AND INTEREST
- 2 3-1-33: FAILURE TO COLLECT AND PAY OVER TAX, ATTEMPTING TO EVADE OR
- 3 DEFEAT TAX
- 4 3-1-34: IMPOSITION OF CIVIL PENALTY ON RESPONSIBLE PARTIES
- 5 3-1-35: AUTHORITY OF FINANCIAL SERVICES MANAGER TO REQUIRE
- 6 IMMEDIATE PAYMENT OF TAX
- 7 3-1-36: TAX LIEN; EXEMPTION FROM LIEN
- 8 3-1-37: NEGLIGENT OR INTENTIONAL TAX DEFICIENCY
- 9 3-1-38: INTEREST RATE ON DELINQUENT TAXES
- 10 3-1-39: INTEREST ON UNDERPAYMENT, OVERPAYMENT, NONPAYMENT OR
- 11 EXTENSIONS OF TIME FOR PAYMENT OF TAX
- 12 3-1-40: OTHER REMEDIES
- 13 3-1-41: HEARINGS BY ~~FINANCE DIRECTOR~~ FINANCIAL SERVICES MANAGER
- 14 3-1-42: REVIEW BY DISTRICT COURT
- 15 3-1-43: ALTERNATIVE REVIEW BY DEPARTMENT OF REVENUE
- 16 3-1-44: AMENDMENTS
- 17 3-1-45: NOTICE OF SALES AND USE TAX ORDINANCE AMENDMENT
- 18 3-1-46: ~~VIOLATION; PENALTIES~~ UNLAWFUL ACTS

19
20 3-1-1: ~~PURPOSE~~ LEGISLATIVE INTENT :

21
22 It is the intent of this chapter that every person in the town who purchases at retail or leases any
23 tangible personal property or purchases a taxable service as defined by this chapter is
24 exercising a taxable privilege. All sales, leases, and purchases of “tangible personal property” as
25 defined in this chapter are taxable unless specifically exempted in this chapter. The sales tax
26 imposed on tangible personal property by this chapter applies to each transfer of ownership,
27 possession, and control of such property and may occur more than once during the life of the
28 property.

29
30 3-1-2: DEFINITIONS:

31
32 A. When not clearly indicated otherwise by the context, the following words and phrases, as
33 used in this chapter, shall have the following meanings:

- ACCESS SERVICE: The services furnished by a local exchange company to its customers who provide telecommunications services which allow them to provide such telecommunications services.
- APPLICANT: A person who has made an application for the initial issuance or renewal of a sales tax license under the provisions of this chapter.
- AUCTION: Any sale where tangible personal property is sold by an auctioneer who is either the agent

for the owner of such property or is in fact the owner thereof.

AUTOMOTIVE VEHICLE:

Any vehicle or device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, or any device used or designed for aviation or flight in the air. "Automotive vehicles" includes, but is not limited to, motor vehicles, trailers, semitrailers, or mobile homes. "Automotive vehicle" shall not include devices moved by human power or used exclusively upon stationary rails or tracks.

BUSINESS:

All activities engaged in, or caused to be engaged in, with the object of gain, benefit or advantage, direct or indirect.

CHARITABLE ORGANIZATION:

Any entity which: a) has been certified as a not for profit organization under section 501(c)(3) of the internal revenue code, and b) is a religious or charitable organization. As used in this definition, a "charitable organization" is an organization which exclusively, and in a manner consistent with existing laws and for the benefit of an indefinite number of persons, freely and voluntarily ministers to the physical, mental or spiritual needs of persons, and which thereby lessens the burdens of government.

CONSTRUCTION MATERIALS:

Tangible personal property which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of a completed structure or project including public and private improvements. Construction materials include, but are not limited to, such things as: asphalt, bricks, builder's hardware, caulking material, cement, concrete, conduit, electric wiring and connections, fireplace inserts, electrical heating and cooling equipment, flooring, glass, gravel, insulation, lathe, lead, lime, lumber, macadam, millwork, mortar, oil, paint, piping, pipe valves and pipe fittings, plaster, plumbing fixtures, putty, reinforcing mesh, road base, roofing, sand, sanitary sewer

pipe, sheet metal, site lighting, steel, stone, stucco, tile, trees, shrubs and other landscaping materials, wallboard, wall coping, wallpaper, weather stripping, wire netting and screen, water mains and meters and wood preserver. The above materials, when used for forms, or other items which do not remain as an integral or inseparable part of a completed structure or project, are not construction materials.

CONSUMER:

A. Any individual person; or
B. Any person engaged in business in the town who uses, stores, distributes or otherwise consumes in the town tangible personal property or taxable services purchased from sources inside or outside the town.

C. Any person residing or engaged in business in the town who is an end user of software that was purchased, leased, rented, or subscribed from sources inside or outside the town.

COMPONENTS USED IN SOLAR THERMAL SYSTEMS:

A. Solar collectors including flat-plate collectors, evacuated tube collectors, solar air collectors, and concentrating solar thermal collectors;

B. Tanks for the storage of gases or liquids that have been heated or cooled by solar-generated energy;

C. Pumps, impellers, and fans for circulation of gases or liquids that have been heated or cooled by solar-generated energy;

D. Heat exchangers used to transfer solar-generated energy;

E. Support structures, racks, and foundations for any components listed in subparagraphs A to D of this definition and

F. Any other system components such as piping, valves, gauges, fittings, insulation, and controls for any components listed in subparagraphs A to D of this definition.

COMPONENTS USED IN THE PRODUCTION OF ALTERNATING CURRENT ELECTRICITY FROM A RENEWABLE ENERGY SOURCE:

A. Included, but is not limited to, wind turbines, rotors and blades, solar modules, trackers, generating equipment, supporting structures or racks, inverters, towers and foundations, balance of system components such as wiring, control systems, switchgear, and generator step-up transformers, and concentrating solar power components that include, but are not limited to, mirrors, plumbing, and heat exchangers.

B. Shall not include any components beyond the point of generator step-up transformers located at the production site, labor, energy storage devices, or remote monitoring systems.

COVER CHARGE:

An admission charge made by a nightclub or similar entertainment establishment which may, or may not, entitle the patron paying such charge to receive tangible personal property, such as food and/or beverages.

DATA PROCESS EQUIPMENT:

Any equipment or system of equipment used in the storage, manipulation, management, display, reception or transmission of information including, but not limited to, computers, software, hardware or firmware.

DATA PROCESSING PROGRAMS:

Systems or applications that organize or manipulate data including, but not limited to, software, software as a service and internet subscription services.

DRUGS DISPENSED IN ACCORDANCE WITH A PRESCRIPTION:

Drugs dispensed in accordance with any order in writing, dated and signed by a licensed practitioner of the healing arts, or given orally by a practitioner, and immediately reduced to writing by the pharmacist, assistant pharmacist or pharmacy intern, specifying the name and address of the person for whom the medicine, drug or poison is offered and directions, if any, to be placed on the label.

ENGAGED IN BUSINESS IN THE TOWN:

Performing or providing services or selling, leasing, renting, delivering or installing

tangible personal property for storage, use or consumption within the town. "Engaged in business in the town" includes, but is not limited to, any one of the following activities by a person:

- A. Directly, indirectly or by a subsidiary maintains a building, store, office, salesroom, warehouse, or other place of business within the taxing jurisdiction;
- B. Sends one or more employees, agents or commissioned salespersons into the taxing jurisdiction to solicit business or to install, assemble, repair, service or assist in the use of its products, or for demonstration or other reasons;
- C. Maintains one or more employees, agents or commissioned salespersons on duty at a location within the taxing jurisdiction;
- D. Owns, leases, rents or otherwise exercises control over real or personal property within the taxing jurisdiction; or
- E. Makes more than one delivery into the taxing jurisdiction within a twelve (12) month period.

EXEMPT COMMERCIAL
PACKAGING MATERIALS:

Containers, labels and shipping cases sold to a person engaged in manufacturing, compounding, wholesaling, jobbing, retailing, packaging, distributing or bottling for sale, profit or use that meets all of the following conditions:

- A. Is used by the manufacturer, compounder, wholesaler, jobber, retailer, packager, distributor or bottler to contain or label the finished product;
- B. Is transferred by said person along with and as part of the finished product to the purchaser; and
- C. Is not returnable to said person for reuse.

FINANCE DIRECTOR FINANCIAL SERVICES MANAGER:

The ~~finance director~~ **financial services manager** of the town or such other person designated by the municipality; "~~finance director~~ **financial services manager**" shall also include such person's designee.

GROSS SALES:	The total amount received in money, credit, property or other consideration valued in money for all sales, leases or rentals of tangible personal property or services.
LICENSE:	A town sales and accommodation tax license.
LIMITED LIABILITY COMPANY:	A limited liability company organized under Colorado law, or a limited liability company organized under the laws of another state.
LOCAL EXCHANGE COMPANY:	Any person which provides public telephone or telecommunication exchange access liens, mobile telecommunications or channels necessary to effect the transfer of two-way voice or data grade information between the final user and the local telecommunications network.
LODGING SERVICES:	The furnishing, for a consideration, of a room or other accommodation in a hotel, inn, bed and breakfast establishment, apartment hotel, lodging house, condominium, condominium hotel, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp, trailer court or trailer park, for a period less than thirty (30) consecutive days, under any rental agreement, concession, permit, right of access, license to use or other agreement, or otherwise, whereby any person uses, possesses or has the right to use or possess any such room or accommodation.
MEDICAL SUPPLIES:	Drugs, <u>as regulated by the FDA</u> , dispensed <u>for humans</u> in accordance with a prescription; insulin in all its forms dispensed pursuant to the direction of a licensed physician; glucose usable for treatment of insulin reactions; urine and blood testing kits and materials; insulin measuring and injecting devices. Including hypodermic syringes and needles; prosthetic devices; wheelchairs and hospital beds; drugs or materials when furnished by a doctor as part of professional services provided to a patient;

and corrective eyeglasses, contact lenses, or hearing aids.

MOBILE MACHINERY AND SELF-PROPELLED CONSTRUCTION EQUIPMENT:

Those vehicles, self-propelled or otherwise, which are not designed primarily for the transportation of persons or cargo over the public highways, and those motor vehicles which may have originally been designed for the transportation of persons or cargo over the public highways, and those motor vehicles which may have originally been designed for the transportation of persons or cargo but which have been redesigned or modified by the mounting thereon of special equipment or machinery, and which may be only incidentally operated or moved over the public highways. This definition includes, but is not limited to, wheeled vehicles commonly used in the construction, maintenance, and repair of roadways, the drilling of wells and the digging of ditches.

NEWSPAPER:

A publication, printed on newsprint, intended for general circulation, and published regularly at short intervals, containing information and editorials on current events and news of general interest. The term newspaper does not include: magazines, trade publications or journals, credit bulletins, advertising inserts, circulars, directories, maps, racing programs, reprints, newspaper clipping and mailing services or listings, publications that include an updating or revision service, or books or pocket editions of books.

PAY TELEVISION:

Shall include, but not be limited to, cable, microwave or other television service for which a charge is imposed.

PERSON:

Any individual, firm, partnership, joint venture, corporation, **limited liability company**, estate or trust, receiver, trustee, assignee, lessee or any person acting in a fiduciary or representative capacity, whether appointed by court or otherwise, or any group

or combination acting as a unit.

PRICE OR PURCHASE PRICE:

A. The price to the consumer, exclusive of any direct tax imposed by the federal government or by this article, and, in the case of all retail sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the same time and place of the exchange if:

1. Such exchanged property is to be sold thereafter in the usual course of the retailer's business, or
2. Such exchanged property is a vehicle and is exchanged for another vehicle and both vehicles are subject to licensing, registration, or certification under the laws of this state, including, but not limited to, vehicles operating upon public highways, off highway recreation vehicles, watercraft, and aircraft. Any money or other consideration paid over and above the value of the exchanged property is subject to tax.

B. "Price" or "purchase price" includes:

1. The amount of money received or due in cash and credits.
2. Property at fair market value taken in exchange but not for resale in the usual course of the retailer's business.
3. Any consideration valued in money, such as trading stamps or coupons whereby the manufacturer or someone else reimburses the retailer for part of the purchase price and other media of exchange.
4. The total price charged on credit sales including finance charges which are not separately stated. An amount charged as interest on the unpaid balance of the purchase price is not part of the purchase price unless the amount added to the purchase price is included in the principal amount of a promissory note; except the interest or carrying charge set out separately from the unpaid balance of the purchase price on the face of the note is not part of the purchase price. An

amount charged for insurance on the property sold and separately stated is not part of the purchase price.

5. Installation, delivery and wheeling-in charges included in the purchase price and not separately stated.

6. Transportation and other charges to effect delivery of tangible personal property to the purchaser.

7. Indirect federal manufacturers' excise taxes, such as taxes on automobiles, tires and floor stock.

8. The gross purchase price of articles sold after manufacturing or after having been made to order, including the gross value of all the materials used, labor and service performed and the profit thereon.

9. Software license fees.

C. "Price" or "purchase price" shall not include:

1. Any sales or use tax imposed by the state of Colorado or by any political subdivision thereof.

2. The fair market value of property exchanged if such property is to be sold thereafter in the retailers usual course of business. This is not limited to exchanges in Colorado. Out of state trade ins are an allowable adjustment to the purchase price.

3. Discounts from the original price if such discount and the corresponding decrease in sales tax due is actually passed on to the purchaser. An anticipated discount to be allowed for payment on or before a given date is not an allowable adjustment to the price in reporting gross sales.

PROSTHETIC DEVICES:

Any artificial limb, part, device or appliance for human use which aids or replaces a bodily function; is designed, manufactured, altered or adjusted to fit a particular individual; and is prescribed by a licensed practitioner of the healing arts. Prosthetic devices include, but are not limited to, prescribed auditory, ophthalmic

or ocular, cardiac, dental, or orthopedic devices or appliances, oxygen concentrators and oxygen with related accessories.

PURCHASE OR SALE:

A. The acquisition for any consideration by any person of tangible personal property or taxable services that are purchased, leased, rented, sold, used, stored, distributed, or consumed, but excludes a bona fide gift of property or services. These terms include capital leases, installment and credit sales, and property and services acquired by:

1. Transfer, either conditionally or absolutely, of title or possession or both to tangible personal property;
2. A lease, lease-purchase agreement, rental or grant of a license, including royalty agreements, to use tangible personal property or taxable services. The utilization of coin operated devices, except coin operated telephones, which do not vend articles of tangible personal property shall be considered short term rentals of tangible personal property;
3. Performance of taxable services; or
4. Barter or exchange for other property or services including coupons.

B. The terms “purchase” and “sale” do not include:

1. A division of partnership assets among the partners according to their interests in the partnership;
2. The formation of a corporation by the owners of a business and the transfer of their business assets to the corporation in exchange for all the corporation’s outstanding stock, except qualifying shares, in proportion to the assets contributed;
3. The transfer of assets of shareholders in the formation or dissolution of professional corporations;
4. The dissolution and the pro rata distribution of the corporation’s assets to its stockholders;
5. A transfer of a partnership interest;

6. The transfer in a reorganization qualifying under section 368(a)(1) of the internal revenue code of 1954, as amended;
7. The formation of a partnership by the transfer of assets to the partnership or transfers to a partnership in exchange for proportionate interests in the partnership;
8. The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;
9. The transfer of assets from a parent corporation to a subsidiary corporation or corporations which are owned at least eighty percent (80%) by the parent corporation, which transfer is solely in exchange for stock or securities of the subsidiary corporation;
10. The transfer of assets from a subsidiary corporation or corporations which are owned at least eighty percent (80%) by the parent corporation to a parent corporation or to another subsidiary which is owned at least eighty percent (80%) by the parent corporation, which transfer is solely in exchange for stock or securities of the parent corporation or the subsidiary which received the assets;
11. The transfer of assets between parent and closely held subsidiary corporations, or between subsidiary corporations closely held by the same parent corporation, or between corporations which are owned by the same shareholders in identical percentage of stock ownership amounts, computed on a share by share basis, when a tax imposed by this article was paid by the transferor corporation at the time it acquired such assets, except to the extent that there is an increase in the fair market value of such assets resulting from the manufacturing, fabricating, or physical changing of the assets by the transferor corporation. To such extent any transfer referred to in this subsection B11 shall constitute a sale. For the purposes of this subsection B11, a closely held subsidiary corporation is one in which the parent corporation owns stock possessing at least

eighty percent (80%) of the total combined voting power of all classes of stock entitled to vote and owns at least eighty percent (80%) of the total number of shares of all other classes of stock.

RELIGIOUS ORGANIZATION:

An organization which has qualified for tax exempt status as a religious organization under section 501(c)(3) of the internal revenue department and the accompanying regulations, and which is described in section 170(C) of the internal revenue code.

RETAIL SALES:

All sales except wholesale sales.

RETAILER:

Any person selling, leasing or renting tangible personal property or services at retail. Retailer shall include any:

A. Auctioneer;

B. Salesperson, representative, peddler or canvasser, who makes sales as a direct or indirect agent of or obtains such property or services sold from a dealer, distributor, supervisor or employer;

C. Charitable organization or governmental entity which makes sales of tangible personal property to the public, notwithstanding the fact that the merchandise sold have been acquired by gift or donation or that the proceeds are to be used for charitable or governmental purposes.

RETURN:

The sales and accommodation tax reporting form used to report sales and accommodation tax.

SALES TAX:

The tax to be collected and remitted by a retailer on sales taxed under this code.

SCHOOL:

An educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

COMPUTER SOFTWARE:

The internalized instruction code which controls the basic operations (i.e., arithmetic and logic) of the computer, causing it to execute instructions contained in system programs, as an integral part of the computer. It is not normally accessible or modifiable by the user. A software program is one in which instructions and routines (programs) are determined necessary to program the customer's electronic data processing equipment to enable the customer to accomplish specific functions with his EDP system. The software may be in the form of:

- A. Systems programs (except for the instruction codes which are considered tangible personal property in this definition) - programs that control the hardware itself and allow it to compile, assemble and process application programs.
- B. Application programs - programs that are created to perform business functions or control or monitor processes.
- C. Prewritten (canned) - programs that are either systems programs or application programs and are in which the base program is not written specifically for the user.

SOFTWARE AS A SERVICE:

Software that is rented, leased or subscribed to from a provider at the consumer's location, including but not limited to applications, systems or programs.

SOFTWARE LICENSE FEE:

A fee charged for the right to use, or maintain a copy of, software, regardless of the form of the software.

SOFTWARE MAINTENANCE AGREEMENT:

An agreement, typically with a software provider, that may include (A) provisions to maintain the right to use the software; (B) provisions for software upgrades including code updates, version updates, code fix modifications, enhancements, and added or new functional capabilities loaded into existing software, or (C) technical support.

SOLAR THERMAL SYSTEM:

A system whose primary purpose is to use energy from the sun to produce heat or cold for:

A. Heating or cooling a residential or commercial building;

B. Heating or cooling water; or

C. Any industrial, commercial, or manufacturing process.

TANGIBLE PERSONAL PROPERTY:

Corporeal personal property.

TAX:

The sales tax due from a retailer.

TAX DEFICIENCY:

Any amount of tax that is not reported or not paid on or before the due date.

TAXABLE SALES:

Gross sales less any exemptions and deductions specified in this ~~code~~**chapter**.

TAXABLE SERVICES:

Services subject to tax pursuant to this ~~code~~**chapter**.

TAXPAYER:

Any person obligated to collect and/or pay tax under the terms of this ~~code~~**chapter**.

TELECOMMUNICATIONS SERVICE:

The transmission **or facilitation** of any two-way interactive electromagnetic communications including, but not limited to, voice, image, data and any other information, by the use of any means but not limited to wire, cable, fiber optical cable, microwave, radio wave, **Voice over Internet Protocol (VoIP), remote access to computers and electronic storage equipment,** or any combinations of such media.

“Telecommunications service” includes, but is not limited to, basic local exchange telephone service, toll telephone service and teletypewriter service, including, but not limited to, residential and business service, directory assistance, cellular mobile telephone or telecommunication service, specialized mobile radio and two-way pagers and paging service, including any form of mobile two-way

communication. Telecommunications service does not include separately stated nontransmission services which constitute computer processing applications used to act on the information to be transmitted.

THERAPEUTIC DEVICE:

Devices, appliances, or related accessories that are sold to correct or treat a human physical disability or surgically created abnormality; if such device, appliance or related accessory has a retail value of more than one hundred dollars (\$100.00), it must be sold in accordance with a written recommendation from a licensed doctor to qualify as a “therapeutic device” for purposes of this ~~code~~chapter.

TOTAL TAX LIABILITY:

The total of all tax, penalties or interest owed by a taxpayer and shall include sales tax collected in excess of such tax computed on total sales.

TOWN:

The town of Breckenridge, Colorado.

VENDING MACHINE:

Any device operated by coins, currency, or any substitute therefor.

WHOLESALE SALES:

Sales to licensed retailers, jobbers, dealers or wholesalers for resale. Sales by wholesalers to consumers are not wholesale sales. Sales by wholesalers to nonlicensed retailers are not wholesale sales.

WHOLESALER:

Any person selling to retailers, jobbers, dealers, or other wholesalers, for resale, and not for storage, use, consumption or distribution.

1
2 **B. Wherever applicable, the pronouns in this chapter designating the masculine or neuter**
3 **apply equally to the feminine, neuter, and masculine genders.**

4
5 **C. Wherever applicable in this chapter, the singular includes the plural, and the plural**
6 **includes the singular.**

7
8 3-1-3: TAXABLE TRANSACTIONS AND ITEMS:

1
2 There is hereby levied and shall be collected and paid a tax in the amount stated in section 3-1-5
3 of this chapter, as follows:
4

5 A. On the purchase price paid or charged upon all sales, purchases, rentals and leases of any
6 duration of tangible personal property at retail, **whether or not such property has been**
7 **included in a previous taxable transaction.**
8

9 **B. All sales are consummated at the place of business of the retailer unless the property**
10 **sold is delivered by the retailer, his agent, a common carrier, or by mail. In the event of**
11 **such delivery, the sale is consummated at the place of delivery.**
12

13 BC. In the case of retail sales involving the exchange of property, on the purchase price paid or
14 charged, including the fair market value of the property exchanged at the time and place of the
15 exchange, excluding, however, from the consideration or purchase price the fair market value of
16 the exchanged property, provided such exchanged property is to be sold thereafter in the usual
17 course of the retailer's business.
18

19 CD. Upon telecommunication services including access services sold by local telephone
20 exchange companies to providers of telecommunication services for use in providing such
21 services for all intrastate telecommunication services originating from or received on
22 telecommunication equipment in the town if the charge for the service is billed to a person in the
23 town or billed to an affiliate or division of such person in the town on behalf of a person in the
24 town.
25

26 DE. Upon access services sold by local telephone exchange companies to providers of
27 telecommunication services for use in providing such services, whether furnished by public or
28 private corporations or enterprises for all interstate telecommunication services originating from
29 or received on telecommunication equipment in the town if the charge for the service is billed to
30 a person in the town, or billed to an affiliate or division of such person in the town on behalf of a
31 person in the town.
32

33 EF. Upon gas and electric service, whether furnished by municipal, public or private
34 corporations or enterprises, and upon gas and electricity furnished and sold for domestic and
35 commercial consumption and not for resale and upon steam when consumed or used by the
36 purchaser and not resold in original form whether furnished or sold by municipal, public or
37 private corporations or enterprises, if the charge is billed to a person in town.
38

39 FG. Upon the entire amount charged to any person or persons for lodging services.
40

41 GH. Upon the amount paid for all meals and beverages furnished in any restaurant, eating
42 house, hotel, drugstore, club, resort, hospital, or other such place at which meals or food are
43 regularly sold.
44

45 HI. Upon cover charges, if tangible personal property, such as food and/or beverages, is received

1 as consideration for the amount paid.

2
3 IJ. Upon all sales of food.

4
5 JK. Upon the sale, lease or transfer of computer programs (software).

6
7 KL. Upon pay, cable or subscription television services sold, purchased, leased, rented, furnished
8 or used, including any equipment rentals furnished as a part of the price or separately stated, if
9 the charge is billed to a person in the town.

10
11 **M. Upon pre-written (canned) software that is sold, licensed for use, subscribed to, leased**
12 **or rented when delivered electronically or by any other method. Software is deemed to be**
13 **used within the town if one of the following is true:**

14
15 **A. The end-user of the software is engaged in business in the town or resides in the**
16 **town while using or accessing the software; or**

17
18 **B. The server or other computer equipment upon which the software, electronic**
19 **files or electronic data reside or are maintained is located within the town.**

20
21 **N. Software Maintenance Agreements when:**

22
23 **A. The agreement is mandatory to maintain the right to use the associated**
24 **software; or**

25
26 **B. The agreement includes software upgrades and the cost for upgrading is not**
27 **separately calculated and stated from other aspects; or**

28
29 **C. The agreement includes technical support and the cost associated with technical**
30 **support is not separately stated or calculated.**

31
32 **O. Upon software as a service, data processing equipment and data processing programs.**

33
34 **P. Upon sales of tangible personal property by a Retailer-Contractor, when acting as a**
35 **retailer, shall be subject to sales tax on the total sales price.**

36
37 **Q. Upon the retail sale of medical marijuana and marijuana-infused products pursuant to**
38 **the Colorado Medical Marijuana Code, Article 43.3 of Title 12, C.R.S.,**

39
40 **R. Upon the sale of retail marijuana or marijuana products pursuant to the Colorado**
41 **Retail Marijuana Retail Marijuana Code, Article 43.4 of Title 12, C.R.S.**

42
43 3-1-4: ITEMS EXEMPT FROM TAX:

44
45 There shall be exempt from taxation under the provisions of this chapter the following:

2013 SALES TAX ORDINANCE

- 1
2 A. All sales to the United States government, to the state, its departments and institutions, and
3 the political subdivisions thereof in their governmental capacities **only when billed to and paid**
4 **for by the governmental entity.**
5
6 B. All sales made to “charitable organizations” as defined in section 3-1-2 of this chapter, in the
7 conduct of their charitable functions **only when billed to and paid for by the charitable**
8 **organization.**
9
10 C. All sales made to “religious organizations” as defined in section 3-1-2 of this chapter, in the
11 conduct of their religious functions **only when billed to and paid for by the religious**
12 **organization.**
13
14 D. All sales which the town is prohibited from taxing under the constitution or laws of the United
15 States or the state.
16
17 E. Food for domestic home consumption, as defined in 7 USC section 2012(g) as amended, for
18 purposes of the federal food stamp program as defined in 7 USC section 2012(h), as amended,
19 purchased with food stamps pursuant to the federal food stamp program; or food purchased with
20 WIC vouchers or checks pursuant to the federal special supplemental program for women,
21 infants and children.
22
23 F. Cover charges, if the amount paid is strictly for admission to the vendor’s place of business
24 and tangible personal property, such as food and/or beverages, is not received as consideration
25 for the amount paid.
26
27 G. All sales of cigarettes.
28
29 H. All sales made to schools, other than schools held or conducted for private or corporate profit.
30
31 I. All sales of motor fuel upon which there has accrued or has been paid the motor fuel tax
32 prescribed by parts one and two of chapter 26 of title 39, Colorado Revised Statutes.
33
34 J. Sales to and purchases of tangible personal property by a person engaged in the business of
35 manufacturing, compounding for sale, profit or use, any article, substance, commodity, which
36 tangible personal property enters into the processing of or becomes an ingredient or component
37 part of the product or service which is manufactured, compounded or furnished and the
38 container, label or the furnished shipping cases thereof, shall be deemed to be wholesale sales
39 and shall be exempt from taxation under this chapter.
40
41 K. Sales of “exempt commercial packaging materials” as defined in section 3-1-2 of this
42 chapter.
43
44 L. Sales and purchases of electricity, coal, fuel, oil, gas or coke for use in processing,
45 manufacturing, mining, refining, irrigation, building construction, telegraph, telephone and radio

1 communication, street and railroad transportation services and all industrial uses, the newsprint
2 and printers ink for use by publishers of newspapers and commercial printers shall be deemed to
3 be wholesale sales and shall be exempt from taxation under this chapter.
4

5 M. All sales and purchases of automotive vehicles which are required to be registered under the
6 Colorado motor vehicle laws whether new or used under the following conditions:
7

- 8 1. The purchaser is not a resident of the town, and
- 9 2. The vehicle or mobile home is to be registered under an address outside of the town and will
10 be primarily housed, located or occupied at such address or other place outside the town.
11

12 N. Sales of tangible personal property shall be exempted from the operation of this section if
13 both of the following conditions exist:
14

- 15 1. The sales are to those who are residents or doing business outside the town, and
- 16 2. The articles purchased are to be delivered to the purchaser outside the town by common
17 carrier or by the conveyance of the seller or by mail.
18

19 ~~N.S.~~ O. Drugs, medical devices:
20

- 21 1. All sales of “medical supplies” as defined in section 3-1-2 of this chapter.
- 22 2. All sales of “therapeutic devices” as defined in section 3-1-2 of this chapter.
- 23 3. All sales of “prosthetic devices” as defined in section 3-1-2 of this chapter.
24

25 OP. Fifty percent (50%) of the purchase price of: 1) factory built housing (including mobile
26 homes), as such housing is defined in section 24-32-703(3), Colorado Revised Statutes, and of 2)
27 other buildings or structures including conventional buildings shall be exempt from taxes under
28 the provisions of this chapter; except that the entire purchase price in any subsequent sale of
29 factory built houses or other buildings severed from real estate after such housing or severed
30 building has once been subject to the payment of sales or use tax under the provisions of this
31 chapter shall be exempt from taxes under the provisions of this chapter.
32

33 PO. The transfer of tangible personal property without consideration (other than the purchase,
34 sale or promotion of the transferor’s product) to an out of state vendee for use outside of this
35 state in selling products normally sold at wholesale by the transferor.
36

37 QR. The sale of tangible personal property for testing, modification, inspection, or similar type
38 of activities in this state if the ultimate use of such property in manufacturing or similar type of
39 activities occurs outside of this state and if the test, modification, or inspection period does not
40 exceed ninety (90) days.
41

42 RS. Any sale of any article to a retailer or vendor of food, meals, or beverages, which article is to
43 be furnished to a consumer or user for use with articles of tangible personal property purchased
44 at retail, if a separate charge is not made for the article to the consumer or user, if such article
45 becomes the property of the consumer or user, together with the foods, meals or beverages

1 purchased, and if a tax is paid on the retail sale as required by subsection ~~3-1-3G~~ **3-1-3H** of this
2 chapter.

3
4 **SI.** Any sale of any container or bag to a retailer or vendor of food, meals, or beverages, which
5 container or bag is to be furnished to a consumer or user for the purpose of packaging or bagging
6 articles of tangible personal property purchased at retail, if a separate charge is not made for the
7 container or bag to the consumer or user, together with the food, meals or beverages purchased,
8 and if a tax is paid on the retail sales as required in section 3-1-3 of this chapter.

9
10 **TU.** All transactions specified in ~~subsection 3-1-3B~~ **3-1-3C** of this chapter in which the fair
11 market value of the exchanged property is excluded from the consideration or purchase price
12 because such exchanged property is covered by subsection 3-1-3A or ~~B-C~~ of this chapter, and in
13 which, because there is no additional consideration involved in the transaction, there is no
14 purchase price within the meaning of section 3-1-2 of this chapter.

15
16 **UV.** All sales of construction materials to contractors and subcontractors for use in the building,
17 erection, alteration, or repair of structures, highways, roads, streets, and other public works
18 owned and used by:

- 19
20 1. The United States government, the state, its departments and institutions, the political
21 subdivisions thereof in their governmental capacities only;
22 2. Charitable organizations, as defined in section 3-1-2 of this chapter, in the conduct of their
23 regular charitable functions and activities; or
24 3. Schools, other than schools held or conducted for private or corporate profit.

25
26 **VW.** All sales of newspapers as defined in section 3-1-2 of this chapter.

27
28 **WX.** All sales of customized ~~computer~~ software where the design or writing of a computer
29 program is for a specific application of an individual user.

30
31 **Y** **All sales, storage, of components used in photovoltaic or solar thermal systems and in**
32 **the production of alternating current electricity from a renewable energy source, including**
33 **but not limited to wind, as defined in section 3-1-2 of this chapter.**

34
35 **Z. All occasional sales by a charitable organization under the following conditions:**

36
37 **1. The sale of tangible personal property or concessions by the charitable organization**
38 **takes place no more than ninety days, whether consecutive or not, during any one calendar**
39 **year;**

40
41 **2. The funds raised by the charitable organization through these sales are retained by the**
42 **organization to be used in the course of the organization's charitable service; and**

43
44 **3. The funds raised in town by the charitable organization through these sales do not**
45 **exceed twenty-five thousand dollars during any calendar year.**

1
2 **AA. All sales of tangible personal property by a school, other than schools held or**
3 **conducted for private or corporate profit, under the condition that the funds raised by the**
4 **school are retained by the organization to be used in the course of the school's service.**
5

6 **BB. All sales of tangible personal property, except automotive vehicles, at garage sales,**
7 **yard sales or estate sales; provided that such sales are conducted no more than three times**
8 **a year, each sale is limited to a maximum of 3 days in duration, that the sale occurs at the**
9 **residence of the seller and that the property to be sold was originally purchased for use by**
10 **members of the household where such sale is being conducted.**
11

12 3-1-5: SCHEDULE OF TAX:
13

14 There is hereby imposed a tax upon all sales of commodities and services specified in section 3-
15 1-3 of this chapter and not exempt therefrom as specified in section 3-1-4 of this chapter at the
16 rate of two and one-half percent (2½ %) on the amount of the sale which shall be rounded off to
17 the nearest penny; provided, however, that sales under the amount of twenty five cents (\$0.25)
18 shall not be taxable.
19

20 3-1-6: SALES TAX, NONAPPLICABILITY:
21

22 For transactions consummated on or after January 1, 1986, the Breckenridge sales tax shall not
23 apply to the sale of construction and building materials, as the term is used in section 29-2-109,
24 Colorado Revised Statutes, if such materials are picked up by the purchaser and if the purchaser
25 of such materials presents to the retailer a building permit or other documentation acceptable to
26 the town evidencing that a local use tax has been paid or is required to be paid.
27

28 3-1-7: RETAILER RESPONSIBLE FOR PAYMENT OF TAX:
29

30 A. Every retailer or vendor engaged in business and selling at retail as defined in this chapter
31 shall be liable and responsible for the payment of an amount equivalent to two and one-half
32 percent (2 ½ %) of all sales made by him of commodities or services as specified in section 3-1-3
33 of this chapter, and shall file a return each month with the ~~finance director~~ **financial services**
34 **manager** on or before the twentieth day of each month for the preceding month and remit an
35 amount equivalent to said two and one-half percent (2½ %) of such sales to the ~~finance director~~
36 **financial services manager**.
37

38 B. Every retailer or vendor conducting a business in which the transaction between the vendor
39 and the consumer consists of the supply of tangible personal property and services in connection
40 with the maintenance or servicing of same, shall be required to pay the tax levied under this
41 chapter on the full contract price, unless application is made to the ~~finance director~~ **financial**
42 **services manager** for permission to use a percentage basis of reporting the tangible personal
43 property sold and the services supplied under such contract. The ~~finance director~~ **financial**
44 **services manager** is hereby authorized to determine the percentage based on the ratio of the
45 tangible personal property included in the consideration as it bears to the total of the

1 consideration paid under said combination contract or sale which shall be subject to the tax
2 levied pursuant to the provisions of this chapter. This subsection shall not be construed to include
3 terms upon which the tax is imposed on the full purchase price as defined herein.
4

5 **3-1-8: ACQUISITION, INCEPTION OR CESSATION OF BUSINESS:**
6

7 **A. Acquisition of an existing business.**
8

9 **1. Seller's responsibilities. Any person engaged in business in the town who**
10 **sells such business shall file a final return. The reporting period for such return shall end**
11 **on the date of the transfer of ownership of the business.**
12

13 **2. Purchaser's responsibilities.**
14

15 **(a) Any person who purchases an existing business shall be**
16 **responsible for determining the total tax liability of that business and shall withhold from**
17 **the initial purchase payment an amount sufficient to cover any such tax liability.**
18

19 **(b) Any amount so withheld shall be paid to the town within ten (10)**
20 **days of the date of the sale of the business on forms prescribed by the financial services**
21 **manager.**

22 **(c) Any purchaser who fails to withhold such tax due or fails to pay to**
23 **the town the amount so withheld within the ten (10) day period allowed, shall, as well as the**
24 **seller, be held liable for any unpaid tax due.**
25

26 **B. Inception of business; initial tax. Any person who purchases or establishes a**
27 **business inside the town shall file an initial tax return.**
28

29 **1. Existing businesses. Sales tax shall be due on tangible personal property,**
30 **except inventory held for lease, rental or resale, which is acquired with the purchase,**
31 **transfer of ownership, or any other form of acquisition of a business. The tax shall be based**
32 **on the price of such property as recorded in the bill of sale or agreement and constituting a**
33 **part of the total transaction at the time of the sale or transfer, provided the valuation is as**
34 **great or greater than the fair market value of such property. If the fair market value of the**
35 **property is greater than the price recorded in the bill of sale or agreement, then the fair**
36 **market value of the property shall be the basis for calculating the amount of tax due. Such**
37 **tax shall be reported on a sale of assets tax return.**
38

39 **2. New businesses. Sales tax shall be paid on the price of all tangible**
40 **personal property, except inventory held for lease, rental or resale, which is purchased**
41 **inside the town. Such tax shall be reported on the seller's sales tax return.**
42

43 **3. Exceptions. In the case of businesses where the tangible personal**
44 **property purchased is or shall be affixed to a building or premises and intended to be**
45 **utilized in that fashion (i.e. automated or self serve car wash equipment, Laundromat**

1 washers and dryers, bowling lanes, and such properties), the business owner shall deduct
2 this equipment on the sale of assets tax return and collect and remit sales tax on each
3 transaction where the equipment is utilized by the customer or patron.

4
5 C. Cessation of business. Every person engaged in business in the town who quits
6 doing business in the town shall file a final return. The reporting period for such return
7 shall end on the last day of business in the town.

8
9 3-1-9: RETAILER TO COLLECT TAX:

10
11 Retailers shall add the tax imposed to the sale price or charge, showing such tax as a separate and
12 distinct item, and when added, such tax shall constitute a part of such price or charge and shall be
13 a debt from the consumer or user to the retailer until paid and shall be recoverable at law in the
14 same manner as other debts; provided, however, that the retailer shall be entitled, as collection
15 agent of the town, to apply and credit the amount of this collection against the two and one-half
16 percent (2½ %) rate to be paid by him under the provisions of section 3-1-5 of this chapter
17 remitting any excess collected over said two and one-half percent (2½ %) to the ~~finance director~~
18 financial services manager in the retailer's next monthly sales tax returns.

19
20 3-1-10: TAX ON CREDIT SALES, ETC.:

21
22 Whenever tangible personal property is sold which is taxable hereunder, under a conditional
23 sales contract whereby the seller retains title as security for all or part of the purchase price, or
24 whenever the seller takes a chattel mortgage on such tangible personal property to secure all or
25 part of the purchase price, the total tax based on the total selling price shall become immediately
26 due and payable. The tax shall be charged, or collected and remitted by the vendor. No refund or
27 credit shall be allowed to either party of the transaction in case of repossession.

28
29 3-1-11: SALES TAX, CREDIT FOR SALES OR USE TAXES PREVIOUSLY PAID TO
30 ANOTHER MUNICIPALITY:

31
32 For transactions consummated on or after June 1, 1997, the town's sales tax shall not apply to the
33 sale of tangible personal property at retail or the furnishing of services if the transaction was
34 previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another
35 statutory or home rule municipality equal to or in excess of two and one-half percent (2½ %). A
36 credit shall be granted against the town's sales tax with respect to such transaction equal in
37 amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to
38 the previous statutory or home rule municipality. The amount of the credit shall not exceed two
39 and one-half percent (2½ %).

40
41 3-1-12: CLAIMS FOR RECOVERY:

42
43 The intent of this section is to streamline and standardize procedures related to situations where
44 tax has been remitted to the incorrect municipality. It is not intended to reduce or eliminate the
45 responsibilities of the taxpayer or vendor to correctly pay, collect, and remit sales and use taxes

1 to the town.

2
3 A. As used herein, “claim for recovery” or “claim” means a claim for reimbursement of sales and
4 use taxes paid to the wrong taxing jurisdiction.

5
6 B. When it is determined by the ~~finance director~~ **financial services manager** of the town that
7 sales tax owed to the town has been reported and paid to another municipality, the town shall
8 promptly notify the vendor that taxes are being improperly collected and remitted, and that as of
9 the date of the notice, the vendor must cease improper tax collections and remittances.

10
11 C. The town may make a written claim for recovery directly to the municipality that received tax
12 and/or penalty and interest owed to the town, or, in the alternative, may institute procedures for
13 collection of the tax from the taxpayer or vendor. The decision to make a claim for recovery lies
14 in the sole discretion of the town. Any claim for recovery shall include a properly executed
15 release of claim from the taxpayer and/or vendor releasing its claim to the taxes paid to the
16 wrong municipality, evidence to substantiate the claim, and a request that the municipality
17 approve or deny in whole or in part, the claim within ninety (90) days of its receipt. The
18 municipality to which the town submits a claim for recovery may, for good cause, request an
19 extension of time to investigate the claim, and approval of such extension by the town shall not
20 be unreasonably withheld.

21
22 D. Within ninety (90) days after receipt of a claim for recovery, the town shall verify to its
23 satisfaction whether or not all or a portion of the tax claimed was improperly received, and shall
24 notify the municipality submitting the claim in writing that the claim is either approved or denied
25 in whole or in part, including the reasons for the decision. If the claim is approved in whole or in
26 part, the town shall remit the undisputed amount to the municipality submitting the claim within
27 thirty (30) days of approval. If a claim is submitted jointly by a municipality and a vendor or
28 taxpayer, the check shall be made to the parties jointly. Denial of a claim for recovery may only
29 be made for good cause.

30
31 E. The town may deny a claim on the grounds that it has previously paid a claim for recovery
32 arising out of an audit of the same taxpayer.

33
34 F. The period subject to a claim for recovery shall be limited to the thirty six (36) month period
35 prior to the date the municipality that was wrongly paid the tax receives the claim for recovery.

36
37 3-1-13: EXEMPTION; BURDEN OF PROOF:

38
39 The burden of proving that any vendor, retailer, consumer or purchaser is exempt from collecting
40 or paying the tax upon goods sold or purchased, paying the same to the ~~finance director~~ **financial**
41 **services manager** or from making such returns, shall be on the vendor, retailer, consumer, or
42 purchaser under such reasonable requirements of proof as the ~~finance director~~ **financial services**
43 **manager** may prescribe.

44
45 3-1-14: EXCESS COLLECTIONS:

1
2 If any vendor shall during any reporting period collect as a tax any amount in excess of two and
3 one-half percent (2½ %) of his total taxable sales, he shall remit to the ~~finance director~~ **financial**
4 **services manager** the full net amount of the tax herein imposed, and also such excess. The
5 retention by the retailer or vendor of any excess tax collections or the intentional failure to remit
6 punctually to the ~~finance director~~ **financial services manager** the full amount required to be
7 remitted by the provisions of this chapter is hereby declared to be a violation of this chapter.
8

9 3-1-15: UNLAWFUL TO ASSUME OR ABSORB TAX:
10

11 **A.** It shall be unlawful, except as provided below, for any retailer to advertise or hold out or state
12 to the public or to any consumer, directly or indirectly, that the tax or any part thereof imposed
13 by this chapter shall be assumed or absorbed by the retailer, or that it will not be added to the
14 selling price of the property sold, or if added, that it or any part thereof shall be refunded. Any
15 person violating any provision of this section shall be subject to the penalties herein provided in
16 this chapter.
17

18 ~~**B.**~~ Nothing herein contained shall be deemed to prohibit any retailer selling malt, vinous or
19 spirituous liquors by the drink from including in his sales price any tax levied under this chapter.
20

21 **C. Sales tax may be included in the price of tangible personal property sold through**
22 **vending machines or the price of utilizing such automatic sale devices as a rental of**
23 **equipment.**
24

25 ~~**BD.**~~ No retailer selling malt, vinous or spirituous liquors by the drink **or sales through a**
26 **vending machine** shall advertise or hold out to the public in any manner, directly or indirectly,
27 that the tax levied by this chapter is not considered as an element in the sales price to the
28 consumer.
29

30 3-1-16: SPECIAL ACCOUNTING BASIS FOR REMITTANCE OF TAX:
31

32 If the accounting methods employed by the vendor or licensed consumer in the transaction of his
33 business, or other conditions, are such that returns made on the calendar month basis will impose
34 unnecessary hardship, the ~~finance director~~ **financial services manager** may, upon request of the
35 vendor or licensed consumer, accept returns at such intervals as will, in his opinion, better suit
36 the convenience of the taxpayer and will not jeopardize the collection of the tax. If any taxpayer
37 who has been granted permission to file reports and pay tax on other than a monthly basis shall
38 become delinquent, then authorization for such alternative method of reporting may be revoked
39 by the ~~finance director~~ **financial services manager** or his authorized agent, and immediately
40 following notice of revocation, the taxpayer will be required to file reports and pay tax, interest
41 and penalties on a monthly basis for all unreported or unpaid tax in the same manner required by
42 law under conditions that would prevail if he has never been granted the alternate method of
43 reporting and paying the tax.
44

45 3-1-17: DUTY TO KEEP BOOKS AND RECORDS:

1
2 A. Every person engaged in business in the town shall keep and preserve for a period of at least
3 three (3) years adequate records of all sales and purchases made by him, and such other books
4 and records as may be necessary to determine the amount of tax he is liable to collect or pay.
5 These records must include the normal books of account maintained by the ordinarily prudent
6 business person engaged in such business, together with all bills, receipts, invoices, cash register
7 tapes, or other documents of original entry supporting the entries in the books of accounts
8 together with all schedules or working papers used in connection with the preparation of tax
9 returns.

10
11 **B. Every person who uses construction equipment inside the town shall keep and preserve**
12 **for at least three (3) years after the final certificate of occupancy or certificate of**
13 **completion for such project is issued, records of the time each piece of construction**
14 **equipment that was located inside the town and any sales tax paid on such construction**
15 **equipment and related materials.**

16
17 3-1-18: INVESTIGATION OF BOOKS:

18
19 For the purpose of ascertaining the correctness of a return, or for the purpose of determining the
20 amount of tax due from any person, the ~~finance director~~ **financial services manager**, or his duly
21 authorized agent, may hold investigations and hearings concerning any matters covered by this
22 chapter and may examine any relevant books, journals, ledgers, business bank account records,
23 work papers of the taxpayer or accountant, records or memorandum of any such person and may
24 require the attendance and testimony of such person.

25
26 3-1-19: COORDINATED AUDIT:

27
28 A. Any taxpayer licensed in this town pursuant to section ~~3-1-20~~ **3-1-22** of this chapter, and
29 holding a similar sales tax license in at least four (4) other Colorado municipalities that
30 administer their own sales tax collection, may request a coordinated audit as provided herein.

31
32 B. Within fourteen (14) days of receipt of notice of an intended audit by any municipality that
33 administers its own sales tax collection, the taxpayer may provide to the ~~finance director~~
34 **financial services manager** of this town, by certified mail, return receipt requested, a written
35 request for a coordinated audit indicating the municipality from which the notice of intended
36 audit was received and the name of the official who issued such notice. Such request shall
37 include a list of those Colorado municipalities utilizing local collection of their sales tax in which
38 the taxpayer holds a current sales tax license and a declaration that the taxpayer will sign a
39 waiver of any passage of time based limitation upon this town's right to recover tax owed by the
40 vendor for the audit period.

41
42 C. Except as provided in subsection G of this section, any taxpayer that submits a complete
43 request for a coordinated audit and ~~promptly signs a waiver of section 3-1-18~~ **3-1-20** of this
44 ~~chapter~~ may be audited by this town during the twelve (12) months after such request is
45 submitted only through a coordinated audit involving all municipalities electing to participate in

1 such an audit.

2
3 D. If this town desires to participate in the audit of a taxpayer that submits a complete request for
4 a coordinated audit pursuant to subsection C of this section, the ~~finance director~~ **financial**
5 **services manager** shall so notify the ~~finance director~~ **financial services manager** of the
6 municipality whose notice of audit prompted the taxpayer's request within ten (10) days after
7 receipt of the taxpayer's request for a coordinated audit. The ~~finance director~~ **financial services**
8 **manager** shall then cooperate with other participating municipalities in the development of
9 arrangements for the coordinated audit, including arrangement of the time during which the
10 coordinated audit will be conducted, the period of time to be covered by the audit, and a
11 coordinated notice to the taxpayer of those records most likely to be required for completion of
12 the coordinated audit.

13
14 E. If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by
15 this town, this town's ~~finance director~~ **financial services manager** shall facilitate arrangements
16 between this town and other municipalities participating in the coordinated audit unless and until
17 an official from some other participating municipality agrees to assume this responsibility. The
18 ~~finance director~~ **financial services manager** shall cooperate with other participating
19 municipalities to, whenever practicable, minimize the number of auditors that will be present on
20 the taxpayer's premises to conduct the coordinated audit on behalf of the participating
21 municipalities. Information obtained by or on behalf of those municipalities participating in the
22 coordinated audit may be shared only among such participating municipalities.

23
24 F. If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by
25 this town, this town's ~~finance director~~ **financial services manager** shall, once arrangements for
26 the coordinated audit between the town and other participating municipalities are completed,
27 provide written notice to the taxpayer of which municipalities will be participating, the period to
28 be audited and the records most likely to be required by participating municipalities for
29 completion of the coordinated audit. The ~~finance director~~ **financial services manager** shall also
30 propose a schedule for the coordinated audit.

31
32 G. The coordinated audit procedure set forth in this section shall not apply:

- 33
34 1. When the proposed audit is a jeopardy audit,
35 2. To audits for which a notice of audit was given prior to the effective date of this section, **or**
36 3. ~~When a taxpayer refuses to promptly sign a waiver of section 3-1-183-1-20 of this chapter, or~~
37 4. ~~When a taxpayer fails to provide a timely and complete request for a coordinated audit as~~
38 ~~provided in subsection B of this section.~~

39
40 3-1-20: STATUTE OF LIMITATIONS:

41
42 No sales tax, interest or penalties shall be assessed, nor shall any notice of lien be filed, or
43 distraint warrant issued, or suit for collection be instituted, nor any action to collect the same be
44 commenced, more than three (3) years after the date on which the tax was or is payable. A lien
45 shall not continue after such period, except on taxes assessed before the expiration of the period

1 for which a notice of a tax lien has been filed prior to the expiration of such period.

2
3 In the case of a false or fraudulent return with intent to evade tax, the tax together with interest
4 and penalties thereon may be assessed, or proceedings for the collection of such taxes may be
5 begun at any time without regard to the statute of limitations. Prior to the expiration of the period
6 of limitation, the taxpayer and the ~~finance director~~ **financial services manager** may agree in
7 writing to an extension thereof, and the period so agreed on may be extended by subsequent
8 agreements in writing.

9
10 When a taxpayer fails or refuses to file a return the sales tax may be assessed and collected
11 without regard to the statute of limitations.

12
13 The period of limitation provided herein shall not run against the town for an audit period if
14 written notice is given to the taxpayer prior to the expiration of the statute of limitations that the
15 latter's records will be audited pursuant to this chapter. "Audit period" is the thirty six (36)
16 month reporting period preceding the date of the notice of audit.

17
18 3-1-21: SUBPOENAS:

19
20 The ~~finance director~~ **financial services manager** may issue a subpoena to compel a person to
21 attend and give testimony or to produce books and records, workpapers, photographs or such
22 other information that may be deemed necessary for the purpose of determining the amount of
23 tax due from any person.

24
25 3-1-22: LICENSES FOR RETAIL SELLERS:

26
27 It shall be unlawful for any person to engage in the business of selling at retail on or after July 1,
28 1984, without having first obtained a Breckenridge sales tax license.

29
30 3-1-23: SALES TAX LICENSES; APPLICATION AND CONTENT:

31
32 Breckenridge sales tax licenses shall be granted only upon application stating the name and
33 address of the person desiring such license, the name of such business and the character thereof,
34 the location, including the street number of such business and such other facts as may be
35 required by the ~~finance director~~ **financial services manager**. Any person doing business as a
36 wholesaler shall obtain a retailer's license if any sales are made at retail as defined herein. In
37 case business is transacted at two (2) or more separate places by one person, a separate license
38 for each place of business shall be required. The license shall be posted in a conspicuous place in
39 the place of business for which it is used. No license shall be transferable.

40
41 3-1-24: DENIAL OF LICENSE:

42
43 A. An application for the initial issuance or renewal of a Breckenridge sales tax license shall be
44 denied by the ~~finance director~~ **financial services manager** if:

45 1. The business for which the license is sought is an unlawful business;

1 2. The applicant is not qualified to engage in such business under applicable federal, state or
2 local law; or

3 3. The applicant or, in the event of an applicant which is other than a natural person, if any
4 principal of the applicant, owes to the town any unpaid and delinquent tax of any kind. As used
5 in this subsection A3, the term “principal” means: a) as to a corporation, any officer, director, or
6 shareholder owning fifty percent (50%) or more of the issued and outstanding capital stock of the
7 corporation, b) as to any general partnership, any partner, c) as to any limited partnership, any
8 general partner, and d) as to any limited liability company, any manager or member owning
9 more than fifty percent (50%) interest in the entity. The term “delinquent” means the
10 nonpayment of any tax obligation owed to the town within sixty (60) days of the date such
11 obligation is due.

12
13 B. Before denying an application the ~~finance director~~ **financial services manager** shall cause a
14 hearing to be held using the general procedures provided for the revocation of a license in section
15 ~~3-1-23~~**3-1-26** of this chapter. In the event an application is denied, the ~~finance director~~ **financial**
16 **services manager** shall deliver to the applicant a written order of denial stating the reason for
17 denial.

18
19 3-1-25: SALE AT RETAIL WITHOUT LICENSE:

20
21 Any person engaging in the business of selling at retail in the town, without having secured a
22 license therefor, except as specifically provided herein, shall be guilty of a violation of this
23 chapter.

24
25 3-1-26: REVOCATION OF LICENSE:

26
27 The ~~finance director~~ **financial services manager** may, on a reasonable notice and after full
28 hearing, revoke the license of any person found by the ~~finance director~~ **financial services**
29 **manager** to have violated any provisions of this chapter.

30
31 3-1-27: APPEAL:

32
33 Any finding and order of the ~~finance director~~ **financial services manager** revoking the license of
34 any person shall be subject to review by the district court of the district where the business of the
35 licensee is conducted, upon application of the aggrieved party. The procedure for review shall be
36 as nearly as possible the same as now provided for review of findings by writ of certiorari in
37 accordance with rule 106(a)(4) of the Colorado rules of civil procedures.

38
39 3-1-28: WHEN LICENSE NOT REQUIRED:

40
41 No license shall be required of any person engaged exclusively in the business of selling
42 commodities which are exempt from taxation under this chapter.

43
44 3-1-29: MAP OR LOCATION GUIDE OF ~~CITY~~ **TOWN** BOUNDARIES:

1 The finance department shall make available to any requesting vendor a map or location guide
2 showing the boundaries of the town. The requesting vendor may rely on such map or location
3 guide and any update thereof available to such vendor in determining whether to collect a sales
4 tax. No penalty shall be imposed or action or deficiency maintained against a vendor who in
5 good faith complies with the most recent map or location guide available to such vendor.
6

7 3-1-30: COLLECTION AND REFUND OF DISPUTED TAX:
8

9 Should a dispute arise between the purchaser and seller as to whether or not any sale or
10 commodity or service is exempt from taxation hereunder, nevertheless, the seller shall collect
11 and the purchaser shall pay such tax, and the seller thereupon issues to the purchaser a receipt or
12 certificate, on forms prescribed by the ~~finance director~~ **financial services manager**, showing the
13 names of the seller and purchaser, the items purchased, the date, price, amount of tax paid, and a
14 brief statement of the claim of the exemption. The purchaser may thereafter apply to the ~~finance~~
15 ~~director~~ **financial services manager** to determine the question of exemption, subject to review
16 by the courts, as herein provided.
17

18 3-1-31: REFUNDS:
19

20 A. A refund shall be made, or credit allowed, for the sales tax so paid under dispute by any
21 purchaser or user who claims an exemption pursuant to section 3-1-4 of this chapter. Such refund
22 shall be made by the ~~finance director~~ **financial services manager** after compliance with the
23 following conditions precedent: Applications for refund must be made within sixty (60) days
24 after the purchase of the goods or services whereon an exemption is claimed and must be
25 supported by the affidavit of the purchaser accompanied by the original paid invoice or sales
26 receipt and certificate issued by the seller and shall be made upon such forms as shall be
27 prescribed therefor.
28

29 B. Upon receipt of such application, the ~~finance director~~ **financial services manager** shall
30 examine the same with due speed and shall give notice to the applicant in writing of his decision
31 thereon. Aggrieved applicants, within ~~twenty (20)~~ **thirty (30)** calendar days after such decision is
32 mailed to them, may petition the ~~finance director~~ **financial services manager** for a hearing on
33 the claim in the manner provided in section ~~3-1-35~~ **3-1-41** of this chapter and may either appeal to
34 the district court in the manner provided in section ~~3-1-36~~ **3-1-42** of this chapter or to the
35 department of revenue in the manner provided in section ~~3-1-37~~ **3-1-43** of this chapter. The right
36 of any person to a refund under this chapter shall not be assignable, and except as provided in
37 subsection C of this section, such application for refund must be made by the same person who
38 purchased the goods or services and paid the tax thereon as shown in the invoice of the sale
39 thereof.
40

41 C. A refund shall be made or a credit allowed by the ~~finance director~~ **financial services**
42 **manager** to any person entitled to an exemption where such person establishes that: 1) a tax was
43 paid by another person, the purchaser, on a purchase made on behalf of the person entitled to an
44 exemption; 2) a refund has not been granted to such purchaser; and 3) the person entitled to the
45 exemption paid or reimbursed such purchaser for such tax. The burden of proving that sales,

1 services, and commodities on which tax refunds are claimed are exempt from taxation under this
2 chapter or were not at retail shall be on the person making such claim under such reasonable
3 requirements of proof as set forth in the rules and regulations prescribed therefor. No such refund
4 shall be made or credit allowed in an amount greater than the tax paid less the expense allowance
5 on such purchase retained by the vendor pursuant to section ~~3-1-8~~ 3-1-9 of this chapter.

6
7 D. Such application for refund under subsection C of this section shall be made on forms
8 furnished by the finance department. Upon receipt of such application and proof of the matters
9 contained therein, the ~~finance director~~ financial services manager shall give notice to the
10 applicant by order in writing of his decision thereon. Aggrieved applicants within ~~twenty (20)~~
11 thirty (30) calendar days after such decision is mailed to them, may petition the ~~finance director~~
12 financial services manager for a hearing on the claim in the manner provided in section ~~3-1-~~
13 ~~353-1-41~~ of this chapter and may either appeal to the district court in the manner provided in
14 section ~~3-1-36~~ 3-1-42 of this chapter or to the department of revenue in the manner provided in
15 section ~~3-1-37~~ 3-1-43 of this chapter. Any applicant for a refund under the provisions of this
16 subsection D, or any other person, who makes any false statement in connection with an
17 application for a refund of any taxes is guilty of a violation of this chapter and shall be punished
18 in the manner provided by state law.

19
20 E. Claims for tax monies paid in error or by mistake shall be made within three (3) years after the
21 date or purchase of the goods or services for which the refund is claimed and shall be processed
22 for refund in accordance with the rules and regulations prescribed therefor under subsection D of
23 this section, except that the proceeds of any such claim for a refund shall first be applied by the
24 finance department to any tax deficiencies or liabilities existing against the claimant before
25 allowance for such claim by the finance department, and further except that if such excess
26 payment of tax monies in any period is discovered as a result of an audit by the finance
27 department, and deficiencies are discovered and assessed against the taxpayer as a result of such
28 audit, then such excess monies shall be first applied against any deficiencies outstanding to the
29 date of the assessment but shall not be applied to any future tax liabilities.

30
31 F. If any person is convicted under the provisions of this section, such conviction shall be prima
32 facie evidence that all refunds received by such person during the current year were obtained
33 unlawfully, and the ~~finance director~~ financial services manager is empowered to bring
34 appropriate action for recovery of such refunds. A brief summary statement of the above
35 described penalties shall be printed on each form application of a refund.

36
37 **G. The right of any person to obtain a refund pursuant to this chapter shall not be**
38 **assignable.**

39
40 3-1-32: RECOVERY OF TAXES, PENALTY AND INTEREST:

41
42 A. All sums of money paid by the purchaser to the retailer as taxes imposed by this chapter shall
43 be and remain public money, the property of the town, in the hands of such retailer, and shall
44 hold the same in trust for the sole use and benefit of the town until paid to the ~~finance director~~
45 financial services manager, and for failure to so pay to the ~~finance director~~ financial services

1 manager, such retailer shall be punished as provided herein.

2
3 B. 1. If any person neglects or refuses to make a return in payment of the sales tax or to pay any
4 sales tax as required by this chapter, then the ~~finance director~~ **financial services manager** shall
5 make an estimate, based upon such information as may be available, of the amount of taxes due
6 for the period for which the taxpayer is delinquent and shall add thereto a penalty equal to the
7 sum of fifteen dollars (\$15.00) for such failure or ten percent (10%) thereof, whichever is
8 greater, and interest on such delinquent taxes at the rate imposed under section ~~3-1-32~~ **3-1-38** of
9 this chapter, plus one-half percent ($\frac{1}{2}$ %) per month from the date when due, not exceeding
10 eighteen percent (18%) in the aggregate.

11
12 2. Promptly thereafter, the ~~finance director~~ **financial services manager** shall give to the
13 delinquent taxpayer written notice of such estimated taxes, penalty, and interest, which notice
14 shall be sent by first class mail directed to the last address of such person on file with the finance
15 department. Such estimate shall thereupon become a notice of deficiency. Within twenty (20)
16 calendar days after the notice of deficiency is mailed, the taxpayer may petition the ~~finance~~
17 ~~director~~ **financial services manager** for a hearing in the manner provided in section ~~3-1-35~~
18 **3-1-41** of this chapter and either may appeal to the district court as provided in section ~~3-1-36~~
19 **1-42** of this chapter or to the department of revenue as provided in section ~~3-1-37~~ **3-1-43** of this
20 chapter.

21
22 C. 1. If any taxes, penalty, or interest imposed by this chapter and shown due by returns filed by
23 the taxpayer or as shown by assessments duly made as provided in this section are not paid
24 within five (5) days after the same are due, then the ~~finance director~~ **financial services manager**
25 may issue a notice, setting forth the name of the taxpayer, the amount of the tax, penalties and
26 interest, the date of the accrual thereof, and that the town claims a first and prior lien therefor on
27 the real and personal property of the taxpayer, including, without limitation, the goods, inventory
28 (stock in trade) and business fixtures of such taxpayer.

29
30 2. Said notice shall be on forms furnished by the finance department and shall be verified by the
31 ~~finance director~~ **financial services manager** or any duly qualified agent of the ~~finance director~~
32 **financial services manager** whose duties are the collection of such tax, and may be filed in the
33 office of the county clerk and recorder in which the taxpayer owns real or tangible personal
34 property, and the filing of such notice shall create a lien on such property in that county and
35 constitute notice thereof. After said notice has been filed, or concurrently therewith, or at any
36 time when taxes due are unpaid, whether such notice shall have been filed or not, the ~~finance~~
37 ~~director~~ **financial services manager** may issue a warrant directed to any duly authorized
38 revenue collector, or to the sheriff of the county, commanding him to levy upon, seize, and sell
39 sufficient of the real and personal property of the tax debtor found within his county to satisfy
40 the amount due together with interest, penalties, and costs, as may be provided by law. Any such
41 sales shall be made free and clear of all liens and encumbrances.

42
43 D. Such revenue collector or the sheriff shall forthwith levy upon sufficient of the property of the
44 taxpayer or any property used by such taxpayer in conducting his retail business, and said
45 property so levied upon shall be sold in all respects with like effect and in the same manner as

1 prescribed by law with respect to executions against property upon judgment of a court of record,
2 and the remedies of garnishment shall apply. The sheriff shall be entitled to such fee in executing
3 such warrants as are allowed by law for similar services.
4

5 E. Any lien for taxes as shown on the records of the county clerks and recorders as provided in
6 this section, upon payment of all taxes, penalties, and interest covered thereby shall be released
7 by the ~~finance director~~ **financial services manager** in the same manner as mortgages and
8 judgments are released.
9

10 F. The ~~finance director~~ **financial services manager** may also treat any such taxes, penalties, and
11 interest due and unpaid as a debt due to the town from the vendor. The return of the taxpayer of
12 the assessment made by the ~~finance director~~ **financial services manager**, as provided in this
13 chapter, shall be prima facie proof of the amount due. Such debt may be collected by civil action
14 brought against the vendor in a court of competent jurisdiction, and in such action the town shall
15 be entitled to recover from the vendor, in addition to the tax, penalties and interest, its reasonable
16 attorney fees incurred in the prosecution of such action.
17

18 G. In any action affecting the title to real estate or the ownership or rights to possession of
19 personal property, the town may be made a party defendant for the purpose of obtaining an
20 adjudication or determination of its lien upon the property involved therein. In any such action,
21 the service of summons upon the ~~finance director~~ **financial services manager** or any person in
22 charge of the office of the ~~finance director~~ **financial services manager** shall be sufficient service
23 and shall be binding upon the town.
24

25 H. The ~~finance director~~ **financial services manager** is authorized to waive, for good cause
26 shown, any penalty assessed as provided in this chapter, and any interest imposed in excess of
27 the rate determined pursuant to subsection B of this section shall be deemed a penalty.
28

29 3-1-33: FAILURE TO COLLECT AND PAY OVER TAX, ATTEMPTING TO EVADE OR
30 DEFEAT TAX:
31

32 A. It shall be unlawful for any person required to collect, truthfully account for, and pay over to
33 the town any tax imposed by this chapter to intentionally or knowingly fail to collect such tax, or
34 to intentionally or knowingly fail to truthfully account for and pay over such tax to the town, or
35 to intentionally or knowingly attempt to evade or defeat any such tax or the payment thereof.
36

37 B. If a corporation has failed to collect or pay over collected sales tax to the town as required by
38 this chapter, a rebuttable presumption shall arise that the president, vice president, secretary and
39 treasurer of the corporation are the persons required to collect, truthfully account for and pay
40 over the tax on behalf of the corporation. Such presumption may be rebutted by evidence
41 demonstrating that another person or persons were responsible for the collection and payment of
42 the tax on behalf of the corporation.
43

44 C. If a partnership has failed to collect or pay over collected sales tax to the town as required by
45 this chapter, a rebuttable presumption shall arise that all partners of a general partnership, or the

1 general partner(s) of a limited partnership, are the persons required to collect, truthfully account
2 for and pay over the tax on behalf of the partnership. Such presumption may be rebutted by
3 evidence demonstrating that another person or persons were responsible for the collection and
4 payment of the tax on behalf of the partnership.

5
6 D. If a limited liability company has failed to collect or pay over collected sales tax to the town
7 as required by this chapter, a rebuttable presumption shall arise that all managers of the limited
8 liability or, if none, all members of the limited liability company, are the persons required to
9 collect, truthfully account for and pay over the tax on behalf of the limited liability company.
10 Such presumption may be rebutted by evidence demonstrating that another person or persons
11 were responsible for the collection and payment of the tax on behalf of the limited liability
12 company.

13
14 3-1-34: IMPOSITION OF CIVIL PENALTY ON RESPONSIBLE PARTIES:

15
16 A. Any party responsible for the collection and payment of the tax imposed by this chapter on
17 behalf of a corporation or partnership who willfully fails to collect such tax, or truthfully account
18 for and pay over such tax to the town, or who willfully attempts in any manner to evade or defeat
19 such tax or the payment thereof, shall, in addition to the other penalties provided by law, be
20 liable for the payment of a civil penalty equal to the total amount of tax evaded, or not collected,
21 or not accounted for and paid over. Such civil penalty shall include all penalties and interest due
22 to the town under this chapter, together with the town's reasonable attorney fees incurred in
23 collecting such civil penalty. The civil penalty provided for in this subsection A shall apply only
24 to the collection, accounting for, and payment over of taxes imposed on a person other than the
25 vendor who is required to collect, account for and pay over such taxes pursuant to this chapter.
26 An action to collect the civil penalty provided for in this subsection A may be brought in the
27 district court and shall be governed by the Colorado rules of civil procedure.

28
29 B. If a corporation has failed to collect, account for or pay over collected sales tax to the town as
30 required by this chapter, a rebuttable presumption shall arise that the president, vice president,
31 secretary and treasurer of the corporation are the persons responsible for the collection and
32 payment of the tax on behalf of the corporation. Such presumption may be rebutted by evidence
33 demonstrating that another person or persons were responsible for the collection and payment of
34 the tax on behalf of the corporation.

35
36 C. If a partnership has failed to collect, account for or pay over collected sales tax to the town as
37 required by this chapter, a rebuttable presumption shall arise that all partners of a general
38 partnership, or the general partner(s) of a limited partnership, are the persons responsible for the
39 collection and payment of the tax on behalf of the partnership. Such presumption may be
40 rebutted by evidence demonstrating that another person or persons were responsible for the
41 collection and payment of the tax on behalf of the partnership.

42
43 D. If a limited liability company has failed to collect, account for or pay over collected sales tax
44 to the town as required by this chapter, a rebuttable presumption shall arise that all managers of
45 the limited liability company or, if none, all members of the limited liability company, are the

1 persons responsible for the collection and payment of the tax on behalf of the limited liability
2 company. Such presumption may be rebutted by evidence demonstrating that another person or
3 persons were responsible for the collection and payment of the tax on behalf of the limited
4 liability company.

5
6 3-1-35: AUTHORITY OF ~~FINANCE DIRECTOR~~ **FINANCIAL SERVICES MANAGER** TO
7 REQUIRE IMMEDIATE PAYMENT OF TAX:
8

9 Notwithstanding the provisions of section 3-1-7 of this chapter with respect to the time for the
10 payment of sales tax due to the town, whenever it appears from the records of the finance
11 department or otherwise that sales tax due to the town has not been paid, or has not been paid in
12 a timely fashion, the ~~finance director~~ **financial services manager**, after notice and hearing, shall
13 have the authority to require the payment to the town of the tax due under this chapter on a daily
14 or weekly basis, as the ~~finance director~~ **financial services manager** shall determine to be
15 required to adequately assure that the tax due under this chapter will be paid to the town. The
16 ~~finance director~~ **financial services manager** shall give the vendor at least ten (10) days' notice
17 of the time and place of such hearing. Notice shall be mailed to the vendor at the address shown
18 on the town sales tax license. The ~~finance director~~ **financial services manager** shall further have
19 the authority to require payment of such tax on a daily or weekly basis into a separate account
20 maintained by the vendor solely for payment of sales tax and accessible only to parties approved
21 by the ~~finance director~~ **financial services manager**. Failure to comply with any order of the
22 ~~finance director~~ **financial services manager** lawfully entered pursuant to this section ~~3-1-29-3~~
23 **3-1-35** shall be sufficient grounds for the revocation of the vendor's sales tax license as provided
24 in section ~~3-1-23~~ **3-1-26** of this chapter.
25

26 3-1-36: TAX LIEN; EXEMPTION FROM LIEN:
27

28 A. 1. Except as provided in subsection ~~A1.5~~ **A2** of this section, the sales tax imposed pursuant to
29 section 3-1-5 of this chapter shall be a first and prior lien upon the real and personal property of
30 or used by the taxpayer, including, without limitation, the goods, inventory (stock in trade) and
31 business fixtures of such taxpayer, and shall take precedence over the other liens, encumbrances,
32 security interest and claims of whatsoever kind or nature.
33

34 ~~1.5~~ **2**. Any retailer or person in possession shall provide a copy of any lease pertaining to the
35 assets and property described in subsection A1 of this section to the ~~finance director~~ **financial**
36 **services manager** within ten (10) days after seizure by the town of such assets and property. The
37 ~~finance director~~ **financial services manager** shall verify that such lease is bona fide and notify
38 the owner that such lease has been received by the ~~finance director~~ **financial services manager**.
39 The ~~finance director~~ **financial services manager** shall use his or her best efforts to notify the
40 owner of the real or personal property which might be subject to the lien created in subsection
41 A1 of this section. The real or personal property of an owner who has made a bona fide lease to a
42 retailer shall be exempt from the lien created in subsection A1 of this section, a) if such property
43 can reasonably be identified from the lease description, or b) if the lessee is given the option to
44 purchase in such lease and has not exercised such option to become the owner of the property
45 leased. This exemption shall become effective from the date of the execution of the lease. Such

1 exemption shall also apply if the lease is recorded with the clerk and recorder of Summit County.
2 Motor vehicles which are properly registered in this state, showing the lessor as owner thereof,
3 shall be exempt from the lien created in subsection A1 of this section; except that such lien shall
4 apply to the extent that the lessee has an earned reserve, allowance for depreciation not to exceed
5 fair market value, or similar interest which is or may be credited to the lessee. Where the lessor
6 and lessee are blood relatives or relatives by law or have twenty five percent (25%) or more
7 common ownership, a lease between such lessee and such lessor shall not be considered as bona
8 fide for the purpose of this subsection ~~A1.5~~A2.

9
10 ~~2.3~~ Any retailer who sells out his business or stock of goods, or quits business, shall be required
11 to make out the return as provided in this chapter within ten (10) days after the date he sold his
12 business or stock of goods, or quit business, and his successor in business shall be required to
13 withhold sufficient purchase money to cover the amount of said taxes due and unpaid until such
14 time as the former owner produces a receipt from the ~~finance director~~ financial services
15 manager showing that the taxes have been paid or a certificate that no taxes are due.

16
17 ~~3.4~~ If the purchaser of a business or stock of goods fails to withhold the purchase money as
18 provided in subsection ~~A2~~A3 of this section, and the taxes are due and unpaid after the ten (10)
19 day period allowed, he, as well as the vendor, shall be personally liable for the payment of the
20 taxes unpaid by the former owner. Likewise, anyone who takes any stock of goods or business
21 fixtures of or used by any retailer under lease, title retaining contract, or other contract
22 arrangement, by purchase, foreclosure sale, or otherwise, takes the same subject to the lien for
23 any delinquent sales taxes owned by such retailer and shall be liable for the payment of all
24 delinquent sales taxes of such prior owner, not, however, exceeding the value of property so
25 taken or acquired.

26
27 B. Whenever the business or property of any taxpayer subject to this chapter shall be placed in
28 receivership, bankruptcy, or assignment for the benefit of creditors, or seized under distraint for
29 property taxes, all taxes, penalties, and interest imposed by this chapter and for which said
30 retailer is in any way liable under the terms of this chapter shall be a prior and preferred claim
31 against all the property of said taxpayer. No sheriff, receiver, assignee, or other officer shall sell
32 the property of any person subject to this chapter under process or order of any court without
33 first ascertaining from the ~~finance director~~ financial services manager the amount of any taxes
34 due and payable under this chapter, and if there are any such taxes due, owing, or unpaid, it is the
35 duty of such officer to first pay the amount of said taxes out of the proceeds of said sale before
36 making payment of any monies to any judgment creditor or other claims of whatsoever kind or
37 nature. For the purposes of this subsection B, "taxpayer" includes "retailer".

38
39 3-1-37: NEGLIGENT OR INTENTIONAL TAX DEFICIENCY:

40
41 If any part of the deficiency in payment of the sales tax is due to negligence or intentional
42 disregard of authorized rules and regulations of the town with knowledge thereof, but without
43 intent to defraud, there shall be added ten percent (10%) of the total amount of the deficiency,
44 and interest in such case shall be collected at the rate imposed under section ~~3-1-32~~3-1-38 of this
45 chapter, in addition to the interest provided by section ~~3-1-33~~3-1-39 of this chapter on the

1 amount of such deficiency from the time the return was due, from the person required to file the
2 return, which interest and addition shall become due and payable ten (10) days after written
3 notice and demand to such person by the ~~finance director~~ **financial services manager**. If any
4 part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added
5 one hundred percent (100%) of the total amount of the deficiency, and in such case, the whole
6 amount of the tax unpaid, including the additions shall become due and payable ten (10) days
7 after written notice and demand by the ~~finance director~~ **financial services manager**, and an
8 additional three percent (3%) per month on said amount shall be added from the date that the
9 return was due until paid.

10
11 3-1-38: INTEREST RATE ON DELINQUENT TAXES:

12
13 When interest is required or permitted to be charged under subsection ~~3-1-29B~~ **3-1-32B** section
14 ~~3-1-31~~ **3-1-37** or subsection ~~3-1-33A~~ **3-1-39A** of this chapter, the annual rate of interest shall be
15 that rate of interest established by the state commissioner of banking pursuant to section 39-21-
16 110.5, Colorado Revised Statutes.

17
18 3-1-39: INTEREST ON UNDERPAYMENT, OVERPAYMENT, NONPAYMENT OR
19 EXTENSIONS OF TIME FOR PAYMENT OF TAX:

20
21 A. If any amount of sales tax is not paid on or before the last date prescribed for payment, then
22 interest on such amount at the rate imposed under section ~~3-1-32~~ **3-1-38** of this chapter shall be
23 paid for the period from such last date to the date paid. The last date prescribed for payment shall
24 be determined without regard to any extension of time for payment and shall be determined
25 without any regard to any notice and demand for payment issued, by reason of jeopardy, prior to
26 the last date otherwise prescribed for such payment. In the case of a tax in which the last date for
27 payment shall be deemed to be the date that the liability for the tax arises, and in no event shall
28 such date be later than the date that notice and demand for the tax is made by the ~~finance director~~
29 **financial services manager**.

30
31 B. Interest prescribed under this section and subsection ~~3-1-29B~~ **3-1-32B** and section ~~3-1-31~~
32 **3-1-37** of this chapter shall be paid upon notice and demand and shall be assessed, collected, and
33 paid in the same manner as the tax to which such interest is applicable.

34
35 C. If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be
36 imposed under this section on the portion of the tax so satisfied for any period during which, if
37 the credit has not been made, interest would have been allowed with respect to such
38 overpayment.

39
40 D. Interest prescribed under this section and subsection ~~3-1-29B~~ **3-1-32B** and section ~~3-1-31~~
41 **3-1-37** of this chapter on any sales tax may be assessed and collected at any time during the
42 period within which the tax to which such interest relates may be assessed and collected.

43
44 3-1-40: OTHER REMEDIES:

1 No provision of this chapter shall preclude the town from utilizing any other lawful penalties or
2 other remedies applicable to the collection of sales taxes.

3
4 3-1-41: HEARINGS BY ~~FINANCE DIRECTOR~~ FINANCIAL SERVICES MANAGER:

5
6 A. If any person contests the ~~finance director~~ financial services manager's deficiency notice or
7 denial of a claim for refund, then he may apply to the ~~finance director~~ financial services
8 manager by petition in writing within twenty (20) calendar days after such deficiency notice is
9 mailed to him for a hearing and a correction of the amount of the tax so assessed, in which
10 petition he shall set forth the reasons why such hearing should be granted and the amount by
11 which such tax should be reduced. The ~~finance director~~ financial services manager shall notify
12 the petitioner in writing of the time and place fixed by him for such hearing. After such hearing,
13 the ~~finance director~~ financial services manager shall make such order in the matter as is just
14 and lawful and shall furnish a copy of such order to the petitioner.

15
16 B. Every decision of the ~~finance director~~ financial services manager shall be in writing, and
17 notice thereof shall be mailed to the petitioner within ten (10) days, and all such decisions shall
18 become final upon the expiration of thirty (30) days after notice of such decision shall have been
19 mailed to the petitioner, unless proceedings are begun within such time for review thereof as
20 provided in section ~~3-1-36~~ 3-1-42 or ~~3-1-37~~ 3-1-43 of this chapter.

21
22 3-1-42: REVIEW BY DISTRICT COURT:

23
24 A. If any person contests the ~~finance director~~ financial services manager's final decision on a
25 deficiency notice or claim for refund, he may proceed to have same reviewed by the district
26 court. The procedure of review shall be in accordance with rule 106(a)(4) of the Colorado rules
27 of civil procedures.

28
29 B. Within fifteen (15) days after filing a notice of appeal as provided in this section, the taxpayer
30 shall file with the district court a surety bond in twice the amount of the taxes, interest, and other
31 charges stated in the final decision by the ~~finance director~~ financial services manager that are
32 contested on appeal. The taxpayer may, at his option, satisfy the surety bond requirement by a
33 savings account or deposit in or a certificate of deposit issued by a state or national bank or by a
34 state or federal savings and loan association, in accordance with the provisions of section 11-35-
35 101(1), Colorado Revised Statutes, equal to twice the amount of the taxes, interest and other
36 charges stated in the final decision by the ~~finance director~~ financial services manager. The
37 taxpayer may, at his option, deposit the disputed amount with the ~~finance director~~ financial
38 services manager in lieu of posting a surety bond. If such amount is so deposited, no further
39 interest shall accrue on the deficiency contested during the pendency of the action. At the
40 conclusion of the action, after appeal to the supreme court or the court of appeals of the state or
41 after the time for such appeal has expired, the funds deposited shall be, at the direction of the
42 district court, either retained by the ~~finance director~~ financial services manager and applied
43 against the deficiency or returned in whole or in part to the taxpayer with interest at the rate
44 imposed pursuant to section ~~3-1-32~~ 3-1-38 of this chapter. No claim for refund of amounts
45 deposited with the ~~finance director~~ financial services manager need be made by the taxpayer in

1 order for such amounts to be repaid in accordance with the direction of the district court.

2
3
4 3-1-43: ALTERNATIVE REVIEW BY DEPARTMENT OF REVENUE:

5
6 In lieu of the procedure provided for in section ~~3-1-363-1-42~~ of this chapter, the taxpayer may
7 elect a hearing on the ~~finance director~~ **financial services manager**'s final decision on a
8 deficiency notice or claim for refund pursuant to procedure set forth in this section.

9
10 A. As used in this section, "state hearing" means a hearing before the executive director of the
11 department of revenue or a delegate thereof as provided in section 29-2-106.1(3), Colorado
12 Revised Statutes.

13
14 B. When the ~~finance director~~ **financial services manager** asserts that sales taxes are due in an
15 amount greater than the amount paid by a taxpayer, then the ~~finance director~~ **financial services**
16 **manager** shall mail a deficiency notice to the taxpayer by certified mail. The deficiency notice
17 shall state the additional sales taxes due. The deficiency notice shall contain notification, in clear
18 and conspicuous type, that the taxpayer has the right to elect a state hearing on the deficiency
19 pursuant to section 29-2-106.1(3), Colorado Revised Statutes. The taxpayer shall also have the
20 right to elect a state hearing on the ~~finance director~~ **financial services manager**'s denial of such
21 taxpayer's claim for a refund of sales tax paid.

22
23 C. The taxpayer shall request the state hearing within thirty (30) days after the taxpayer's
24 exhaustion of local remedies. The taxpayer shall have no right to such hearing if he has not
25 exhausted local remedies, or if he fails to request such hearing within the time period provided
26 for in this subsection C. For purposes of this subsection C, "exhaustion of local remedies"
27 means:

28
29 1. The taxpayer has timely requested in writing a hearing before the ~~finance director~~ **financial**
30 **services manager**, and the ~~finance director~~ **financial services manager** has held such hearing
31 and issued a final decision thereon. Such hearing shall be informal, and no transcript, rules of
32 evidence or filing of briefs shall be required, but the taxpayer may elect to submit a brief, in
33 which case the ~~finance director~~ **financial services manager** may submit a brief. The ~~finance~~
34 ~~director~~ **financial services manager** shall hold such hearing and issue the final decision thereon
35 within ninety (90) days after the ~~finance director~~ **financial services manager**'s receipt of the
36 taxpayer's written request therefor, except that the town may extend such period if the delay in
37 holding the hearing or issuing the decision thereon was occasioned by the taxpayer, but, in any
38 such event, the ~~finance director~~ **financial services manager** shall hold such hearing and issue
39 the decision thereon within one hundred eighty (180) days of the taxpayer's request in writing
40 therefor; or

41
42 2. The taxpayer has timely requested in writing a hearing before the ~~finance director~~ **financial**
43 **services manager**, and the ~~finance director~~ **financial services manager** has failed to hold such
44 hearing or has failed to issue a final decision thereon within the time periods prescribed in
45 subsection C1 of this section.

1
2 D. If a taxpayer has exhausted his local remedies as provided in subsection C of this section, then
3 the taxpayer may request a state hearing on such deficiency notice or claim for refund, and such
4 request shall be made, and such hearing shall be conducted in the same manner as set forth in
5 section 29-2-106.1(3) through (7), inclusive, Colorado Revised Statutes.
6

7 E. If the deficiency notice or claim for refund involves only the ~~finance director~~ **financial**
8 **services manager**, then in lieu of requesting a state hearing, the taxpayer may appeal such
9 deficiency or denial of a claim for refund to the district court as provided in section 29-2-
10 106.1(8), Colorado Revised Statutes, if the taxpayer complies with the procedures set forth in
11 subsection C of this section.
12

13 F. No provision of this section shall prohibit the taxpayer from pursuing judicial review of a final
14 decision of the ~~finance director~~ **financial services manager** as otherwise provided in section
15 ~~3-1-36~~ **3-1-42** of this chapter.
16

17 3-1-44: AMENDMENTS:
18

19 The town council may amend, alter or change any provision of this chapter, except as to the two
20 and one-half percent (2½ %) rate of tax herein imposed, by ordinance duly adopted in
21 accordance with the town charter. Such amendment, alteration or change need not be submitted
22 to the electors of the town for their approval **unless required by Article X, §20 of the Colorado**
23 **Constitution**.
24

25 3-1-45: NOTICE OF SALES AND USE TAX ORDINANCE AMENDMENT:
26

27 A. In order to initiate a central register of sales and use tax ordinances for municipalities that
28 administer local sales tax collection, the ~~finance director~~ **financial services manager** of the town
29 shall file with the Colorado municipal league prior to the effective date of this section a copy of
30 the town sales tax ordinance reflecting all provisions in effect on the effective date of this
31 section.
32

33 B. In order to keep current the central register of sales and use tax ordinances for municipalities
34 that administer local sales tax collection, the ~~finance director~~ **financial services manager** of the
35 town shall file with the Colorado municipal league prior to the effective date of any amendment
36 a copy of each sales tax ordinance amendment enacted by the town.
37

38 C. Failure of the town to file such ordinance or ordinance amendment pursuant to this section
39 shall not invalidate any provision of the sales and use tax ordinance or any amendment thereto.
40

41 3-1-46: ~~VIOLATION; PENALTIES:~~ **UNLAWFUL ACTS:**
42

43 A. It is an “infraction”, as defined in section 1-3-2 of this code, for any person to violate any of
44 the provisions of this chapter. Every person found liable for a violation of any provision of this
45 chapter shall be punished as provided in section 1-4-1-1 of this code.

1
2 ~~B. In addition to other remedies available to the town, the town may commence an action~~
3 ~~pursuant to section 1-8-10 of this code to enjoin the alleged violation of any provision of this~~
4 ~~chapter.~~

5
6 **It is unlawful and a misdemeanor offense for a retailer or vendor:**

7
8 **A. To fail to collect and remit tax to the town in accordance with the schedule set forth in**
9 **this chapter, or in any manner to evade the collection and payment of the tax imposed by**
10 **this chapter;**

11 **B. To knowingly and willfully swear to or verify any false tax return or other statement**
12 **filed with the financial services manager as required by this chapter;**

13 **C. To retain any excess tax collections made under this chapter; and**

14 **D. To fail to have in full force and effect at the time of a sale a valid Breckenridge sales tax**
15 **license issued pursuant to this chapter.**

16 **E. To violate any other provision of this chapter that is applicable to retailer or vendors.**

17 Section 3. Section 3-7-4 of the Breckenridge Town Code is amended to read in its
18 entirety as follows:

19
20 **A.** Nothing in section 3-7-1 of this chapter shall be construed to prohibit the inspection of tax
21 returns and related information by the town attorney, other legal representatives, the ~~finance~~
22 ~~director~~ **financial services manager**, other employees of the town with a need to know such
23 information in connection with the performance of their duties, or law enforcement personnel of
24 the town

25
26 **B.** **Notwithstanding the provisions of this section, the financial services manager may**
27 **furnish to the taxing officials of the State of Colorado, its political subdivisions, any other**
28 **state, or political subdivision, or the United States, any information contained in tax**
29 **returns and related documents filed pursuant to this title or in the report of an audit or**
30 **investigation made with respect to a return, if the recipient jurisdiction agrees with the**
31 **manager to grant similar privileges to the town and if such information is to be used by the**
32 **jurisdiction only for tax purposes.**

33
34 Section 4. Except as specifically amended hereby, the Breckenridge Town Code, and the
35 various secondary codes adopted by reference therein, shall continue in full force and effect.

36
37 Section 5. The repeal and readoption of Chapter 1 of Title 3 of the Breckenridge Town
38 Code as provided for in this ordinance shall not affect any sales tax due to the Town under the
39 previous version of Chapter 1 of Title 3 of the Breckenridge Town Code, or prevent the

1 prosecution or punishment of any person for any act done or committed in violation of the
2 previous version of Chapter 1 of Title 3 of the Breckenridge Town Code.

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

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

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

16
17 TOWN OF BRECKENRIDGE, a Colorado
18 municipal corporation

19
20
21
22 By _____
23 John G. Warner, Mayor

24
25 ATTEST:

26
27
28
29 _____
30 Helen Cospolich, Town Clerk

1
2
3

400-2\2013 Sales Tax Ordinance_2 (07-17-13)

2013 SALES TAX ORDINANCE

Page 45



To: Breckenridge Town Council
From: Laurie Best- Community Development Department
Date: July 16, 2013 (for July 23rd meeting)
Re: RESOLUTION FOR MAGGIE PLACER SECOND AMENDED AND RESTATED ANNEXATION AGREEMENT

Attached is a Resolution to approve an amendment to the Maggie Placer annexation agreement. This Resolution is scheduled for public hearing at the July 23rd meeting. The original Maggie Placer agreement was approved in 2007 and allowed 4 market units and 18 deed restricted units on the 1.82 acre parcel. That agreement was amended in 2012 to 10 market units and 10 deed restricted units. Since early 2013 the owner has been working on additional plan revisions which require a second amendment. The substantive changes were discussed with the Council at worksession on June 11th. They have been incorporated in the Second Amended and Restated Annexation Agreement as follows:

- reduce the maximum number of units from 20 to 18 (9 deed restricted and 9 market)
- eliminate three-bedroom deed restricted units and construct 8 two-bedroom units and 1 one-bedroom ADA unit
- modify the pricing from 2-80% AMI units and 8-95% AMI units to 2-80% AMI units and 7-100% AMI units
(Note that the owner has agreed to use an interest rate of 6.5% for pricing which is significantly higher than current rates and results in lower price points and more long term affordability-maximum price at \$295,000)
- extend the start date from June 1, 2013 to June 1, 2014
- modify the release rate from 1 market unit for every 3 deed-restricted units to 1 market unit for every 2 deed-restricted
- the positive points awarded under Policy 24/R will be +6 points
(Note that +10 points would typically be awarded for a project with more than 9.5% of employee housing density, but given that only 50%, instead of 80%, of the Units will be restricted, the employee housing points are reduced by the same ratio)

The Second Amended and Restated Annexation Agreement is enclosed in your packet with all changes highlighted.

It should be noted that the Planning Commission approved the project on July 16, 2013 with a passing score of +4 points but that Development Permit is contingent on the Council approval of the annexation agreement modifications. Staff supports the modifications and recommends approval of the Resolution. Staff will be available to answer question at your meeting.

DRAFT July 16, 2013 DRAFT

Marked To Show Changes From Amended Annexation Agreement

SECOND AMENDED AND RESTATED ANNEXATION AGREEMENT

THIS SECOND AMENDED AND RESTATED ANNEXATION AGREEMENT (“Second Amended and Restated Agreement”) is made and entered into this _____ day of _____, ~~2012~~2013, by and between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation (“**Town**”) and MAGGIE PLACER, LLC, a Colorado limited liability company (“**Owner**”). Town and Owner are sometimes referred to individually in this Second Amended and Restated Agreement as a “Party”, and together as the “Parties.”

WHEREAS, Owner is the owner of the real property described in Exhibit “A” (“**Property**”); and

WHEREAS, by Ordinance No. 29, Series 2007, the Town annexed the Property to the Town; and

WHEREAS, the Town and Henry F. Harris, Jr., Owner’s predecessor in interest, entered into that Annexation Agreement dated October 19, 2007 and recorded October 19, 2007 under Reception No. 871523 of the records of the Clerk and Recorder of Summit County, Colorado (“**Annexation Agreement**”); and

WHEREAS, the Town and the Owner amended the Annexation Agreement by that Amended Annexation Agreement dated November 8, 2012 and recorded November 16, 2012 under Reception No. 1008442 of the records of the Clerk and Recorder of Summit County, Colorado (“Amended Agreement”); and

WHEREAS, Owner and Town desire to enter into ~~an~~this Second Amended and Restated Agreement to replace the Amended Annexation Agreement ~~in its entirety and the Annexation Agreement~~, all as more fully set forth hereafter.

NOW, THEREFORE, in consideration of the recitals, promises, and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **DEFINITIONS.** As used in this Second Amended and Restated Agreement, unless the context clearly requires otherwise:

“Annexation Surcharge” or “Surcharge” shall mean the fee due and payable to Town pursuant to Paragraph 7 of this Second Amended and Restated Agreement. Such fee shall be paid to Town as a general annexation fee and in lieu of the transfer of raw water to Town by the Owner.

“Applicable Town Ordinances” shall mean all ordinances of Town which regulate the development, subdivision and use of the Property, as in effect from time to time. Such ordinances shall include, but shall not be limited to, Town’s:

- (i) Development Code;
- (ii) Street Standards;
- (iii) Drainage Ordinance;
- (iv) Flood Prevention Ordinance;
- (v) Water Quality Ordinance;
- (vi) Subdivision Ordinance;
- (vii) Building, Technical and Construction Codes;
- (viii) ordinances concerning annexation/water surcharges;
- (ix) ordinances concerning payment of fees;
- (x) ordinances concerning public dedications; and
- (xi) all other applicable Town ordinances, resolutions, regulations and polices.

“AMI” shall mean the Area Median Income for Summit County, Colorado based on the most current data as of the date of the sale of a Restricted Unit.

“Development Permit” shall mean the ~~initial~~ Development Permit issued by Town for the subdivision/development (PC#~~20080242013050~~) including the off-site improvements at the existing Highway 9 intersection to the Ski and Racquet Club, and any amendments thereto subsequently approved by Town through its land use regulatory system.

“Owner” shall mean Maggie Placer, LLC., its successors and assigns, and all other subsequent owners of the Property.

“PIF” shall mean the then-current Town Plant Investment Fee as provided for by the ordinances or regulations of Town at the time such charges are due and payable to Town as provided in Paragraph 6 of this ~~Second~~ Amended ~~and Restated~~ Agreement.

“Property” shall mean that certain real property described on the attached Exhibit “A”.

“Restricted Units” shall mean the ~~109~~ residential Units approved for construction on the Property pursuant to the Development Permit, which are to be and shall remain in perpetuity subject to the Restrictive Covenant. Pursuant to the Development Permit, there shall be ~~48~~ two-bedroom Restricted Units, and ~~6 three-1 one-~~bedroom Restricted ~~Units~~Unit.

“Restrictive Covenant” shall mean the restrictive covenant executed by Owner for the benefit of Town as described in Paragraph 3.~~56~~ of this ~~Second~~ Amended ~~and Restated~~ Agreement.

“SFE” shall mean a single family equivalent of density as defined by the Applicable Town Ordinances.

“Unit” includes both the Restricted Units and the Unrestricted Units. Pursuant to the Development Permit, there shall be a maximum of 2018 Units developed on the Property (~~109~~ Restricted Units and ~~109~~ Unrestricted Units).

“Unrestricted Unit” means the ~~109~~ residential Units approved for construction on the Property pursuant to the Development Permit which are not Restricted Units.

2. **DEVELOPMENT.** Development of the Property shall conform in all respects with the Applicable Town Ordinances.

3. **PROPOSED USE OF AND RESTRICTIONS ON THE PROPERTY.**

3.1 **Land Use District Designation.** The Property is located in Land Use District 30.

3.2 **Development Density.** Town of Breckenridge Land Use District Guidelines which are in effect as of the date of this Second Amended and Restated Agreement provide that the maximum density in Land Use District 30 is per approved plat between 2 and 25 units per acre. As of the date of this Second Amended and Restated Agreement, the Property is unplatted. However, the Parties acknowledge that ~~Town staff has recommended to Town Council that a subdivision plat the maximum density for the Property be approved allowing a development of 20 Units on the 1.85 acre parcel. Under the applicable Town guidelines such density is acceptable for multi-family development in Land Use District 30. The parties acknowledge that the Town staff's recommendation has not been approved or acted upon by Town as of the date of this Amended Agreement, and that nothing in this Amended Agreement shall obligate Town to approve the proposed plat. However, if such plat is not adopted within one year of the date of this Amended Agreement, the Owner shall have the rights and remedies be as provided in Paragraph 11 of this Amended Agreement. the Development Permit. A subdivision plat of the Property will be required prior to the sale or conveyance of any Units.~~

~~3.3~~

~~3.3 **Award of Points Under Policy 24/R.** The Parties agrees that Owner's development of the Property justifies an assessment of only +6 points under Policy 24/Relative (Social Community), Section 9-1-19-24R of the Development Code.~~

~~3.4 **Plan Of Development.** Town and Owner agree that the Property will only be developed in accordance with the Development Permit. The Town and Owner agree that the Owner will seek an amendment to the Development Permit to reduce the total number of Units to 20, with a maximum of 10 Unrestricted Units and a minimum of 10 Restricted Units. The Town agrees to extend the initial Development Permit for two additional years through August 24, 2014. The Owner agrees to utilize Summit County vendors, businesses, and employees for all construction authorized by the Development Permit, unless otherwise authorized by the Town in writing. Owner shall commence development of the Property by obtaining a building permit and breaking ground for the work authorized by the Development Permit and the Building Permit not later than June 1, 20132014. Owner shall thereafter diligently and continuously prosecute the work authorized by the Development Permit and Building Permit to completion.~~

3.45 Minimum Size of Units. The minimum size for the ~~48~~ two-bedroom Restricted Units ~~and the 1 one-bedroom Restricted Unit~~ shall be 1,000 square feet (density), ~~and the minimum size for the 6 three-bedroom Units shall be, 1,250 square feet (density)~~. There shall be no minimum size for the Unrestricted Units.

3.56 Terms of Restrictive Covenant.

3.56.1 Restrictive Covenant - Generally. At the time of the issuance of the first building permit for the construction of improvements to the Property, Owner shall execute and file the Restrictive Covenant with the Clerk and Recorder of Summit County, Colorado. As originally filed, the Restrictive Covenant shall encumber both the Restricted Units and the Unrestricted Units. The Unrestricted Units may be released from the Restrictive Covenant as provided in Paragraph 3.56.3. The Restrictive Covenant shall be subject to the approval of Town, and the Owner shall not file the Restrictive Covenant until it has been reviewed and approved by Town. At the time of recording, the Restrictive Covenant shall be superior in priority to all liens and encumbrances against the Property, except for the lien of the general property taxes for the year in which the Restrictive Covenant is recorded and subsequent years.

3.56.2 Restrictive Covenant - Required General Topics. The Restrictive Covenant shall contain, without limitation, provisions regulating and limiting:

- (i) the ownership of each Restricted Unit;
- (ii) the occupancy and use of each Restricted Unit;
- (iii) the sale and resale of each Restricted Unit; and
- (iv) remedies for the breach or other violation of the Restrictive Covenant.

3.56.3 Restrictive Covenant - Release of Unrestricted Units. The Restrictive Covenant shall ~~contain~~ provide that one Unrestricted Unit may be released from the Restrictive Covenant for every ~~three~~ ~~two~~ Restricted Units which are sold at the agreed sales price as described in Paragraph 3.56.6. All of the Restricted Units shall remain subject to the Restrictive Covenant in perpetuity, unless otherwise expressly agreed to by Town.

3.56.4 Restrictive Covenant - Mandatory Provisions Re: Ownership and Use. It shall be the stated intent of the Restrictive Covenant to ensure that each Restricted Unit is the exclusive and permanent residence of the owner of such Unit. Therefore, and without limiting the generality of Paragraph 3.56.2, the Restrictive Covenant shall provide that:

- A. each Restricted Unit shall be owned only by a natural person, unless otherwise allowed by the terms of the Restrictive Covenant;
- B. each owner of a Restricted Unit shall be a 18 years of age or older who, during the entire period of his or her occupancy of the Restricted Unit earns his or her living by working at least 30 hours per week for a business physically located in Summit County, Colorado and providing goods or services to persons primarily located in Summit County, Colorado- (qualified occupant);

- C. the owner of a Restricted Unit shall list for sale any other developed residential property owned by such owner in Summit County, Colorado within 120 days after acquiring the Restricted Unit; and
- D. at all times, an owner of a Restricted Unit shall:
 - 1. occupy the Restricted Unit as his or her sole place of residence; unless otherwise allowed by the terms of the Restrictive Covenant;
 - 2. not engage in any business activity on or in such Restricted Unit; other than as permitted in the applicable land use regulations of Town or by applicable Town ordinance;
 - 3. sell or transfer the Restricted Unit only in accordance with the terms; conditions and limitations of the Restrictive Covenant;
 - 4. not sell or otherwise transfer the Restricted Unit for use in a trade or business;
 - 5. not permit any use of occupancy of the Restricted Unit except in compliance with the terms; conditions and limitations of the Restrictive Covenant;
 - 6. not voluntarily encumber the Restricted Unit in an amount in excess of the owner's purchase price; and
 - 7. not own any other residential property in Summit County; Colorado; except as may be expressly authorized by the Restrictive Covenant.
- E. Upon the written consent of the Town, which may be recorded, a non-qualifying natural person or entity that owns and/or operates a business located in and serving the County may purchase a Unit; provided, however, that by taking title to a Unit, such Owner shall be deemed to agree to the rental restrictions authorized by the Restrictive Covenant.

3.56.5 **Restrictive Covenant - Exceptions.** The Restrictive Covenant shall provide that it shall not be a violation of the Restrictive Covenant if:

- A. rooms within a Restricted Unit are rented to qualified occupant sharing the Restricted Unit with the Unit owner;
- B. a Restricted Unit is rented for use and occupancy to qualified occupant for a maximum cumulative total of 12 months during the time of ownership by a Unit owner or while the Restricted Unit is initially being marketed by the Owner;
- C. a Restricted Unit is owned or occupied by a person age 65 years or older who has owned and occupied the Unit and worked at paid employment in Summit County, Colorado at least 30 hours per week on an annual basis, for the previous 7 years, together with such person's spouse and minor children, if any;
- D. a Restricted Unit is owned or occupied by a person otherwise authorized to own or occupy the Restricted Unit pursuant to the Restrictive Covenant who becomes disabled after commencing ownership or occupancy of the Restricted Unit such that he or she cannot work the required number of hours each week required by the Restrictive Covenant, provided, however,

that such person shall be permitted to own or rent the Restricted Unit for a maximum period of one year following the commencement of such person's disability unless a longer period of ownership or occupancy is authorized by Town; and

- E. guests ~~visiting~~visit a qualified occupant at a Restricted Unit and ~~paying~~pay no rent or other consideration.

3.56.6 Restrictive Covenant - Sale and Resale Limitations; Key Employee Priority.

No Restricted Unit may be sold except to a person who is at the time of sale:

- (i) an employee of a business physically located in and serving the Upper Blue River Basin as defined from time to time in the Town's Development Code or other applicable land use regulations ("**Upper Blue Employee**"); or
- (ii) an employee of a business, private organization, or governmental entity providing essential services in Summit County as determined by the Town, including, but not limited to: municipal employees, school district employees, and emergency and medical personnel ("**Key Employee**").

The provisions of this Paragraph shall apply both to the initial sale of a Restricted Unit by the Owner, and to all subsequent resales of the Restricted Unit. In the event of the foreclosure of a deed of trust, mortgage or other voluntary or involuntary lien, the person acquiring title to the Restricted Unit shall resell the Restricted Unit only in compliance with the requirements and limitations of this Paragraph.

A seller shall initially attempt in good faith to sell a Restricted Unit to a Key Employee or an Upper Blue Employee by actively marketing the Restricted Unit to such group of prospective purchasers. If, after 30 days of actively marketing the Restricted Unit to Key Employees and Upper Blue Employees, the seller has been unable to enter into an acceptable sales contract with a Key Employee or an Upper Blue Employee, then the Unit may be sold to ~~an~~ employee of a business physically located in and serving Summit County a qualified occupant as described in Section 3.6.4(B).

3.56.6.1 Initial Sale Price.

3.56.6.1.1 The initial sale price for each Restricted Unit shall be calculated based on the following formula:

1. Take current Summit County Area Median Income ("**AMI**") (based on 1.5 persons per bedroom);
2. Divide by 12 (monthly median income);
3. Multiply by .30 (maximum 30% of household income allowed for housing expense);
4. Subtract \$350 (allowance for homeowners' association fees, dues/Taxes/Insurance);
5. = Maximum Monthly Mortgage expense

Use the Maximum Monthly Mortgage Expense to calculate the maximum initial sale price assuming ~~90~~10% down payment and 6.5% interest rate.

3.56.6.1.2 The Restrictive Covenant shall contain provisions governing the sale and resale of each of the Restricted Units. Unless otherwise agreed by Town, the Restrictive Covenant shall provide that:

- A. 2 of the Restricted Units will initially be sold by the Owner at a price at or below 80% of the AMI based on the most current data as of the date of sale;
- B. 87 of the Restricted Units will initially be sold by the Owner at a price at or below 95100% of the AMI based on the most current data as of the date of sale; and
- C. Each prospective purchaser of a Restricted Unit shall meet income testing standards to be established by the Town and consistent with the requirements of the Restrictive Covenant.

3.56.6.2 **Resale Price Limit.** Subsequent to the initial sale of a Restricted Unit by the Owner, the total price for which such Restricted Unit may be re-sold shall be determined as follows:

- A. The selling owner’s purchase price at the time of the acquisition of the Restricted Unit, exclusive of any real estate commission paid at the time of acquisition, shall be the Base Price Limit.
- B. The Base Price Limit shall be increased to reflect a cost of living adjustment. Such amount shall be the selling owner’s “Adjusted Price Limit.” The Adjusted Price Limit shall be the lesser of:

The Base Price Limit	X	.0025	X	the number of whole months from the date of a Unit Owner’s purchase to the date of a Unit Owner’s sale of the Residential Unit	+	The Base Price Limit ¹	=	ADJUSTED PRICE LIMIT
----------------------	---	-------	---	--	---	-----------------------------------	---	----------------------

OR

The Base Price Limit	X	100% of AMI most recently released prior to the selling owner’s sale	÷	100% of AMI in effect at the time of the selling owner’s purchase of the Residential Unit ²	=	ADJUSTED PRICE LIMIT
----------------------	---	--	---	--	---	----------------------

¹ The Base Price Limit multiplied by one quarter of one percent (0.25%) multiplied by the number of whole months from the date of a Unit Owner’s purchase to the date of a Unit Owner’s sale of the Residential Unit plus the Base Price Limit.

- C. The resale price of any Residential Unit shall not exceed such Adjusted Price Limit except to allow the cost of eligible capital improvements made by the Owner which includes only those Capital Improvements that are approved by the Town in accordance with the Town's Affordable Housing Guidelines including Administrative Rules and Regulations promulgated by the Town.
- D. Notwithstanding anything contained in the Restrictive Covenant to the contrary, the Adjusted Price Limit shall never be less than the purchase price actually paid by the selling owner for the Restricted Unit.
- E. If the owner of a Restricted Unit sells the Restricted Unit through the services of the Summit Housing Authority, a commission of not more than 2% of the Adjusted Price Limit may be paid to the Summit Housing Authority.

Compliance with the terms and conditions of the Restrictive Covenant shall be secured by an "Appreciation-limiting Promissory Note and Deed of Trust," in a form acceptable to Town, which Note and Deed of Trust shall be executed by each and every owner of a Restricted Unit.

3.56.7 Restrictive Covenant - Final Form. The final form of the Restrictive Covenant will comply with U.S. Department of Housing and Urban Development for use with FHA-insured mortgage loans, and may include provisions which vary from the specific requirements of Paragraphs 3.56.4, 3.56.6 and 3.56.7 only if Town Attorney approves such provisions as being fully consistent with the intent of this Second Amended and Restated Agreement and with the Town's Affordable Housing Guidelines including Administrative Rules and Regulations promulgated by the Town. Once the Restrictive Covenant has been recorded with the Summit County Clerk and Recorder, the provisions of the Restrictive Covenant shall control over the provisions of this Paragraph 3.

3.67 Transfer of Density. Within 60 days after the last of the contingencies in Paragraph 11 have been satisfied, Town shall provide or allow any density necessary for the development of the Restricted Units, and Town and the Owner shall enter into and record a density transfer agreement and covenant in a form acceptable to Town Attorney.

4. UTILITY SERVICE AND PUBLIC IMPROVEMENTS.

4.1 Extensions of Utility Services and Public Improvements. Owner shall pay all costs for the design and construction of all public improvements and utility services necessary to

² The Base Price Limit multiplied by a fraction the numerator of which is the 100% of AMI most recently released prior to a selling owner's sale and the denominator of which is the 100% of AMI in effect at the time of the selling owner's purchase of the Restricted Unit.

serve the Property, including, but not limited to, roads, curbs, gutters, sanitary and drainage sewers, water, street lights, electricity, telephone, gas, and cable television service, all in accordance with applicable Town or public utility company standards and specifications. Owner shall dedicate to Town and applicable public utility companies without charge, free and clear of all liens and encumbrances, those easements and rights-of-way necessary for installation and maintenance of said utility lines and other public improvements, including public streets and trails, and in addition shall convey the public improvements to the appropriate entity upon completion and acceptance of the improvements.

4.2 **Sanitation District Connection Fees.** Without limiting the generality of Paragraph 4.1, Owner shall pay all fees and charges required to connect the Units to the Breckenridge Upper Blue Sanitation District.

4.3 **Reimbursement For Improvements.** Pursuant to Section 9-2-3-7 of the Breckenridge Town Code, Owner may be eligible for reimbursement from future connector(s) to the public improvements and utility services described in Paragraph 4.1 which are extended by Owner to the Property. Any claim for reimbursement shall be subject to the provisions and requirements of said Section 9-2-3-7 of the Breckenridge Town Code, as the same may be amended from time to time.

4.3 **Town Provision of Services.** Upon the extension of utility services and public improvements as provided for in Paragraph 4.1 above and acceptance by Town of the utility services and public improvements to be dedicated to Town, Town shall make available and provide all Town provided utilities and services to the Property and Units or other improvements served by such utility services and public improvements on the normal and customary basis as such utilities and services are provided and for the normal and customary charges for such utilities and services, except as such charges may be waived by Town as hereinafter provided.

5. **PUBLIC DEDICATIONS.** There are no public dedications required as part of the annexation of the Property to Town. The need for road rights-of-ways, open space, and pedestrian, bicycle, and skier access and trails will be evaluated during the subdivision process and site-specific development review process, and dedications made in accordance with Town regulations at such time.

6. WATER CHARGES

6.1 PIF Charges.

6.1.1 Pursuant to Section 12-4-9(A)(2) of the Breckenridge Town Code, Town hereby waives the PIF charges for each of the Restricted Units. As required by Section 12-4-9(C) of the Breckenridge Town Code, the Town Council finds and determines that sufficient cause has been demonstrated for the waiver of the PIF charges for the Restricted Units, and that waiving such charges is in the public interest.

6.1.2 Owner shall pay to Town applicable PIF charges for each of the Unrestricted Units. Such charges shall be paid for each Unrestricted Unit at or prior to the first to occur of connection of the Unrestricted Unit to Town's water utility system, or the issuance of a building

permit for such Unrestricted Unit. If, for any reason, an Unrestricted Unit is not owned by the Owner at the time of the connection, the PIF shall be paid by the then-current owner of such Unrestricted Unit.

6.2 **Water Rates.** Water users on the Property (including owners of both the Restricted Units and the Unrestricted Units) shall pay the then-current rates for water service and other water charges paid by in-Town water users, subject to all decreases or increases in fees adopted in accordance with Town ordinances and regulations. Such water users are subject to all rules, regulations and ordinances pertaining to Town's water utility system, including all future amendments.

7. ANNEXATION SURCHARGE.

7.1 Surcharge Fees.

7.1.1 No Annexation Surcharge shall be paid with respect to any of the Restricted Units.

7.1.2 An Annexation Surcharge shall be paid by the Owner to Town for each of the Unrestricted Units. The Annexation Surcharges shall be due and payable for each Unrestricted Unit prior to the first to occur of:

- (i) connection of the Unrestricted Unit to Town's water utility system; or
- (ii) issuance of a building permit for such Unrestricted Unit.

The amount of the Annexation Surcharge for each Unrestricted Unit shall be equal to the then-current PIF charge per SFE at the time the Annexation Surcharge becomes due.

7.1.3 Upon receipt of the Annexation Surcharges, such funds shall be deposited by Town into Town's General Fund.

8. **OTHER TOWN CHARGES:** Town hereby waives the following fees, charges or taxes:

- A. application fees for the Development Permit for the Restricted Units;
- B. fees for future development permit applications, review of plans, building permits and any similar application or permit fees for the future improvement of any Restricted Unit; and
- C. real estate transfer taxes upon the transfer of any Restricted Unit.

Nothing contained herein shall constitute a waiver by Town of its rights to collect all of its normal and customary fees and taxes with respect to any portion of the Property except for the Restricted Units.

9. **VESTED PROPERTY RIGHTS.** Owner waives any and all vested property rights that may exist on the Property prior to its annexation to Town. Further, nothing contained herein shall be construed as to create a vested property right for the Property.

10. **NO RIGHT OF WAY DEVOTED TO AGRICULTURAL USE.** Owner states, represents and warrants to Town that as of the date of this Second Amended and Restated Agreement no portion of the Property consists of a public transportation right-of-way, a customary or regular use of which involves the movement of any agricultural vehicles and equipment as defined in Section 31-12-115(6)(c), C.R.S. As such, the Parties agree that the special notice provisions of Section 31-12-115(6)(b), C.R.S., are not applicable to the annexation of the Property to Town.

11. **ANNEXATION CONTINGENCIES.** Town and Owner agree that the ~~annexation of the Property and the~~ effectiveness of this Second Amended and Restated Agreement ~~are~~ is contingent upon the occurrence of all of the following events, and ~~the annexation and this~~ Second Amended and Restated Agreement shall be effective on the date on which the last of the following events occurs:

- A. final approval by Town of ~~any required amendment to~~ the Development Permit by Town through its land use regulatory system; ~~and~~
- B. Town Attorney's review and approval of all owner's association documents for the Property; and
- ~~B.C.~~ Town's approval of the Restrictive Covenant.

Provided, however, that, if all of the foregoing events have not occurred on or before one year from the date hereof, then this Second Amended and Restated Agreement shall be null and void and of no further force or effect, and Owner may pursue disconnection of the Property from Town, and Town shall not object to such disconnection.

12. MISCELLANEOUS.

~~12.1 **Effective Date.** This Amended Agreement is contingent upon Town approval of the annexation and shall become effective as of the date and time when the annexation itself becomes effective.~~

~~12.2 **Parties' Authority.** Town and Owner represent that each has the authority to enter into this Second Amended and Restated Agreement according to applicable Colorado law and Town's Home Rule Charter and ordinances, and each represents that the terms and conditions hereof are not in violation of any agreement previously entered into by such Party. This Second Amended and Restated Agreement shall not become effective until a resolution or other necessary authorizations for the execution of the Second Amended and Restated Agreement are effective.~~

12.32 **Recording.** This Second Amended and Restated Agreement **SHALL BE RECORDED** in the Summit County Clerk and Recorder's Office in order to put prospective purchasers of the Property or other interested Parties on notice as to the terms and conditions contained herein.

12.43 **Entire Agreement.** This Second Amended and Restated Agreement and the exhibit(s) hereto represent the entire understanding between the Parties, and no other agreement concerning the Property, oral or written, made prior to the date of this Second Amended and

Restated Agreement, which conflicts with the terms of this Second Amended and Restated Agreement shall be valid as between the Parties. Without limiting the generality of the preceding sentence, this Second Amended and Restated Agreement supersedes and replaces in ~~its~~their entirety the Annexation Agreement and Amended Annexation Agreement, and in the event of a conflict between this Second Amended Annexation Agreement and either the Annexation Agreement or the Amended Annexation Agreement, this Second Amended and Restated Agreement shall control.

12.54 Disconnection. In the event of disconnection of the Property from Town for any reason, Town's infrastructure and utility service obligations under this Second Amended and Restated Agreement shall be void and of no further force and effect.

~~12.6 Modification. This Amended Agreement shall not be modified except in writing executed by all parties hereto.~~

~~12.7~~**12.5 Additional Remedies.** If at any time any part hereof has been breached by the Owner, Town may, in addition to other remedies, withhold approval of any or all building or other permits applied for by the Owner on its Property, or withhold issuance of certificates of occupancy, until the breach or breaches has or have been cured.

12.86 Binding Effect. The agreements and covenants as set forth herein shall be binding upon the Owner, its successors and assigns, and all persons who may hereafter acquire an interest in the Property, or any part thereof.

12.97 Joint And Several Liability. If there are two or more Owners, the responsibility of the Owners shall be joint and several.

~~12.108~~ **Severability.** In case one or more of the provisions contained in this Second Amended and Restated Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Second Amended and Restated Agreement shall not in any way be affected or impaired thereby.

~~12.119~~ **Incorporation of Exhibit.** Exhibit "A", which is attached hereto, is incorporated herein by reference.

~~12.1210~~ **Attorney's Fees.** If any action is brought in a court of law by either Party to this Second Amended and Restated Agreement concerning the enforcement, interpretation or construction of this Second Amended and Restated Agreement, the prevailing Party, either at trial or upon appeal, shall be entitled to reasonable attorney's fees, as well as costs, including expert witness' fees, incurred in the prosecution or defense of such action.

~~12.1311~~ **Notices.** All notices required or permitted under this Second Amended and Restated Agreement shall be given by registered or certified mail, return receipt requested, postage prepaid, or by hand or commercial carrier delivery, or by telecopies, directed as follows:

If intended for Town, to:

Town of Breckenridge
P.O. Box 168
150 Ski Hill Road
Breckenridge, Colorado 80424
Attn: Town Manager
Telecopier number: (970)547-3104
Telephone number: (970)453-2251

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

Timothy H. Berry, Esq.
Timothy H. Berry, P.C.
131 West 5th Street
P. O. Box 2
Leadville, Colorado 80461
Telecopier number: (719)486-3039
Telephone number: (719)486-1889

If intended for Owner, to:

Maggie Placer, LLC
Attn: Deborah Linden
P.O. Box 17184653
Avon Breckenridge, Colorado 8162080424
Telephone number: (407) 928-7057432-5409

Any notice delivered by mail in accordance with this paragraph shall be deemed to have been duly given and received on the third business day after the same is deposited in any post office or postal box regularly maintained by the United States postal service. Any notice delivered by telecopier in accordance with this paragraph shall be deemed to have been duly given and received upon receipt if concurrently with sending by telecopier receipt is confirmed orally by telephone and a copy of said notice is sent by certified mail, return receipt requested, on the same day to the intended recipient. Any notice delivered by hand or commercial carrier shall be deemed to have been duly given and received upon actual receipt. Either Party, by notice given as provided above, may change the address to which future notices may be sent.

12.1412 Waiver. The failure of either Party to exercise any of its rights under this Second Amended and Restated Agreement shall not be a waiver of those rights. A Party waives only those rights specified in writing and signed by either Party waiving such rights.

12.1513 Applicable Law. This Second Amended and Restated Agreement shall be interpreted in all respects in accordance with the laws of the State of Colorado without regard to any conflict of law rule or principle that might refer the governance or construction of this Agreement to the laws of another jurisdiction.

12.1614 Counterparts. This Second Amended and Restated Agreement may be executed in several counterparts and/or signature pages and all counterparts and signature pages

so executed shall constitute one agreement binding on all Parties hereto, notwithstanding that all the Parties are not signatories to the original or the same counterpart or signature page.

12.1715 **Paragraph Headings.** Paragraph headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Second Amended and Restated Agreement.

12.1816 **Amendment.** This Second Amended and Restated Agreement may be modified or amended only by a duly authorized written instrument executed by the Parties hereto. Oral amendments to this Second Amended and Restated Agreement are not permitted.

12.1917 **No Adverse Construction.** Both Parties acknowledge having had the opportunity to participate in the drafting of this Second Amended and Restated Agreement. This Second Amended and Restated Agreement shall not be construed against either Party based upon authorship.

IN WITNESS WHEREOF, the Parties have executed this Second Amended and Restated Agreement the date first written above.

Notary Public

EXHIBIT "A"

Legal Description

A PARCEL OF LAND LOCATED IN THE MAGGIE PLACER, U.S.M.S. No. 1338, IN SEC. 6, TOWNSHIP 7 SOUTH, RANGE 77 WEST OF THE 6th P.M., COUNTY OF SUMMIT, STATE OF COLORADO, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT COLORADO STATE HIGHWAY NO. 9 MONUMENT T.S. 80+50 ON THE WESTERLY R.O.W. OF SAID HIGHWAY NO. 9, WHICH POINT IS, IN FACT, THE TRUE POINT OF BEGINNING.

THENCE; S02°07'30"E, ALONG SAID WESTERLY R.O.W. A DISTANCE OF 311.40 FEET.

THENCE; 98.75 FEET ALONG THE ARC OF A CURVE TO THE LEFT WITH A RADIUS OF 1030.00 FEET, A CHORD BEARING OF S10°48'45"E, AND A CHORD OF 98.71 FEET.

THENCE; S76°26'29"W, A DISTANCE OF 24.05 FEET.

THENCE; N23°31'59"W, A DISTANCE OF 32.00 FEET.

THENCE; 111.08 FEET ALONG THE ARC OF A CURVE TO THE LEFT WITH A RADIUS OF 205.24 FEET, A CHORD BEARING OF N39°02'16"W, AND A CHORD OF 109.73 FEET.

THENCE; N54°32'30"W, A DISTANCE OF 172.17 FEET.

THENCE; 139.94 FEET ALONG THE ARC OF A CURVE TO THE RIGHT WITH A RADIUS OF 83.90 FEET, A CHORD BEARING OF N06°45'32"W, AND A CHORD OF 124.27 FEET.

THENCE N41°01'17"E, A DISTANCE OF 250.76 FEET.

THENCE; S89°04'00"E, A DISTANCE OF 67.32 FEET TO A POINT IN THE WESTERLY R.O.W. OF SAID COLORADO HIGHWAY No. 9,

THENCE; S00°56'00"W, ALONG SAID WESTERLY R.O.W. A DISTANCE OF 112.18 FEET TO THE TRUE POINT OF BEGINNING.

DESCRIBED PARCEL CONTAINING 1.82 ACRES, MORE OR LESS.



MEMORANDUM

TO: Town Council

FROM: Julia Puester, AICP, Senior Planner

DATE: July 17 (For Meeting July 23, 2013)

SUBJECT: McCain Density Transfer Resolution

The McCain Master Plan was approved as a Town Project by the Town Council on May 14, 2013. Along with the McCain Master Plan approval, staff was directed by the Council to transfer the existing density, 6.39 Single Family Equivalents (SFEs) off of the site.

The resolution and covenant attached transfers the density from the McCain and Alpine Rock properties to the Pence Miller property. Staff is recommending the density be transferred to the Pence Miller property since there is a current application in the Town Project process for affordable workforce housing on the site that will require a transfer of density.

In accordance with the Joint Upper Blue Master Plan, *“When new affordable workforce housing are developed, the Town of Breckenridge should transfer density it owns to the affordable workforce housing site at a 1:4 ratio (i.e., transfer one development right for every four affordable housing units permitted to be built).”*

The 6.39 SFEs will be a portion of the required density for the affordable workforce housing project. The remainder of the required density at Pence Miller will be transferred after the project has been approved and a final density number is determined.

Staff will be available at the meeting to answer any questions.

1 Colorado in order to give record notice that the Town has transferred 6.39 single family
2 equivalents of density from the McCain Parcel to the Pence Miller Parcel.

3
4 Section 2. This resolution is effective upon adoption.

5
6 RESOLUTION APPROVED AND ADOPTED this ___ day of ___, 2013.

7
8 TOWN OF BRECKENRIDGE

9
10
11
12 By: _____
13 John G. Warner, Mayor

14
15 ATTEST:

16
17
18
19 _____
20 Helen Cospolich, Town Clerk

21
22 APPROVED IN FORM

23
24
25
26 _____
27 Town Attorney Date

DENSITY TRANSFER COVENANT
(McCain Parcel to Pence Miller Parcel)

This Density Transfer Covenant (“**Covenant**”) is dated _____, 2013, and is executed by the TOWN OF BRECKENRIDGE, a Colorado municipal corporation.

RECITALS

A. WHEREAS, the Town owns the real property in the Town of Breckenridge, Summit County, Colorado more particularly described on **Exhibit A** (“**McCain Parcel**”).

B. WHEREAS, Town also owns the real property in the Town of Breckenridge, Summit County, Colorado more particularly described on **Exhibit B** (“**Pence Miller Parcel**”).

C. WHEREAS, the Town desires to transfer 6.39 single family equivalent units of density from the McCain Parcel to the Pence Miller Parcel.

D. WHEREAS, this Covenant is executed in compliance with the requirements of Section 9-1-17-12(A) of the Breckenridge Town Code to memorialize and confirm the transfer of the density from the McCain Parcel to the Pence Miller Parcel.

NOW, THEREFORE, the Town states and agrees as follows:

1. Transfer. 6.39 single family equivalents of the density heretofore allocated to the McCain Parcel under and pursuant to the ordinances, policies, and codes of Town shall be and hereby are transferred to the Pence Miller Parcel.
2. Amount of Density Remaining on McCain Parcel. After the density transfer evidenced by this Covenant, the amount of density remaining on the McCain Parcel is zero (0) single family equivalents.
3. Amount of Density on the Pence Miller Parcel. After the density transfer evidenced by this Covenant, the amount of density on the Pence Miller Parcel is 6.39 single family equivalents.
4. Use of Transferred Density. Except as provided in Section 9-1-27 of the Breckenridge Town Code concerning Town Projects, the density that has been transferred to the Pence Miller Parcel as evidenced by this Covenant may be used only in accordance with a development permit issued pursuant to the Breckenridge Development Code, Chapter 1 of Title 9 of the Breckenridge Town Code.
5. Binding Effect. This Covenant shall run with the land, shall burden the McCain Parcel and benefit and burden the Pence Miller Parcel, and shall be binding upon and inure to the benefit of the Town, and all persons who may hereafter acquire an interest in the

DENSITY TRANSFER COVENANT

McCain Parcel or the Pence Miller Parcel.

- 6. Covenant to be Recorded. This Covenant shall be recorded in the records of the Clerk and Recorder of Summit County, Colorado.

TOWN OF BRECKENRIDGE

[AFFIX TOWN SEAL HERE]

By: _____
Timothy J. Gagen, Town Manager

ATTEST:

Helen Cospolich, Town Clerk

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by Timothy J. Gagen, Town Manager, and Helen Cospolich, Town Clerk, of the Town of Breckenridge, a Colorado municipal corporation.

WITNESS my hand and official seal.

My commission expires: _____.

Notary Public

Exhibit “A”

Legal Description of McCain Parcel

The real property described on the following documents recorded with the Clerk and Recorder of Summit County, Colorado:

1. McCain Annexation Phase I, recorded at Reception No. 714272 (67.6 acres ,excluding Tract A, Reception No. 491971 [9.9 acres]);
2. McCain Annexation Phase II, recorded at Reception No. 714274 (35.2 acres); and
3. Alpine Rock Annexation, recorded at Reception No. 703129 (25.0 acres)

Exhibit “A”

Exhibit “B”

Legal Description of Pence Miller Parcel

Government Lot 47, Section 30, Town 6 South, Range 77 West of the 6th P.M.,
Town of Breckenridge, County of Summit and State of Colorado

Exhibit “B”

MEMORANDUM

To: Town Council

From: Peter Grosshuesch, Director of Community Development

Date: July 17, 2013

Re: Planning Commission Decisions of the July 16, 2013, Meeting.

DECISIONS FROM THE PLANNING COMMISSION AGENDA OF July 16, 2013:

CLASS C APPLICATIONS:

None.

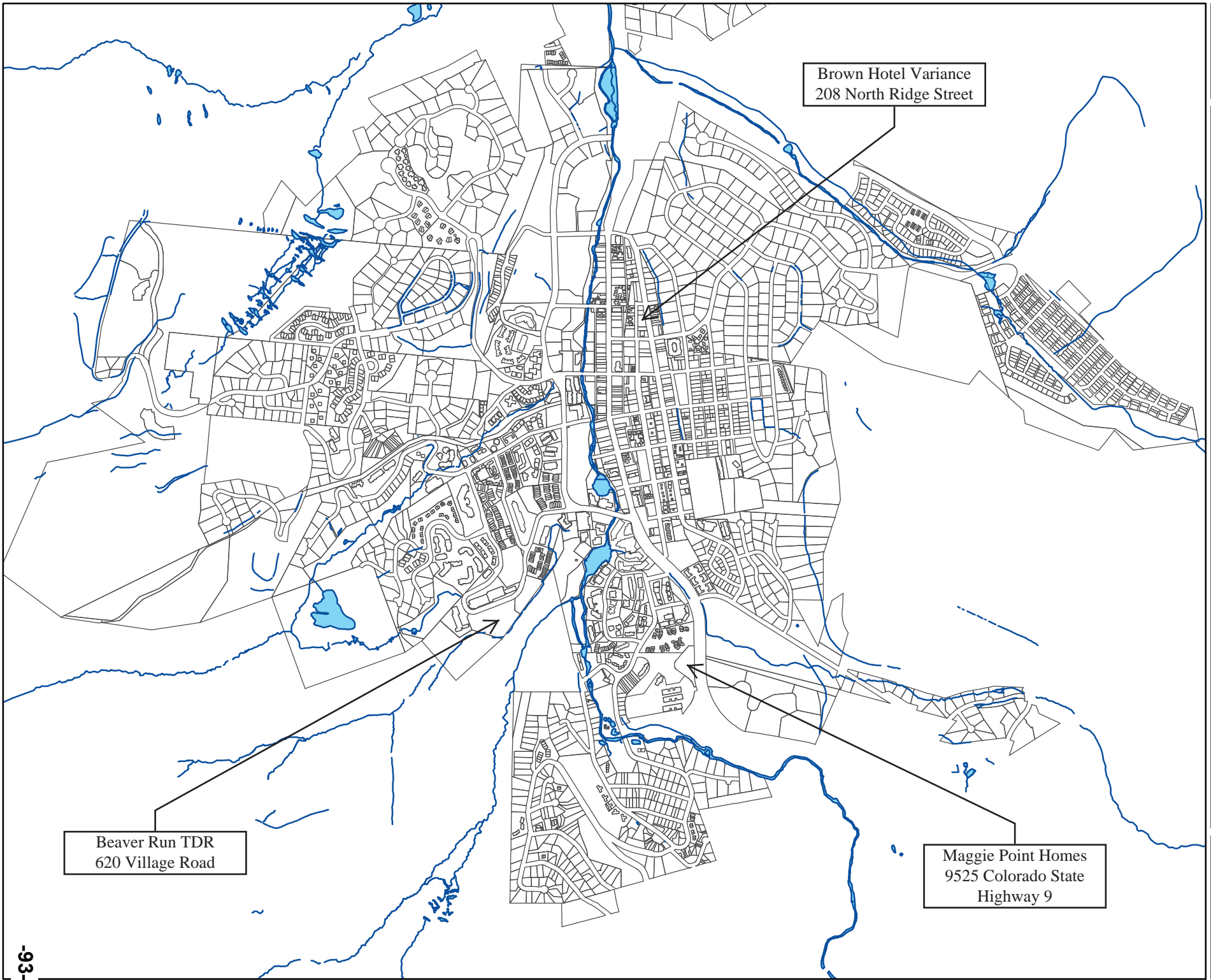
CLASS B APPLICATIONS:

1) Brown Hotel Variance (MM) PC#2013055, 208 North Ridge Street
Obtain a variance from Policy 5 (Absolute), "*Architectural Compatibility*", of the Development Code as it relates to Priority Policy 80A of the Handbook of Design Standards for the Historic and Conservation District. Approved.

2) Beaver Run TDR (MM) PC#2013049, 620 Village Road
Remodel the exterior of the existing porte-cochere with natural materials and enclose 494 square feet of the existing covered walkway between the porte-cochere and lobby. Approved.

CLASS A APPLICATIONS:

1) Maggie Point Homes (MM) PC#2013050, 9525 Colorado State Highway 9
Develop 18 multi-family units: 9 as market-rate and 9 as workforce deed-restricted units; each with at least a one-car garage and some with two-car garages. Approved.



NOT TO SCALE

printed 4/12/2011

Breckenridge South

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



PLANNING COMMISSION MEETING

The meeting was called to order at 7:00 pm

ROLL CALL

Kate Christopher	Jim Lamb	Gretchen Dudney
Dan Schroder	Eric Mamula	Trip Butler
Dave Pringle		
Jennifer McAtamney, Town Council Liaison		

APPROVAL OF AGENDA

With no changes, the July 16, 2013 Planning Commission meeting agenda was approved unanimously (6-0).

APPROVAL OF MINUTES

Mr. Pringle: On page 10, regarding the 10 inch siding, please change “demonstrate what the siding is going to look right” to “demonstrate what the siding is supposed to look like”. With no other changes, the July 2, 2013, Planning Commission Minutes were approved as presented.

TOWN COUNCIL REPORT:

Ms. McAtamney:

I think that our last meeting addressed three important topics. There was a meeting with the Fire Department. We met with them and they shared with us video and photos and an account of the Black Forest fire. The presenter was able to show us what the fire looked like and how a neighborhood with good mitigation and defensible space had remained untouched by fire. He had video of himself standing at a house from the mitigated subdivision looking at a non mitigated subdivision while it burned. We will be revisiting the fire policies again and we’ll have some evidence because in this subdivision they were able to defend the homes. In the other subdivisions around it, they were heavily crowned, trees touching each other and the noise of the fire was incredible.

The other thing was that we are going to ask the voters for the 5% excise tax for all marijuana products; a portion of that goes to the Town, schools and another bit of it will go to the State for management. It will be just like our medical marijuana; the hope is that the people that are in business currently will be changing their businesses, and we will limit to the same number of business. (Mr. Mamula: It would be great if the town would do a flyer for our guests, so that they could hand them out to the restaurants and educate our guests; have had a lot of guests unsure of the regulations.) Good idea for some of the funds. We have no idea of what kind of volume there will be; we will already get the sales tax plus the 5% plus 10% of the 15% that the State collects. (Ms. Dudney: You do have the right to restrict usage even more right?) Yes, but the Council has decided to honor the voters’ decision and have recreational marijuana available. (Ms. Dudney: The fines should not be counted on as an ongoing revenue stream.)

Also, there has been conversation about the childcare tax, and there has been conversation about using the marijuana tax for that but we aren’t comfortable yet about it being a long term revenue stream, so we will treat it like we do the RETT until we have more assurance of what the amount will be. The last thing was the childcare scholarship program; it serves 350 families; 60% in care receive some kind of scholarship. We will be looking to the voters to not lower their property taxes as much as they could (different mill levy being reduced this year) so property tax will be going down just a little if it passes rather than the whole mill levy amount. (Ms. Dudney: If that doesn’t pass, will money continue to come from the general fund?) Our hope is that it will pass, a lot of support from the survey results. Especially since the taxes won’t increase, just decrease less. If you have questions about how the program works, I’m happy to answer them. People pay 15% of their income before they can receive the scholarship. (Mr. Pringle: It’s unfortunate that the business

community did not step up to help. I was a little disappointed that they didn't step up since it is needed by employees in Town.) (Mr. Mamula: Not every employer has employees who have children. I have no employees who have children. I also own property, so...) Some of the business owners feel that they pay through the building tax already, the Gallagher Amendment has them paying three times as much as residential. From a pragmatic standpoint it didn't make sense to make this a sales tax. I hope that you will learn more about it and support the ballot in the fall.

We passed some housekeeping amendments as well. We will be revisiting the F-Lot Hotel proposal; that's really the major update on that; want to see more information on how it will affect other lodging. The BRC had their annual meeting and elected their new Board. Any more questions? (Ms. Dudney: I have a question about a development that we are considering this evening, but it doesn't have to do with Code; it is about the Development Agreement. How does the Council come up with the points that are going to be granted in the affordable homes in the project?) We gave direction that, typically we have seen 80% of the homes in an annexation be affordable. We felt that if we were going to do less than that then we should be awarding points proportional to that. (Ms. Dudney: My question was why is the Council in the business of determining points? I'm asking this as future guidance.) (Mr. Grosshuesch: If they had done the 80/20; this one was pretty straightforward so it was just a prorated calculation.) The Housing Committee just gave a general conception on this. (Mr. Pringle: That might be a good subject to discuss if we ever get together again.) (Mr. Mosher: 10% of any project gives you the maximum points, so we aren't going to provide a range because everything we see will be over 10%.)

FINAL HEARINGS:

1. Brown Hotel Variance (MM) PC#2013055, 208 North Ridge Street

Mr. Mosher presented a proposal to obtain a variance from Policy 5 (Absolute), "*Architectural Compatibility*", of the Development Code as it relates to Priority Policy 80A of the Handbook of Design Standards for the Historic and Conservation District. On June 18, 2013 the Planning Commission approved the Brown Hotel and Stable Restoration and Renovation (Permit #2012005) with a Condition of Approval that the applicant request and obtain an approval for a variance from Policy 5/A, *Architectural Compatibility*, of the Development Code to allow for the connector element as presented with that application. The Application meets all of the requirements of Priority Policy 80A except that portion which provides that the width of the proposed connector should not exceed two-thirds of the facade of the smaller of the two modules that are to be linked. Therefore, a variance is being requested with respect to the requirements of Priority Policy 80A, as conditioned in Brown Hotel and Stable Restoration development permit approval.

1. Did the Commission support a variance from Policy 5/A (Absolute) Architectural Compatibility of the Development Code as it relates to Priority Policy 80A of the Handbook of Design Standards?

2. Did the Commission agree that no points be awarded under Policy 5/R (Relative) Architectural Compatibility of the Development Code as it relates to Priority Policy 80A of the Handbook of Design Standards, since the connector link meets the general Design Standards of Policy 80A?

Commissioner Questions / Comments:

Mr. Pringle: We would like to see these types of buildings connected with a connector. This is a Condition of Approval for the Brown Hotel and Stable Development permit. The Commission could choose to not support the variance. What would happen to the approved Brown Hotel Permit? (Mr. Mosher: The permit would have to be modified without the variance and the plans changed.) We could say that we won't give them the variance, because you can't connect them without violating policy. (Mr. Mosher: You could.)

Ms. Christopher: This connector caused because it is for a commercial application, they are trying to add bathrooms into the space. You could squeeze in a smaller connector if it was a residence, but because it's commercial it can't meet. (Mr. Mosher: A smaller connector would damage

more fabric as there are several openings in the wall that is being preserved inside.)
Ms. Dudney: I thought you either granted a variance or not; I was unfamiliar with points relating to a variance. (Mr. Mosher: Variances are for Absolute Policies. If there is an associated Relative Policy, as in this case we have 5/A and 5/R, the points must be addressed also.)

Ms. Christopher: We never gave it points the last time. (Mr. Mosher: We had the Condition for this variance in the last development report.)

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

Commissioner Final Comments:

Mr. Pringle: I support the variance; it is a correct solution. I think that a narrow, 4 foot one would be inappropriate so the trade off was good. I am neutral on the points.

Mr. Lamb: I think that it meets the intent of the policy.

Ms. Dudney: I support it.

Mr. Butler: I support it.

Ms. Christopher: I support it.

Mr. Schroder: I support it.

Mr. Pringle made a motion to approve the Brown Hotel Variance, PC#2013055, with the presented findings and conditions and a zero (0) point analysis. Mr. Mamula seconded, and the motion was carried unanimously (7-0).

2. Maggie Point Homes (MM) PC#2013050; 9525 Colorado State Highway 9
(Mr. Butler recused himself from the discussion as a potential contractor for the project.)

Mr. Mosher presented a proposal to develop 18 multi-family units (9 market rate and 9 workforce deed-restricted units). Mr. Mosher noted there was an error in the staff report: the correct total for the point analysis was positive four (+4) points. Each unit has at least a one-car garage and some units have two-car garages. The Planning Commission last reviewed this project as a preliminary hearing on July 3, 2013. At that meeting, the Commission expressed concerns about:

- a) Site buffering to the neighboring residential buildings;
- b) The look of the proposed wood siding;
- c) Reducing the impacts from the extra parking spaces;
- d) Having a site visit.

Changes since the July 3, 2013, Planning Commission Meeting:

- a) The elevations have been updated with each building delineated and accurate grading (existing and proposed shown);
- b) Additional landscaping shown along property edges;
- c) Updated elevations with existing and proposed grade line shown;
- d) Removal of a culvert along the south property line;
- e) A streetscape will be presented at the meeting;
- f) The Applicant's Agent will also have a sample of the proposed siding at the evening meeting.

The applicant and agent had sought a quick turn-around to final review from the last meeting. The submitted plans address the concerns associated expressed by the Commission and with the Development Code. Separately, the applicant is working on the off-site improvements to the access off Highway 9 and how the sewer line will be routed.

Staff had the following questions for the Commission:

1. Did the Commission believe the perimeter site landscaping buffering to the neighbors is adequate?
2. Should negative points be awarded for the site buffering along the west edge?
3. Did the Commission believe the 1X10 siding being proposed is too dissimilar to the architecture around Town?
4. Staff believes that positive two (+2) points may be awarded for providing 13 common parking spaces for the project. Did the Commission concur? Staff welcomed any other comments.

Commissioner Questions / Comments:

Mr. Mamula: Can you explain the rationale for not awarding points for site design and excessive grading? The Commission has said that the condition you find your property in is the condition that you evaluate it at. Maybe things have changed, but it used to be you developed in the condition that you find it in. It's been hydro-mined, so what? There should be negative points for the massive cut and fill on this site. (Mr. Mosher: Staff has past precedent to not assign points. On good example is the Wellington Neighborhood. There were no negative points awarded on this Dredged property. We also had an example in the Highlands.)

Mr. Lamb: What did we do on the old BBC site? (Mr. Mosher: They came in before annexation, as did Corkscrew Flats, graded and then, after annexation, made their application.)

Mr. Pringle: I agree with Mr. Mamula and might challenge the grading issues, but it's water over the bridge. I know what Mr. Mamula is talking about and I'm sympathetic, but I'm not sure.

Mr. Schroder: What about site buffering? How is adequate buffering judged? Should the adjacent neighbors have buffering as well? (Mr. Mosher: Staff will look at the distance away from the property line, the size of the building and the proposed and existing plant material. Generally is five feet minimum distance we'd expect for a parking lot, which has no height.) It's a judgment on the smaller buildings here and there are going to be new plantings so it varies.

Staff recommended approval of the presented Point Analysis for Maggie Point Homes, PC#2013050, showing a passing score of positive four (+4) points.

Mr. Bobby Craig, Architect:

We have everyone here. As for the site buffering, for those who were at the site visit today I think that we showed you that the actual buildings are not on the edge, but pulled back from the steeper slopes. At the last meeting there were concerns about the decks on Buildings 4, 5 and 6, so we moved three of the four decks on Buildings 4 and 5. The one that remains in place is on Building 4 so that we avoided all decks going over that slope. It also gives us more room for buffer; there are a lot of aspen trees on that slope. So we want to hand-select on site where those landscaping pockets will be to plant the new trees in. We want to save as much of the trees possible. At the last meeting we mentioned getting rid of a culvert along the south property line that would require removing most of those aspens in the ditch; we got rid of the culvert and put in a small wall. Those were our solutions to your concerns about preserving the buffering around the edges.

Detention area: we retained most of the trees there by creating planting pockets. Architecture: our theme here is more of a mountain lodge or rustic finish. Here is an example of what we are not going to do (showing lap siding). Our siding is a true 1x and has a channel edge that locks over the other one showing a joint. In the Town's "Victorian districts" you wouldn't want an 8 inch exposure but we aren't trying to do that here to be different; we are purposely going for a wider plank to make it look like a heavier piece of wood. We have brought samples of the color which will be a 12 inch board with a two inch batten; we may go with a darker color on trim and I have rock samples if you want to take a look at those.

The last thing is the streetscape: we have Building 2 and Building 3 which are the triplexes and Building 4 which is the duplex and Building 6 presents a single story and Building 7 is 1-1/2 stories tall. Generally, with the Point

Analysis prepared by Staff, we have no concerns. The positive six (+6) Points for the housing has been established by the Council. We have tried to address the site buffering but we understand that negative four (-4) points will be awarded tonight. We are actually 18 parking spaces over required minimum. As far as site access goes, we are very close to a final agreement with Ski and Racquet Club HOA. As far as the sewer easement, we are getting closer to working with the neighbors and Ms. Deb Linden (Owner's Rep) is here if you have questions about that. We have no concerns with the Findings and Conditions.

Commissioner Questions / Comments:

- Mr. Mamula: What's the length of the driveways on Buildings 4 and 5? (Mr. Craig: They are 25-feet from face of door to edge of drive and 24-feet on the shorter edge; 18-feet is the minimum length and its 18' on Building 7.)
- Mr. Pringle: I had the same concern Mr. Mamula did; just seemed like a massive expansion of paving in front of these two buildings. (Mr. Craig: The extra paving is partly because we pushed the buildings away from each other per your direction at previous meetings.) (Mr. Mosher noted that two of the garages are single, with the second parking space tandem, in front of the garage door.)
- Ms. Dudney: The cut and fill is between that natural grade and the undulation is between those buildings and the entrance to the property. You are not really disturbing cutting or filling along any of those. (Mr. Craig: Any of the retaining walls that we've added have been specifically to add an additional buffer. We are trying to equal cut and full on the site out and compared to the previous application we've done a better job reducing the impacts.)

Ms. Dudney opened the hearing to public comment.

Mr. Jay Rust, President of the Woods Manor HOA: Thank all of you who participated in the site visit today; it was very helpful to see what they were talking about. You are all to be highly complimented for sticking it out with the rest of us. In terms of our own thoughts, I'm not an architect or engineer, one of the things that we are concerned about is that we understand that we need retaining walls and from looking at the plans, we trust in Mr. Mosher to ensure that it will be done that way it needs to be done. Building 4; that does not have the decking on the side (it's still hanging out there) is troublesome but with proper landscaping that slope could be retained. There was quite a bit of recent erosion where the deck would actually sit. I don't know if it would be possible to move the access road for the project further east so that the entire project could be moved farther east too. I appreciate that nobody would want to have 5 feet separation between the buildings. So, I don't know what can be done to also give enough space between the buildings and push these further back if this cut into the development could be realigned. The other thought was about site disturbance; at the base of that is our development and we wouldn't want the existing aspen trees to be disturbed. All of that said, this is a vast improvement then we saw before. The architectural features, the plans, are far superior then what we had before. It's going to be developed, regardless; we all had to come in first, so we get that. I do appreciate your understanding of our balconies, our views from Building A and B onto the site and we support everything that was said about buffering. Thank you for your patience, diligence and care for the fabulous town that we have.

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

Commissioner Questions / Comments:

- Mr. Mamula: I went out to the site on my own after the published site visit; can you explain about that west slope? These last two rains eroded that slope a bit, and I'd like to know what the plan is to make sure that it doesn't degrade more and lose the trees, some of them have exposed roots. (Mr. Mosher: There could be individual tree wells to hold new and existing plantings, and as with any project, also trees identified by Staff will be chain link protected, any trees

that are lost are replaced, and landscape netting will have to be put down on the steeper slopes to stabilize the grade.) Can you do tree wells on some of the existing larger trees? (Mr. Mosher: Yes, it's possible to build them up; like cut and fill, and have the tree in a well and cover up where the roots are exposed.)

Ms. Christopher: Is this the plan? (Mr. Mosher: This is a Condition of Approval. Engineering has already warned us that their approval may be very time consuming to look over the details. We are going to be fine tuning a lot of these details with the Building Set of drawings.)

Ms. Dudney: To install retaining walls, aren't we bound to lose vegetation? (Mr. Mosher: These are not retaining walls in this area but stacked stone planters to keep the soil in.)

Mr. Mamula: Rather than having a condition that they will replace them, I would like add a condition to have them be protected prior to moving forward. Somehow, the condition is that some measures need to be employed to protect these specimen trees. Really, I'm concerned about the slope on the west. (Mr. Craig: You just want to quantify that with Staff?) Yes, that in conjunction with the landscaping plans. I get it that we are going to let Staff do this, but I don't feel comfortable saying that that's plenty of buffering for me. Last time when I went out there, there have been two big rains. (Mr. Mosher: Staff expressed the same concerns. Ms. Puester is suggesting is that we can modify Condition #16 on Page 42 of your packet or add a new Finding to identify and preserve the Aspen grove and enhance where needed on the west side of the property. We can then add into the final motion.) (Mr. Craig: Do you want to put it in there that we will walk it with Staff?)

Ms. Dudney: Can you explain why the drive can't be moved further to the south as your neighbor suggested? (Mr. Craig: There is a power pole with some guy-wires and we are already tight up against it. Xcel doesn't want to do it either.) (Mr. Mosher: Also, Town Engineering standards like to see at least 100 feet to intersections, and moving it south would reduce that number.)

Mr. Pringle: The deck on Building 4: you moved the other decks back, is there any consideration in making that the same as the other decks? It seems like it sticks out further than the other decks. (Ms. Diane Yost, Applicant: At the respect of the new owners of the neighboring Allaire Timbers Inn, they did not want the deck closer to their deck, so we left it there.) So its depth is not going to be a concern? (Mr. Craig: No, it's not over the edge at this location.) I'd like to see the calculation of the hard surface of the driveways at Buildings 4 and 5 versus the driveways of any of the other units and why does it appear like there is a significant difference? Do you see what I'm saying? (Mr. Mosher: The function of the different sizes of garages, 2-car and one-car, for the reasoning behind the difference in hard surface. There is more functional snow stacking as well.) I just thought that there seemed to be too much hard surface. (Mr. Mosher: For the most part, it's all functional space.)

Mr. Lamb: I agree with the point analysis; the project has come a long way. On the driveway, I don't think a 25-foot driveway is excessive; I am fine with those two driveways. I am fine with the project and would like to see it go forward. I like the larger siding and it is appropriate for a building like this, especially now that I see it. I think that what we have written now is pretty good, but to make it more iron clad is fine.

Ms. Dudney: I also agree with the point analysis; I think what Mr. Mamula brought up about site disturbance a good point but I wouldn't be in favor of negative points because the perimeter of the site meets existing grade and doesn't have a visual big impact on the neighbors. I have no problem with the siding and I agree with Mr. Lamb regarding additional tree protection. I would like some additional language in the Conditions.

Ms. Christopher: I also agree with the point analysis; the negative points for site buffering and positive points for parking. I feel like parking is a major issue on many Town projects. We could always use extra. I don't have problems with the driveways; the landscape language change I would support. I don't have any problem with the channel siding, but I think that an 8-inch

exposure would fit better on these small buildings.

Mr. Mamula: I don't feel that the landscaping buffering is at all adequate; we see much smaller projects with way bigger number of trees. Most of what is proposed are aspen which are bare in the winter; you're going to see these buildings at least most of the time in the winters. I don't think it's even remotely adequate. Yes, definitely negative points and I'd ask for more if I could garnish support; there are two trees in that buffer along the west in reality between the back of the homes and the property line, the rest are in between the internal buildings. This and only two aspen, so virtually zero buffering. I'd like to see more landscaping behind those two buildings in particular. I'm fine with the siding. The parking you'll get the points for, but the thing is over-parked; we are actually giving extra points for the size of those driveways. I do think that we should ask for negative points under Policy 7 for the site design and grading. I don't remember Wellington grading. That whole experience was a terrible year out of my life, going through that one. I'm going to make a motion for more negative points for excessive grading, we are doing a lot of disturbance on this site, we have a huge retaining wall on the north, we'll need one on the rest there are some site grading issues. Other than that, it's better than it was. Does it belong here? I don't know. Adding density to a site where we have buffering issues still but it seems like this train is already on the move.

Mr. Schroder: I support the point analysis; I would support the positive two (+2) for parking and I support the siding. I support the way it looks and believes it meets code. I would support the point analysis as presented. The language change in the Conditions for buffering is a great recommendation especially given the conversation that has gone on this evening. I'm not in support of too much landscaping against homes. We are talking about fire mitigation around homes and adding landscaping too. There appears to be a conflict.

Mr. Pringle: I think it's hard to talk about site buffering when we don't have a lot of room; basically we are asking for sizable buffering in for screening and on the other hand we are talking about defensible space, I think we have to come to grips about the big picture there. I'll be neutral as to whether or not it is adequate. It's hard to work with minimal numbers; I don't know if we should put negative points or not for site grading; if you're going to award points with landscaping and then create problems with defensible space. I agree with what Ms. Christopher said; with the scale of the buildings 8-inch might have been a better choice, but it doesn't matter. I think that we are getting some oversized parking spaces which add to the problem of the hard surface and looking for places for snow stacking and the other parking spots seem to be more strategically placed more than just a big drives for Buildings 4 and 5. I could be sympathetic to Mr. Mamula's motion and it would still make the project pass. I appreciate the streetscape drawings; I would criticize the streetscape of Buildings 7 and 6 and the garage door look at the front with little else, but I'm not going to bring that up. I'm in favor of the language change.

Ms. Dudney: I would not be in favor of not giving any negative points per Policy 7. The site should be designed to minimize the amount of cut and fill, which is why I would be against assigning negative points.

Ms. Christopher: When we did the old BBC lot, I thought that was part of the Application; we were to re-grade it to natural grade. It's kind of the same here. I thought at the last project it was part of the Application. (Mr. Grosshuesch: There have been several precedents set. Most recent was the approval of the lodge at Peak 8 in March.)

Mr. Mamula: We used to give them negative points all of the time.

Ms. Puester read new Condition #24: "Applicant shall protect existing tree stand not shown on tree survey west of Buildings 4, 5, & 7 as approved by Town Staff through such means as construction fencing, slope stabilization, and tree wells for the purpose of protecting existing buffer."

Mr. Craig: Are we redundant on anything else in here?

Ms. Dudney called a recess for the applicant to review the new condition with staff. The meeting was called back to order after the recess.

Mr. Mamula made a motion to change the landscaping points to negative four (-4) points, changing the final point analysis to an allocation of zero. Mr. Pringle seconded.

Ms. Christopher: Yes.

Ms. Dudney: No.

Mr. Mamula: Yes.

Mr. Schroder: No.

Mr. Pringle: Yes.

Mr. Lamb: No.

The motion failed (3-3).

Mr. Mamula made a motion to change the landscaping to negative two (-2) points, changing the final allocation to positive two (+2) points. Ms. Christopher seconded.

Mr. Schroder: No.

Mr. Pringle: No.

Mr. Lamb: No.

Ms. Christopher: Yes.

Mr. Mamula: Yes.

Ms. Dudney: No.

The motion failed (2-4).

Mr. Pringle made a motion to approve the point analysis as presented by Staff for Maggie Point Homes, PC#2013050, 9525 Colorado State Highway 9. Mr. Schroder seconded, and the motion was carried unanimously (6-0).

Mr. Pringle made a motion to approve Maggie Point Homes, PC#2013050, 9525 Colorado State Highway 9, with the presented Findings and Conditions plus addition of condition #24: "Applicant shall protect existing tree stand not shown on tree survey west of Buildings 4, 5, & 7 as approved by Town Staff through such means as construction fencing, slope stabilization, and tree wells for the purpose of protecting existing buffer." Mr. Schroder seconded, and the motion was carried unanimously (6-0).

COMBINED HEARINGS:

1. Beaver Run TDR (MM) PC#2013049; 620 Village Road

Mr. Mosher presented a proposal to remodel the exterior of the existing porte-cochere with natural materials and enclose 494 square feet of the existing covered walkway between the porte-cochere and lobby. This project will allow guests to wait inside a heated area of the building rather than outside for personal and shuttle vehicles. This will also assist in reducing unconditioned air from entering the lobby. There is not enough density remaining in the approved Master Plan for this proposal. Hence, the project will require a Master Plan Amendment and density transfer. Beaver Run Resort was constructed in the 1980s. Over time there have been many modifications to the original development permit and Master Plan. Most recently in May 2011, the Planning Commission approved an addition of 820 square feet with an associated density transfer and Master Plan Amendment for the addition of an elevator shaft between Buildings 1 and 2 to improve internal circulation within the resort.

The Planning Department recommended the Planning Commission accept the presented Point Analysis for the Beaver Run Vestibule Airlock Entrance and Density Transfer with Master Plan Amendment (PC#2013049)

showing a passing score of zero (0) points.

The Planning Department recommended approval of the Beaver Run Vestibule Airlock Entrance and Density Transfer with Master Plan Amendment (PC#2013049) with the presented Findings and Conditions and Point Analysis.

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

Commissioner Questions / Comments:

Mr. Mamula: For the record to Council, I don't think we should be charging for this kind of density to happen; there are a lot of instances on Main Street where it would be nice to add an airlock to allow for better energy efficiency but it would be adding to density. It's more energy efficient which the Town has made a pointed drive towards and somehow we should be allowed to waive density; it should lead to a broader conversation with the Council to allow airlocks in the commercial core.

Mr. Lamb: I agree; no one is living there; its common area. (Mr. Mosher: Staff has discussed this and it is on a list to review.)

Ms. Christopher: We don't allow it in residential for people taking advantage of it, why would we just allow commercial to do it? (Mr. Mosher: This is usually common area, not living area; for circulation and like Mr. Mamula said it isn't livable density.)

Mr. Mamula: There are a lot of buildings on Main Street that could use it; my property did it and it has made a huge difference. It's the comfort in those two or three really cold weeks of the year; and there are a lot of places like that on Main Street if they could figure out a way to make it more comfortable for our guests.

Mr. Pringle: I don't disagree but in principle when you build with maximum density allowed it isn't fair to allow people to come in and then add more density per say to the project. Plus, the historic district character is important to keep; people can add an airlock inside their existing building.

Mr. Mamula: The problem is that the building that we own got passed with lots of positive points. (Mr. Mosher: This will likely always be affecting older pre-approved buildings.) Peek-A-Boo Toys on Main Street has one door; if he could build something like that without altering the feel of the building, it would be better for the guests.

Ms. Christopher: I would err on the side of caution and I can see people taking advantage of it and it looking out of character. (Mr. Mosher: Staff is aware of this.)

Mr. Mamula: We actually have to have a discussion about it before we talk to Council about it. We'll need to carve some time out to plan what we want to take to Council.

Ms. Dudney: A discussion on these issues; the buildings that this would apply to etc. so that we are all on the same page first. (Ms. Puester: We can have a discussion on the Top Ten list in more detail than in the past.)

Ms. Dudney: It could be something on the agenda. When we have to carve out this time, let's have enough time to discuss the point analysis for annexations that bring in this affordable housing too. I'd like to understand it better. Let's make sure to assign some time under other matters so that we can understand.

Mr. Lamb made a motion to approve the point analysis as well as the Density transfer with Amendment with a passing score of 0 for the Beaver Run TDR, PC#2013049, 620 Village Road. Mr. Mamula seconded, and the motion was carried unanimously (7-0).

OTHER MATTERS:

Ms. Puester reminded the Planning Commissioners about the Committee Reception on July 24, and to please RSVP no later than July 21.

We've got the State APA Conference October 2-5th in Vail and Ms. Puester will send out an email to see if any of the Commissioners were interested in attending.

Lastly we have a new intern, Shane Greenburg joining us and we want to welcome him. We are happy to have him.

ADJOURNMENT:

The meeting was adjourned at 9 pm.

Gretchen Dudney, Chair



Scheduled Meetings, Important Dates and Events

Shading indicates Council attendance – others are optional

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

JULY 2013

Wednesday, July 17, 2013; 1:00 pm Valley Brook Cemetery Open House

Friday, July 19, 2013; 8:00-9:00 am; Fatty's Pizzeria Coffee Talk

Tuesday, July 23, 2013; 2:00 pm Terry L. Perkins Public Works Administration Building Dedication

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

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

AUGUST 2013

Tuesday, August 13, 2013; 3:00/7:30 pm First Meeting of the Month

Friday, August 16, 2013; 8:00-9:00 am; TBD Coffee Talk

Tuesday, August 20, 2:30-4:30 pm USA Pro Challenge Stage 2 Breckenridge Finish Ceremony

Wednesday, August 21, 11:00 am–12:00 pm USA Pro Challenge Stage 3 Breckenridge Start Ceremony

Tuesday, August 27, 2013; 3:00/7:30 pm Second Meeting of the Month

SEPTEMBER 2013

Tuesday, September 10, 2013; 3:00/7:30 pm First Meeting of the Month

Friday, September 20, 2013; 8:00-9:00 am; TBD Coffee Talk

Tuesday, September 24, 2013; 3:00/7:30 pm Second Meeting of the Month

OTHER MEETINGS

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

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