



BRECKENRIDGE TOWN COUNCIL WORK SESSION

Tuesday, March 11, 2014; 3:00 PM

Town Hall Auditorium

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

3:00-3:10pm	I	<u>PLANNING COMMISSION DECISIONS</u>	2
3:10-3:45pm	II	<u>LEGISLATIVE REVIEW*</u>	
		BGV Community Center Library Lease Ordinance	12
		RETT Ordinance	60
		Historic - Connectors Ordinance	67
		Temporary Structures Ordinance	77
3:45-4:15pm	III	<u>MANAGERS REPORT</u>	
		Public Projects Update	83
		Housing/Childcare Update	
		Committee Reports	86
		Emergency Preparedness Exercise Overview	88
4:15-5:00pm	IV	<u>PLANNING MATTERS</u>	
		USFS Referral: Ski Area Resort Master Plan Addendum	90
		Condo-Hotels Ordinance	94
5:00-6:00pm	V	<u>OTHER</u>	
		North Roundabout Public Art Recommendation	98
		GoBreck Marketing Update	
		North Main Street Park Design Review	106
6:00pm	VI	<u>EXECUTIVE SESSION - NEGOTIATIONS</u>	

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

MEMORANDUM

To: Town Council

From: Peter Grosshuesch, Director of Community Development

Date: March 5, 2014

Re: Planning Commission Decisions of the March 4, 2014, Meeting.

DECISIONS FROM THE PLANNING COMMISSION AGENDA OF March 4, 2014:

CLASS C APPLICATIONS:

- 1) Ankenbauer Residence (MGT) PC#2014007, 835 Gold Run Road
Construct a new, single family residence with 4 bedrooms, 6.5 bathrooms, 4,984 sq. ft. of density and 5,812 sq. ft. of mass for a F.A.R. of 1:13.70. Continued to a future meeting.
- 2) AT&T Telecommunications Site at RWB (MGT) PC#2013112, 316 North Main Street
Withdrawn at the request of the Applicant.

CLASS B APPLICATIONS:

None.

CLASS A APPLICATIONS:

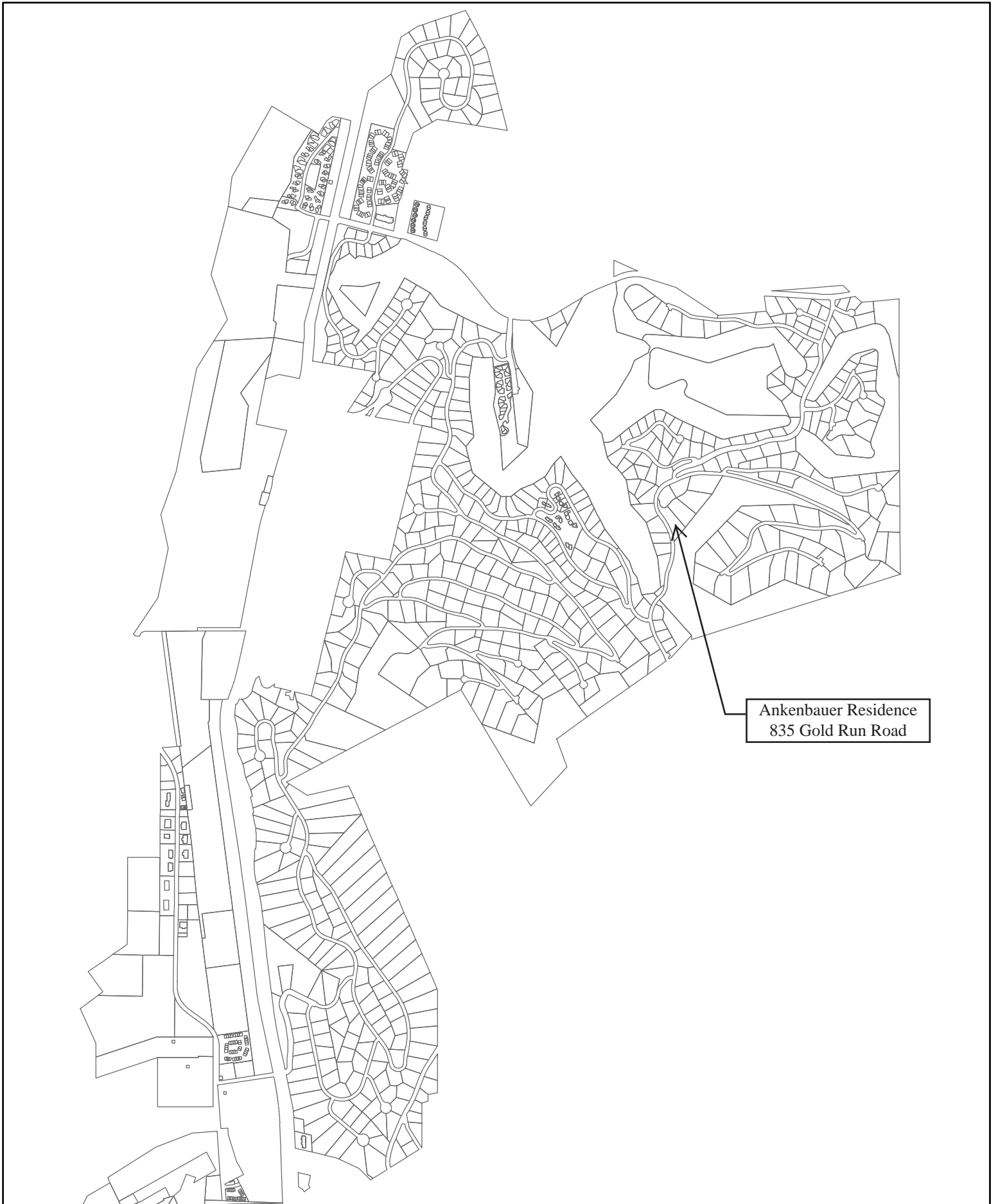
None.

TOWN PROJECT HEARINGS:

None.

OTHER:

None.

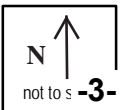


Ankenbauer Residence
835 Gold Run Road



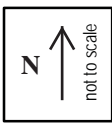
Breckenridge North

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.



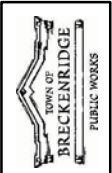


AT&T Telecommunications Site at
Red, White and Blue Fire District
316 North Main Street



Breckenridge South

Town of Breckenridge and Summit County governments
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use of the product for any purpose is at user's sole risk.



PLANNING COMMISSION MEETING

The meeting was called to order at 7:00 pm

ROLL CALL

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

APPROVAL OF AGENDA

Ms. Puester noted several changes to the Agenda. First, the AT&T Telecommunications Site at RWB has been withdrawn by the Applicant. (Mr. Thompson: Jay Nelson from Red, White and Blue announced that the board voted against the proposal due to issues with conditions of the lease.) (Ms. Dudney: Do you expect this to come back to another meeting?) (Mr. Thompson: No, we do not.) There will be no Town Council Report as Ms. McAtamney is absent. We will add a summary of the Saving Places Conference in Denver February 5-7, and a discussion on changing the date of the April 1 meeting due to the election.

APPROVAL OF MINUTES

With no changes, the February 18, 2014, Planning Commission Minutes were approved as presented.

CONSENT CALENDAR:

- 1) Ankenbauer Residence (MGT) PC#2014007, 835 Gold Run Road
- 2) AT&T Telecommunications Site at RWB (MGT) PC#2013112, 316 North Main Street (*Withdrawn at the request of the Applicant.*)

Mr. Mamula: I have a question about the 12 foot retaining wall on Ankenbauer. Please explain and have we never done a 12 foot retaining wall on a single family residence? (Mr. Thompson: I have not worked on a single family with a 12 foot retaining wall; I have done 6 foot wall with terracing, with another 6 foot wall. The architect for the applicant on this project said the lot is so steep and they are at edge of their disturbance envelope they had to do this. (Indicated on plans where wall would be.) Whole lot is very steep. That is why we gave them negative four (-4) points. One good thing is it is behind the house and not very visible to the general public.) Mr. Mamula: What about Lot 146? (Mr. Thompson: They will look right over the retaining wall. Strong landscaping plan warranted. The architect's concept was to put garage in back because they did not want garage doors to be the first thing you saw coming up to the road and did not want to bury living area in back. Other design we had them look at was to place garage on the other side of the north side of the house so that the driveway could short and not require the large retaining wall; they did not like the look of the garage doors dominating the front of the house. And they said they still want to have this size house, would have had to bury living area in back instead of garage. Staff had concerns with driveway and retaining wall but we did get a very strong landscaping plan and a HERS rating. Other negative points are for the heated driveway. Not much sun in there.) Ms. Dudney: Where is snow stack? (Mr. Thompson: (Indicated on plans.) They have quite a bit of parking. Four outdoor spaces. No accessory apartment. Only require two spaces.) Ms. Dudney: Above retaining wall, is it very steep? (Mr. Thompson: Yes, 32%.) Ms. Dudney: So snow above that will slide onto driveway. Is it our job to be concerned about snow stack? With weather conditions we have now, it is important to note. (Mr. Thompson: The majority of the snow will be pushed to the downhill side of the driveway, which will allow for adequate snow storage (indicated on plans). It will be challenging but not impossible to plow. We do look at reasonable proposed snow storage. Heating it with this design is probably a necessity.) Mr. Mamula: Are the negative points for 7/R (C.) Retaining Walls or 7R(A) Site Design and Grading? (Ms. Puester: We are talking a lot about this application, so the Commission should call it up.)

Mr. Mamula made a motion to call up the Ankenbauer Residence, PC#2014007, 835 Gold Run Road. Ms.

Dudney seconded, and the motion was carried unanimously (6-0).

Mr. Pringle: Mr. Bill Tinker is here for the AT&T Telecommunications Site at RWB, and does not know it has been withdrawn. (Mr. Thompson reiterated as at the beginning of the meeting that the AT&T Telecommunications Site at RWB had been withdrawn.) Mr. Tinker thanked the Commission.

(Ms. Puester announced the camera screen connection is not working so if audience members want to see plans they can step up to the diaz.)

Mr. Thompson: We do have flexible zoning. They are able to make up negative points with landscaping and a HERS rating.

Commissioner Questions / Comments:

Mr. Mamula: What I am driving at is there is an obvious ability to have more than negative four (-4) points. (Mr. Thompson: I have typically always given negative two (-2)). With the length of this driveway we have always broken it up. You can't see it, but I don't want to set a precedent for a 12' retaining wall.

Mr. Lamb: I would prefer to see negative six (-6).

Mr. Schroder: We have had the landscape conversation before, that it is easy points. Have we seen this before? (Ms. Puester: Is the Commission against the wall visibility and disturbance or the precedent? If precedent, we could write a condition to describe the site issues.) (Mr. Thompson: The Daisy residence has a 10 foot wall next to the driveway that went through last meeting. However, the Daisy Residence garage was shorter and did not go behind the house. Also, due to the wetlands there was really no other location for the Daisy Residence and the steep slope caused a 10' tall retaining wall.)

Mr. Pringle: If the disturbance envelope line wasn't there they could move the line, true? (Mr. Thompson: Yes, you could step it.) Is the disturbance envelope there for a reason? The envelope can move around the lot to some extent if they fit within the setbacks? Is the envelope because we made them do it that way? (Mr. Thompson: This is the difference between the first filing of the Highlands versus later filings. The Town supports disturbance envelopes.)

Mr. Mamula: Developer put them on the lots; the buyer buys them knowing where they are and so do the neighbors.

Mr. Pringle: We arbitrarily put this disturbance envelope on this lot? (Ms. Puester: Disturbance envelopes were not arbitrarily placed. Staked and reviewed in the field at subdivision. This lot is steep. Garage designed to be way in back against that line.) Maybe we should look at other design options.

Ms. Dudney: On page 22 of the packet, it doesn't look like it's 12 feet straight up. On the top section. (Mr. Thompson: The stone here closer to garage he shows 5'11", break, and then 5'6". The 12' is a section of wall.)

Mr. Mamula: I assumed it was the section further from the garage. (Mr. Thompson: Concrete planter, landscape and flowers on top of it. They chose stone to face the concrete wall.)

Ms. Dudney: Is your conclusion that the 12 foot wall is right near the garage and goes straight up? (Mr. Thompson: Yes. I asked the architect for different options, can you step it? They were resistant.)

Mr. Pringle: We could have made that disturbance envelope a little wider.

Ms. Dudney: That is a variance. You mean at the time platted?

Mr. Pringle: Yes, at the time platted. (Mr. Thompson: Usually 25 feet between disturbance envelope and property line. Setback issue and density issue. There were physical constraints too. This lot is very steep; the whole thing is very steep. This is the envelope they bought. They have a

- right to build to this envelope.)
- Mr. Mamula: We had a lot of discussion on long driveways. We discussed breaking up with retaining walls, stepping them, landscaping. That is going to be a canyon.
- Ms. Dudney: In this case you are protecting them from themselves. Maybe if they see our comments, they are not negatively affecting the neighbors. I might be open to a special finding since its not visible. (Mr. Lamb: How would we proceed here? Ms. Puester: We would need a motion to pass the point analysis and then motion for approval of the project with finding we craft, should the Commission go that route.)

Mr. Lamb opened the call up for public comment.

Mr. John Ebright: Coincidentally I was on design review board when this house came in. To protect wall will have to drill into the hillside. An engineer on the board, says you can't do it. A previous design for another house on this lot had garage right at the beginning. HOA gave them preliminary comments and asked the applicant to address those comments. The HOA is also concerned with the height of this proposed retaining wall. (Mr. Thompson: There is a plat note that encourages you to step back retaining walls.)

There was no further public comment and the call up was closed.

Commissioner Questions / Comments (Continued):

- Ms. Christopher: Is there anything about drilling into the hillside to secure the wall? (Mr. Thompson: No. There is a plat note that you can have retaining wall outside disturbance envelope if related to the driveway. The architect for the applicant said you are going to have to cut way back and thus open up a view into the house from above.)
- Ms. Dudney: 12 foot wall is not really from the driveway. Wouldn't allow because not really the driveway. (Mr. Ebright: The HOA did not approve it. We sent it back with series of questions to resolve.) Don't they have to get HOA approval? (Ms. Puester: We strongly recommend it but legally, we can't require it. It is the applicant's choice to submit to the Town first. If they have substantial changes between the Commission approval and building permit, then staff would take back to Planning Commission.)
- Mr. Lamb: If visible we would have an issue; since it's not, we don't.
- Mr. Mamula: Policy 7/R is Site and Environmental Design, and section A Site Design and Grading, where you can receive negative points, also under section C. Retaining Walls, applicant can receive negative two (-2) or negative four (-4) points. (Mr. Thompson: Section C. Also, encourages retaining walls if they minimize site disturbance. Section D. Driveways and Site Circulation Systems could also be used to assess points, that multiplier is 4 x (-2/+2). Applicant should try and minimize the amount of site disturbance more.)
- Mr. Schroder: Sounds like there's the possibility the HOA will deny the project.
- Mr. Mamula: We don't have a code issue to deny, so we are setting precedent if we approve. (Ms Puester: (read from code) smaller retaining walls of four feet are preferred without creating excessive site disturbance. When you keep going back is that excessive site disturbance? It also goes on to say that if alternative site layout that causes less site grading and complies with all other polices is viable, then it should be strongly considered. It's under 7, the relative policy.) I might be ok with that then. By approving something that they are going to have to do (soil nailing etc.); if it's not constructed correctly and it fails, does that set the Town up for liability? (Ms. Puester: No. We would require the design to be stamped by engineer, so that engineer would be the liable.)
- Mr. Pringle: They have more parking, is that one reason why this wall has to be there? (Mr. Thompson: I don't think so. You need the hammerhead to get out of one garage bay.)
- Ms. Christopher: I agree with Mr. Mamula.

- Mr. Schroder: I agree.
- Mr. Pringle: I'm not sure I agree with it.
- Ms. Dudney: I'm ok with what we've talked about; adding a caveat to findings.
- Mr. Mamula: Right by Discovery Ridge trailhead? (Mr. Thompson: Immediately adjacent to the big cut we did up there.) So you will see it when you are on a bike. Town property to the side. Now I have some visibility concerns.
- Mr. Pringle: Rather than stepping back retaining walls, what are we talking about in that 12' section? If we are worried about the additional disturbance and what that might look like, we need to look at the whole lot.
- Mr. Mamula: (Showed photo on his computer.) This lot is all dog hair lodgepole.
- Mr. Pringle: I don't know if the additional grading to access the wall would be as objectionable as the 12 foot wall. If we step it back once or twice the disturbance would be very large. I'd rather have it stepped back and maintain precedent we have set and not build into disturbance envelope.
- Ms. Dudney: Does that require a variance to go into the envelope? (Mr. Thompson: Plat note says you can for a driveway. If you think it's better to go beyond the disturbance envelope, that is an option.)
- Ms. Christopher: Mr. Pringle, you would prefer that?
- Mr. Mamula: How much space between 4 foot sections? (Ms. Puester: We typically suggest enough for plantings.) (Mr. Thompson: About two feet.) What is distance from edge of disturbance envelope to back of lot? (Mr. Thompson: 25 to 30 feet. It would use up approximately one third of the setback area.
- Mr. Pringle: Outside envelope but within setback. (Mr. Thompson: I would consider this the rear yard, that setback requirement is 15'.)
- Mr. Mamula: It's rear yard setback compared to where Gold Run Road is.
- Mr. Pringle: I'm good with that solution.
- Mr. Mamula: I would be good with that.
- Ms. Dudney: I would be too. (Mr. Thompson: The wall is 35 to 40 feet from the property line. That would be enough. Also meets the plat note.) (Mr. Ebright: We did not turn it down; we just sent it back.) (Ms. Puester: There has been lots of discussion this evening, and the Applicant is not here to hear the discussion or accept your suggestions. Another option would be to continue this to another meeting to give the Applicant time to understand the concerns and suggestions.)

Mr. Mamula made a motion to continue the Ankenbauer Residence, PC#2014007, 835 Gold Run Road, to a future hearing. Ms. Dudney seconded, and the motion was carried unanimously (6-0).

TOWN COUNCIL REPORT: None.

OTHER MATTERS:

1) Legislative Review:

Ms. Puester: On March 11 we will have the first reading on the Historic Connectors Ordinance. Condo-Hotels Ordinance is also set for first reading on March 11. Ms. McAtamney went over the changes; 50 unit limit is removed to allow for market conditions. Existing condo-hotels will be able to convert to deed restricted units with energy audits through a development agreement. A covenant will be recorded against any new condo-hotel developed if they change the use from condo-hotel, which they receive extra density for, they would have to pay the TDRs at the current price in addition to meeting all other relevant policies of the Town Code. The Covenant would go into detail. Council was concerned that future buyers would not understand TDR process.

Commissioner Questions / Comments:

- Mr. Pringle: There is nothing that compels an owner of a unit in a condo-hotel to rent the unit short term. Can our covenant compel someone to operate the new condo hotel in the way we want it to be done, well? (Ms. Puester: I have spoken to our Town Attorney and he has drafted the Ordinance to require a covenant for future conversions.) We still don't have guarantee to rent the units.
- Ms. Dudney: Why is there even a condo-hotel policy?
- Mr. Pringle: That is my next point. Why are we kidding ourselves?
- Mr. Mamula: We should just call it a timeshare. No one can afford to buy 52 weeks. Almost physically impossible to buy a room there.
- Ms. Dudney: They may never have any intention of running as a condo-hotel. They buy and put all units on VRBO never have any intention of running as a condo-hotel.
- Mr. Pringle: There has not been one new condo complex to come in since this policy went into effect.
- Mr. Lamb: The Town Council has weighed in on this based on our recommendations made. Mayor Warner asked if the Planning Commission understands this policy, I said yes.
- Mr. Pringle: We should just get rid of the condo-hotel designation in total.
- Mr. Lamb: The Town Council will read these minutes.
- Mr. Pringle: I will go to the meeting. I don't see anything changing this policy. I don't see anything forcing them to do what they are supposed to. I say you should get rid of this policy. We are not going to be able to do anything to get the developer to run as condo-hotel.
- Mr. Mamula: I agree with Mr. Pringle. We need to let them know we have had a complete change on this issue. We need to meet ourselves, have another worksession on this issue. I don't want to send this to the Council and say read our minutes. This is a new thought. (Mr. Truckey: We already went to Council with a worksession on this; this is a first reading scheduled next week. We will talk to Town management about how to proceed.) I will go to the meeting.
- Mr. Lamb: I will too, usually do.
- Mr. Pringle: I don't know we are going to get anything new with this reading. (Ms. Puester: We are requiring a covenant that yes, if they are going to convert they will have to pay the density; same with conversion of any rooms. If you convert from condo-hotel to condo all of units.) They won't convert anything with that. How are you going to get them to operate? Stop the presses! Eliminate the condo-hotel policy. (Ms. Puester: I'll check with Tim Berry tomorrow.) No offense to him but we need someone with really good land use law to see whether we can do that; require owner to operate correctly.
- Mr. Mamula: The big one will be the ski area's Grand Hotel on Watson and Ski Hill.
- Mr. Pringle: Could they develop as condo-hotel?
- Mr. Mamula: They could, but in discussion years ago, not sure if best for them would be to run as condo with front desk or condo-hotel. This was planned to look like hotel but as financing structure they want to sell individual units and have management company to run it. Riskier to run as a hotel.
- Mr. Lamb: How are we to proceed? The first reading is a week from today. Council is comfortable with this.
- Ms. Dudney: They don't understand this new issue.
- Mr. Lamb: How do we proceed? Mr. Lamb and Mr. Mamula will attend the next Town Council meeting on the 11th. (Mr. Truckey: We need to regroup tomorrow internally on this and see how to address it. The council direction was to let the market deal with this.) Mr. Lamb and Mr. Mamula will attend, Dave is going to make a phone call.

Ms. Puester: Temporary structures going for first reading on the 11th. Reduction of wording and requirements of temporary structures; written to conform to applicable policies within Town Code. Also, staff is working on a cell tower policy. That will be on a later meeting. Talking to cell providers now as to how everything will look in the future. (Mr. Mamula: Can we disallow them in the historic district?) My understanding is with

the data needs now rather than coverage. LTE requires much more data capacity. If we don't have any in the area, for example in the historic district, people are not going to be able to access their phones. (Mr. Truckey: We may be preempted by federal law from denying outright.) Cell towers look a lot better than we have seen in the past. They can camouflage them so you may not even notice they are there. Sometimes in light poles. Sometimes they look like a tree. There are ways to disguise them. We are learning more; we do expect to see some new applications within next 18 to 24 months. (Ms. Christopher: Are you working on design issues and locations?) Yes, an all encompassing policy. Co-locating so not all over the place if possible; how to disguise; what kind of equipment. Not ready yet but on the radar.

There is a US Forest Service open house from 4:30 to 6:30 tomorrow evening on summer programming at Mountain Thunder Lodge. (Mr. Mamula: Is this proposal giving BOSAC heartburn?) (Mr. Truckey: BOSAC saw this a couple of weeks ago. Mark Udall passed bill a couple of years ago allowing more summer activities on federal lands. Zip lines over a mile in distance off the Independence Chair; canopy tours through forest; four wheel drive tours on access roads; and other smaller pieces. BOSAC had concerns and made recommendations to Council. Scott Reid is writing a letter to the Forest Service. Next week the Council reviews and makes comments. The draft letter is due the next day. This is scoping period, then we will have opportunity to comment at environmental impact statement time too.

2) Saving Places Conference Recap

Ms. Puester: Several Staff members, as well as Mr. Lamb, Ms. Christopher, Ms. Dudney and Mr. Butler attended the Saving Places Conference in Denver February 5-7. Good conference. The Ski Town Forum covered connector elements and additions to historic structures. There was a lot of talk about sympathetic additions; everything from things that blend in to extremely modern additions. Interesting to see a different viewpoint. A lot of variety as to how to do additions. (Mr. Lamb: We are more on the strict side.) (Mr. Truckey: Philosophical approaches differ too. Aspen approach is you know what is historic and what is new. Sometimes here you would have a hard time without a trained eye. Kind of a philosophy as to how to address those additions.) (Ms. Christopher: Also a principal they would consider a mid century house just as beautiful.) (Mr. Lamb: Never been so damn cold in my life. Minus seven was the high. The second presentation on dredge restoration was wonderful.) Financial incentives for history related preservation. Mr. Thompson went to the State Capitol and talked to Rep. Millie Hamner about state tax preservation credits. Increasing state historic preservation tax credits from \$50,000 now to up to \$5 million. Addressing very large commercial buildings. Seeing huge historic preservation projects that can receive tax credits in other states that have a larger cap. Here in Colorado, its small projects with the low cap. Economic vitality in older run down areas. Something in the works at the state capital. (Ms. Christopher: I have notes from all classes I took; I can email that out to everyone.)

3) Change of Date for April 1, 2014, Planning Commission Meeting

Ms. Puester presented. The Town Council Chambers will be used on Tuesday, April 1, 2014, for the Municipal Election. Therefore, the April 1, 2014, Planning Commission Meeting needs to be rescheduled to another date. Would a quorum of Planning Commissioners be available for Monday, March 31, 2014, at 7:00pm? This date is preferable due to the Town Hall remodel, which is very noisy and dusty Wednesday through Saturday, especially in the evenings. Mr. Butler indicated by email earlier in the day that he was available March 31st.

Mr. Lamb asked for a show of hands for those Commissioners available for March 31st. All Commissioners are available, so the meeting date will be changed. The Commissioners will be reminded a couple of times by email as to the date change.

We will place the updated meeting on the Town Calendar. Thanks very much for your flexibility.

Mr. Pringle: A couple final things. On the cell tower information for tonight, we didn't have a problem with

the proposed project being enclosed, can't see it. Need to look at the quickly changing technology. We got started about writing television discs when they were 8-10 feet wide. Now they are tiny. On the minutes from the last meeting, regarding the discussion on affordable housing. The minutes did not catch the essence of my comments. I meant that we had an absolute policy that everyone building would be required to do affordable housing, and then we abandoned that policy. I just wanted to get that into these minutes. (Ms. Puester: Is a change to the prior meeting minutes needed?) No, it is just a clarification.

ADJOURNMENT:

The meeting was adjourned at 8:23pm.

Jim Lamb, Chair

Memorandum

TO: Town Council

FROM: Tom Daugherty, Public Works Director

DATE: 3/6/2014

RE: Library Lease for Breckenridge Grand Vacations Community Center
Second Reading

Attached is the lease for the Summit County South Branch Library that will be located at the Breckenridge Grand Vacations Community Center. The Council was concerned that the Town and County could have conflicts with each other and that conflict resolution needs to be addressed.

Article 12 of the lease describes how disputes will be resolved. I hope that this article address the Councils concern. Staff did place a sentence on page 1 of the Operational Plan on lines 26, 27 and 28 that references Article 12 of the lease. The sentence is highlighted in yellow.

The remaining terms of the lease remain the same as the first reading. Staff will be available to discuss.

1 ***FOR WORKSESSION/SECOND READING – MAR. 11***

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

4
5 COUNCIL BILL NO. 6

6
7 Series 2014

8
9 AN ORDINANCE APPROVING A LONG-TERM LEASE WITH THE BOARD OF COUNTY
10 COMMISSIONERS OF SUMMIT COUNTY, COLORADO
11 (South Branch of Summit County Library – 103 South Harris Street)

12
13 WHEREAS, the Town of Breckenridge owns the real property commonly known as the
14 “Breckenridge Grand Vacations Community Center” located at 103 South Harris Street,
15 Breckenridge, Colorado (“**BGV Community Center**”); and

16
17 WHEREAS, a portion of the BGV Community Center is suitable for use by the Board of
18 County Commissioners of Summit County, Colorado (“**County**”) as the location of the new
19 South Branch of the Summit County Library; and

20
21 WHEREAS, the Town is willing to lease a portion of the BGV Community Center to the
22 County for use as the new South Branch of the Summit County Library; and

23
24 WHEREAS, a proposed Lease between the Town and the County has been prepared and
25 reviewed by the Town Council; and

26
27 WHEREAS, Section 15.4 of the Breckenridge Town Charter provides:

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

32
33 and;

34
35 WHEREAS, the term of the proposed Lease with the County exceeds one year in length;
36 and

37
38 WHEREAS, Section 1-11-4 of the Breckenridge Town Code requires that any real estate
39 lease entered into by the Town that exceeds one year in length must be approved by ordinance.

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

43
44 Section 1. The Lease between the Town and the Board of County Commissioners of
45 Summit County, Colorado, a copy of which is marked **Exhibit “A”**, attached hereto, and

1 incorporated herein by reference is approved, and the Town Manager is authorized, empowered,
2 and directed to execute such Lease for and on behalf of the Town of Breckenridge.

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

7
8 Section 3. 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 SECOND READING, APPROVED AND ORDERED
12 PUBLISHED IN FULL this ____ day of _____, 2014. 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 _____, 2014, at 7:30 P.M., or as soon thereafter as possible in the Municipal
15 Building of the Town.

16
17 TOWN OF BRECKENRIDGE, a Colorado
18 municipal corporation

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

24
25 ATTEST:

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29 _____
30 Helen Cospolich
31 Town Clerk

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**103 South Harris Building Lease
(South Branch of Summit County Library)**

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THIS LEASE (“**Lease**”) is dated _____, 2014 (“**Effective Date**”) and is between TOWN OF BRECKENRIDGE, a Colorado municipal corporation (“**Town**”) and the BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY, COLORADO (“**County**”). Town and County are sometimes referred individually as a “**Party**”, and together as the “**Parties.**”

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ARTICLE 1 - BASIC LEASE PROVISIONS

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1.1 **Intent and Purpose.** Pursuant to the “Intergovernmental Agreement (103 South Harris Street - Library)” attached as **Exhibit “A”**, dated September 11, 2012 Town and County agreed to jointly remodel Town’s property at 103 South Harris Street in Breckenridge, Colorado for uses that include County’s public library. The IGA also contemplated that the Parties will enter into a perpetual lease authorizing County to use a portion of Town’s property for the South Branch of the Summit County Library. This Lease is entered into pursuant to the IGA.

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1.2 **Leased Premises.** In consideration of County’s payment of the sums due to Town under this Lease, and the keeping of the promises, covenants, and conditions required of County by this Lease, Town leases to County, and County leases from Town, for the Term (as defined in Section 1.7) and upon the conditions of this Lease, a portion of the Town’s building located at 103 South Harris Street, Breckenridge, Colorado (“**Building**”). The portion of the Building leased by Town to County, pursuant to this Lease, is depicted on the attached **Exhibit “B”**, and is referred to in this Lease as the “**Leased Premises.**” County has no interest in, or right to use or occupy, any portion of the Building except for the Leased Premises and the Shared Use Areas described in this Lease, or pursuant to any other agreement between the Parties that may exist from time to time.

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1.3 **Shared Use Areas.** As part of this Lease, County also has the right to use the Shared Use Areas of the Building (“**Shared Use Areas**”), as depicted on the attached **Exhibit “C”**, subject to Town’s rules concerning the use of such areas. The Shared Use Areas of the Building include consist of the following:

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- (a) the two Multi-Purpose Rooms;
 - (b) the kitchen;
 - (c) the entryways and corridors, circulation space;
 - (d) the public restrooms;
 - (e) the parking areas and walkways;
 - (f) landscaped areas and yard; and

1 (g) other spaces mutually agreed upon by the Town and County.

2 1.4 **Use of Leased Premises.** County may use the Leased Premises only as a “county
3 library” as defined in Section 24-90-103, C.R.S., as amended from time to time throughout the
4 Term. County will not use the Leased Premises for any other purpose without Town’s prior
5 written consent.

6 1.5 **Other Uses and Tenants.** The Town will consult with the County with respect to
7 potential future uses of the Building, and other tenants, Town will not allow uses or tenants in
8 the Building that conflict with the County’s use of the Leased Premises as a public library,
9 except in exceptional circumstances where the Town reasonably determines that a particular use
10 or tenant will not substantially interfere with the County’s use of the Leased Premises as a public
11 library.

12 1.6 **Multi-Purpose Rooms.** The two Multi-Purpose Rooms located in the Building
13 are part of the Shared Use Areas and may be used by Tenant subject to the following terms and
14 conditions:

15 (a) The Operational Plan described in Section 5.1 (“**Operational Plan**”)
16 describes the Town’s and County’s rights and responsibilities with respect to the use of the
17 Multi-Purpose Rooms.

18 (b) The policy described in the Operational Plan includes, without limitation, a
19 mutually acceptable policy for reserving, monitoring, and using the Multi-Purpose Rooms. As of
20 the date of this Lease, the Parties anticipate that the Multi-Purpose Rooms will be open for use
21 approximately 84 hours each week (8 A.M. to 8 P.M., seven days a week). Based upon this
22 assumption, County will have priority scheduling for up to 25% (21 hours) of the weekly use of
23 the Multi-Purpose Rooms, and Town will have priority scheduling for use of the Multi-Purpose
24 Rooms the remainder of the available hours.

25 (c) The policy described in the Operational Plan includes an agreed rate structure
26 for fees to be charged to third parties for the use of the Multi-Purpose Rooms.

27 (d) The policy described in the Operational Plan includes a mutually acceptable
28 policy related to the care, maintenance, repair and/or replacement of technical infrastructure and
29 equipment within the Multi-Purpose Rooms.

30 1.7 **Term.** The term of this Lease (“**Term**”) commences on the Effective Date and
31 ends, unless sooner terminated as hereafter provided, at 11:59 P.M., local time, on
32 _____, 2113.

33 1.8 The Town and County agree to meet at least once per year to review this Lease
34 and the operation of the Building.

35 1.9 **Surrender of Leased Premises.**

1 (a) Upon the expiration or earlier termination of this Lease County will surrender
2 the Leased Premises to Town broom clean and in good condition, ordinary wear and tear
3 excepted. Not later than the last day of the Term, County will remove its personal property and
4 fixtures (including, but not limited to, trade fixtures) from the Leased Premises. The cost of such
5 removal will be borne by County, and County will repair all injury or damage done to the Leased
6 Premises in connection with the installation or removal of County's personal property and trade
7 fixtures. All of County's fixtures (including, but not limited to, trade fixtures) that are so attached
8 to the Leased Premises that they cannot be removed without material injury to the Leased
9 Premises will, at Town's option, become the property of Town upon installation and remain with
10 the Leased Premises upon surrender.

11 (b) Town may retain or dispose of any personal property, fixtures (including, but
12 not limited to, trade fixtures), alterations, or improvements left remaining by County at or upon
13 the Leased Premises following the expiration or earlier termination of this Lease, and Town is
14 not accountable to County for any damages for the loss or destruction thereof, or for any part of
15 the proceeds of sale, if any, realized by Town. County waives all claims against Town for any
16 damages suffered by County resulting from Town's retention or disposition of such personal
17 property, fixtures (including, but not limited to, trade fixtures), alterations or improvements.
18 County is liable to Town for Town's costs for storing, removing and disposing of any such
19 personal property, fixtures (including trade fixtures), or alterations.

20 **ARTICLE 2 - RENT AND SECURITY**

21 2.1 **Rent.** There is no periodic rent to be paid by County for the lease of the Leased
22 Premises. However, County will pay to Town any amount required to be paid by County under
23 this Lease as and when due.

24 2.2 **Interest on Past Due Amounts.** County will pay interest to Town on any sum
25 due to Town under this Lease that is 60 days or more past due at the rate of 12% per annum from
26 the date due until the date such payment is fully paid.

27 2.3 **Due Date, Place, and Manner of Payments.**

28 (a) Unless otherwise provided in this Lease, all sums payable to Town under this
29 Lease are due 30 days after County's receipt of Town's properly documented invoice. County
30 will notify Town of any objection within 14 days of the invoice date, identifying the reasons for
31 such objection in writing and timely paying that portion of the invoice not in dispute. Invoices
32 will be considered acceptable to County if no such objections are made. If objections to an
33 invoice are made by County, the dispute will be resolved in accordance with Article 12.

34 (b) Sums due to Town under this Lease will be paid to:

35 Town of Breckenridge
36 Clerk & Finance Division
37 Attn: Accounts Receivable

1 P. O. Box 168
2 Breckenridge, CO 80424
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4 or at such other place as Town Manager of Town may hereafter designate by written notice
5 provided to County in accordance with Section 15.1 of this Lease.
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7 2.4 **Late Charge.** County will pay to Town a late charge of 5% on any amount due
8 under this Lease that is not received by Town within 60 days of the due date.

9 **ARTICLE 3- TOWN’S DISCLAIMERS AND EXCULPATORY PROVISIONS**

10 3.1 **“As Is” Condition of Leased Premises.** County acknowledges that it had
11 adequate and fair opportunity to inspect the Leased Premises prior to taking possession. The
12 Leased Premises are leased by Town to County, and accepted by County, in **“AS IS”** condition.
13 County’s act of taking possession of the Leased Premises is conclusive evidence that County
14 accepted the Leased Premises in then **“AS IS”** condition, and that the Leased Premises were in
15 satisfactory condition and working order at the time of commencement of County’s possession.

16 3.2 **Delay In Delivery of Possession of Leased Premises.** Town is not liable to
17 County for any delay in delivery of possession of the Leased Premises to County.

18 3.3 **Town’s Non-liability.** As a material part of the consideration to be received by
19 Town under this Lease, County assumes all risk of damage to property or injury to persons in or
20 upon the Leased Premises from any cause other than Town’s negligence or intentional wrongful
21 act, and County waives all claims in respect thereof against Town.

22 3.4 **Limitation of Remedies. IN NO EVENT WILL TOWN BE LIABLE FOR**
23 **ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT**
24 **NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS, REVENUE, OR SAVINGS,**
25 **BUSINESS INTERRUPTION, GOVERNMENT DISRUPTION, LOSS OF CONFIDENCE**
26 **IN GOVERNMENT, OR ANY OTHER CLAIM OF WHATEVER KIND, ARISING**
27 **FROM TOWN’S BREACH OF THIS LEASE, EVEN IF TOWN HAS BEEN ADVISED**
28 **OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION WILL APPLY**
29 **NOTWITHSTANDING THE FAILURE OF AN ESSENTIAL PURPOSE OF ANY**
30 **LIMITED REMEDY.**

31 **ARTICLE 4 - COUNTY’S AFFIRMATIVE OBLIGATIONS**

32 4.1 **Damages to Leased Premises and Building.** County will pay for any damage to
33 the Leased Premises caused by County or resulting from County’s use of the Leased Premises
34 pursuant to this Lease. County will also pay for any damage to other portions of the Building
35 caused by County’s negligence or intentional wrongful act. County will pay for any such damage
36 within 30 days of receipt of notice from Town.

1 4.2 **Taxes.** Because both Town and Country are tax-exempt entities under Colorado
2 law, the Parties anticipate that the Leased Premises will be tax-exempt throughout the Term.
3 However, if any taxes are lawfully assessed against the Leased Premises as a result of County’s
4 use of the Leased Premises County will pay such taxes before they become delinquent.

5 4.3 **Signs.** With the exception of temporary signage within the Leased Premises and
6 Shared Use Areas, and signage consistent with existing Building signage, County will not post,
7 place, affix, erect, or display any sign within or outside of the Leased Premises without Town’s
8 prior approval. County will maintain all signs located within or outside of the Leased Premises in
9 good, clean, and attractive condition. County will remove all signs placed by it within or outside
10 of the Leased Premises at the expiration or earlier termination of this Lease, and repair any
11 damage or injury caused thereby. If not so removed by County, Town may remove such sign(s)
12 at County’s expense.

13 4.4 **Inspection and Entry.** Town and Town’s authorized representatives may enter
14 the Leased Premises at all times during reasonable hours to inspect the Leased Premises. County
15 further agrees that Town may go upon the Leased Premises at all times and:

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

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

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

21 all without any liability to County for damages.

22 Nothing in this Section implies or creates any duty on the part of Town to do any work that
23 under this Lease County may be required to do, nor will it constitute a waiver of County’s
24 default in failing to do such work. No reasonable exercise by Town of any of the reserved rights
25 will entitle County to any damage or compensation of any kind from Town for any injury, loss,
26 damage, or inconvenience occasioned by the exercise of such reserved right.

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28 4.5 **Compliance With Laws.** County, at its sole cost and expense, will comply with
29 all laws, ordinances, orders, and regulations of all governmental authorities with respect to the
30 use of the Leased Premises. A judgment of any court or the admission of County in any action or
31 proceeding against County, whether Town is a party thereto or not, that County has violated any
32 law, ordinance, requirement or order in the use of the Leased Premises will be conclusive of the
33 fact as between Town and County.

34 **ARTICLE 5 – UTILITIES AND MAINTENANCE**

35 5.1 **Operational Plan.** The initial Operational Plan describing how the Leased
36 Premises and the Building will operate is attached to this Lease as **Exhibit “D”**. The

1 Operational Plan may be changed from time to time if mutually agreeable to both Parties. The
2 Operational Plan is not intended to change the terms of this Lease and changes to the Operational
3 Plan are intended to allow flexibility in operation of the Building without substantially changing
4 this Lease.

5 **5.2 Utilities.** Town will contract for, and obtain in its name, water, sewer, gas and
6 electrical utility service for the Leased Premises. County will periodically reimburse Town for
7 the water, sewer, gas and electric service used at the Leased Premises as follows:

8 (a) 35% of the total electric and gas charges for the Building (less the electric
9 demand charge);

10 (b) 35% of the total electric demand charge for the Building;

11 (c) 35% of the total sewer charges for the Building; and

12 (d) 35% of the total water charges for the Building.

13 (e) 35% of the total recycling and trash removal.

14 County will reimburse Town for these costs in accordance with Section 2.3.

15 **5.3 Other Utility Service To Leased Premises.** County will initiate, contract for, and
16 obtain in its name, all other required utilities and services in connection with its use of the
17 Leased Premises, including, without limitation, telephone, cable and internet. County will pay all
18 charges for such services as they become due.

19 **5.4 Security System and Key Management.** The Town will provide the Building
20 security and key/access system. Town will provide the necessary keys, devices, or codes to
21 County to allow it to manage the Shared Use Areas pursuant to the Operational Plan.

22 **5.5 Cleaning and Maintenance.**

23 (a) During the Term, County will, at its sole expense, keep the Leased Premises
24 in a neat, clean, and sanitary condition. This includes incidental items such light bulb
25 replacement and minor repairs pursuant to the Operational Plan.

26 (b) County will manage and perform the cleaning and routine maintenance of the
27 Shared Use Areas described in subsections 1.3(a-d). The definition of cleaning and routine
28 maintenance is described in the Operational Plan. The Town will pay 65% of the actual and
29 necessary costs of cleaning and maintaining the Shared Use Areas. The County will notify the
30 Town of those costs monthly and those costs will be accounted for monthly as a set-off from
31 those amounts otherwise owed to the Town by the County under this Lease.

32 **5.6 Snow Plowing and Snow Removal.**

1 (a) The Town and County currently have an agreement to park County
2 Courthouse employees in the north parking lot of the property on which the Building is located.
3 As long as that agreement stays in place the County will continue to plow and remove snow in
4 the north parking lot. If that agreement is terminated then the County will continue to have the
5 responsibility to plow and remove snow from the north lot or some other arrangement as agreed
6 by the Parties.

7 (b) Snow removal for the remainder of the parking areas of the property on which
8 the Building is located not addressed in subsection (a) above, the walkways, entrance ways and
9 handicap access ramps will be contracted for by the Town for the benefit of the entire Building.
10 The County will pay for 35% of those snow removal expenses. Snow will be removed once per
11 day per snow event. If the Town or County requires additional snow removal in these areas the
12 requesting Party will make arrangements to perform and pay for that work unless modified
13 pursuant to the Operational Plan.

14 5.7 Major Maintenance

15 (a) Unless otherwise agreed to by the Parties, the County will pay for 35% and
16 the Town will pay for 65% of any major maintenance or emergency repairs to the Building.
17 “major maintenance” includes the roof, foundation, exterior walls and windows, heating and
18 cooling systems, plumbing systems, electrical systems and exterior walkways and parking lots or
19 any additional item defined in the Operational Plan. Interior finishes and carpet in the Leased
20 Premises are not included as major maintenance and are the responsibility of the County in the
21 Leased Premises. Any work needed inside the Leased Premises that is not defined as Major
22 Maintenance or Emergency Repairs, or otherwise addressed by the Operational Plan, will be
23 performed by the County. “Emergency repairs” include the substantial repair or replacement of
24 any structural or non-structural component of the Building that must be performed immediately
25 in order to maintain the Building in a safe and usable condition.

26 (b) The Town will be responsible for performing or contracting for all non-
27 routine maintenance including, without limit to, structural repairs, replacement and repair of
28 roofs, replacement and repair of HVAC systems, painting of the Building excluding the Leased
29 Premises, flooring replacement excluding the Leased Premises, replacement and repair of
30 parking areas and exterior walkways, and all “major maintenance” and “Emergency repairs”.

31 (c) The Town will provide maintenance support and on-call contact information
32 for County to notify if “Major maintenance” or “Emergency repairs” are required outside of
33 normal Town operating hours.

34 ARTICLE 6 - COUNTY’S NEGATIVE OBLIGATIONS

35 6.1 Alterations and Improvements.

36 (a) “**Alteration**” means any material alteration, addition, substitution, installation,
37 change, and improvement to the Leased Premises but excludes cosmetic items such as painting

1 and alterations that do not impact Building systems, i.e. electrical, plumbing, HVAC, and
2 structural.

3 (b) County is responsible for constructing and paying for all Alterations.

4 (c) However, County will not make any Alteration to the Leased Premises
5 without the prior written consent of Town, which will not be unreasonably withheld.

6 (d) County will provide Town with plans for the construction or installation of
7 any proposed Alteration at least 60 days prior to the planned commencement of construction.
8 County will also provide any supplemental information requested by Town. County will not
9 make any Alteration that has not been approved by Town.

10 (e) The following will be conditions of Town's consent to the construction of any
11 Alteration to the Leased Premises by County:

12 (i) The work will be performed and completed:

13 (A) In accord with the submitted plans and specifications;

14 (B) In a workmanlike manner.

15 (C) In compliance with Town's building and technical codes, and may
16 be inspected by Town's Building Official to determine compliance with the
17 applicable codes.

18 (D) In compliance with all applicable laws, rules, regulations,
19 ordinances, and other requirements of governmental authorities.

20 (E) Using new materials, unless otherwise agreed by Town.

21 (F) With due diligence.

22 (ii) County will propose a contractor that is qualified to perform the proposed
23 work to the Town to review and approve or disapprove based on the contractor's
24 qualifications. County will not use any contractor that Town does not approve.

25 (iii) County will modify plans and specifications because of reasonable
26 conditions set by Town after reviewing the plans and specifications.

27 (iv) County's contractors will carry builders risk insurance in an amount then
28 customarily carried by prudent contractors, and workers' compensation insurance for its
29 employees complying with applicable law.

30 (v) Upon request, County will give Town evidence that it complied with any
31 condition set by Town.

1 (f) Any Alteration made by County to the Leased Premises will become the
2 property of Town; will be considered as part of the Leased Premises; and will not be removed
3 from the Leased Premises by County upon the expiration or earlier termination of this Lease
4 unless removal is ordered by Town.

5 (g) County will not make any Alteration without first having obtained a
6 development permit from Town, acting in Town's governmental capacity.

7 **6.2 Assignment and Subletting.**

8 (a) County will not assign, sublet, license, pledge, encumber, any or all of the
9 Leased Premises without first obtaining Town's prior written consent. Any assignment, sublease,
10 license, pledge or encumbrance without Town's prior written consent is voidable by Town and,
11 at Town's election, will constitute a default under this Lease. Provided, however, the Parties
12 recognize and agree that the library is currently managed and operated by the Summit County
13 Library Board of Trustees pursuant to the Colorado Library Law in Title 24, Article 90, and Title
14 30 of the Colorado Revised Statutes, and that such organizational structure as it currently exists,
15 or as it may be amended during the Term in accordance with applicable law, will not violate this
16 Section. No consent by Town to any of the above acts will constitute a further waiver of the
17 provisions of this Section.

18 (b) **Costs.** If Town consents to an assignment, sublease, or license County may be
19 required, as a condition of granting consent, to pay Town's reasonable costs incurred in
20 considering the proposed assignment, sublease, or license including, but not limited to, legal fees
21 and credit checks.

22 (c) **Waste or Nuisance.** County will not commit or permit to be committed upon
23 the Leased Premises any waste, any public or private nuisance, or any other act or thing
24 prohibited by law.

25 **ARTICLE 7 – INSURANCE**

26 7.1 **County's Liability Insurance.** Throughout the Term County will, at its expense,
27 continuously maintain comprehensive general liability insurance with limits of liability not less
28 than the limits of liability for local governments established from time to time by the Colorado
29 Governmental Immunity Act, Section 24-10-101, et seq., C.R.S. ("**Act**"), which limits are as of
30 the effective date of this Lease \$350,000 for injuries or damages sustained to one person in any
31 single occurrence and \$990,000 for injuries or damages sustained to two or more persons in any
32 single occurrence. County's liability insurance policy will be endorsed to include Town as an
33 additional insured.

34 7.2 **Worker's Compensation Insurance.** County will maintain at all times
35 throughout the Term worker's compensation insurance as required by Colorado law insuring the
36 payment of compensation to all its employees engaged in the performance of work at the Leased
37 Premises.

1 7.3 **Property and Casualty Insurance.**

2 (a) Town will provide property (casualty) insurance for the Building.

3 (b) County will provide its own property (casualty) insurance for its personal
4 property and equipment located from time to time in the Leased Premises.

5 7.4 **Additional Insurance Provisions.** Every insurance policy required by this
6 Article to be carried by County will be primary insurance, and any insurance carried by Town, its
7 officers, or its employees, or carried by or provided through any insurance pool of which Town
8 is a member, will be excess and not contributory insurance to that provided by County. County is
9 solely responsible for any deductible losses under its required insurance policies.

10 7.5 **Insurance Criteria.** Insurance polices required of County by this Lease will:

11 (a) be issued by insurance companies licensed to do business in the State of
12 Colorado with general policyholder's ratings of at least A and a financial rating of at least XI in
13 the most current Best's Insurance Reports available at the time such insurance is to be procured
14 or a governmental insurance pool; and

15 (b) provide that the insurance cannot be cancelled or materially changed in the
16 scope or amount of coverage unless 15 days' advance notice is given to Town.

17 7.6 **Evidence of Insurance.** Prior to the commencement of this Lease, and on each
18 subsequent renewal or replacement of the required insurance policies during the Term, County
19 will give to Town a certificate of insurance evidencing compliance with the requirements of this
20 Article. All required insurance policies will be renewed or replaced and maintained by County
21 throughout the Term to assure continuous coverage. If County fails to give the required
22 insurance certificate within 20 days after notice or demand for it, such action will constitute a
23 default under this Lease, and Town may then proceed as provided in Article 11 of this Lease,
24 and/or Town may obtain and pay for that insurance and receive reimbursement from County,
25 together with interest thereon at the rate of 12% per annum.

26 **ARTICLE 8 - INDEMNIFICATION**

27 8.1 **Indemnification by County.** To the extent permitted by law, and subject to any
28 applicable limits of the Act and any applicable constitutional provision prohibiting or limiting
29 indemnification by a local government entity, County will indemnify and defend Town, its
30 officers, employees, insurers, and self-insurance pool from all liability, claims, and demands, on
31 account of injury, loss, or damage, including, without limitation, claims arising from bodily
32 injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any
33 kind whatsoever, arising out of or in any manner connected with County's use or possession of
34 the Leased Premises pursuant to this Lease, except to the extent that such liability, claim, or
35 demand arises through the negligence or intentional wrongful act of Town, its officers,
36 employees, or agents, or Town's breach of this Lease. If indemnification is required under this

1 Section, County will investigate, handle, respond to, and to provide defense for and defend
2 against, any such liability, claims, or demands at its expense, and bear all other costs and
3 expenses related thereto, including court costs and attorney fees.

4 8.2 **Survival.** The obligations of this Article will survive the expiration or earlier
5 termination of this Lease.

6 **ARTICLE 9 - EMINENT DOMAIN**

7 **9.1 Eminent Domain.**

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

12 (b) **Entire Taking.** If the entire Leased Premises are taken by eminent domain,
13 this Lease will automatically end on the earlier of:

14 (i) the date title vests; or

15 (ii) the date County is dispossessed by the condemning authority.

16 (c) **Partial Taking.** If the taking of a part of the Leased Premises materially
17 interferes with County’s ability to continue its business operations in substantially the same
18 manner then County may terminate this Lease on the earlier of:

19 (i) the date when title vests;

20 (ii) the date County is dispossessed by the condemning authority; or

21 (iii) 60 days following notice to County of the date when vesting or
22 dispossession is to occur.

23 If the taking of a part of the Leased Premises does not materially interfere with County’s ability
24 to continue its library operations in substantially the same manner, then this Lease will terminate
25 only as to part of the Leased Premises taken.

26
27 (d) **Awards and Damages.** Sixty five percent (65%) of any compensation or
28 damages paid by a condemning authority, whether as a result of a judgment or settlement, will be
29 the property of the Town, and thirty five percent (35%) of any compensation or damages paid by
30 a condemning authority, whether as a result of a judgment or settlement, will be the property of
31 the County.

32 (e) **Attorneys’ Fees and Costs.** The Town will pay sixty five percent (65%) of
33 all attorneys’ fees, appraiser/expert witness fess, and other litigation costs in connection with any

1 eminent domain action affecting the Leased Premises, and the County will pay thirty five percent
2 (35%) of all attorneys' fees, appraiser/expert witness fess, and other litigation costs in connecting
3 with any such action.

4 **ARTICLE 10- HAZARDOUS MATERIALS**

5 **10.1 Hazardous Materials - Defined.** As used in this Article the term "**Hazardous**
6 **Materials**" means any chemical, material, substance, or waste:

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

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

17 **10.2 Hazardous Materials - Prohibited.** County will full comply with all statutes,
18 laws, ordinances, rules, regulations, and precautions now or hereafter mandated or advised by
19 any federal, state, local, or other governmental agency with respect to the use, generation,
20 storage, or disposal of Hazardous Materials. With the exception of those substances used for
21 typical cleaning, maintenance and repairs of the Leased Premises, County will not cause, or
22 allow anyone else to cause, any Hazardous Materials to be used, generated, stored, or disposed of
23 on or about the Leased Premises without the prior written consent of Town, which consent may
24 be revoked at any time. County's indemnification of Town pursuant to this Lease extends to all
25 liability, including all foreseeable and unforeseeable consequential damages, directly or
26 indirectly arising out of the use, generation, storage, or disposal of Hazardous Materials at the
27 Leased Premises by County, or any person claiming under County, including, without limitation,
28 the cost of any required or necessary repair, cleanup, or detoxification and the preparation of any
29 closure or other required plans, whether such action is required or necessary prior to or following
30 the termination of this Lease, to the full extent that such action is attributable, directly or
31 indirectly, to the use, generation, storage, or disposal of Hazardous Materials by County or any
32 person claiming under County; provided, however, the written consent by Town to the use,
33 generation, storage, or disposal of Hazardous Materials will excuse County from County's
34 obligation of indemnification. In the event County is in breach of the covenants herein, after
35 notice to County and the expiration of the earlier of:

36 (a) the cure period provided in Section 11.1(d);

37 (b) the cure period permitted under applicable law, regulation, or order,

1 then Town may, in its sole discretion, declare a default under this Lease and/or cause the Leased
2 Premises to be freed from the Hazardous Material and the cost thereof will be due and payable
3 from County. The obligations of County under this Section will survive the expiration or earlier
4 termination of this Lease.

5
6 **ARTICLE 11 - DEFAULT**

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

9 (a) The failure to open the library in the Leased Premises to the general public for
10 a period of more than 14 consecutive days without Town's prior consent, unless it is due to
11 maintenance or repairs.

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

13 (c) The failure by County to make any payment due from County hereunder as
14 and when due, when such failure will continue for a period of 30 days after service of written
15 notice thereof by Town to County.

16 (d) The failure by County to observe or perform any of the other covenants,
17 conditions, or provisions of this Lease to be observed or performed by County, or to obey rules
18 promulgated by Town, within 30 days after service of written notice thereof by Town to County.
19 In the event of a non-monetary default that is not capable of being corrected within 30 days,
20 County will not be default if it commences correcting the default within 30 days of service of a
21 demand for compliance notice and thereafter corrects the default with due diligence.

22 (e) The filing by or against County of a petition to have County adjudged
23 bankrupt.

24 **11.2 Exceptions to Cure Periods.** The cure period provided in Section 11.1(d) does
25 not apply to:

26 (a) Emergencies;

27 (b) County's failure to maintain the insurance required by Article 7.

28 **11.3 Town's Remedies Upon Default.** If County is in default under this Lease, Town
29 has all of the remedies provided for in such circumstances by Colorado law; provided, however,
30 Town will comply with dispute resolution provisions of Article 12. Town's exercise of any of its
31 remedies or its receipt of County's keys will be not an acceptance of County's surrender of the
32 Leased Premises. A surrender must be agreed to in writing and signed by both Parties.

33 **11.4 Default by Town.** Town will be in default under this Lease if Town fails to
34 comply with any of the terms, provisions, or covenants of this Lease within 30 days following
35 service of written notice thereof by County. In the event of a non-monetary default that is not

1 capable of being corrected within 30 days, Town will not be default if it commences correcting
2 the default within 30 days of receipt of notification thereof and thereafter corrects the default
3 with due diligence.

4 11.5 **County’s Remedies Upon Default.** If Town is in default under this Lease,
5 County has all of the remedies provided for in such circumstances by Colorado law; provided,
6 however, County will comply with dispute resolution provisions of Article 12.

7 **ARTICLE 12 – DISPUTE RESOLUTION**

8 12.1 **Negotiation.** The Parties will attempt in good faith to resolve any dispute arising
9 out of or relating to this Lease not resolved promptly by negotiations between persons who have
10 authority to settle the controversy (“**Executives**”). Any Party may give the other Party written
11 notice of any dispute not resolved in the normal course of business. Within five days after receipt
12 of said notice, Executives of the Parties will meet at a mutually acceptable time and place, and
13 thereafter as often as they reasonably deem necessary, to exchange relevant information and to
14 attempt to resolve the dispute. If the matter has not been resolved within ten days of the notice
15 of dispute, or if the Parties fail to meet within five days, either Party may initiate mediation of
16 the controversy as provided in Section 12.2.

17 12.2 **Mediation.** If the dispute has not been resolved by negotiation as provided above,
18 the Parties will endeavor to settle the dispute by mediation with a neutral third Party. If the
19 Parties encounter difficulty in agreeing on a neutral third Party, they may each appoint a neutral
20 third Party, such third Parties to appoint a neutral third Party to mediate. Each Party will pay
21 their own attorneys’ fees incurred in connection with a mediation.

22 12.3 **Judicial Action.** Any dispute arising out of or relating to this Lease or the breach,
23 termination or validity of this Lease, which has not been resolved by the methods set forth above
24 within 30 days of the initiation of mediation, may be finally resolved by appropriate judicial
25 action. The Parties agree to exclusive venue in the courts of Summit County, Colorado with
26 respect to any dispute arising out of or relating to this Lease. **BOTH PARTIES WAIVE THE RIGHT**
27 **TO A JURY TRIAL IN ACTION TO ENFORCE, INTERPRET, OR CONSTRUE THIS LEASE.**

28 12.4 **Attorneys’ Fees** If any action is brought in a court of law by either Party to this
29 Lease concerning the enforcement, interpretation or construction of this Lease, the prevailing
30 Party, either at trial or upon appeal, will be entitled to reasonable attorneys’ fees, as well as costs,
31 including expert witness’ fees, incurred in the prosecution or defense of such action.

32 12.5 **Equitable Relief.** Nothing in this Article prevents a Party from seeking to obtain
33 from a court of competent jurisdiction a temporary restraining order, preliminary injunction,
34 permanent injunction, or other appropriate form of equitable relief, to enforce the provisions of
35 this Lease if such action is authorized by applicable law.

36 **ARTICLE 13 - NO DISTURBANCE**

1 Timothy H. Berry, Esq.
2 Timothy H. Berry, P.C.
3 131 West 5th Street
4 P. O. Box 2
5 Leadville, Colorado 80461
6 Telecopier number: (719)486-3039
7 Telephone number: (719)486-1889
8

9 If intended for County to:

10
11 Board of County Commissioners
12 P.O. Box 68
13 Breckenridge, Colorado 80424
14 Attn: Gary Martinez, County Manager
15 Telephone number: (970)453-3401
16 Telecopier number: (970)453-3535
17

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

19
20 Jeff Huntley, Esq.
21 Summit County Attorney
22 P.O. Box 68
23 Breckenridge, Colorado 80424
24 Telephone number: (970)453-3407
25 Telecopier number: (970)454-3535
26

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

39
40 15.2 **“Day” Defined.** Unless otherwise indicated, the term **“day”** means a calendar
41 (and not a business) day.

1 15.3 **“Will” or “Will Not” Defined.** “Will” or “will not” indicates a mandatory
2 obligation to act or to refrain from acting as specifically indicated in the context of the sentence
3 in which such word is used.

4 15.4 **Complete Agreement.** It is understood and agreed that this Lease, and the
5 Intergovernmental Agreement referred to in Section 1.1, contain the complete and final
6 expression of the agreement between the Parties regarding the County’s use of the Leased
7 Premises, and there are no promises, representations, or inducements except as are herein
8 provided. All negotiations, considerations, representations, and understandings between the
9 Parties related to this Lease are contained herein.

10 15.5 **Amendment.** This Lease may not be modified except by a written Lease signed
11 by both Town and County. Oral modifications of this Lease are not permitted.

12 15.6 **Captions.** The headings of the sections and paragraphs contained in this Lease are
13 for convenience only and do not define, limit, or construe the contents of the Articles, Sections
14 and Paragraphs.

15 15.7 **Waiver.** The failure of either Party to exercise any of such Party’s rights under
16 this Lease is not a waiver of those rights. A Party waives only those rights specified in writing
17 and signed by the Party waiving such rights.

18 15.8 **Severability.** If any provision of this Lease is held to be invalid, illegal, or
19 unenforceable in any respect, the validity, legality and enforceability of the remaining provisions
20 contained in this Lease will not in any way be affected or impaired thereby.

21 15.9 **Survival.** All indemnification obligations required under this Lease will survive
22 the expiration or earlier termination of this Lease.

23 15.10 **Force Majeure.** Neither Party is liable to the other for any failure, delay, or
24 interruption in the performance of any of the terms, covenants, or conditions of this Lease due to
25 causes beyond the control of that Party including, without limitation, strikes, boycotts, labor
26 dispute, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of
27 superior governmental authority, weather conditions, floods, riots, rebellion, terrorism, sabotage
28 or any other circumstance for which such Party is not responsible or that is not in its power to
29 control.

30 15.11 **Advances by Town For County.** If County fails to do anything required to be
31 done by it under the terms of this Lease (other than a failure to make the payments to Town
32 herein required) Town may, at its sole option, but without any obligation to do so, do or perform
33 such act or thing on behalf of County, and in doing so Town will not be deemed to be a
34 volunteer; provided, however, that before exercising its rights under this Section Town must give
35 notice to County as provided in Section 15.1, and afford County not less than five days from the
36 giving of such notice within which to do or perform the act required by County. Upon
37 notification to County of the costs incurred by Town County will promptly pay to Town the full

1 amount of costs and/or expenses incurred by Town pursuant to this Section, together with
2 interest thereon at the rate of 12% per annum.

3 15.12 **Governmental Immunity.** Both Town and County are relying on, and do not
4 waive or intend to waive by any provision of this Lease, the monetary limitations (presently
5 \$350,000 per person and \$990,000 per occurrence) or any other rights, immunities, and
6 protections provided by the Act, as from time to time amended, or any other limitation, right,
7 immunity or protection otherwise available to Town or County, or their respective elected
8 officials, officers, or employees.

9 15.13 **No Adverse Construction Based On Authorship.** Each Party had the
10 opportunity to participate in the drafting of this Lease. This Lease is not to be construed against
11 either Party by virtue of such Party having drafted this Lease.

12 15.14 **Town's Consent.** Except as otherwise expressly provided to the contrary in this
13 Lease, wherever in this Lease it is provided that some act requires Town's prior consent, such
14 consent will not be unreasonably withheld by Town.

15 15.15 **Third Parties.** There are no third party beneficiaries of this Lease.

16 15.16 **Lease To Be Recorded.** This Lease **SHALL BE RECORDED** with the Clerk
17 and Recorder of Summit County, Colorado.

18 15.17 **Time of Essence.** Time is of the essence of this Lease.

19 15.18 **Non-Discrimination; Compliance with Applicable Laws.** County:

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

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

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

30 (d) will comply with all applicable federal, state, and local laws, rules and
31 regulations. Without limiting the generality of the foregoing, County will comply with the
32 applicable provisions of the Americans With Disabilities Act, 42 U.S.C. §12101, et seq. (Public
33 Law 101-336), and all applicable regulations and rules promulgated thereunder by any regulatory
34 agency. The indemnification and termination provisions of this Lease apply to County's failure
35 to comply with all applicable laws or regulations.

1 15.19 **No Partnership.** Town is not a partner, associate, or joint venturer of County in
2 the conduct of County’s business at the Leased Premises. County is an independent contractor
3 without the right or authority to impose tort or contractual liability upon Town.

4 15.20 **Binding Effect.** The covenants, conditions, and obligations contained in this
5 Lease extend to, bind, and inure to the benefit of, not only the Parties, but their respective
6 successors and permitted assigns.

7 15.21 **Annual Appropriation.**

8 (a) Town’s financial obligations under this Lease are subject to an annual
9 appropriation being made by Town Council of Town of Breckenridge, Colorado in an amount
10 sufficient to allow Town to perform its obligations under this Lease. If sufficient funds are not
11 appropriated for such purpose, this Lease may be terminated by either Party without penalty;
12 provided, however, all sums due to County under this Lease up to date of termination will be
13 budgeted, appropriated, and paid by Town. Town’s financial obligations under this Lease do not
14 constitute a general obligation indebtedness or multiple year direct or indirect debt or other
15 financial obligation whatsoever within the meaning of the Constitution or laws of the State of
16 Colorado.

17 (b) County’s financial obligations under this Lease are subject to an annual
18 appropriation being made by the Board of County Commissioners of Summit County, Colorado
19 in an amount sufficient to allow County to perform its obligations under this Lease. If sufficient
20 funds are not appropriated for such purpose, this Lease may be terminated by either Party
21 without penalty; provided, however, all sums due to Town under this Lease up to date of
22 termination will be budgeted, appropriated, and paid by County. County’s financial obligations
23 hereunder do not constitute a general obligation indebtedness or multiple year direct or indirect
24 debt or other financial obligation whatsoever within the meaning of the Constitution or laws of
25 the State of Colorado.

26 15.22 **Incorporation of Exhibits.** The attached Exhibits “A”, “B”, “C” and “D” are
27 incorporated into this Lease by reference.

28 TOWN OF BRECKENRIDGE, a Colorado
29 municipal corporation
30

31
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33 By _____
34 Timothy J. Gagen, Town Manager
35

36 ATTEST:
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Helen Cospolich
Town Clerk

BOARD OF COUNTY COMMISSIONERS OF
SUMMIT COUNTY, COLORADO

By:

Chair

ATTEST:

Clerk and Recorder, and ex-officio
clerk to the Board of the County Commissioners

1500-72\Library Lease (02-17-14)

Exhibit "A" of Public Library Lease
Intergovernmental Agreement
(Attached in the following pages)

1 INTERGOVERNMENTAL AGREEMENT
2 (103 South Harris Street - Library)
3

4 This Intergovernmental Agreement (this "Agreement") is dated SEPTEMBER 11,
5 2012 (the "Effective Date") and is between the TOWN OF BRECKENRIDGE, a Colorado
6 municipal corporation (the "Town") and SUMMIT COUNTY, COLORADO, acting by and
7 through the BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY, COLORADO
8 (the "County"). The Town and the County are sometimes referred to individually as a "Party",
9 and together as the "Parties."

10
11 **Background**
12

13 The County operates a county library system within Summit County pursuant to Section
14 24-90-101, et. seq., C.R.S. As part of its library system, the County owns and operates the South
15 Branch of the Summit County Library located at 504 Airport Road, Breckenridge, Colorado
16 80424. The Town owns the real property commonly known as 103 South Harris Street,
17 Breckenridge, Colorado 80424. There is currently located on the Town's property a historic
18 structure which, if renovated, will be suitable for uses that include the Library, as defined below.
19 The Parties have agreed to jointly pay to design and then renovate the Town's property so that it
20 will be suitable for uses that include the Library, all as more fully set forth in this Agreement. The
21 Parties desire that the Library be relocated from its current location to the Town's Property, as
22 defined below, subject to the terms and conditions of this Agreement.
23

24 **Agreement**
25

26 For and in consideration of the mutual promises and covenants contained herein, and intending to
27 be legally bound, the Parties agree as follows:
28

- 29 1. Authority. This Agreement is entered into pursuant to the authority granted by Article
30 XIV, Section 18(2)(a) of the Colorado Constitution and Part 2 of Article 1 of Title 29,
31 C.R.S.
- 32 2. Definitions. As used in this Agreement, the following terms have the following meanings,
33 unless the context clearly requires otherwise:

ACT:	The Colorado Governmental Immunity Act, Part 1 of Article 10 of Title 24, C.R.S., as amended from time to time.
BUILDING:	The improvements located upon the Property.
DEFAULTING PARTY:	A Party alleged to be in default under this Agreement.
EXISTING LIBRARY SITE:	The site of the South Branch of the Summit

INTERGOVERNMENTAL AGREEMENT

County Library as of the date of this Agreement, which property is commonly known as at 504 Airport Road, Breckenridge, Colorado and is more fully described on the attached Exhibit "B".

FOUNDATION: The Summit County Library Foundation, a Colorado nonprofit corporation formed in 1990.

LEASE: The 99 year lease agreement between the Town and the County described in Section 6.

LIBRARY: The South Branch of the Summit County Library to be relocated to a portion of the Building as provided in this Agreement.

NON-DEFAULTING PARTY: The Party asserting that the other Party is in default under this Agreement.

PLANS: The plans for the Project approved by the Town and the County, as amended from time to time in accordance with this Agreement.

PRIOR LIBRARY IGA: The Intergovernmental Agreement between the Parties dated March 1, 1995, as amended by the First Amendment to Intergovernmental Agreement dated October 1, 2001.

PROJECT: The work of designing and renovating the Building as described in this Agreement.

PROPERTY: The real property owned by the Town as described on the attached Exhibit "A".

SHARED USE AREAS: Two multi-purpose rooms, a kitchen, the circulation space, the public restrooms, and the parking areas of the Building.

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6 3. Renovation of the Building.

7 A. The Building will be renovated by the Town in accordance with the Plans.

8 B. The Town and the County must each approve the Plans. Once approved, the Plans
9 will not be changed without the Parties' consent.

INTERGOVERNMENTAL AGREEMENT

- 1 C. The Town and the County will work cooperatively and in good faith with each
2 other throughout the design and construction of the Project.
- 3 D. The Town is responsible for the performance of all of the work required to
4 complete the Project. To that end, the Town will select the general contractor to
5 perform the work described in the Plans, and will enter into all necessary contracts
6 for the design and construction of the Project, with construction/demolition
7 anticipated to begin no later than July 15, 2013. The Town will consult with the
8 County before selecting the general contractor. The Town will not change the
9 general contractor without first consulting with the County.
- 10 E. The Town will complete the Project with due diligence. Subject to the force
11 majeure conditions described in Section 9, the Town will use its best efforts to
12 complete the Project and make the County's leased space in the Building, including
13 the Library, ready for the County's occupancy not later than August 15, 2014, or
14 such other date as may be agreed to by the Town and the County after the selection
15 of the contractor who will renovate the Building; provided, however, as provided in
16 Section 8, the Town is not liable to the County for any delay in the completion of
17 the Project.

18 4. Cost of the Project.

- 19 A. As of the date of this Agreement, the best information available to the Parties is that
20 the total cost of the Project will be approximately \$7,400,000. Any increase in the
21 cost of the Project must be reviewed and approved by both the Town and the
22 County
- 23 B. The County will pay \$2,675,000 toward the cost of the Project. Such sum will be
24 paid upon request of the Town in pro rata payments (using an estimated 35%
25 County share of costs subject to final adjustment as provided herein) based on the
26 percentage of work completed as the construction progresses.
- 27 C. Subject to the remainder of this Section, the Town will pay the balance of the cost
28 of the Project.
- 29 D. If the actual cost to complete the Project is:
 - 30 i. less than \$7,400,000 but greater than \$6,000,000, the difference between
31 \$7,400,000 and the actual cost to complete the Project will be credited to the
32 Town's financial obligation as described in Section 4(C).
 - 33 ii. \$6,000,000 or less, \$1,400,000 will first be credited to the Town's financial
34 obligation as described in Section 4(C), and the remaining savings will then
35 be credited equally to the Town and the County.

36 5. Fundraising

INTERGOVERNMENTAL AGREEMENT

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- A. The Town and the County will work cooperatively, expeditiously, and in good faith to attempt to raise funds to help pay the cost of the Project. Such efforts will include, without limitation, private donations, public and private grants, and similar awards. It is expected that the Foundation will serve as the lead organization in raising funds for the Library, Shared Use Areas and other common elements of the Building. Such funds will be segregated from the all other ongoing operational fund raising efforts of the Foundation.

- B. The Foundation will develop a plan to raise funds through the sale of naming rights on the Library and Shared Use Spaces. The Town and the County have the right to review and approve the proposed naming plan, as well as the right to review and approve the proposed name(s) of the Library and Shared Use Spaces, and the duration of the naming rights to be granted. The proposed naming plan may include the Building name with the approval of the Town.

- C. It is anticipated the Foundation's fundraising effort for the Library will cease 120 days following the County's occupancy of the Library portion of the Building.

- D. Funds raised through joint fundraising efforts of the Parties and the Foundation will be applied as follows:
 - i. the first \$575,000 will be paid to the County to offset the costs incurred or to be incurred by the Town to assist with the Library construction and complete the Shared Use Areas and common elements.

 - ii. any amount between \$575,001 and \$675,000 will be paid to the County into a separate Library account and used for special enhancements to the Library, which may include items such as the book/resource collection, equipment, or other Library personal property, to be designated by the County. Any funds described in this Subsection that are not spent will be credited for construction of the Library, Shared Use Areas and common elements as described in Subsection (iii) below.

 - iii. any amount in excess of \$675,000 will be paid to the County to offset the costs incurred or to be incurred by the Town to assist with the Library construction and complete the Shared Use Areas and common elements, until the Town's share of the cost to complete the Project has been reduced to \$2,675,000 (the amount of the County's share of the cost to complete the Project as described in Section 4(B)).

 - iv. any amount in excess of that required to reduce the costs as described above shall be paid to the County and credited equally to both Parties.

- E. The Parties agree that if the Foundation raises more than \$675,000 for the cost of the Project, the Foundation may retain ten percent of any amount in excess of

INTERGOVERNMENTAL AGREEMENT

1 \$675,000 and used, in the Foundation's discretion, for special enhancements to the
2 Library, which may include items such as the book/resource collection, equipment,
3 or other Library personal property, to be designated by the Foundation. Such
4 enhancement funds may be expended by the Foundation pursuant to this Section
5 once the final plans and budget for the special enhancements has been prepared and
6 approved by both the County and the Town.

7 6. Lease. Within 90 days of the acceptance of building plans by each Party, the Town and the
8 County will negotiate a mutually acceptable 99 year lease for the County's use of the
9 Library portion of the Building, as well as the Shared Use Areas, as defined above. The
10 lease will include, without limitation, the following provisions:

- 11 A. The County will be required to pay 35% of the annual total cost of providing gas,
12 electricity, water, sewer, and trash removal/recycling for the Building.
- 13 B. The County will manage the Library and Shared Use Areas and, in connection with
14 such management, will pay for and provide required cleaning and routine
15 maintenance of the Library and the Shared Use Areas.
- 16 C. The Town will reimburse the County for 65% of the cleaning and routine
17 maintenance of the Shared Use Areas that the County manages as described in B,
18 above.
- 19 D. The Town will manage the remainder of the Building and, in connection with such
20 management, will pay for and provide required cleaning and routine maintenance
21 of the remainder of the Building.
- 22 E. The Town will be responsible for performing all non-routine maintenance of the
23 Building, such as structural repairs, the replacement of the roof or boiler, and the
24 painting of the Building
- 25 F. The Parties will agree on a mutually acceptable mechanism for paying for major or
26 emergency repairs of the Building. Unless otherwise agreed by the Parties, the
27 County will pay for 35% of the cost of major or emergency repairs of the Building,
28 and the Town will pay 65% of such costs. "Major repairs" include the substantial
29 repair or replacement of the Building's roof, foundation, exterior walls and glass,
30 plumbing system, heating and ventilation systems, electrical system, and the
31 painting of the exterior of the Building. "Emergency repairs" include the
32 substantial repair or replacement of any structural or non-structural component of
33 the Building that must be performed immediately in order to maintain the structure
34 in a safe and useable condition.
- 35 G. Each Party will budget and set aside in its annual budget funds to be accumulated
36 and used to pay the cost of major or emergency repairs of the Building. The amount
37 of funds annually set aside to pay the cost of major or emergency repairs of the
38 Building will be in the sound discretion of each of the Parties. Each Party will

INTERGOVERNMENTAL AGREEMENT

1 annually report to the other Party the amount of funds that have been set aside to
2 pay the cost of major or emergency repairs to the Building, and the Parties will
3 meet and confer at least once each fiscal year to discuss the condition of the
4 Building, anticipated repairs to the Building, and the adequacy of the Parties'
5 reserves for major or emergency repairs of the Building.

6 7. Use of Remainder of Building.

7 A. The Town will retain ownership of the Building, and will have sole and exclusive
8 use and control over those portions of the Building that are not subject to the Lease.
9 The County has no right to use or control any portion of the Building that is not
10 subject to the Lease.

11 B. To attempt to avoid uses that conflict with the County's use of the Building as the
12 Library, the Town will consult with the County with respect to potential uses and
13 future tenants of the portion of the Building that is not subject to the Lease, and will
14 not allow future tenants or Building uses that conflict with the Library except on a
15 rare or special occasion.

16 8. **Exclusion of Remedies. IN NO EVENT WILL THE TOWN BE LIABLE FOR ANY**
17 **INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT**
18 **NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS, REVENUE, OR**
19 **SAVINGS, BUSINESS INTERRUPTION, GOVERNMENT DISRUPTION, LOSS**
20 **OF CONFIDENCE IN GOVERNMENT, OR ANY OTHER CLAIM OF**
21 **WHATEVER KIND, ARISING FROM THE DELAY IN THE COMPLETION OF**
22 **THE PROJECT, EVEN IF THE TOWN HAS BEEN ADVISED OF THE**
23 **POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION WILL APPLY**
24 **NOTWITHSTANDING THE FAILURE OF AN ESSENTIAL PURPOSE OF ANY**
25 **LIMITED REMEDY.**

26 9. Force Majeure. Neither Party is liable to the other for any failure, delay, or interruption in
27 the performance of any of the terms, covenants, or conditions of this Agreement due to
28 causes beyond the control of that Party, including, without limitation, strikes, boycotts,
29 labor dispute, embargoes, shortages of materials, acts of God, acts of the public enemy,
30 terrorism, acts of superior governmental authority, weather conditions, floods, riots,
31 rebellion, sabotage or any other circumstance for which such Party is not responsible or
32 which is not in its power to control.

33 10. Insurance.

34 A. Required Insurance. Until the Project has been completed the Town and the County
35 will each procure and maintain the following minimum insurance coverages:

- 36 i. workers' compensation insurance to cover obligations imposed by
37 applicable laws for any employee of the Town or the County (as
38 applicable).

INTERGOVERNMENTAL AGREEMENT

1 ii. general liability insurance with limits of liability not less than the limits of
2 liability established from time to time by the Act. The policy must include
3 coverage for bodily injury, broad form property damage (including
4 complete operations), personal injury (including coverage for contractual
5 and employee’s acts), blanket contractual, products, and completed
6 operations.

7 Such coverages will be procured and maintained with forms and insurers
8 reasonably acceptable to the other Party. All coverage will be continuously
9 maintained until the Project has been completed. In the case of any claims-made
10 policy, the necessary retroactive dates and extended reporting periods will be
11 procured to maintain such continuous coverage.

12
13 B. Deductibles. The Town and the County are each solely responsible for any
14 deductible amounts required to be paid under their own required insurance policies
15 described in Subsection A.

16 C. Insurance Certificate. Each Party will provide the other Party with a certificate of
17 insurance evidencing that policies providing the required coverages, conditions,
18 and minimum limits are in full force and effect. Such certificates will be provided
19 within 10 days of the Effective Date of this Agreement, and on each renewal or
20 replacement of the required insurance policies throughout the term of this
21 Agreement. The completed insurance insurances will be sent to the Parties at the
22 addresses provided in Section 14.

23 11. Mutual Indemnification.

24 A. Indemnification By the Town. The Town will indemnify and defend the County, its
25 officers, employees, insurers, and self-insurance pool against all liability, claims,
26 and demands, on account of injury, loss, or damage, including, without limitation,
27 claims arising from bodily injury, personal injury, sickness, disease, death,
28 property loss or damage, or any other loss of any kind whatsoever, arising out of or
29 in any manner connected with this Agreement, to the extent that such injury, loss,
30 or damage is caused by:

31 i. the negligence or intentional wrongful act of the Town, or any officer,
32 employee, representative or agent of the Town; or

33 ii. the Town’s breach of this Agreement,

34 except to the extent such liability, claim or demand arises through the negligence or
35 intentional wrongful act of the County, its officers, employees, or agents, or the
36 County’s breach of this Agreement. To the extent indemnification is required under
37 this Agreement, the Town agrees to investigate, handle, respond to, and to provide
38 defense for and defend against, any such liability, claims, or demands at its

1 expense, and to bear all other costs and expenses related thereto, including court
2 costs and attorney fees.

3
4 B. Indemnification By the County. The County will indemnify and defend the Town,
5 its officers, employees, insurers, and self-insurance pool against all liability,
6 claims, and demands, on account of injury, loss, or damage, including, without
7 limitation, claims arising from bodily injury, personal injury, sickness, disease,
8 death, property loss or damage, or any other loss of any kind whatsoever, arising
9 out of or in any manner connected with this Agreement, to the extent that such
10 injury, loss, or damage is caused by:

11 i. the negligence or intentional wrongful act of the County, or any officer,
12 employee, representative or agent of the County; or

13 ii. the County's breach of this Agreement,

14 except to the extent such liability, claim or demand arises through the negligence or
15 intentional wrongful act of the Town, its officers, employees, or agents, or the
16 Town's breach of this Agreement. To the extent indemnification is required under
17 this Agreement, the County agrees to investigate, handle, respond to, and to
18 provide defense for and defend against, any such liability, claims, or demands at its
19 expense, and to bear all other costs and expenses related thereto, including court
20 costs and attorney fees.

21
22 C. Indemnity Subject To Applicable Law. The obligation of a Party to indemnify and
23 defend the other Party pursuant to this Section is expressly subject to any applicable
24 limitation or provision of the Act or any other law providing similar limitations or
25 protections, as well as to any applicable constitutional prohibition against a Party
26 indemnifying the other Party.

27 D. Indemnity For Worker's Compensation Claims.

28 i. The Town will indemnify and defend the County with respect to any claim,
29 damage, or loss arising out of any worker's compensation claim of any
30 employee of the Town.

31 ii. The County will indemnify and defend the Town with respect to any claim,
32 damage, or loss arising out of any worker's compensation claim of any
33 employee of the County.

34 E. Survival. The obligation of a Party to indemnify and defend the other Party
35 pursuant to this Section will survive the termination of this Agreement, and will
36 continue to be enforceable thereafter until such obligations are fully performed.

37 12. Prior Library IGA.

INTERGOVERNMENTAL AGREEMENT

- 1 A. The Prior Library IGA is terminated. The recording of this Agreement with the
 2 Summit County Clerk and Recorder constitutes the notice of termination of the
 3 prior Intergovernmental Agreement as required by Section 6(D) of the Prior
 4 Library IGA.
- 5 B. Notwithstanding the termination of the Prior Library IGA, it is agreed that upon the
 6 first to occur of:
- 7 i. the transfer of legal title to the Existing Library Site by the County;
 - 8 ii. any use of the Existing Library Site after the commencement of the Lease
 9 other than as a County, Judicial System, or District Attorney's office; or
 - 10 iii. the termination of the Lease for any reason,
 - 11 iv. the County does not operate a library in the vicinity of the Town for a
 12 continuous period of two years unless both Parties agree that continued
 13 operation of a library is no longer necessary,

14 then the County will pay to the Town: (1) a sum equal to 92% of the then-current
 15 fair market value of the land (but not the improvements) comprising the Existing
 16 Library Site, and (2) 100% of the then-current cost of the Plant Investment Fee for
 17 the Existing Library Site that the Town deferred payment of pursuant to the Prior
 18 Library IGA. The value of the Existing Library Site will be determined by
 19 agreement of the Parties, or if the Parties cannot agree, then by the determination of
 20 a qualified, impartial real estate appraiser employed and paid equally by the Parties.
 21 The selection of the appraiser will be made by mutual agreement of the Parties, but
 22 if the Parties cannot agree, then the appraiser will be selected by the then-President
 23 of the Continental Divide Bar Association, or successor organization. The fair
 24 market value for the Existing Library Site will be paid in cash to Town by the
 25 County within 30 days of the Parties' receipt of the appraiser's determination of
 26 value.

27
 28 13. Default; Resolution Of Disputes.

- 29 A. Default. A default exists under this Agreement if any Party violates any covenant,
 30 condition, or obligation required to be performed under this Agreement. If a
 31 Defaulting Party fails to cure such default within 30 business days after the other
 32 Non-Defaulting Party gives written notice of the default to the Defaulting Party
 33 then, at the Non-Defaulting Party's option, the Non-Defaulting Party may
 34 terminate this Agreement. In the event of a default not capable of being cured
 35 within 30 business days, a Defaulting Party will not be in default if it commences
 36 curing the default within 30 business days after receipt of written notice of default
 37 from the Non-Defaulting Party, and thereafter cures such default with due diligence
 38 and in good faith. Notwithstanding any Party's right to terminate this Agreement

INTERGOVERNMENTAL AGREEMENT

1 for an uncured default, this Agreement is subject to the rights of any Party to invoke
2 the remaining provisions of this Section.

3 B. Negotiation. Either Party may give the other Party written notice of any dispute
4 arising out of or related to this Agreement that is not resolved in the normal course
5 of business. The Parties will attempt in good faith to resolve any such dispute
6 promptly by negotiations between the Parties' Authorized Representatives. Within
7 15 business days after receipt of said notice, Authorized Representatives will meet
8 at a mutually acceptable time and place, and thereafter as often as they reasonably
9 deem necessary, to exchange relevant information and to attempt to resolve the
10 dispute. If the matter has not been resolved within 60 business days of the notice of
11 dispute, or if the Parties fail to initially meet within 15 business days, either Party to
12 the dispute may initiate mediation of the controversy as provided below.

13 C. Mediation. If the dispute has not been resolved by negotiation as provided above,
14 the Parties will endeavor to settle the dispute by mediation with a neutral third
15 Party. If the Parties encounter difficulty in agreeing on a neutral third Party, they
16 may each appoint a neutral third Party to mediate.

17 D. Judicial Action. Any dispute arising out of or relating to this Agreement or the
18 breach, termination, or validity hereof, which has not been resolved by the methods
19 set forth above within 30 days of the initiation of mediation, may be finally
20 resolved by appropriate judicial action commenced in a court of competent
21 jurisdiction. The partiesParties agree to venue in the courts of Summit County,
22 Colorado with respect to any dispute arising out of or relating to this Agreement.
23 Both parties waive the right to a jury trial in action to enforce, interpret, or construe
24 this Agreement.

25 E. Provisional Remedies. The procedures specified in this Section are the sole and
26 exclusive procedures for the resolution of disputes among the Parties arising out of
27 or relating to this Agreement; provided, however, that a Party may seek a
28 preliminary injunction or other provisional judicial relief if, in its judgment, such
29 action is necessary to avoid irreparable damage or to preserve the status quo.
30 Despite such action, the Parties will continue to participate in good faith in the
31 procedures specified in this Section.

32 F. Performance To Continue. Each Party is required to continue to perform its
33 obligations under this Agreement pending final resolution of any dispute arising
34 out of or relating to this Agreement.

35 G. Extension Of Deadlines. All deadlines specified in this Section may be extended
36 by mutual agreement.

37 H. Costs. Each Party will pay its own costs with respect to negotiation and mediation.
38 The prevailing Party in any judicial action is entitled to reimbursement from the

INTERGOVERNMENTAL AGREEMENT

1 other Party for all reasonable costs and expenses, including attorney fees in
2 connection with such judicial action.

- 3 14. Notices. All notices required or permitted under this Agreement must given by registered
4 or certified mail, return receipt requested, postage prepaid, or by hand or commercial
5 carrier delivery, or by telecopies directed as follows:

6 If intended for the Town to:

7
8 Town of Breckenridge
9 P.O. Box 168
10 150 Ski Hill Road
11 Breckenridge, Colorado 80424
12 Attn: Timothy J. Gagen, Town Manager
13 Telecopier number: (970)547-3104
14 Telephone number: (970)453-2251
15

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

17
18 Timothy H. Berry, Esq.
19 Town Attorney
20 Timothy H. Berry, P.C.
21 131 West 5th Street
22 P. O. Box 2
23 Leadville, Colorado 80461
24 Telephone number: (719)486-1889
25 Telecopier number: (719)486-3039
26

27 If intended for the County, to:

28
29 Board of the County Commissioners
30 P.O. Box 68
31 Breckenridge, Colorado 80424
32 Attn: Gary Martinez, County Manager
33 Telephone number: (970)453-3401
34 Telecopier number: (970)453-3535
35

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

37
38 Jeff Huntley, Esq.
39 Summit County Attorney
40 P.O. Box 68
41 Breckenridge, Colorado 80424
42 Telephone number: (970)453-3407
43 Telecopier number: (970)454-3535

INTERGOVERNMENTAL AGREEMENT

1
2 Any notice delivered by mail in accordance with this Section is effective on the third
3 business day after being deposited in any post office or postal box regularly maintained by
4 the United States postal service. Any notice delivered by telecopier in accordance with this
5 Section is effective upon receipt if concurrently with sending by telecopier receipt is
6 confirmed orally by telephone and a copy of said notice is sent by certified mail, return
7 receipt requested, on the same day to that intended recipient. Any notice delivered by hand
8 or commercial carrier is effective upon actual receipt. Either Party, by notice given as
9 above, may change the address to which future notices may be sent. E-mail is not a valid
10 method for the giving of notice under this Agreement.
11

12 15. Pledged Cash Reserves. Both the Town and the County covenant and agree to appropriate
13 during their respective current (2012) fiscal years sufficient funds to allow them to perform
14 and pay for their respective obligations under Section 4 of this Agreement. Such funds will
15 constitute present cash reserves pledged irrevocably for the payment of the Parties'
16 financial obligations under this Agreement in accordance with Section 20(4)(b) of Article
17 X of the Colorado Constitution. Unspent funds appropriated during the current fiscal year
18 will be carried over to the next fiscal year until all appropriated funds have been spent in
19 accordance with this Agreement.

20 16. Governmental Immunity. The Parties are each relying on, and do not waive or intend to
21 waive by any provision of this Agreement, the monetary limitations of the Act, which
22 limitations are as of the date of this Agreement \$150,000 per person and \$600,000 per
23 occurrence, or any other limitation, right, immunity, defense or protection otherwise
24 available to the Town and the County, and their respective officers, representatives, agents
25 and employees.

26 17. Third Parties. This Agreement does not confer upon or grant to any third party any right to
27 claim damages or to bring suit, action, or other proceeding against either the Town or the
28 County because of any breach of this Agreement, or because of any of the terms,
29 covenants, agreements, and conditions contained in this Agreement.

30 18. Waiver. The failure of either Party to exercise any of its rights under this Agreement is not
31 a waiver of those rights. A Party waives only those rights specified in writing and signed
32 by either Party waiving its rights.

33 19. Independent Contractor. In connection with this Agreement each of the Parties acts as an
34 independent contractor (and not an agent or employee of the other Party), without the right
35 or authority to impose tort or contractual liability upon the other Party.

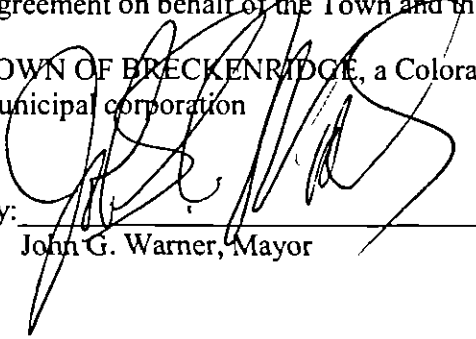
36 20. Applicable Law. This Agreement is to be interpreted in all respects in accordance with the
37 laws of the State of Colorado.

38 21. Entire Agreement. This Agreement constitutes the entire agreement and understanding
39 between the Parties as to the subject matter of this Agreement, and supersedes any prior
40 agreement or understanding relating thereto.

INTERGOVERNMENTAL AGREEMENT

- 1 22. Amendment. This Agreement may be modified or amended only by a duly authorized
 2 written instrument executed by the Parties. No oral amendment or modification of this
 3 Agreement is allowed.
- 4 23. Severability. If any of the provisions of this Agreement are declared by a final.
 5 non-appealable judgment court of competent jurisdiction to be invalid, illegal or
 6 unenforceable in any respect, the validity, legality and enforceability of the remaining
 7 provisions of this Agreement will not in any way be affected or impaired thereby.
- 8 24. Section Headings. Section and subsection headings are inserted for convenience only and
 9 in no way limit or define the interpretation to be placed upon this Agreement.
- 10 25. Authority. The individuals executing this Agreement on behalf of each of the Parties
 11 represent to the other Party that they have all requisite powers and authority to cause the
 12 Party for whom they have signed to enter into this Agreement, and to bind such Party to
 13 fully perform its obligations as set forth in this Agreement.
- 14 26. No Adverse Construction. Both Parties acknowledge having had the opportunity to
 15 participate in the drafting of this Agreement. This Agreement is not to be construed against
 16 either Party based upon authorship.
- 17 27. Will and Will Not Defined. The terms “will” and “will not” as used in this Agreement
 18 indicate a mandatory obligation to act or to refrain from acting, respectively, as described in
 19 this Agreement.
- 20 28. Incorporation of Exhibits. All exhibits referred to in this Agreement are attached to and
 21 incorporated by reference into this Agreement.
- 22 29. Binding Effect. This Agreement is binding upon, and inures to the benefit of, the Parties
 23 and their respective successor governing boards.
- 24 30. Approval By Governing Boards or Other Authority. In accordance with Section
 25 29-1-203(1), C.R.S., this Agreement will not become effective unless and until it has been
 26 approved by the governing bodies of both the Town and the County, or by such persons as
 27 has the power to approve this Agreement on behalf of the Town and the County.

28 TOWN OF BRECKENRIDGE, a Colorado
 29 municipal corporation

30
 31
 32 By: 
 33 John G. Warner, Mayor
 34

35 ATTEST:
 36
 37

INTERGOVERNMENTAL AGREEMENT

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Linda A. Copen
Town Clerk

BOARD OF COUNTY COMMISSIONERS OF
SUMMIT COUNTY, COLORADO

By: Don Alb
Chair



ATTEST:

Kathleen Reed
Clerk and Recorder, and ex-officio
clerk to the Board of the County Commissioners

EXHIBIT "A"
TO
INTERGOVERNMENTAL AGREEMENT
(103 South Harris Street – Library)

Legal Description of the Property

LOTS 1 THROUGH 9, BLOCK 2, YINGLING & MICKLES ADDITION, AND THAT PORTION OF THE KLACK GULCH PLACER, U.S. MINERAL SURVEY NO. 1224 SITUATE BETWEEN WASHINGTON AVENUE AND LINCOLN AVENUE AND BOUNDED ON THE WEST BY BLOCK 4, ABBETT ADDITION AND ON THE EAST BY BLOCK 2, Y & M ADDITION, ALL IN THE TOWN OF BRECKENRIDGE, COUNTY OF SUMMIT, STATE OF COLORADO.

EXHIBIT "B"
TO
INTERGOVERNMENTAL AGREEMENT
(103 South Harris Street – Library)

Legal Description of the Existing Library Site

Lot C, Block 1, Parkway Center Subdivision Amended

Exhibit "B" of Public Library Lease
DEPICTION OF LEASED PREMISES

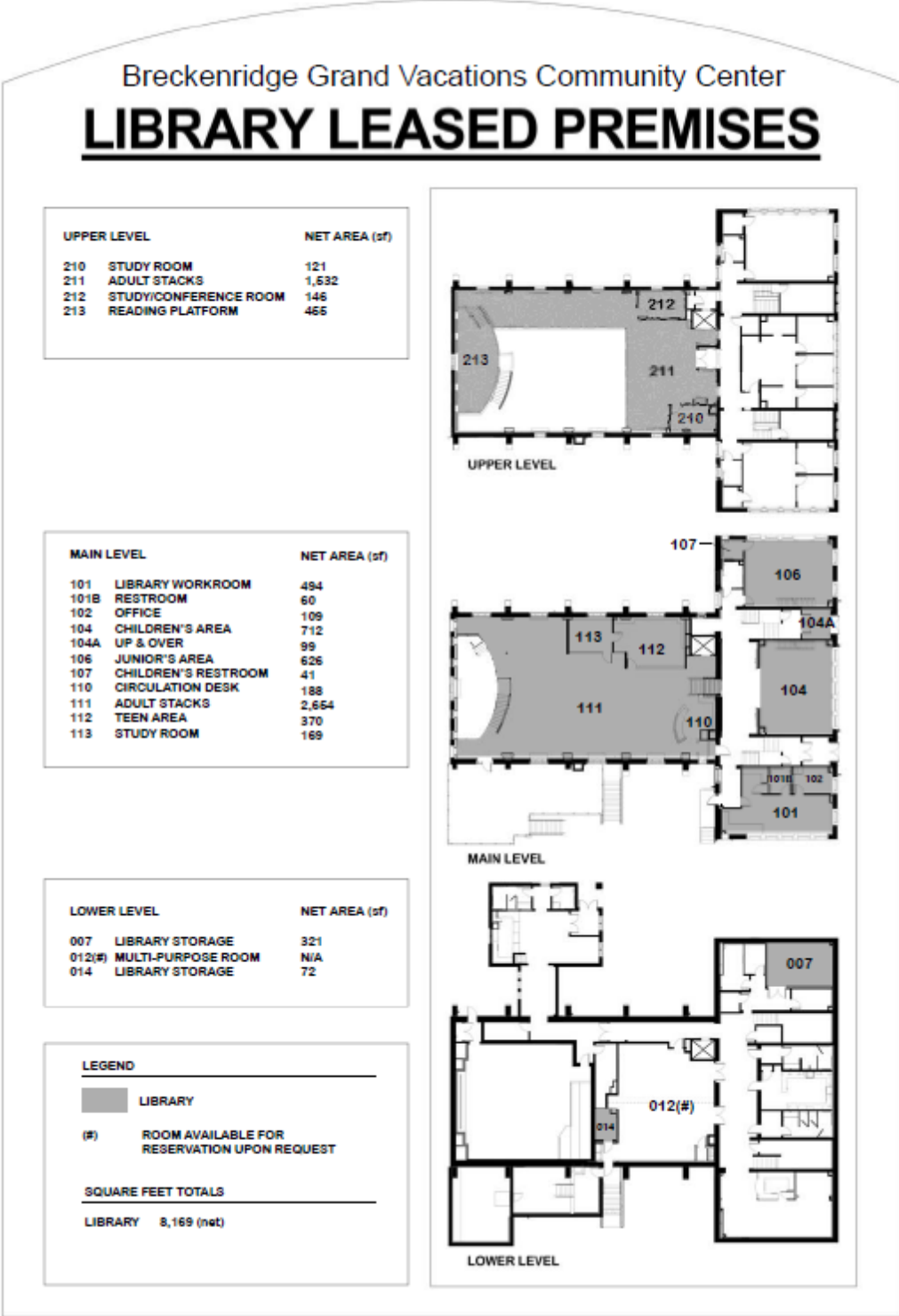
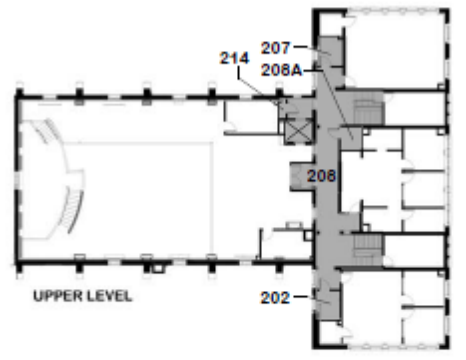


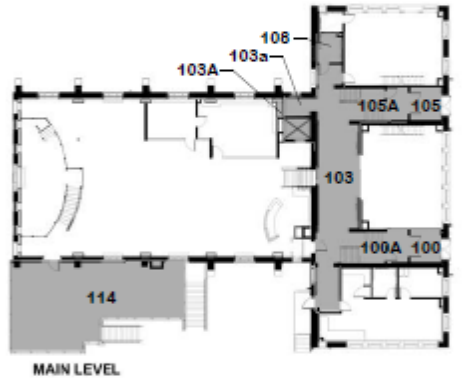
Exhibit "C" of Public Library Lease
DEPICTION OF SHARED USE AREAS

**Breckenridge Grand Vacations Community Center
 SHARED USE (TOWN & COUNTY) PREMISES**

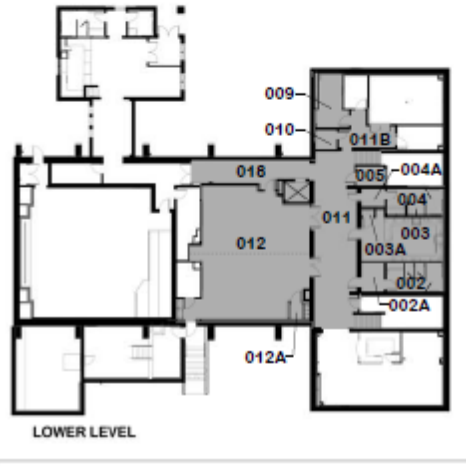
UPPER LEVEL		NET AREA (sf)
202	RESTROOM	66
207	RESTROOM	64
208	HALLWAY	90
208A	JANITORS CLOSET	38
214	IT	12



MAIN LEVEL		NET AREA (sf)
100	MAIN ENTRY	84
100A	MAIN ENTRY LANDING	62
103	LOBBY	572
103a	ELEVATOR LOBBY	100
103A	IT CLOSET	6
105	VESTIBULE	86
105A	VESTIBULE LANDING	64
108	RESTROOM	61
114	READING DECK (1,130 sf OUTDOOR)	N/A



LOWER LEVEL		NET AREA (sf)
002	WOMEN'S RESTROOM	141
002A	VESTIBULE	68
003	KITCHEN	304
003A	CLOSET	8
004	MEN'S RESTROOM	131
004A	VESTIBULE	40
005	ELEVATOR MACH.	43
009	TELECOMM	121
010	JANITOR'S CLOSET	41
011	LOBBY	1078
011B	HALLWAY	138
012	MULTI-PURPOSE ROOM	1221
012A	MULTI-PURPOSE STORAGE	17
018	HALLWAY	232




LEGEND	
	SHARED USE (TOWN & COUNTY)
SQUARE FEET TOTALS	
SHARED USE SPACES	4,867 (net)

Exhibit “D” of Public Library Lease
Operational Plan
(Attached in the following pages)

1 **South Branch of the Summit County Library at the Breckenridge Grand**
2 **Vacations Community Center**

3 **Operational plan**

4 **March 6, 2014**

5 **Intent of operational plan**

6 This document is an operational plan (“Plan”) to define how the building will be operated and
7 maintained. Because circumstances for each party may change, the Plan can be amended from
8 time to time if each party agrees to the amendments. This document will define who will be
9 responsible for the various maintenance activities as defined in this plan. Nothing in this plan is
10 meant to change the content of the lease.

11 The operational plan is based on the fact that the Town of Breckenridge (Town) is the owner of
12 the overall building and Summit County (County) has invested a substantial amount of money to
13 the rehabilitation of the building similar to what it would have paid for a new library building.
14 The space that the Library occupies will be treated like the County owns and maintains that
15 space. The common spaces will be jointly operated and maintained by the Town and County.
16 The Town will maintain those spaces that it leases to parties other than the County. The IGA
17 dated September 1, 2012 specified that the Town would fund the operation and maintenance of
18 the common space at 65% and Summit County at 35%.

19 The Shared Areas are described in the lease. The lease specifically describes how the
20 maintenance will be performed and paid by each party.

21 The items listed below are not specifically in the lease but are intended to be within the intent of
22 the lease.

23 The Town and County will meet approximately three months after the County takes possession
24 of the leased premises to review operational issues with the building. The Town and County will
25 meet annually, or as necessary, to review operational issues. During these meetings, this plan can
26 be revised as agreed upon by both the Town and County. Should either the Town or the County
27 not be able to reach an agreed upon solution, Article 12 of the lease shall dictate how to resolve
28 the dispute.

29 **Important phone numbers:**

30 Emergency Facility Request: 970-453-3386.

1 **Multi-Purpose Room.**

2 As stated in the lease in Section 1.6, the Library reserves the right to reserve this room 25% of
3 the time based on using this space from 8 A.M. to 8 P.M. seven days a week (84 hours per
4 week). The following describes how the multipurpose room will be managed and reserved for
5 use by different parties

6 1. Booking priority timelines.

- 7 a. The County staff will maintain a list of the reserved bookings for the
8 multipurpose room.
- 9 b. The County staff will answer requests for bookings during normal library hours as
10 they are set by the Library. Requests for bookings will be done by phone, email
11 or other online means available to the Library. The method for booking the space
12 will be provided to the Town and made available to the public through the web
13 sites of the Town and County.
- 14 c. Library will have the first priority for booking the multipurpose room beginning 8
15 months prior to the event date. This is intended to give the Library the ability to
16 book events in the multipurpose room that fall under the 25% described in the
17 IGA.
- 18 d. The Town or a Town designated entity will be able to book the multipurpose
19 room beginning 7 months prior to the event date.
- 20 e. All other entities will be able to book the multipurpose room 6 months prior to the
21 event date.
- 22 f. At any time within their respective booking time frame the County and Town will
23 be able to reserve the multipurpose room if it is available.
- 24 g. The County will be flexible with the times it has already booked if the
25 multipurpose rooms are needed by the Town for significant events such as an all
26 day training or Council retreat.
- 27 h. The space will not be leased to, or reserved for the use of, any business for the
28 purpose of engaging in commercial, profit-making activities.

29 2. Management of multipurpose room. Because the Library staff is in the building on a daily
30 basis, they will manage the booking of the multipurpose room.

- 31 a. Deposit – If the Town, a Town designated entity, and County use the
32 multipurpose room then no deposit is required. If an entity other than the Town
33 or County use the multipurpose room a deposit will be taken and managed as
34 follows:
 - 35 i. The deposit will be taken at the time of the event reservation.
 - 36 ii. The County will inspect the space after each user and assure that no
37 damage has occurred before returning the deposit
 - 38 iii. Once the space is accepted the remaining deposit will be returned to the
39 leasing entity.

- 1 b. The cleaning of the multipurpose room will be managed by the County. The
2 room will be cleaned daily and made available for the users each day.
- 3 c. Cleaning company – Bids will be taken from cleaning companies from time to
4 time to clean the multipurpose room. The Town and County will determine when
5 this is necessary.
- 6 d. Lease of the space after hours. County will book and manage the keys to access
7 the multipurpose room for the hours outside of the Library’s normal hours.
- 8 3. Rate for the multipurpose room – The rates for leasing the multipurpose room will be as
9 follows:
 - 10 a. No charge –
 - 11 i. Town or County
 - 12 ii. Town or County funded organization
 - 13 iii. Organizations who lease space in the building
 - 14 b. \$25 per hour
 - 15 i. Community or Civic organizations
 - 16 ii. Non-profit organizations located in Summit County
 - 17 c. \$50 per hour – All other organizations.
 - 18 d. The money collected will be accounted for by the County and used to offset the
19 costs of maintenance for the Shared Use Areas.

20 **Other Shared Areas**

- 21 1. Cleaning Schedule – As described in Article 5 of the lease, the County will manage the
22 cleaning and routine maintenance of the Shared Use Areas described in subsections 5.5
23 (a-d). “Other shared areas” as that term is used in Section 5.5 (g) refers to the public
24 bathrooms and common hallways within the building. The multipurpose rooms are
25 addressed in the previous section of this operating plan. The Town and County will hire
26 an outside party to clean the shared areas as follows:
 - 27 a. A schedule for cleaning will be developed as the facility opens and will be
28 reviewed at the three month review.
 - 29 b. During the course of its routine business the library staff will inspect and pick up
30 any litter in the shared areas during the hours of operation of the library.
 - 31 c. County staff will attempt to unclog toilets with a plunger that will be stocked
32 within each bathroom. If the toilet cannot be unclogged with a plunger then the
33 County staff will call for assistance from the Town Facilities staff.
 - 34 d. Spills and messes - Any messes or spills made in the shared areas will be picked
35 up or cleaned by whichever party discovers the spill. If the spill is not cleanable
36 by staff then other arrangements can be made – typically notice will be made to
37 the janitorial staff for cleaning during their contracted cleaning times or on a call-
38 in basis if deemed necessary by Town or County Facilities staff.

- 1 2. Security Key System – As stated in the lease, Section 5.4, the Town will provide the key
2 system. The following describes the key system.
 - 3 a. The key system is for the common entrance to the building and the main entrance
4 to the kitchen and multipurpose room.
 - 5 i. County staff will manage the key access to the multipurpose room and
6 common entrance so that the multipurpose room can be utilized after
7 hours.
 - 8 ii. A computer program and card maker will be provided by the Town to
9 manage the key system
 - 10 b. The Library will have a separate key system from the multipurpose room, kitchen
11 and common entrance to enter library that will be provided by the Town.
 - 12 i. Each key will be assigned to an individual as requested by the library.
 - 13 ii. The County will immediately notify the Town’s Facility Division contact
14 person when library personnel leave the County’s employment.
 - 15 iii. The Town’s Facilities Division of Public Works will issue the keys.
 - 16 iv. The Town’s Facility Contact person is Matt Pellant and can be reached at
17 970-453-3366.
 - 18 v. The other spaces rented by the Town that are not part of the County lease
19 will have a separate lock system that are managed by the Town any
20 additional locks inside the leased spaced are managed by the renter.
- 21 3. Coordination between tenants – The Town will lease the other spaces in the building to
22 other entities which may cause the need for coordination of operations from time to time.
23 The Speakeasy Theater is anticipated to operate in the movie theater space on the lowest
24 floor and will operate primarily in the evening after 5:00. These additional uses may
25 require additional communication and coordination between the Town, County and all
26 tenants, and will be required for all renters.
- 27 4. Routine maintenance will include any prescribed yearly maintenance by the manufacturer
28 of equipment attached to or part of the building by the responsible party of that area. It
29 also includes biannual cleaning of carpet and windows. The changing of light bulbs as
30 well as refinishing or resealing wood and tile floors will be completed as needed.

31

32 **Major Maintenance**

- 33 1. Currently the items considered “major maintenance” are listed in the lease under
34 section 5.7. If any additional items need to be listed they will be done under this
35 section.

36 **Rules**

1
2

1. Currently rules have not been established but will be done under this section if necessary.

MEMO

TO: Town Council

FROM: Town Attorney

RE: Council Bill No. 7 (RETT Amendment Ordinance)

DATE: March 3, 2014 (for March 11 meeting)

The second reading of the ordinance amending the Town's Real Estate Transfer Tax Ordinance is scheduled for your meeting on March 11th. There are no changes proposed to ordinance from first reading.

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

1 **FOR WORKSESSION/SECOND READING – MAR. 11**

2
3 **NO CHANGE FROM FIRST READING**

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

7
8 COUNCIL BILL NO. 7

9
10 Series 2014

11
12 AN ORDINANCE AMENDING CHAPTER 3 OF TITLE 3 OF THE BRECKENRIDGE
13 TOWN CODE, KNOWN AS THE “BRECKENRIDGE REAL ESTATE TRANSFER TAX
14 ORDINANCE”

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

18
19 Section 1. Section 3-3-6(F) of the Breckenridge Town Code is amended to read as
20 follows:

21
22 F. 1. Transfers made pursuant to reorganization, merger or consolidation of
23 corporations, or by a subsidiary to a parent corporation for no consideration other
24 than cancellation or surrender of the subsidiary’s stock; ~~or~~

25
26 ~~2.~~ Transfers made to a corporation, **limited liability company**, partnership,
27 limited partnership, joint venture, business trust, ~~or other association or~~
28 ~~organization, if that association or organization~~

29 **1) the transferee corporation, limited liability company, partnership, limited**
30 **partnership, joint venture, business trust, or other association or**
31 **organization** is owned by the persons by whom such transfer was made; ~~or~~

32 **2) if such owners have the same relative interests in said association or**
33 ~~organization~~ **the transferee corporation, limited liability company,**
34 **partnership, limited partnership, joint venture, business trust, or other**
35 **association or organization** as they had in the real property immediately prior to
36 said transfer; ~~and~~

37 **3)** there is no consideration other than their respective interests in the ~~new~~
38 ~~association or organization~~ **the transferee corporation, limited liability**
39 **company, partnership, limited partnership, joint venture, business trust, or**
40 **other association or organization.**

41
42 Section 2. Section 3-3-6(O) of the Breckenridge Town Code is amended to read as
2014 REAL ESTATE TRANSFER TAX AMENDMENT ORDINANCE

1 follows:

2
3 O. Any transfer by deed in lieu of foreclosure; ~~provided, that:~~

4
5 ~~1. Such transfer shall be exempt only if the grantee in such deed is the person~~
6 ~~holding the obligation or instrument which is being canceled, in whole or in part,~~
7 ~~in exchange for the transfer; and~~

8 ~~2. Such transfer shall be exempt only to the extent of the amount of the obligation~~
9 ~~which is being canceled, in whole or in part, in exchange for the transfer.~~

10
11 Section 3. Section 3-3-6(P) of the Breckenridge Town Code is amended to read as
12 follows:

13
14 P. Any transfer by sheriff’s deed, trustee’s deed or other conveyance of real
15 property in connection with an execution sale; foreclosure sale by the public
16 trustee under a power of sale; court decree foreclosing a mortgage, deed of trust
17 or other security instrument; or court decree of lien foreclosure; ~~provided, that:~~

18 ~~1. Such transfer shall be exempt only if the grantee is the person holding the~~
19 ~~obligation or instrument upon which the proceeding is based; and~~

20 ~~2. Such transfer shall be exempt only to the extent of the obligation to be satisfied~~
21 ~~at the execution or foreclosure sale and any obligations to prior lienholders paid~~
22 ~~from the sale.~~ **provided, that if such transfer is made to a person who**
23 **submitted an “overbid” as defined by Section 38-38-100.3(17.3), C.R.S., or**
24 **any successor statute, such transfer shall be taxable to the full extent of the**
25 **amount paid by the person who submitted the overbid.**

26
27 Section 4. Section 3-3-6(R) of the Breckenridge Town Code is repealed.

28
29 Section 5. Section 3-3-6(S) of the Breckenridge Town Code is repealed.

30
31 Section 6. Section 3-3-7 of the Breckenridge Town Code is amended to read as follows:

32
33 3-3-7: APPLICATION FOR EXEMPTION

34
35 A. In the event of any transfer claimed to be exempt from the real estate transfer
36 tax herein imposed, the grantor or purchaser shall apply for and obtain from the
37 Town Manager a certificate of exemption **or exemption stamp,** which may be
38 affixed to the deed or instrument of transfer. **The certificate of exemption or**
39 **exemption stamp shall be in a form approved by the Town Manager.** The
40 burden of proving any exemptions shall in all cases be upon the one claiming it.
41 Provided further, that the exemption provided in section 3-3-6 of this chapter shall
42 be allowed only with a certificate of exemption **or exemption stamp** issued by

1 the Town Manager prior to the date that the transfer tax is payable to the town.
2 The certificate of exemption shall be in substantially the following form:

3
4 EXEMPTION FROM REAL ESTATE TRANSFER TAX

5
6 —The undersigned, as purchaser pursuant to a deed or other instrument of
7 transfer from to dated, hereby applies for exemption from the payment of the
8 real estate transfer tax, imposed by Title 3, Chapter 3 of the Town Code. The
9 basis for such exemption is as follows:

10
11 —(State briefly grounds for exemption, including applicable section and
12 subdivision of Title 3, Chapter 3 of the Town Code)

13
14 —I hereby certify this day of, 19 under penalty of perjury that the foregoing
15 statements are true and correct.

16
17 —Purchaser

18
19 Certificate of Exemption

20
21 —I hereby certify this day of 19 that the above described transfer of real
22 property is exempt from the payment of real estate transfer tax under Title 3,
23 Chapter 3 of the Town Code.

24
25 —Town Manager

26
27 B. Any person whose claim of exemption duly applied for under the provisions of
28 this section is denied by the Town Manager may immediately appeal to the Town
29 Council for a determination of such exemption and such appeal shall be
30 considered by the Town Council within thirty (30) days of receipt of the same,
31 **unless the appellant and the Town Attorney agree to a later hearing date.** In
32 the event of a determination by the Town Council favorable to the appellant, any
33 amount previously deposited, or so much thereof as may be allowed by the Town
34 Manager, shall be promptly refunded to the person paying or depositing the same.
35 If a decision is not made by the Town Council within thirty (30) days of the
36 receipt **date of the Town Council's hearing** of the appeal, the decision will be
37 deemed favorable to the appellant, ~~unless appellant has obtained a continuance of~~
38 ~~the matter, in which case the Town Council shall make its decision within six (6)~~
39 ~~months after receipt of the appeal.~~

40
41 Section 7. Section 3-3-10(A) of the Breckenridge Town Code is amended to read as
42 follows:
43

2014 REAL ESTATE TRANSFER TAX AMENDMENT ORDINANCE

1 A. The tax imposed under this chapter is due and payable at the time of the
2 transfer, and is delinquent if it remains unpaid for thirty (30) days thereafter. In
3 the event that the tax is not paid prior to becoming delinquent, a delinquency
4 penalty of ten percent (10%) of the amount of tax due shall accrue.
5

6 In the event a portion of the tax is paid prior to becoming delinquent, the penalty
7 shall only accrue as to the portion which is delinquent. Interest shall accrue at the
8 rate of one and one-half percent (1.5%) per month, or fraction thereof, on the
9 amount of tax, exclusive of penalties, from the date the tax becomes delinquent to
10 the date of payment. Interest and penalty accrued shall become part of the tax.

11 **For good cause shown, the Town Manager may waive all or part of the**
12 **penalty and interest provided for in this section.**
13

14 Section 8. Section 3-3-10(C) of the Breckenridge Town Code is amended to read as
15 follows:
16

17 C. Notwithstanding the provisions of section 3-3-6 of this chapter, if an artifice or
18 device is employed in connection with the transfer of real property, which term
19 “artifice or device” means a transaction or transactions a substantial purpose of
20 which was to evade the provisions of this chapter and the imposition of the tax
21 hereunder, then such transfer will nevertheless be subject to the real estate transfer
22 tax. “Artifice or device” includes, but is not limited to: 1) a transfer to a
23 corporation, **limited liability company**, partnership, limited partnership, joint
24 venture, business trust, or other association or organization, followed within three
25 (3) years by an assignment of the controlling interest in such ~~association or~~
26 ~~organization~~ **transferee corporation, limited liability company, partnership,**
27 **limited partnership, joint venture, business trust, or other association or**
28 **organization**, or 2) such a transfer plus the intent to ultimately assign the
29 controlling interest in such ~~association or organization~~ **transferee corporation,**
30 **limited liability company, partnership, limited partnership, joint venture,**
31 **business trust, or other association or organization.**
32

33 Section 9. Section 3-3-11(C) of the Breckenridge Town Code is amended to read as
34 follows:
35

36 C. Unpaid Tax: If the tax is unpaid and delinquent, the Town Manager shall give
37 written notification to the purchaser or person to whom the transfer is made at the
38 address shown on any deed of instrument evidencing the transfer, or his last
39 known address, of said delinquency. Said notification shall be mailed certified or
40 registered mail, postage prepaid, return receipt requested, and shall be effective on
41 the date of mailing. If the tax, penalty and interest are not paid within thirty (30)
42 days of the effective date of the notification, the Town Managers ~~shall~~ **may, but is**
43 **not required to, record a confirmation lien statement with the Clerk and**

2014 REAL ESTATE TRANSFER TAX AMENDMENT ORDINANCE

1 **Recorder of Summit County, Colorado and then** commence foreclosure of the
2 lien for said tax in the same manner as the foreclosure of a mortgage in
3 accordance with Colorado law, **or take such other action to collect the tax,**
4 **penalty and interest as may be appropriate.**

5
6 Section 10. Section 3-3-11(E) of the Breckenridge Town Code is amended to read as
7 follows:

8
9 E. Violations; Penalties: **It is a misdemeanor offense for any person to violate**
10 **any portion of this Chapter.** Every person convicted of a violation of any
11 provision of this chapter shall be punished as provided in section 1-4-1 of this
12 code.

13
14 Section 11. Except as specifically amended hereby, the BreckenridgeTownCode, and the
15 various secondary codes adopted by reference therein, shall continue in full force and effect.

16
17 Section 12. The adoption of this ordinance does not result in a new tax, a tax rate
18 increase, or a tax policy change directly causing a net tax revenue gain to the Town within the
19 meaning of Article X, §20 of the Colorado Constitution.

20
21 Section 13. If this ordinance, or any part of this ordinance, is declared to be invalid for
22 any reason those provisions of Chapter 3 of Title 3 of the Breckenridge Town Code amended by
23 this ordinance, as such provisions existed immediately prior to the adoption of this ordinance,
24 shall be revived, and as revived shall continue in full force and effect.

25
26 Section 14. The Town Council hereby finds, determines and declares that it has the
27 power to adopt this ordinance pursuant to the authority granted to home rule municipalities by
28 Article XX of the Colorado Constitution and the powers contained in the
29 BreckenridgeTownCharter.

30
31 Section 15. This ordinance shall be published and become effective as provided by
32 Section 5.9 of the BreckenridgeTownCharter.

33
34 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
35 PUBLISHED IN FULL this ____ day of _____, 2014. A Public Hearing shall be held at the
36 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
37 _____, 2014, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
38 Town.

39
40 TOWN OF BRECKENRIDGE, a Colorado
41 municipal corporation
42
43

2014 REAL ESTATE TRANSFER TAX AMENDMENT ORDINANCE

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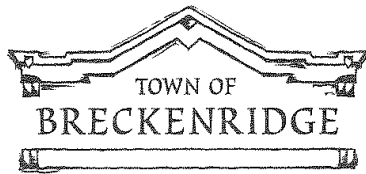
By _____
John G. Warner, Mayor

ATTEST:

Helen Cospolich, Town Clerk

400-1\RETT Amendment Ordinance (03-03-14)(Second Reading)

2014 REAL ESTATE TRANSFER TAX AMENDMENT ORDINANCE



MEMORANDUM

TO: Town Council

FROM: Julia Puester, AICP, Senior Planner

DATE: February 19, 2014 for meeting of March 11, 2014

SUBJECT: Policy 80A Connectors- First Reading

The Planning Commission has voiced concern over recent projects in the Conservation District comprised of large massing in part from tall connector elements. Resulting projects featuring what appears to be an overall large mass do not meet the intent of the distinct and separate “module size” policies, and is out of character with the surviving historic structures within the Historic District.

The guidelines in the Town of Breckenridge Handbook of Design Standards for the Historic and Conservation District limit building module size to what was historically typical. The connector element is the connecting piece which allows for two modules to be connected. This can be seen in detail in the diagrams attached.

The connector link policy (Policy 80A) was reviewed by the Planning Commission at their January 21 and February 18 worksessions. The existing language, “*The height of the connector should be clearly lower than that of the masses to be linked. In general, the ridge line of the connector should be at least two feet less than that of the original, principal mass*” has been interpreted literally as a minimum of two feet, even in the cases where the principal mass reads as two stories. This has resulted in tall connector elements creating the visual impact of one large mass, instead of two smaller ones.

Maintaining the distinction between modules is important to the character of the District, ensuring that building masses do not creep up in size and overwhelm the small scale historic building character of the area. (Large massing is typical *outside* of the District in newer subdivisions). The majority of Planning Commission believes that a connector taller than one story really doesn’t achieve the obvious distinction between modules that is the goal of the policy (Diagram 2) and will lead to uncertainty about the historic context.

At the earlier Planning Commission worksession, there was a public comment regarding maintaining the ability to connect upper stories without having to go up and down stairs internally in each module with a one story connector. Staff believes that a one story connector could be designed to connect two stories in 2 different two story modules within the 13 foot mean height allowed in the “one story” code definition, depending on the interior design and floor/plate heights (see diagram 1), but that is not the priority goal of

this change and the Planning Commission has come to that point of view as well.

Planning Commission Recommendation

The Planning Commission has recommended (six in favor, one opposed) that connectors be limited to one story in height and have a simple design. The one story connector maintains the differentiation between module sizes and protects the historical context of the area.

The primary changes recommended by the Planning Commission include:

- Further clarification of the intent of the connector policy;
- Clarification that a connector should be located to the rear or setback from the side of the façade on a corner lot;
- A required 6 foot minimum connector length;
- A one story connector;
- A simple, visible design and simple roof form.

Staff will be available to answer any questions at the meeting and would like to get Town Council direction on the proposed code changes in ~~strike~~ and **bold**.

Diagrams

Diagram 1: One Story Connector

Diagram 1A: One Story Connector Plan View

Diagram 2: Example of Connector Allowed Currently under Policy 80A

1 **FOR WORKSESSION/FIRST READING – MAR. 11**

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 2014

9
10 AN ORDINANCE AMENDING CHAPTER 5 OF TITLE 9 OF THE BRECKENRIDGE
11 TOWN CODE BY AMENDING “THE BRECKENRIDGE DESIGN STANDARDS”
12 CONCERNING CONNECTORS

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

16
17 Section 1. Section 9-5-3-1 of the Breckenridge Town Code is amended by the addition of
18 a new subsection A.5, which shall read in its entirety as follows:

19
20 A.5 Priority Policy 80A of The “Handbook of Design Standards For the Historic and
21 Conservation District” is amended to read as follows:

22
23 Policy:

24
25 The design standards stipulate that larger masses should be divided into smaller
26 “modules” and be linked with a “connector” that is subordinate to the larger masses. **The**
27 **intent of this policy is to clearly define and separate modules and/or separate a**
28 **historic structure from the new addition.**

29
30 Design Standard:

31
32 P 80A. Use connectors to link ~~smaller~~ **building** modules **in new construction** and for
33 new additions to historic structures.

34
35 **1. The connector and addition should be located at the rear of a building or in the**
36 **event of a corner lot, shall be setback substantially from significant and front**
37 **façades. A minimum of fifteen feet is required from significant front façades.**

38
39 2. The width of the connector ~~should~~ **shall** not exceed two-thirds the **width of the** façade
40 of the smaller of the two modules that are to be linked.

41
42 3. The wall planes of the connector should be set back from the corners of the modules to
43 be linked by a minimum of two feet on any side.
44

1 4. The larger the masses to be connected are, the greater the separation created by the link
2 should be; a standard connector link of at least half the length of the principal (original)
3 mass is preferred, **a minimum of six feet length is required**. (In addition, as the mass of
4 the addition increases, the distance between the original building and addition should also
5 increase. In general, for every foot in height that the larger mass would exceed that of the
6 original building, the connector length should increase by two feet.)
7

8 5. The height of the connector should be clearly lower than that of the masses to be
9 linked. ~~In general, the ridge line of the connector should be at least two feet less than that~~
10 ~~of the original, principal mass.~~ **The connector shall not exceed one story in height and**
11 **be two feet lower than the ridgeline of the modules to be connected.**
12

13 **6. A connector shall be visible as a connector. It shall have a simple design with**
14 **minimal features and a gable roof form. A simple roof form (such as a gable) is**
15 **allowed over a single door.**
16

17 7. When adding onto a historic building, a connector should be used when the addition
18 would be greater than 50% of the floor area of the historic structure or when the ridge
19 height of the roof of the addition would be higher than that of the historic building.
20

21 Note: The Design Standards for Additions to Existing Buildings, Policies 36-41, also
22 apply.
23

24 Section 2. Section 9-5-3-1(F) of the Breckenridge Town Code is amended to read as
25 follows:
26

27 F. The portion of section 5.2 of the “Breckenridge Design Standards” entitled “Building
28 Materials”, and design standard priority policy 90 of the “Breckenridge Design
29 Standards”, are amended so as to read in their entirety as follows:
30

31 Building Materials

32
33 Policy:

34
35 The major building materials for new structures should appear to be similar to those of
36 historic structures in the area. The most common material on primary structures was
37 painted lap siding with a dimension of roughly 4”- 4 ½”. Secondary structures such as
38 barns and sheds were typically unpainted wood (horizontal lap or vertical board and
39 batten) or corrugated metal sheet siding.
40

41 Design Standard:

42
43 P 90. Use materials that appear to be the same as those used historically.
44

- New materials that appear to be the same in scale, texture and finish as those used historically may be considered.
- Imitation materials that do not successfully repeat these historic material characteristics are inappropriate.
- For secondary structures **and connector elements (Policies 80A – 80C, inclusive)**, stain or paint in appearance similar to natural wood is appropriate. Materials such as stone, brick or masonry wainscoting is inappropriate.

Section 3. Section 9-5-3-1(G) of the Breckenridge Town Code is amended to read as follows:

G. The policy portion of section 5.2 of the “Breckenridge Design Standards” entitled “Architectural Details”, and design standards policies 91, 92 and 93 of the “Breckenridge Design Standards”, are amended so as to read in their entirety as follows:

Architectural Details

Design Standard:

91. Use building components that are similar in size and shape to those found historically along the street.

- These include windows, doors and porches.
- Building components on secondary structures **and connector elements** should be similar to those on historic secondary structures.

Policy:

If ornamental details are to be used that are similar to those used historically, they should appear to be functional in the same manner in which they originally occurred. Ornamental details should appear to perform an obvious function. Traditionally, decorative brackets were used to support overhanging cornices, for example. Today, when such details are applied, they should be used in similar ways.

Design Standard:

92. Ornamental elements, such as brackets and porches, should be in scale with similar historic features.

- Thin, fake brackets and strap work applied to the surface of a building are inappropriate uses of these traditional details.

- Brackets, porches, long eaves, and other ornamental details or embellishments are inappropriate on secondary structures **and connector elements**.

Policy:

Non-historic, small scale ornamentation should relate to the visual characteristics of neighboring historic buildings. They should be simple in their design.

Design Standard:

93. Avoid the use of non-functional or ornamental bric-a-brac that is out of character with the area and secondary structures.

Section 4. Section 9-5-3-1(H) of the Breckenridge Town Code is amended to read as follows:

H. Priority policy 95 of the “Breckenridge Design Standards” is amended so as to read in its entirety as follows:

Design Standard:

P 95. The proportions of window and door openings should be similar to historic buildings in the area.

- This is an important design standard.
- These details strongly influence the compatibility of a building within its context.
- Large expanses of glass, either vertical or horizontal, are generally inappropriate on commercial or residential buildings. Oversized doors that would create a “grand entry” are also inappropriate.
- Smaller windows with simple window frames are recommended for secondary structures **and connector elements**.

Section 5. Except as specifically amended hereby, the Breckenridge Town Code, and the various secondary codes adopted by reference therein, shall continue in full force and effect.

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

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

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this ____ day of _____, 2014. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of _____, 2014, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By _____
John G. Warner, Mayor

ATTEST:

Helen Cospolich
Town Clerk

1
2
3

500-22\Connectors Ordinance (02-21-14)

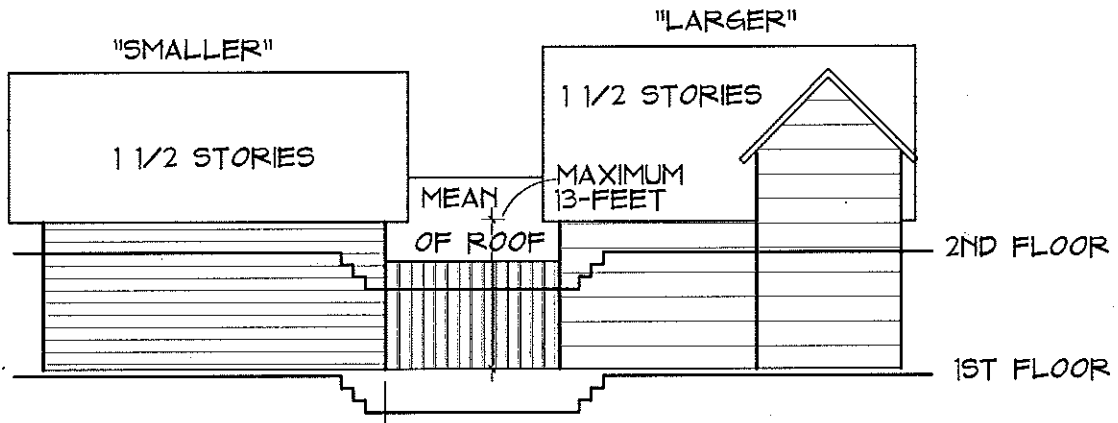


DIAGRAM 1 - ONE STORY CONNECTOR @ 13-FEET

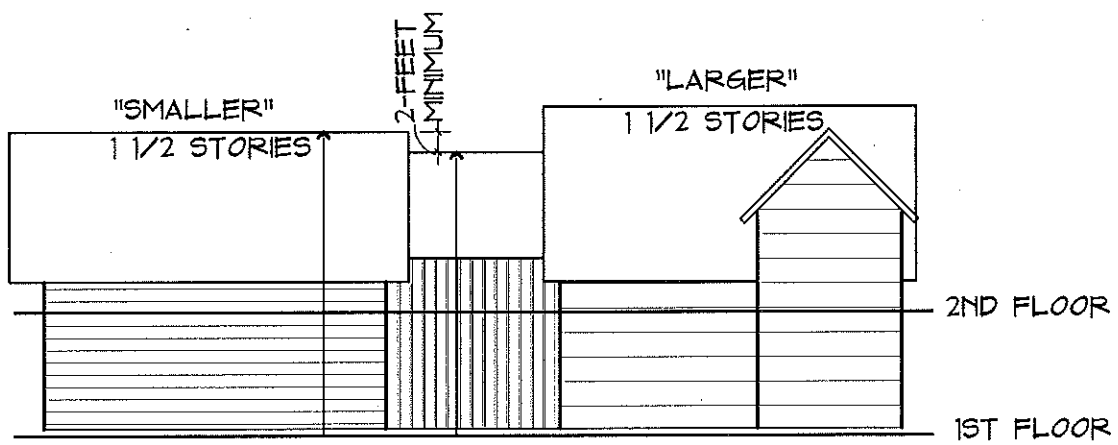


DIAGRAM 2 - CONNECTOR
ALLOWED CURRENTLY UNDER 80A



MEMORANDUM

TO: Town Council

FROM: Julia Puester, AICP, Senior Planner

DATE: March 4, 2014 for meeting of March 11, 2014

SUBJECT: Policy 36 Temporary Structures- First Reading

The Planning Commission and Staff continue to identify sections within the Development Code which result in outcomes which are not in the character of Town or need updating to reflect current development standards. The purpose of this memo is to identify modifications regarding Temporary Structures (Policy 36) in the Development Code to address some of these insufficiencies. Temporary structures in place longer than 3 days (not associated with a special event) are classified as a Class C development which is reviewed by the Planning Commission.

The existing Temporary Structures policy is rarely used in its existing form. For example, the Breckenridge Ski Resort sprung structure building and Beaver Run Resort summer event tent are regularly occurring development permits which have been approved year after year and do not meet the policy, hence requiring variances and/or development agreements. Therefore, the Planning Commission is recommending modifications to the policy that would address what is needed to meet common occurrences in town to avoid having to process variances and development agreements on small and temporary structures.

Primary changes to the Policy include:

- Prohibiting temporary structures (not associated with special events) within the Conservation District.
- Allowing a temporary structure to remain in place for up to 3 years (rather than 2 years).
- Allowing uses currently prohibited including office, retail, industrial or commercial uses.
- Allowing for temporary structures on a property without having to obtain a building permit to replace the existing use on site.
- Moving “construction trailers” from the Policy 36 Temporary Structures to Policy 29 Construction Activities.

Staff has attached the proposed policy for first reading as recommended by the Planning Commission attached in ~~strike~~ and **bold** and will be available at the meeting for any questions that Council may have.

1 **FOR WORKSESSION/FIRST READING – MAR. 11**

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 2014

9
10 AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE
11 TOWN CODE CONCERNING TEMPORARY STRUCTURES

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

15
16 Section 1. Item C of the definition of “Class C Development” in Section 9-1-5 of the
17 Breckenridge Town Code is amended to read as follows:

18
19 C. Temporary structures ~~and uses greater than three (3) days in duration~~ **to be used**
for longer than three (3) days.

20
21 Section 2. Item H of the definition of “Class D - Minor Development” in Section 9-1-5 of
22 the Breckenridge Town Code is amended to read as follows:

23
24 H. Temporary structures ~~or events of three (3) days or less in duration~~ **to be used for**
three (3) days or less.

25
26 Section 3. The definition of “Temporary Structure” in Section 9-1-5 of the Breckenridge
Town Code is amended to read as follows:

TEMPORARY STRUCTURE: ~~A structure other than a vendor cart or construction trailer, intended to be utilized for a specified period of time of not less than four (4) days nor more than two (2) years that is not intended as a permanent structure, and does not provide a permanent foundation or underground utilities.~~ **A structure, other than a vendor cart, construction trailer, or seasonal noncommercial greenhouse, that is not designed as a permanent structure, but is instead designed to be utilized only for a specified and limited period of time of not more than three (3) years.**

27
28 Section 4. Policy 9-1-19-36A of the Breckenridge Town Code, entitled “Policy 36
29 (Absolute) Temporary Structures,” is amended to read as follows:
30

1 9-1-19-36A: POLICY 36 (ABSOLUTE) TEMPORARY STRUCTURES:
2

3 **A. The placement of temporary structures within the Conservation District**
4 **is prohibited.**

5 **B. The placement of temporary structures within the town outside of the**
6 **Conservation District is strongly discouraged, but may be permitted subject to**
7 **compliance with all applicable absolute and relative policies of this Code.**

8 ~~Temporary Structures Or Uses: Temporary structures as defined in section 9-1-5~~
9 ~~of this chapter are subject to the following conditions:~~

10 ~~(1) Temporary structures shall only be utilized to replace an existing structure being~~
11 ~~demolished on site while a new, permanent structure on the same site is being~~
12 ~~constructed.~~

13 ~~(2) The temporary structure shall have no greater floor area than the structure it is~~
14 ~~temporarily replacing.~~

15 ~~(3) The temporary structure shall not be placed on site until a building permit has been~~
16 ~~issued for the new structure, and shall be removed once a certificate of occupancy for~~
17 ~~the new structure has been issued.~~

18 ~~(4) The holder of the development permit for a temporary structure shall provide a~~
19 ~~monetary guarantee to the town, in a form acceptable to the town attorney, ensuring~~
20 ~~the complete removal of the structure, site cleanup, and site revegetation, once a~~
21 ~~certificate of occupancy for the new structure has been issued. In addition, the holder~~
22 ~~of the development permit shall enter into an agreement with the town authorizing the~~
23 ~~town to take possession of the temporary structure and to dispose of the structure,~~
24 ~~without the town being accountable for any damages for the loss or destruction of the~~
25 ~~structure, if the permit holder fails to remove the structure within a reasonable period~~
26 ~~of time after a certificate of occupancy for the new structure has been issued.~~

27 ~~B. Other Permitted Temporary Structures: Subsection A of this section does not prohibit~~
28 ~~temporary tents, air structures, or other similar temporary structures that are not~~
29 ~~designed and intended for office, retail, industrial or commercial uses, and such~~
30 ~~temporary structures may be approved subject to all other relevant development code~~
31 ~~policies.~~

32 ~~C. Temporary Construction Trailers: Temporary construction trailers may be utilized for~~
33 ~~storage or office uses during the construction of a project within the town. The~~
34 ~~construction trailer's location, size and general design shall be disclosed to the town~~
35 ~~as a component of the construction staging plan as required by section 9-1-19-29A,~~
36 ~~"Policy 29 (Absolute) Construction Activities", of this chapter. Construction trailers~~
37 ~~shall not be placed on site prior to the issuance of a building permit and shall be~~
38 ~~removed upon issuance of a certificate of occupancy.~~

39 ~~DC. Seasonal Noncommercial Greenhouses: Seasonal noncommercial greenhouses may~~

1 be allowed when they meet the following criteria subject to the following conditions:

- 2 (1) A seasonal noncommercial greenhouse may be erected and operated only from May 1
3 to July 1 of the same year. Not later than July 2, the seasonal noncommercial
4 greenhouse (including frame) shall be completely removed from its location;
- 5 (2) A seasonal noncommercial greenhouse shall not exceed five hundred (500) square
6 feet in size;
- 7 **(3) A seasonal noncommercial greenhouse shall be located in the rear or side yard**
8 **insofar as practical.**
- 9 (4) A seasonal noncommercial greenhouse shall not be placed on a permanent
10 foundation;
- 11 (5) A seasonal noncommercial greenhouse shall be constructed of materials which, taken
12 as a whole, give the appearance of a unified and coordinated design;
- 13 (6) A seasonal noncommercial greenhouse shall be maintained at all times in a neat and
14 orderly condition;
- 15 (7) All materials related to the operation of a seasonal noncommercial greenhouse shall
16 be stored within the greenhouse. The outdoor storage of such materials is prohibited;
17 and
- 18 (8) If a seasonal noncommercial greenhouse is located on land normally used for required
19 off street parking, the greenhouse shall not occupy more than two (2) parking spaces.

20
21 A seasonal noncommercial greenhouse authorized by a permit issued under this
22 policy ~~shall~~ **does** not count as density or mass.

23
24 The director ~~of the department of community development~~ shall not collect an
25 application fee in connection with a class D development permit application to
26 construct a seasonal noncommercial greenhouse which is submitted by the owner of a
27 single-family residential structure.

28 **D. The holder of the development permit for a temporary structure shall provide a**
29 **monetary guarantee to the town, in a form acceptable to the town attorney,**
30 **ensuring the complete removal of the structure, site cleanup, and site**
31 **revegetation, once a certificate of occupancy for the new structure has been**
32 **issued. In addition, the holder of the development permit shall enter into an**
33 **agreement with the town authorizing the town to take possession of the**
34 **temporary structure and to dispose of the structure, without the town being**
35 **accountable for any damages for the loss or destruction of the structure, if the**
36 **permit holder fails to remove the structure within a reasonable period of time**
37 **after a certificate of occupancy for the new structure has been issued.**

38

1 ATTEST:

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Helen Cospolich
Town Clerk

Memorandum

TO: TOWN COUNCIL
FROM: Dale Stein, Assistant Town Engineer
DATE: March 5, 2014
RE: Public Projects Update

Skate park

Team Pain, the firm chosen to design the new skate park, presented their design on March 5th to the public for feedback. Based on the public feedback received, the design will be modified over the next couple weeks. Team Pain will then prepare a cost estimate to construct the new park. Demolition of the existing skate park is being discussed and will be scheduled to occur in the spring, with construction of the new park to begin as weather permits. The estimated completion date of the new skate park is mid-August of this year.

Kingdom Park Multi-Pitch

Proposals for converting the natural grass field to artificial turf were received on March 7th. Staff is currently reviewing the proposals and will select the preferred contractor to design / build the field. The schedule for completing the project will be determined once the contractor is selected.

North Main Street Pocket Park

Staff is currently working on the design of the pocket park on Main Street and will present the park concept to Town Council at the work session on March 11th.

South Main Street Improvements

The construction drawings for the 2014 improvements to the Main Street between Adams Ave. and S. Park Ave. have been completed and recently advertised for bids. Bids for the project are scheduled to be received on March 14th. Staff will update Town Council on March 25th the results of the bid opening.

Lincoln Heated Sidewalk

The bid documents are being completed by Staff for the heated sidewalk on Lincoln Ave. east of Main Street. The project is scheduled to advertise for bids within the next week.

Town Hall Renovation

Staff will provide verbal update.

Riverwalk Center Phase 1 Audio / Video

The project is on schedule with the completion of the installation of the two stage screens (see back screen photo below), the video projector (photo below), and the surround sound speakers, as well as the venting for the projector. The month of March is being dedicated to the stage floor repairs and a thorough 'high up' clean. The stage resurfacing will be done in stages over the next two months, and was met with enthusiastic approval by the RWC Users. Shade

installation is on schedule for mid April, and completion is expected by May 1. The backstage (and the upstairs office areas) will be getting new flooring under the regular budget for maintenance. Taking into account the current calendar for the RWC's winter season, construction work is working around existing events and activities. Currently the project is on budget.



New Riverwalk Center stage screen and projector



Arts District Campus Build Out

Interior construction continues at the Arts District with rough-ins and concrete slabs. The “Throne” sculpture, one of our signature site finishes at the corner of Washington and Ridge Street, is also nearing completion.



Artist Chaz della Porta assembles the Throne.



The vertical element of the sculpture is visible from Main Street, attracting visitors up into the Arts District.

Breckenridge Grand Vacations Community Center

Work continues on the historic rehabilitation project including partition wall framing, rough-in electrical, rough-in plumbing, HVAC installation, interior foundation walls, and refinishing of stair railings. The demolition of the existing garage and excavation for the new movie concessions addition is scheduled for later this month.

Staff is also working to coordinate a Public Forum to be held in April. The Forum is intended to provide information on the rehabilitation project and allow comments from the public.



Existing Stair Railing in 1909 (left)

HVAC supply duct work in 1921 vaulted ceiling and underground HVAC supply duct work in 1909 basement level (below).



MEMO

TO: Mayor & Town Council
FROM: Tim Gagen, Town Manager
DATE: March 6, 2014
SUBJECT: Committee Reports for 3-11-2014 Council Packet

Police Advisory Committee **March 5, 2014** **Chief Haynes**

The Police Advisory Committee (PAC) held its bimonthly meeting on March 5, 2014. The Chief and PAC members discussed the following:

- **Town Council Update:** Chief Haynes reported on current community topics. She asked members to educate themselves on the conversation around a second water plant, as well as water conservation. The group had a brief discussion on the need for a second water plant. The Roundabout Sculpture proposals were discussed.
- **Marijuana:** Officer Allen reported that the Department does not yet know the full impacts of retail marijuana on crime and driving incidents. To date there has been little impact on calls for service. Chief Haynes stated that there have been more overdoses and incidents of odd behavior due to the effects of marijuana use. Committee members raised several questions about the safety of cash only marijuana sales, tax compliance of retail shops, and e-cigarette usage.
- **Staffing & Recruiting:** Recently one open police officer position was temporarily re-assigned as a CSO position, leaving two police officer openings. There are currently two police officer applicants with conditional offers. The two applicants are close to completing the hiring process. Chief Haynes explained that the Department’s second in command position will be re-posted this week. We expect to conduct a hiring assessment for this position in April.
- **Parking:** Officer Collver answered questions from the committee regarding ticketing on Main Street, vehicle counts being conducted in Town parking lots, and the effectiveness of the LPR (license plate reader). With the addition of another CSO position the community service division is planning to provide increased assistance to patrol officers by handling cold calls and accidents. The group discussed the F Lot parking structure process, as well as the current RRC Parking & Transit Survey.
- **Investigations:** A couple of complex investigations are on-going; once completed, results will be shared with the committee.
- **Liquor Licensing:** Officer Allen provided an update on Liquor Code violations and licensing. At the last meeting of the Liquor Licensing Authority a license renewal was denied. The group discussed violations and enforcement issues. At the next meeting, Chief Haynes will provide statistics on liquor violations.
- **Traffic:** Chief Haynes discussed traffic counts from December 2013 and January 2014. The group was encouraged to utilize the CDOT website to view information.

Summit Stage Advisory Board **February 26, 2014** **James Phelps**

Old Business- New Summit Stage Advisory Board Members were introduced. Steve Swanson was reappointed and will remain as Lower Blue Representative, Erin Gigliello & Larry Nelson (new members) will represent the Upper Blue Basin. Terms are for two years. The Summit Stage Summer Schedule will begin on Monday, April 21. The service plan will be nearly identical to last summer with a restore of a several early morning mainline times. The slight changes are cost neutral and will provide service for early morning commuters. Winter Service plan will resume on Nov. 23rd, 2014. Street Media, who has been contracted to operate the Exterior Bus Advertising program, reported that they are working closely with new clients and expect that new advertising will be going into place very soon.

Mass Transit Tax receipts for the year 2013 were up at 9.85% (over 2012) or Total \$7,940,799.00 Additionally, 2013 operating expenses are projected to be under or \$337,000.00 below 2013 budget. Reduced service levels, lower labor costs, and deferred bus purchases contributed to the cost savings.

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

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

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



MEMORANDUM

To: Mayor and Town Council
From: Shannon Haynes, Chief of Police
Date: March 3, 2014
Subject: 2014 Emergency Planning Exercise

Each year the Summit County Incident Management Team hosts an emergency planning exercise to assess the readiness of responders during a large emergency. The 2014 exercise will assess our ability to effectively respond to an escalating wildfire which will begin in a forested and non-accessible area of the county and move steadily towards Breckenridge. The fire will be wind-driven and will move steadily up the valley towards Breckenridge and Blue River. The smoke and spot fires will create the need for evacuations in select areas. The exercise, which will include a mass casualty event, is designed to stress all aspects of the Summit County Public Safety and Public Health systems.

The role of elected officials in this type of event has been detailed in the Town of Breckenridge Emergency Operations Annex, located on the Town website under Emergency Preparedness. The annex details the Roles and Responsibilities of Mayor/Town Council, as well as Town staff. Briefly, Council responsibilities include:

- Town Council members are required to respond to the Breckenridge Emergency Operations Center (150 Valley Brook Street) when requested by the Town Manager.
- Approval and commitment of resources and funds for disaster or emergency purposes; as well as the re-appropriation or reallocation of current budget or reserve dollars for emergency expenditures.
- The Mayor/Town Manager, in the event of a major emergency or disaster, shall ensure that a copy of a declaration of disaster/emergency is filed with the Town Clerk and forwarded to the Summit County Board of County Commissioners.
- Issuance of official orders regarding population protection or temporary social restrictions, such as fire restrictions, evacuation orders, and establishment of curfews.

A tabletop exercise will be held on Friday, March 21st from 8:00am to 12:00pm at the Frisco Senior Center. Participation in the table top will allow elected officials a chance to raise questions regarding response and recovery activities; and to better understand the complicated nature of an emergency event. The table top is designed to serve as a primer for the full scale event.

We would like available Council members to attend the table top exercise on Friday, March 21st to observe and ask questions. We are working with the Summit County Emergency Manager, Joel Cochran, to plan a useful and interactive morning for elected officials. In addition, we may schedule a brief follow up meeting so any additional questions can be addressed.

As a reminder, FEMA strongly recommends that elected officials complete online training on the National Incident Management System (NIMS) and the Incident Command System (ICS). Recommended trainings include:

- IS-100.b – (ICS 100) Introduction to Incident Command System
- IS-700.a – National Incident Management System (NIMS), An introduction

Both online training sessions can be located at: <http://www.fema.gov/training>

I will be available at the Tuesday, March 11th Council meeting to answer any questions you may have.



MEMORANDUM

TO: Town Council
FROM: Open Space Staff
DATE: March 5, 2014 (for March 11, 2014 meeting)
SUBJECT: USFS Referral- Ski Area Resort Master Plan Addendum

Attached, please find a draft letter for Council review pertaining to U.S. Forest Service (USFS) scoping notice for Breckenridge Ski Area's (BSR) proposed Master Development Plan Addendum. BSR project details and the scoping notice are available on the [USFS website](#).

The content of the attached draft was derived from BOSAC's February 17, 2014 discussion of the proposal, which was also attended by BSR representative Jeff Zimmerman.

Please review the attached referral letter, drafted for Mayor's Warner's signature, and provide any necessary edits or additions necessary to submit the letter by the March 12, 2014 comment period deadline.

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



*****DRAFT*****DRAFT*****DRAFT*****

March 12, 2014

Scott Fitzwilliams, Forest Supervisor
c/o Roger Poirier, Project Leader
U.S. Forest Service
120 Midland Avenue, Suite 140
Glenwood Springs, CO 81601

Dear Mr. Fitzwilliams:

Thank you for the opportunity to comment on the scoping notice for the Breckenridge Ski Resort (BSR) 2013 Master Development Plan (MDP) Addendum, dated February 4, 2014. The Town of Breckenridge appreciates the opportunity to comment on BSR's proposal. We understand that this is the initial scoping comment period, and that there will be additional opportunities to comment on a draft EIS document to be prepared by the U.S. Forest Service (USFS). We also appreciate BSR and USFS staff attending recent Breckenridge Town Council and BOSAC meetings to better describe the proposal in detail.

In general, the Town of Breckenridge supports BSR's goals to expand year-round recreational offerings on the ski area pursuant to the Ski Area Recreational Opportunity Enhancement Act of 2011. The use and expansion of existing on-mountain infrastructure to provide safe, secure nature-based recreational activities for visitors is generally consistent with the Town's recreational amenity and visitor experience goals.

However, we have identified several areas of concern that need to be more thoroughly vetted in the planning process and draft EIS document. Those issues are identified in the following bullets:

- Surface drainage from Peak 8 into the existing Boreas Creek inlets and Upper Cucumber Gulch continues to be a keen concern and high priority for the Town. BSR is responsible for enhancing drainage and ski slope revegetation efforts in an effort to reduce sediment loads in Cucumber Gulch Preserve via the 60" culvert. The additional infrastructure included in this proposal underscores the need to install and effectively maintain sediment traps to reduce sediment transport into the protected wetlands of Cucumber Gulch. We respectfully request the USFS review this issue in detail so that our long-term land and wetland protection efforts are consistent across jurisdictions.
- The revegetation element of the proposal is intriguing, but short on details. The Town's wetland consultants have consistently recommended improving native vegetation on the ski area (e.g. ski runs) in order to promote groundwater infiltration, minimize runoff volumes and peak flows, reduce sediment transport, and support joint BSR/Town downstream wetland protection efforts. We strongly urge BSR and

the USFS to better articulate and execute native revegetation efforts across the ski area. To be truly effective, any on-mountain revegetation efforts will need to successfully promote native grass and plant growth while not relying heavily on chemical fertilizers and herbicides, both of which negatively affect wetland health and are forbidden in the downstream Cucumber Gulch Preserve. Applying fertilizers and herbicides on areas that drain into the 60” culvert will affect water chemistry, vegetative growth, amphibian viability, and overall wetland protection efforts in Cucumber Gulch Preserve. We request that the USFS and BSR cooperatively develop a coherent, benchmarked plan to maximize native ground cover revegetation while minimizing the use of fertilizers and herbicides to support downstream wetland health.

- Recently, BSR submitted to Town staff a draft base area master plan for the portions of the ski area **not** on National Forest. The addition of more on-mountain infrastructure proposed by BSR emphasizes the need for an integrated base area plan that provides clear direction for the future management of crowd control, special event management, and infrastructure needs. We request that the USFS and BSR work cooperatively with the Town to ensure that the Town-focused base area plan submitted by BSR supports the infrastructure plans located on the National Forest, and vice versa. These two planning efforts should enhance inter-jurisdictional, cooperative management.
- As has been previously discussed with both BSR and USFS staffs, extending the Peaks Trail through the ski area to bypass Cucumber Gulch and the pedestrian-only Peak 8 base area would improve trail connectivity between Town and this popular trail. In fact, as part of the Town Council approval to operate the Breckconnect gondola during summer months, BSR agreed to pursue the NEPA analysis and construction of this route. The proposed MDP Addendum is the opportunity to complete this vision, and we appreciate BSR including the concept in the proposal. We request that BSR and the USFS thoroughly evaluate the proposed Peaks Trail extension via this NEPA process, even though portions of the proposed trail would occur outside of the ski area permit boundary.
- Wildlife impacts resulting from the proposed additional infrastructure warrants thorough evaluation during this NEPA process. Currently, summers provide somewhat of a respite for wildlife because on-mountain activities are limited geographically. New facilities and programming on the ski area, as outlined in this proposal, will inevitably encroach on wildlife habitat and could affect wildlife viability. Specifically, the proposed Ore Bucket canopy tour and the Sawmill zip line have the potential to add new roads, cables, and towers in areas that currently receive limited summer recreational use. Restricting forest cover loss and summer recreational activities to the already-impacted interior portions of the ski area, rather than the periphery, warrants evaluation by the USFS wildlife staff.
- The visual impacts of the various proposed zip lines, ropes courses, canopy tours, and observation towers should be assessed to determine whether the associated infrastructure will affect Breckenridge’s visual backdrop. Protecting scenic vistas and discouraging ridgeline development is an important Town planning and open space goal. We request the USFS thoroughly evaluate the visual impacts of the proposed

recreational infrastructure in the MDP Addendum and minimize the visibility of those facilities from Town and the surrounding areas.

- The proposed goal to realign upper Four O'clock Road to make the route more sustainable is laudable, but highly constrained topographically. In general, the Town supports on-mountain travel system improvements that enhance recreational and administrative use, improve hydrologic function, improve vegetative regeneration, and limit sediment transport. We recommend that the USFS thoroughly evaluate this realignment proposal with these goals in mind.
- The proposal to increase on-mountain off-highway vehicle tours could negatively impact the area wildlife habitat and the 'forest experience' sought by summer visitors. We request the USFS evaluate this portion of the BSR proposal with the goals of minimizing impacts to the recreational experience of other, non-motorized visitors, ensuring the routes used for the off-highway vehicle tours can sustainably support the proposed use, and minimizing the above-timberline tours in an effort to preserve functional alpine wildlife habitat.
- As a gold-level Bicycle Friendly Community, the Town of Breckenridge generally supports improvements to the existing mountain biking and hiking trail network on the Breckenridge Ski Area. Expansion of the trail system, with a goal of providing lift-served access to intermediate flow trails, would significantly improve the Breckenridge's broader bike-related offerings. Although additional details are needed regarding the design and construction of the proposed "15 miles of new and rerouted mountain bike trails," the Town endorses this overall goal. However, we recommend the USFS specifically evaluate two specific concerns regarding this proposal: 1) Ensuring that necessary improvements and upgrades to the *existing* trail network are planned and implemented, and 2) Establishing and designating access routes for uphill, non lift-served users. These issues warrant additional evaluation in the draft EIS document to ensure that the existing trails are brought up to an IMBA standard and quality, and that long-term, safe, non lift-served users are accommodated on the Breckenridge Ski Resort.

Thank you for the opportunity to comment on this proposal. If you have any questions or concerns regarding this letter, please contact Scott Reid at 970-547-3155 or ScottR@townofbreckenridge.com.

Sincerely,

John Warner, Mayor



MEMORANDUM

TO: Town Council

FROM: Julia Puester, AICP, Senior Planner

DATE: March 5, 2014 for meeting of March 11, 2014

SUBJECT: Condo-Hotel Code Amendment Worksession

Staff is proposing to address two general issues with the condo-hotel policy. One has to do with existing condo-hotel structures and requests received by the Planning Department to convert unused space. The second issue has to do with applications for new condo-hotels, and their ongoing ability to comply with the current definition which entitles them to a form of density bonus multiplier.

After the Planning Commission retreat in October 2013 which included visiting various condo-hotels and several worksessions on the topic in November and January, the Planning Commission requested staff to proceed to Town Council with their recommendations on revisions to the condo-hotel policy. The recommendations included 1) allowing existing condo-hotels to convert unused amenity spaces on a case by case basis for rental deed restricted units via a Development Agreement along with an energy audit on existing buildings, and 2) new condo-hotels have a minimum of 50 units and a covenant must be recorded against the property that requires if a condo-hotel is converted to a use which would require more density, the property owner would be required to first make up the difference of the bonus density received under condo-hotel multiplier, by transferring development rights (TDRs).

The Town Council held a worksession February 11th on changes recommended by the Planning Commission to the condo-hotel policy. The Council was in agreement with the Planning Commission recommendations with one change-the removal of the 50 unit minimum to allow for flexibility in market conditions and directed staff to draft an ordinance for first reading.

Subsequent to the Council worksession, a majority of Planning Commissioners at their March 4th meeting, under *Other Matters*, indicated a desire to revisit the condo-hotel issue. They voiced concern that new condo-hotel units would not remain as rentable “hot bed” units and therefore, should not receive a higher density multiplier (or density allowance). The density equivalent for condo-hotels is 1,200 square feet per unit, while condominiums are 900 square feet per unit (see conversion table below). Commissioners indicated that the Town has no ability to enforce or require that individual condo-hotel units be rented and cannot ensure that the 24 hour desk/phone service/food service

required in the existing condo-hotel provisions are actually complied with. Because of this, a few of the Commissioners voiced their preference that perhaps the condo-hotel category be entirely removed from the code and/or revised to allow only timeshares, which appear to be the only types of units other than hotels that consistently operate as hot beds. The Commissioners wanted to forward this concern to the Town Council. This concept and associated code amendments have not been fully vetted with the Commission.

In light of this new concern raised by the Commission, staff opted to remove the condo-hotel policy first reading from the agenda this evening and return with a worksession to get Council direction on this issue raised by the Commission.

- Does the Council support removing the condo-hotel use classification from the Town of Breckenridge Development Code or alternatively to modify the condo-hotel use classification to “timeshare”?
- Would the Council support the removal of the higher density multiplier?

Staff would like to get Town Council direction on the questions above, along with any other input the Council has on the proposed policy amendments. Based on Council direction, we will either return with draft revisions to the applicable policies for a first reading or return with an additional worksession on the policy.

Other Related Condo-Hotel Development Code Sections **(For Reference)**

9-1-5 Definition:

Condominium/Hotel: A multi-unit structure in which units may be individually owned and which provides on the site of the development a centralized management structure incorporating the following features: a) a twenty four (24) hour front desk check in operation, b) a central phone system to individual rental units, c) meeting rooms or recreation and leisure amenities, and d) food services.

Policy 3(Absolute) Density:

CONVERSION TABLE - RESIDENTIAL USES

Within conservation district:		
Single-family		1 unit = 1,600 square feet
Duplexes and townhouses		1 unit = 1,600 square feet
Condominiums or boarding houses		1 unit = 900 square feet
All other residential (including bed and breakfast, apartment, and condo hotel)		1 unit = 1,200 square feet
Outside conservation district:		
Single-family		1 unit = unlimited square footage*
Duplex included within site plan level development permit with net density of less than 5 units per acre		1 unit = unlimited square footage*
Duplex included within site plan level development permit with net density of 5 units per acre or more		1 unit = 1,600 square feet
Townhouse		1 unit = 1,600 square feet
Hotel, inn, motel, bed and breakfast		1 unit = 1,380 square feet
Condominiums or boarding houses		1 unit = 900 square feet
All other residential (including apartment and condo hotel)		1 unit = 1,200 square feet

Policy 24 (Absolute) Social Community:

A. Meeting And Conference Rooms: All condominium/hotels, hotels, lodges, and inns shall provide meeting areas or recreation and leisure amenities, at a ratio of one square foot of meeting or recreation and leisure amenity area for every thirty five (35) square feet of gross dwelling area.

Policy 24 (Relative) Social Community:

3x(0/+2) Meeting And Conference Rooms Or Recreation And Leisure Amenities: The provision of meeting and conference facilities or recreation and leisure amenities, over and above that required in subsection A of this section is strongly encouraged. (These facilities, when provided over and above that required in subsection A of this section, shall not be assessed against the density and mass of a project when the facilities are legally guaranteed to remain as meeting and conference facilities or recreation and leisure amenities, and they do not equal more than 200 percent of the area required under subsection A of this section.)

Memorandum

To: Town Council

From: Jennifer Cram, Manager Breckenridge Arts District and Public Art Program

Date: 03/04/2014

Re: Public Art Commission Recommendation for the Roundabout Sculpture

Thanks to the generous support of the Town Council, the Breckenridge Public Art Commission (BPAC) has the opportunity to commission an original sculpture for the roundabout at the north entry to town. The sculpture selected will be coordinated with the proposed improvements to the medians and roundabout coming into town from the north.

Public Art Commission Recommendation

The BPAC has followed the typical process for commissioning a new piece of art for the permanent collection as outlined in the Art in Public Places Master Plan. The process was thorough and fair. The Commission has participated in an open dialogue and vetted each of the finalist's proposals with regard to the Creative Intent. Public comment has been considered. As the advisory Commission to the Council on public art, the Commission takes their role seriously. The Commission is confident about the process and recommends "Syncline" by Albert Paley for the roundabout. Further details about how the Commission arrived at this recommendation is noted below. The Commission hopes that the Council will support their recommendation. Members of the Commission and staff will be present during the worksession to listen to the Council's input and answer any questions.

Process

The Breckenridge Public Art Commission (BPAC) worked for several months to draft a Call to Artists for the roundabout sculpture. In October of 2013 a Call to Artists was posted. The BPAC received 260 responses. The Commission was pleased with the quantity of responses and the quality of work submitted by each sculptor. The Commission reviewed applications in December of 2013 and narrowed the 260 applications to four finalists. Applications included 6 images of past works. The Commission based their selection of 4 finalists on the applicants whose work best fit the goals of the project. They also considered those applicants that in addition to exhibiting artistic excellence, clearly demonstrated that they had experience in executing a large scale public sculpture.

Finalists were then asked to prepare proposals and maquettes for presentation to the BPAC and staff on February 19, 2014, with a public reception to follow that evening. The Creative Intent or goals for the project that each sculptor was asked to consider is noted below.

Creative Intent

- Sense of arrival to the Town
- One of a kind piece of art work
- Timeless and iconic statement piece

- Simple and recognizable at a speed of about 15 MPH
- Sensitive to the space
- Meet all Colorado Department of Transportation guidelines

Deliberations and Recommendation

On March 5th, 2014, the Commission met during their regularly scheduled meeting to discuss each of the sculptor's proposals, review public comment and make a recommendation for one proposal to the Council for the roundabout. The Commission dedicated the majority of the scheduled meeting for discussion and then some.

A summary of the public comments was discussed first. All agreed that the public reception was a better format for receiving input. All agreed that the majority of the public resonated towards the representational piece of the skier by Seth Vandable. Public input is very important, however the emotional response of the public does not take into consideration all of the details of the project that the Commission must consider for a piece to be the best fit for the Creative Intent, location and overall growth of the collection.

The Commission then summarized each proposal. After a summary of the proposals, the Commission was able to eliminate one proposal for a more focused discussion. The process continued by having each Commissioner speak about how they believed the remaining proposals fit the Creative Intent and other items relevant to the public art collection. The open dialogue amongst the nine Commissioners helped them to go through a process of elimination and ultimately a final recommendation.

"Syncline" by Albert Paley was recommended for many reasons. Because of its monumental scale, it will create a sense of arrival to the town. Although non-representational, the Commission believes the sculpture does capture the essence of the mountains and that of movement associated with all the recreational activities that we enjoy as a community. It is truly a one-of-a kind sculpture that has interest from all directions and is the one proposal that will be visible from all directions. It is detailed, but the scale of the detail will allow traffic to easily see the piece and move around it. Beyond meeting all of the Creative Intent better than the other proposals, the Commission discussed the growth and variety of the collection. This sculpture by Albert Paley will put the Breckenridge Public Art collection on the map. People will travel to see an Albert Paley. Breckenridge will be the first community in Colorado to have an Albert Paley. The Commission also recognized the evolution of Breckenridge as an arts destination and a community that embraces and celebrates art and culture. Last, but certainly not least the Commission agreed that Paley Studios is a very reputable studio and the Commission has confidence that the proposal can be executed on time and within budget. The Commission understands that the sculpture may not be immediately embraced by the community at first glance and agreed that public education should be a priority to help the public understand contemporary art in general and Albert Paley as a world renowned sculptor. The Commission would also like to discuss the final color for the sculpture and believes that the weathering steel, as proposed by Paley or a combination of weathering steel and blue might be more aesthetically pleasing.

A summary of each proposal and images are included in this memo for reference.

Summary of Community Comments - Public Reception and Engage Breckenridge

The public reception on February 19th was well attended with 82 members from the public participating. The format allowed participants to see all four maquettes in 360 degrees and to have the Commission provide commentary on each of the proposals from what they had learned from each sculptor earlier that day. The atmosphere was very positive and all those that participated were happy to have an opportunity to see the four proposals and give input.

There were 3 questions that were asked during the public reception along with room for additional comments. The 3 questions are noted below.

- #1. Which proposal best represents the character of Breckenridge?
- #2. Which sculpture would you be most proud of as the North entry to Breckenridge?
- #3. What proposal is your favorite?

Photos of the 4 finalist's proposals and the same questions were also posted on Engage Breckenridge, where the public had until March 4th to give additional comment. A summary of the public comments received is provided below.

Public Reception 2/19/2014

The majority of responses circled D (Vandable) for all 3 questions. The next most popular was A (Paley) for all 3 questions as well. Overall, this told the Commission that the public felt the more representational sculpture was most accessible.

A= Albert Paley "Syncline" (Question #1=7, #2=13 and #3=11)

B= Ilan Averbuch "Dreams and Gravity"

C= Denny Haskew "Mountain Embrace"

D= Seth Vandable "Summit Gold" (Question #1=66, #2=56 and #3=57)

Engage Breckenridge

The same 3 questions were asked. One photo of each proposal was also included. Please note that photos were labeled differently.

A= Ilan Averbuch "Dreams and Gravity"

B= Seth Vandable "Summit Gold" (Question #1=107, #2=100 and #3=94)

C= Denny Haskew "Mountain Embrace" (Question #1=12, #2=16 and #3=19)

D= "Albert Paley "Syncline"

The majority of responses voted for B (Vandable) with C (Haskew) being the next most popular. The overall atmosphere for comments was rather negative. This is common for an on-line forum because information is limited. The Commission took away two distinct and contrary messages from the comments. Some felt that a more dynamic abstract sculpture was best for Breckenridge, while others felt that a more representational sculpture was appropriate. Overall, the majority of comments wanted to see a more representational sculpture that embodied more of Breckenridge's history and wildlife.

Proposal Summaries

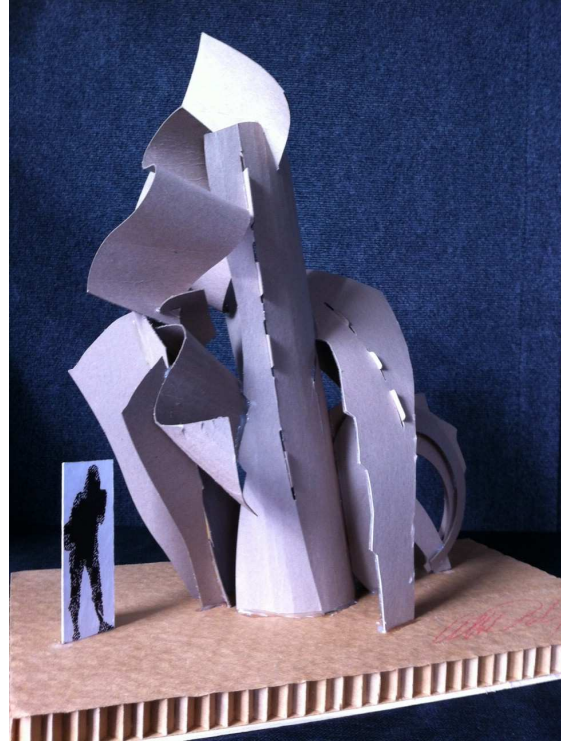
"Syncline" by Albert Paley – The Paley proposal is an abstract, monumental, three-dimensional fabricated steel sculpture. Paley's proposal considers the long site views and vehicular traffic, thus proposing a piece that is large in scale for visual prominence. The proposed sculpture is 24-feet in height, 18-feet in width and has a depth of 9- feet. It is the largest sculpture proposed. The sculpture gestures inwards towards the center of the roundabout and engages the proposed landscaping. The proposed sculpture is non-representational, taking cues from the environment and site. The emphasis of the forms is focused on the concave and convex forms of the mountainous topography and the motion of winter sports. The silhouettes of these forms are "S" shaped arabesques reflecting balance and counter balance like skiing. The title "Syncline" is appropriate for the sculpture as it refers to the geology of the terrain, the dominance of the natural environment and the

experience of skiing/snowboarding. Paley has proposed two finishes, the blue as shown in the photo and weathering steel which develops a rich dark brown patina.

“Dreams and Gravity” by Ilan Averbuch – The Averbuch proposal is both abstract and representational. The proposed sculpture would be fabricated of hammered copper, stone and steel. The proposed scale is 20-feet in height, 22-feet in width and a depth of 6-feet. The two heads represent the yin and yang of things coming and going, of male and female, etc. Averbuch wishes to convey a sense of transformation with the balancing of the two heads on either side of the stone. Averbuch is known for his sculptures that magically balance large stone forms. The balanced stone is accentuated by the two heads appearing to grow out of the ground. He proposes to allow the copper to oxidize naturally so that it will get a green patina over time.

“Mountain Embrace” by Denny Haskew – The Haskew proposal is an abstract sculpture using a monolithic stone. The stone is a Jurassic layer of sandstone from Colorado celebrating the earth’s natural beauty so prevalent in our area. The proposed stone has a sister. The two stones will be placed next to one another to create depth. The use of gold leaf represents a gold vein to pay tribute to Breckenridge’s mining history. A 12-inch stainless steel ribbon threaded between the two stones introduces motion and can be interpreted as music, film and the exhilaration of winter sports or cycling paths. The proposed sculpture is 20-feet in height, approximately 4-feet in width and approximately 3-feet deep. Haskew proposed a sculpture that was simple, yet intricate to be easily understood.

“Summit Gold” by Seth Venable – The Venable proposal is a representational bronze sculpture of a skier with a gold pan on the backside of a setting sun. Venable’s goal was to capture the energy, spirit and charm of Breckenridge. Venable’s proposal looks as though it was sculpted from stone and wind to explore the relationship between nature and ourselves as caretakers. The proposed sculpture is 16-feet tall with the overall width yet to be determined. The skier is proposed to be larger than human scale. This is the smallest sculpture proposed. There are intricate details proposed such as the setting sun that is a gold pan on the opposite side that references the timelessness of the sun and our history. The overall shape of the sculpture and details is that of the treble clef to reference the arts. The patina proposed is a natural bronze to emphasize the connection with nature.



“ Syncline ” by Albert Paley



“ Dreams and Gravity ” by Ilan Averbuch



“ Mountain Embrace ” by Denny Haskew



“ Summit Gold” by Seth Vandable

Memo

To: Town Council Members
Cc: Tim Gagen, Town Manager and Rick Holman, Assistant Town Manager
From: Michael Barney, Director of Recreation
Date: 3/5/2014
Re: *North Main Street Park Development*

The purpose of this memo is to summarize the stakeholder feedback that contributed to the current proposed design of the North Main Street Park site and to introduce that design to you for consideration.

In creating the design for a new park to be located along North Main Street, input was sought from the public, Town Council, the Recreation Advisory Committee, local businesses, and Town staff. Public input specifically was gained through an open house held on August 14th, which was attended by approximately 40 individuals, and through Engage Breckenridge, where 89 individuals provided input on the design of the park. The goal of creating a dynamic space which offered active recreation opportunities as well as scenic passive opportunities was established. The inclusion of a gathering plaza that could be used to host programming and events, the opportunity to display public art, the ability for the park to be utilized throughout the entire year, and the creation of a spatial connection to the Edwin Carter Museum were also identified as goals for the new park. Staff also put a high priority on creating a design that was within the allocated budget, and all of these goals were achieved with the current design.

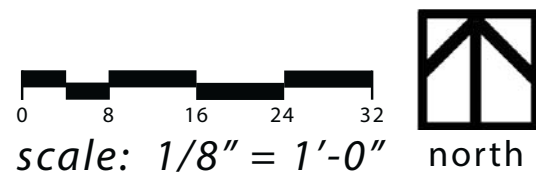
The proposed design (attached), will be presented at the work session on March 11th. I look forward to hearing your thoughts and feedback.



Concept Plan

NORTH MAIN STREET PARK

Town of Breckenridge March 5, 2014



play features



stone & furnishings

Park Materials & Furnishings Character

NORTH MAIN STREET PARK
Town of Breckenridge March 5, 2014

