



**BRECKENRIDGE TOWN COUNCIL REGULAR MEETING**

Tuesday, April 28, 2015; 7:30 PM

Town Hall Auditorium

<b>I</b>	<b>CALL TO ORDER, ROLL CALL</b>	
<b>II</b>	<b>APPROVAL OF MINUTES - APRIL 14, 2015</b>	<b>3</b>
<b>III</b>	<b>APPROVAL OF AGENDA</b>	
<b>IV</b>	<b>COMMUNICATIONS TO COUNCIL</b>	
	A. CITIZEN'S COMMENT - (NON-AGENDA ITEMS ONLY: 3-MINUTE LIMIT PLEASE)	
	B. BRECKENRIDGE SKI RESORT UPDATE	
	C. GARY ROBERTS SERVICE RECOGNITION	
<b>V</b>	<b>CONTINUED BUSINESS</b>	
	A. SECOND READING OF COUNCIL BILLS, SERIES 2015 - PUBLIC HEARINGS	
	1. COUNCIL BILL NO. 10, SERIES 2015 - AN ORDINANCE AMENDING CHAPTER 3 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE CONCERNING OFF STREET PARKING	<b>6</b>
<b>VI</b>	<b>NEW BUSINESS</b>	
	A. FIRST READING OF COUNCIL BILLS, SERIES 2015 - PUBLIC HEARINGS	
	1. COUNCIL BILL NO. 9, SERIES 2015 - AN ORDINANCE REPEALING AND READOPTING WITH CHANGES CHAPTER 13 OF TITLE 4 OF THE BRECKENRIDGE TOWN CODE CONCERNING SPECIAL EVENTS AND MAKING MISCELLANEOUS AMENDMENTS TO THE BRECKENRIDGE TOWN CODE RELATED THERETO	<b>14</b>
	2. COUNCIL BILL NO. 11, SERIES 2015 - AN ORDINANCE AMENDING CHAPTER 14 OF TITLE 4 OF THE BRECKENRIDGE TOWN CODE , KNOWN AS THE "TOWN OF BRECKENRIDGE 2013 MARIJUANA LICENSING ORDINANCE," BY EXTENDING THE LIMITATION ON THE SUBMISSION OF NEW LICENSE APPLICATIONS UNTIL JULY 1, 2016	<b>39</b>
	3. COUNCIL BILL NO. 12, SERIES 2015 - AN ORDINANCE APPROVING A CABLE TELEVISION FRANCHISE AGREEMENT BETWEEN THE TOWN OF BRECKENRIDGE, COLORADO AND COMCAST OF COLORADO V, LLC	<b>42</b>
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	2. RESOLUTION NO. 8, SERIES 2015 - RESOLUTION AUTHORIZING EXECUTION OF DOCUMENTS BY TOWN OF BRECKENRIDGE FOR PINWOOD 2	<b>166</b>
	C. OTHER	
	1. MOTION TO CANCEL MAY 12, 2015 REGULAR TOWN COUNCIL MEETING	<b>171</b>
<b>VII</b>	<b>PLANNING MATTERS</b>	
	A. CALL-UP PUBLIC HEARING: LINCOLN PARK MASTER PLAN	<b>172</b>

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

- B. TOWN PROJECT - PUBLIC HEARING: SUMMIT RECYCLING CENTER 203
- C. PLANNING COMMISSION DECISIONS 224
- D. PLANNING COMMISSION REPORT (MS. WOLFE)

**VIII REPORT OF TOWN MANAGER AND STAFF**

**IX REPORT OF MAYOR AND COUNCILMEMBERS**

- A. CAST/MMC (MAYOR WARNER)
- B. BRECKENRIDGE OPEN SPACE ADVISORY COMMITTEE (MS. GIGLIELLO)
- C. BRECKENRIDGE TOURISM OFFICE (MS. WOLFE)
- D. BRECKENRIDGE HERITAGE ALLIANCE (MS. LAWRENCE)
- E. WATER TASK FORCE (MR. GALLAGHER)
- F. BRECKENRIDGE CREATIVE ARTS (MR. BURKE)

**X OTHER MATTERS**

**XI SCHEDULED MEETINGS 233**

**XII ADJOURNMENT**

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

**CALL TO ORDER, ROLL CALL**

Mayor Warner called the meeting of April 14, 2015 to order at 7:39 pm. The following members answered roll call: Mr. Gallagher, Mr. Brewer, Ms. Lawrence, Mr. Burke, Ms. Gigliello and Mayor Warner. Ms. Wolfe was absent.

**APPROVAL OF MINUTES - MARCH 24, 2015**

With no changes or corrections to the meeting minutes of March 24, 2015, Mayor Warner declared they would stand approved as submitted.

**APPROVAL OF AGENDA**

Mr. Gagen stated the only change to the agenda was a request to add an Executive Session for negotiations at the end of the meeting.

**COMMUNICATIONS TO COUNCIL**

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

Mayor Warner opened Citizen's Comment.

Mr. Michael Bromley, President of Chimney Ridge Homeowners Association, stated he wrote a letter to Council hoping to explain the need to heat steps and driveways for the health and welfare of the owners and renters of those units. He further stated that while it's okay for the Town to have exterior heated spaces in public places, it's a negative point situation for businesses and residents, and this Homeowners Association oversees an 18-unit complex. In particular, the lower level driveways on Primrose Path have snow and ice buildups, and so do the hillside steps, which creates a safety issue for the Association. Mr. Bromley further stated the Association can't afford to make a contribution to affordable housing at this time to offset the negative points. Mayor Warner stated the Town follows sustainable energy practices, and Ms. Puester stated there are other options to get positive points on a project. Council agreed they would like to see the other options and the cost of those options to the applicant. Mayor Warner referred this issue back to staff to address.

There were no additional comments and Citizen's Comment was closed.

B. Breckenridge Tourism Office Update

Ms. Lucy Kay, Director of the Breckenridge Tourism Office, stated overall occupancy in March was over 71%, which was less than last year and two years ago. Winter occupancy was up 4% over last year, with an ADR increase of 10%, equating to a \$8-\$12 million dollar gross revenue increase. She also stated summer kickoff includes the Spartan Race June 12-14, with more than 3,000 people expected. Also, Kingdom Days will take place June 19-21 and the Bicycle Tour of Colorado will take place the following week.

**CONTINUED BUSINESS**

A. Second Reading of Council Bills, Series 2015 - Public Hearings - NONE

**NEW BUSINESS**

A. First Reading of Council Bills, Series 2015 - Public Hearings

1. COUNCIL BILL NO. 10, SERIES 2015 - AN ORDINANCE AMENDING CHAPTER 3 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE CONCERNING OFF STREET PARKING

Mayor Warner read the title into the minutes. Mr. Berry stated this ordinance would update the Town's off-street parking requirements and staff recommends its approval on first reading.

Mayor Warner opened a public hearing for first reading. There were no comments and the public hearing was closed.

Mr. Brewer moved to approve COUNCIL BILL NO. 10, SERIES 2015 - AN ORDINANCE AMENDING CHAPTER 3 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE CONCERNING OFF STREET PARKING. Mr. Gallagher made the second.

The motion passed 6 - 0. Ms. Wolfe was absent.

B. Resolutions, Series 2015 - NONE

C. Other

1. BOSAC Appointments

Mr. Gagen explained the process in that appointment is no longer done by secret ballot, and five Council members must approve the appointment for it to stand. Mr. Scott Reid, Open Space Manager, stated the three incumbents are Craig Campbell, Jeff Cospolich, and Jeff Carlson. He further explained Mr. Cospolich is the Chair and Mr. Carlson is the Vice-Chair, and Matt Powers and Donald Craig also applied. Mr. Burke asked if we can ask staff for their feedback on appointments, and Mr. Reid stated staff can work with whoever is appointed by Council. Mr. Gagen further stated longevity is good, but may not lead to new ideas. Mr. Burke stated he would support Mr. Cospolich and Mr. Carlson. Council agreed

on those two appointments.

Ms. Lawrence asked if Mr. Craig still does any work with the Ski Area, and the answer was no. Mr. Burke stated he also likes Mr. Campbell, and he noted that Mr. Powers had attended some meetings and this is the second time he has applied to BOSAC. Mr. Gallagher stated he didn't feel strongly about the other three. Mr. Gallagher asked what was currently missing on BOSAC right now, and Mr. Brewer answered he looks for a body that is diverse and can make good decisions. He further stated he supports Mr. Craig's application because he provides the historic perspective for this group. Ms. Lawrence stated Mr. Craig might be the most diverse person we can pick, but Mr. Powers is a realtor and that might be helpful also. Mr. Burke stated he wants the right fit and can't support Mr. Craig at this time. Mayor Warner stated he agreed with Mr. Burke.

After further discussion, Council agreed to support Mr. Campbell for appointment to the third open seat.

Council appointed Mr. Carlson, Mr. Cospolich and Mr. Campbell to BOSAC by voice vote.

2. Town Council Committee Appointments

Mayor Warner stated he sent an email about committee assignments with a short explanation about the new assignments. Mr. Gagen stated the only position that has to be appointed officially is the Mayor Pro-Tem.

Mr. Gallagher moved to approve Mr. Burke as Mayor Pro Tem. Ms. Lawrence seconded the motion.

The motion passed 6 - 0. Ms. Wolfe was absent.

**PLANNING MATTERS**

A. Planning Commission Decisions

Mr. Berry stated in light of Council's discussion at the worksession, the development code allows no need to call up if a settlement with the applicant has been reached. He further stated that at this point, we are not in the position to propose a settlement. Mr. David O'Neil, Lincoln Park Developer, stated Gretchen and Ian Hamilton led the charge on a petition, and they have now agreed on a different phasing of the neighborhood. He further stated he hopes Council will modify the agreement instead of holding a public hearing at the next meeting. Mr. Ian Hamilton, resident of Bridge Street, stated the petition involves the logical phasing of the Master Plan.

Mr. Brewer and Ms. Lawrence asked to be recused on this matter due to personal interest in purchasing units in Lincoln Park and a potential conflict of interest.

Mayor Warner clarified the process for moving forward and stated he feels a public hearing would allow all interested parties to respond to this project and the proposed changes. Mr. Gallagher stated he agreed with holding a public hearing. He further stated he would like to meet with Mr. Mosher about the background of the project. Ms. Gigliello agreed she would also like to learn more.

Mr. Burke moved to call up Lincoln Park Master Plan from the consent agenda for a public hearing at the April 28, 2015 Town Council Meeting. Mr. Gallagher made the second. The motion passed 4-0. Ms. Wolfe was absent. Ms. Lawrence and Mr. Brewer recused themselves.

The remainder of the Planning Commission consent agenda was approved.

B. Planning Commission Report (Mr. Brewer)

Mr. Brewer stated he had nothing to report other than what was sent to Council as a summary from the meeting.

**REPORT OF TOWN MANAGER AND STAFF**

Mr. Gagen stated the Comcast franchise agreement and other documents related to the agreement are scheduled for the next Council meeting.

**REPORT OF MAYOR AND COUNCILMEMBERS**

A. Cast/MMC (Mayor Warner)

Mr. Burke stated he attended in MMC meeting in Mayor Warner's absence. He stated there was nothing more to present on the bike path developments, and Mr. Gagen explained the HUD AMI has gone down to below 0 as a five-year rolling average statewide. Mr. Gagen also explained how this has happened in the past, and the last time the Town chose to set it at 0, but other communities will have to do a policy decision relative to how they handle this. Mr. Burke also stated CMC will be adding two more Bachelor degrees and applications for next year are up 40%.

B. Breckenridge Open Space Advisory Committee (Ms. Lawrence)

Ms. Lawrence stated there was no report.



- C. Breckenridge Tourism Office (Ms. Wolfe)  
Ms. Wolfe was not present for an update.
- D. Breckenridge Heritage Alliance (Ms. Gigliello)  
Ms. Gigliello stated the BHA discussed the Wakefield project, the Highline Railroad Park, Outdoor artifacts for Prospector Park, the Milne Park upgrades, capital improvements, and benchmarking visits to historical sites, among other things. Mr. Burke suggested the Town has artifacts in the community that can be used as historic art pieces. Mr. Holman stated the Town has asked staff to work with the BHA on the artifacts and the appropriateness for the park.
- E. Water Task Force (Mr. Gallagher)  
Mr. Gallagher stated the last meeting with the Water Board was a success, and they reached an agreement that works for most of the parties involved. He also stated conversations are still going on but he is hopeful by the next meeting the County and the Sanitation District will drop their objections and agree with the proposal. Council thanked Mr. Gallagher for his work with the Water Task Force.
- F. Breckenridge Creative Arts (Mr. Gallagher and Ms. Wolfe)  
Mr. Gallagher stated yesterday's meeting was devoted to upcoming events, including the International Arts Festival at the end of the summer. He also stated BCA is getting good media exposure and the board has prepared a memo with the new pricing structure with respect to using the Riverwalk Center, and will be seeking Town Council feedback on the new rates at the next meeting. Mr. Gallagher stated the Town has the ability to underwrite the cost as needed and will need to make a decision about how to proceed. Also, Mr. Brewer and Ms. Gigliello will be putting into action these decisions as part of the Town's Grant Committee. Ms. Gigliello asked if she should be conscious of the grant recipients who are clients for her business, and consensus from Council was that she could recuse herself for those specific situations.

**OTHER MATTERS**

Mayor Warner stated he had a call from the Mountain Pact trying to raise awareness about climate change and global warming, and they would like the Town of Breckenridge to sign a letter to the Department of the Interior supporting a recommendation to close loopholes for coal extraction. He further stated he sent this information to Council. Mr. Brewer stated he supports signing the letter.

Ms. Lawrence asked if Council was going to address what was going on with the Summit Historical Society, and Mr. Gagen stated the Town is the innocent party in that deal. Ms. Lawrence also stated someone contacted her inquiring about rental housing, and she believes it would be positive PR to advertise the upcoming rental units the Town is constructing. She also asked about an ad in the newspaper for new Town employees that offers a free golf pass. Mr. Gagen stated that benefit is not extended to Council in the same way due to a decision by the past Council. However, Council can change that by majority vote. Council approved the golf benefit by voice vote.

**SCHEDULED MEETINGS**

**ADJOURNMENT**

With no further business to discuss, the meeting adjourned at 10:51 pm. Submitted by Helen Cospolich, Municipal Services Manager.

ATTEST:

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John Warner, Mayor



**MEMORANDUM**

**TO: Town Council**

**FROM: Julia Puester, AICP, Senior Planner**

**DATE: April 15, 2015 for April 28, 2015 Council Meeting**

**SUBJECT: Off Street Parking (Chapter 3) Second Reading**

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The second reading of the ordinance amending Chapter 3 of the Town's Development Code regarding Off Street Parking is scheduled for your meeting on April 28th. There are no changes proposed to ordinance from first reading.

Staff will be available at the meeting if there are any concerns or comments from the Council.

1 ***FOR WORKSESSION/SECOND READING – APR. 28***

2  
3 Additions To The Current Breckenridge Town Code Are  
4 Indicated By **Bold + Double Underline**; Deletions By ~~Strikeout~~  
5

6 ***NO CHANGE FROM FIRST READING***

7  
8 COUNCIL BILL NO. 10

9  
10 Series 2015

11  
12 AN ORDINANCE AMENDING CHAPTER 3 OF TITLE 9 OF THE BRECKENRIDGE  
13 TOWN CODE CONCERNING OFF STREET PARKING  
14

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

17  
18 Section 1. Section 9-3-3 of the Breckenridge Town Code is amended to read as follows:  
19

20 9-3-3: AUTHORITY:

21  
22 This chapter is adopted pursuant to: ~~one or more of the following authorities:~~ a) the  
23 ~~authority granted to home rule municipalities in Colorado by article XX of the Colorado~~  
24 ~~constitution; b) the powers contained in the Breckenridge town charter; c) the powers~~  
25 ~~contained in parts 2 and 3 of article 23 of title 31, Colorado Revised Statutes; and d) the~~  
26 ~~Colorado land use enabling act, article 20 of title 29, Colorado Revised Statutes~~ **(a) the**  
27 **local government land use control enabling act, article 20 of title 29, Colorado**  
28 **Revised Statutes; (b) part 3 of article 23 of title 31, Colorado Revised Statutes**  
29 **(concerning municipal zoning powers); (c) section 31-15-103, Colorado Revised**  
30 **Statutes (concerning municipal police powers); (d) section 31-15-401, Colorado**  
31 **Revised Statutes (concerning municipal police powers); (e) the authority granted to**  
32 **home rule municipalities by article XX of the Colorado constitution; and (f) the**  
33 **powers contained in the Breckenridge town charter.** The provisions of this chapter  
34 shall not be construed to limit the power of the town to utilize other methods authorized  
35 under state law or pursuant to other local government powers to accomplish the purposes  
36 set forth herein, either in substitution or in conjunction with this chapter  
37

38 Section 2. Section 9-3-6 of the Breckenridge Town Code is amended by the addition of  
39 the following definition:  
40

41 **STAGING**  
**AREA:**

**A section of a driveway designed to allow vehicles to safely stop**  
**before entering the roadway. This is typically the first twenty feet**  
**of a driveway.**

1           Section 3. The “Note” located immediately following the table in Section 9-3-8(B) of the  
2 Breckenridge Town Code is amended to read as follows:

3           Note: The required number of parking spaces shall be rounded up to the nearest whole  
4 number. **Required residential spaces shall be rounded up based on the unit count if**  
5 **parking spaces are assigned.**

6           Section 4. Section 9-3-8(C) of the Breckenridge Town Code is amended to read as  
7 follows:

8  
9           C. Compliance With Parking Requirement Mandatory: No new development **or change of**  
10 **use** for which off street parking is required under this chapter may be approved unless  
11 compliance with the requirements of this section is achieved.

12           Section 5. Section 9-3-9 of the Breckenridge Town Code is amended to read as follows:

13  
14 **9-3-9: DESIGN STANDARDS FOR OFF STREET PARKING FACILITIES:**

15  
16 Each off street parking facility constructed pursuant to the requirements of this chapter  
17 shall conform to the following design standards:

- 18  
19           A. Compliance With Codes Required: The design and structural quality of all off street  
20 parking spaces and facilities required by this chapter shall conform to: 1) all applicable  
21 standards contained in this chapter; 2) the development code; 3) the Breckenridge street  
22 standards ordinance; and 4) other applicable town ordinances. Drainage facilities shall be  
23 constructed pursuant to the Breckenridge storm drainage **standards ordinance** and the  
24 town's water quality and sediment transport control ordinance.
- 25           B. Width Of Parking Aisles: The following minimum aisle widths shall apply to all off street  
26 parking facilities within the town:

Angle Of Parking Stall	Aisle Width
45°	12'
60°	16'
75°	22'
90°	24'

27  
28           C. Size Of Parking Stalls: The following minimum sizes shall apply to all off street parking  
29 stalls within the town:

	Length	Width	<b><u>Height</u></b>

30° _ 90° parking	18'	9'	<u>n/a</u>
Parallel parking	25'	8'	<u>n/a</u>
Enclosed parking	18'	9'	<u>n/a</u>
<b><u>Stacked Parking</u></b>	<b><u>18'</u></b>	<b><u>9'</u></b>	<b><u>6'5"</u></b>

D. Ingress And Egress: The ingress and egress provisions for off street parking spaces shall conform to the following standards:

1. Location Of Driveways: No portion of any entrance or exit driveway leading from or to a public street, highway or alley for the purpose of off street parking shall be closer than ~~thirty five feet (35')~~ **thirty feet (30')** to an intersection point of two (2) or more public streets, alleys or highways. The intersection point shall be determined by the crossing of two (2) rights of way, curb lines, or two (2) physically established edges of the public street, alley or highway, whichever is most restrictive.
2. Width Of Driveways: The width of driveway connecting an off street parking area with a public street, alley, or highway shall not exceed ~~thirty feet (30')~~ **twenty feet (20')** at its intersection with the property line, curb line, right of way or the physically established edge of the public street, alley or highway, whichever is most restrictive.

**Private driveways shall comply with the standards in the table below.**

**Private Driveway Standards**

<u>Design Element</u>	<u>1 &amp; 2 Family Residential</u>	<u>Multi- family Residential</u>	<u>Commercial</u>
<u>Minimum Width- (ft.)</u>	<u>12</u>	<u>12</u>	<u>12</u>
<u>Maximum Width-including flares (ft.)</u>	<u>20</u>	<u>25</u>	<u>35</u>
<u>Maximum Slope (%)</u>	<u>8</u>	<u>8</u>	<u>8</u>
<u>Maximum Slope for first 20 feet from Road Edge (%)</u>	<u>4</u>	<u>4</u>	<u>4</u>

3. Frequency Of Driveways: No two (2) driveways connecting a public street, alley or highway to an off street parking area shall be within thirty feet (30') of one another at their intersections with the property line, curb line, right of way line or the physically established edge of the public street, alley or highway, whichever is most restrictive. **One driveway shall be allowed per lot unless otherwise permitted by the Town Engineer. Circular driveways consisting of two curb cuts onto a street are not permitted. Existing circular driveways or multiple driveways shall be reduced to one driveway curb cut as a condition of the issuance of a development permit for future development of the subject property in accordance with the following schedule: a)**

1 within the conservation district, whenever a class B minor development permit or  
2 higher is issued; and b) outside the conservation district, whenever a class D major  
3 development permit or higher is issued.

- 4 4. Angle Of Intersection: All driveways serving off street parking facilities shall intersect  
5 public streets and alleyways and other driveways at a ninety degree (90°) angle.
- 6 5. Accessibility: All off street parking stalls shall have legal, unobstructed access to a public  
7 street or alleyway.
- 8 6. Backing On To Public Street: Excepting single-family and duplex parking areas all other  
9 parking stalls shall be so designed, located and served by maneuvering lanes or spaces  
10 that their use will under no circumstances require a backing movement onto any public  
11 street.
- 12 7. Visual Clearance: All driveways leading to and from off street spaces that intersect  
13 possible pedestrianways shall be visually unobstructed for such distances as not to  
14 imperil pedestrians or interfere with vehicular traffic on the street.
- 15 ~~8. Traffic: The location and number of driveways must be so arranged that they will reduce~~  
16 ~~the possibilities of traffic hazards as much as possible.~~
- 17
- 18 E. Lighting: All parking facilities containing ten (10) or more parking spaces shall have an  
19 average surface illumination of not less than 0.2 foot-candle or more than 1.5 foot-  
20 candles. All lights shall be designed, located and arranged so as to reflect the light away  
21 from adjacent streets and structures.
- 22 F. Grades: The sustained surface grades for parking areas shall not exceed a minimum of  
23 one-half percent (0.5%) or a maximum of four percent (4%). Driveway grades shall not  
24 exceed a maximum grade of eight percent (8%). The first five feet of an driveway  
25 shall be graded to match the cross slope of the connecting street. For downhill sites,  
26 a twenty foot (20') staging area with a maximum grade of negative four percent  
27 (-4%) is required (Attachment B). For uphill sites, a twenty foot (20') staging area  
28 with the first five (5') feet matching the cross slope of the connecting road and the  
29 next fifteen feet (15') at a maximum grade of four percent (4%) is required  
30 (Attachment C).
- 31 G. Heated Driveways: Driveway heat systems shall terminate at the property line. If  
32 the system extends into the public right of way, a separate zone must be created for  
33 that portion of the system and accommodations must be made to reduce the impacts  
34 of the melted drainage at the snow/melted interface. A revocable License Agreement  
35 acceptable in form and substance to the Town Attorney must be approved by the  
36 Town and executed prior to the issuance of a Certificate of Occupancy.
- 37 GH. Drainage: All off street parking facilities shall be graded for proper drainage so that all  
38 surface discharge is channeled to a natural or improved drainageway without causing  
39 nuisance or damage to other properties or the improvements thereon.

1  
2 **HI.** Location: The location of all required off street parking facilities shall be as follows:  
3

4 1. Residential Uses: For residential uses, except residences located in buildings adjacent to  
5 the “Riverwalk” as defined in section 9-1-19-37A, “Policy 37 (Absolute) Special Areas”,  
6 of this title, all required off street parking spaces shall be provided on the same property  
7 as the residential units they are intended to serve.

8 2. Nonresidential Uses: Off street parking for nonresidential uses shall be placed totally on  
9 the same parcel of land as the use, **unless a fee in lieu is paid to the Town as provided**  
10 **in Section 9-3-12.**

11 3. Parking Space Location: No parking space shall be located closer than five feet (5') from  
12 any public street, public alley, public pedestrianway or public right of way.

13 **IJ.** Landscaping: A minimum of twenty five (25) square feet per parking stall shall be  
14 utilized for landscaping purposes. Any parking facility containing more than two (2) side by  
15 side loading spaces shall contain at least two hundred (200) square feet of landscaped area  
16 raised a minimum of six inches (6”) above the parking surface for each two (2) side by side  
17 loading spaces. Landscaping shall be maintained according to the standards contained in the  
18 development code.

19  
20 **JK.** Snow Stacking: All off street surface parking facilities shall provide a minimum of sixty  
21 (60) square feet of snow stacking space for each parking space. Such space shall be so  
22 located as to reasonably facilitate the snowplowing process. The snow stacking space shall be  
23 landscaped in such a manner as not to interfere with the snow stacking process.

24  
25 **KL.** Signs: The placement of appropriate signs is encouraged according to the provisions of  
26 the Breckenridge sign ordinance. Parking lot and circulation directional signs must be  
27 approved pursuant to the town's sign ordinance. All signs relating to off street parking  
28 facilities shall be reviewed according to the development code.

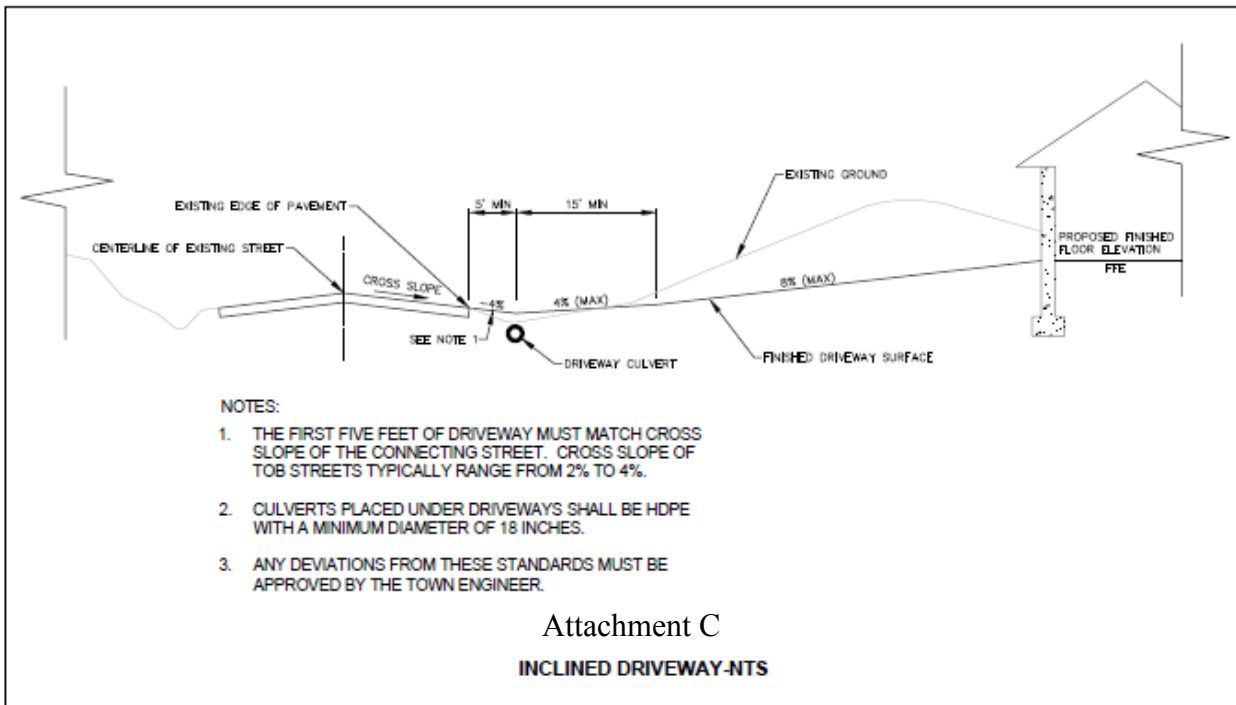
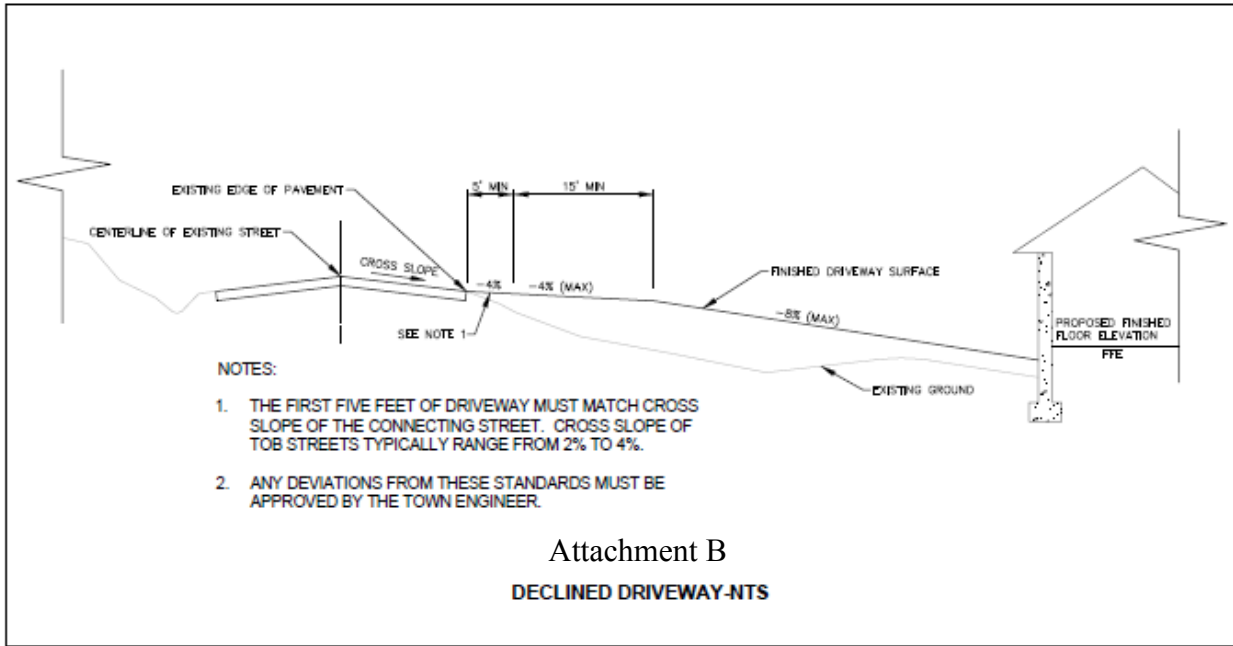
29  
30 **LM.** Paving:

31  
32 1. Off Street Parking Spaces: All off street parking spaces shall be paved.

33 2. Driveways: All driveways shall be paved; provided, however, that any unpaved driveway  
34 which exists at the time of the adoption of this subsection **LM** shall be paved as a  
35 condition of the issuance of a development permit for future development of the subject  
36 property in accordance with the following schedule: a) within the conservation district,  
37 whenever a class B minor development permit or higher is issued; and b) outside the  
38 conservation district, whenever a class D major development permit or higher is issued.

39 Section 6. The following two drawings are to be inserted into Chapter 3 of Title 9 of the  
40 Breckenridge Town Code following the map of the “Parking Service Area” (Attachment A):  
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Section 7. Except as specifically amended by this ordinance, the Breckenridge Town Code, and the various secondary codes adopted by reference therein, shall continue in full force and effect.

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

Section 9. 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 \_\_\_\_\_, 2015. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the \_\_\_ day of \_\_\_\_\_, 2015, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

TOWN OF BRECKENRIDGE, a Colorado municipal corporation

By: \_\_\_\_\_  
John G. Warner, Mayor

ATTEST:

\_\_\_\_\_  
Helen Cospolich  
Town Clerk



## MEMO

*TO:* Town Council  
*FROM:* Director of Communications  
*DATE:* April 21 (*for April 28, 2015 meeting*)  
*RE:* Special Events Ordinance & Administrative Regulations  
*CC:* Breckenridge Events Committee Members

---

Thank you for your input and discussion regarding the Special Events ordinance and administrative regulations at the March 24, 2015 work session. Based on what we heard from the Council, the Breckenridge Events Committee (BEC) made various modifications.

In essence, the changes made include:

- Added flexibility and exemptions for film/photo shoots.
- Moved the no “longer than 5 days” into Standards For Issuance of Permit instead of under Denial for Permit to remove confusion.
- Added a new definition for freelance/commercial photographers/videographers (crew of three or under) for exemption.

Please note that the 45 day application time frame still applies; however, there is the provision for waiving if it has low impact on resources and the public.

### Key Elements of the Ordinance revisions:

- ✓ Simplification – provide the general overview of special events in the ordinance, and add Administrative Rules and Regulations that can evolve as the process and the level of events mature.
- ✓ Add the Breckenridge Events Committee as the oversight group.
- ✓ Remove reference to Events Manager as this position no longer exists.
- ✓ Refine and tighten up definition of special event, including the addition of the length of time for an event.
- ✓ Add in Photo/Film Shoots as an ‘Event’ so this process would include the application and review of these requests.
- ✓ Update the Outdoor Display of Merchandise regulations as it relates to special events.
- ✓ Clarify/rename the Special Events Business License so it is not confused with the Special Events Permit.

The Breckenridge Events Committee has been reviewing the process over the past few months, and presents the revised Special Events Ordinance and accompanying Administrative Rules and Regulations that follow for your consideration.

I will be available for questions, clarifications and look forward to receiving input on these revisions.

Thank you.

1 ***FOR WORKSESSION/FIRST READING - April 28, 2015***

2  
3 **Marked To Show Changes To the Draft Ordinance Reviewed**  
4 **At the March 24, 2015 Town Council Meeting**

5  
6 COUNCIL BILL NO. \_\_\_\_

7  
8 Series 2015

9  
10 AN ORDINANCE REPEALING AND READOPTING WITH CHANGES CHAPTER 13 OF  
11 TITLE 4 OF THE BRECKENRIDGE TOWN CODE CONCERNING SPECIAL EVENTS;  
12 AND MAKING MISCELLANEOUS AMENDMENTS TO THE BRECKENRIDGE TOWN  
13 CODE RELATED THERETO

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

17  
18 Section 1. Chapter 13 of Title 4 of the Breckenridge Town Code is repealed and  
19 readopted with changes to read as follows:

20  
21 Chapter 13  
22 SPECIAL EVENTS

- 23  
24 4-13-1: SHORT TITLE:  
25 4-13-2: PURPOSE:  
26 4-13-3: FINDINGS:  
27 4-13-4: DEFINITIONS:  
28 4-13-5: PERMIT REQUIRED:  
29 4-13-6: EXCEPTIONS:  
30 4-13-7: APPLICATION FOR PERMIT:  
31 4-13-8: FEES:  
32 4-13-9: INVESTIGATION OF APPLICATION:  
33 4-13-10: STANDARDS FOR ISSUANCE OF PERMIT:  
34 4-13-11: RELATIONSHIP TO OTHER TOWN ORDINANCES:  
35 4-13-12: DENIAL OF PERMIT:  
36 4-13-13: AUTHORITY TO IMPOSE CONDITIONS ON PERMIT:  
37 4-13-14: NONDISCRIMINATION; CONTENT NEUTRALITY:  
38 4-13-15: DECISION BY TOWN MANAGER:  
39 4-13-16: NOTICE OF DECISION:  
40 4-13-17: APPEAL OF DENIAL OR CONDITIONAL APPROVAL OF PERMIT:  
41 4-13-18: CONTENTS OF PERMIT:  
42 4-13-19: PERMIT NOT TRANSFERABLE:  
43 4-13-20: NOTICE OF ISSUANCE OF PERMIT:  
44 4-13-21: INSURANCE REQUIREMENT:

- 1 4-13-22: DUTIES OF PERMITTEE:
- 2 4-13-23: POSTING OF PERMIT:
- 3 4-13-24: SUSPENSION OR REVOCATION OF PERMIT:
- 4 4-13-25: PENALTIES; INJUNCTIVE RELIEF:
- 5 4-13-26: RULES AND REGULATIONS:

6  
7 4-13-1: SHORT TITLE:

8  
9 This chapter shall be known and may be cited as the TOWN OF BRECKENRIDGE SPECIAL  
10 EVENTS ORDINANCE.

11  
12 4-13-2: PURPOSE:

13  
14 The purpose of this chapter is to establish a procedure for permitting and regulating special  
15 events, as that term is defined in this chapter. It is not the intent of this chapter to regulate speech  
16 or other forms of conduct protected by either the first amendment to the United States  
17 constitution or by the Colorado constitution. The permitting process established by this chapter is  
18 intended to be content neutral and not subject matter based. This chapter is intended merely to  
19 establish a nondiscriminatory mechanism by which the town can control, through appropriate  
20 regulation, the holding of special events.

21  
22 4-13-3: FINDINGS:

23  
24 The town council hereby finds and determines as follows:

- 25  
26 A. The town of Breckenridge is authorized to regulate businesses operating within the town  
27 pursuant to section 2.2 of the Breckenridge town charter and section 31-15-501, Colorado  
28 Revised Statutes.
- 29  
30 B. Special events, as defined in this chapter, contribute to the economic, cultural, social, and  
environmental health and wellbeing of the community.
- 31  
32 C. Special events, however, create special regulatory problems and quality of life issues,  
33 including, but not limited to, the need for crowd control, sanitation, security, traffic management,  
parking, infrastructure, and desire to balance the quality and quantity of events.
- 34  
35 D. In enacting this chapter the town council is exercising its police power as granted by the  
36 town's charter, and the constitution and statutes of the state of Colorado, as well as its power to  
license and regulate business activities.

37 4-13-4: DEFINITIONS:

38  
39 As used in this chapter the following words have the following meanings, unless the context  
40 clearly requires otherwise:

41

1 APPLICANT: A person who has submitted an application for permit pursuant to this chapter.  
2  
3 APPLICATION: An application for permit submitted pursuant to this chapter.  
4  
5 DAY: A calendar day, unless otherwise indicated.  
6  
7 ENTERTAINMENT: Includes, but is not limited to, touring exhibitions, concerts, performances  
8 of dance, music, drama, art and comedy, parades, sporting exhibitions or contests, festivals, fairs,  
9 automotive displays, and performances of skill.  
10  
11 FILMING: The taking of motion pictures, the taking of still photography or the use and  
12 operation of television cameras or transmitting television equipment, including radio remotes and  
13 any preparatory activity associated therewith, and shall include events that include, but are not  
14 limited to, the making of feature or documentary films, television serials, webcasts, simulcasts or  
15 specials. The town manager shall provide in ~~Private, non-commercial filming and photography~~  
16 may be exempted from the permitting requirements of this chapter pursuant to the administrative  
17 rules and regulations adopted by the town manager pursuant to section 4-13-26 appropriate  
18 exemptions from the permitting requirements of this chapter for filming and photography  
19 activities not significantly affecting Town property and not requiring substantial Town services  
20 shall be exempt from the requirements of this chapter.  
21  
22 PERMIT: A permit issued by the town pursuant to this chapter.  
23  
24 PERMITTEE: The person to whom a permit has been issued pursuant to this chapter.  
25  
26 PERSON: Has the meaning provided in section 1-3-2 of this code.  
27  
28 SPECIAL EVENT OR EVENT: A planned or organized occurrence that:  
29  
30 (a) includes an expected gathering of 50 or more people if: (i) the primary purpose of the  
31 occurrence is entertainment; (ii) the public or a substantial portion of the public is invited to the  
32 occurrence, either by express invitation or by implication; and (iii) the occurrence is expected to  
33 have a visual, noise, or environmental impact, or to cause disruption of the normal routine of the  
34 community or the affected neighborhood; or  
35  
36 (b) involves filming.  
37  
38 TOWN: Has the meaning provided in section 1-3-2 of this code.  
39  
40 TOWN MANAGER: The Town Manager of the Town of Breckenridge, or his or her designee  
41 acting pursuant to section 1-7-2 of this code.  
42  
43 4-13-5: PERMIT REQUIRED:

1  
2 No person shall stage, hold, present, or conduct a special event within the town without a valid  
3 permit issued in accordance with this chapter.

4  
5 4-13-6: EXCEPTIONS:

6  
7 The requirements of this chapter shall not apply to:

8  
9 A. An indoor special event of any kind;

10 B. A special event held by the town;

11 C. An event held at Carter Park, Kingdom Park, or the town's multipurpose fields contracted  
12 through the recreation department and constituting "normal or regular" use of those town  
13 facilities; or

14 D. An event protected by either the first amendment to the United States constitution or by the  
15 Colorado constitution; provided, however, that a person staging, holding, presenting, or  
16 conducting such an event shall submit an application and obtain a permit pursuant to this chapter,  
17 but there shall be no fee required and the deadline for submission of an application as provided  
18 in subsection 4-13-7B of this chapter does not apply to such an application. The town manager  
19 may also modify any other requirement of this chapter with respect to such an application if  
20 necessary to comply with applicable law.

21 4-13-7: APPLICATION FOR PERMIT:

22  
23 A. A person seeking to obtain a permit shall file an application with the town manager. The  
24 form of the application shall be established by the town manager in administrative rules and  
25 regulations adopted pursuant to section 4-13-26.

26 B. An application for a special event permit shall be filed with the town manager not less than  
27 forty five (45) days nor more than three hundred sixty five (365) days before the special event is  
28 proposed to begin. The town manager may waive the minimum forty five (45) day filing period  
29 and accept an application filed within a shorter time period if, after due consideration of the date,  
30 time, place, and nature of the special event, the anticipated number of participants, and the town  
31 services required in connection with the special event, the town manager determines that  
32 sufficient time exists for the proper investigation and review of the application; that the waiver  
33 will not present a hazard to public health, safety or welfare; and that the waiver will not create a  
34 substantial burden on the town's staff or financial resources.

35 C. A permit issued pursuant to this chapter eliminates the need for a development permit to  
36 authorize the special event. However, an applicant may still be required to obtain a development  
37 permit depending on the size and scale of any temporary structures proposed to be used in  
38 connection with the special event. The need for a development permit will be determined by the  
39 town manager once the application has been received and reviewed.

1 D. An application for a special event permit shall contain such information as shall be  
2 established by the town manager in administrative rules and regulations adopted pursuant to  
3 section 4-13-26.

4 E. Applications shall be processed by the town manager in order of receipt.

5 4-13-8: FEES:  
6

7 A. When an application is filed an applicant shall pay to the town a nonrefundable application  
8 fee in such amount as shall be established by the town manager in administrative rules and  
9 regulations adopted pursuant to section 4-13-26.

10 B. If the application includes a request to use any town property or any town service in  
11 connection with the special event, then before the permit is issued the applicant shall pay to the  
12 town any required charges, fees, or deposits required by the town in connection with the use of  
13 the requested town property or the provision of the requested town service.

14 4-13-9: INVESTIGATION OF APPLICATION:  
15

16 A. Upon receipt of a properly completed application, together with all information required in  
17 connection therewith, and the payment of the application fee as required by section 4-13-8 of this  
18 chapter, the town manager shall transmit copies of the application to such persons, agencies, or  
19 departments as the Town Manager shall identify in administrative rules and regulations adopted  
20 pursuant to section 4-13-26.

21 B. Within thirty (30) days of receipt of a completed application those town departments and  
22 other referral agencies described in subsection A of this section shall provide the town manager  
23 with comments concerning the application. If an application is accepted by the town manager  
24 less than forty five (45) days before the proposed special event is to be held, the town  
25 departments and other referral agencies shall use their best efforts to provide the town manager  
26 with their comments in a timely manner so that the town manager will have the comments before  
27 making a decision on the application.

28 4-13-10: STANDARDS FOR ISSUANCE OF PERMIT:  
29

30 A. The town manager shall issue a permit when, from a consideration of the application and  
31 from such other information as may otherwise be obtained, the town manager determines that:

- 32 1. The application (including any required attachments and submissions) is complete and  
33 signed by the applicant;
- 34 2. The applicant has paid the application fee and any other fees required by section 4-13-8  
35 of this chapter;
- 36 3. The application does not contain a material falsehood or misrepresentation;
- 37 4. The application complies with all of the requirements of this chapter;
- 38 5. The applicant is legally competent to contract under Colorado law;

1 6. The applicant or the person on whose behalf the application is made has not previously  
2 damaged town property and failed to pay in full for such damage, and the applicant does  
3 not have other outstanding and unpaid debts to the town;

4 7. The duration of the event will not be longer than five (5) consecutive days, unless the  
5 town manager (and not the town manager's designee acting pursuant to section 1-7-2 of  
6 this code), after taking into account all relevant factors related to the event, determines  
7 that the proposed event may be longer;

8 ~~7.8.~~The proposed special event will not conflict with:

- 9 a. A special event for which a permit has previously been issued;
- 10 b. A town sponsored event;
- 11 c. An annual special event which is reasonably expected to be held again, but for which  
12 an application has yet to be submitted; or
- 13 d. An event protected by the first amendment to the United States constitution or by the  
14 Colorado constitution which due to its anticipated size, location, hours of operation,  
15 or other relevant factors, is reasonably expected to require such town services or  
16 personnel as to make the holding of the special event for which the application was  
17 submitted a potential risk to the public health, safety or welfare.

18 ~~8.9.~~The holding of the proposed special event will not cause significant disruption in the  
19 ability of the town to deliver or provide essential governmental services;

20 ~~9.10.~~ Adequate sanitation and other required health facilities are or will be made  
21 available at or sufficiently near to the proposed special event area(s);

22 ~~10.11.~~ Sufficient parking is available near the site of the proposed special event to  
23 accommodate the number of vehicles reasonably expected for the event, or an acceptable  
24 transportation and parking plan to provide adequate parking for the proposed special  
25 event has been submitted and approved by the town manager;

26 ~~11.12.~~ The proposed special event will not pose a danger to the public health, safety or  
27 welfare;

28 ~~12.13.~~ The proposed special event will positively impact the town culturally,  
29 economically, environmentally or socially.

30  
31 4-13-11: RELATIONSHIP TO OTHER TOWN ORDINANCES:

32  
33 Notwithstanding anything contained in this code to the contrary:

34  
35 A. A permit issued under this chapter is not a special events liquor license. If alcoholic  
36 beverages are to be served at the special event, the permittee must obtain the required permit or  
37 approval from the town clerk or the town of Breckenridge liquor licensing authority.

38 B. A permit issued under this chapter may authorize the permittee to exceed the maximum noise  
39 levels provided in title 5, chapter 8 of this code in connection with the holding of the special  
40 event for which the permit is issued; and the town manager may establish specific maximum  
41 noise levels for any such event. The town manager shall apply the standards set forth in  
42 subsection 5-8-12A of this code in connection with any request for permission to exceed the  
43 maximum noise levels provided in title 5, chapter 8 of this code.



1 C. A permit issued under this chapter shall be treated as a special event permit within the  
2 meaning of section 9-1-19-44A, "Policy 44 (Absolute) Radio Broadcasts", of the development  
3 code. No class D minor development permit shall be required to authorize any radio broadcast  
4 conducted as a special event.

5 D. Except as specifically provided in this section, in addition to a permit a permittee must obtain  
6 all other required town permits and approvals before holding the special event authorized by the  
7 permit, including, but not limited to, a development permit and building permit.

8 4-13-12: DENIAL OF PERMIT:  
9

10 A. The town manager shall deny an application for a special event permit if the town manager  
11 determines that:

- 12 1. The application conflicts with another event as described in subsection 4-13-10A8 of this  
13 chapter;
- 14 2. Information contained in the application, or supplemental information requested from the  
15 applicant, is found to be false in any material respect;
- 16 3. The application fails to meet any of the standards set forth in section 4-13-10 of this  
17 chapter;
- 18 4. The time, route, or size of the event will substantially interrupt the safe and orderly  
19 movement of traffic on or contiguous to the event site or route or will disrupt the use of a  
20 street or highway at a time when it is usually subject to heavy traffic congestion;
- 21 5. The location of the event will substantially interfere with any construction or  
22 maintenance work scheduled to take place upon or along the town streets or property;
- 23 ~~6. The duration of the event will be longer five (5) consecutive days, unless the Town~~  
24 ~~Manager (and not the Town Manager's designee acting pursuant to section 1-7-2 of this~~  
25 ~~code), determines that the proposed event may be of a longer duration. In making such~~  
26 ~~determination the Town Manager shall take into account all relevant factors related to the~~  
27 ~~proposed event;~~
- 28 ~~7.6.~~ The applicant has failed to pay costs, fees, or deposits for a previous special event permit  
29 within the preceding five (5) years; or the applicant has failed to pay the town for  
30 damages arising from a previous special event held by the applicant, regardless of when  
31 such event was held; or
- 32 ~~8.7.~~ The applicant has failed to abide by the requirements or conditions of previous special  
33 event permits within the preceding five (5) years.

34  
35 B. If an application is denied the application fee shall not be refunded.

36 4-13-13: AUTHORITY TO IMPOSE CONDITIONS ON PERMIT:  
37

38 The town manager shall have the authority to impose such reasonable terms and conditions on a  
39 permit as may be necessary to protect the public health, safety, and welfare, and to obtain  
40 compliance with the requirements of this chapter and applicable law.  
41

1 4-13-14: NONDISCRIMINATION; CONTENT NEUTRALITY:

2  
3 The town manager shall uniformly consider each application for a permit upon its merits, and  
4 shall not discriminate in granting or denying a permit under this chapter based upon race, creed,  
5 color, religion, national origin, ancestry, sex, age, veteran status, sexual orientation, or physical  
6 or mental disability. Further, the town manager shall be content neutral in reviewing an  
7 application, and shall not consider the subject matter of any type of speech proposed as part of  
8 the application.

9  
10 4-13-15: DECISION BY TOWN MANAGER:

11  
12 A. The town manager shall approve, deny or conditionally approve an application within forty  
13 (40) days of the receipt of the completed application unless, by written notice to the applicant,  
14 the decision period is extended for an additional ten (10) days; provided, however, that in any  
15 event the town manager shall render a decision on an application not less than forty eight (48)  
16 hours prior to the scheduled commencement of the special event which is the subject of the  
17 application.

18 B. If an application is denied, the town manager shall clearly set forth in writing the grounds for  
19 denial and, where feasible, shall propose measures to cure the defects that lead to the denial of  
20 the application. When the basis for denial is the prior receipt of a competing application for the  
21 same time and place, the town manager shall suggest an alternative time or place for the special  
22 event which is the subject of the application which was denied.

23 C. In the event an application is conditionally approved, the town manager shall clearly set forth  
24 in writing the conditions of approval.

25 4-13-16: NOTICE OF DECISION:

26  
27 The town manager shall notify the applicant of the town manager's decision on the application  
28 within three (3) business days of rendering the decision. Notice shall be given by mailing a copy  
29 of the town manager's decision to the applicant by regular mail, postage prepaid, at the address  
30 shown in the application. Notice is deemed to have been properly given upon mailing.

31  
32 4-13-17: APPEAL OF DENIAL OR CONDITIONAL APPROVAL OF PERMIT:

33  
34 A. An applicant has the right to appeal the town manager's denial or conditional approval of an  
35 application to the town council.

36 B. An applicant's appeal of the town manager's denial or conditional approval of an application  
37 shall be processed in accordance with title 1, chapter 19 of this code; provided, however, that the  
38 applicant's written notice of appeal shall be filed with the town manager within ten (10) days  
39 after the date of mailing of the town manager's decision on the application.

1 C. The applicant shall be provided with not less than ten (10) days' prior written notice of the  
2 appeal hearing to be held by the town council.

3 D. The burden of proof in an appeal filed under this section shall be on the applicant.

4 E. If the town council finds by a preponderance of the evidence that the decision of the town  
5 manager was correct, the town council shall uphold the decision of the town manager. If the  
6 town council finds by a preponderance of the evidence that the decision of the town manager was  
7 incorrect, the town manager's decision shall be set aside and the permit issued (if it was  
8 previously denied) or the conditions of approval stricken or modified.

9 F. Any decision made by the town council pursuant to this section shall be a final decision and  
10 may be appealed to the district court pursuant to rule 106(a)(4) of the Colorado rules of civil  
11 procedure. The applicant's failure to timely appeal the decision is a waiver of the applicant's  
12 right to contest the denial or conditional approval of the application.

13 G. If there is any conflict between the provisions and requirements of this section and the  
14 provisions and requirements of title 1, chapter 19 of this code, the provisions and requirements of  
15 this section shall control.

16 4-13-18: CONTENTS OF PERMIT: The required contents of a permit shall be established by the  
17 town manager in administrative rules and regulations adopted pursuant to Section 4-13-26.

18  
19 4-13-19: PERMIT NOT TRANSFERABLE:

20  
21 A permit is nontransferable and nonassignable. Any attempt to transfer or assign such permit  
22 voids the permit.

23  
24 4-13-20: NOTICE OF ISSUANCE OF PERMIT:

25  
26 Immediately upon the issuance of a permit, the town manager shall send a copy of the permit to  
27 such persons, agencies, or departments as the Town Manager shall identify in administrative  
28 rules and regulations adopted pursuant to section 4-13-26.

29  
30 4-13-21: INSURANCE REQUIREMENT:

31  
32 Each permit shall require the permittee to file with the Town's finance and municipal services  
33 department prior to commencement of the setup of the special event a certificate of insurance  
34 demonstrating that the permittee has in effect a policy or policies of general liability insurance  
35 covering the special event with minimum combined single limits of not less than one million  
36 dollars (\$1,000,000.00). Such insurance shall remain in full force throughout the entirety of the  
37 special event for which the permit is issued. The town shall be named as an additional insured  
38 under such insurance policy. If alcoholic beverages will be served at the special event, the  
39 permittee must also provide proof of liquor liability insurance.  
40

1 4-13-22: DUTIES OF PERMITTEE:  
2

3 In connection with the holding of the event for which a permit is issued, a permittee shall:  
4

- 5 A. Comply with all of the terms and conditions of the permit;
- 6 B. Comply with all applicable town ordinances and state and federal laws; and
- 7 C. Permit inspection of its records and special event facilities by the town manager for the  
8 purpose of determining the permittee's compliance with the terms and conditions of the permit.

9 4-13-23: POSTING OF PERMIT:  
10

11 A permit shall be continuously posted in a conspicuous location at the site of the special event  
12 throughout the duration of the special event.  
13

14 4-13-24: SUSPENSION OR REVOCATION OF PERMIT:  
15

16 A. A permit issued pursuant to this chapter may be suspended or revoked by the town manager  
17 after a hearing for the following reasons:

- 18 1. Fraud, misrepresentation or a false statement of material fact contained in the permit  
19 application;
- 20 2. A violation of any town, state, or federal law or regulation;
- 21 3. A violation of any of the terms and conditions of the permit;
- 22 4. A violation of any of the provisions of this chapter;
- 23 5. Threatening weather conditions if the town manager determines that holding the special  
24 event under such conditions would either:
  - 25 a. pose a threat to the public health, safety or welfare, or
  - 26 b. pose a threat to any town owned property to be used in connection with this special  
27 event;
- 28 6. The existence of fire or drought conditions if the town manager determines that holding  
29 the special event under such conditions would pose a threat to the public health, safety or  
30 welfare;
- 31 7. Any unforeseen, unanticipated, or uncontrollable circumstance if the town manager  
32 determines that holding the special event under such circumstance would pose a threat to  
33 the public health, safety or welfare; or
- 34 8. An irreconcilable scheduling conflict with an event protected by either the first  
35 amendment to the United States constitution or by the Colorado constitution.  
36

37 B. In connection with the suspension of a permit, the town manager may impose reasonable  
38 conditions.

39 C. A hearing held pursuant to this section shall be processed in accordance with title 1, chapter  
40 19 of this code.

1 D. In deciding whether a permit should be suspended or revoked, and in deciding what  
2 conditions to impose in the event of a suspension, if any, the town manager shall consider:

- 3 1. The nature and seriousness of the violation;
- 4 2. Corrective action, if any, taken by the permittee;
- 5 3. Prior violation(s), if any, by the permittee;
- 6 4. The likelihood of recurrence;
- 7 5. All circumstances surrounding the violation;
- 8 6. Whether the violation was willful;
- 9 7. The number of previous special events held by the permittee;
- 10 8. The number of previous violations by the permittee; and
- 11 9. Previous sanctions, if any, imposed against the permittee.

12  
13 E. The town manager shall have the authority to summarily suspend a permit during a special  
14 event if it appears to the town manager that a permittee has violated one or more of the terms and  
15 conditions of a permit or any applicable law and, based upon the available information, the town  
16 manager, in consultation with the police chief, reasonably determines that such violation results  
17 in an immediate threat to the public health, safety and welfare. No appeal is allowed from a  
18 summary suspension of a permit issued by the town manager pursuant to this subsection.

19 F. If the town manager suspends a permit, except for a summary suspension pursuant to  
20 subsection E of this section, or revokes a permit, the permittee may appeal the suspension or  
21 revocation to the town council in accordance with title 1, chapter 19 of this code. The burden of  
22 proof in such an appeal is on the permittee. If the town council finds by a preponderance of the  
23 evidence that the town manager acted correctly in suspending or revoking the permit, the town  
24 council shall uphold the town manager's order of suspension or revocation. If the town council  
25 finds by a preponderance of the evidence that the town manager acted improperly in suspending  
26 or revoking the permit, the appeal shall be sustained, and the town manager's order of  
27 suspension or revocation shall be set aside. Any decision made by the town council pursuant to  
28 this section shall be a final decision and may be appealed to the district court pursuant to rule  
29 106(a)(4) of the Colorado rules of civil procedure. The applicant's failure to timely appeal the  
30 decision is a waiver of the applicant's right to contest the denial or conditional approval of the  
31 application.

32 G. No fee previously paid by a permittee in connection with the application shall be refunded if  
33 such permit is suspended or revoked.

34 4-13-25: PENALTIES; INJUNCTIVE RELIEF:

35  
36 A. It is a misdemeanor offense for any person to violate any provision of this chapter. Any  
37 person convicted of having violated any provision of this chapter shall be punished as set forth in  
38 title 1, chapter 4 of this code.

39 B. The staging, holding, presenting, or conducting of a special event without a valid permit  
40 issued pursuant to this chapter may be enjoined by the town in an action brought in a court of

1 competent jurisdiction, including, but not limited to, the town’s municipal court pursuant to  
2 section 1-8-10 of this code.

3 4-13-26: RULES AND REGULATIONS:  
4

5 The town manager shall have the authority from time to time to adopt, amend, alter, and repeal  
6 administrative rules and regulations as may be necessary for the proper administration of this  
7 chapter. Such regulations shall be adopted in accordance with the procedures established by title  
8 1, chapter 18 of this code.  
9

10 Section 2. Section 9-7-6(F) of the Breckenridge Town Code [OUTDOOR DISPLAY OF  
11 MERCHANDISE ORDINANCE] is amended to read as follows:

12 ~~F. Special Events: Special events, subject to the following limitations:~~

- 13 ~~1. The event includes twenty (20) or more individual merchants, each holding a state sales~~
- 14 ~~tax license.~~
- 15 ~~2. The event is no longer in duration than three (3) consecutive days.~~
- 16 ~~3. The event is conducted on a single premises not currently licensed under the provisions~~
- 17 ~~of title 4, chapter 1 of this code.~~
- 18 ~~4. A class D minor development permit is issued which adequately addresses parking,~~
- 19 ~~transportation and waste disposal.~~
- 20 ~~5. A special events license is issued for the event pursuant to section 4-2-11 of this code.~~

21  
22  
23 **F. A special event for which a permit has been issued pursuant to title 4, chapter 2 of this**  
24 **code.**

25  
26 Section 3. Section 9-7-6(I) of the Breckenridge Town Code [OUTDOOR DISPLAY OF  
27 MERCHANDISE ORDINANCE] is amended to read as follows:

28 **I. Summer Outdoor** Sales Days: Outdoor displays of merchandise conducted on **Summer**  
29 **Outdoor** Sales Days as established by the town manager. In setting **Summer Outdoor** Sales  
30 Days, the town manager shall consult with representatives of the business community to  
31 determine appropriate dates. At least thirty (30) days before setting **Summer Outdoor** Sales  
32 Days each year, the town manager shall advise the town council of the proposed dates of such  
33 event.  
34

35 Section 4. Section 4-2-11 of the Breckenridge Town Code [TRANSIENT DEALER’S  
36 LICENSE ORDINANCE] is amended to read as follows:

37 **4-2-11: SPECIAL EVENTS BUSINESS LICENSE:**

38  
39 The sponsor of any fair, show or exhibition of arts, crafts or similar handiwork, or the sponsor of  
40 any special event to be held ~~in accordance with subsection 9-7-6F~~ **pursuant to a permit issued**  
41 **pursuant to title 4, chapter 2 of this code** shall obtain a special events **business** license from

1 the town manager at least fourteen (14) days prior to the event. Said application shall include the  
2 name and local address of the sponsor, proposed duration of the event, names and addresses of  
3 the artisans or merchants taking part in the event, purpose of the event, **and** goods or types of  
4 goods to be sold, and a statement under oath as to whether the applicant or its agents have ever  
5 been convicted of any crime or misdemeanor and, if so, the nature thereof.

6  
7 A. At the time of filing of the application, the sponsor must pay a license fee of two hundred  
8 fifty dollars (\$250.00) to the town clerk, or the artisans or merchants must obtain a business  
9 license from ~~shall be paid to~~ the town clerk as provided in subsection 4-2-5 of this chapter, to  
10 cover the costs of investigating the facts stated in the application and administrative costs.

11 B. At least five (5) days prior to the event, each merchant taking part in the event shall file with  
12 the town clerk, a sworn statement, on a form furnished by the town clerk, which shall give the  
13 following information:

- 14 1. Name, phone number and permanent home/business address.
- 15 2. Date of birth.
- 16 3. Colorado state sales tax number.
- 17 4. Anticipated taxable sales from the special event.

18  
19 ~~A sales tax deposit shall be made by each merchant taking part in the event as described in~~  
20 ~~subsection 4-2-5E of this chapter.~~

21  
22 C. Merchants covered under a special events business license shall be exempt from the license  
23 fee provided in subsection 4-2-5D of this chapter, but are subject to the sales tax deposit as  
24 described in subsection 4-2-5E of this chapter.

25 D. Organizations meeting the qualifications set forth in subsection 4-2-12A of this chapter shall  
26 be exempt from the special events license fee, but shall be subject to all other requirements of  
27 this section.

28 E. The town manager may impose reasonable conditions on the approval of the special events  
29 business license, including, but not limited to, required sanitation and cleanup measures, security  
30 measures or reasonable requirements to secure the payment of the sale tax due to the town.

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

34 Section 6. The Town Council finds, determines, and declares that this ordinance is necessary  
35 and proper to provide for the safety, preserve the health, promote the prosperity, and improve the  
36 order, comfort and convenience of the Town of Breckenridge and the inhabitants thereof.  
37





1 ***DRAFT April 28, 2015 DRAFT***

2  
3 **Marked To Show Changes To the Draft Administrative Regulations Reviewed**  
4 **At the March 24, 2015 Town Council Meeting**

5  
6 **ADMINISTRATIVE RULES AND REGULATIONS CONCERNING THE TOWN OF**  
7 **BRECKENRIDGE “ SPECIAL EVENTS ORDINANCE”**  
8

- 9 A. **Effective Date.** These regulations are effective **\_\_\_\_\_**, 2015.  
10  
11 B. **Authority.** These regulations are issued by the Town Manager of the Town of  
12 Breckenridge pursuant to the authority granted by Section 4-13-26 of the Town of  
13 Breckenridge “Special Events Ordinance” (Chapter 13 of Title 4 of the  
14 Breckenridge Town Code).  
15  
16 C. **Adoption Procedures.** The procedures set forth in Chapter 18 of Title 1 of the  
17 Breckenridge Town Code were followed in connection with the issuance of these  
18 regulations. Notice of the adoption of these regulations was given in accordance  
19 with the requirements set forth in Section 1-18-3 of the Breckenridge Town Code.  
20  
21 D. **Conflict With Special Events Ordinance.** These regulations do not amend the  
22 Town’s “Special Events Ordinance.” If there is a conflict between these  
23 regulations and the Special Events Ordinance, the ordinance will control.  
24  
25 E. **Definitions Adopted By Reference.** All of the definitions in Section 4-13-4 of  
26 the Special Events Ordinance are adopted by reference and incorporated into  
27 these regulations.  
28  
29 F. **Additional Definitions.** As used in these regulations the following words and  
30 phrases have the following meanings:

31  
32 “Events Committee” means the Breckenridge Events Committee, consisting of  
33 representatives of the Town’s partner organizations, representatives of the  
34 Breckenridge Tourism Office, and one designated representative of the Town.  
35 The composition of the Events Committee, as the same may be altered from time  
36 to time, must be approved by the Town Manager.

37  
38 Special Events Permit Application “SEPA Review Group” includes members of  
39 the Town’s Community Development Department, the Town’s Police  
40 Department, the Town Clerk/Finance & Municipal Services Department, the  
41 Town’s Public Works Department, the Red, White and Blue Fire Protection

1 District, and any other person or agency that the Events Committee determines  
2 should properly investigate and comment upon the application.

3  
4 “Town Property” means: (i) land or other property owned by the Town; (ii) land  
5 or other property that the Town holds a present right of possession and control;  
6 and (iii) all public rights-of-way owned or controlled by the Town.  
7

8 **G. Filming Activities on Town Property Not Requiring A Special Event Permit.**

9 The following filming activities on Town property do not require a special event  
10 permit:

- 11 1. Filming or photography by casual photographers and tourists for solely  
12 private use;
- 13 2. Filming by free-lance/commercial photographers not involving a total  
14 crew (including the photographer) of more than three persons if no street  
15 or public space closures or other Town services are required;
- 16 3. Filming or photography by credentialed members of the news media,  
17 including reporters, photographers or camera persons in the employ of a  
18 newspaper, news service or similar entity engaged in on-the-spot print  
19 media, publishing or broadcasting of news events and of general public  
20 interest, and/or for use in criminal investigations, civil proceedings and  
21 emergencies such as fires, floods, etc. This exception does not apply to  
22 magazines or documentary programs;
- 23 4. Filming or photography undertaken by the Town;
- 24 5. Filming or photography by education, government and public access and  
25 local origination programs for cable television systems franchised within  
26 the Town;
- 27 6. Filming or photography of a parade, rally, protest, or demonstration;
- 28 7. Any filming or photography that the Town Manager determines should be  
29 exempt from the requirements of these regulations because the Town will  
30 receive a substantial benefit from such activity.  
31

32  
33 **G.H. Delegation of Authority to Events Committee.** Pursuant to Section 1-7-2 of the  
34 Breckenridge Town Code the Town Manager delegates to the Events Committee,  
35 as the Town Manager’s authorized representative, the authority to enforce the  
36 Special Events Ordinance, except for the following sections the performance or  
37 enforcement of which are reserved to the Town Manager:  
38

- 39 a. Section 4-13-~~12(6)~~10(A)(7)(Authority to Approve Special Event  
40 With Duration Longer Than 5 Days)
- 41 b. Section 4-13-24 (Suspension or Revocation of Permit)
- 42 c. Section 4-13-26 (Rules and Regulations)
- 43

1 With respect to those sections of the Special Events Ordinance that the Events  
2 Committee is authorized to enforce, references to the “Town Manager” mean the  
3 “Events Committee,” unless the context clearly requires otherwise.  
4

5 **H.I. Contents of Application For Special Events Permit.** An application for a  
6 special event permit shall contain the following information:  
7

- 8 1. The applicant’s name, address, and telephone number.
- 9 2. The name, title (if any), address, and telephone number of the contact  
10 person for the applicant with respect to the special event.
- 11 3. A description of the special event, including a description of the purpose,  
12 scope, and activities planned during the event.
- 13 4. The proposed date(s) of the special event.
- 14 5. The proposed location of the special event.
- 15 6. The proposed hours of operation of the special event.
- 16 7. The dates and times when the special event facilities will be set up and  
17 torn down.
- 18 8. If the special event will involve the use of any town street(s), trail(s),  
19 park(s), land(s), building(s), parking lot(s) or right(s) of way, a statement  
20 as to the portion(s) of the town street(s), trail(s), park(s), land(s),  
21 building(s), parking lot(s) or right(s) of way which will be used or  
22 occupied in connection with the special event.
- 23 9. A statement of the fees, if any, to be charged to participants at the special  
24 event.
- 25 10. A list of food and/or beverages, including alcoholic beverages, that will be  
26 served at the special event.
- 27 11. A statement of whether goods and merchandise will be sold at the special  
28 event.
- 29 12. A map including pedestrian flow, emergency access, trash receptacles,  
30 temporary structures, sign placement, parking areas and activity areas.
- 31 13. Proof of the applicant’s tax exempt status, if applicable.
- 32 14. First time special events shall provide evidence indicating the extent of  
33 neighborhood and business support for the holding of the special event.
- 34 15. A description and location of any recording equipment, tents, or other  
35 structures, sound amplification equipment, banners, signs, or other  
36 attention getting devices proposed to be used in connection with the  
37 special event.
- 38 16. A plan for providing adequate safety for spectators and workers at the  
39 special event.
- 40 17. A plan for providing adequate sanitation at the special event, including  
41 “event greening” and recycling plans.

- 1 18. The approximate number of staff, vendors, and entertainers reasonably
- 2 anticipated to participate in putting on the special event (excluding
- 3 spectators).
- 4 19. A good faith estimate of the approximate number of spectators expected to
- 5 attend the special event each day.
- 6 20. The number of security personnel to be hired for the special event, if any.
- 7 21. A designation of any public facilities or equipment to be utilized.
- 8 22. A complete list of the names, addresses, and telephone numbers of all
- 9 vendors who will participate in the special event.
- 10 23. For trail-based events, applicant must provide proof of approval from
- 11 private property owners, Summit County Open Space and US Forest
- 12 Service when the event utilizes those entities properties as part of the
- 13 event.
- 14 24. Any additional information that the Events Committee reasonably
- 15 determines to be necessary in connection with its investigation and review
- 16 of the application.
- 17

18 | I.J. Fees.

- 19 1. When an application is filed an applicant shall pay to the Events
- 20 Committee a nonrefundable application fee of \$50.00 for 2015, and then
- 21 the application fee as set annually through the budget process.
- 22 2. Other fees or deposits may be required by the permittee to cover potential
- 23 financial obligations to the Town that may be incurred by the permittee in
- 24 connection with the permitted activity. Fees could include, but are not
- 25 limited to, the use of open space and trails and other Town property,
- 26 services from the Police Department, the Public Works Department,
- 27 and/or a security deposit for damages to property, or trash and sanitation.
- 28 Factors to be considered may include, but are not limited to, the number of
- 29 people involved, the location of the activity, and the nature of the activity.
- 30 A deposit may be in the form of cash, certified funds payable to the Town
- 31 or credit card. A deposit may be used by the Town to pay for any
- 32 monetary obligation due to the Town from the permittee. If a deposit is
- 33 required, any unused portion of the deposit will be refunded to the
- 34 permittee within 60 days after the conclusion of the permitted activity.
- 35

36 | I.K. Investigation of Application. Upon receipt of a properly completed application,

37 and the payment of the required application fee, the Events Committee shall

38 transmit copies of the application to the SEPA Review Group for their review as

39 provided in Section 4-13-9 of the Special Events Ordinance.

40

41

1 | ~~K.L.~~ **Contents of Special Events Permit.** A permit shall contain the following  
2 information:  
3

- 4 1. The name of the permittee;
- 5 2. The location of the special event to be held pursuant to the permit;
- 6 3. The date(s) of the special event to be held pursuant to the permit,  
7 including the dates and times for the setup and tear down of the event;
- 8 4. The starting and ending times the special event is to be held pursuant to  
9 the permit;
- 10 5. The name and telephone number of the permittee's local contact person  
11 for the special event;
- 12 6. A requirement that the permittee provide proof of insurance pursuant to  
13 Section 4-13-21 of the Special Events Ordinance;
- 14 7. An advisement to the permittee of the permittee's duties under section  
15 4-13-22 of the Special Events Ordinance;
- 16 8. An acknowledgment by the permittee that the permit may be summarily  
17 suspended by the Town Manager in accordance with Section 4-13-24(E)  
18 of the Special Events Ordinance;
- 19 9. Any special conditions of approval imposed upon the permit by the Events  
20 Committee pursuant to Section 4-13-13 of the Special Events Ordinance;
- 21 10. A list of all vendors who will participate in the special event; and
- 22 11. Such other information related to the special event as the Events  
23 Committee shall determine to be necessary or appropriate for inclusion in  
24 the permit.  
25

26 A permit must be signed by the permittee as an acceptance of the findings and  
27 conditions, and then by either the Town Manager, the Assistant Town Manager,  
28 or the Town's Director of Communications to be valid.  
29

30 | ~~L.M.~~ **Standard Conditions of Permit.** In addition to other duties required of a  
31 permittee under the Special Events Ordinance or these regulations, a permittee  
32 must comply with the following additional duties:  
33

- 34 1. A permit is not intended to authorize activities that are illegal under any  
35 applicable Town, state or federal law or rule, except that permittees may  
36 engage in such conduct as is expressly authorized by the permit.
- 37 2. All permittees must confine their activities to the location(s) and time(s)  
38 specified on their permit. The Events Committee may establish specific  
39 guidelines to address conditions that exist at certain designated locations  
40 and the use of vehicles and equipment at locations based on, among other  
41 considerations, the time of day, weather conditions, season, location, and  
42 day of the week.

- 1 3. All permittees are responsible for cleaning and restoring the site after the  
2 end of the permitted activity. The cost of any Town employee time  
3 incurred because of a permittee's failure to clean and/or restore the site  
4 following the end of the permitted activity will be borne by the permittee.
- 5 4. Should there be any injuries, accidents, other health incidents or damage  
6 to private or Town property in connection with a permitted activity, the  
7 permittee must immediately notify the Town Manager or Police Chief.
- 8 5. Only vehicles with permits issued by the Police Chief will be allowed to  
9 park in areas designated for the permitted activity at the time(s) and  
10 location(s) described in the applicable permit.
- 11 6. The use of pyrotechnics, fire effects and explosions, including simulated  
12 smoke and smoke effects, must be conducted only upon authorization by  
13 the Red, White and Blue Fire District, and subsequent approval must be  
14 obtained from the Police Chief prior to start of event.
- 15 7. Any activity proposed to be conducted pursuant to the permit that is  
16 determined by the Events Committee to cause a potential danger to  
17 persons or property will be referred for approval by the Police Chief or  
18 other governmental agency having jurisdiction over such activity. Such  
19 activities must include, but not be limited to, the use of stunts, helicopters,  
20 firearms, or simulated firearms or other weapons.
- 21 8. A permittee is strictly liable to the Town for any damage to, or destruction  
22 of, any Town property occurring in connection with the permitted activity.  
23 This obligation will survive the suspension, revocation, expiration, or  
24 other termination of the permit, and will continue to be fully enforceable  
25 thereafter.
- 26 9. Trimming, damaging, removing or cutting trees or vegetation on Town  
27 property is prohibited without the prior approval of the Events Committee.
- 28 10. No street signs, street lights, postal boxes, benches, or any other  
29 permanent street structure may be removed or altered without the prior  
30 approval of the Town department charged with maintaining such  
31 structures.
- 32 11. If determined by the Events Committee to be appropriate, permittees must  
33 submit a mitigation plan for minimizing the potential inconvenience to  
34 residents and/or businesses.
- 35 12. By accepting a permit, a permittee irrevocably agrees to protect all persons  
36 and property from damage, loss or injury arising from any of the  
37 operations performed by or on behalf of the permittee pursuant to the  
38 permit and, to the full extent permitted by law, to indemnify, defend, and  
39 hold the Town harmless from all claims, losses, damages, and expenses,  
40 including attorneys' fees and costs (including expert witness fees), that  
41 may be incurred by the Town as result therefrom. This indemnification  
42 requirement will survive the suspension, revocation, expiration, or other

## SPECIAL EVENTS ORDINANCE REGULATIONS

1 termination of the permit, and will continue to be fully enforceable  
2 thereafter.

3 13. If the Events Committee determines, in light of the activity for which a  
4 permit is sought, that such activity may increase the potential for injury to  
5 individuals and/or damage to property, and that the minimum limits of  
6 liability insurance coverage should be higher than one million dollars  
7 (\$1,000,000) per occurrence required by Section 4-13-21 of the Special  
8 Events Ordinance, the Events Committee may determine what higher  
9 minimum limit is to be required and will inform the applicant of such  
10 higher limit. Factors to be considered may include, but are not limited to,  
11 the number of people involved, the location of the activity, and the nature  
12 of the activity. The applicant must thereafter provide proof of such  
13 increased liability insurance coverage. If the Events Committee  
14 determines in writing that a higher minimum limits of liability insurance  
15 coverage is required, the applicant may appeal such determination  
16 pursuant to Section 4-13-17 of the Special Events Ordinance.

17 14. The Events Committee may waive the required liability insurance if the  
18 applicant is able to demonstrate that such insurance cannot be obtained  
19 without imposing an unreasonable hardship on the applicant. Any request  
20 for a waiver of the insurance must be included by the applicant in the  
21 permit application. The burden of demonstrating unreasonable hardship is  
22 on the applicant, and may be demonstrated by a showing, for example,  
23 that the cost of obtaining insurance for the permitted activity exceeds  
24 twenty-five percent (25%) of the applicant's budget for such activity that  
25 is the subject of the application. The Events Committee will take into  
26 consideration the applicant's projections of budget as well as the budget  
27 projections for comparable productions of similar size and duration in  
28 determining whether the cost of obtaining insurance exceeds twenty-five  
29 percent (25%) of the budget. The Events Committee may also take into  
30 consideration his or her determination that the permitted activity may  
31 increase the potential for injury to individuals and/or damage to property.  
32 If the Events Committee denies a request for a waiver of the insurance  
33 requirement, the applicant may appeal such denial pursuant to Section 4-  
34 13-17 of the Special Events Ordinance.

35  
36 | M.N. Notice of Issuance of Permit. Immediately upon the issuance of a permit, the  
37 Events Committee shall send a copy of the permit to the following members of  
38 the SEPA Review Group.  
39

1 ~~N.O.~~ **Special Rules For Filming and Photography.** In addition to the administrative  
2 regulations set forth above, unless exempted as provided below, an applicant for a  
3 special event permit that includes filming or photography on any Town property  
4 must comply with the following additional administrative regulations:  
5

6 ~~1. The following activities on Town property do not require a special event~~  
7 ~~permit:~~  
8

9 ~~a. Filming or photography by casual photographers and tourists for~~  
10 ~~solely private use;~~

11 ~~b. Filming or photography by credentialed members of the news~~  
12 ~~media, including reporters, photographers or camera persons in the~~  
13 ~~employ of a newspaper, news service or similar entity engaged in~~  
14 ~~on the spot print media, publishing or broadcasting of news events~~  
15 ~~and of general public interest, and/or for use in criminal~~  
16 ~~investigations, civil proceedings and emergencies such as fires,~~  
17 ~~floods, etc. This exception does not apply to magazines or~~  
18 ~~documentary programs;~~

19 ~~c. Filming or photography undertaken by the Town;~~

20 ~~d. Filming or photography by education, government and public~~  
21 ~~access and local origination programs for cable television systems~~  
22 ~~franchised within the Town;~~

23 ~~e. Filming or photography of a parade, rally, protest, or~~  
24 ~~demonstration, except when using vehicles or professional grade~~  
25 ~~equipment;~~

26 ~~f. Any filming or photography that the Town Manager determines~~  
27 ~~should be exempt from the requirements of these regulations~~  
28 ~~because the Town will receive a substantial benefit from such~~  
29 ~~activity.~~  
30

31 ~~2.1.~~ The Town Manager may waive or reduce the application fee if:  
32

33 a. the permitted activity will result in substantial, beneficial  
34 media/public relations for the Town; or  
35

36 b. the applicant is a film student.  
37

38 ~~3.2.~~ If known at the time of the application, an application for a special event  
39 permit that will involve filming or photography must include, in addition  
40 to the other information required by Rule H of these regulations the date(s)  
41 and time(s) of scouting, rigging, or shooting and location of such activity,  
42 and any special circumstances including, but not limited to, information



1 regarding whether the activity involves special parking requests, traffic  
2 control issues, or special effects.

3  
4 | 4.3. Film school students must provide a letter from the student's school  
5 confirming the existence of the insurance coverage required by Section 4-  
6 13-21 of the Special Events Ordinance, or any higher insurance limits  
7 | required pursuant to Rule ~~M(7)(e)~~M(13) of these regulations, and  
8 confirmation of the student's current enrollment in the school.  
9

10 | 5.4. In addition to the other grounds for denial of a special events permit set  
11 forth in the Special Events Ordinance, an application for a special event  
12 permit may be denied for any of the following reasons:  
13

- 14 a. the activity proposed by the application may reasonably pose a  
15 danger or a threat to participants, onlookers, or the general public;
- 16 b. the date(s) and time(s) requested for a particular location is not  
17 available because a permit has previously been issued for such  
18 date(s) and time(s);
- 19 c. the proposed location(s) cannot reasonably be accommodated by  
20 the Town for any other reason specified by the Town Manager,  
21 including, without limitation, that the requested use of the location  
22 would unreasonably interfere with the operations of Town  
23 government or the use of the Town's property;
- 24 d. the Town Manager has concluded, based on specific information,  
25 that the applicant is unlikely to comply with the material terms of  
26 the requested permit; or
- 27 e. use of the location or the proposed activity at the location would  
28 otherwise violate any law, ordinance, statute or regulation.  
29

30 | 6.5. In addition to other duties required of a permittee under the Special Events  
31 Ordinance or these regulations, a permittee whose permit includes filming  
32 or photography must comply with the following additional duties:  
33

- 34 a. All permittees are responsible to procure model/subject releases  
35 from anyone;
- 36 b. No dolly track or other equipment may be laid across a street,  
37 sidewalk, or block a fire lane without prior approval of the Police  
38 Chief, and the Red, White and Blue Fire Protection District;
- 39 c. Where a public street or alley is closed in connection with a  
40 permitted activity rigging or production activities, a 13.5-foot lane  
41 must be kept open. Such requirement may be waived upon an  
42 appropriate showing of need or at the discretion of the Police  
43 Chief.

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12

Dated: \_\_\_\_\_, 2015

---

Timothy J. Gagen, Town Manager  
Town of Breckenridge, Colorado

500-272\Administrative Regulations\_6 (04-21-15)



## MEMORANDUM

**To:** Mayor and Town Council  
**From:** Shannon Haynes, Chief of Police  
**Date:** April 20, 2015  
**Subject:** Marijuana Licensing Ordinance

---

The current moratorium on new marijuana business licenses is due to expire on July 1, 2015. Staff has heard from some Council members that they would prefer to extend this moratorium for another year. Extending the moratorium for another year will allow staff the opportunity to evaluate the impact the current number of establishments has on safety and quality of life for residents and other businesses in the area of Airport Road.

As you know, beginning in February of this year all marijuana businesses are now located on Airport Road. Since that time, we have experienced an increased number of customers frequenting that area on foot, by transit, and in automobiles. Initial observations revealed the need for additional street lighting in that area. Staff is currently evaluating the lighting needs and plan to have improvements in place prior to the 2015 winter season. In addition, staff is evaluating the location of current transit stops and the possibility of adding a stop along the west side of the roadway.

Once improvements have been made, it would be valuable to monitor and assess the impact of those improvements over the course of the next winter. In the spring of 2016, staff would like to come back to the Council with a recommendation of the number of marijuana businesses the Airport Road infrastructure is able to support without impacting safety and quality of life for the residents in the area.

The attached draft ordinance simply extends the moratorium to July 1, 2016. All other provisions of the current licensing ordinance remain in effect.

Tim Berry and I will be present at the work session on Tuesday, April 28<sup>th</sup> to answer questions.

1 ***FOR WORKSESSION/FIRST READING – APR. 28***

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 2015

9  
10 AN ORDINANCE AMENDING CHAPTER 14 OF TITLE 4 OF THE BRECKENRIDGE  
11 TOWN CODE, KNOWN AS THE “TOWN OF BRECKENRIDGE 2013 MARIJUANA  
12 LICENSING ORDINANCE,” BY EXTENDING THE LIMITATION ON THE SUBMISSION  
13 OF NEW LICENSE APPLICATIONS UNTIL JULY 1, ~~2015~~**2016**

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

17  
18 Section 1. Section 4-14-8(D) of the Breckenridge Town Code is amended to read as  
19 follows:

20  
21 D. Until July 1, ~~2015~~**2016** the Local Licensing Authority shall not: (i) accept or  
22 process an application for a new medical marijuana business or retail marijuana  
23 establishment license under this Chapter, or (ii) approve and issue any new  
24 medical marijuana business or retail marijuana establishment license under this  
25 Chapter. However, prior to July 1, ~~2015~~**2016** the Local Licensing Authority may  
26 approve a transfer of ownership of an existing local license or a change of  
27 location of an existing licensed premises in accordance with the applicable codes,  
28 the applicable administrative regulations, and the applicable requirements of this  
29 Chapter. For the purpose of this Section, a “new medical marijuana or retail  
30 marijuana establishment license” means a local medical marijuana business or  
31 retail marijuana establishment license under this Chapter that was not issued by  
32 the Local Licensing Authority and in full force and effect prior to November 11,  
33 2014.

34  
35 Section 2. Except as specifically amended by this ordinance, the Breckenridge Town  
36 Code, and the various secondary codes adopted by reference therein, shall continue in full force  
37 and effect.

38  
39 Section 3. The Town Council finds, determines and declares that it has the power to  
40 adopt this ordinance pursuant to: (i) the Colorado Medical Marijuana Code, Article 43.3 of Title  
41 12, C.R.S.; (ii) Section 16 of Article XVIII to the Colorado Constitution; (iii) the Colorado Retail  
42 Marijuana Code, Article 43.4 of Title 12, C.R.S.; (iv) the applicable administrative regulations;  
43 (v) The Local Government Land Use Control Enabling Act, Part 1 of Article 20 of Title 29,  
44 C.R.S.; (vi) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal zoning powers); (vii)  
45 Section 31-15-103, C.R.S. (concerning municipal police powers); (viii) Section 31-15-401,  
46 C.R.S. (concerning municipal police powers); (ix) Section 31-15-501, C.R.S. (concerning

1 municipal authority to regulate businesses); (x) the authority granted to home rule municipalities  
2 by Article XX of the Colorado Constitution; and (xi) the powers contained in the Breckenridge  
3 Town Charter.

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

9  
10 Section 5. This ordinance shall be published and shall become effective as provided by  
11 Section 5.9 of the Breckenridge Town Charter.

12  
13 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED  
14 PUBLISHED IN FULL this \_\_\_\_ day of \_\_\_\_\_, 2015. A Public Hearing shall be held at the  
15 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the \_\_\_\_ day of  
16 \_\_\_\_\_, 2015, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the  
17 Town.

18  
19 TOWN OF BRECKENRIDGE, a Colorado  
20 municipal corporation

21  
22  
23 By: \_\_\_\_\_  
24 John G. Warner, Mayor

25  
26 ATTEST:

27  
28  
29 \_\_\_\_\_  
30 Helen Cospolich  
31 Town Clerk



## MEMORANDUM

**To:** Mayor and Town Council  
**From:** Tim Gagen, Town Manager  
**Date:** April 7, 2015  
**Subject:** *Comcast Franchise, Lease Renewal, I-Net Agreement & Customer Service Standards*

### Issue:

Consideration of action to renew a cable franchise with Comcast, renew a lease with Comcast for its headend facility on Town land, approve a new I-Net Agreement with Comcast and approve updated customer service standards.

### Background:

The Town has an existing cable franchise agreement and headend lease with Comcast, both of which were set to expire in June, 2013. The Town has agreed to short term extensions of the franchise and lease while it has been negotiating a longer term renewal. During this same period, Comcast's franchise with Frisco, Dillon, Silverthorne and Summit County were also expiring so the Summit County entities collaborated to negotiate renewal with Comcast. Only Breckenridge has a separate lease arrangement with Comcast but it still wanted to renew these two documents at the same time.

Generally the new franchise and lease follow the previous terms of the last franchise and lease with some exceptions. Since the original franchise and lease, Comcast has revised some of its business practices that have resulted in modification to what terms they keep in a franchise and what they put in a new agreement called an "I-Net Agreement" and in a lease. In the old franchise, there was language regarding connecting public buildings to fiber which has been done by Comcast, but going forward the new standard in franchises is for these connections to be paid for at a discounted rate so the "I-Net" outlines how a community can acquire those services if they desire them. It also establishes a standard of performance for all the cable services that a community gets. The old lease also talked about these same connections and other internet connections but the new lease removes these as they are in the I-Net. The annual lease fee to compensate for removal of some free services like internet connections has been increased from \$1,500 per month to \$2,500 per month so the Town is made more than whole with these changes. The Town and the other Summit County entities had the benefit in renewing their franchise in that several front range communities had just done theirs so we could use a lot of their work. With renewal of our franchise all the communities in Summit now have very similar franchises with similar terms. The term of the franchise and lease are for 10 years which is standard in Colorado and are matched up on purpose. Most authority for regulating cable

companies has been taken away from Cities and Towns by the FCC so franchises today are boiler plate but still provide for a franchise fee to pay for the use of the Town's right of way. Included with this package of renewals is the re-adoption of customer service standards which govern Comcast operations. These were originally adopted in August, 2007. The updated standards have been adopted by all the Summit County entities.

Action:

Staff recommendation is to approve the renewal franchise and lease, the new I-Net Agreement and updated Customer Service Standards.

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

2  
3 COUNCIL BILL NO. \_\_\_\_

4  
5 Series 2015

6  
7 AN ORDINANCE APPROVING A CABLE TELEVISION FRANCHISE AGREEMENT  
8 BETWEEN THE TOWN OF BRECKENRIDGE, COLORADO AND COMCAST OF  
9 COLORADO V, LLC

10  
11 WHEREAS, the Town of Breckenridge is authorized by Article XIII of the Breckenridge  
12 Town Charter, Section 4-12-3 of the Breckenridge Town Code, and other applicable law, to  
13 grant one or more non-exclusive, revocable franchises to construct, reconstruct, operate, and  
14 maintain a cable system within the boundaries of the Town; and

15  
16 WHEREAS, the Town’s current cable television franchisee is California/Colorado/  
17 Washington, LP, which has made application to the Town for a renewal of its cable franchise;  
18 and

19  
20 WHEREAS, Comcast of Colorado V, LLC (“**Comcast**”) is the successor in interest to  
21 Comcast of California/Colorado/Washington, LP; and

22  
23 WHEREAS, Comcast is agreeable to continuing providing cable television service in the  
24 Town; and

25  
26 WHEREAS, the Town has reviewed the performance of the cable provider under the  
27 current franchise and the quality of service during the prior franchise term, has identified the  
28 future cable-related needs and interests of the Town and its citizens, has considered the financial,  
29 technical, and legal qualifications of Comcast and, after a public proceeding affording due  
30 process to all interested parties, has determined that Comcast’s plans for operating and  
31 maintaining its cable system are adequate; and

32  
33 WHEREAS, the public has had adequate notice and opportunity to comment on  
34 Comcast’s proposal to continue providing cable service within the Town; and

35  
36 WHEREAS, the Town has a legitimate and necessary regulatory role in ensuring the  
37 availability of cable service, the reliability of the cable system within the Town, the availability  
38 of local programming, and quality customer service; and

39  
40 WHEREAS, a proposed new Cable Franchise Agreement between the Town and  
41 Comcast has been prepared, a copy of which is marked **Exhibit “A”**, attached hereto, and  
42 incorporated herein by reference; and

43  
44 WHEREAS, the Town Council has reviewed the proposed new Cable Franchise  
45 Agreement and is familiar with its terms; and

46



1 WHEREAS, the Town Council desires to grant to Comcast, and Comcast desires to  
2 accept, terms and conditions for the use of Town-owned easements and rights-of-way to be used  
3 for the installation and operation of Comcast’s cable system within the Town, all as set forth in  
4 the proposed new Cable Franchise Agreement; and

5  
6 WHEREAS, the process of reviewing and approving the proposed new Cable Franchise  
7 Agreement complies in all respects with the requirements of Chapter 12 of Title 4 of the  
8 Breckenridge Town Code ; and

9  
10 WHEREAS, after due consideration, the Town Council has determined that it is in the  
11 best interest of the Town and its residents to grant a cable franchise to Comcast upon the terms  
12 and conditions set forth in the proposed new Cable Franchise Agreement.

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

16  
17 Section 1. The Cable Franchise Agreement between the Town of Breckenridge, Colorado  
18 and Comcast of Colorado V, LLC (Exhibit “A” hereto), substantially in the form attached to this  
19 ordinance, is approved, and the Mayor and Town Clerk are hereby authorized, empowered, and  
20 directed to execute such Franchise Agreement for and on behalf of the Town of Breckenridge.

21  
22 Section 2. Minor changes to or amendments of the approved Cable Franchise Agreement  
23 may be made by the Town Manager if the Town Attorney certifies in writing that the proposed  
24 changes or amendments do not substantially affect the consideration to be received or paid by the  
25 Town pursuant to the approved agreement, or the essential elements of the approved agreement.

26  
27 Section 3. Upon the execution of the approved new Franchise Agreement (Exhibit “A”)  
28 by the Town and Comcast of Colorado V, LLC , the Town’s current cable television franchise  
29 with Comcast of California/Colorado/Washington, LP, shall be deemed to have been terminated.  
30 The appropriate officers or employees of the Town are authorized to sign any necessary  
31 documentation to confirm the termination of the current cable television franchise.

32  
33 Section 4. Town officials and employees are authorized to take such action as may be  
34 necessary and appropriate to implement the new Cable Franchise Agreement.

35  
36 Section 5. Except as specifically amended by this ordinance, the  
37 Breckenridge Town Code, and the various secondary codes adopted by reference therein, shall  
38 continue in full force and effect.

39  
40 Section 6. The Town Council finds, determines, and declares that it has the power to  
41 adopt this ordinance pursuant to: (i) Article XIII of the Breckenridge Town Charter; (ii) Section  
42 4-12-3 of the Breckenridge Town Code ; (iii) applicable federal law, rules, and regulations; and  
43 (iv) the authority granted to home rule municipalities by Article XX of the Colorado  
44 Constitution.

45  
46 Section 7. This ordinance shall be published and become effective as provided by Section

1 5.9 of the Breckenridge Town Charter.

2  
3 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED  
4 PUBLISHED IN FULL this \_\_\_\_ day of \_\_\_\_\_, 2015. A Public Hearing shall be held at the  
5 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the \_\_\_\_ day of  
6 \_\_\_\_\_, 2015, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the  
7 Town.

8  
9 TOWN OF BRECKENRIDGE, a Colorado  
10 municipal corporation

11  
12  
13  
14 By: \_\_\_\_\_  
15 John G. Warner, Mayor

16  
17 ATTEST:

18  
19  
20  
21 \_\_\_\_\_  
22 Helen Cospolich  
23 Town Clerk

**COMCAST OF COLORADO V, LLC AND  
THE TOWN OF BRECKENRIDGE, COLORADO**

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**CABLE FRANCHISE AGREEMENT**

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**COMCAST OF COLORADO V AND  
TOWN OF BRECKENRIDGE, COLORADO**

---

**CABLE FRANCHISE AGREEMENT**

**SECTION 1. DEFINITIONS AND EXHIBITS**

**(A) DEFINITIONS**

For the purposes of this Franchise, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

1.1 “Access” means the availability for noncommercial use by various agencies, institutions, organizations, groups and individuals in the community, including the Town and its designees, of the Cable System to acquire, create, receive, and distribute video Cable Services and other services and signals as permitted under Applicable Law including, but not limited to:

a. “Public Access” means Access where community-based, noncommercial organizations, groups or individual members of the general public, on a nondiscriminatory basis, are the primary users.

b. “Educational Access” means Access where schools are the primary users having editorial control over programming and services. For purposes of this definition, “school” means any State-accredited educational institution, public or private, including, for example, primary and secondary schools, colleges and universities.

c. “Government Access” means Access where governmental institutions or their designees are the primary users having editorial control over programming and services.

1.2 “Access Channel” means any Channel, or portion thereof, designated for Access purposes or otherwise made available to facilitate or transmit Access programming or services.

1.3 “Activated” means the status of any capacity or part of the Cable System in which any Cable Service requiring the use of that capacity or part is available without further installation of system equipment, whether hardware or software.

1.4 “Affiliate,” when used in connection with Grantee, means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.

1.5 “Applicable Law” means any statute, ordinance, judicial decision, executive order or regulation having the force and effect of law, that determines the legal standing of a case or issue.

1.6 “Bad Debt” means amounts lawfully billed to a Subscriber and owed by the Subscriber for Cable Service and accrued as revenues on the books of Grantee, but not collected after reasonable efforts have been made by Grantee to collect the charges.

1.7 “Basic Service” is the level of programming service which includes, at a minimum, all Broadcast Channels, all PEG SD Access Channels required in this Franchise, and any additional Programming added by the Grantee, and is made available to all Cable Services Subscribers in the Franchise Area.

1.8 “Broadcast Channel” means local commercial television stations, qualified low power stations and qualified local noncommercial educational television stations, as referenced under 47 USC § 534 and 535.

1.9 “Broadcast Signal” means a television or radio signal transmitted over the air to a wide geographic audience, and received by a Cable System by antenna, microwave, satellite dishes or any other means.

1.10 “Cable Act” means the Title VI of the Communications Act of 1934, as amended.

1.11 “Cable Operator” means any Person or groups of Persons, including Grantee, who provide(s) Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System or who otherwise control(s) or is (are) responsible for, through any arrangement, the management and operation of such a Cable System.

1.12 “Cable Service” means the one-way transmission to Subscribers of video programming or other programming service, and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

1.13 “Cable System” means any facility, including Grantee’s, consisting of a set of closed transmissions paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any Right-of-Way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with federal statutes; or (E) any facilities of any electric utility used solely for operating its electric utility systems.

1.14 “Channel” means a portion of the electromagnetic frequency spectrum which is used in the Cable System and which is capable of delivering a television channel (as television channel is defined by the FCC by regulation).



1.15 “Commercial Subscribers” means any Subscribers other than Residential Subscribers.

1.16 “Designated Access Provider” means the entity or entities designated now or in the future by the Town to manage or co-manage Access Channels and facilities. The Town may be a Designated Access Provider.

1.17 “Digital Starter Service” means the Tier of optional video programming services, which is the level of Cable Service received by most Subscribers above Basic Service, and does not include Premium Services.

1.18 “Downstream” means carrying a transmission from the Headend to remote points on the Cable System or to Interconnection points on the Cable System.

1.19 “Dwelling Unit” means any building, or portion thereof, that has independent living facilities, including provisions for cooking, sanitation and sleeping, and that is designed for residential occupancy. Buildings with more than one set of facilities for cooking shall be considered Multiple Dwelling Units unless the additional facilities are clearly accessory.

1.20 “FCC” means the Federal Communications Commission.

1.21 “Fiber Optic” means a transmission medium of optical fiber cable, along with all associated electronics and equipment, capable of carrying Cable Service by means of electric lightwave impulses.

1.22 “Franchise” means the document in which this definition appears, *i.e.*, the contractual agreement, executed between the Town and Grantee, containing the specific provisions of the authorization granted, including references, specifications, requirements and other related matters.

1.23 “Franchise Area” means the area within the jurisdictional boundaries of the Town, including any areas annexed by the Town during the term of this Franchise.

1.24 “Franchise Fee” means that fee payable to the Town described in subsection 3.1 (A).

1.25 “Grantee” means Comcast of Colorado V, LLC or its lawful successor, transferee or assignee.

1.26 “Gross Revenues” means, and shall be construed broadly to include all revenues derived directly or indirectly by Grantee and/or an Affiliated Entity that is the cable operator of the Cable System, from the operation of Grantee’s Cable System to provide Cable Services within the Town. Gross revenues include, by way of illustration and not limitation:

- monthly fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial customers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event and video-on-demand Cable Services);

- installation, reconnection, downgrade, upgrade or similar charges associated with changes in subscriber Cable Service levels;
- fees paid to Grantee for channels designated for commercial/leased access use and shall be allocated on a pro rata basis using total Cable Service subscribers within the Town;
- converter, remote control, and other Cable Service equipment rentals, leases, or sales;
- Advertising Revenues as defined herein;
- late fees, convenience fees and administrative fees which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total subscriber revenues within the Town;
- revenues from program guides;
- Franchise Fees;
- FCC Regulatory Fees; and,
- commissions from home shopping channels and other Cable Service revenue sharing arrangements which shall be allocated on a pro rata basis using total Cable Service subscribers within the Town.

(A) “Advertising Revenues” shall mean revenues derived from sales of advertising that are made available to Grantee’s Cable System subscribers within the Town and shall be allocated on a pro rata basis using total Cable Service subscribers reached by the advertising. Additionally, Grantee agrees that Gross Revenues subject to franchise fees shall include all commissions, rep fees, Affiliated Entity fees, or rebates paid to National Cable Communications (“NCC”) and Comcast Spotlight (“Spotlight”) or their successors associated with sales of advertising on the Cable System within the Town allocated according to this paragraph using total Cable Service subscribers reached by the advertising.

(B) “Gross Revenues” shall not include:

- actual bad debt write-offs, except any portion which is subsequently collected which shall be allocated on a *pro rata* basis using Cable Services revenue as a percentage of total subscriber revenues within the Town;
- any taxes and/or fees on services furnished by Grantee imposed by any municipality, state or other governmental unit, provided that Franchise Fees and the FCC regulatory fee shall not be regarded as such a tax or fee;

- fees imposed by any municipality, state or other governmental unit on Grantee including but not limited to Public, Educational and Governmental (PEG) Fees;
- launch fees and marketing co-op fees; and,
- unaffiliated third party advertising sales agency fees which are reflected as a deduction from revenues.

(C) To the extent revenues are received by Grantee for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a *pro rata* basis when comparing the bundled service price and its components to the sum of the published rate card, except as required by specific federal, state or local law, it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value. This calculation shall be applied to every bundled service package containing Cable Service from which Grantee derives revenues in the Town. The Town reserves its right to review and to challenge Grantee’s calculations.

(D) Grantee reserves the right to change the allocation methodologies set forth in this Section 1.26 in order to meet the standards required by governing accounting principles as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”). Grantee will explain and document the required changes to the Town within three (3) months of making such changes, and as part of any audit or review of franchise fee payments, and any such changes shall be subject to 1.26(E) below.

(E) Resolution of any disputes over the classification of revenue should first be attempted by agreement of the Parties, but should no resolution be reached, the Parties agree that reference shall be made to generally accepted accounting principles (“GAAP”) as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”). Notwithstanding the forgoing, the Town reserves its right to challenge Grantee’s calculation of Gross Revenues, including the interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.

1.27 “Headend” means any facility for signal reception and dissemination on a Cable System, including cables, antennas, wires, satellite dishes, monitors, switchers, modulators, processors for Broadcast Signals, equipment for the Interconnection of the Cable System with adjacent Cable Systems and Interconnection of any networks which are part of the Cable System, and all other related equipment and facilities.

1.28 “Leased Access Channel” means any Channel or portion of a Channel commercially available for video programming by Persons other than Grantee, for a fee or charge.

1.29 “Manager” means the Town Manager of the Town or designee.

1.30 “Person” means any individual, sole proprietorship, partnership, association, or corporation, or any other form of entity or organization.

1.31 “Premium Service” means programming choices (such as movie Channels, pay-per-view programs, or video on demand) offered to Subscribers on a per-Channel, per-program or per-event basis.

1.32 “Residential Subscriber” means any Person who receives Cable Service delivered to Dwelling Units or Multiple Dwelling Units, excluding such Multiple Dwelling Units billed on a bulk-billing basis.

1.33 “Right-of-Way” means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the Town: streets, roadways, highways, avenues, lanes, alleys, bridges, sidewalks, easements, rights-of-way and similar public property and areas.

1.34 “State” means the State of Colorado.

1.35 “Subscriber” means any Person who or which elects to subscribe to, for any purpose, Cable Service provided by Grantee by means of or in connection with the Cable System and whose premises are physically wired and lawfully Activated to receive Cable Service from Grantee's Cable System, and who is in compliance with Grantee’s regular and nondiscriminatory terms and conditions for receipt of service.

1.36 “Subscriber Network” means that portion of the Cable System used primarily by Grantee in the transmission of Cable Services to Residential Subscribers.

1.37 “Summit County Telecommunication Consortium” or “SCTC” means the non-profit entity formed by the franchising authorities and/or local governments from the Towns of Breckenridge, Silverthorne, Frisco, and Dillon, and Summit County, Colorado or the SCTC’s successor entity, whose purpose is, among other things, to communicate with regard to franchising matters collectively and cooperatively.

1.38 “Telecommunications” means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received (as provided in 47 U.S.C. Section 153(43)).

1.39 “Telecommunications Service” means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used (as provided in 47 U.S.C. Section 153(46)).

1.40 “Tier” means a group of Channels for which a single periodic subscription fee is charged.

1.41 “Town” is the Town of Breckenridge, Colorado, a body politic and corporate under the laws of the State of Colorado.

1.42 “Town Council” means the Breckenridge Town Council, or its successor, the governing body of the Town of Breckenridge, Colorado.

1.43 “Two-Way” means that the Cable System is capable of providing both Upstream and Downstream transmissions.

1.44 “Upstream” means carrying a transmission to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.

## **(B) EXHIBITS**

The following documents, which are occasionally referred to in this Franchise, are formally incorporated and made a part of this Franchise by this reference:

- 1) *Exhibit A*, entitled Customer Service Standards.
- 2) *Exhibit B*, entitled Report Form.

## **SECTION 2. GRANT OF FRANCHISE**

### **2.1 Grant**

(A) The Town hereby grants to Grantee a nonexclusive authorization to make reasonable and lawful use of the Rights-of-Way within the Town to construct, operate, maintain, reconstruct and rebuild a Cable System for the purpose of providing Cable Service subject to the terms and conditions set forth in this Franchise and in any prior utility or use agreements entered into by Grantee with regard to any individual property. This Franchise shall constitute both a right and an obligation to provide the Cable Services required by, and to fulfill the obligations set forth in, the provisions of this Franchise.

(B) Nothing in this Franchise shall be deemed to waive the lawful requirements of any generally applicable Town ordinance existing as of the Effective Date, as defined in subsection 2.3.

(C) Each and every term, provision or condition herein is subject to the provisions of State law, federal law, the Charter of the Town, and the ordinances and regulations enacted pursuant thereto. The Charter and Municipal Code of the Town, as the same may be amended from time to time, are hereby expressly incorporated into this Franchise as if fully set out herein by this reference. Notwithstanding the foregoing, the Town may not unilaterally alter the material rights and obligations of Grantee under this Franchise.

(D) This Franchise shall not be interpreted to prevent the Town from imposing additional lawful conditions, including additional compensation conditions for use of the Rights-of-Way, should Grantee provide service other than Cable Service.

(E) Grantee promises and guarantees, as a condition of exercising the privileges granted by this Franchise, that any Affiliate of the Grantee directly involved in the offering of Cable Service in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, will also comply with the obligations of this Franchise.

(F) No rights shall pass to Grantee by implication. Without limiting the foregoing, by way of example and not limitation, this Franchise shall not include or be a substitute for:

(1) Any other permit or authorization required for the privilege of transacting and carrying on a business within the Town that may be required by the ordinances and laws of the Town;

(2) Any permit, agreement, or authorization required by the Town for Right-of-Way users in connection with operations on or in Rights-of-Way or public property including, by way of example and not limitation, street cut permits; or

(3) Any permits or agreements for occupying any other property of the Town or private entities to which access is not specifically granted by this Franchise including, without limitation, permits and agreements for placing devices on poles, in conduits or in or on other structures.

(G) This Franchise is intended to convey limited rights and interests only as to those Rights-of-Way in which the Town has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide the Grantee with any interest in any particular location within the Right-of-Way; and it does not confer rights other than as expressly provided in the grant hereof.

(H) This Franchise does not authorize Grantee to provide Telecommunications Service, or to construct, operate or maintain Telecommunications facilities. This Franchise is not a bar to the provision of non-Cable Services, or to the imposition of any lawful conditions on Grantee with respect to Telecommunications, whether similar, different or the same as the conditions specified herein. This Franchise does not relieve Grantee of any obligation it may have to obtain from the Town an authorization to provide Telecommunications Services, or to construct, operate or maintain Telecommunications facilities, or relieve Grantee of its obligation to comply with any such authorizations that may be lawfully required.

## **2.2 Use of Rights-of-Way**

(A) Subject to the Town's supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Rights-of-Way within the Town such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System within the Town. Grantee, through this Franchise, is granted extensive and valuable rights to operate its Cable System for profit using the Town's Rights-of-Way in compliance with all applicable Town construction codes and procedures. As trustee for the public, the Town is entitled to fair compensation as provided for

in Section 3 of this Franchise to be paid for these valuable rights throughout the term of the Franchise.

(B) Grantee must follow Town established nondiscriminatory requirements for placement of Cable System facilities in Rights-of-Way, including the specific location of facilities in the Rights-of-Way, and must in any event install Cable System facilities in a manner that minimizes interference with the use of the Rights-of-Way by others, including others that may be installing communications facilities. Within limits reasonably related to the Town's role in protecting public health, safety and welfare, the Town may require that Cable System facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to a particular Right-of-Way; may deny access if Grantee is not willing to comply with Town's requirements; and may remove, or require removal of, any facility that is not installed by Grantee in compliance with the requirements established by the Town, or which is installed without prior Town approval of the time, place or manner of installation, and charge Grantee for all the costs associated with removal; and may require Grantee to cooperate with others to minimize adverse impacts on the Rights-of-Way through joint trenching and other arrangements.

### **2.3 Effective Date and Term of Franchise**

This Franchise and the rights, privileges and authority granted hereunder shall take effect on June 30, 2014 (the "Effective Date"), and shall terminate on June 29, 2024 unless terminated sooner as hereinafter provided.

### **2.4 Franchise Nonexclusive**

This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements or licenses granted by the Town to any Person to use any property, Right-of-Way, right, interest or license for any purpose whatsoever, including the right of the Town to use same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. The Town may at any time grant authorization to use the Rights-of-Way for any purpose not incompatible with Grantee's authority under this Franchise and for such additional franchises for Cable Systems as the Town deems appropriate.

### **2.5 Police Powers**

Grantee's rights hereunder are subject to the police powers of the Town to adopt and enforce ordinances necessary to the safety, health, and welfare of the public, and Grantee agrees to comply with all laws and ordinances of general applicability enacted, or hereafter enacted, by the Town or any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof. The Town shall have the right to adopt, from time to time, such ordinances as may be deemed necessary in the exercise of its police power; provided that such hereinafter enacted ordinances shall be reasonable and not materially modify the terms of this Franchise. Any conflict between the provisions of this Franchise and any other present or future lawful exercise of the Town's police powers shall be resolved in favor of the latter.

## 2.6 Competitive Equity

(A) The Grantee acknowledges and agrees that the Town reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to provide Cable Services within the Town. If the Town grants such an additional franchise or other similar lawful authorization containing material terms and conditions that differ from Grantee's material obligations under this Franchise, then the Town agrees that the obligations in this Franchise will, pursuant to the process set forth in this Section, be amended to include any material terms or conditions that it imposes upon the new entrant, or provide relief from existing material terms or conditions, so as to insure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include, but are not limited to: Franchise Fees and Gross Revenues; insurance; System build-out requirements; security instruments; Public, Education and Government Access Channels and support; customer service standards; required reports and related record keeping; competitive equity (or its equivalent); audits; dispute resolution; remedies; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entity so long as the regulatory and financial burdens on each entity are materially equivalent. Video programming services (as defined in the Cable Act) delivered over wireless broadband networks are specifically exempted from the requirements of this Section.

(B) The modification process of this Franchise as provided for in Section 2.6 (A) shall only be initiated by written notice by the Grantee to the Town regarding specified franchise obligations. Grantee's notice shall address the following: (1) identifying the specific terms or conditions in the competitive cable services franchise which are materially different from Grantee's obligations under this Franchise; (2) identifying the Franchise terms and conditions for which Grantee is seeking amendments; (3) providing text for any proposed Franchise amendments to the Town, with a written explanation of why the proposed amendments are necessary and consistent.

(C) Upon receipt of Grantee's written notice as provided in Section 2.6 (B), the Town and Grantee agree that they will use best efforts in good faith to negotiate Grantee's proposed Franchise modifications, and that such negotiation will proceed and conclude within a ninety (90) day time period, unless that time period is reduced or extended by mutual agreement of the parties. If the Town and Grantee reach agreement on the Franchise modifications pursuant to such negotiations, then the Town shall amend this Franchise to include the modifications.

(D) In the alternative to Franchise modification negotiations as provided for in Section 2.6 (C), or if the Town and Grantee fail to reach agreement in such negotiations, Grantee may, at its option, elect to replace this Franchise by opting into the franchise or other similar lawful authorization that the Town grants to another provider of Cable Services, so as to insure that the regulatory and financial burdens on each entity are equivalent. If Grantee so elects, the Town shall immediately commence proceedings to replace this Franchise with the franchise issued to the other Cable Services provider.

(E) Notwithstanding anything contained in this Section 2.6(A) through (D) to the contrary, the Town shall not be obligated to amend or replace this Franchise unless the new



entrant makes Cable Services available for purchase by Subscribers or customers under its franchise agreement with the Town.

(F) Notwithstanding any provision to the contrary, at any time that non-wireless facilities based entity, legally authorized by state or federal law, makes available for purchase by Subscribers or customers, Cable Services or multiple Channels of video programming within the Franchise Area without a franchise or other similar lawful authorization granted by the Town, then:

(1) Grantee may negotiate with the Town to seek Franchise modifications as per Section 2.6(C) above; or

(a) the term of Grantee's Franchise shall, upon ninety (90) days written notice from Grantee, be shortened so that the Franchise shall be deemed to expire on a date eighteen (18) months from the first day of the month following the date of Grantee's notice; or,

(b) Grantee may assert, at Grantee's option, that this Franchise is rendered "commercially impracticable," and invoke the modification procedures set forth in Section 625 of the Cable Act.

## **2.7 Familiarity with Franchise**

The Grantee acknowledges and warrants by acceptance of the rights, privileges and agreements granted herein, that it has carefully read and fully comprehends the terms and conditions of this Franchise and is willing to and does accept all lawful and reasonable risks of the meaning of the provisions, terms and conditions herein. The Grantee further acknowledges and states that it has fully studied and considered the requirements and provisions of this Franchise, and finds that the same are commercially practicable at this time, and consistent with all local, State and federal laws and regulations currently in effect, including the Cable Act.

## **2.8 Effect of Acceptance**

By accepting the Franchise, the Grantee: (1) acknowledges and accepts the Town's legal right to issue and enforce the Franchise; (2) accepts and agrees to comply with each and every provision of this Franchise subject to Applicable Law; and (3) agrees that the Franchise was granted pursuant to processes and procedures consistent with Applicable Law, and that it will not raise any claim to the contrary.

## **SECTION 3. FRANCHISE FEE PAYMENT AND FINANCIAL CONTROLS**

### **3.1 Franchise Fee**

As compensation for the benefits and privileges granted under this Franchise and in consideration of permission to use the Town's Rights-of-Way, Grantee shall continue to pay as a Franchise Fee to the Town, throughout the duration of and consistent with this Franchise, an

amount equal to five percent (5%) of Grantee's Gross Revenues.

### **3.2 Payments**

Grantee's Franchise Fee payments to the Town shall be computed quarterly for the preceding calendar quarter ending March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than thirty (30) days after said dates.

### **3.3 Acceptance of Payment and Recomputation**

No acceptance of any payment shall be construed as an accord by the Town that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the Town may have for further or additional sums payable or for the performance of any other obligation of Grantee.

### **3.4 Quarterly Franchise Fee Reports**

Each payment shall be accompanied by a written report to the Town, or concurrently sent under separate cover, verified by an authorized representative of Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount. Such reports shall detail all Gross Revenues of the Cable System.

### **3.5 Annual Franchise Fee Reports**

Grantee shall, within sixty (60) days after the end of each year, furnish to the Town a statement stating the total amount of Gross Revenues for the year and all payments, deductions and computations for the period.

### **3.6 Audits**

On an annual basis, upon thirty (30) days prior written notice, the Town, including the Town's Auditor or his/her authorized representative, or the SCTC, as assigned by the Town, shall have the right to conduct an independent audit/review of Grantee's records reasonably related to the administration or enforcement of this Franchise. An audit conducted by the SCTC pursuant to this section may be joined with an audit/review of Grantee's records being conducted by another SCTC community related to the administration or enforcement of its cable franchise agreement with Grantee. Pursuant to subsection 1.26, as part of the Franchise Fee audit/review the Town shall specifically have the right to review relevant data related to the allocation of revenue to Cable Services in the event Grantee offers Cable Services bundled with non-Cable Services. For purposes of this section, "relevant data" shall include, at a minimum, Grantee's records, produced and maintained in the ordinary course of business, showing the subscriber counts per package and the revenue allocation per package for each package that was available for Town subscribers during the audit period. To the extent that the Town does not believe that the relevant data supplied is sufficient for the Town to complete its audit/review, the Town may require other relevant data. For purposes of this Section 3.6, the "other relevant data" shall

generally mean all: (1) billing reports, (2) financial reports (such as General Ledgers) and (3) sample customer bills used by Grantee to determine Gross Revenues for the Franchise Area that would allow the Town to recompute the Gross Revenue determination. If the audit/review shows that Franchise Fee payments have been underpaid by five percent (5%) or more (or such other contract underpayment threshold as set forth in a generally applicable and enforceable regulation or policy of the Town related to audits), Grantee shall pay the total cost of the audit/review, such cost not to exceed five thousand dollars (\$5,000) for each year of the audit period for all SCTC communities combined. The Town's right to audit/review and the Grantee's obligation to retain records related to this subsection shall expire three (3) years after each Franchise Fee payment has been made to the Town.

### **3.7 Late Payments**

In the event any payment due quarterly is not received within thirty (30) days from the end of the calendar quarter, Grantee shall pay interest on the amount due (at the prime rate as listed in the Wall Street Journal on the date the payment was due), compounded daily, calculated from the date the payment was originally due until the date the Town receives the payment.

### **3.8 Underpayments**

If a net Franchise Fee underpayment is discovered as the result of an audit, Grantee shall pay interest at the rate of the eight percent (8%) per annum, compounded quarterly, calculated from the date each portion of the underpayment was originally due until the date Grantee remits the underpayment to the Town.

### **3.9 Alternative Compensation**

In the event the obligation of Grantee to compensate the Town through Franchise Fee payments is lawfully suspended or eliminated, in whole or part, then Grantee shall pay to the Town compensation equivalent to the compensation paid to the Town by other similarly situated users of the Town's Rights-of-Way for Grantee's use of the Town's Rights-of-Way, provided that in no event shall such payments exceed the equivalent of five percent (5%) of Grantee's Gross Revenues (subject to the other provisions contained in this Franchise), to the extent consistent with Applicable Law.

### **3.10 Maximum Legal Compensation**

The parties acknowledge that, at present, applicable federal law limits the Town to collection of a maximum permissible Franchise Fee of five percent (5%) of Gross Revenues. In the event that at any time during the duration of this Franchise, the Town is authorized to collect an amount in excess of five percent (5%) of Gross Revenues, then this Franchise may be amended unilaterally by the Town to provide that such excess amount shall be added to the Franchise Fee payments to be paid by Grantee to the Town hereunder, provided that Grantee has received at least ninety (90) days prior written notice from the Town of such amendment, so long as all cable operators in the Town are paying the same Franchise Fee amount.

### **3.11 Additional Commitments Not Franchise Fee Payments**

No term or condition in this Franchise, including the funding required by Section 9, shall in any way modify or affect Grantee's obligation to pay Franchise Fees. Although the total sum of Franchise Fee payments and additional commitments set forth elsewhere in this Franchise may total more than five percent (5%) of Grantee's Gross Revenues in any twelve (12) month period, Grantee agrees that the additional commitments herein are not Franchise Fees as defined under any federal law, nor are they to be offset or credited against any Franchise Fee payments due to the Town, nor do they represent an increase in Franchise Fees.

### **3.12 Tax Liability**

The Franchise Fees shall be in addition to any and all taxes or other levies or assessments which are now or hereafter required to be paid by businesses in general by any law of the Town, the State or the United States including, without limitation, sales, use and other taxes, business license fees or other payments. Payment of the Franchise Fees under this Franchise shall not exempt Grantee from the payment of any other license fee, permit fee, tax or charge on the business, occupation, property or income of Grantee that may be lawfully imposed by the Town. Any other license fees, taxes or charges shall be of general applicability in nature and shall not be levied against Grantee solely because of its status as a Cable Operator, or against Subscribers, solely because of their status as such.

### **3.13 Financial Records**

Grantee agrees to meet with a representative of the Town upon request to review Grantee's methodology of record-keeping, financial reporting, the computing of Franchise Fee obligations and other procedures, the understanding of which the Town deems necessary for reviewing reports and records.

### **3.14 Payment on Termination**

If this Franchise terminates for any reason, the Grantee shall file with the Town within ninety (90) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. The Town reserves the right to satisfy any remaining financial obligations of the Grantee to the Town by utilizing the funds available in the letter of credit or other security provided by the Grantee.

## **SECTION 4. ADMINISTRATION AND REGULATION**

### **4.1 Authority**

(A) The Town shall be vested with the power and right to reasonably regulate the exercise of the privileges permitted by this Franchise in the public interest, or to delegate that power and right, or any part thereof, to the extent permitted under Federal, State and local law, to any agent including, but not limited to, the SCTC, in its sole discretion.

(B) Nothing in this Franchise shall limit nor expand the Town's right of eminent domain under State law.

#### **4.2 Rates and Charges**

All of Grantee's rates and charges related to or regarding Cable Services shall be subject to regulation by the Town to the full extent authorized by applicable federal, State and local laws.

#### **4.3 Rate Discrimination**

All of Grantee's rates and charges shall be published (in the form of a publicly-available rate card) and be non-discriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with Applicable Law, with identical rates and charges for all Subscribers receiving identical Cable Services, without regard to race, color, ethnic or national origin, religion, age, sex, sexual orientation, marital, military or economic status, or physical or mental disability or geographic location within the Town. Grantee shall offer the same Cable Services to all Residential Subscribers at identical rates to the extent required by Applicable Law and to Multiple Dwelling Unit Subscribers to the extent authorized by FCC rules or applicable Federal law. Grantee shall permit Subscribers to make any lawful in-residence connections the Subscriber chooses without additional charge nor penalizing the Subscriber therefor. However, if any in-home connection requires service from Grantee due to signal quality, signal leakage or other factors, caused by improper installation of such in-home wiring or faulty materials of such in-home wiring, the Subscriber may be charged reasonable service charges by Grantee. Nothing herein shall be construed to prohibit:

(A) The temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns; or,

(B) The offering of reasonable discounts to senior citizens or economically disadvantaged citizens; or,

(C) The offering of rate discounts for Cable Service; or,

(D) The Grantee from establishing different and nondiscriminatory rates and charges and classes of service for Commercial Subscribers, as allowable by federal law and regulations.

#### **4.4 Filing of Rates and Charges**

(A) Throughout the term of this Franchise, Grantee shall maintain on file with the Town a complete schedule of applicable rates and charges for Cable Services provided under this Franchise. Nothing in this subsection shall be construed to require Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns.

(B) Upon request of the Town, Grantee shall provide a complete schedule of current rates and charges for any and all Leased Access Channels, or portions of such Channels, provided by Grantee. The schedule shall include a description of the price, terms, and conditions established by Grantee for Leased Access Channels.

#### **4.5 Cross Subsidization**

Grantee shall comply with all Applicable Laws regarding rates for Cable Services and all Applicable Laws covering issues of cross subsidization.

#### **4.6 Reserved Authority**

Both Grantee and the Town reserve all rights they may have under the Cable Act and any other relevant provisions of federal, State, or local law.

#### **4.7 Time Limits Strictly Construed**

Whenever this Franchise sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a breach of this Franchise, and sufficient grounds for the Town to invoke any relevant remedy in accordance with Section 13.1 of this Franchise.

#### **4.8 Franchise Amendment Procedure**

Either party may at any time seek an amendment of this Franchise by so notifying the other party in writing. Within thirty (30) days of receipt of notice, the Town and Grantee shall meet to discuss the proposed amendment(s). If the parties reach a mutual agreement upon the suggested amendment(s), such amendment(s) shall be submitted to the Town Council for its approval. If so approved by the Town Council and the Grantee, then such amendment(s) shall be deemed part of this Franchise. If mutual agreement is not reached, there shall be no amendment.

#### **4.9 Performance Evaluations**

(A) The Town may hold performance evaluation sessions upon ninety (90) days written notice, provided that such evaluation sessions shall be held no more frequently than once every two (2) years. All such evaluation sessions shall be conducted by the Town.

(B) Special evaluation sessions may be held at any time by the Town during the term of this Franchise, upon ninety (90) days written notice to Grantee.

(C) All regular evaluation sessions shall be open to the public and announced at least two (2) weeks in advance in any manner within the discretion of the Town. Grantee shall also include with or on the Subscriber billing statements for the billing period immediately preceding the commencement of the session, written notification of the date, time, and place of the regular performance evaluation session, and any special evaluation session as required by the Town, provided Grantee receives appropriate advance notice.

(D) Topics which may be discussed at any evaluation session may include, but are not limited to, Cable Service rate structures; Franchise Fee payments; liquidated damages; free or discounted Cable Services; application of new technologies; Cable System performance; Cable Services provided; programming offered; Subscriber complaints; privacy; amendments to this Franchise; judicial and FCC rulings; line extension policies; and the Town or Grantee's rules; provided that nothing in this subsection shall be construed as requiring the renegotiation of this Franchise.

(E) During evaluations under this subsection, Grantee shall fully cooperate with the Town and shall provide such information and documents as the Town may reasonably require to perform the evaluation.

#### **4.10 Late Fees**

(A) For purposes of this subsection, any assessment, charge, cost, fee or sum, however characterized, that the Grantee imposes upon a Subscriber solely for late payment of a bill is a late fee and shall be applied in accordance with the Town's Customer Service Standards, as the same may be amended from time to time by the Town Council acting by ordinance or resolution, or as the same may be superseded by legislation or final court order.

(B) Nothing in this subsection shall be deemed to create, limit or otherwise affect the ability of the Grantee, if any, to impose other assessments, charges, fees or sums other than those permitted by this subsection, for the Grantee's other services or activities it performs in compliance with Applicable Law, including FCC law, rule or regulation.

(C) The Grantee's late fee and disconnection policies and practices shall be nondiscriminatory and such policies and practices, and any fees imposed pursuant to this subsection, shall apply equally in all parts of the Town without regard to the neighborhood or income level of the Subscriber.

#### **4.11 Force Majeure**

In the event Grantee is prevented or delayed in the performance of any of its obligations under this Franchise by reason beyond the control of Grantee, Grantee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise or to procure a substitute for such obligation which is satisfactory to the Town. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, work stoppages or labor disputes, power outages, telephone network outages, and severe or unusual weather conditions which have a direct and substantial impact on the Grantee's ability to provide Cable Services in the Town and which was not caused and could not have been avoided by the Grantee which used its best efforts in its operations to avoid such results.

If Grantee believes that a reason beyond its control has prevented or delayed its compliance with the terms of this Franchise, Grantee shall provide documentation as reasonably required by the Town to substantiate the Grantee's claim. If Grantee has not yet cured the

deficiency, Grantee shall also provide the Town with its proposed plan for remediation, including the timing for such cure.

## **SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS**

### **5.1 Indemnification**

(A) General Indemnification. Grantee shall indemnify, defend and hold the Town, its officers, officials, boards, commissions, agents and employees, harmless from any action or claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses, arising from any casualty or accident to Person or property, including, without limitation, copyright infringement, defamation, and all other damages in any way arising out of, or by reason of, any construction, excavation, operation, maintenance, reconstruction, or any other act done under this Franchise, by or for Grantee, its agents, or its employees, or by reason of any neglect or omission of Grantee. Grantee shall consult and cooperate with the Town while conducting its defense of the Town.

(B) Indemnification for Relocation. Grantee shall indemnify the Town for any damages, claims, additional costs or reasonable expenses assessed against, or payable by, the Town arising out of, or resulting from, directly or indirectly, Grantee's failure to remove, adjust or relocate any of its facilities in the Rights-of-Way in a timely manner in accordance with any relocation required by the Town.

(C) Additional Circumstances. Grantee shall also indemnify, defend and hold the Town harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses in any way arising out of:

(1) The lawful actions of the Town in granting this Franchise to the extent such actions are consistent with this Franchise and Applicable Law.

(2) Damages arising out of any failure by Grantee to secure consents from the owners, authorized distributors, or licensees/licensors of programs to be delivered by the Cable System, whether or not any act or omission complained of is authorized, allowed or prohibited by this Franchise.

(D) Procedures and Defense. If a claim or action arises, the Town or any other indemnified party shall promptly tender the defense of the claim to Grantee, which defense shall be at Grantee's expense. The Town may participate in the defense of a claim, but if Grantee provides a defense at Grantee's expense then Grantee shall not be liable for any attorneys' fees, expenses or other costs that Town may incur if it chooses to participate in the defense of a claim, unless and until separate representation as described below in Paragraph 5.1(F) is required. In that event the provisions of Paragraph 5.1(F) shall govern Grantee's responsibility for Town's/ /Town's attorney's fees, expenses or other costs. In any event, Grantee may not agree to any settlement of claims affecting the Town without the Town's approval.



(E) Non-waiver. The fact that Grantee carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to Grantee's duty of defense and indemnification under this subsection.

(F) Expenses. If separate representation to fully protect the interests of both parties is or becomes necessary, such as a conflict of interest between the Town and the counsel selected by Grantee to represent the Town, Grantee shall pay, from the date such separate representation is required forward, all reasonable expenses incurred by the Town in defending itself with regard to any action, suit or proceeding indemnified by Grantee. Provided, however, that in the event that such separate representation is or becomes necessary, and Town desires to hire counsel or any other outside experts or consultants and desires Grantee to pay those expenses, then Town shall be required to obtain Grantee's consent to the engagement of such counsel, experts or consultants, such consent not to be unreasonably withheld. The Town's expenses shall include all reasonable out-of-pocket expenses, such as consultants' fees, and shall also include the reasonable value of any services rendered by the Town Attorney or his/her assistants or any employees of the Town or its agents but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the Town by Grantee.

## **5.2 Insurance**

(A) Grantee shall maintain in full force and effect at its own cost and expense each of the following policies of insurance:

(1) Commercial General Liability insurance with limits of no less than one million dollars (\$1,000,000.00) per occurrence and one million dollars (\$1,000,000.00) general aggregate. Coverage shall be at least as broad as that provided by ISO CG 00 01 1/96 or its equivalent and include severability of interests. Such insurance shall name the Town, its officers, officials and employees as additional insureds per ISO CG 2026 or its equivalent. There shall be a waiver of subrogation and rights of recovery against the Town, its officers, officials and employees. Coverage shall apply as to claims between insureds on the policy, if applicable.

(2) Commercial Automobile Liability insurance with minimum combined single limits of one million dollars (\$1,000,000.00) each occurrence with respect to each of Grantee's owned, hired and non-owned vehicles assigned to or used in the operation of the Cable System in the Town. The policy shall contain a severability of interests provision.

(B) The insurance shall not be canceled or materially changed so as to be out of compliance with these requirements without thirty (30) days' written notice first provided to the Town, via certified mail, and ten (10) days' notice for nonpayment of premium. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this subsection within the term of this Franchise, Grantee shall provide a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts required, for the duration of this Franchise and, in the case of the Commercial General Liability, for at least one (1) year after expiration of this Franchise.

### 5.3 Deductibles / Certificate of Insurance

Any deductible of the policies shall not in any way limit Grantee's liability to the Town.

(A) Endorsements.

(1) All policies shall contain, or shall be endorsed so that:

(a) The Town, its officers, officials, boards, commissions, employees and agents are to be covered as, and have the rights of, additional insureds with respect to liability arising out of activities performed by, or on behalf of, Grantee under this Franchise or Applicable Law, or in the construction, operation or repair, or ownership of the Cable System;

(b) Grantee's insurance coverage shall be primary insurance with respect to the Town, its officers, officials, boards, commissions, employees and agents. Any insurance or self-insurance maintained by the Town, its officers, officials, boards, commissions, employees and agents shall be in excess of the Grantee's insurance and shall not contribute to it; and

(c) Grantee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

(B) Acceptability of Insurers. The insurance obtained by Grantee shall be placed with insurers with a Best's rating of no less than "A VII."

(C) Verification of Coverage. The Grantee shall furnish the Town with certificates of insurance and endorsements or a copy of the page of the policy reflecting blanket additional insured status. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices.

(D) Self-Insurance In the alternative to providing a certificate of insurance to the Town certifying insurance coverage as required above, Grantee may provide self-insurance in the same amount and level of protection for Grantee and Town, its officers, agents and employees as otherwise required under this Section. The adequacy of self-insurance shall be subject to the periodic review and approval of the Town.

### 5.4 Letter of Credit

(A) If there is a claim by the Town of an uncured breach by Grantee of a material provision of this Franchise or pattern of repeated violations of any provision(s) of this Franchise, then the Town may require and Grantee shall establish and provide within thirty (30) days from

receiving notice from the Town, to the Town as security for the faithful performance by Grantee of all of the provisions of this Franchise, a letter of credit from a financial institution satisfactory to the Town in the amount of ten thousand dollars (\$10,000).

(B) In the event that Grantee establishes a letter of credit pursuant to the procedures of this Section, then the letter of credit shall be maintained ten thousand dollars (\$10,000) until the allegations of the uncured breach have been resolved.

(C) As an alternative to the provision of a Letter of Credit to the Town as set forth in Subsections 5.4 (A) and (B) above, if the Town is a member of SCTC, and if Grantee provides a Letter of Credit to SCTC in an amount agreed to between Grantee and SCTC for the benefit of its members, in order to collectively address claims reference in 5.4 (A), Grantee shall not be required to provide a separate Letter of Credit to the Town.

(D) After completion of the procedures set forth in Section 13.1 or other applicable provisions of this Franchise, the letter of credit may be drawn upon by the Town for purposes including, but not limited to, the following:

(1) Failure of Grantee to pay the Town sums due under the terms of this Franchise;

(2) Reimbursement of costs borne by the Town to correct Franchise violations not corrected by Grantee;

(3) Monetary remedies or damages assessed against Grantee due to default or breach of Franchise requirements; and,

(4) Failure to comply with the Customer Service Standards of the Town, as the same may be amended from time to time by the Town Council acting by ordinance or resolution.

(E) The Town shall give Grantee written notice of any withdrawal under this subsection upon such withdrawal. Within seven (7) days following receipt of such notice, Grantee shall restore the letter of credit to the amount required under this Franchise.

(F) Grantee shall have the right to appeal to the Town Council for reimbursement in the event Grantee believes that the letter of credit was drawn upon improperly. Grantee shall also have the right of judicial appeal if Grantee believes the letter of credit has not been properly drawn upon in accordance with this Franchise. Any funds the Town erroneously or wrongfully withdraws from the letter of credit shall be returned to Grantee with interest, from the date of withdrawal at a rate equal to the prime rate of interest as quoted in the Wall Street Journal.

## **SECTION 6. CUSTOMER SERVICE**

### **6.1 Customer Service Standards**

Grantee shall comply with Customer Service Standards of the Town, as the same may be amended from time to time by the Town Council in its sole discretion, acting by ordinance. Any requirement in Customer Service Standards for a “local” telephone number may be met by the provision of a toll-free number. The Customer Services Standards in effect as of the Effective Date of this Franchise are attached as Exhibit A. Grantee reserves the right to challenge any customer service ordinance which it believes is inconsistent with its contractual rights under this Franchise.

### **6.2 Subscriber Privacy**

Grantee shall fully comply with any provisions regarding the privacy rights of Subscribers contained in federal, State, or local law.

### **6.3 Subscriber Contracts**

Grantee shall not enter into a contract with any Subscriber which is in any way inconsistent with the terms of this Franchise, or any Exhibit hereto, or the requirements of any applicable Customer Service Standard. Upon request, Grantee will provide to the Town a sample of the Subscriber contract or service agreement then in use.

### **6.4 Advance Notice to Town**

The Grantee shall use reasonable efforts to furnish information provided to Subscribers or the media in the normal course of business to the Town in advance.

### **6.5 Identification of Local Franchise Authority on Subscriber Bills**

Within sixty (60) days after written request from the Town, Grantee shall place the Town’s phone number on its Subscriber bills, to identify where a Subscriber may call to address escalated complaints.

## **SECTION 7. REPORTS AND RECORDS**

### **7.1 Open Records**

Grantee shall manage all of its operations in accordance with a policy of keeping its documents and records open and accessible to the Town. The Town, including the Town’s Auditor or his/her authorized representative, shall have access to, and the right to inspect, any books and records of Grantee, its parent corporations and Affiliates which are reasonably related to the administration or enforcement of the terms of this Franchise. Grantee shall not deny the Town access to any of Grantee's records on the basis that Grantee's records are under the control of any parent corporation, Affiliate or a third party. The Town may, in writing, request copies of

any such records or books and Grantee shall provide such copies within thirty (30) days of the transmittal of such request. One (1) copy of all reports and records required under this or any other subsection shall be furnished to the Town, at the sole expense of Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then Grantee may request, in writing within ten (10) days, that the Town inspect them at Grantee's local offices. If any books or records of Grantee are not kept in a local office and not made available in copies to the Town upon written request as set forth above, and if the Town determines that an examination of such records is necessary or appropriate for the performance of any of the Town's duties, administration or enforcement of this Franchise, then all reasonable travel and related expenses incurred in making such examination shall be paid by Grantee.

## **7.2 Confidentiality**

The Town agrees to treat as confidential any books or records that constitute proprietary or confidential information under federal or State law, to the extent Grantee makes the Town aware of such confidentiality. Grantee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under State or federal law. If the Town believes it must release any such confidential books and records in the course of enforcing this Franchise, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. If the Town receives a demand from any Person for disclosure of any information designated by Grantee as confidential, the Town shall, so far as consistent with Applicable Law, advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, the Town agrees that, to the extent permitted by State and federal law, it shall deny access to any of Grantee's books and records marked confidential as set forth above to any Person. Grantee shall reimburse the Town for all reasonable costs and attorneys fees incurred in any legal proceedings pursued under this Section.

## **7.3 Records Required**

(A) Grantee shall at all times maintain, and shall furnish to the Town upon 30 days written request and subject to Applicable Law:

(1) A complete set of maps showing the exact location of all Cable System equipment and facilities in the Right-of-Way, but excluding detail on proprietary electronics contained therein and Subscriber drops. As-built maps including proprietary electronics shall be available at Grantee's offices for inspection by the Town's authorized representative(s) or agent(s) and made available to such during the course of technical inspections as reasonably conducted by the Town. These maps shall be certified as accurate by an appropriate representative of the Grantee;

(2) A copy of all FCC filings on behalf of Grantee, its parent corporations or Affiliates which relate to the operation of the Cable System in the Town;

(3) Current Subscriber Records and information;

(4) A log of Cable Services added or dropped, Channel changes, number of Subscribers added or terminated, all construction activity, and total homes passed for the previous twelve (12) months; and

(5) A list of Cable Services, rates and Channel line-ups.

(B) Subject to subsection 7.2, all information furnished to the Town is public information, and shall be treated as such, except for information involving the privacy rights of individual Subscribers.

#### **7.4 Annual Reports**

Within sixty (60) days of the Town's written request, Grantee shall submit to the Town a written report, in a form acceptable to the Town, which shall include, but not necessarily be limited to, the following information for the Town:

(A) A Gross Revenue statement, as required by subsection 3.5 of this Franchise;

(B) A summary of the previous year's activities in the development of the Cable System, including, but not limited to, Cable Services begun or discontinued during the reporting year, and the number of Subscribers for each class of Cable Service (*i.e.*, Basic, Digital Starter, and Premium);

(C) The number of homes passed, beginning and ending plant miles, any services added or dropped, and any technological changes occurring in the Cable System;

(D) A statement of planned construction, if any, for the next year; and,

(E) A copy of the most recent annual report Grantee filed with the SEC or other governing body.

The parties agree that the Town's request for these annual reports shall remain effective, and need only be made once. Such a request shall require the Grantee to continue to provide the reports annually, until further written notice from the Town to the contrary.

#### **7.5 Copies of Federal and State Reports**

Within thirty (30) days of a written request, Grantee shall submit to the Town copies of all pleadings, applications, notifications, communications and documents of any kind, submitted by Grantee or its parent corporation(s), to any federal, State or local courts, regulatory agencies and other government bodies if such documents directly relate to the operations of Grantee's Cable System within the Town. Grantee shall not claim confidential, privileged or proprietary rights to such documents unless under federal, State, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or State agency.

## **7.6 Complaint File and Reports**

(A) Grantee shall keep an accurate and comprehensive file of any complaints regarding the Cable System, in a manner consistent with the privacy rights of Subscribers, and Grantee's actions in response to those complaints. These files shall remain available for viewing to the Town during normal business hours at Grantee's local business office.

(B) Within thirty (30) days of a written request, Grantee shall provide the Town a quarterly executive summary in the form attached hereto as Exhibit B, which shall include the following information from the preceding quarter:

- (1) A summary of service calls, identifying the number and nature of the requests and their disposition;
- (2) A log of all service interruptions;
- (3) A summary of customer complaints referred by the Town to Grantee; and,
- (4) Such other information as reasonably requested by the Town.

The parties agree that the Town's request for these summary reports shall remain effective, and need only be made once. Such a request shall require the Grantee to continue to provide the reports quarterly, until further written notice from the Town to the contrary.

## **7.7 Failure to Report**

The failure or neglect of Grantee to file any of the reports or filings required under this Franchise or such other reports as the Town may reasonably request (not including clerical errors or errors made in good faith), may, at the Town's option, be deemed a breach of this Franchise.

## **7.8 False Statements**

Any false or misleading statement or representation in any report required by this Franchise (not including clerical errors or errors made in good faith) may be deemed a material breach of this Franchise and may subject Grantee to all remedies, legal or equitable, which are available to the Town under this Franchise or otherwise.

# **SECTION 8. PROGRAMMING**

## **8.1 Broad Programming Categories**

Grantee shall provide or enable the provision of at least the following initial broad categories of programming to the extent such categories are reasonably available:

- (A) Educational programming;

- (B) Colorado news, weather & information;
- (C) Sports;
- (D) General entertainment (including movies);
- (E) Children/family-oriented;
- (F) Arts, culture and performing arts;
- (G) Foreign language;
- (H) Science/documentary;
- (I) National news, weather and information; and,
- (J) Public, Educational and Government Access, to the extent required by this Franchise.

## **8.2 Deletion or Reduction of Broad Programming Categories**

(A) Grantee shall not delete or so limit as to effectively delete any broad category of programming within its control without the prior written consent of the Town.

(B) In the event of a modification proceeding under federal law, the mix and quality of Cable Services provided by Grantee on the Effective Date of this Franchise shall be deemed the mix and quality of Cable Services required under this Franchise throughout its term.

## **8.3 Obscenity**

Grantee shall not transmit, or permit to be transmitted over any Channel subject to its editorial control, any programming which is obscene under, or violates any provision of, Applicable Law relating to obscenity, and is not protected by the Constitution of the United States. Grantee shall be deemed to have transmitted or permitted a transmission of obscene programming only if a court of competent jurisdiction has found that any of Grantee's officers or employees or agents have permitted programming which is obscene under, or violative of, any provision of Applicable Law relating to obscenity, and is otherwise not protected by the Constitution of the United States, to be transmitted over any Channel subject to Grantee's editorial control. Grantee shall comply with all relevant provisions of federal law relating to obscenity.

## **8.4 Parental Control Device**

Upon request by any Subscriber, Grantee shall make available a parental control or lockout device, traps or filters to enable a Subscriber to control access to both the audio and



video portions of any or all Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter. Any device offered shall be at a rate, if any, in compliance with Applicable Law.

### **8.5 Continuity of Service Mandatory**

(A) It shall be the right of all Subscribers to continue to receive Cable Service from Grantee insofar as their financial and other obligations to Grantee are honored. The Grantee shall act so as to ensure that all Subscribers receive continuous, uninterrupted Cable Service regardless of the circumstances. For the purposes of this subsection, "uninterrupted" does not include short-term outages of the Cable System for maintenance or testing.

(B) In the event of a change of grantee, or in the event a new Cable Operator acquires the Cable System in accordance with this Franchise, Grantee shall cooperate with the Town, new franchisee or Cable Operator in maintaining continuity of Cable Service to all Subscribers. During any transition period, Grantee shall be entitled to the revenues for any period during which it operates the Cable System, and shall be entitled to reasonable costs for its services when it no longer operates the Cable System.

(C) In the event Grantee fails to operate the Cable System for four (4) consecutive days without prior approval of the Manager, or without just cause, the Town may, at its option, operate the Cable System itself or designate another Cable Operator until such time as Grantee restores service under conditions acceptable to the Town or a permanent Cable Operator is selected. If the Town is required to fulfill this obligation for Grantee, Grantee shall reimburse the Town for all reasonable costs or damages that are the result of Grantee's failure to perform.

### **8.6 Services for the Disabled**

Grantee shall comply with the Americans with Disabilities Act and any amendments thereto.

### **8.7 Ascertainment of Programming and Customer Satisfaction**

Upon written request of the Town, the Grantee shall provide to the Town written questions that it intends to use in formal upcoming customer ascertainment, if any, to survey community-wide views of cable operations, customer-service issues and programming issues within the Franchise Area. The Town may suggest new or modified questions to such formal community-wide ascertainment, which the Grantee, in the reasonable exercise of its discretion, may add to the next formal community-wide ascertainment it conducts. Upon completion of the next formal community-wide ascertainment of Subscribers in the Town, Grantee shall provide the results from any portion of such survey that addresses customer satisfaction and/or programming issues. Nothing herein shall be construed to limit the right of the Town to conduct its own surveys at its own expense.

## **SECTION 9. ACCESS**

### **9.1 Designated Access Providers**

(A) The Town shall have the sole and exclusive responsibility for identifying the Designated Access Providers, including itself for Access purposes, to control and manage the use of any or all Access Facilities provided by Grantee under this Franchise. As used in this Section, such "Access Facilities" includes the Channels, services, facilities, equipment, technical components and/or financial support provided under this Franchise, which is used or useable by and for Public Access, Educational Access, and Government Access ("PEG" or "PEG Access"). At the commencement of the Term of this Franchise, the Town is authorizing the SCTC as its Designated Access Provider for all Access purposes as permitted in this Franchise and Applicable Law.

(B) Grantee shall cooperate with Town in Town's efforts to provide Access programming, but will not be responsible or liable for any damages resulting from a claim in connection with the programming placed on the Access Channels by the Designated Access Provider.

### **9.2 Channel Capacity and Use**

(A) Grantee shall make available to the SCTC four (4) Downstream Channels for PEG use as provided for in this Section. The Downstream Channels allocated under this Section are the same common channels that Grantee shall make available to all member communities of the SCTC. It is intended that these four (4) common Downstream Channels will be used for the provision of programming to subscribers of PEG programming by the Town and the individual jurisdictions and educational institutions within the SCTC.

(B) Grantee shall have the right to temporarily use any Channel, or portion thereof, which is allocated under this Section for Public, Educational, or Governmental Access use, within sixty (60) days after a written request for such use is submitted to Town, if such Channel is not "fully utilized" as defined herein. A Channel shall be considered fully utilized if substantially unduplicated programming is delivered over it more than an average of 38 hours per week over a six (6) month period. Programming that is repeated on an Access Channel up to two times per day shall be considered "unduplicated programming." Character-generated programming shall be included for purposes of this subsection, but may be counted towards the total average hours only with respect to two (2) Channels provided to Town. If a Channel allocated for Public, Educational, or Governmental Access use will be used by Grantee in accordance with the terms of this subsection, the institution to which the Channel has been allocated shall have the right to require the return of the Channel or portion thereof. Town shall request return of such Channel space by delivering written notice to Grantee stating that the institution is prepared to fully utilize the Channel, or portion thereof, in accordance with this subsection. In such event, the Channel or portion thereof shall be returned to such institution within sixty (60) days after receipt by Grantee of such written notice.

(C) Standard Definition ("SD") Digital Access Channels.

(1) Grantee shall provide to the SCTC four (4) common Activated Downstream Channels for PEG Access use in a standard definition (“SD”) digital format in Grantee’s Basic Service (“SD Access Channel”). Grantee shall carry all components of the SD Access Channel Signals provided by a Designated Access Provider including, but not limited to, closed captioning, stereo audio and other elements associated with the Programming. A Designated Access Provider shall be responsible for providing the SD Access Channel Signal in an SD format to the demarcation point at the designated point of origination for the SD Access Channel. Grantee shall transport and distribute the SD Access Channel signal on its Cable System and shall not unreasonably discriminate against SD Access Channels with respect to accessibility, functionality and to the application of any applicable Federal Communications Commission Rules & Regulations, including without limitation Subpart K Channel signal standards.

(2) With respect to signal quality, Grantee shall not be required to carry a SD Access Channel in a higher quality format than that of the SD Access Channel signal delivered to Grantee, but Grantee shall distribute the SD Access Channel signal without degradation. Upon reasonable written request by a Designated Access Provider, Grantee shall verify signal delivery to Subscribers with the Designated Access Provider, consistent with the requirements of this Section 9.2(C).

(3) Grantee shall be responsible for costs associated with the transmission of SD Access signals on its side of the demarcation point which for the purposes of this Section 9.2 (C)(3), shall mean up to and including the modulator where the Town signal is converted into a format to be transmitted over a fiber connection to Grantee. The Town or Designated Access Provider shall be responsible for costs associated with SD Access signal transmission on its side of the demarcation point.

(4) SD Access Channels may require Subscribers to buy or lease special equipment, available to all Subscribers, and subscribe to those tiers of Cable Service, upon which SD channels are made available. Grantee is not required to provide free SD equipment to Subscribers, including complimentary government and educational accounts, nor modify its equipment or pricing policies in any manner.

(D) High Definition (“HD”) Digital Access Channels.

(1) After the Effective Date, and with at least 120 days written notice to Grantee, the Town may request in coordination with all SCTC member communities, and Grantee shall provide to the SCTC on its Cable System, one (1) common Activated Downstream Channel for PEG Access use in a High Definition (“HD”) digital format (“HD Access Channel or Channels”). The HD Access Channel allocated under this Section is the same common HD Access Channel that Grantee shall make available to all member communities of the SCTC. After the fifth (5<sup>th</sup>) anniversary of the Effective Date, and with at least 120 day written notice to Grantee, the Town may request in coordination with all SCTC member communities, and Grantee shall provide to the SCTC on its Cable System, one (1) additional common Activated Downstream Channel

for PEG Access use in a High Definition (“HD”) digital format (“HD Access Channel or Channels”). Activation of such common HD Access Channel(s) shall only occur after the following conditions are satisfied:

(a) The Town shall, in its written notice to Grantee as provided for in this Section, confirm that the SCTC or its Designated Access Provider has the capabilities to produce, has been producing and will produce programming in an HD format for the newly activated HD Access Channel(s); and,

(b) There will be a minimum of five (5) hours per-day, five days per-week of HD PEG programming available for each HD Access Channel.

(2) The Town shall be responsible for providing the HD Access Channel signal in an HD digital format to the demarcation point at the designated point of origination for the HD Access Channel. For purposes of this Franchise, an HD signal refers to a television signal delivering picture resolution of either 720p or 1080i, or such other resolution in this same range that Grantee utilizes for other similar non-sport, non-movie programming channels on the Cable System, whichever is greater.

(3) Grantee shall transport and distribute the HD Access Channel signal on its Cable System and shall not unreasonably discriminate against HD Access Channels with respect to accessibility, functionality and to the application of any applicable Federal Communications Commission Rules & Regulations, including without limitation Subpart K Channel signal standards. With respect to signal quality, Grantee shall not be required to carry a HD Access Channel in a higher quality format than that of the HD Access Channel signal delivered to Grantee, but Grantee shall distribute the HD Access Channel signal without degradation. Grantee shall carry all components of the HD Access Channel signals provided by the Designated Access Provider including, but not limited to, closed captioning, stereo audio and other elements associated with the Programming. Upon reasonable written request by the Town, Grantee shall verify signal delivery to Subscribers with the Town, consistent with the requirements of this Section 9.2(D).

(4) HD Access Channels may require Subscribers to buy or lease special equipment, available to all Subscribers, and subscribe to those tiers of Cable Service, upon which HD channels are made available. Grantee is not required to provide free HD equipment to Subscribers, including complimentary government and educational accounts, nor modify its equipment or pricing policies in any manner.

(5) The Town or any Designated Access Provider is responsible for acquiring all equipment necessary to produce programming in HD.

(6) Grantee shall cooperate with the Town to procure and provide, at Town’s cost, all necessary transmission equipment from the Designated Access Provider channel origination point, at Grantee’s headend and through Grantee’s distribution system, in order to deliver the HD Access Channels. The Town shall be responsible for the costs of all transmission equipment, including HD modulator and demodulator, and encoder or decoder equipment, and multiplex

equipment, required in order for Grantee to receive and distribute the HD Access Channel signal, or for the cost of any resulting upgrades to the video return line. The Town and Grantee agree that such expense of acquiring and installing the transmission equipment or upgrades to the video return line qualifies as a capital cost for PEG Facilities within the meaning of the Cable Act 47 U.S.C.A. Section 542(g)(20)(C), and therefore is an appropriate use of revenues derived from those PEG Capital fees provided for in this Franchise.

(E) Grantee shall simultaneously carry the HD Access Channel provided for in Section 9.2(D) in high definition format on the Cable System, in addition to simultaneously carrying in standard definition format the SD Access Channels provided pursuant to Subsection 9.2(C). At such time as Grantee activates the first common HD Access Channel, the number of common SD Access Channels Grantee is obligated to provide to the SCTC in Section 9.2(C) shall be reduced from four (4) to three (3). At such time as Grantee activates the second common HD Access Channel, the number of common SD Access Channels Grantee is obligated to provide to the SCTC in Section 9.2(C) shall be reduced from three (3) to two (2).

(F) There shall be no restriction on Grantee's technology used to deploy and deliver SD or HD signals so long as the requirements of the Franchise are otherwise met. Grantee may implement HD carriage of the PEG channel in any manner (including selection of compression, utilization of IP, and other processing characteristics) that produces a signal quality for the consumer that is reasonably comparable and functionally equivalent to similar commercial HD channels carried on the Cable System. In the event the Town believes that Grantee fails to meet this standard, Town will notify Grantee of such concern, and Grantee will respond to any complaints in a timely manner.

### **9.3 Access Channel Assignments**

Grantee will use reasonable efforts to minimize the movement of SD and HD Access Channel assignments. Grantee shall also use reasonable efforts to institute common SD and HD Access Channel assignments among the SCTC members served by the same Headend as Town for compatible Access programming, for example, assigning all Educational Access Channels programmed by higher education organizations to the same Channel number. In addition, Grantee will make reasonable efforts to locate HD Access Channels provided pursuant to Subsection 9.2(D) in a location on its HD Channel line-up that is easily accessible to Subscribers.

### **9.4 Relocation of Access Channels**

Grantee shall provide Town a minimum of sixty (60) days' notice, and use its best efforts to provide one hundred and twenty (120) days notice, prior to the time Public, Educational, and Governmental Access Channel designations are changed.

### **9.5 Web-Based Video On Demand and Streaming**

(A) Within one hundred and twenty (120) days of written request, Grantee shall provide at no cost to the Town, at 110 Ski Hill Road, Breckenridge, Colorado, a business class

broadband connection, broadband service and all necessary hardware, to enable the Town's delivery of web-based PEG content. If, during the term of this Franchise, the Town desires an upgrade to the business class broadband connection provided into 110 Ski Hill Road and such upgrade results in any construction costs, or if the Town moves its location and such new location does not have the capacity to connect and receive the broadband service described in this Section 9.5(A), the cost of upgrading the network to enable such service and/or the cost for any increased level of service shall be incurred by the Town. The broadband connection provided herein shall be used exclusively for web-based on demand Access programming and/or web-based video streaming of Access content. Within ninety (90) days after written request of the Town, Grantee shall additionally provide a one time grant of funding to the SCTC, in an amount not to exceed fifteen thousand dollars (\$15,000) which the Town, through the SCTC, shall use to acquire and/or for replacement costs for a video on demand server for facilitating the web-based Access programming described in this Section 9.5. The grant of funding allocated under this Section is a collective grant that Grantee is providing in the franchise agreements of each SCTC member community. The total amount of this collective grant shall not exceed fifteen thousand dollars (\$15,000).

(B) For all of the Town's and its Designated Access Provider's web-based on demand Access programming facilitated through the broadband connection and service described in this Section 9.5, Grantee shall be permitted to provide its logo which shall be displayed on the main web page for the web-based Access programming, in a manner reasonably similar to the Grantee's logo display found on its Project Open Voice web-based supported programming. Notwithstanding the foregoing, the size of the Town's or Designated Access Provider's logos may be as large as or larger than Grantee's logo, in the Town's or Designated Access Provider's sole reasonable discretion.

(C) Any costs incurred by Grantee in facilitating the web-based on demand Access programming described in this Section 9.5 may be recovered from Subscribers by Grantee in accordance with Applicable Law.

## **9.6 Support for Access Costs**

During the term of this Franchise Agreement, Grantee shall provide fifty cents (\$.50) per month per Residential Subscriber (the "PEG Contribution") to be used solely for capital costs related to Public, Educational and Governmental Access and the web based on demand Access programming described in Section 9.5, or as may be permitted by Applicable Law. To address inflationary impacts on capital equipment or to evaluate whether the Town's PEG Access capital costs have reduced with time, the Town and Grantee may meet no more than three times after the Effective Date to discuss whether to increase or to decrease the PEG Contribution. The primary purpose of such meetings will be for the parties to review prior expenditures and future capital plans to determine if the current PEG Contribution is reasonably appropriate to meet future needs. The Town and Grantee may suggest to each other, based upon their own assessments of reasonable past practices and future anticipated needs, whether the current level of PEG Contribution is appropriate. If either party believes that the PEG Contribution should be modified in a reasonable amount to address such future needs the parties shall share all relevant information supporting their positions and negotiate in good faith to determine if the PEG

Contribution should be increased or decreased, and if so, in what amount. Such discussions regarding potential adjustment to the PEG Contribution will be conducted pursuant to the Franchise amendment procedures in Section 4.8 of this Franchise. Grantee shall make PEG Contribution payments quarterly, following the effective date of this Franchise Agreement for the preceding quarter ending March 31, June 30, September 30, and December 31. Each payment shall be due and payable no later than thirty (30) days following the end of the quarter. Town shall have sole discretion to allocate the expenditure of such payments for any capital costs related to PEG Access. The parties agree that this Franchise shall provide Town discretion to utilize Access payments for new internal network connections and enhancements to the Town's existing network.

### **9.7 Access Support Not Franchise Fees**

Grantee agrees that capital support for Access Costs arising from or relating to the obligations set forth in this Section shall in no way modify or otherwise affect Grantee's obligations to pay Franchise Fees to Town. Grantee agrees that although the sum of Franchise Fees plus the payments set forth in this Section may total more than five percent (5%) of Grantee's Gross Revenues in any 12-month period, the additional commitments shall not be offset or otherwise credited in any way against any Franchise Fee payments under this Franchise Agreement so long as such support is used for capital Access purposes consistent with this Franchise and federal law.

### **9.8 Access Channels On Basic Service or Lowest Priced HD Service Tier**

All SD Access Channels under this Franchise Agreement shall be included by Grantee, without limitation, as part of Basic Service. All HD Access Channels under this Franchise Agreement shall be included by Grantee, without limitation, as part of the lowest priced tier of HD Cable Service upon which Grantee provides HD programming content.

### **9.9 Change In Technology**

In the event Grantee makes any change in the Cable System and related equipment and Facilities or in Grantee's signal delivery technology, which directly or indirectly affects the signal quality or transmission of Access services or programming, Grantee shall at its own expense take necessary technical steps or provide necessary technical assistance, including the acquisition of all necessary equipment, and full training of Town's Access personnel to ensure that the capabilities of Access services are not diminished or adversely affected by such change. If the Town implements a new video delivery technology that is currently offered and can be accommodated on the Grantee's local Cable System then the same provisions above shall apply. If the Town implements a new video delivery technology that is not currently offered on and/or that cannot be accommodated by the Grantee's local Cable System, then the Town shall be responsible for acquiring all necessary equipment, facilities, technical assistance, and training to deliver the signal to the Grantee's headend for distribution to subscribers.

## **9.10 Technical Quality**

Grantee shall maintain all upstream and downstream Access services and Channels on its side of the demarcation point at the same level of technical quality and reliability required by this Franchise Agreement and all other applicable laws, rules and regulations for Residential Subscriber Channels. Grantee shall provide routine maintenance for all transmission equipment on its side of the demarcation point, including modulators, decoders, multiplex equipment, and associated cable and equipment necessary to carry a quality signal to and from Town's facilities for the Access Channels provided under this Franchise Agreement, including the business class broadband equipment and services necessary for the video on demand and streaming service described in Section 9.5. Grantee shall also provide, if requested in advance by the Town, advice and technical expertise regarding the proper operation and maintenance of transmission equipment on the Town's side of the demarcation point. The Town shall be responsible for all initial and replacement costs of all HD modulator and demodulator equipment, web-based video on demand servers and web-based video streaming servers. The Town shall also be responsible, at its own expense, to replace any of the Grantee's equipment that is damaged by the gross negligence or intentional acts of Town staff. The Grantee shall be responsible, at its own expense, to replace any of the Grantee's equipment that is damaged by the gross negligence or intentional acts of Grantee's staff. The Town will be responsible for the cost of repairing and/or replacing any HD PEG Access and web-based video on demand transmission equipment that Grantee maintains that is used exclusively for transmission of the Town's and/or its Designated Access Providers' HD Access programming.

## **9.11 Access Cooperation**

Town may designate any other jurisdiction which has entered into an agreement with Grantee or an Affiliate of Grantee based upon this Franchise Agreement, any SCTC member, the SCTC, or any combination thereof to receive any Access benefit due Town hereunder, or to share in the use of Access Facilities hereunder. The purpose of this subsection shall be to allow cooperation in the use of Access and the application of any provision under this Section as Town in its sole discretion deems appropriate, and Grantee shall cooperate fully with, and in, any such arrangements by Town.

## **9.12 Return Lines/Access Origination**

(A) Grantee shall continuously maintain the return lines previously constructed and in place as of the Effective Date to the SCTC's facility at 110 Ski Hill Road, Breckenridge, Colorado, throughout the Term of the Franchise, in order to enable the distribution of Access programming to Residential Subscribers on the Access Channels; provided however that Grantee's maintenance obligations with respect to this location shall cease if a location is no longer used in the future by the Town to originate Access programming.

(B) Grantee shall construct and maintain new Fiber Optic return lines to the Headend from production facilities of new or relocated Designated Access Providers delivering Access programming to Residential Subscribers as requested in writing by the Town. All actual construction costs incurred by Grantee from the nearest interconnection point to the Designated



Access Provider shall be paid by the Town or the Designated Access Provider. New return lines shall be completed within one (1) year from the request of the Town or its Designated Access Provider, or as otherwise agreed to by the parties. If an emergency situation necessitates movement of production facilities to a new location, the parties shall work together to complete the new return line as soon as reasonably possible.

## **SECTION 10. GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION**

### **10.1 Right to Construct**

Subject to Applicable Law, regulations, rules, resolutions and ordinances of the Town and the provisions of this Franchise, Grantee may perform all construction in the Rights-of-Way for any facility needed for the maintenance or extension of Grantee's Cable System.

### **10.2 Right-of-Way Meetings**

Grantee will regularly attend and participate in meetings of the Town, of which the Grantee is made aware, regarding Right-of-Way issues that may impact the Cable System.

### **10.3 Joint Trenching/Boring Meetings**

Grantee will regularly attend and participate in planning meetings of the Town, of which the Grantee is made aware, to anticipate joint trenching and boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, licensees, permittees, and franchisees so as to reduce so far as possible the number of Right-of-Way cuts within the Town.

### **10.4 General Standard**

All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. All installations of equipment shall be permanent in nature, durable and installed in accordance with good engineering practices.

### **10.5 Permits Required for Construction**

Prior to doing any work in the Right-of Way or other public property, Grantee shall apply for, and obtain, appropriate permits from the Town. As part of the permitting process, the Town may impose such conditions and regulations as are necessary for the purpose of protecting any structures in such Rights-of-Way, proper restoration of such Rights-of-Way and structures, the protection of the public, and the continuity of pedestrian or vehicular traffic. Such conditions may also include the provision of a construction schedule and maps showing the location of the facilities to be installed in the Right-of-Way. Grantee shall pay all applicable fees for the requisite Town permits received by Grantee.

## **10.6 Emergency Permits**

In the event that emergency repairs are necessary, Grantee shall immediately notify the Town of the need for such repairs. Grantee may initiate such emergency repairs, and shall apply for appropriate permits within forty-eight (48) hours after discovery of the emergency.

## **10.7 Compliance with Applicable Codes**

(A) Town Construction Codes. Grantee shall comply with all applicable Town construction codes, including, without limitation, the Uniform Building Code and other building codes, the Uniform Fire Code, the Uniform Mechanical Code, the Electronic Industries Association Standard for Physical Location and Protection of Below-Ground Fiber Optic Cable Plant, and zoning codes and regulations.

(B) Tower Specifications. Antenna supporting structures (towers) shall be designed for the proper loading as specified by the Electronics Industries Association (EIA), as those specifications may be amended from time to time. Antenna supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable federal, State, and local codes or regulations.

(C) Safety Codes. Grantee shall comply with all federal, State and Town safety requirements, rules, regulations, laws and practices, and employ all necessary devices as required by Applicable Law during construction, operation and repair of its Cable System. By way of illustration and not limitation, Grantee shall comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.

## **10.8 GIS Mapping**

Grantee shall comply with any generally applicable ordinances, rules and regulations of the Town regarding geographic information mapping systems for users of the Rights-of-Way.

## **10.9 Minimal Interference**

Work in the Right-of-Way, on other public property, near public property, or on or near private property shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. Grantee's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the Town, or with any other pipes, wires, conduits, pedestals, structures, or other facilities that may have been laid in the Rights-of-Way by, or under, the Town's authority. The Grantee's Cable System shall be located, erected and maintained so as not to endanger or interfere with the lives of Persons, or to interfere with new improvements the Town may deem proper to make or to unnecessarily hinder or obstruct the free use of the Rights-of-Way or other public property, and shall not interfere with the travel and use of public places by the public during the construction, repair, operation or removal thereof, and shall not obstruct or impede traffic. In the event of such interference, the Town may require the removal or relocation of

Grantee's lines, cables, equipment and other appurtenances from the property in question at Grantee's expense.

#### **10.10 Prevent Injury/Safety**

Grantee shall provide and use any equipment and facilities necessary to control and carry Grantee's signals so as to prevent injury to the Town's property or property belonging to any Person. Grantee, at its own expense, shall repair, renew, change and improve its facilities to keep them in good repair, and safe and presentable condition. All excavations made by Grantee in the Rights-of-Way shall be properly safeguarded for the prevention of accidents by the placement of adequate barriers, fences or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly designated by warning lights.

#### **10.11 Hazardous Substances**

(A) Grantee shall comply with any and all Applicable Laws, statutes, regulations and orders concerning hazardous substances relating to Grantee's Cable System in the Rights-of-Way.

(B) Upon reasonable notice to Grantee, the Town may inspect Grantee's facilities in the Rights-of-Way to determine if any release of hazardous substances has occurred, or may occur, from or related to Grantee's Cable System. In removing or modifying Grantee's facilities as provided in this Franchise, Grantee shall also remove all residue of hazardous substances related thereto.

(C) Grantee agrees to indemnify the Town against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the Town arising out of a release of hazardous substances caused by Grantee's Cable System.

#### **10.12 Locates**

Prior to doing any work in the Right-of-Way, Grantee shall give appropriate notices to the Town and to the notification association established in C.R.S. Section 9-1.5-105, as such may be amended from time to time.

Within forty-eight (48) hours after any Town bureau or franchisee, licensee or permittee notifies Grantee of a proposed Right-of-Way excavation, Grantee shall, at Grantee's expense:

(A) Mark on the surface all of its located underground facilities within the area of the proposed excavation;

(B) Notify the excavator of any unlocated underground facilities in the area of the proposed excavation; or

(C) Notify the excavator that Grantee does not have any underground facilities in the vicinity of the proposed excavation.

### **10.13 Notice to Private Property Owners**

Grantee shall give notice to private property owners of work on or adjacent to private property in accordance with the Town's Customer Service Standards, as the same may be amended from time to time by the Town Council acting by Ordinance or resolution.

### **10.14 Underground Construction and Use of Poles**

(A) When required by general ordinances, resolutions, regulations or rules of the Town or applicable State or federal law, Grantee's Cable System shall be placed underground at Grantee's expense unless funding is generally available for such relocation to all users of the Rights-of-Way. Placing facilities underground does not preclude the use of ground-mounted appurtenances.

(B) Where electric, telephone, and other above-ground utilities are installed underground at the time of Cable System construction, or when all such wiring is subsequently placed underground, all Cable System lines shall also be placed underground with other wireline service at no expense to the Town or Subscribers unless funding is generally available for such relocation to all users of the Rights-of-Way. Related Cable System equipment, such as pedestals, must be placed in accordance with the Town's applicable code requirements and rules. In areas where either electric or telephone utility wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation.

(C) The Grantee shall utilize existing poles and conduit wherever possible.

(D) In the event Grantee cannot obtain the necessary poles and related facilities pursuant to a pole attachment agreement, and only in such event, then it shall be lawful for Grantee to make all needed excavations in the Rights-of-Way for the purpose of placing, erecting, laying, maintaining, repairing, and removing poles, supports for wires and conductors, and any other facility needed for the maintenance or extension of Grantee's Cable System. All poles of Grantee shall be located as designated by the proper Town authorities.

(E) This Franchise does not grant, give or convey to the Grantee the right or privilege to install its facilities in any manner on specific utility poles or equipment of the Town or any other Person. Copies of agreements for the use of poles, conduits or other utility facilities must be provided upon request by the Town.

(F) The Grantee and the Town recognize that situations may occur in the future where the Town may desire to place its own cable or conduit for Fiber Optic cable in trenches or bores opened by the Grantee. The Grantee agrees to cooperate with the Town in any construction by the Grantee that involves trenching or boring, provided that the Town has first notified the Grantee in some manner that it is interested in sharing the trenches or bores in the area where the Grantee's construction is occurring. The Grantee shall allow the Town to lay its cable, conduit and Fiber Optic cable in the Grantee's trenches and bores, provided the Town shares in the cost

of the trenching and boring on the same terms and conditions as the Grantee at that time shares the total cost of trenches and bores. The Town shall be responsible for maintaining its respective cable, conduit and Fiber Optic cable buried in the Grantee's trenches and bores under this paragraph.

### **10.15 Undergrounding of Multiple Dwelling Unit Drops**

In cases of single site Multiple Dwelling Units, Grantee shall minimize the number of individual aerial drop cables by installing multiple drop cables underground between the pole and Multiple Dwelling Unit where determined to be technologically feasible in agreement with the owners and/or owner's association of the Multiple Dwelling Units.

### **10.16 Burial Standards**

(A) Depths. Unless otherwise required by law, Grantee, and its contractors, shall comply with the following burial depth standards. In no event shall Grantee be required to bury its cable deeper than electric or gas facilities, or existing telephone facilities in the same portion of the Right-of-Way, so long as those facilities have been buried in accordance with Applicable Law:

Underground cable drops from the curb shall be buried at a minimum depth of eight (8) inches, unless a sprinkler system or other construction concerns preclude it, in which case, underground cable drops shall be buried at a depth of at least six (6) inches.

Feeder lines shall be buried at a minimum depth of twenty-four inches.

Trunk lines shall be buried at a minimum depth of twenty-four (24) inches.

Fiber Optic cable shall be buried at a minimum depth of thirty-six (36) inches.

In the event of a conflict between this subsection and the provisions of any customer service standard, this subsection shall control.

(B) Timeliness. Cable drops installed by Grantee to residences shall be buried according to these standards within one calendar week of initial installation, or at a time mutually-agreed upon between the Grantee and the Subscriber. When freezing surface conditions prevent Grantee from achieving such timetable, Grantee shall apprise the Subscriber of the circumstances and the revised schedule for burial, and shall provide the Subscriber with Grantee's telephone number and instructions as to how and when to call Grantee to request burial of the line if the revised schedule is not met.

### **10.17 Cable Drop Bonding**

Grantee shall ensure that all cable drops are properly bonded at the home, consistent with applicable code requirements.

### **10.18 Prewiring**

Any ordinance or resolution of the Town which requires prewiring of subdivisions or other developments for electrical and telephone service shall be construed to include wiring for Cable Systems. The Town shall give the same notification to Grantee that is given to any electrical or telephone service companies as set forth in its ordinance.

### **10.19 Repair and Restoration of Property**

(A) The Grantee shall protect public and private property from damage. If damage occurs, the Grantee shall promptly notify the property owner within twenty-four (24) hours in writing.

(B) Whenever Grantee disturbs or damages any Right-of-Way, other public property or any private property, Grantee shall promptly restore the Right-of-Way or property to at least its prior condition, normal wear and tear excepted, at its own expense.

(C) Rights-of-Way and Other Public Property. Grantee shall warrant any restoration work performed by or for Grantee in the Right-of-Way or on other public property in accordance with Applicable Law. If restoration is not satisfactorily performed by the Grantee within a reasonable time, the Town may, after prior notice to the Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the cost of those repairs from the Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Grantee shall pay the Town.

(D) Private Property. Upon completion of the work which caused any disturbance or damage, Grantee shall promptly commence restoration of private property, and will use best efforts to complete the restoration within seventy-two (72) hours, considering the nature of the work that must be performed. Grantee shall also perform such restoration in accordance with the Town's Customer Service Standards, as the same may be amended from time to time by the Town Council acting by ordinance or resolution.

### **10.20 Use of Conduits by the Town**

The Town may install or affix and maintain wires and equipment owned by the Town for Town purposes in or upon any and all of Grantee's ducts, conduits or equipment in the Rights-of-Way and other public places if such placement does not interfere with Grantee's use of its facilities, without charge to the Town, to the extent space therein or thereon is reasonably available, and pursuant to all applicable ordinances and codes. This right shall not extend to affiliates of Grantee who have facilities in the right-of-way for the provision of non-cable

services. For the purposes of this subsection, "Town purposes" includes, but is not limited to, the use of the structures and installations for Town fire, police, traffic, water, telephone, and/or signal systems, but not for Cable Service or transmission to third parties of telecommunications or information services in competition with Grantee. Grantee shall not deduct the value of such use of its facilities from its Franchise Fee payments or from other fees payable to the Town.

### **10.21 Common Users**

(A) For the purposes of this subsection:

(1) "Attachment" means any wire, optical fiber or other cable, and any related device, apparatus or auxiliary equipment, for the purpose of voice, video or data transmission.

(2) "Conduit" or "Conduit Facility" means any structure, or section thereof, containing one or more Ducts, conduits, manholes, handhole or other such facilities in Grantee's Cable System.

(3) "Duct" means a single enclosed raceway for cables, Fiber Optics or other wires.

(4) "Licensee" means any Person licensed or otherwise permitted by the Town to use the Rights-of-Way.

(5) "Surplus Ducts or Conduits" are Conduit Facilities other than those occupied by Grantee or any prior Licensee, or unoccupied Ducts held by Grantee as emergency use spares, or other unoccupied Ducts that Grantee reasonably expects to use within two (2) years from the date of a request for use.

(B) Grantee acknowledges that the Rights-of-Way have a finite capacity for containing Conduits. Therefore, Grantee agrees that whenever the Town determines it is impracticable to permit construction of an underground Conduit system by any other Person which may at the time have authority to construct or maintain Conduits or Ducts in the Rights-of-Way, but excluding Persons providing Cable Services in competition with Grantee, the Town may require Grantee to afford to such Person the right to use Grantee's Surplus Ducts or Conduits in common with Grantee, pursuant to the terms and conditions of an agreement for use of Surplus Ducts or Conduits entered into by Grantee and the Licensee. Nothing herein shall require Grantee to enter into an agreement with such Person if, in Grantee's reasonable determination, such an agreement could compromise the integrity of the Cable System.

(C) A Licensee occupying part of a Duct shall be deemed to occupy the entire Duct.

(D) Grantee shall give a Licensee a minimum of one hundred twenty (120) days notice of its need to occupy a licensed Conduit and shall propose that the Licensee take the first feasible action as follows:

(1) Pay revised Conduit rent designed to recover the cost of retrofitting the Conduit with multiplexing, Fiber Optics or other space-saving technology sufficient to meet Grantee's space needs;

(2) Pay revised Conduit rent based on the cost of new Conduit constructed to meet Grantee's space needs;

(3) Vacate the needed Ducts or Conduit; or

(4) Construct and maintain sufficient new Conduit to meet Grantee's space needs.

(E) When two or more Licensees occupy a section of Conduit Facility, the last Licensee to occupy the Conduit Facility shall be the first to vacate or construct new Conduit. When Conduit rent is revised because of retrofitting, space-saving technology or construction of new Conduit, all Licensees shall bear the increased cost.

(F) All Attachments shall meet local, State, and federal clearance and other safety requirements, be adequately grounded and anchored, and meet the provisions of contracts executed between Grantee and the Licensee. Grantee may, at its option, correct any attachment deficiencies and charge the Licensee for its costs. Each Licensee shall pay Grantee for any fines, fees, damages or other costs the Licensee's attachments cause Grantee to incur.

(G) In order to enforce the provisions of this subsection with respect to Grantee, the Town must demonstrate that it has required that all similarly situated users of the Rights-of-Way to comply with the provisions of this subsection.

## **10.22 Acquisition of Facilities**

Upon Grantee's acquisition of Cable System-related facilities in any Town Right-of-Way, or upon the addition to the Town of any area in which Grantee owns or operates any such facility, Grantee shall, at the Town's request, submit to the Town a statement describing all such facilities involved, whether authorized by franchise, permit, license or other prior right, and specifying the location of all such facilities to the extent Grantee has possession of such information. Such Cable System-related facilities shall immediately be subject to the terms of this Franchise.

## **10.23 Discontinuing Use/Abandonment of Cable System Facilities**

Whenever Grantee intends to discontinue using any facility within the Rights-of-Way, Grantee shall submit for the Town's approval a complete description of the facility and the date on which Grantee intends to discontinue using the facility. Grantee may remove the facility or request that the Town permit it to remain in place. Notwithstanding Grantee's request that any such facility remain in place, the Town may require Grantee to remove the facility from the Right-of-Way or modify the facility to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. The Town may require Grantee to perform a



combination of modification and removal of the facility. Grantee shall complete such removal or modification in accordance with a schedule set by the Town. Until such time as Grantee removes or modifies the facility as directed by the Town, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, Grantee shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Right-of-Way, in the same manner and degree as if the facility were in active use, and Grantee shall retain all liability for such facility. If Grantee abandons its facilities, the Town may choose to use such facilities for any purpose whatsoever including, but not limited to, Access purposes.

#### **10.24 Movement of Cable System Facilities For Town Purposes**

The Town shall have the right to require Grantee to relocate, remove, replace, modify or disconnect Grantee's facilities and equipment located in the Rights-of-Way or on any other property of the Town for public purposes, in the event of an emergency, or when the public health, safety or welfare requires such change (for example, without limitation, by reason of traffic conditions, public safety, Right-of-Way vacation, Right-of-Way construction, change or establishment of Right-of-Way grade, installation of sewers, drains, gas or water pipes, or any other types of structures or improvements by the Town for public purposes). Such work shall be performed at the Grantee's expense. Except during an emergency, the Town shall provide reasonable notice to Grantee, not to be less than five (5) business days, and allow Grantee with the opportunity to perform such action. In the event of any capital improvement project exceeding \$500,000 in expenditures by the Town which requires the removal, replacement, modification or disconnection of Grantee's facilities or equipment, the Town shall provide at least sixty (60) days' written notice to Grantee. Following notice by the Town, Grantee shall relocate, remove, replace, modify or disconnect any of its facilities or equipment within any Right-of-Way, or on any other property of the Town. If the Town requires Grantee to relocate its facilities located within the Rights-of-Way, the Town shall make a reasonable effort to provide Grantee with an alternate location within the Rights-of-Way. If funds are generally made available to users of the Rights-of-Way for such relocation, Grantee shall be entitled to its pro rata share of such funds.

If the Grantee fails to complete this work within the time prescribed and to the Town's satisfaction, the Town may cause such work to be done and bill the cost of the work to the Grantee, including all costs and expenses incurred by the Town due to Grantee's delay. In such event, the Town shall not be liable for any damage to any portion of Grantee's Cable System. Within thirty (30) days of receipt of an itemized list of those costs, the Grantee shall pay the Town.

#### **10.25 Movement of Cable System Facilities for Other Franchise Holders**

If any removal, replacement, modification or disconnection of the Cable System is required to accommodate the construction, operation or repair of the facilities or equipment of another Town franchise holder, Grantee shall, after at least thirty (30) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. Grantee may require that the costs associated with the removal or relocation be paid by the benefited

party.

### **10.26 Temporary Changes for Other Permittees**

At the request of any Person holding a valid permit and upon reasonable advance notice, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The expense of such temporary changes must be paid by the permit holder, and Grantee may require a reasonable deposit of the estimated payment in advance.

### **10.27 Reservation of Town Use of Right-of-Way**

Nothing in this Franchise shall prevent the Town or public utilities owned, maintained or operated by public entities other than the Town from constructing sewers; grading, paving, repairing or altering any Right-of-Way; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System.

### **10.28 Tree Trimming**

Grantee may prune or cause to be pruned, using proper pruning practices, any tree in the Town's Rights-of-Way which interferes with Grantee's Cable System. Grantee shall comply with any general ordinance or regulations of the Town regarding tree trimming. Except in emergencies, Grantee may not prune trees at a point below thirty (30) feet above sidewalk grade until one (1) week written notice has been given to the owner or occupant of the premises abutting the Right-of-Way in or over which the tree is growing. The owner or occupant of the abutting premises may prune such tree at his or her own expense during this one (1) week period. If the owner or occupant fails to do so, Grantee may prune such tree at its own expense. For purposes of this subsection, emergencies exist when it is necessary to prune to protect the public or Grantee's facilities from imminent danger only.

### **10.29 Inspection of Construction and Facilities**

The Town may inspect any of Grantee's facilities, equipment or construction at any time upon at least twenty-four (24) hours notice, or, in case of emergency, upon demand without prior notice. The Town shall have the right to charge generally applicable inspection fees therefore. If an unsafe condition is found to exist, the Town, in addition to taking any other action permitted under Applicable Law, may order Grantee, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the Town establishes. The Town has the right to correct, inspect, administer and repair the unsafe condition if Grantee fails to do so, and to charge Grantee therefore.

### **10.30 Stop Work**

(A) On notice from the Town that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the Town, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the Town.

(B) The stop work order shall:

- (1) Be in writing;
- (2) Be given to the Person doing the work, or posted on the work site;
- (3) Be sent to Grantee by overnight delivery at the address given herein;
- (4) Indicate the nature of the alleged violation or unsafe condition; and
- (5) Establish conditions under which work may be resumed.

### **10.31 Work of Contractors and Subcontractors**

Grantee's contractors and subcontractors shall be licensed and bonded in accordance with the Town's ordinances, regulations and requirements. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it, and shall ensure that all such work is performed in compliance with this Franchise and other Applicable Law, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors or other Persons performing work on Grantee's behalf are familiar with the requirements of this Franchise and other Applicable Law governing the work performed by them.

## **SECTION 11. CABLE SYSTEM, TECHNICAL STANDARDS AND TESTING**

### **11.1 Subscriber Network**

(A) Grantee's Cable System shall be equivalent to or exceed technical characteristics of a traditional HFC 750 MHz Cable System and provide Activated Two-Way capability. The Cable System shall be capable of supporting video and audio. The Cable System shall deliver no less than one hundred ten (110) Channels of digital video programming services to Subscribers, provided that the Grantee reserves the right to use the bandwidth in the future for other uses based on market factors.

(B) Equipment must be installed so that all closed captioning programming received by the Cable System shall include the closed caption signal so long as the closed caption signal is provided consistent with FCC standards. Equipment must be installed so that all local signals

received in stereo or with secondary audio tracks (broadcast and Access) are retransmitted in those same formats.

(C) All construction shall be subject to the Town's permitting process.

(D) Grantee and Town shall meet, at the Town's request, to discuss the progress of the design plan and construction.

(E) Grantee will take prompt corrective action if it finds that any facilities or equipment on the Cable System are not operating as expected, or if it finds that facilities and equipment do not comply with the requirements of this Franchise or Applicable Law.

(F) Grantee's construction decisions shall be based solely upon legitimate engineering decisions and shall not take into consideration the income level of any particular community within the Franchise Area.

## **11.2 Technology Assessment**

(A) The Town may notify Grantee on or after five (5) years after the Effective Date, that the Town will conduct a technology assessment of Grantee's Cable System. The technology assessment may include, but is not be limited to, determining whether Grantee's Cable System technology and performance are consistent with current technical practices and range and level of services existing in the fifteen (15) largest U.S. cable systems owned and operated by Grantee's Parent Corporation and/or Affiliates pursuant to franchises that have been renewed or extended since the Effective Date.

(B) Grantee shall cooperate with the Town to provide necessary non-confidential and proprietary information upon the Town's reasonable request as part of the technology assessment.

(C) At the discretion of the Town, findings from the technology assessment may be included in any proceeding commenced for the purpose of identifying future cable-related community needs and interests undertaken by the Town pursuant to 47 U.S.C. §546.

## **11.3 Standby Power**

Grantee's Cable System Headend shall be capable of providing at least twelve (12) hours of emergency operation. In addition, throughout the term of this Franchise, Grantee shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than four (4) hours. This outage plan and evidence of requisite implementation resources shall be presented to the Town no later than thirty (30) days following receipt of a request.

#### **11.4 Emergency Alert Capability**

(A) Grantee shall provide an operating Emergency Alert System (“EAS”) throughout the term of this Franchise in compliance with FCC standards. Grantee shall test the EAS as required by the FCC. Upon request, the Town shall be permitted to participate in and/or witness the EAS testing up to twice a year on a schedule formed in consultation with Grantee. If the test indicates that the EAS is not performing properly, Grantee shall make any necessary adjustment to the EAS, and the EAS shall be retested.

#### **11.5 Technical Performance**

The technical performance of the Cable System shall meet or exceed all applicable federal (including, but not limited to, the FCC), State and local technical standards, as they may be amended from time to time, regardless of the transmission technology utilized. The Town shall have the full authority permitted by Applicable Law to enforce compliance with these technical standards.

#### **11.6 Cable System Performance Testing**

(A) Grantee shall, at Grantee's expense, perform the following tests on its Cable System:

- (1) All tests required by the FCC;
- (2) All other tests reasonably necessary to determine compliance with technical standards adopted by the FCC at any time during the term of this Franchise; and
- (3) All other tests as otherwise specified in this Franchise.

(B) At a minimum, Grantee's tests shall include:

- (1) Cumulative leakage index testing of any new construction;
- (2) Semi-annual compliance and proof of performance tests in conformance with generally accepted industry guidelines;
- (3) Tests in response to Subscriber complaints;
- (4) Periodic monitoring tests, at intervals not to exceed six (6) months, of Subscriber (field) test points, the Headend, and the condition of standby power supplies; and
- (5) Cumulative leakage index tests, at least annually, designed to ensure that one hundred percent (100%) of Grantee's Cable System has been ground or air tested for signal leakage in accordance with FCC standards.

(C) Grantee shall maintain written records of all results of its Cable System tests, performed by or for Grantee. Copies of such test results will be provided to the Town upon reasonable request.

(D) If the FCC no longer requires proof of performance tests for Grantee's Cable System during the term of this Franchise, Grantee agrees that it shall continue to conduct proof of performance tests on the Cable System in accordance with the standards that were in place on the Effective Date, or any generally applicable standards later adopted, at least once a year, and provide written results of such tests to the Town upon request.

(E) The FCC semi-annual testing is conducted in January/February and July/August of each year. If the Town contacts Grantee prior to the next test period (*i.e.*, before December 15 and June 15 respectively of each year), Grantee shall provide Town with no less than seven (7) days prior written notice of the actual date(s) for FCC compliance testing. If Town notifies Grantee by the December 15th and June 15th dates that it wishes to have a representative present during the next test(s), Grantee shall cooperate in scheduling its testing so that the representative can be present. Notwithstanding the above, all technical performance tests may be witnessed by representatives of the Town.

(F) Grantee shall be required to promptly take such corrective measures as are necessary to correct any performance deficiencies fully and to prevent their recurrence as far as possible. Grantee's failure to correct deficiencies identified through this testing process shall be a material violation of this Franchise. Sites shall be re-tested following correction.

### **11.7 Additional Tests**

Where there exists other evidence which in the judgment of the Town casts doubt upon the reliability or technical quality of Cable Service, the Town shall have the right and authority to require Grantee to test, analyze and report on the performance of the Cable System. Grantee shall fully cooperate with the Town in performing such testing and shall prepare the results and a report, if requested, within thirty (30) days after testing. Such report shall include the following information:

- (A) the nature of the complaint or problem which precipitated the special tests;
- (B) the Cable System component tested;
- (C) the equipment used and procedures employed in testing;
- (D) the method, if any, in which such complaint or problem was resolved; and
- (E) any other information pertinent to said tests and analysis which may be required.

## **SECTION 12. SERVICE AVAILABILITY, INTERCONNECTION AND SERVICE TO SCHOOLS AND PUBLIC BUILDINGS**

### **12.1 Service Availability**

(A) In General. Except as otherwise provided in herein, Grantee shall provide Cable Service within seven (7) days of a request by any Person within the Town. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee, receipt of a written request by Grantee or receipt by Grantee of a verified verbal request. Except as otherwise provided herein, Grantee shall provide such service:

(1) With no line extension charge except as specifically authorized elsewhere in this Franchise Agreement.

(2) At a non-discriminatory installation charge for a standard installation, consisting of a 125 foot drop connecting to an inside wall for Residential Subscribers, with additional charges for non standard installations computed according to a non discriminatory methodology for such installations, adopted by Grantee and provided in writing to the Town;

(3) At non discriminatory monthly rates for Residential Subscribers.

(B) Service to Multiple Dwelling Units. Consistent with this Section 12.1, the Grantee shall offer the individual units of a Multiple Dwelling Unit all Cable Services offered to other Dwelling Units in the Town and shall individually wire units upon request of the property owner or renter who has been given written authorization by the owner; provided, however, that any such offering is conditioned upon the Grantee having legal access to said unit. The Town acknowledges that the Grantee cannot control the dissemination of particular Cable Services beyond the point of demarcation at a Multiple Dwelling Unit.

(C) Customer Charges for Extensions of Service. Grantee agrees to extend its Cable System to all persons living in areas with a residential density of forty-five (45) residences per mile of Cable System plant. If the residential density is less than forty-five (45) residences per 5,280 cable-bearing strand feet of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and customers in the area in which service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per 5,280 cable-bearing strand feet of its trunk or distribution cable and whose denominator equals forty-five (45). Customers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential customers be paid in advance.

## **12.2 Connection of Public Facilities**

Grantee shall, at no cost to the Town, provide one outlet of Basic Service and Digital Starter Service to all Town owned and occupied buildings, schools and public libraries located in areas where Grantee provides Cable Service, so long as these facilities are already served or are located within 150 feet of its Cable System. For purposes of this subsection, “school” means all State-accredited K-12 public and private schools. Such obligation to provide free Cable Service shall not extend to areas of Town buildings where the Grantee would normally enter into a commercial contract to provide such Cable Service (e.g., golf courses, airport restaurants and concourses, and recreation center work out facilities). Outlets of Basic and Digital Starter Service provided in accordance with this subsection may be used to distribute Cable Services throughout such buildings, provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. Such outlets may only be used for lawful purposes. The Cable Service provided shall not be distributed beyond the originally installed outlets without authorization from Grantee, which shall not be unreasonably withheld.

## **SECTION 13. FRANCHISE VIOLATIONS**

### **13.1 Procedure for Remedying Franchise Violations**

(A) If the Town reasonably believes that Grantee has failed to perform any obligation under this Franchise or has failed to perform in a timely manner, the Town shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged default. Grantee shall have thirty (30) days from the receipt of such notice to:

(1) respond to the Town, contesting the Town’s assertion that a default has occurred, and requesting a meeting in accordance with subsection (B), below;

(2) cure the default; or,

(3) notify the Town that Grantee cannot cure the default within the thirty (30) days, because of the nature of the default. In the event the default cannot be cured within thirty (30) days, Grantee shall promptly take all reasonable steps to cure the default and notify the Town in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the Town may set a meeting in accordance with subsection (B) below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether Grantee's proposed completion schedule and steps are reasonable.

(B) If Grantee does not cure the alleged default within the cure period stated above, or by the projected completion date under subsection (A)(3), or denies the default and requests a meeting in accordance with (A)(1), or the Town orders a meeting in accordance with subsection (A)(3), the Town shall set a meeting to investigate said issues or the existence of the alleged default. The Town shall notify Grantee of the meeting in writing and such meeting shall take place no less than thirty (30) days after Grantee's receipt of notice of the meeting. At the



meeting, Grantee shall be provided an opportunity to be heard and to present evidence in its defense.

(C) If, after the meeting, the Town determines that a default exists, the Town shall order Grantee to correct or remedy the default or breach within fifteen (15) days or within such other reasonable time frame as the Town shall determine. In the event Grantee does not cure within such time to the Town's reasonable satisfaction, the Town may:

- (1) Withdraw an amount from the letter of credit as monetary damages;
- (2) Recommend the revocation of this Franchise pursuant to the procedures in subsection 13.2; or,
- (3) Recommend any other legal or equitable remedy available under this Franchise or any Applicable Law.

(D) The determination as to whether a violation of this Franchise has occurred shall be within the discretion of the Town, provided that any such final determination may be subject to appeal to a court of competent jurisdiction under Applicable Law.

### **13.2 Revocation**

(A) In addition to revocation in accordance with other provisions of this Franchise, the Town may revoke this Franchise and rescind all rights and privileges associated with this Franchise in the following circumstances, each of which represents a material breach of this Franchise:

- (1) If Grantee fails to perform any material obligation under this Franchise or under any other agreement, ordinance or document regarding the Town and Grantee;
- (2) If Grantee willfully fails for more than forty-eight (48) hours to provide continuous and uninterrupted Cable Service;
- (3) If Grantee attempts to evade any material provision of this Franchise or to practice any fraud or deceit upon the Town or Subscribers; or
- (4) If Grantee becomes insolvent, or if there is an assignment for the benefit of Grantee's creditors;
- (5) If Grantee makes a material misrepresentation of fact in the application for or negotiation of this Franchise.

(B) Following the procedures set forth in subsection 13.1 and prior to forfeiture or termination of the Franchise, the Town shall give written notice to the Grantee of its intent to revoke the Franchise and set a date for a revocation proceeding. The notice shall set forth the exact nature of the noncompliance.

(C) Any proceeding under the paragraph above shall be conducted by the Town Council and open to the public. Grantee shall be afforded at least forty-five (45) days prior written notice of such proceeding.

(1) At such proceeding, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce evidence, and to question witnesses. A complete verbatim record and transcript shall be made of such proceeding and the cost shall be shared equally between the parties. The Town Council shall hear any Persons interested in the revocation, and shall allow Grantee, in particular, an opportunity to state its position on the matter.

(2) Within ninety (90) days after the hearing, the Town Council shall determine whether to revoke the Franchise and declare that the Franchise is revoked and the letter of credit forfeited; or if the breach at issue is capable of being cured by Grantee, direct Grantee to take appropriate remedial action within the time and in the manner and on the terms and conditions that the Town Council determines are reasonable under the circumstances. If the Town determines that the Franchise is to be revoked, the Town shall set forth the reasons for such a decision and shall transmit a copy of the decision to the Grantee. Grantee shall be bound by the Town's decision to revoke the Franchise unless it appeals the decision to a court of competent jurisdiction within fifteen (15) days of the date of the decision.

(3) Grantee shall be entitled to such relief as the Court may deem appropriate.

(4) The Town Council may at its sole discretion take any lawful action which it deems appropriate to enforce the Town's rights under the Franchise in lieu of revocation of the Franchise.

### **13.3 Procedures in the Event of Termination or Revocation**

(A) If this Franchise expires without renewal after completion of all processes available under this Franchise and federal law or is otherwise lawfully terminated or revoked, the Town may, subject to Applicable Law:

(1) Allow Grantee to maintain and operate its Cable System on a month-to-month basis or short-term extension of this Franchise for not less than six (6) months, unless a sale of the Cable System can be closed sooner or Grantee demonstrates to the Town's satisfaction that it needs additional time to complete the sale; or

(2) Purchase Grantee's Cable System in accordance with the procedures set forth in subsection 13.4, below.

(B) In the event that a sale has not been completed in accordance with subsections (A)(1) and/or (A)(2) above, the Town may order the removal of the above-ground Cable System facilities and such underground facilities from the Town at Grantee's sole expense within a

reasonable period of time as determined by the Town. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Rights-of-Way, public places and private property in as good condition as that prevailing prior to Grantee's removal of its equipment without affecting the electrical or telephone cable wires or attachments. The indemnification and insurance provisions and the letter of credit shall remain in full force and effect during the period of removal, and Grantee shall not be entitled to, and agrees not to request, compensation of any sort therefore.

(C) If Grantee fails to complete any removal required by subsection 13.3 (B) to the Town's satisfaction, after written notice to Grantee, the Town may cause the work to be done and Grantee shall reimburse the Town for the costs incurred within thirty (30) days after receipt of an itemized list of the costs, or the Town may recover the costs through the letter of credit provided by Grantee.

(D) The Town may seek legal and equitable relief to enforce the provisions of this Franchise.

#### **13.4 Purchase of Cable System**

(A) If at any time this Franchise is revoked, terminated, or not renewed upon expiration in accordance with the provisions of federal law, the Town shall have the option to purchase the Cable System.

(B) The Town may, at any time thereafter, offer in writing to purchase Grantee's Cable System. Grantee shall have thirty (30) days from receipt of a written offer from the Town within which to accept or reject the offer.

(C) In any case where the Town elects to purchase the Cable System, the purchase shall be closed within one hundred twenty (120) days of the date of the Town's audit of a current profit and loss statement of Grantee. The Town shall pay for the Cable System in cash or certified funds, and Grantee shall deliver appropriate bills of sale and other instruments of conveyance.

(D) For the purposes of this subsection, the price for the Cable System shall be determined as follows:

(1) In the case of the expiration of the Franchise without renewal, at fair market value determined on the basis of Grantee's Cable System valued as a going concern, but with no value allocated to the Franchise itself. In order to obtain the fair market value, this valuation shall be reduced by the amount of any lien, encumbrance, or other obligation of Grantee which the Town would assume.

(2) In the case of revocation for cause, the equitable price of Grantee's Cable System.

### **13.5 Receivership and Foreclosure**

(A) At the option of the Town, subject to Applicable Law, this Franchise may be revoked one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

(1) The receivership or trusteeship is vacated within one hundred twenty (120) days of appointment; or

(2) The receivers or trustees have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Franchise, and have remedied all defaults under the Franchise. Additionally, the receivers or trustees shall have executed an agreement duly approved by the court having jurisdiction, by which the receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Franchise.

(B) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Grantee, the Town may serve notice of revocation on Grantee and to the purchaser at the sale, and the rights and privileges of Grantee under this Franchise shall be revoked thirty (30) days after service of such notice, unless:

(1) The Town has approved the transfer of the Franchise, in accordance with the procedures set forth in this Franchise and as provided by law; and

(2) The purchaser has covenanted and agreed with the Town to assume and be bound by all of the terms and conditions of this Franchise.

### **13.6 No Monetary Recourse Against the Town**

Grantee shall not have any monetary recourse against the Town or its officers, officials, boards, commissions, agents or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this Franchise or the enforcement thereof, in accordance with the provisions of applicable federal, State and local law. The rights of the Town under this Franchise are in addition to, and shall not be read to limit, any immunities the Town may enjoy under federal, State or local law.

### **13.7 Alternative Remedies**

No provision of this Franchise shall be deemed to bar the right of the Town to seek or obtain judicial relief from a violation of any provision of the Franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the Town to recover monetary damages for such violations by Grantee, or to seek and obtain judicial enforcement of Grantee's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

### **13.8 Assessment of Monetary Damages**

(A) The Town may assess against Grantee monetary damages (i) up to five hundred dollars (\$500.00) per day for general construction delays, violations of PEG obligations or payment obligations, (ii) up to two hundred fifty dollars (\$250.00) per day for any other material breaches, or (iii) up to one hundred dollars (\$100.00) per day for defaults, and withdraw the assessment from the letter of credit or collect the assessment as specified in this Franchise. Damages pursuant to this Section shall accrue for a period not to exceed one hundred twenty (120) days per violation proceeding. To assess any amount from the letter of credit, Town shall follow the procedures for withdrawals from the letter of credit set forth in the letter of credit and in this Franchise. Such damages shall accrue beginning thirty (30) days following Grantee's receipt of the notice required by subsection 13.1(A), or such later date if approved by the Town in its sole discretion, but may not be assessed until after the procedures in subsection 13.1 have been completed.

(B) The assessment does not constitute a waiver by Town of any other right or remedy it may have under the Franchise or Applicable Law, including its right to recover from Grantee any additional damages, losses, costs and expenses that are incurred by Town by reason of the breach of this Franchise.

### **13.9 Effect of Abandonment**

If the Grantee abandons its Cable System during the Franchise term, or fails to operate its Cable System in accordance with its duty to provide continuous service, the Town, at its option, may operate the Cable System; designate another entity to operate the Cable System temporarily until the Grantee restores service under conditions acceptable to the Town, or until the Franchise is revoked and a new franchisee is selected by the Town; or obtain an injunction requiring the Grantee to continue operations. If the Town is required to operate or designate another entity to operate the Cable System, the Grantee shall reimburse the Town or its designee for all reasonable costs, expenses and damages incurred.

### **13.10 What Constitutes Abandonment**

The Town shall be entitled to exercise its options in subsection 13.9 if:

(A) The Grantee fails to provide Cable Service in accordance with this Franchise over a substantial portion of the Franchise Area for four (4) consecutive days, unless the Town authorizes a longer interruption of service; or

(B) The Grantee, for any period, willfully and without cause refuses to provide Cable Service in accordance with this Franchise.

## **SECTION 14. FRANCHISE RENEWAL AND TRANSFER**

### **14.1 Renewal**

(A) The Town and Grantee agree that any proceedings undertaken by the Town that relate to the renewal of the Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or State law.

(B) In addition to the procedures set forth in said Section 626(a), the Town agrees to notify Grantee of the completion of its assessments regarding the identification of future cable-related community needs and interests, as well as the past performance of Grantee under the then current Franchise term. Notwithstanding anything to the contrary set forth herein, Grantee and Town agree that at any time during the term of the then current Franchise, while affording the public adequate notice and opportunity for comment, the Town and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Franchise and the Town may grant a renewal thereof. Grantee and Town consider the terms set forth in this subsection to be consistent with the express provisions of Section 626 of the Cable Act.

### **14.2 Transfer of Ownership or Control**

(A) The Cable System and this Franchise shall not be sold, assigned, transferred, leased or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger or consolidation; nor shall title thereto, either legal or equitable, or any right, interest or property therein pass to or vest in any Person or entity without the prior written consent of the Town, which consent shall be by the Town Council/Commission, acting by ordinance/resolution.

(B) The Grantee shall promptly notify the Town of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Grantee. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. Every change, transfer or acquisition of control of the Grantee shall make this Franchise subject to cancellation unless and until the Town shall have consented in writing thereto.

(C) The parties to the sale or transfer shall make a written request to the Town for its approval of a sale or transfer and furnish all information required by law and the Town.

(D) In seeking the Town's consent to any change in ownership or control, the proposed transferee shall indicate whether it:

(1) Has ever been convicted or held liable for acts involving deceit including any violation of federal, State or local law or regulations, or is currently under an indictment, investigation or complaint charging such acts;

(2) Has ever had a judgment in an action for fraud, deceit, or misrepresentation entered against the proposed transferee by any court of competent jurisdiction;

(3) Has pending any material legal claim, lawsuit, or administrative proceeding arising out of or involving a cable system or a broadband system;

(4) Is financially solvent, by submitting financial data including financial statements that are audited by a certified public accountant who may also be an officer of the transferee, along with any other data that the Town may reasonably require; and

(5) Has the financial, legal and technical capability to enable it to maintain and operate the Cable System for the remaining term of the Franchise.

(E) The Town shall act by ordinance on the request within one hundred twenty (120) days of the request, provided it has received all information required by this Franchise and/or by Applicable Law. The Town and the Grantee may by mutual agreement, at any time, extend the 120 day period. Subject to the foregoing, if the Town fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the Town agree to an extension of time.

(F) Within thirty (30) days of any transfer or sale, if approved or deemed granted by the Town, Grantee shall file with the Town a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee, and the transferee shall file its written acceptance agreeing to be bound by all of the provisions of this Franchise, subject to Applicable Law. In the event of a change in control, in which the Grantee is not replaced by another entity, the Grantee will continue to be bound by all of the provisions of the Franchise, subject to Applicable Law, and will not be required to file an additional written acceptance.

(G) In reviewing a request for sale or transfer, the Town may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the Town in so inquiring. The Town may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, in accordance with Applicable Law.

(H) Notwithstanding anything to the contrary in this subsection, the prior approval of the Town shall not be required for any sale, assignment or transfer of the Franchise or Cable System to an entity controlling, controlled by or under the same common control as Grantee, provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the Town and must agree in writing to comply with all of the provisions of the Franchise. Further, Grantee may pledge the assets of the Cable System for the purpose of financing without the consent of the Town; provided that such pledge of assets shall not impair or mitigate Grantee's responsibilities and capabilities to meet all of its obligations under the provisions of this Franchise.

## **SECTION 15. SEVERABILITY**

If any Section, subsection, paragraph, term or provision of this Franchise is determined to be illegal, invalid or unconstitutional by any court or agency of competent jurisdiction, such determination shall have no effect on the validity of any other Section, subsection, paragraph, term or provision of this Franchise, all of which will remain in full force and effect for the term of the Franchise.

## **SECTION 16. MISCELLANEOUS PROVISIONS**

### **16.1 Preferential or Discriminatory Practices Prohibited**

**NO DISCRIMINATION IN EMPLOYMENT.** In connection with the performance of work under this Franchise, the Grantee agrees not to refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any Person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Grantee further agrees to insert the foregoing provision in all subcontracts hereunder. Throughout the term of this Franchise, Grantee shall fully comply with all equal employment or non-discrimination provisions and requirements of federal, State and local laws, and in particular, FCC rules and regulations relating thereto.

### **16.2 Notices**

Throughout the term of the Franchise, each party shall maintain and file with the other a local address for the service of notices by mail. All notices shall be sent overnight delivery postage prepaid to such respective address and such notices shall be effective upon the date of mailing. These addresses may be changed by the Town or the Grantee by written notice at any time. At the Effective Date of this Franchise:

Grantee's address shall be:

Comcast of Colorado V, LLC  
8000 E. Iliff Ave.  
Denver, CO 80231  
Attn: Government Affairs

The Town's address shall be:

Town of Breckenridge  
Attn: Town Manager  
150 Ski Hill Road; P.O. Box 168  
Breckenridge, CO 80424



### **16.3 Descriptive Headings**

The headings and titles of the Sections and subsections of this Franchise are for reference purposes only, and shall not affect the meaning or interpretation of the text herein.

### **16.4 Publication Costs to be Borne by Grantee**

Grantee shall reimburse the Town for all costs incurred in publishing this Franchise, if such publication is required.

### **16.5 Binding Effect**

This Franchise shall be binding upon the parties hereto, their permitted successors and assigns.

### **16.6 No Joint Venture**

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third Persons or the public in any manner which would indicate any such relationship with the other.

### **16.7 Waiver**

The failure of the Town at any time to require performance by the Grantee of any provision hereof shall in no way affect the right of the Town hereafter to enforce the same. Nor shall the waiver by the Town of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

### **16.8 Reasonableness of Consent or Approval**

Whenever under this Franchise “reasonableness” is the standard for the granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards as well as business and economic considerations.

### **16.9 Entire Agreement**

This Franchise and all Exhibits represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersede all prior oral negotiations between the parties.

### **16.10 Jurisdiction**

Venue for any judicial dispute between the Town and Grantee arising under or out of this Franchise shall be in Summit County District Court, Colorado, or in the United States District

Court in Denver.

IN WITNESS WHEREOF, this Franchise is signed in the name of the Town of Breckenridge, Colorado this \_\_\_\_ day of \_\_\_\_\_, 2015.

ATTEST:

TOWN OF BRECKENRIDGE, COLORADO:

\_\_\_\_\_  
Town Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

RECOMMENDED AND APPROVED:

\_\_\_\_\_  
Town Attorney

\_\_\_\_\_  
Town Manager

Accepted and approved this \_\_\_\_ day of \_\_\_\_\_, 2015.

ATTEST:

COMCAST OF COLORADO V, LLC

\_\_\_\_\_  
Public Notary

\_\_\_\_\_  
Name/Title: \_\_\_\_\_

**EXHIBIT A:  
CUSTOMER SERVICE STANDARDS**

**EXHIBIT B  
Report Form**

Comcast  
 Quarterly Executive Summary - Escalated Complaints  
 Section 7.6 (B) of our Franchise Agreement  
 Quarter Ending \_\_\_\_\_, Year  
 BRECKENRIDGE, COLORADO

<u>Type of Complaint</u>	<u>Number of Calls</u>
Accessibility	0
Billing, Credit and Refunds	0
Courtesy	0
Drop Bury	0
Installation	0
Notices/Easement Issues (Non-Rebuild)	0
Pedestal	0
Problem Resolution	0
Programming	0
Property Damage (Non-Rebuild)	0
Rates	0
Rebuild/Upgrade Damage	0
Rebuild/Upgrade Notices/Easement Issues	0
Reception/Signal Quality	0
Safety	0
Service and Install Appointments	0
Service Interruptions	0
Serviceability	0
<b>TOTAL</b>	<b>0</b>

Compliments

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

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 2015

9  
10 AN ORDINANCE AMENDING SECTION 4-8-1 OF THE BRECKENRIDGE TOWN CODE  
11 CONCERNING CABLE TELEVISION CUSTOMER SERVICE STANDARDS

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

15  
16 Section 1. Section 4-8-1 of the Breckenridge Town Code, entitled “Customer Service  
17 Standards Adopted,” is amended to read as follows:

18  
19 4-8-1: CUSTOMER SERVICE STANDARDS ADOPTED:

20  
21 The Town of Breckenridge cable television customer service standards (~~August~~  
22 **2007 revised June 2014**) are adopted by reference. A true copy of the customer  
23 service standards shall be kept on file by the town clerk.

24  
25 Section 2. Except as specifically amended by this ordinance, the  
26 BreckenridgeTownCode, and the various secondary codes adopted by reference therein, shall  
27 continue in full force and effect.

28  
29 Section 3. If any portion of this ordinance is held to be unconstitutional or invalid for any  
30 reason, such decision shall not affect the constitutionality or validity of the remaining portions of  
31 this ordinance. The Town Council hereby declares that it would have passed this ordinance and  
32 each part hereof irrespective of the fact that any one part be declared unconstitutional or invalid.

33  
34 Section 4. All other ordinances or portions thereof inconsistent or conflicting with this  
35 ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or  
36 conflict.

37  
38 Section 5. The Town Council hereby finds, determines and declares that it has the power  
39 to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article  
40 XX of the Colorado Constitution and the powers contained in the BreckenridgeTownCharter.

41  
42 Section 6. This ordinance shall be published and become effective as provided by  
43 Section 5.9 of the BreckenridgeTownCharter.

1 INTRODUCTION, READ ON FIRST READING, APPROVED AND ORDERED  
2 PUBLISHED IN FULL this \_\_\_\_ day of \_\_\_\_\_, 2015. A Public Hearing shall be held at the  
3 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the \_\_\_\_ day of  
4 \_\_\_\_\_, 2015, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the  
5 Town.

6  
7 TOWN OF BRECKENRIDGE, a Colorado  
8 municipal corporation  
9

10  
11  
12 By: \_\_\_\_\_  
13 John G. Warner, Mayor  
14

15 ATTEST:

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19 \_\_\_\_\_  
20 Helen Cospolich  
21 Town Clerk  
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**TOWN OF BRECKENRIDGE**  
**Customer Service Standards**  
**(revised June 2014)**

**I. POLICY**

The Cable Operator should resolve citizen complaints without delay and interference from the Franchising Authority.

Where a given complaint is not addressed by the Cable Operator to the citizen's satisfaction, the Franchising Authority should intervene. In addition, where a pattern of unremedied complaints or noncompliance with the Standards is identified, the Franchising Authority should prescribe a cure and establish a reasonable deadline for implementation of the cure. If the noncompliance is not cured within established deadlines, monetary sanctions should be imposed to encourage compliance and deter future non-compliance.

These Standards are intended to be of general application, and are expected to be met under normal operating conditions; however, the Cable Operator shall be relieved of any obligations hereunder if it is unable to perform due to a region-wide natural emergency or in the event of force majeure affecting a significant portion of the franchise area. The Cable Operator is free to exceed these Standards to the benefit of its Customers and such shall be considered performance for the purposes of these Standards.

These Standards supercede any contradictory or inconsistent provision in federal, state or local law (Source: 47 U.S.C. § 552(a)(1) and (d)), provided, however, that any provision in federal, state or local law, or in any original franchise agreement or renewal agreement, that imposes a higher obligation or requirement than is imposed by these Standards, shall not be considered contradictory or inconsistent with these Standards. In the event of a conflict between these Standards and a Franchise Agreement, the Franchise Agreement shall control.

These Standards apply to the provision of any Cable Service, provided by a Cable Operator over a Cable System, within the Town of Breckenridge.

**II. DEFINITIONS**

When used in these Customer Service Standards (the “Standards”), the following words, phrases, and terms shall have the meanings given below.

“Adoption” shall mean the process necessary to formally enact the Standards within the Franchising Authority's jurisdiction under applicable ordinances and laws.

“Affiliate” shall mean any person or entity that is owned or controlled by, or under common ownership or control with, a Cable Operator, and provides any Cable Service or Other Service.

“Applicable Law” means, with respect to these standards and any Cable Operator’s privacy policies, any statute, ordinance, judicial decision, executive order or regulation having the force and effect of law, that determines the legal standing of a case or issue.

“Cable Operator” shall mean any person or group of persons (A) who provides Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a Cable System. Source: 47 U.S.C. § 522(5).

“Cable Service” shall mean (A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. Source: 47 U.S.C. § 522(6). For purposes of this definition, “video programming” is programming provided by, or generally considered comparable to programming provided by a television broadcast station. Source: 47 U.S.C. § 522(20). “Other programming service” is information that a Cable Operator makes available to all subscribers generally. Source: 47 U.S.C. § 522(14).

“Cable System” shall mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the televisions signals of one or more television broadcast stations, or (B) a facility that serves subscribers without using any public right of way. Source: 47 U.S.C. § 522(7).

“County” shall mean the Summit County, Colorado.

“Summit County Telecommunications Consortium” or “SCTC” shall mean the non-profit entity formed by the franchising authorities and/or local governments from the Towns of Silverthorne, Frisco, Dillon, Breckenridge, and Summit County, Colorado, or the SCTC’s successor entity. The SCTC may, on behalf of its members, be delegated the authority to review, investigate or otherwise take some related role in the administration and/or enforcement of any functions under these Standards. SCTC is not the Franchising Authority.

“Contractor” shall mean a person or entity that agrees by contract to furnish materials or perform services for another at a specified consideration.

"Customer" shall mean any person who receives any Cable Service from a Cable Operator.

"Customer Service Representative" (or "CSR") shall mean any person employed with or under contract or subcontract to a Cable Operator to assist, or provide service to, customers, whether by telephone, writing service or installation orders, answering customers' questions in person, receiving and processing payments, or performing any other customer service-related tasks.

“Escalated complaint” shall mean a complaint that is referred to a Cable Operator by the Franchising Authority.

"Franchising Authority" shall mean the Town, and does not mean SCTC.

"Necessary" shall mean required or indispensable.



"Non-cable-related purpose" shall mean any purpose that is not necessary to render or conduct a legitimate business activity related to a Cable Service or Other Service provided by a Cable Operator to a Customer. Market research, telemarketing, and other marketing of services or products that are not related to a Cable Service or Other Service provided by a Cable Operator to a Customer shall be considered Non-cable-related purposes.

"Normal business hours" shall mean those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include at least some evening hours one night per week, and include some weekend hours. Source: 47 C.F.R. § 76.309.

"Normal operating conditions" shall mean those service conditions which are within the control of a Cable Operator. Conditions which are not within the control of a Cable Operator include, but are not necessarily limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Conditions which are ordinarily within the control of a Cable Operator include, but are not necessarily limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods and maintenance or upgrade to the Cable System.

"Other Service(s)" shall mean any wire or radio communications service provided using any of the facilities of a Cable Operator that are used in the provision of Cable Service.

"Personally Identifiable Information" shall mean specific information about an identified Customer, including, but not be limited to, a Customer's (a) login information for the use of Cable Service and management of a Customer's Cable Service account, (b) extent of viewing of video programming or Other Services, (c) shopping choices, (d) interests and opinions, (e) energy uses, (f) medical information, (g) banking data or information, or (h) any other personal or private information. "Personally Identifiable Information" shall not mean any aggregate information about Customers which does not identify particular persons, or information gathered by a Cable Operator necessary to install, repair or service equipment or Cable System facilities at a Customer's premises.

"Service interruption" or "interruption" shall mean (i) the loss or substantial impairment of picture and/or sound on one or more cable television channels.

"Service outage" or "outage" shall mean a loss or substantial impairment in reception on all channels.

"Subcontractor" shall mean a person or entity that enters into a contract to perform part or all of the obligations of another's contract.

"Town" shall mean the Town of Breckenridge, Colorado

"Writing" or "written" as the term applies to notification shall include electronic communications.

Any terms not specifically defined in these Standards shall be given their ordinary meaning, or where otherwise defined in applicable federal law, such terms shall be interpreted consistent with those definitions.

### **III. CUSTOMER SERVICE**

#### **A. Courtesy**

Cable Operator employees, contractors and subcontractors shall be courteous, knowledgeable and helpful and shall provide effective and satisfactory service in all contacts with customers.

#### **B. Accessibility**

1. A Cable Operator shall provide customer service centers/business offices (“Service Centers”) which are conveniently located, and which are open during Normal Business Hours. Service Centers shall be fully staffed with Customer Service Representatives offering the following services to Customers who come to the Service Center: bill payment, equipment exchange, processing of change of service requests, and response to Customer inquiries and request.

Unless otherwise requested by the Town, a Cable Operator shall post a sign at each Service Center, visible from the outside of the Service Center, advising Customers of its hours of operation and of the telephone number at which to contact the Cable Operator if the Service Center is not open at the times posted.

The Cable Operator shall use commercially reasonable efforts to implement and promote “self-help” tools and technology, in order to respond to the growing demand of Customers who wish to interact with the Cable Operator on the Customer’s own terms and timeline and at their own convenience, without having to travel to a Service Center. Without limitation, examples of self-help tools or technology may include self-installation kits to Customers upon request; pre-paid mailers for the return of equipment upon Customer request; an automated phone option for Customer bill payments; and equipment exchanges at a Customer’s residence in the event of damaged equipment. A Cable Operator shall provide free exchanges of faulty equipment at the customer's address if the equipment has not been damaged in any manner due to the fault or negligence of the customer.

2. A Cable Operator shall maintain local telephone access lines that shall be available twenty-four (24) hours a day, seven (7) days a week for service/repair requests and billing/service inquiries.

3. A Cable Operator shall have dispatchers and technicians on call twenty-four (24) hours a day, seven (7) days a week, including legal holidays.

4. If a customer service telephone call is answered with a recorded message providing the customer with various menu options to address the customer’s concern, the recorded message must provide the customer the option to connect to and speak with a CSR within sixty (60) seconds of the commencement of the recording. During Normal Business Hours, a Cable Operator shall retain sufficient customer service representatives and telephone line capacity to ensure that telephone calls to technical service/repair and billing/service inquiry lines are answered by a customer service representative within thirty (30) seconds or less from the time a customer chooses a menu option to speak directly with a CSR or chooses a menu option that pursuant to the automated voice message, leads to a direct connection with a CSR. Under normal operating conditions, this thirty (30) second telephone answer time requirement standard shall be met no less than ninety (90) percent of the time measured quarterly.

5. Under normal operating conditions, a customer shall not receive a busy signal more than three percent (3%) of the time. This standard shall be met ninety (90) percent or more of the time, measured quarterly.

## **C. Responsiveness**

### **1. Guaranteed Seven-Day Residential Installation**

a. A Cable Operator shall complete all standard residential installations or modifications to service requested by customers within seven (7) business days after the order is placed, unless a later date for installation is requested. "Standard" residential installations are those located up to one hundred twenty five (125) feet from the existing distribution system. If the customer requests a nonstandard residential installation, or the Cable Operator determines that a nonstandard residential installation is required, the Cable Operator shall provide the customer in advance with a total installation cost estimate and an estimated date of completion.

b. All underground cable drops to the home shall be buried at a depth of no less than twelve inches (12"), or such other depth as may be required by the Franchise Agreement or local code provisions, or if there are no applicable Franchise or code requirements, at such other depths as may be agreed to by the parties if other construction concerns preclude the twelve inch requirement, and within no more than one calendar week from the initial installation, or at a time mutually agreed upon between the Cable Operator and the customer.

### **2. Residential Installation and Service Appointments**

a. The "appointment window" alternatives for specific installations, service calls, and/or other installation activities will be either a specific time, or at a maximum, a four (4) hour time block between the hours of 8:00 a.m. and 6:00 p.m., six (6) days per week. A Cable Operator may schedule service calls and other installation activities outside of the above days and hours for the express convenience of customers. For purposes of this subsection "appointment window" means the period of time in which the representative of the Cable Operator must arrive at the customer's location.

b. A Cable Operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment, unless the customer's issue has otherwise been resolved.

c. If a Cable Operator is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the Cable Operator shall take reasonable efforts to contact the customer promptly, but in no event later than the end of the appointment window. The appointment will be rescheduled, as necessary at a time that is convenient to the customer, within Normal Business Hours or as may be otherwise agreed to between the customer and Cable Operator.

d. A Cable Operator shall be deemed to have responded to a request for service under the provisions of this section when a technician arrives within the agreed upon time, and, if the customer is absent when the technician arrives, the technician leaves written notification of arrival and return time, and a copy of that notification is kept by the Cable Operator. In such circumstances, the Cable Operator shall contact the customer within forty-eight (48) hours.

### 3. Residential Service Interruptions

a. In the event of system outages resulting from Cable Operator equipment failure, the Cable Operator shall correct such failure within 2 hours after the 3rd customer call is received.

b. All other service interruptions resulting from Cable Operator equipment failure shall be corrected by the Cable Operator by the end of the next calendar day.

#### c. Records of Complaints.

i. A Cable Operator shall keep an accurate and comprehensive file of any complaints regarding the cable system or its operation of the cable system, in a manner consistent with the privacy rights of customers, and the Cable Operator's actions in response to those complaints. These files shall remain available for viewing by the Franchising Authority during normal business hours at the Cable Operator's business office, and shall be retained by the Cable Operator for a period of at least three (3) years.

ii. Upon written request a Cable Operator shall provide the Franchising Authority an executive summary quarterly, which shall include information concerning customer complaints referred by the Franchising Authority to the Grantee and any other requirements of a Franchise Agreement but no personally identifiable information. These summaries shall be provided within fifteen (15) days after the end of each quarter. Once a request is made, it need not be repeated and quarterly executive summaries shall be provided by the Cable Operator until notified in writing by the Franchising Authority that such summaries are no longer required.

iii. Upon written request a summary of service requests, identifying the number and nature of the requests and their disposition, shall also be completed by the Cable Operator for each quarter and submitted to the Franchising Authority by the fifteenth (15th) day of the month after each calendar quarter. Once a request is made, it need not be repeated and quarterly summary of service requests shall be provided by the Cable Operator until notified in writing by the Franchising Authority that such summaries are no longer required. Complaints shall be broken out by the nature of the complaint and the type of Cable service subject to the complaint.

d. Records of Service Interruptions and Outages. A Cable Operator shall maintain records of all outages and reported service interruptions. Such records shall indicate the type of cable service interrupted, including the reasons for the interruptions. A log of all service interruptions shall be maintained and provided to the Franchising Authority quarterly, upon written request, within fifteen (15) days after the end of each quarter. Such records shall be submitted to the Franchising Authority with the records identified in Section 3.c.ii above if so requested in writing, and shall be retained by the Cable Operator for a period of three (3) years.

e. All service outages and interruptions for any cause beyond the control of the Cable Operator shall be corrected within thirty-six (36) hours, after the conditions beyond its control have been corrected.

#### 4. TV Reception

a. A Cable Operator shall provide clear television reception that meets or exceeds technical standards established by the United States Federal Communications Commission (the "FCC"). A Cable Operator shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Scheduled interruptions shall be preceded by notice and shall occur during periods of minimum use of the system, preferably between midnight and six a.m. (6:00 a.m.).

b. If a customer experiences poor video or audio reception attributable to a Cable Operator's equipment, the Cable Operator shall:

- i. Assess the problem within one (1) day of notification;
- ii. Communicate with the customer regarding the nature of the problem and the expected time for repair;
- iii. Complete the repair within two (2) days of assessing the problem unless circumstances exist that reasonably require additional time.

c. If an appointment is necessary to address any video or audio reception problem, the customer may choose a block of time described in Section III.C.2.a. At the customer's request, the Cable Operator shall repair the problem at a later time convenient to the customer, during Normal Business Hours or at such other time as may be agreed to by the customer and Cable Operator. A Cable Operator shall maintain periodic communications with a customer during the time period in which problem ascertainment and repair are ongoing, so that the customer is advised of the status of the Cable Operator's efforts to address the problem.

#### 5. Problem Resolution

A Cable Operator's customer service representatives shall have the authority to provide credit for interrupted service, to waive fees, to schedule service appointments and to change billing cycles, where appropriate. Any difficulties that cannot be resolved by the customer service representative shall be referred to the appropriate supervisor who shall contact the customer within four (4) hours and resolve the problem within forty eight (48) hours or within such other time frame as is acceptable to the customer and the Cable Operator.

#### 6. Billing, Credits, and Refunds

a. In addition to other options for payment of a customer's service bill, a Cable Operator shall make available a telephone payment option where a customer without account irregularities can enter payment information through an automated system, without the necessity of speaking to a CSR.

b. A Cable Operator shall allow at least thirty (30) days from the beginning date of the applicable service period for payment of a customer's service bill for that period. If a customer's service bill is not paid within that period of time the Cable Operator may apply an administrative fee to the customer's account. The administrative fee must reflect the average costs incurred by the Cable Operator in attempting to collect the past due payment in accordance with applicable law. If the customer's service bill is not paid within forty-five (45) days of the beginning date of the applicable service period, the

Cable Operator may perform a "soft" disconnect of the customer's service. If a customer's service bill is not paid within fifty-two (52) days of the beginning date of the applicable service period, the Cable Operator may disconnect the customer's service, provided it has provided two (2) weeks notice to the customer that such disconnection may result.

c. The Cable Operator shall issue a credit or refund to a customer within 30 days after determining the customer's entitlement to a credit or refund.

d. Whenever the Cable Operator offers any promotional or specially priced service(s) its promotional materials shall clearly identify and explain the specific terms of the promotion, including but not limited to manner in which any payment credit will be applied.

## 7. Treatment of Property

To the extent that a Franchise Agreement does not contain the following procedures for treatment of property, Operator shall comply with the procedures set forth in this Section.

a. A Cable Operator shall keep tree trimming to a minimum; trees and shrubs or other landscaping that are damaged by a Cable Operator, any employee or agent of a Cable Operator during installation or construction shall be restored to their prior condition or replaced within seven (7) days, unless seasonal conditions require a longer time, in which case such restoration or replacement shall be made within seven (7) days after conditions permit. Trees and shrubs on private property shall not be removed without the prior permission of the owner or legal tenant of the property on which they are located. This provision shall be in addition to, and shall not supersede, any requirement in any franchise agreement.

b. A Cable Operator shall, at its own cost and expense, and in a manner approved by the property owner and the Franchising Authority, restore any private property to as good condition as before the work causing such disturbance was initiated. A Cable Operator shall repair, replace or compensate a property owner for any damage resulting from the Cable Operator's installation, construction, service or repair activities. If compensation is requested by the customer for damage caused by any Cable Operator activity, the Cable Operator shall reimburse the property owner one hundred (100) percent of the actual cost of the damage.

c. Except in the case of an emergency involving public safety or service interruption to a large number of customers, a Cable Operator shall give reasonable notice to property owners or legal tenants prior to entering upon private premises, and the notice shall specify the work to be performed; provided that in the case of construction operations such notice shall be delivered or provided at least twenty-four (24) hours prior to entry, unless such notice is waived by the customer. For purposes of this subsection, "reasonable notice" shall be considered:

- i. For pedestal installation or similar major construction, seven (7) days.
- ii. For routine maintenance, such as adding or dropping service, tree trimming and the like, reasonable notice given the circumstances. Unless a Franchise Agreement has a different requirement, reasonable notice shall require, at a minimum, prior notice to a property owner or tenant, before entry is made onto that person's property.

iii. For emergency work a Cable Operator shall attempt to contact the property owner or legal tenant in person, and shall leave a door hanger notice in the event personal contact is not made. Door hangars must describe the issue and provide contact information where the property owner or tenant can receive more information about the emergency work.

Nothing herein shall be construed as authorizing access or entry to private property, or any other property, where such right to access or entry is not otherwise provided by law.

d. Cable Operator personnel shall clean all areas surrounding any work site and ensure that all cable materials have been disposed of properly.

#### **D. Services for Customers with Disabilities**

1. For any customer with a disability, a Cable Operator shall deliver and pick up equipment at customers' homes at no charge unless the malfunction was caused by the actions of the customer. In the case of malfunctioning equipment, the technician shall provide replacement equipment, hook it up and ensure that it is working properly, and shall return the defective equipment to the Cable Operator.
2. A Cable Operator shall provide either TTY, TDD, TYY, VRS service or other similar service that are in compliance with the Americans With Disabilities Act and other applicable law, with trained operators who can provide every type of assistance rendered by the Cable Operator's customer service representatives for any hearing-impaired customer at no charge.
3. A Cable Operator shall provide free use of a remote control unit to mobility-impaired (if disabled, in accordance with Section III.D.4) customers.
4. Any customer with a disability may request the special services described above by providing a Cable Operator with a letter from the customer's physician stating the need, or by making the request to the Cable Operator's installer or service technician, where the need for the special services can be visually confirmed.

#### **E. Cable Services Information**

1. At any time a customer or prospective customer may request, a Cable Operator shall provide the following information, in clear, concise written form, easily accessible and located on Cable Operator's website (and in Spanish, when requested by the customer):
  - a. Products and services offered by the Cable Operator, including its channel lineup;
  - b. The Cable Operator's complete range of service options and the prices for these services;
  - c. The Cable Operator's billing, collection and disconnection policies;
  - d. Privacy rights of customers;
  - e. All applicable complaint procedures, including complaint forms and the telephone numbers and mailing addresses of the Cable Operator, and the FCC;

- f. Use and availability of parental control/lock out device;
- g. Special services for customers with disabilities;
- h. Days, times of operation, and locations of the service centers;

2. At a Customer's request, a Cable Operator shall make available either a complete copy of these Standards and any other applicable customer service standards, or a summary of these Standards, in a format to be approved by the Franchising Authority, which shall include at a minimum, the URL address of a website containing these Standards in their entirety; provided however, that if the Franchising Authority does not maintain a website with a complete copy of these Standards, a Cable Operator shall be under no obligation to do so;

If acceptable to a customer, Cable Operator may fulfill customer requests for any of the information listed in this Section by making the requested information available electronically, such as on a website or by electronic mail.

3. Upon written request, a Cable Operator shall meet annually with the Franchising Authority to review the format of the Cable Operator's bills to customers. Whenever the Cable Operator makes substantial changes to its billing format, it will contact the Franchising Authority at least thirty (30) days prior to the time such changes are to be effective, in order to inform the Franchising Authority of such changes.

4. Copies of notices provided to the customer in accordance with subsection 5 below shall be filed (by fax or email acceptable) concurrently with the Franchising Authority and the SCTC.

5. A Cable Operator shall provide customers with written notification of any change in rates for nondiscretionary cable services, and for service tier changes that result in a deletion of programming from a customer's service tier, at least thirty (30) days before the effective date of change. For purposes of this section, "nondiscretionary" means the subscribed tier and any other Cable Services that a customer has subscribed to, at the time the change in rates are announced by the Cable Operator.

6. All officers, agents, and employees of the Cable Operator or its contractors or subcontractors who are in personal contact with customers and/or when working on public property, shall wear on their outer clothing identification cards bearing their name and photograph and identifying them as representatives of the Cable Operator. The Cable Operator shall account for all identification cards at all times. Every vehicle of the Cable Operator shall be clearly visually identified to the public as working for the Cable Operator. Whenever a Cable Operator work crew is in personal contact with customers or public employees, a supervisor must be able to communicate clearly with the customer or public employee. Every vehicle of a subcontractor or contractor shall be labeled with the name of the contractor and further identified as contracting or subcontracting for the Cable Operator.

7. Each CSR, technician or employee of the Cable Operator in each contact with a customer shall state the estimated cost of the service, repair, or installation orally prior to delivery of the service or before any work is performed, and shall provide the customer with an oral statement of the total charges before terminating the telephone call or before leaving the location at which the work was performed. A written estimate of the charges shall be provided to the customer before the actual work is performed.



## **F. Customer Privacy**

1. Cable Customer Privacy. In addition to complying with the requirements in this subsection, a Cable Operator shall fully comply with all obligations under 47 U.S.C. Section 551.

2. Collection and Use of Personally Identifiable Information.

a. A Cable Operator shall not use the Cable System to collect, monitor or observe Personally Identifiable Information without the prior affirmative written or electronic consent of the Customer unless, and only to the extent that such information is: (i) used to detect unauthorized reception of cable communications, or (ii) necessary to render a Cable Service or Other Service provided by the Cable Operator to the Customer and as otherwise authorized by applicable law.

b. A Cable Operator shall take such actions as are necessary using then-current industry standard practices to prevent any Affiliate from using the facilities of the Cable Operator in any manner, including, but not limited to, sending data or other signals through such facilities, to the extent such use will permit an Affiliate unauthorized access to Personally Identifiable Information on equipment of a Customer (regardless of whether such equipment is owned or leased by the Customer or provided by a Cable Operator) or on any of the facilities of the Cable Operator that are used in the provision of Cable Service. This subsection F.2.b shall not be interpreted to prohibit an Affiliate from obtaining access to Personally Identifiable Information to the extent otherwise permitted by this subsection F.

c. A Cable Operator shall take such actions as are necessary using then-current industry standard practices to prevent a person or entity (other than an Affiliate) from using the facilities of the Cable Operator in any manner, including, but not limited to, sending data or other signals through such facilities, to the extent such use will permit such person or entity unauthorized access to Personally Identifiable Information on equipment of a Customer (regardless of whether such equipment is owned or leased by the Customer or provided by a Cable Operator) or on any of the facilities of the Cable Operator that are used in the provision of Cable Service.

3. Disclosure of Personally Identifiable Information. A Cable Operator shall not disclose Personally Identifiable Information without the prior affirmative written or electronic consent of the Customer, unless otherwise authorized by applicable law.

a. A minimum of thirty (30) days prior to making any disclosure of Personally Identifiable Information of any Customer for any Non-Cable related purpose as provided in this subsection F.3.a, where such Customer has not previously been provided the notice and choice provided for in subsection III.F.9, the Cable Operator shall notify each Customer (that the Cable Operator intends to disclose information about) of the Customer's right to prohibit the disclosure of such information for Non-cable related purposes. The notice to Customers may reference the Customer to his or her options to state a preference for disclosure or non-disclosure of certain information, as provided in subsection III.F.9.

b. A Cable Operator may disclose Personally Identifiable Information only to the extent that it is necessary to render, or conduct a legitimate business activity related to, a Cable Service or Other Service provided by the Cable Operator to the Customer.

c. To the extent authorized by applicable law, a Cable Operator may disclose Personally Identifiable Information pursuant to a subpoena, court order, warrant or other valid legal process authorizing such disclosure.

4. Access to Information. Any Personally Identifiable Information collected and maintained by a Cable Operator shall be made available for Customer examination within thirty (30) days of receiving a request by a Customer to examine such information about himself or herself at the local offices of the Cable Operator or other convenient place within the Town designated by the Cable Operator, or electronically, such as over a website. Upon a reasonable showing by the Customer that such Personally Identifiable Information is inaccurate, a Cable Operator shall correct such information.

5. Privacy Notice to Customers

a. A Cable Operator shall annually mail or provide a separate, written or electronic copy of the privacy statement to Customers consistent with 47 U.S.C. Section 551(a)(1), and shall provide a Customer a copy of such statement at the time the Cable Operator enters into an agreement with the Customer to provide Cable Service. The written notice shall be in a clear and conspicuous format, which at a minimum, shall be in a comparable font size to other general information provided to Customers about their account as it appears on either paper or electronic Customer communications.

b. In or accompanying the statement required by subsection F.5.a, a Cable Operator shall state substantially the following message regarding the disclosure of Customer information: "Unless a Customer affirmatively consents electronically or in writing to the disclosure of personally identifiable information, any disclosure of personally identifiable information for purposes other than to the extent necessary to render, or conduct a legitimate business activity related to, a Cable Service or Other Service, is limited to:

i. Disclosure pursuant to valid legal process authorized by applicable law.

ii. Disclosure of the name and address of a Customer subscribing to any general programming tiers of service and other categories of Cable Services provided by the Cable Operator that do not directly or indirectly disclose: (A) A Customer's extent of viewing of a Cable Service or Other Service provided by the Cable Operator; (B) The extent of any other use by a Customer of a Cable Service; (C) The nature of any transactions made by a Customer over the Cable System; or (D) The nature of programming or websites that a Customer subscribes to or views (i.e., a Cable Operator may only disclose the fact that a person subscribes to a general tier of service, or a package of channels with the same type of programming), provided that with respect to the nature of websites subscribed to or viewed, these are limited to websites accessed by a Customer in connection with programming available from their account for Cable Services."

The notice shall also inform the Customers of their right to prohibit the disclosure of their names and addresses in accordance with subsection F.3.a. If a Customer exercises his or her right to prohibit the disclosure of name and address as provided in subsection F.3.a or this subsection, such prohibition against disclosure shall remain in effect, unless and until the Customer subsequently changes their disclosure preferences as described in subsection F.9 below.

6. Privacy Reporting Requirements. The Cable Operator shall include in its regular periodic reports to the Franchising Authority required by its Franchise Agreement information summarizing:

a. The type of Personally Identifiable Information that was actually collected or disclosed by Cable Operator during the reporting period;

b. For each type of Personally Identifiable Information collected or disclosed, a statement from an authorized representative of the Cable Operator certifying that the Personally Identifiable Information collected or disclosed was: (A) collected or disclosed to the extent Necessary to render, or conduct a legitimate business activity related to, a Cable Service or Other Service provided by the Cable Operator; (B) used to the extent Necessary to detect unauthorized reception of cable communications; (C) disclosed pursuant to valid legal process authorized by applicable law; or (D) a disclosure of Personally Identifiable Information of particular subscribers, but only to the extent affirmatively consented to by such subscribers in writing or electronically, or as otherwise authorized by applicable law.

c. The standard industrial classification (SIC) codes or comparable identifiers pertaining to any entities to whom such Personally Identifiable Information was disclosed, except that a Cable Operator need not provide the name of any court or governmental entity to which such disclosure was made pursuant to valid legal process authorized by applicable law;

d. The general measures that have been taken to prevent the unauthorized access to Personally Identifiable Information by a person other than the Customer or the Cable Operator. A Cable Operator shall meet with Franchising Authority if requested to discuss technology used to prohibit unauthorized access to Personally Identifiable Information by any means.

7. Nothing in this subsection III.F shall be construed to prevent the Franchising Authority from obtaining Personally Identifiable Information to the extent not prohibited by Section 631 of the Communications Act, 47 U.S.C. Section 551 and applicable laws.

8. Destruction of Personally Identifiable Information. A Cable Operator shall destroy any Personally Identifiable Information if the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under subsection 4 of this subsection III.F, pursuant to a court order or other valid legal process, or pursuant to applicable law.

9. Notice and Choice for Customers. The Cable Operator shall at all times make available to Customers one or more methods for Customers to use to prohibit or limit disclosures, or permit or release disclosures, as provided for in this subsection III.F. These methods may include, for example, online website “preference center” features, automated toll-free telephone systems, live toll-free telephone interactions with customer service agents, in-person interactions with customer service personnel, regular mail methods such as a postage paid, self-addressed post card, an insert included with the Customer’s monthly bill for Cable Service, the privacy notice specified in subsection III.F.5, or such other comparable methods as may be provided by the Cable Operator. Website “preference center” features shall be easily identifiable and navigable by Customers, and shall be in a comparable size font as other billing information provided to Customers on a Cable Operator’s website. A Customer who provides the Cable Operator with permission to disclose Personally Identifiable Information through any of the methods offered by a Cable Operator shall be provided follow-up notice, no less than annually, of the Customer’s right to prohibit these disclosures and the options for the Customer to express his or her

preference regarding disclosures. Such notice shall, at a minimum, be provided by an insert in the Cable Operator's bill (or other direct mail piece) to the Customer or a notice or message printed on the Cable Operator's bill to the Customer, and on the Cable Operator's website when a Customer logs in to view his or her Cable Service account options. The form of such notice shall also be provided on an annual basis to the Franchising Authority. These methods of notification to Customers may also include other comparable methods as submitted by the Cable Operator and approved by the Franchising Authority in its reasonable discretion.

### **G. Safety**

A Cable Operator shall install and locate its facilities, cable system, and equipment in compliance with all federal, state, local, and company safety standards, and in such manner as shall not unduly interfere with or endanger persons or property. Whenever a Cable Operator receives notice that an unsafe condition exists with respect to its equipment, the Cable Operator shall investigate such condition immediately, and shall take such measures as are necessary to remove or eliminate any unsafe condition.

### **H. Cancellation of New Services**

In the event that a new customer requests installation of Cable Service and is unsatisfied with their initial Cable Service, and provided that the customer so notifies the Cable Operator of their dissatisfaction within 30 days of initial installation, then such customer can request disconnection of Cable Service within 30 days of initial installation, and the Cable Operator shall provide a credit to the customer's account consistent with this Section. The customer will be required to return all equipment in good working order; provided such equipment is returned in such order, then the Cable Operator shall refund the monthly recurring fee for the new customer's first 30 days of Cable Service and any charges paid for installation. This provision does not apply to existing customers who request upgrades to their Cable Service, to discretionary Cable Service such as PPV or movies purchased and viewed On Demand, or to customer moves and/or transfers of Cable Service. The service credit shall be provided in the next billing cycle.

## **IV. COMPLAINT PROCEDURE**

### **A. Complaints to a Cable Operator**

1. A Cable Operator shall establish written procedures for receiving, acting upon, and resolving customer complaints, and crediting customer accounts and shall have such procedures printed and disseminated at the Cable Operator's sole expense, consistent with Section III.E.1.e of these Standards.
2. Said written procedures shall prescribe a simple manner in which any customer may submit a complaint by telephone or in writing to a Cable Operator that it has violated any provision of these Customer Service Standards, any terms or conditions of the customer's contract with the Cable Operator, or reasonable business practices. If a representative of the Franchising Authority notifies the Cable Operator of a customer complaint that has not previously been made by the customer to the Cable Operator, the complaint shall be deemed to have been made by the customer as of the date of the Franchising Authority's notice to the Cable Operator.

3. At the conclusion of the Cable Operator's investigation of a customer complaint, but in no more than ten (10) calendar days after receiving the complaint, the Cable Operator shall notify the customer of the results of its investigation and its proposed action or credit.

4. A Cable Operator shall also notify the customer of the customer's right to file a complaint with the Franchising Authority in the event the customer is dissatisfied with the Cable Operator's decision, and shall thoroughly explain the necessary procedures for filing such complaint with the Franchising Authority.

5. A Cable Operator shall immediately report all customer Escalated complaints that it does not find valid to the Franchising Authority.

6. A Cable Operator's complaint procedures shall be filed with the Franchising Authority prior to implementation.

### **B. Complaints to the Franchising Authority**

1. Any customer who is dissatisfied with any proposed decision of the Cable Operator or who has not received a decision within the time period set forth below shall be entitled to have the complaint reviewed by the Franchising Authority.

2. The customer may initiate the review either by calling the Franchising Authority or by filing a written complaint together with the Cable Operator's written decision, if any, with the Franchising Authority.

3. The customer shall make such filing and notification within twenty (20) days of receipt of the Cable Operator's decision or, if no decision has been provided, within thirty (30) days after filing the original complaint with the Cable Operator.

4. If the Franchising Authority decides that further evidence is warranted, the Franchising Authority shall require the Cable Operator and the customer to submit, within ten (10) days of notice thereof, a written statement of the facts and arguments in support of their respective positions.

5. The Cable Operator and the customer shall produce any additional evidence, including any reports from the Cable Operator, which the Franchising Authority may deem necessary to an understanding and determination of the complaint.

6. The Franchising Authority shall issue a determination within fifteen (15) days of receiving the customer complaint, or after examining the materials submitted, setting forth its basis for the determination.

7. The Franchising Authority may extend these time limits for reasonable cause and may intercede and attempt to negotiate an informal resolution.

### **C. Security Fund or Letter of Credit**

A Cable operator shall comply with any Franchise Agreement regarding Letters of Credit. If a Franchise Agreement is silent on Letter of Credit the following shall apply:

1. Within thirty (30) days of the written notification to a Cable Operator by the Franchising Authority that an alleged Franchise violation exists, a Cable Operator shall deposit with an escrow agent approved by the Franchising Authority ten thousand dollars (\$10,000) or, in the sole discretion of the Franchising Authority, such lesser amount as the Franchising Authority deems reasonable to protect subscribers within its jurisdiction. Alternatively, at the Cable Operator's discretion, it may provide to the Franchising Authority an irrevocable letter of credit in the same amount. With the approval of the Franchising Authority (or Franchising Authorities), a letter of credit or cash deposit, may be posted jointly for more than one Franchising Authority, and may be administered, and drawn upon, jointly by the Franchising Authorities, or drawn upon individually.

The escrowed funds or letter of credit shall constitute the "Security Fund" for ensuring compliance with these Standards for the benefit of the Franchising Authority. The escrowed funds or letter of credit shall be maintained by a Cable Operator at the amount initially required, even if amounts are withdrawn pursuant to any provision of these Standards, until any claims related to the alleged Franchise violation(s) are paid in full.

2. The Franchising Authority may require the Cable Operator to increase the amount of the Security Fund, if it finds that new risk factors exist which necessitate such an increase.

3. The Security Fund shall serve as security for the payment of any penalties, fees, charges or credits as provided for herein and for the performance by a Cable Operator of all its obligations under these Customer Service Standards.

4. The rights reserved to the Franchising Authority with respect to the Security Fund are in addition to all other rights of the Franchising Authority, whether reserved by any applicable franchise agreement or authorized by law, and no action, proceeding or exercise of a right with respect to same shall in any way affect, or diminish, any other right the Franchising Authority may otherwise have.

#### **D. Verification of Compliance**

A Cable Operator shall establish its compliance with any or all of the standards required through annual reports that demonstrate said compliance, or as requested by the Franchising Authority.

#### **E. Procedure for Remediating Violations**

1. If the Franchising Authority has reason to believe that a Cable Operator has failed to comply with any of these Standards, or has failed to perform in a timely manner, the Franchising Authority may pursue the procedures in its Franchise Agreement to address violations of these Standards in a like manner as other franchise violations are considered.

2. Following the procedures set forth in any Franchise Agreement governing the manner to address alleged Franchise violations, if the Franchising Authority determines in its sole discretion that the noncompliance has been substantiated, in addition to any remedies that may be provided in the Franchise Agreement, the Franchising Authority may:

a. Impose assessments of up to one thousand dollars (\$1,000.00) per day, to be withdrawn from the Security Fund in addition to any franchise fee until the non-compliance is remedied; and/or

b. Order such rebates and credits to affected customers as in its sole discretion it deems reasonable and appropriate for degraded or unsatisfactory services that constituted noncompliance with these Standards; and/or

c. Reverse any decision of the Cable Operator in the matter and/or

d. Grant a specific solution as determined by the Franchising Authority; and/or

e. Except for in emergency situations, withhold licenses and permits for work by the Cable Operator or its subcontractors in accordance with applicable law.

## **V. MISCELLANEOUS**

### **A. Severability**

Should any section, subsection, paragraph, term, or provision of these Standards be determined to be illegal, invalid, or unconstitutional by any court or agency of competent jurisdiction with regard thereto, such determination shall have no effect on the validity of any other section, subsection, paragraph, term, or provision of these Standards, each of the latter of which shall remain in full force and effect.

### **B. Non-Waiver**

Failure to enforce any provision of these Standards shall not operate as a waiver of the obligations or responsibilities of a Cable Operator under said provision, or any other provision of these Standards. (Revised 6/2/14)





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INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED  
PUBLISHED IN FULL this \_\_\_\_ day of \_\_\_\_\_, 2015. A Public Hearing shall be held at the  
regular meeting of the Town Council of the Town of Breckenridge, Colorado on the \_\_\_\_ day of  
\_\_\_\_\_, 2015, 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 LEASE

2 THIS LEASE ("Lease") is made and entered into this \_\_\_\_ day of \_\_\_\_\_,  
3 2015 between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation  
4 ("Landlord") and COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC, a  
5 Delaware limited liability company ("Tenant").  
6

7 Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the following  
8 real property located in the Town of Breckenridge, County of Summit and State of Colorado:

9 A parcel of land located in a portion of the Blue River Placer M.S. 816, Section  
10 31, Township 6 South, Range 77 West of the 6th Principal Meridian, Summit  
11 County, Colorado and being more particularly described as follows:  
12

13 Commencing at Corner 12 of the Blue River Placer as shown on the Annexation  
14 Plat of a portion of the Blue River Placer M.S. 816, Reception No. 221385, a ½  
15 inch rebar with a plastic cap stamped PLS 9939, thence N 75° 25'02" W along the  
16 line between said Corner 12 and the Southeast Corner of said Annexation Plat a  
17 distance of 207.97 feet to a ½ inch rebar with a broken cap stamped PLS 9939,  
18 thence N 18°47'59" W a distance of 346.99 feet to the point of beginning of this  
19 description.  
20

21 Thence N 58°55'26" W a distance of 26.50 feet to a point; Thence N 31°04'34" E  
22 a distance of 34.50 feet to a point; Thence S 58°55'26" E a distance of 26.50 feet  
23 to a point; Thence S 31°04'34" W a distance of 34.50 feet to the point of  
24 beginning.  
25

26 Containing 0.02 acres, more or less  
27

28 (the "Leased Premises", which are depicted on the attached Exhibit "A", which  
29 is incorporated herein by reference)  
30

31 upon the following terms and conditions:  
32

33 1. Term.

34 A. The initial term of this Lease (the "Initial Term") shall be for ten (10)  
35 years and shall commence as of 12:01 A.M., local time, on the next business day following the  
36 mutual execution and delivery of this Lease (the "Commencement Date"). The parties agree to  
37 execute a certificate stating the date of the Commencement Date.

38 B. Should Tenant remain in possession of the Leased Premises with the  
39 consent of Landlord after the natural expiration of this Lease, a new tenancy from month to  
40 month shall be created between Landlord and Tenant which shall be subject to all the terms and  
41 conditions hereof, but shall be terminable on thirty (30) days' written notice served by either  
42 Landlord or Tenant on the other party.

1           2.     Rent. The monthly rent to be paid by the Tenant for this Lease during the first  
2 year of the term shall be Two thousand five hundred Dollars (\$2,500.00) payable without  
3 demand on the first day of each month. The monthly rent shall be increased to reflect the annual  
4 cost-of-living adjustment as provided in Paragraph 3. A late charge of five percent (5%) shall be  
5 paid on any installment of rent not received by Landlord within five (5) days of the due date. If  
6 this Lease commences on any date other than the first day of a month, the rent for the first and  
7 last months shall be prorated. The rental for the first month of the term shall be paid within ten  
8 (10) business days after the mutual execution and delivery of this Lease.

9           3.     Annual Rent Adjustment. On each anniversary date of the Commencement Date  
10 of this Lease during the Initial Term, commencing with the first anniversary date in 2016, the  
11 monthly rent for the Leased Premises shall be increased by an amount equal to three percent  
12 (3%) of the monthly rent paid in the immediately preceding year.

13           4.     Use of Leased Premises. The Leased Premises may be used by the Tenant only to  
14 provide a location for constructing, maintaining, and operating a cable and broadband  
15 communications signal processing and transmission facility together with uses incidental thereto,  
16 in accordance with applicable laws. No other use of the Leased Premises shall be made by  
17 Tenant without Landlord's prior written consent, which consent may be withheld in Landlord's  
18 sole and absolute discretion. Tenant shall comply with all the reasonable rules and regulations  
19 which the Landlord may make for the protection of the Leased Premises (provided that in the  
20 event of any conflict or inconsistency between such rules and regulations and this Lease, the  
21 terms of this Lease shall govern) and with all the laws, ordinances, regulations, rules, and orders  
22 of appropriate governmental authorities either now in force or hereafter enacted pertaining to  
23 police, fire, sanitation, occupancy, and preservation of the Leased Premises during the term of  
24 this Lease. Tenant shall not, during the term hereof, maintain, commit, or permit the  
25 maintenance or commission of any hazard or nuisance on the Premises.

26           5.     Inspection of Leased Premises. Tenant acknowledges that it is aware of the  
27 geological and topographical condition of the Leased Premises based upon its occupancy and use  
28 of the Leased Premises pursuant to a prior lease. Tenant accepts the Leased Premises in "AS  
29 IS" condition without recourse to Landlord for any dangerous conditions, known or unknown.

30           6.     Right to Enter. Tenant shall permit Landlord, its agents, employees and  
31 contractors, to have access to and to enter the Leased Premises at all reasonable and necessary  
32 times to inspect the Leased Premises for any purpose connected with the repair, improvement,  
33 care and management of the Leased Premises, or for any other purpose reasonably connected  
34 with Landlord's interest in the Leased Premises, and to perform any such work or other act  
35 found necessary on such inspection; provided that such inspection shall not unreasonably  
36 interfere with Tenant's use of the Leased Premise and Landlord shall indemnify and hold Tenant  
37 harmless from any damage or personal injury resulting from Landlord's inspection of the Leased  
38 Premise.

39           7.     Surrender of Leased Premises; Removal of Tenant's Property. At the end of the  
40 term of this Lease (whether by the natural expiration of the term of this Lease or the earlier  
41 termination of this Lease as herein provided) Tenant shall surrender the Leased Premises to the  
42 Landlord in as good a condition as existed at the time of the commencement of this Lease,

1 normal wear and tear excepted. At the end of the term of this Lease Tenant shall remove its  
2 property from the Leased Premises. Any property of Tenant's not removed from the Leased  
3 Premises by Tenant at the expiration of this Lease shall be considered abandoned and Landlord  
4 shall have the right (but not the duty), without any notice to Tenant, to sell or otherwise dispose  
5 of the same at the expense of the Tenant and shall not be accountable to the Tenant for any part  
6 of the proceeds of such sale, if any.

7 8. Parking. Use of any parking area provided by the Landlord for the Leased  
8 Premises shall be governed by such rules and regulations as may be made from time to time by  
9 Landlord. The use of any such parking area by Tenant shall be at Tenant's risk and with the  
10 understanding and agreement that Landlord shall not be liable for personal injury therein or loss  
11 of or damage to property thereon. No overnight parking of Tenant's vehicles shall be permitted.

12 9. Alterations and Improvements. Tenant shall make no structural alterations to the  
13 Leased Premises or construct any building or make other exterior or structural improvements to  
14 the Leased Premises without the prior written consent of Landlord, which consent shall not be  
15 unreasonably withheld, conditioned, or delayed. Tenant may make non-structural alterations or  
16 improvements to the Leased Premises without the Landlord's consent. Landlord hereby  
17 approves all alterations and improvements constructed on the Leased Premises by Tenant or  
18 Tenant's predecessors prior to the Commencement Date. All alterations, changes and  
19 improvements built, constructed or placed on the Leased Premises by Tenant, with the exception  
20 of fixtures removable without damage to the Leased Premises, and Tenant's moveable personal  
21 property shall, unless otherwise provided by written agreement between Landlord and Tenant,  
22 become the property of the Landlord and remain on the Leased Premises at the expiration or  
23 sooner termination of this Lease.

24 10. Maintenance and Snow Plowing. During the term of this Lease, Tenant, at  
25 Tenant's sole expense, shall keep the Leased Premises in a neat and clean condition and provide  
26 all required maintenance, snow plowing and snow removal necessary to allow the Leased  
27 Premises to be used by Tenant for the uses described in Paragraph 7.

28 11. Utilities. Tenant shall initiate, contract for, and pay the cost of obtaining, in its  
29 sole name, all utility services required by Tenant on the Leased Premises, and Tenant shall pay  
30 all charges for such services as they become due. Without limiting the generality of the  
31 foregoing, Tenant shall continue to have a separate electric meter installed and maintained at the  
32 Leased Premises.

33 12. Trash Removal. Tenant shall pay the cost of any trash removal required in  
34 connection with its use of the Leased Premises.

35 13. Hazardous Materials. Tenant shall not store or permit the storage on the Leased  
36 Premises of any type of hazardous or similar material which is regulated by federal, state or local  
37 regulation, except strictly in accordance with all applicable laws and regulations.

38 14. Damage to Premises. If the Leased Premises should be damaged, regardless of  
39 cause, to the extent that Tenant cannot operate, Tenant shall have the right to either rebuild or



1 repair the Leased Premises at its cost and continue this Lease or terminate this Lease by giving  
2 Landlord written notice.

3  
4 15. Insurance.

5 A. Tenant shall procure and maintain general liability insurance with  
6 minimum combined single limits of not less than One Million Dollars (\$1,000,000). Such  
7 coverage shall be procured and maintained with insurers reasonably acceptable to the  
8 Landlord and rated A- VII by AM Best. Such coverage shall be continuously maintained to  
9 cover all liability, claims, demands, and other obligations assumed by Tenant pursuant to  
10 this Lease. In the case of any claims-made policy, the necessary retroactive damages and  
11 extended reporting periods shall be procured to maintain such continuous coverages.

12 B. The policy required by Paragraph (A), above, shall be endorsed to  
13 include the Landlord as an additional insured, which may be achieved through a blanket  
14 additional insured endorsement. Such policy shall be primary insurance, and any insurance  
15 carried by Landlord, its officers, or its employees, or carried by or provided through any  
16 insurance pool of which Landlord is a member, shall be excess and not contributory  
17 insurance to that provided by Tenant, but only with respect to losses for which Tenant is  
18 responsible hereunder. Tenant shall be solely responsible for any deductible losses under the  
19 policy required above.

20 C. A certificate of insurance shall be completed by Tenant's insurance  
21 agent and provided to the Landlord as evidence that a policy providing the required  
22 coverage, conditions, and minimum limits is in full force and effect and shall be reviewed  
23 and approved by Landlord prior to commencement of the term of this Lease. The certificate  
24 shall identify this Lease and shall provide that the coverage afforded under the policy shall  
25 not be cancelled until at least thirty (30) days' prior written notice has been given to  
26 Landlord. The completed certificate of insurance shall be sent to:

27 Town Clerk  
28 Town of Breckenridge  
29 150 Ski Hill Road  
30 P.O. Box 168  
31 Breckenridge, CO 80424  
32

33 D. Notwithstanding any other portion of this Lease, failure on the part of  
34 Tenant to procure or maintain policies providing the required coverage, conditions, and  
35 minimum limits, or to provide the required additional insured policy endorsement, shall  
36 constitute a material breach of this Lease for which Landlord may immediately terminate  
37 this Lease.

38 16. Indemnification. Tenant agrees to indemnify and hold harmless Landlord, its  
39 officers, and employees from and against all liability, claims, and demands, on account of  
40 injury, loss, or damage, including without limitation claims arising from bodily injury, personal  
41 injury, sickness, disease, death, property loss or damage, or any other loss of any kind

1 whatsoever, which occur on the Leased Premises and which arise out of or are in any manner  
2 connected with Tenant's occupancy or use of the Leased Premises pursuant to this Lease. Tenant  
3 agrees to investigate, handle, respond to, and to provide defense for and defend against any such  
4 liability, claim, or demand at the sole expense of Tenant. Tenant also agrees to bear all other  
5 costs and expenses related thereto, including court costs and reasonable attorney's fees. Tenant's  
6 indemnification obligation shall not extend to any damages arising out of the gross negligence or  
7 intentional acts of Landlord, its employees or agents. As to any indemnification required  
8 hereunder, Tenant shall have the right to choose qualified counsel to defend Landlord, and  
9 Tenant shall have full settlement authority.

10 17. Liens. Tenant shall not permit the creation of any type of lien upon the Leased  
11 Premises, including, but not limited to a mechanic's or materialmen's lien. The indemnification  
12 provisions of Paragraph 19 of this Lease shall apply to any such lien. If, because of any act or  
13 omission of Tenant, and resulting from Tenant's work on the Leased Premises, any mechanic's  
14 or other lien, charge or order for the payment of money shall be filed against the Leased  
15 Premises, Tenant shall, at its own cost and expense, cause the same to be discharged of record or  
16 bonded within ninety (90) days from the filing of such lien.

17 18. Taxes.

18 A. Taxes Defined. As used in this Lease, the term "taxes" shall mean all  
19 personal property and real property taxes that may be levied, assessed or imposed arising out of  
20 Tenant's occupancy and use of the Leased Premises pursuant to this Lease.

21 B. Possessory Interests. Pursuant to Section 39-3-105, C.R.S., all real or  
22 personal property owned by Landlord is exempt from taxation. However, the parties  
23 acknowledge that Tenant's occupancy and use of the Leased Premises pursuant to this Lease  
24 may be deemed to be a taxable possessory interest.

25 C. Tenant To Pay Taxes. Any taxes lawfully assessed arising from Tenant's  
26 occupancy and use of the Leased Premises pursuant to this Lease shall be paid by Tenant, and  
27 Tenant shall indemnify and hold Landlord harmless from any such taxes. Any taxes due arising  
28 from Tenant's occupancy and use of the Lased Premises pursuant to this Lease shall be paid by  
29 Tenant in a timely manner. Prior to the last day for payment of such taxes without penalty or  
30 interest, Tenant shall provide to Landlord a photostatic copy of the receipt(s) or cancelled  
31 check(s) showing payment of the taxes. Tenant may pay any taxes in installments if permitted by  
32 law.

33 D. Tenant's Right to Contest Taxes. In the event Tenant is liable for the  
34 payment of any taxes arising from Tenant's occupancy and use of the Leased Premises pursuant  
35 to this Lease, Tenant shall have the right, at Tenant's sole expense, to contest any such taxes by  
36 the commencement and prosecution, in good faith and with due diligence, of appropriate legal  
37 proceedings; provided that Tenant makes timely payment of such taxes if Tenant loses the  
38 contest. Tenant shall advise Landlord prior to instituting any such contest and shall as a  
39 condition of exercising such right provide Landlord such reasonable assurance as it may request  
40 that such contest shall be in compliance with the provisions of this Paragraph. Landlord, at  
41 Tenant's sole cost and expense, shall reasonably cooperate with Tenant in any such contest, may

1 join in the contest, and shall execute and deliver such documents and instruments as may be  
2 necessary or appropriate for prosecuting an effective contest.

3 19. Right to Relocate Tenant's Head End Facility. Landlord shall have the right, at  
4 its sole cost and expense, to relocate Tenant's head end facility from the Leased Premises to  
5 another site similar in size, location and suitability for Tenant's technical requirements (i.e.,  
6 location, altitude, etc.) which is reasonably acceptable to Tenant. Landlord shall give Tenant not  
7 less than one hundred eighty (180) days' notice prior to such relocation. Such relocation shall be  
8 done in such a manner as to minimize any disruption in Tenant's business operations. If Tenant  
9 finds the proposed relocated site reasonably unacceptable, Tenant shall not be relocated.  
10 Landlord shall waive any development fees required as a result of such relocation. In the event  
11 of such relocation, an Amendment to this Lease shall be executed by Landlord and Tenant  
12 describing the replacement property for this Lease.

13 20. Landlord hereby grants to Tenant during the term of this Lease, the right to  
14 install, access and maintain an emergency generator and related above-ground fuel storage tank  
15 (collectively, the "Generator Equipment") in order to provide a source of emergency power for  
16 Tenant's operations at the Premises. Tenant shall be responsible for compliance with all laws  
17 applicable to the installation, maintenance, use and removal of the Generator Equipment. Tenant  
18 will immediately report to Landlord any spill or release of fuel or hazardous substances and any  
19 citations or notices of violation and will provide Landlord with copies thereof. Such notification  
20 will not relieve Tenant from its obligations to notify governmental agencies. Any cleanup or  
21 remediation of any spill or release with respect to the Generator Equipment required by any  
22 governmental agency will be completed by Tenant in accordance with all applicable laws.  
23 Landlord may make periodic inspections to ensure regulatory compliance and the proper  
24 operation, maintenance and repair of the Generator Equipment. Tenant shall give to Landlord  
25 notice of any notices which Tenant receives from third parties that any of the Generator  
26 Equipment is or may be in violation of any law. Tenant shall pay all taxes of any kind or nature  
27 whatsoever levied upon the Generator Equipment and all licensing fees, franchise taxes and  
28 other charges, expenses and other costs of any nature whatsoever relating to the construction,  
29 ownership, maintenance and operation of the Generator Equipment. Within ten (10) days after  
30 expiration or termination of this Lease, Tenant, at Tenant's sole cost and expense, shall remove  
31 any Generator Equipment installed hereunder.

32 21. Tenant Default. Tenant shall be in default under this Lease if Tenant fails to  
33 comply with any of the terms, provisions or covenants of this Lease within ten (10) days  
34 following service of a demand for compliance notice by Landlord in accordance with Colorado  
35 law; provided, however, as to any non-monetary default not capable of being cured within ten  
36 (10) days following service of a demand for compliance notice, Tenant shall not be in default if  
37 it commences correcting the non-monetary default within ten (10) days of service of the demand  
38 for compliance notice and thereafter corrects the default with due diligence.

39 22. Landlord's Remedies upon Default. If the Tenant is in default under this Lease,  
40 Landlord shall have all of the remedies provided for in such circumstances by Colorado law,  
41 including without limitation, the right to terminate this Lease by written notice to Tenant, in  
42 which event Tenant shall immediately surrender the Leased Premises to Landlord and, if Tenant  
43 fails to do so, Landlord may, without prejudice to any other remedy which it may have for

1 possession or arrearages in rent, enter upon and take possession of the Leased Premises and  
2 expel or evict Tenant and any other person who may be occupying the Leased Premises or any  
3 part thereof, by force if necessary, without being liable for any claim for damages therefore.

4 23. Landlord's Default. Landlord shall be in default under this Lease if Landlord fails  
5 to comply with any of the terms, provisions or covenants of this Lease within ten (10) days  
6 following service of a notice by Tenant; provided, however, as to any non-monetary default not  
7 capable of being cured within ten (10) days following service of the notice, Landlord shall not be  
8 in default if it commences correcting the non-monetary default within ten (10) days of service of  
9 the notice and thereafter corrects the default with due diligence.

10 24. Tenant's Remedies upon Default. If the Landlord is in default under this Lease,  
11 Tenant shall have all of the remedies provided for in such circumstances by Colorado law.

12 25. No Waiver of Governmental Immunity. The parties hereto understand and agree  
13 that Landlord is relying on, and does not waive or intend to waive by any provision of this  
14 Lease, the monetary limitations or any other rights, immunities, and protections provided by the  
15 Act, as from time to time amended, or any other limitation or defense otherwise available to  
16 Landlord, its officers, or its employees.

17 26. Waiver. The waiver by Landlord or Tenant of any breach of any term, covenant,  
18 or condition herein contained shall not be deemed to be a waiver of any other term, covenant, or  
19 condition of this Lease, or of any subsequent breach of the same or any other term, covenant, or  
20 condition herein contained. The subsequent acceptance of rent hereunder by Landlord shall not  
21 be deemed to be a waiver of any preceding breach by Tenant of any term, covenant, or condition  
22 of this Lease, regardless of Landlord's knowledge of such preceding breach at the time of  
23 acceptance of such rent. A waiver of Landlord or Tenant of any of its rights hereunder shall be  
24 valid and binding only if contained in a written instrument signed by Landlord or Tenant, as  
25 applicable. Tenant expressly recognizes Landlord's right to compensation for the use of the  
26 Leased Premises, whether characterized as rent or damages, and acceptance of rent during  
27 Tenant's occupation shall not constitute a waiver of any breach, even if accepted after notice of  
28 termination or institution of court proceedings.

29 27. Non-liability of Landlord. Tenant hereby releases Landlord, and the  
30 representatives, agents, attorneys and employees of Landlord, from any and all liability for any  
31 injury or damage to Tenant, or to Tenant's property located on or about the Leased Premises ,  
32 resulting from any cause whatsoever, except injury or damage resulting from the gross  
33 negligence or the willful or intentional act of Landlord, or the representatives, agents, attorneys  
34 and employees of Landlord.

35 28. Attorney's Fees and Costs. If any action is brought in a court of law by either  
36 party to this Lease concerning the enforcement, interpretation or construction of this Lease, the  
37 prevailing party, either at trial or upon appeal, shall be entitled to reasonable attorney's fees as  
38 well as reasonable costs, including expert witness's fees, incurred in the prosecution or defense  
39 of such action. Tenant shall further reimburse Landlord for its attorneys' fees incurred in  
40 connection with the preparation of this Lease, in an amount not to exceed \$3,000.00, within  
41 thirty (30) days after receipt of a copy of Landlord's attorney's invoice.



1           29.    Intentionally deleted

2           30.    Assignment and Sublease. Tenant shall not sublet the Leased Premises or any part  
3 thereof, or assign this Lease, or any part hereof, or grant any concession or license to use the  
4 Leased Premises or any part thereof, without the prior written consent of the Landlord, which  
5 consent may be withheld in Landlord’s sole and absolute discretion. An assignment of this Lease  
6 resulting from the:

- 7                    i.    merger of Tenant with another business entity;
- 8                    ii.   acquisition of Tenant by another business entity; or
- 9                    iii.   transfer of the Lease to another business entity controlled by Tenant or  
10                        a parent, subsidiary, or affiliate of Tenant,

11 shall be deemed a permitted assignment not requiring Landlord’s prior consent.

12  
13           31.    Notices. Any notices required or permitted hereunder shall be sufficient if  
14 personally delivered or if sent by certified mail, return receipt requested, or by nationally  
15 recognized overnight courier service, addressed as follows:

16           If to Landlord:           Town Manager  
17                                        Town of Breckenridge  
18                                        150 Ski Hill Road  
19                                        P.O. Box 168  
20                                        Breckenridge, CO    80424

21  
22           WITH A COPY (WHICH SHALL NOT CONSTITUTE NOTICE) TO:

23  
24                                        Timothy H. Berry, Esq.  
25                                        Timothy H. Berry, P.C.  
26                                        P. O. Box 2  
27                                        Leadville, CO 80461

28  
29           If to Tenant:           Comcast Cable Communications Management, LLC  
30                                        8000 E. Iliff Blvd  
31                                        Denver, CO 80231  
32                                        Attention: Facilities Manager

33  
34           WITH A COPY (WHICH SHALL NOT CONSTITUTE NOTICE) TO:

35  
36                                        Comcast Cable Communications, LLC  
37                                        One Comcast Center  
38                                        1701 John F. Kennedy Boulevard  
39                                        Philadelphia, PA 19103-2838  
40                                        Attn: General Counsel  
41

1 Notices mailed in accordance with the provisions of this Paragraph shall be effective on the fifth  
2 calendar day following mailing or on the first business day following submission to a nationally  
3 recognized overnight courier service. Notices personally delivered shall be effective upon  
4 delivery. Nothing herein shall prohibit the giving of notice in the manner provided for in the  
5 Colorado Rules of Civil Procedure for service of civil process. E-mail is not a valid means of  
6 giving notice under this Lease.  
7

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

9 33. No Partnership. Notwithstanding anything contained in this Lease to the contrary,  
10 it is expressly understood and agreed that the Landlord shall not be construed or held to be a  
11 partner, associate or joint venturer of Tenant in the conduct of its business.

12 34. Third Parties. This Lease does not, and shall not be deemed or construed to,  
13 confer upon or grant to any third party (except a party to whom the Tenant may assign this Lease  
14 in accordance with the terms hereof) any right to claim damages or to bring suit, action or other  
15 proceeding against the Landlord because of any breach hereof or because of any of the terms,  
16 covenants, agreements and conditions herein.

17 35. Complete Agreement. It is understood and agreed that this Lease contains the  
18 complete and final expression of the agreement between the parties as to the subject matter of  
19 this Lease and that there are no promises, representations, or inducements except as are herein  
20 set forth.

21 36. Modification. This Lease may be modified or amended only by a duly authorized  
22 written instrument executed by the parties hereto. Oral amendments to this Lease are not  
23 permitted.

24 37. Applicable Law. This Lease shall be interpreted in all respects in accordance with  
25 the laws of the State of Colorado without regard to its conflict of laws principles.

26 38. Forum Selection. The parties agree to the jurisdiction and venue of the state  
27 courts of Summit County, Colorado in connection with any litigation arising out of or in any  
28 manner connected with this Lease.

29 39. Waiver of Right to Jury Trial. **BOTH PARTIES WAIVE THE RIGHT TO A JURY TRIAL**  
30 **IN CONNECTION WITH ANY LITIGATION ARISING OUT OF OR IN ANY MATTER CONNECTED WITH**  
31 **THIS LEASE.**

32 40. Counterparts. This Lease may be executed simultaneously in two or more  
33 counterparts, each of which shall be considered an original for all purposes and all of which  
34 together shall constitute but one and the same instrument.

35 41. Paragraph Headings. Paragraph headings are inserted for convenience only and in  
36 no way limit or define the interpretation to be placed upon this Lease.

37 42. No Recording. This Lease **SHALL NOT BE RECORDED** in the real property records  
38 of the Clerk and Recorder of Summit County, Colorado.

HEAD END FACILITY LEASE

1           43.    Binding Effect. This Lease shall be binding upon, and shall inure to the benefit  
2 of, the parties and their respective successors and permitted assigns.

3 Landlord Authority. The execution of this Lease by Landlord was authorized by Ordinance No.  
4 \_\_\_\_\_Series 2015 , adopted by the Town Council of the Town of Breckenridge  
5 on \_\_\_\_\_,2015.

6  
7

LANDLORD:

8  
9

TOWN OF BRECKENRIDGE, a Colorado  
municipal corporation

10  
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\_\_\_\_\_  
Timothy J. Gagen, Town Manager

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16

ATTEST:

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\_\_\_\_\_  
Helen Cospolich  
Town Clerk

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TENANT:

COMCAST CABLE COMMUNICATIONS  
MANAGEMENT, LLC

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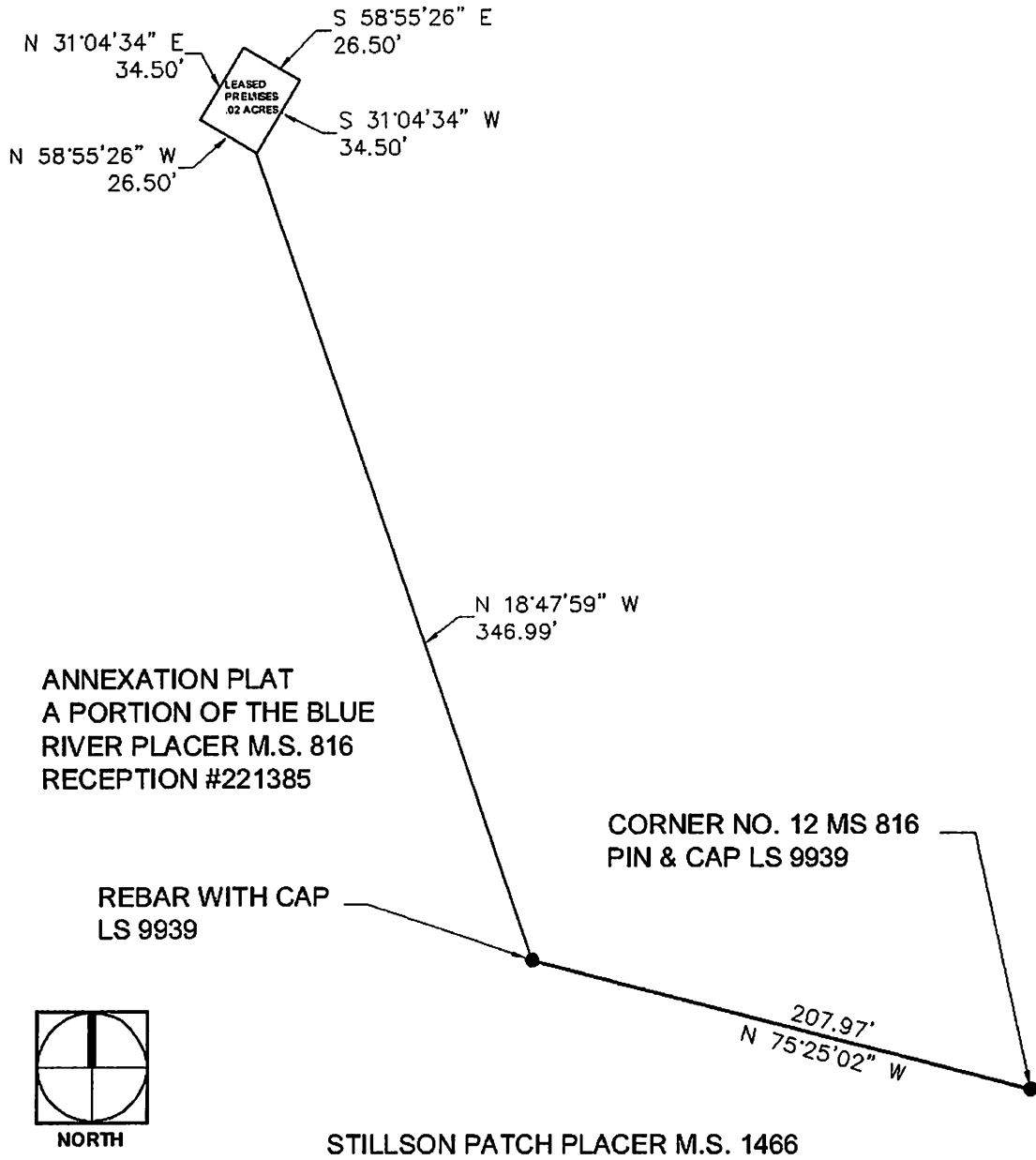
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Title:

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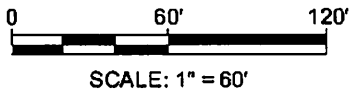
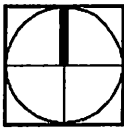
EXHIBIT "A"



ANNEXATION PLAT  
A PORTION OF THE BLUE  
RIVER PLACER M.S. 816  
RECEPTION #221385

CORNER NO. 12 MS 816  
PIN & CAP LS 9939

REBAR WITH CAP  
LS 9939



STILLSON PATCH PLACER M.S. 1466

<p>EXHIBIT A PARCEL A</p>	<p>A PORTION OF THE BLUE RIVER PLACE M.S. 816 SUMMIT COUNTY COLORADO</p>	<p>DATE SURVEYED 6-3-99</p>	<p>DATE DRAWN 12-11-13</p>
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1 ***FOR WORKSESSION/APPROVAL – APRIL 28***

2  
3 RESOLUTION NO. \_\_\_\_

4  
5 Series 2015

6  
7 A RESOLUTION APPROVING AN “INSTITUTIONAL NETWORK (I-NET)  
8 AGREEMENT” WITH COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC  
9 AND SUMMIT COUNTY, COLORADO GOVERNMENT

10  
11 WHEREAS, an “I-Net” is a private communications network consisting of circuits and  
12 interconnections between and among facilities; and

13  
14 WHEREAS, the Town desires to enter into the “Institutional Network (I-Net)  
15 Agreement” with Comcast Cable Communications Management, LLC, and Summit County  
16 government, a copy of which is marked **Exhibit “A,”** attached hereto, and incorporated herein  
17 by reference (“**Agreement**”); and

18  
19 WHEREAS, the Town Council of the Town of Breckenridge has reviewed the proposed  
20 Agreement, and finds and determines that it would be in the best interests of the Town and its  
21 residents for the Town to enter into the proposed Agreement; and

22  
23 WHEREAS, Rule 6.1(b) of the Council Procedures and Rules of Order provides that a  
24 resolution may be used to approve a contract.

25  
26 NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF  
27 BRECKENRIDGE, COLORADO:

28  
29 Section 1. The “Institutional Network (“I-Net”) Agreement” between the Town,  
30 Comcast Cable Communications Management, LLC, and Summit County government is  
31 approved, and the Town Manager is authorized, empowered, and directed to execute such  
32 agreement for and on behalf of the Town of Breckenridge.

33  
34 Section 2. Minor changes to or amendments of the approved agreement may be made by  
35 the Town Manager if the Town Attorney certifies in writing that the proposed changes or  
36 amendments do not substantially affect the consideration to be received or paid by the Town  
37 pursuant to the approved agreement, or the essential elements of the approved agreement.

38  
39 Section 3. This resolution is effective upon adoption.

40  
41 RESOLUTION APPROVED AND ADOPTED this \_\_\_\_ day of \_\_\_\_, 2015.

42  
43  
44

TOWN OF BRECKENRIDGE

By: \_\_\_\_\_  
John G. Warner, Mayor

ATTEST:

\_\_\_\_\_  
Helen Cospolich  
Town Clerk

APPROVED IN FORM

\_\_\_\_\_  
Town Attorney                      Date

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**INSTITUTIONAL NETWORK ("I-NET")  
AGREEMENT**

THIS INSTITUTIONAL NETWORK AND ENTERPRISE CLASS SERVICES AGREEMENT (the "Agreement") is made and entered into, to be effective as of \_\_\_\_\_ (the "Effective Date"), by and between on the one hand, the Town of Breckenridge, a Colorado home rule municipal corporation and the County of Summit, a Colorado county (hereinafter each referred to as "Town" and "County," respectively), and on the other hand Comcast Cable Communications Management, LLC, on behalf of itself and its affiliates (hereinafter "Comcast").

WHEREAS, concurrently with the approval of this Agreement, the Town and County will be granting to Comcast's affiliate Comcast of Colorado V, LLC a cable television franchise (together with any renewals or extensions, the "Franchise") which provides, among other things, for the building and maintenance of an Institutional Network (the "I-Net", as further defined in Section I.B. and Appendix A); and,

WHEREAS, Comcast has completed installation and continues to maintain the I-Net in full compliance with the Franchise and,

WHEREAS, Comcast has requested, and the Town and County are willing to separate the terms and conditions regarding the I-Net from the Franchise, and to restate and amend such terms and conditions as provided herein, and (2) to establish the framework upon which the Town may acquire additional products and services from Comcast, whether related to the I-Net or otherwise.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS HEREIN, THE PARTIES AGREE AS FOLLOWS:

**I. I-Net Scope and Definitions**

A. **Defined Terms.** All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Franchise.

B. **Private Network.** The I-Net is a private communications network built and maintained by Comcast for the benefit of the Town and County, and consists of the circuits and interconnections between and among the facilities described on Appendix A, enabling direct communications between and among any of those facilities. Comcast grants the Town and County the right to access and use the I-Net during the Term (as defined in Section V.A. below) only by employees, contractors and officials of the Town and County, and certain business and legal representatives of the Town and County for Town and County governmental business and government business of any other governmental or quasi-governmental entity located in the County only (together "Qualified I-Net Users"). Subject to Section I.B. below, and unless expressly prohibited by State or federal law, Qualified I-Net Users shall have the right to provide for the internal switching, routing and/or cross connection to telecommunications carriers of its choice, for the Town's and County's normal voice and data communications operations, including without limitation the following uses:

- (1) High-speed transmission of data to and from Town and County departments and to and from other Qualified I-Net Users;

**EXHIBIT "A"**

- (2) Transmitting live and stored instructional materials (whether in the form of data, video or otherwise) for distance learning and staff training purposes to and from Qualified I-Net Users;
- (3) Providing videoconferencing among government locations and to other locations for government purposes;
- (4) Linking public libraries and providing terminals at library locations that allow members of the public to access library databases and other remote databases;
- (5) Providing for remote origination of Access programming;
- (6) Facilitating connections for telephone systems, security systems and other critical public entity communications applications, so long as such systems are not providing telecommunications services to any person or entity other than Qualified I-Net Users.

**C. Prohibited Uses.** The I-Net is for the governmental business operation of the Town and County, and may not be used to provide commercial services to Town and County residents or any non-governmental third party. Neither the Town, County nor any Qualified I-Net Users may resell or re-lease access to the I-Net. In addition, the I-Net will not be used in any way that will intentionally or unreasonably interfere with the signal quality and the normal operation of Comcast's Subscriber Network (as that term is defined in the Franchise). Without limiting the foregoing, the I-Net may not be used for providing Internet access, telecommunications or multi-channel video services to any person or entity other than Qualified I-Net Users. The Town and County agrees to require all Qualified I-Net Users to stipulate and agree to these limitations.

**D. Network Equipment.** Working in cooperation, the Town and County, Comcast shall determine the network equipment that is necessary for the operation of the I-Net from the Headend to the Demarcation Point at each I-Net site (excluding end user electronics), and Comcast shall install this equipment at appropriate points on the I-Net. Comcast shall not install or be responsible for any I-Net end user equipment past the Demarcation Point, unless through a separate agreement with the Town or County; provided, however, that Comcast shall provide technical expertise as necessary to ensure that the end user equipment is compatible with the I-Net. See Appendix A and Appendix B (a map illustrating the Demarcation Point at each I-Net site location).

## **II. I-Net Service and Performance Standards**

Comcast shall be responsible for meeting these service and performance standards on the portion of the I-Net:

**A. Signal Quality.** The following standards presume that the I-Net will be constructed solely of Fiber Optics to the Demarcation Point at each Qualified I-Net User site, and that the I-Net will operate in an analog format up to 550 MHz, and in a digital format from 550-750 MHz. If the I-Net incorporates any coaxial cable or the bandwidth is used in a different manner than described above, the parties will negotiate in good faith to modify these standards as appropriate to the circumstances. The I-Net shall achieve performance standards listed below under worst-case conditions for communications occurring between one Demarcation Point and any other Demarcation Point.

- (1) **Noise.** The I-Net will not add more than 4dB carrier-to-noise to transmissions, as measured from one Demarcation Point to another. Signal-to-noise or other interference



measurements will be substituted for this standard where appropriate.

(2) **Data Communications.** For any data communications link on the I-Net, the bit error ratio (BER) shall be equal to or better than  $1 \times 10$  to the minus 9.

(3) **Availability.** I-Net availability shall be equal to or better than 99.965% (no more than 184 minutes of I-Net downtime) as measured on an annual basis. The I-Net shall be defined as “unavailable” or as an “I-Net Outage” under the standards in this subsection for Qualified I-Net Users when Qualified I-Net Users (i) cannot, because of an I-Net Problem, measured by SNMP software or other appropriate software and associated hardware, or through a failure of a Comcast-provided interconnect, transmit video, voice and/or data communications to, from, and/or on the I-Net; (ii) experience, due to an I-Net Problem, video, voice, and data transmissions that are below the standards set forth in this subsection; or (iii) experience, due to an I-Net Problem, a data communications packet loss of greater than ten percent (10%). For purposes of this subsection, an I-Net Problem is defined as those that result from the failure of any Comcast-provided I-Net component. I-Net Problems shall not include (i) infrequent scheduled preventative maintenance as long as the Town’s and County’s Technical Contact (as defined in Section II.B. below) is notified in advance; or (ii) those caused by force majeure, as set forth in Section IX.A. of this Agreement.

**B. Service Response.**

(1) **Maintenance.** As more fully described in Section II.D. of this Agreement, Comcast shall be responsible for the ongoing maintenance and performance of the I-Net from the Demarcation Point within a facility through the I-Net, including the Breckenridge Hub. Routine and preventative maintenance shall be performed on the I-Net to ensure that it meets all performance criteria detailed herein. Comcast will provide the Town’s and County’s Technical Contact with at least ten (10) business days advance notice of routine and preventative maintenance activities that may affect operation of the I-Net circuits.

(2) **Demand Maintenance/Service and Repair.** Response to I-Net Problems shall occur at all hours (24 X 365). Appropriate Comcast technical support shall respond and actively begin working on I-Net Problems within one (1) hour of either (a) Comcast identifying such I-Net Problem; or (b) Comcast receiving a call from the Town’s or County’s Technical Contact reporting an I-Net Problem. Comcast shall work continuously until the problem is resolved. If it is determined that the I-Net Problem is caused by the Qualified I-Net User’s equipment or software, then the Qualified I-Net User shall correct the problem such that other Qualified I-Net Users are no longer affected. If the Qualified I-Net User does not correct the problem, then Comcast may disconnect the affected site from the I-Net until such time as the equipment or software is repaired.

(3) **Staff Support.** Comcast shall provide an appropriate complement of administrative, Hub and field personnel at all times to meet the performance criteria detailed herein.

(4) **Service Call Processing and Tracking.** Comcast will establish mechanisms and procedures for all Qualified I-Net Users to quickly and easily report I-Net Problems. All trouble or service calls will be documented, processed and completed in an expedient manner. Comcast will provide in-house and/or contractor staff; spare and backup Hub and distribution equipment; test and maintenance equipment; and additional support as necessary to ensure that the I-Net performs reliably in accordance with all standards detailed herein.

**C. Performance Testing.** Comcast will conduct proof of performance testing on the I-Net two

times per year, no less frequently than every six months. A minimum of one test point location per twenty I-Net sites will be established for the I-Net which are representative of worst-cast performance of the I-Net. A representative sampling of activated upstream and downstream bandwidth shall be teste at each test point location. Testing shall be performed to ensure compliance with the I-Net performance specifications herein. Tests shall be performed using standard test methodologies as incorporated in the most recent version of the NCTA’s Recommended Practices of Measurement on a Cable Television System, or another test methodology as mutually agree to by the Town, County and Comcast. All test will be documented and, upon request, filed with the Town and County. At the Town or County’s request, all testing processes will be conducted under the observation of a representative from the Town and/or County.

**D. Maintenance; Service Trouble Calls and Escalation.** Comcast will perform routine maintenance, non-emergency and emergency repairs upon the I-Net fiber optic circuits and associated facilities and equipment from the Comcast side of the Demarcation Point. The Town and County will each appoint a designated person (the "**Town’s and County’s Technical Contact**") to serve as the point person for troubleshooting and notifying Comcast of any I-Net Problems. The Town and County acknowledge that Comcast does not actively monitor the signal transmission upon the Town and County-utilized I-Net fiber, and would have no notice of a service outage but for Town or County-initiated notification. In the event of a system failure, the Town’s or County’s Technical Contact will notify Comcast by calling (720) 535-8841. This line shall be staffed at all hours (24 hours per day, 365 days per year). Comcast shall not be obligated to respond to maintenance or troubleshooting calls from any Qualified I-Net User other than the Town’s or County’s Technical Contact.

Response to I-Net problems shall occur at all hours (24 hours per day, 365 days per year) as set forth below.

In the event of a disruption or trouble with respect to any portion of the I-Net, Comcast shall provide maintenance and repairs in accordance with the response times set forth below (the "**Dispatch Period**"). Comcast shall notify the Town’s and County’s Technical Contact within the Dispatch Period that Comcast has dispatched its personnel or contractors to effect restoration and repair and shall provide the City with updates concerning the status of restoration at reasonable intervals.

<b>Severity Level</b>	<b>Network Condition</b>	<b>Response Time</b>	<b>Commitment</b>
CRITICAL	Network is down. No workaround is available.	1 hour	Comcast and Town/County work to resolve situation 24 x 7.
HIGH	Network functionality is severely limited. No workaround is available.	2 hours	Comcast and Town/County work to resolve situation 24 x 7.
MEDIUM	Limited functionality. Workaround is available.	12 hours	Comcast and Town/County work to resolve situation during named business hours.
LOW	General questions, system enhancements, and/or documentation issues in the ordinary course of business.	24 hours	Comcast and Town/County work to resolve situation during normal business hours.

For problems with a "High" or "Critical" severity level, the following escalation procedure will be followed:

1 -2 Hours	Comcast system engineer or equivalent will be notified, will contact the Town/County and roll crews to begin repairs. Comcast Director or equivalent will be notified.
------------	--

**III. Fees for Use and Maintenance of I-Net**

**A. Annual Maintenance Fee.** For all maintenance and technical support provided hereunder, the Town and County shall pay Comcast an all-inclusive annual maintenance fee of \$0.

**B. Taxes and Government-Related Costs and Fees.**

Except to the extent Town or County provide a valid tax exemption certificate, Town or County shall be responsible for the payment of any and all applicable local, state, and federal taxes or fees (however designated). The Town or County also will be responsible to pay any fees, payment obligations and taxes that become applicable retroactively.

**IV. Additional Services**

**A. Terms Limited to Exiting I-Net.** The Town and County acknowledge and agree that the terms and conditions in Sections I through III above apply only to the I-Net as it is currently described on Appendix A and existing as of the Effective Date of this Agreement. Any new or additional products or services purchased by the Town or County shall be subject to terms set forth below. "Dark Fiber" solutions of the type provided for the existing I-Net will not be available; rather, the Town or County shall be entitled to purchase additional circuits on a managed-services basis subject to Comcast's monthly fees for such services. Any additional circuits will remain owned by Comcast subject to the rights granted to the Town and County herein, even if such circuits are used in conjunction with the existing I-Net.

**B. Additional Products and Services.** Comcast shall make available the same products and services to the Town and County as to other enterprise class or Business Service customers, at the discounted fees provided for in Section IV.C. below, and subject to the terms in this Agreement. The current list of products/services available for purchase by the Town and County is on Appendix C, which may be updated from time to time by Comcast to reflect Comcast's then-current general product offerings. These services have additional terms and conditions which will be set forth in the order form or product schedule ("Additional Terms"), provided that (1) such Additional Terms will be the same as to those provided generally to other enterprise class or Business Service customers as part of Comcast's standard offering, and (2) in the event of any conflict between the Additional Terms and any terms or conditions in this Agreement, this Agreement shall be controlling.

**C. Fees; Discount.** Any enterprise class products or services purchased by the Town or County (including circuits added or upgrades to the I-Net requested by the Town or County) shall be billed at Comcast's enterprise class then-standard rate card or tariff rates, if applicable, less a discount of up to thirty percent (30%), plus expenses. Discounts on Comcast Business Services products will depend on length of Service Order and volume of services ordered.

**D. Payment of Bills.** Comcast will invoice the Town and/or County in advance for any additional products and services purchased hereunder. Payment is due NET thirty (30) days. The Parties shall negotiate in good faith to resolve any billing dispute. Comcast will refund/credit all valid disputes resolved in the Town's or County's favor as of the date the disputed charges first appeared on the Town's or County's invoice.

**E. Taxes and Government-Related Costs and Fees.** Except to the extent the Town or County provides a valid tax exemption certificate, the Town or County shall be responsible for the payment of any and all applicable local, state, and federal taxes or fees (however designated). Taxes and other government-related fees and surcharges may be changed with or without notice. In the event that any newly adopted law, rule, regulation or judgment increases Comcast's costs of providing its services, the Town and County shall pay Comcast's additional costs of providing its services under the new law, rule, regulation or judgment.

#### **IV. General Obligations of the City and Comcast**

**A. Access.** In order to deliver certain services to the Town or County, Comcast may require access, right-of-way, conduit, and/or common room space ("Access"), both within and/or outside each location to which service is being provided. That access has been provided to Comcast in its Lease Agreement entered into with the Town, concurrent with the execution of this Agreement.

**B. Hazardous Materials.** If the presence of asbestos or other hazardous materials exists or is detected at a location or within the building where the Town or County requests service, Comcast may immediately stop providing services until such a time as such materials are removed. Alternatively the Town or County may notify Comcast to install the applicable portion of the service in areas of any such location not containing such hazardous material. Any additional expense incurred by Comcast as a result of encountering hazardous materials, including but not limited to, any additional equipment shall be borne by the Town or County.

**C. Comcast Equipment.** As used herein, "Comcast Equipment" means any and all facilities, equipment or devices provided by Comcast or its authorized contractors that are used to deliver any of the Services under this Agreement, including, but not limited to, all terminals, wires, modems, lines, circuits, ports, routers, gateways, switches, channel service units, data service units, cabinets, and racks. Notwithstanding the above, inside telephone wiring within the Town's or County's premises, whether or not installed by Comcast, shall not be considered Comcast Equipment. At any time Comcast may remove or change Comcast Equipment in its sole discretion in connection with providing the services. The Town and County shall not move, rearrange, disconnect, remove, attempt to repair, or otherwise tamper with any Comcast Equipment or permit others to do so, and shall not use the Comcast Equipment for any purpose other than that authorized by the Agreement. Comcast shall maintain Comcast Equipment in good operating condition during the term of this Agreement; provided, however, that such maintenance shall be at Comcast's expense only to the extent that it is related to and/or resulting from the ordinary and proper use of the Comcast Equipment. The Town and County are responsible for damage to, or loss of, Comcast Equipment caused by their acts or omissions, and its noncompliance with this Agreement, or by fire, theft or other casualty at the Town's or County's service location(s), unless caused by the negligence or willful misconduct of Comcast.

**D. Ownership, Impairment and Removal of Network.** The Comcast Equipment, facilities, fiber optic cable associated with electronics and other equipment used to provide the services hereunder (the "Network") is and shall remain the property of Comcast regardless of whether installed within or upon the Town's or County's premises or property and whether installed overhead, above, or underground, and shall not be considered a fixture or an addition to the land or the buildings on which it is located. The Town and County agree that neither Party shall take action that directly or indirectly impairs Comcast's title to the Network, or any portion thereof, or exposes Comcast to any claim, lien, encumbrance, or legal process,

except as otherwise agreed in writing by the Parties. Nothing in this Agreement shall preclude Comcast from using the Network for services provided to other Comcast customers. For a period of twelve (12) months following Comcast's discontinuance of any service to any Town or County location, Comcast retains the right to remove the Network including, but not limited to, that portion of the Network that is located in such location. To the extent Comcast removes such portion of the Network it shall be responsible for returning the location(s) to its prior condition, reasonable wear and tear excepted.

**E. Town or County-Provided Equipment.** As used herein, "Town or County Equipment" means any and all facilities, equipment or devices supplied by the Town or County for use in connection with the services provided by Comcast hereunder. Comcast shall have no obligation to install, operate, or maintain Town or County Equipment. The Town and County, as applicable, shall have sole responsibility for providing maintenance, repair, operation and replacement of all Town or County Equipment, inside telephone wiring and other Town or County Equipment. Neither Comcast nor its employees, affiliates, agents or contractors will be liable for any damage, loss, or destruction to Town or County Equipment, unless caused by the negligence or willful misconduct of Comcast. Town or County Equipment shall at all times be compatible with the Network as determined by Comcast in its sole discretion. In addition to any other service charges that may be imposed from time to time, the Town or County shall be responsible for the payment of service charges for visits by Comcast's employees or agents to a service location when the service difficulty or trouble report results from the use of Town or County Equipment or facilities provided by any party other than Comcast.

**V. Term and Termination**

**A. Term.** This Agreement shall commence upon the Effective Date hereof and, unless otherwise terminated earlier in accordance with this Agreement, shall remain in full force and effect for five (5) years (the "**Initial Term**"). The Town and County shall have two (2) consecutive options to extend the Initial Term for an additional period of two (2) years (each a "**Renewal Term**"), subject to the terms and conditions established in Section VI.B. below; provided however that if the term of the Franchise of either the Town or County is extended, the option to extend the term of this Agreement shall include the right to extend for a term concurrent with the term of the extended Franchise. The Initial Term and the Renewal Term (if any) shall collectively be referred to as the "**Term.**"

**B. Option to Renew.**

(1) The Renewal Term(s) shall be automatic unless the Town or County gives Comcast ninety (90) days prior written notice of intent not to renew.

(2) Each Renewal Term shall commence immediately after the expiration of the immediately preceding Term. Each Renewal Term shall be upon and subject to the same terms and conditions of the immediately preceding Term.

**C. Termination for Default.**

(1) A party shall be in default under this Agreement if:

(a) such party fails to timely perform any material obligation under this Agreement, and such failure continues for a period of thirty (30) days after written notice of such failure given by the other party; or

(b) such party becomes the subject of any proceedings under any bankruptcy or insolvency laws provided that, in the case of any involuntary proceeding, such

proceeding is not dismissed within sixty (60) days.

(2) Upon default, and at any time thereafter, the non-defaulting party may, at its option, declare this Agreement to be in default, and may terminate this Agreement upon written notice to the defaulting party and may pursue all other available remedies at law and in equity, all of which shall be cumulative. No express or implied waiver by either party of any event of default shall in any way be, or be construed to be, a waiver of any further or subsequent event of default.

## **VI. Warranties; Limitation of Liability; Disclaimers**

**A. Certain Covenants and Warranties of Comcast.** Comcast will perform all services under this Agreement using a degree of skill, care, and judgment consistent with customarily accepted best business practices in the industry.

### **B. Disclaimer of Warranties.**

(1) I-Net construction and I-Net maintenance shall be provided pursuant to the terms and conditions in this Agreement, and are in lieu of all other warranties, express, implied or statutory, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose, title, and non-infringement. **TO THE MAXIMUM EXTENT ALLOWED BY LAW, COMCAST EXPRESSLY DISCLAIMS ALL SUCH EXPRESS, IMPLIED AND STATUTORY WARRANTIES.**

(2) Without limiting the generality of the foregoing, Comcast does not warrant that any of its services, Comcast Equipment, software, or the Town's or County's use of the I-Net will be uninterrupted, error-free, or free of latency or delay, or that the services, Comcast Equipment, software or the Town's or County's use of the I-Net will meet the requirements of the Town and County or their end-users, or that the services, Comcast Equipment, software, or the I-Net will prevent unauthorized access by third-parties.

(3) Comcast's services are not fail-safe and are not designed or intended for use in situations requiring fail-safe performance or in which an error or interruption in the services could lead to severe injury to business, persons, property or environment ("**High Risk Activities**"). These High Risk Activities may include, without limitation, vital business or personal communications, or activities where absolutely accurate data or information is required.

(4) In no event shall Comcast be liable for any loss, damage or claim arising out of or related to: (i) stored, transmitted, or recorded data, files, or software; (ii) any act or omission of Town or County, its users or third-parties; (iii) interoperability, interaction or interconnection of the services with applications, equipment, services or networks provided by Town, County or third-parties; or (iv) loss or destruction of any Town or County Equipment, hardware, software, files or data resulting from any virus or other harmful feature or from any attempt to remove it. The Town and County are advised to back up all data, files and software at regular intervals.

### **C. Limitation of Liability.**

(1) **THE AGGREGATE LIABILITY OF COMCAST FOR ANY AND ALL LOSSES, DAMAGES AND CAUSES ARISING OUT OF THE AGREEMENT, AND NOT OTHERWISE LIMITED HEREUNDER, WHETHER IN CONTRACT, TORT, IN LAW OR IN EQUITY, OR OTHERWISE, SHALL NOT EXCEED DIRECT DAMAGES EQUAL TO THE SUM TOTAL OF PAYMENTS MADE BY TOWN AND COUNTY TO COMCAST DURING THE ONE YEAR PERIOD IMMEDIATELY**

PRECEDING THE EVENT FOR WHICH DAMAGES ARE CLAIMED. THIS LIMITATION SHALL NOT APPLY TO AMOUNTS PAID BY WAY OF INDEMNITY PURSUANT TO SECTION VII BELOW, OR TO THE TOWN AND COUNTY'S LIABILITY FOR THE FEES DUE FOR THE SERVICES HEREUNDER.

(2) NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, COVER, PUNITIVE OR CONSEQUENTIAL DAMAGES, WHETHER OR NOT FORESEEABLE, OF ANY KIND INCLUDING BUT NOT LIMITED TO ANY LOSS REVENUE, LOSS OF USE, LOSS OF BUSINESS, OR LOSS OF PROFIT WHETHER SUCH ALLEGED LIABILITY ARISES IN CONTRACT OR TORT; PROVIDED HOWEVER, THAT NOTHING HEREIN IS INTENDED TO LIMIT TOWN AND COUNTY'S LIABILITY FOR THE FEES DUE FOR THE SERVICES HEREUNDER.

**VII. Defense; Indemnification and Responsibility for Damages**

**A.** Comcast hereby agrees to defend, indemnify, reimburse and hold harmless Town and County, their appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property made by third parties ("Claims"), arising out of, resulting from, or relating to the work performed under this Agreement to the extent attributable to the negligence or willful misconduct of Comcast or any employee or contractor of Comcast. This indemnity shall not apply to the extent any such Claim is attributed to the negligence or willful misconduct of Town or County. Comcast's duty to defend and indemnify the Town and County shall arise at the time written notice of the Claim is first provided to Comcast by the Town or County, regardless of whether Claimant has filed suit on the Claim. Comcast's duty to defend and indemnify shall arise even if Town or County is the only party sued.

**B. Process.** Comcast will defend any and all Claims covered by Section VII.A. above which may be brought or threatened against the Town or County and will pay on behalf of the Town or County any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims. Such payments on behalf of the Town or County shall be in addition to any other legal remedies available to the Town or County and shall not be considered the Town's or County's exclusive remedy.

**C. Relationship to Insurance.** Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of Comcast under the terms of this indemnification obligation. Comcast shall obtain, at its own expense, any additional insurance that it deems necessary for the Town's and County's protection.

**D. Responsibility for Damages.** The Town will be responsible to Comcast, its parent, subsidiary and affiliated companies and entities and their officers, directors, employees, and agents for any claims, damages, liabilities, costs, and expenses (including reasonable attorneys' fees) caused by (i) the Town's negligence or breach of contractual obligations, or (ii) arising out of any Qualified I-Net User's use of the I-Net provided under the Agreement, including without limitation with respect to libel, slander, infringement of copyright, or unauthorized use of trademark, trade name, or service mark arising out of communications via the I-Net. The County will be responsible to Comcast, its parent, subsidiary and affiliated companies and entities and their officers, directors, employees, and agents for any claims, damages, liabilities, costs, and expenses (including reasonable attorneys' fees) caused by (i) the County's negligence or breach of contractual obligations, or (ii) arising out of any Qualified I-Net User's use of the I-Net provided under the Agreement, including without limitation with respect to libel, slander, infringement of copyright, or unauthorized use of trademark, trade name, or service mark arising out of communications

via the I-Net. Notwithstanding the foregoing, nothing contained herein shall be considered or construed as a waiver of any of the coverages or protections of the Colorado Governmental Immunity Act, as amended.

**E. Survival.** This Section VII shall survive the expiration or earlier termination of this Agreement.

## **VIII. Confidential Information and Privacy**

**A. Definition of Confidential Information.** "Confidential Information shall mean all information regarding either party's business which has been marked or is otherwise communicated as being "proprietary" or "confidential" or which reasonably should be known by the receiving party to be proprietary or confidential information. Without limiting the generality of the foregoing, Confidential Information shall include, even if not marked, the Agreement, promotional materials, proposals, quotes, rate information, discount information, subscriber information, network upgrade information and schedules, network operation information (including without limitation information about outages and planned maintenance) and invoices, as well as the parties' communications regarding such items. Comcast acknowledges and agrees that the terms of this Agreement are not Confidential Information.

**B. Disclosures and Use.** All Confidential Information disclosed by either party shall be kept by the receiving party in strict confidence and shall not be disclosed to any third-party without the disclosing party's express written consent. Notwithstanding the foregoing, such information may be disclosed (i) to the receiving party's employees, affiliates, and agents who have a need to know for the purpose of performing this Agreement (provided that in all cases the receiving party shall take appropriate measures prior to disclosure to its employees, affiliates, and agents to assure against unauthorized use or disclosure); or (ii) as otherwise authorized by this Agreement. Each party agrees to treat all Confidential Information of the other in the same manner as it treats its own proprietary information, but in no case using a degree of care less than a reasonable degree of care.

**C. Exceptions.** Notwithstanding the foregoing, each party's confidentiality obligations hereunder shall not apply to information that: (i) is already known to the receiving party without a pre-existing restriction as to disclosure; (ii) is or becomes publicly available without fault of the receiving party; (iii) is rightfully obtained by the receiving party from a third-party without restriction as to disclosure, or is approved for release by written authorization of the disclosing party; (iv) is developed independently by the receiving party without use of the disclosing party's Confidential Information; or (v) is required to be disclosed by law or regulation. In addition, Comcast recognizes that the Town and County must comply with the Colorado Open Records Act ("CORA"). If a request for Confidential Information is made to the Town or County pursuant to CORA, the Town or County shall provide prompt written notice of the request to Comcast, so that Comcast may evaluate its options to seek protection of its Confidential Information.

**D. Remedies.** Notwithstanding any other section of this Agreement, the non-breaching party shall be entitled to seek equitable relief to protect its interests pursuant to this Section VIII, including, but not limited to, injunctive relief.

**E. Monitoring of Services.** Comcast assumes no obligation to pre-screen or monitor the Town's or County's use of the I-Net or its other services, including without limitation postings and/or transmission. However, the Town and County acknowledge and agree that Comcast and its agents shall have the right to pre-screen and monitor such use from time to time and to use and disclose such results to the extent necessary to operate its services properly, to ensure compliance with applicable use policies, to protect the rights and/or property of Comcast, or in emergencies when physical safety is at issue, and that



Comcast may disclose the same to the extent necessary to satisfy any law, regulation, or governmental request. Comcast shall have no liability or responsibility for content received or distributed by Town or County or their users through any use of I-Net or Comcast's other services. For the avoidance of doubt, the monitoring of data described in this Section VIII.E refers to aggregate data and types of traffic (protocol, upstream/downstream utilization, etc.). Comcast does not have access to the content of encrypted data transmitted across Comcast networks.

**F. Survival of Confidentiality Obligations.** The obligations of confidentiality and limitation of use described in this Section VIII shall survive the expiration and termination of the Agreement for a period of two (2) years (or such longer period as may be required by law).

## **IX. Miscellaneous Terms**

**A. Force Majeure.** Neither party (and in the case of Comcast, Comcast affiliates and subsidiaries) shall be liable to the other party for any delay, failure in performance, loss, or damage to the extent caused by force majeure conditions such as acts of God, fire, explosion, power blackout, cable cut, acts of regulatory or governmental agencies, unavailability of right-of-way or materials, or other causes beyond the party's reasonable control, except that Town or County's obligation to pay under this Agreement shall not be excused. Changes in economic, business or competitive condition shall not be considered force majeure events.

**B. Publicity.** The Agreement provides no right to use any party's or its affiliates' trademarks, service marks, or trade names, or to otherwise refer to the other party in any marketing, promotional, or advertising materials or activities. Neither party shall issue any publication or press release relating to, or otherwise disclose the existence of the terms and conditions of any contractual relationship between Comcast and the Town and County, except as permitted by the Agreement or otherwise consented to in writing by the other party.

**C. Assignment or Transfer.** Neither party shall assign any right, obligation or duty, in whole or in part, or of any other interest hereunder, without the prior written consent of the other party, which shall not be unreasonably withheld. Notwithstanding the foregoing, Comcast may assign the Agreement without the Town's or County's consent to any affiliate or to any entity that acquires all or substantially all of the assets of Comcast relating to this Agreement (provided that such entity also assumes Comcast's obligations under the Franchise). All obligations and duties of either party under this Agreement shall be binding on all successors in interest and assigns of such party. Nothing herein is intended to limit Comcast's use of third-party consultants and contractors to perform under this Agreement.

**D. Entire Understanding.** The Agreement constitutes the entire understanding of the parties related to the subject matter hereof. The Agreement supersedes all prior agreements, proposals, representations, statements, or understandings, whether written or oral, concerning I-Net or colocation on the Leased Premises or the parties' rights or obligations relating to I-Net or colocation on the Leased Premises, including the Colocation Agreement and any terms contained in the Franchise. Any prior representations, promises, inducements, or statements of intent regarding I-Net are of no effect. No subsequent agreement among the parties concerning the I-Net shall be effective or binding unless it is made in writing by authorized representatives of the parties.

**E. Exports.** The Town and County acknowledge that any products, software, and technical information (including, but not limited to, services and training) provided pursuant to the Agreement may be subject to U.S. export laws and regulations. The Town and County agree that it will not use distribute,

transfer, or transmit the products, software, or technical information (even if incorporated into other products) except in compliance with U.S. export regulations. If requested by Comcast, Town and County also agree to sign written assurances and other export-related documents as may be required for Comcast to comply with U.S. export regulations.

**F. Construction.** In the event that any portion of the Agreement is held to be invalid or unenforceable, the parties shall replace the invalid or unenforceable portion with another provision that, as nearly as possible, reflects the original intention of the parties, and the remainder of the Agreement shall remain in full force and effect.

**G. Survival.** The rights and obligations of either party that by their nature would continue beyond the termination or expiration of this Agreement shall survive termination or expiration of this Agreement.

**H. Choice of Law.** This Agreement shall be governed by the laws of the State of Colorado, without regard to the conflicts of laws principles thereof. Venue for any proceeding brought in connection with this Agreement shall be in Summit County.

**I. No Third-Party Beneficiaries.** This Agreement does not expressly or implicitly provide any third-party (including users) with any remedy, claim, liability, reimbursement, cause of action, or other right or privilege.

**J. Parties' Authority to Contract.** The persons whose signatures appear below are duly authorized to enter into the Agreement on behalf of the parties name therein.

**K. No Waiver; Etc.** No failure by either party to enforce any right(s) hereunder shall constitute a waiver of such right(s). This Agreement may be executed in counterpart copies.

**L. Independent Contractors.** The parties to this Agreement are independent contractors. Neither party is an agent, representative, or partner of the other party. Neither party shall have any right, power, or authority to enter into any agreement for, or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other party. This Agreement shall not be interpreted or construed to create an association, agency, joint venture, or partnership between the parties or to impose any liability attributable to such a relationship upon either party.

**M. Headings.** The article and section headings used herein are for reference only and shall not limit or control any term or provision of this Agreement or the interpretation or construction thereof.

**N. Compliance with Laws.** Each of the parties agrees to comply with all applicable local, state and federal laws and regulations and ordinances in the performance of its respective obligations under this Agreement.

**O. Notices.** Unless otherwise provided herein, all notices and communications concerning this Agreement shall be in writing and effective when sent by facsimile (confirmed by first-class mail), or when delivered by overnight express or other express delivery service addressed to the other party as follows:

If to Comcast:

Comcast Business  
ATTN: Vice President of Business Services  
1601 Mile High Stadium Circle | Denver, CO 80204  
Office: 303-603-0947

With copies to:

Comcast Business  
ATTN: Director of Business Operations  
1601 Mile High Stadium Circle | Denver, CO 80204  
Office: 303-603-0908

and

Comcast Cable Communications Management, LLC  
Attention: Cable Law Department  
50<sup>th</sup> Floor,  
1701 JFK Blvd  
Philadelphia, PA 19103

If to Town:

Town of Breckenridge  
Attention: Town Manager  
150 Ski Hill Road  
P.O. Box 168  
Breckenridge, CO 80424

and

Town of Breckenridge  
Attention: Town Attorney  
150 Ski Hill Road  
P.O. Box 168  
Breckenridge, CO 80424

If to County:

Summit County  
Attention: County Manager  
Post Office Box 68  
208 East Lincoln Avenue  
Breckenridge, CO 80424

and

Summit County  
Attention: County Manager  
Post Office Box 68  
208 East Lincoln Avenue  
Breckenridge, CO 80424

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURE PAGES FOLLOW]**

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date first written above.

COMCAST CABLE COMMUNICATIONS  
MANAGEMENT, LLC

By \_\_\_\_\_

Name:

Title:

TOWN OF BRECKENRIDGE,  
COLORADO

By: \_\_\_\_\_  
Town Manager

Attest:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

COUNTY OF SUMMIT, COLORADO

By: \_\_\_\_\_  
County Manager

Attest:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## Appendix A

### I-Net Connections

1. Existing I-Net Connections. One fiber pair (two strands) connecting each of the following buildings to Comcast's Hub located at 524 Wellington Road, Breckenridge: (a) Summit County Courthouse, 208 Lincoln, Breckenridge (b) Summit County Justice Center, 501 North Park Avenue, Breckenridge; (c) Public Works Building, 1095 Airport Road, Breckenridge; (d) Golf Maintenance Facility, 1 Gold Run Gulch, Breckenridge; (e) Clubhouse, 200 Clubhouse Drive, Breckenridge; (f) Recreation Center, 880 Airport Road, Breckenridge; (g) Ice Rink, 189 Boreas Pass Road, Breckenridge; (h) Riverwalk Center, 150 West Adams, Breckenridge; (i) Breckenridge Town Hall, 150 Ski Hill Road.
2. All I-Net connections shall allow for internal communications between and among all facilities identified in this Appendix A, as well as be connected, via Town-owned fiber to the Breckenridge Police Department, 150 Valley Brook Road.
3. As of the date of the Effective Date, there are two fiber pairs (four strands) from Comcast's Hub located at 524 Wellington Road, Breckenridge, travelling past the exterior of the South Branch Library located at 504 Airport Road, Breckenridge, CO 80424, and not terminating at that location but rather continuing and terminating at the Justice Center, 501 N. Park Avenue, Breckenridge. Upon 120 days written notice from the County, Comcast will terminate one fiber pair (two strands) at the Library. The County is responsible for all costs and expenses incurring with this termination. If this termination is initiated and paid for by the County, an Existing I-Net Connection will be created consisting of one fiber pair (two strands) connecting Comcast's Hub and the South Branch Library. The County retains discretion to continue to utilize both pairs (four strands) at their current termination location within the Justice Center.

**Appendix B**  
**Demarcation Map**

The map shows the boundary between the two areas. The boundary is shown as a solid line. The area to the north of the boundary is shaded. The area to the south of the boundary is unshaded. The boundary follows the course of the river. The boundary is shown as a solid line. The area to the north of the boundary is shaded. The area to the south of the boundary is unshaded. The boundary follows the course of the river.

The map shows the boundary between the two areas. The boundary is shown as a solid line. The area to the north of the boundary is shaded. The area to the south of the boundary is unshaded. The boundary follows the course of the river.

The map shows the boundary between the two areas. The boundary is shown as a solid line. The area to the north of the boundary is shaded. The area to the south of the boundary is unshaded. The boundary follows the course of the river.

## Appendix C

### Enterprise Class products

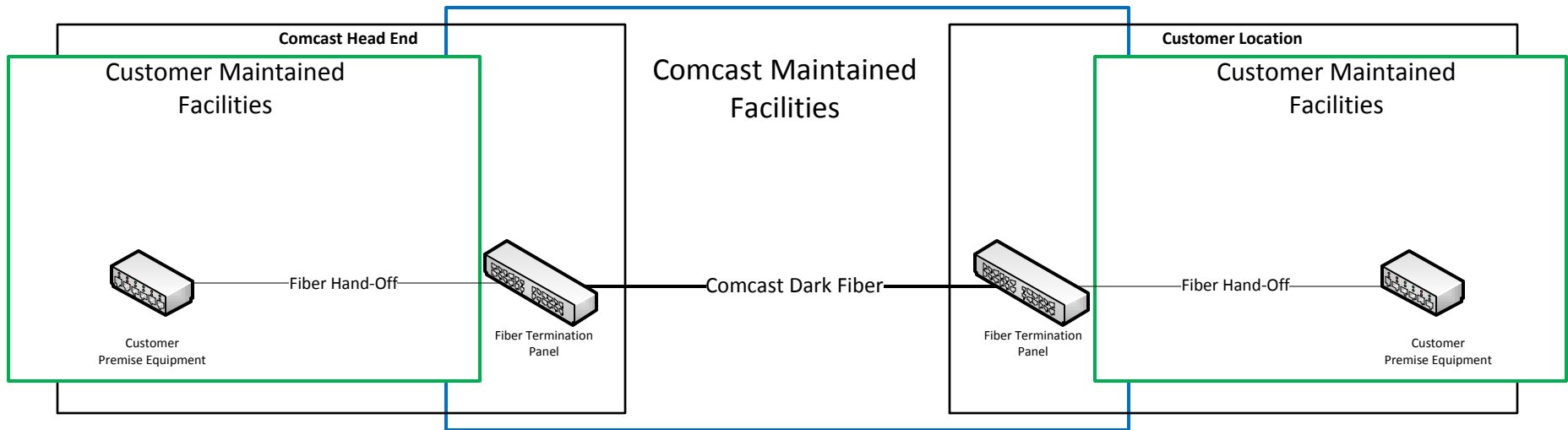
- Ethernet Dedicated Internet Services
- Ethernet Transport Services
  - Ethernet Private Line
  - Ethernet Virtual Private Line
  - Ethernet Network Services
- Ethernet Intrastate Transport
- Enterprise Trunk Services
- Enterprise Voice Service (Business VoIP Services – fiber-based and Ethernet over HFC)

### Business Services products

- Comcast Business TV
- Comcast Business Internet
- Comcast Business Class Voice (Business VoIP Services over coax)



# Summit County Town of Breckenridge



**TO: Breckenridge Town Council**  
**FROM: Laurie Best-Community Development Department**  
**RE: Pinewood 2 Low Income Housing Tax Credit Documents**

**RESOLUTION AUTHORIZING EXECUTION OF DOCUMENTS BY TOWN OF BRECKENRIDGE FOR PINEWOOD 2**

**DATE: April 15, 2015 (for April 28, 2015 meeting)**

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A Resolution has been prepared to authorize the execution of documents that include the purchase of the CHFA bond, certain loan/ lender documents, construction documents, equity documents, partnership agreements, and contracts related to the financing, construction, operation, and management of Pinewood 2. These documents have been reviewed by Town staff and by the Town Attorney as well as outside counsel, and will only be presented for signature/execution after final approval by the Town Attorney, Town Staff, and the outside counsel. These documents provide for financing of the Pinewood 2 project utilizing the Low Income Housing Tax Credit (LIHTC) process that has been reviewed previously with the Town Council and must be executed to finalize the financing structure.

The intent is to start construction the end of April and to complete the 45 unit apartment project next summer. The LIHTC process will enable the Town to leverage the Housing Fund by generating \$3,972,717 in private equity for the project.

Staff recommends approval of the Resolution and will be available on April 28<sup>th</sup> to answer questions.

**RESOLUTION # \_\_\_\_\_**  
Series 2015

**A RESOLUTION BY THE TOWN OF BRECKENRIDGE (THE “TOWN”), A BODY CORPORATE AND POLITIC UNDER THE LAWS OF THE STATE OF COLORADO, AUTHORIZING THE PURCHASE OF MULTIFAMILY HOUSING REVENUE BOND (PINWOOD VILLAGE 2 PROJECT) SERIES 2015 AND A CONSTRUCTION LOAN TO PINWOOD VILLAGE 2, LLLP, A COLORADO LIMITED LIABILITY LIMITED PARTNERSHIP (THE “PARTNERSHIP”), IN CONNECTION WITH THE PINWOOD VILLAGE 2 HOUSING PROJECT IN BRECKENRIDGE, COLORADO (THE “PROJECT”).**

**WHEREAS**, the Town does hereby adopt the following resolutions.

**Section 1. Bond Purchase**

**WHEREAS**, the Colorado Housing and Finance Authority (the “Authority”) has authorized the issuance of Multifamily Housing Revenue Bond (Pinewood Village 2 Project) Series 2015 in the maximum principal amount of \$7,000,000.00 (the “Bond”);

**WHEREAS**, the proceeds of the Bond are to be used to finance a portion of the costs of the acquisition, construction and equipping of the Project;

**WHEREAS**, the Town desires to purchase and to pay the purchase price of such Bond pursuant to and in accordance with the terms of a Financing Agreement by and among the Authority, the Town and the Partnership (the “Financing Agreement”);

**NOW, THEREFORE, BE IT RESOLVED** by the Town Council of the Town of Breckenridge, Colorado that the Town be and is authorized, ratified, and directed to purchase and pay the purchase price of such Bond pursuant to the terms of the Financing Agreement;

**RESOLVED FURTHER**, that Town be and is authorized and directed to execute any and all documents in connection with the purchase of the Bond or the subsequent loan of the Bond proceeds to the Partnership (the “Bond Loan”) to finance a portion of the costs of the acquisition, construction and equipping of the Project,

**RESOLVED FURTHER**, that the Town be and is authorized to do such other acts and things, make such other agreements and execute and deliver such other contracts or writings required in connection with any of the foregoing.

**RESOLVED FURTHER**, that the foregoing resolution is in addition to, and does not limit and shall not be limited by, any resolution heretofore or hereafter adopted by the Town, and the foregoing resolutions shall continue in full force and effect until express written notice of their prospective rescission or modification, as to future transactions that have not been undertaken or committed for, has been received.

**RESOLVED FURTHER**, that any and all actions and transactions by or on behalf of the Town prior to the adoption of this resolution are and the same hereby are in all respects ratified, approved and confirmed.

**Section 2.     Construction Loan**

**WHEREAS**, the Partnership intends to be the owner of a 45-unit rental housing project to be known as “Pinewood Village 2” located at 837 Airport Road in Breckenridge, Colorado;

**WHEREAS**, in order to develop the Project, the Partnership requires a loan in the approximate amount of \$9,725,446.00 to cover the costs of acquisition, construction and equipping the Project;

**WHEREAS**, the Town desires to authorize a construction loan to the Partnership;

**WHEREAS**, the Authority has authorized the issuance of the Bond to facilitate the development of the Project, and the Town has agreed to purchase and to pay the purchase price of such Bond;

**WHEREAS**, the proceeds of the Bond will be provided to the Partnership in the form of a loan in in the approximate amount of \$6,150,000.00, to finance the Project (the “Bond Loan”);

**WHEREAS**, in addition to the Bond Loan, the Town desires to lend approximately \$3,575,446.00 (the “Bridge Loan”) to the Partnership to facilitate the development of the Project; and

**WHEREAS**, the Bond Loan and the Bridge Loan shall collectively be referred to as the “Construction Loan” to the Partnership;

**NOW, THEREFORE, BE IT RESOLVED** by the Town Council of the Town of Breckenridge, Colorado that the Town be and is authorized, ratified, and directed to:

1.     Lend the Bridge Loan funds to the Partnership on such terms and conditions as are typical in the industry; and
2.     Execute a Loan Agreement between the Partnership and the Town;
3.     Execute a Financing Agreement by and among the Authority, the Partnership and the Town relating to the Bond Loan and make the construction loan to the Partnership; and
4.     Do such other acts and things, make such other agreements and execute and deliver such other contracts or writings required in connection with any of the foregoing.

**RESOLVED FURTHER**, that the foregoing resolution is in addition to, and does not limit and shall not be limited by, any resolution heretofore or hereafter adopted by the Town, and

the foregoing resolutions shall continue in full force and effect until express written notice of their prospective rescission or modification, as to future transactions that have not been undertaken or committed for, has been received.

**RESOLVED FURTHER**, that any and all transactions by or on behalf of the Town prior to the adoption of this resolution are and the same hereby are in all respects ratified, approved and confirmed.

**Section 3. Authority.**

This Resolution is adopted pursuant to Section 1-9-1 of the Breckenridge Town Code.

**Section 4. Miscellaneous.**

The provisions of this Resolution are hereby declared to be separable, and if any section, phrase or provision shall, for any reason, be declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases or provisions. All resolutions, orders or parts thereof in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby superseded. This Resolution shall be in full force and effect from and after its passage and approval, in accordance with law.

*[Signature Page to Follow.]*

10235347v2

PASSED, ADOPTED AND APPROVED this \_\_\_\_\_, 2015.

\_\_\_\_\_  
John G. Warner, Mayor

\_\_\_\_\_  
Helen Cospolich  
Town Clerk

APPROVED IN FORM

\_\_\_\_\_  
Town Attorney                      Date

# Memo



**To:** Breckenridge Town Council Members  
**From:** Helen Cospolich, Municipal Services Manager  
**Date:** 04/28/2015  
**Subject:** Motion to Cancel the May 12, 2015 Town Council Regular Meeting

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Staff understands Council may desire to cancel the May 12, 2015 Regular Meeting because it occurs the same day as the Town Council Budget Retreat.

Section 4.1 of the Council Procedures and Rules of Order states "The Council, by majority consent, may dispense with the holding of any regular meeting."

As such, in order to cancel the May 12<sup>th</sup> Regular Meeting, Council must first entertain a motion to cancel the meeting and may reach majority consent by voice vote.

## Town Council Staff Report

**Subject:** **De novo Hearing:** Lincoln Park at the Wellington Neighborhood Phase II, Master Plan Modification (7th Master Plan Amendment of Wellington Neighborhood Master Plan) (Class A Final Hearing; PC#2014038)

**Proposal:** A proposal is to amend the approved Wellington Neighborhood Phase II Master Plan (PC#2005042) with the proposed development of 78 SFEs of single-family, duplex and triplex residential uses. This portion of the neighborhood is to be called “Lincoln Park at the Wellington Neighborhood”. There is no change in the previously approved density or uses.

**Date:** April 15, 2015 (For Council meeting of April 28, 2015)

**Project Manager:** Michael Mosher, Planner III

**Applicants/Owner:** David O’Neil, Poplar Wellington, LLC, Tom Wolff, Wolff Lyon Architects

**Address:** 710 Stables Road

**Legal Description:** Lots 1, 2, 3 and 4, Block 6, Wellington Neighborhood

**Site Area:** 63 acres (2,744,280 sq. ft.) - 13.5 acres for Phase 1 of Lincoln Park

**Land Use District:** 16: Residential: Primarily affordable housing with a mixture of free market units not to exceed 25% of the overall number of units. (4 UPA maximum)  
Commercial: "Live-work" commercial appurtenant to the residential neighborhood.

**Site Conditions:**

- To the **northeast**, there is the existing Wellington Neighborhood (Phase I and a portion of Phase II), largely undeveloped land across French Creek Road, the trailhead to the Gold Run Gulch trail, National Forest Land, and a single family residence (Johnson Residence).
- To the **southeast** lie the remaining French Creek Valley, National Forest, scattered single-family homes and the Country Boy Mine.
- To the **southwest** at the toe of the hill, there are three homes from the Breckenridge Heights Subdivision (two of the homes are accessed from an easement on Stables Drive), the Breckenridge Stables, and the Town Storage Lot.
- To the **northwest**, lie the Vista Point and Gibson Heights Subdivisions, and the Little Red School House Day Care.
- The **south** edge of the property has a 150-foot wide XCEL utility easement for the existing overhead power lines.

**Density:**

Per Phase I Master Plan	122 SFEs
Per Phase II Master Plan	160 SFEs
Portion of Phase II affected by this modification:	13.5 (+/-) acres - 78 SFEs (Phase II – Lincoln Park)

### Item History

Originally presented to Town Council in 1998 for annexation review, the Wellington Neighborhood was created as a ‘new urbanism’ neighborhood with smaller lots, reduced building setbacks, and detached garages off alleys. To date 204 homes have been constructed. Lincoln Park is the last portion of the 2006 Master Plan.



Over the 15-years of development of the Wellington Neighborhood, the Annexation Agreement, Master Plan and various Subdivisions have been amended several times to reflect changes in the overall market, residential trends, and to correct or modify other issues. The neighborhood remains with the original 80% deed-restricted properties and 20% market-rate property ratios. Though rather complex, here is a brief summary of the general project timeline as it relates to the Development Code:

Originally presented to Town Council in 1998 for annexation review, the Wellington Neighborhood was created as a ‘new urbanism’ neighborhood. The benefits of this type of design are improved walkability, vehicular and pedestrian connectivity, quality of life, lower infrastructure costs, and increased density with better connections to public transit. The initial request was for 302 units of residential and commercial density with associated open space over the 85.7 acres.

As presented by the applicant, the Wellington Neighborhood addressed the early needs for affordable workforce housing in Breckenridge. The “Overall Vision” presented by the Applicant in a design handbook to the Town Council in 1998 and to the Planning Commission in 1999 proposed to:

- Provide affordable housing near downtown Breckenridge.
- Create a sense of community within the neighborhood.
- Establish a true sense of place by representing the physical design patterns of a traditional neighborhood.
- Provide needed community housing for a variety of residents.
- Give back life to the land which has been significantly disturbed by previous destructive activities.
- Encourage sustainable development.

Amongst the numerous design concepts for this “Overall Vision” (and part of the review for this application), the proposed development was to provide (*italics below are quotes from the Applicant’s initial design handbook for Phase I*):

- *Safe and plentiful connections*
  - *Ensure that vehicular connections are plentiful.*
  - *Make "the river" path charming and inviting and accessible in all seasons.*
  - *Provide convenient access to public transit and make the place to wait comfortable and alive. Place this at a crossroads of routes with important pedestrian interest.*
  - *Consider placing play and activity areas for children along major pedestrian routes such as the “river path”.*
- *Well Defined Public Realms*
  - *Place small parks throughout the neighborhood and look for opportunities to front buildings and their porches toward them.*
  - *Minimize the number of curb cuts along the street by providing alleys to avoid conflicts with pedestrians and improve the quality of the streetscape.*
  - *Design more intimate sheltered paths that provide alternate routes for residents and children in particular.*
- *Respect the historical context of which they are a part*
  - *Employing a modified grid of streets and alleys short walkable blocks as the main organizing structure of the neighborhood.*
  - *Create an alignment and spacing pattern of street trees to give character along the street.*

The 1999 conceptual illustration planning site plan with 5 vehicular bridges and 300 units is shown below:

# 7

## PUTTING IT ALL TOGETHER

The river path ends at a neighborhood park which contains an existing pond and mature landscaping.

The site is accessible from both Wellington Rd. and from French Gulch Rd.

A potential Civic Building such as a Branch Library, Community Center, or Day Care Facility could be located adjacent to the park.

This section of existing road could be eliminated and replaced by the connection to the south.

A sheltered transit stop is located at the end of the river path.

A small neighborhood square is well defined by the live/work buildings and is located adjacent to the river path and neighborhood park.

New Stables and rodeo arenas (Town of Breckenridge)

The river path provides a direct connection through the neighborhood. Existing landscaping along French Creek will be maintained and enhanced.

Small apartment buildings are located close to the river path.

The existing road maintains access to existing homes.

The modified grid of neighborhood streets distributes traffic evenly through the neighborhood.

### The Wellington Neighborhood

#### Summary of Units Shown in Illustrative Site Plan

DESIGNATION	DESCRIPTION	# OF UNITS	AVE. LOT SIZE
LL	LARGE LOT SINGLE FAMILY HOUSES	40	6000
SL	SMALL LOT SINGLE FAMILY HOUSES	56	3600
DL	DOUBLE LOT HOUSES	74	2640
TH	TOWNHOUSE UNITS	74	1600
MF	SMALL APARTMENT BUILDING UNITS	40	8000 (4 UNITS)
L/W	LIVE/WORK UNITS ABOVE 1st FLOOR	18	7000 (4 UNITS)
<b>TOTAL</b>		<b>302</b>	

This alley is mostly located on the existing gravel road.

Traffic calming devices are placed at critical points along the main road.

Townhouse units are placed close to the Neighborhood Center.

Access is provided to an existing back country trail head.

Alleys with wider R.O.W.'s (24'-0") allow for snow plowing and provide convenient access to the rear of almost all lots.

Mini parks at mid block provide pedestrian cross connection to the river path in the summer.

Mid block parks provide for winter snow storage and wildflower meadow in summer.

Large lot single family homes are located at the edge of the neighborhood. A group of four homes face onto and enclose small parks at the center.

Alley spurs serve four units and provide additional snow storage areas at the ends.

Additional snow storage could be provided at the intersection of alleys and streets.

Undeveloped area of the site continues up-valley to the Wellington Mine.



The Council and Applicant ultimately decided on 122 units for what became the first phase. A new Land Use District 16 was created to place this property within the Town's overall Master Planned Land Use District boundary. The 80 acres property had 4 existing SFEs. The remaining deed restricted density was created per the Joint Upper Blue Master Plan and the remaining Market rate density was provided by the Town.

Staff notes, that throughout the inception of the Wellington Neighborhood, the applicant had a desire to create a neighborhood community building at the west end of the property. There is currently no density assigned for this use and it is no longer proposed.

Through the first Annexation Agreement (Rec#608041) and included in the first Master Plan, there are provisions that deviate from the Town's Development Code to accommodate the "new urbanism" designs:

- Lot sizes less than 5,000 square feet are allowed. (9-2-4-5: Subdivision Ordinance, Lot Dimensions, Improvements and Configuration; 1.)
- Reduced building setbacks are allowed. (Development Code, 9-1-19-9A and 9R, Placement of Structures)
- Allowance for more than four homes off a private drive (Engineering Standards, Section IV, Private Roadways and Driveways, B., 5)
- Right of Way paving sections are less than 24-feet wide (Engineering Standards, I., Structural Design Criteria, Table 3.13 Design Elements Summary)
- Private alleys are narrower than the suggested paving sections (Engineering Standards, I., Structural Design Criteria, Table 3.13 Design Elements Summary)
- Fences are allowed. (9-1-19-47A: Policy 47 (Absolute) Fences, Gates And Gateway Entrance Monuments, (9) Fences specifically authorized in a vested Master Plan containing specific fence design standards.)

The Town Council approved the original Wellington Neighborhood Master Plan, PC#1999139, on July 8, 1999. This was one of the first workforce housing projects undertaken by the Town. During Planning Commission review of the Master Plan and the resulting subdivisions, concerns were raised regarding road and alley widths, snow removal, lack of extra vehicle parking (for roommates, recreational vehicles, etc.), building setbacks and overall lot sizes. The master plan also included public improvements to the property (see section of report titled "Completion of Public Improvements per the Master Plan" below).

After the success of the first phase, the Applicant requested (and obtained approval for) another 160 units of density for a second phase, bringing the total build-out of the neighborhood to 282 units. At the time, the creation of Land Use District 16 provided all but four units of market density that preexisted on the 80 acres. The deed-restricted density was created per the Joint Upper Blue Master Plan. All units are in the form of single-family and duplex homes. There are no commercial uses.

In July of 2005, the Applicant submitted the second Master Plan for what was called at that time "The South 40" with another handbook describing the goals. Lincoln Park is a portion of "The South 40". This is essentially the approved 2006 Master Plan. In the applicant's handbook that was reviewed by the Commission, Section 1., Introduction, the Applicant outlined the goals:

- *Completing the process of giving life back to land which has been significantly disturbed by previous destructive mining activities (most of the South 40 consists of disturbed dredge tailings)*
- *Completing the French Creek restoration bounded by pedestrian friendly roads that provide year-round pedestrian access*
- *Completing the trail system which will connect the Town to the B&B lands and Gold Run Gulch*
- *Continuing to respect the physical design patterns of a traditional neighborhood, including pedestrian friendly streets and functional alleys*
- *Preserving the existing balance between homes facing on greens and streets*
- *Adding new home models with stylistic variations on existing historic designs*
- *Introducing new building types to meet counsel requested affordability goals*

This illustration shows 2 vehicular bridges and one pedestrian bridge.





This is the draft plan for the South 40 portion of the Neighborhood and the Lincoln Park modification. (Note the location of the bus stop, community building, trails, skating rink and dog park.)

Some of the past modifications to the original Master Plan have included:

- The minimum lot size for a single-family home increased from 3,000 square feet to 3,500 square feet.
- A reduction in combined side-yard setbacks from 12-feet to 10-feet for garage setbacks and duplex setbacks.
- A redefinition of Large Lot (Market Rate) properties and Small Lots (Deed Restricted) properties.
- Building height measurement (to 35-feet overall for both single family and duplex).
- Introduction of “Creek Pocket Park” now “Central Park”.
- A reduction in allowed density for large and small lots.
- Previous dedication of a site for Child Care uses.
- Identify sheds as having the same setbacks as garages.

At the time of this writing, all but the last 78 units have been constructed or are under construction on the north side of French Creek. This final phase and planned final build-out (south side of French Creek) will complete the overall neighborhood for the developer.

The approved 2006 Wellington Neighborhood Master Plan and the proposed Lincoln Park at the Wellington Neighborhood are attached for your review.

### **Staff Comments**

As this application represents the 7th modification to the Wellington Neighborhood Master Plan, Staff has not included discussion of Development Code policies that are not impacted by any proposed changes.

The following applicable policies are not discussed as they have been addressed with the previous applications:

Land Use (Policies 2/A & 2/R); Density/Intensity (3/A & 3/R)/Mass (4/R); Architectural Compatibility (5/A & 5/R); Building Height (6/A & 6/R); Site and Environmental Design (7/R); Snow Removal And Storage (13/R); Landscaping (22/A & 22/R); Social Community / Employee Housing (24/A & 24/R); Utilities Infrastructure (26/A & 26/R; 28/A); Drainage (27/A & 27/R).

**Access / Circulation (16/A & 16/R; & 17/A):** Prior to the Planning Commission approval, the applicants met with Engineering and Planning Staff to review options for the vehicular bridge crossing French Creek at Midnight Sun Road. This crossing had been shown and anticipated on previous Wellington Neighborhood Master Plans. The decision was reached to eliminate this (and the vehicular crossing shown on the approved 2006 Master Plan at Rodeo Drive) with this amended Master Plan. The single vehicular crossing at Bridge Street is shown and is consistent with the approved 2006 Master Plan.

The plans also show three pedestrian bridges crossing French Creek. They are located at Rodeo Drive, Midnight Sun Road and at Central Park.

Additionally, as requested by Staff, the applicant has obtained approval from Xcel for the alley and parking shown within the Xcel power line easement.

### **Vehicular Connections**

Identified in the original 1999 Annexation Agreement, the Town Council agreed to allow variances to certain policies of the Town Code based on the original 1999 Master Plan. Two variances that affected vehicular circulation within the public right of ways (ROWs) are 1) reduced street widths and 2) reduced turning radii. The Town was supportive of these reductions, in part, as the multi-street-grid layout of the original design of the neighborhood allowed plentiful vehicular connections with five bridges across French Creek.

There are nine separate ROWs in the existing Wellington Neighborhood with thirteen separate vehicular connections to French Gulch Road.

By comparison, Lincoln Park plans show two vehicular access points along one right of way - at the east, Bridge Street crossing French Creek into the existing Wellington Neighborhood and at the west at Wellington Road. There are six private alley connections to Stable Road.

At the final Planning Commission hearing, some neighbors expressed concerns over increased traffic from Lincoln Park into the streets of the original Wellington Neighborhood. As mentioned above, the vehicular connection to Midnight Sun was eliminated but the connection across French Creek at Bridge Street is maintained.

The applicant submitted a revised Traffic Impact Analysis, prepared by Felsburg, Holt and Ullevig. One analysis is set at 2015 and the other at 2035. The study also includes traffic impacts from the potential Child Care Facility located at the west end of Bridge Street adjacent to Wellington Road.

Traffic volumes were recorded on Wednesday December 11, 2013 at the study area intersections (see below). It studied current and full build-out traffic impacts.

Morning and evening peak hour turning movement counts were recorded at three intersections. The traffic counts were collected in 15-minute intervals between the hours of 7:00 AM to 9:00 AM and from 4:00 PM to 6:00 PM. These volumes were chosen to represent the existing conditions in this analysis.

With the reduced vehicular connectivity, both Engineering and Emergency Services felt that the resulting traffic loads and for the capability for larger vehicles, there should be modifications from the original right of way variances to maintain safe connections. Since the last review, the applicants worked with Engineering Staff and agreed that Bridge Street in Lincoln Park will have:

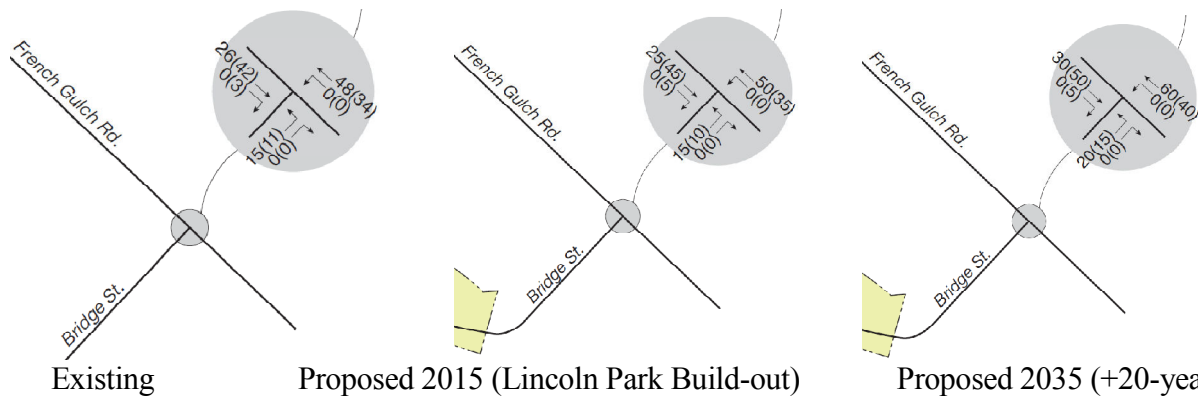
- A 50-foot right of way (the same as all the ROWs the Wellington Neighborhood)
- A 20-foot wide paving section with 3-foot valley pans on each side (the same as the Wellington Neighborhood)
- The guest parking encroachment located at the entrance of each green is reduced to 4-feet into the right of way. The parking in the Wellington Neighborhood is allowed 9-feet into the right of way; and
- The amount of landscaping that may be placed in the right of way is to be reduced. (The Town will allow some plantings with the subdivision review as each phase is submitted.

Staff believes the proposed modification to the 2006 Master Plan will function safely. Staff supports the vehicular access and circulation plans with the proposed modifications.

*Traffic patterns gravitate to the west in the morning (into the Town of Breckenridge) and shift to the east in the afternoon. Peak hour counts show Wellington Road carries approximately 175 vehicles per hour (vph) during the morning peak and 175 vph during the evening peak hour in both directions just west of the existing private business access. On Reiling Road, two-way traffic accounts for roughly 170 vph during the morning peak and 185 vph during the evening peak just north of Wellington Road.*

*Traffic operations were analyzed at the Reiling Road/Wellington Road/French Gulch Road, Wellington Road/Stables Road and French Gulch Road/Bridge Street intersections. The all-way stop intersection of Reiling Road/Wellington Road/French Gulch Road operates at Level of Service A (LOS) during both the AM and PM peak hours. (LOS A represents a minimal delay).*

Also, all vehicular entrances/exits from the neighborhood at the secondary streets operate at LOS A. At the last hearing, the connection to Bridge Street and resulting potential increases in traffic was of concern to some residents.



The site trip distribution estimates for the proposed development are based on the accessibility to major roadways, existing traffic patterns and engineering judgment. The following summarizes the intersection trip distribution assumptions with these totals:

- 45 percent of Lincoln Park traffic will be to/from the west on Wellington Road
- 45 percent of Lincoln Park traffic will be to/from the north/west on Reiling Road
- 10 percent of Lincoln Park traffic will be to/from the north/west on Bridge Street

Based on the submitted 2015 traffic study (this study did not include any bus service):

The inclusion of the proposed Lincoln Park at the Wellington Neighborhood and the abutting possible day care facility traffic is anticipated to have minimal impact to the operation at most study area intersections. Each approach of the Reiling Road/Wellington Road/French Gulch Road all-way stop intersections would continue to operate at LOS A during both peak hours. Each individual movement at the two-way stop controlled intersection of French Gulch Road/Bridge Road northbound approach would operate at LOS A during the AM and PM peak hours. The individual movements at the northbound stop controlled approach at the Wellington Road/Stables Road intersection would operate at LOS B or better, an acceptable condition. The maximum calculated 95% queue length for the northbound approach would be one vehicle (25 feet) in length during the AM and PM peak hours.

Based on the analysis, staff believes the impacts of the Lincoln Park subdivision will have minimal impact to the existing Wellington Neighborhood. Staff is supportive of the Traffic Analysis findings and has no concerns as there is minimal impact to the existing subdivision.

**Pedestrian Connections:** The applicant has provided a plan, “Representative Figure Ground Plan”, which illustrates the pedestrian connections, the sidewalk and trail connections to the entire Wellington Neighborhood. In addition to the pedestrian friendly vehicular bridge at Bridge Street, there are three pedestrian crossings. These are equally dispersed between Rodeo Drive and Bridge Street offering excellent connectivity of the abutting neighborhood. There is also a separated sidewalk along the entire length of the extended Bridge Street. Adding to the connectivity, the applicant is also proposing way-finding signage to direct pedestrians to these connections. The trail connections throughout the entire neighborhood were discussed at the previous hearing with no concerns. Staff is supportive of the proposed vehicular and pedestrian circulation.

**Completion of Public Improvements per the Master Plan:** As this is the master plan for the final development of the Wellington Neighborhood, there were several items and improvements committed to as part of the overall development that was presented to the Town and the Town will now be seeking prior to completion of the project.



- Improvements (stabilization, restoration, rehabilitation) along French Creek:
  - Several detention ponds are proposed along French Creek. These will have the sides finished with capping soil, topsoil, and irrigated native seed mix. The remainder will be treated in a similar fashion to eliminate the possibility for noxious weeds to invade the graded areas.
  - Per the Amendment to Annexation Agreement, Section 5.3, French Creek Easement: *“Owner shall grant an easement to the Town over those portions of French Creek as are located within the Phase II Property to provide the town with a drainage easement for French Creek, which easement shall allow for, among other things, the Town to obtain access and have the ability to improve water quality and riparian habitat and shall be in a form and contain such terms and conditions as are mutually acceptable to the Town Attorney and Owner's attorney. In addition, Owner shall coordinate with the Town in obtaining a similar easement over those portions of French Creek has had been previously platted as private open space under the control of Wellington Neighborhood Association, if the Town request such easement from said Association.”*
    - The easements are shown on the Subdivision Plan
  - Creation of a “River Path”
    - The four pedestrian bridges and network of connecting paths and trails allow residents to walk along the creek and nearby open space from the west end of the Wellington Neighborhood to the east end. (Several Phases)
- Improvements next to Dead Elk Pond
  - Shown with this Master Plan Modification as Phase 3, “Vern Johnson Memorial Park”.
- The Bridge Street Bus Stop on the north side of French Creek.
  - In Phase 2, when Bridge Street is connected to the Wellington Neighborhood.
- Inclusion of a potential Day Care site.
  - Shown with this Master Plan Modification.

Staff believes the outstanding improvement items of the Wellington Neighborhood have been satisfied.

### **Phasing:**

There will be four phases to coincide with and will include these improvements.

From the applicant:

1. **Phase 1** will include the portion of the Bridge Street right-of-way and the other improvements shown within Block 1, plus the proposed Rodeo Pedestrian bridge connecting Reliance Green to Rodeo Drive. In addition, Phase 1 will include the improvement of Stables Road, (excluding paving) up to Alley 3a, which is located within Town of Breckenridge property to the west of Lincoln Park, up to and including the intersection with Bridge Street. It is anticipated that a public right-of-way (ROW) will be created by the Town for Stables Road, at least up to and including the intersection with Bridge Street and that easements will be granted by the Town for the Connections from Stables Road to Alleys 2a, 3a & 4a.
2. **Phase 2** will include the right-of-way and other improvements shown within Block 2, except for the Midnight Sun pedestrian bridge connecting from Lincoln Park to Queen of the West Road. This will be completed as part of Phase 3. Phase 2 will include the paving of Stables Road and Alley 2, 3a, & 4a connections. In addition, prior to receiving the last Certificate of Occupancy for the residences included within Phase 2, the bridge from Bridge Street, northeast of French Creek to Lincoln Park, southwest of French Creek shall be installed and a temporary turnaround sufficient in size to accommodate the Town's 29-foot long Free Ride buses will be graded and finished with road base. A new bus stop at the west side of the Logan Road and Bridge Street intersection will be constructed with a sign, bench, and accessible landing pad consistent with the Town's requirements.



3. *Phase 3 will include the ROW and other improvements shown within Block 3. The Vern Johnson Memorial Park and the Midnight Sun pedestrian bridge connection from Lincoln Park to Queen of the West Road will be completed as part of Phase 3 prior to receiving the last Certificate of Occupancy for the residences included within Phase 3.*
4. *Phase 4 will include the right-of-way and other improvements shown within Block 4, including specifically completion of Bridge Street to the previously installed Bridge Street bridge over French Creek. The Central Park pedestrian bridge connecting Lincoln Park to central park will be completed as part of Phase 4 prior to receiving the last Certificate of Occupancy for the residences included within Phase 4. Trails will also be completed during Phase 4.*

This phasing has been reviewed with Planning, Transit, Emergency Services and Engineering Staff with no concerns. A memo from Public Works Staff dated April 21, 2015 has been attached to this report.

**Transit (25/R):** The Free Ride bus stop is being addressed during Phase 2 of the Master Plan. A bus stop has been shown on the east portion Bridge Street since the 2006 Master Plan. A second stop is proposed at the last phase on the western portion of Bridge Street.

With past direction from the Town Council, Engineering and Transit Department felt that after the approval of the 2006 Master Plan and to better serve the current homes at the east end of the neighborhood, bus service should be extended. Currently, the only bus stop is at the west end of the neighborhood at Olivia Lane.

In order to bring bus service to the east portion of the neighborhood with this modification of the Master Plan, two options were presented. Each involves bringing a Free Ride bus into and back out of the neighborhood. One option was to construct the bridge and all of Bridge Street down towards Stables Road and the second option was to provide a the bridge to a cul-de-sac over French Creek and at the end of Bridge Street. Either would allow the Free Ride bus access to a Bridge Street bus stop as the 2006 Master Plan had depicted.

Based on direction from the applicant, the plans are showing the option with the bridge and cul-de-sac at the east end of Bridge Street for Phase 2.

**Rock Crushing:** Like previous phases of the Wellington Neighborhood, on-site rock crushing is proposed during subdivision improvements to provide needed material on site and to reduce the truck traffic along the French Creek corridor. As in previous phases, sound reduction efforts will include sound deadening mitigation to the machinery and scheduling the crushing operation during spring “mud season” when windows are more likely to be closed. As in the past, the specific details will be addressed with a separate Class D Development permit. Staff has no immediate concerns.

**Placement of Structures (9/A & 9/R) and Parking (18/A & 18/R):** Through the first Annexation Agreement (Rec#608041) and included in the first Master Plan, there are provisions that deviate from the Town’s Development Code to accommodate the “new urbanism” designs:

- Lot sizes less than 5,000 square feet are allowed. (9-2-4-5: Subdivision Ordinance, Lot Dimensions, Improvements and Configuration; 1.)
- Reduced building setbacks are allowed. (Development Code, 9-1-19-9A and 9R, Placement of Structures)
- Allowance for more than four homes off a private drive (Engineering Standards, Section IV, Private Roadways and Driveways, B., 5)
- Right of Way paving sections are less than 24-feet wide (Engineering Standards, I., Structural Design Criteria, Table 3.13 Design Elements Summary)
- Private alleys are narrower than the suggested paving sections (Engineering Standards, I., Structural Design Criteria, Table 3.13 Design Elements Summary)

- Fences are allowed. (9-1-19-47A: Policy 47 (Absolute) Fences, Gates And Gateway Entrance Monuments, (9) Fences specifically authorized in a vested Master Plan containing specific fence design standards.)

The reduced yard setbacks have been in place for all of the Wellington Neighborhood Master Plans. The Commission and applicant agreed to some modifications in association with this master plan.

- Increase the minimum setback for garages from 1-foot to 4-feet.
- The minimum setback for garages that abut a right of way be as close as 1-foot with Town approval.
- Increase the combined side yard setbacks from 10-feet to 12-feet.
- Bonus Rooms with water and sewer hook-ups will be required to provide an additional on-site parking space.

These changes are amongst the other standards reflected in the Development Standards Matrix copied below:

### DEVELOPMENT STANDARDS MATRIX:

DESIGNATION	SINGLE FAMILY	DUPLEX	TRIPLEX	NOTES
MINIMUM LOT SIZE	3500 sq. ft.	3500 sq. ft.	5000 sq. ft.	1) The SFE designated on a Single Family Lot may be either a Large Lot SFE or Small Lot SFE.
MINIMUM LOT SIZE PER UNIT	3500 sq. ft.	1750 sq. ft.	1250 sq. ft.	
<b>SETBACKS AND BUILDING HEIGHT</b>				
FRONT	6'	6'	6'	2) The setback requirements shall apply to the principal and accessory buildings separately. 3) *Side yard setback refers to principal residential structures, garages, and sheds. Garages adjacent to a right-of-way may be placed as close as 1-foot with Town of Breckenridge approval. 4) In those instances where a violation of the International Building Code is not created, bay windows, roof eaves and other similar projections may extend within any required yard up to a maximum of eighteen inches (18") with approval of the Planning Commission.
SIDE*	4'	4'	4'	
REAR	5'	5'	5'	
COMBINED SIDE YARD SETBACK	12'	12'	12'	
<b>BUILDING HEIGHT</b>				
MAXIMUM BUILDING HEIGHT	35'	35'	35'	5) Building height shall be measured to the ridgeline of all buildings in accordance with the definition of Overall Height as defined in the Town's Development Code.
<b>PARKING REQUIREMENTS</b>				
MINIMUM NUMBER OF OFF-STREET PARKING SPACES PER UNIT	2	2	2	6) All Carriage Houses (Market Rate only) and Bonus Garages that are finished with a water and sewer stub or connection must provide one additional on-site parking space. 7) Duplex and Triplex lots may have common parking structures that may abut a shared property line, if provided by the developer for the affected properties.
<b>ADDITIONAL NOTES</b>				
8) Eaves and overhangs may encroach into Setbacks, Drainage Easements, and Snowstack Easements. 9) Fences are allowed in the Wellington Neighborhood and Lincoln Park at the Wellington Neighborhood per the Wellington Neighborhood Homeowner Association Design Standards, as currently adopted.				

(Staff notes: Fences are and have been allowed in the 1999 Wellington Neighborhood Master Plan and all amended master plans.)

**Point Analysis (Section: 9-1-17-3):** Staff has reviewed this application against applicable policies of the Development Code. Staff notes the following were exempt from point assessments as they are identified in the Annexation Agreement.

- Lot sizes less than 5,000 square feet are allowed. (9-2-4-5: Subdivision Ordinance, Lot Dimensions, Improvements and Configuration:)

- Reduced building setbacks are allowed. (Development Code, 9-1-19-9A and 9R, Placement of Structures)
- Allowance for more than four homes off a private drive (Engineering Standards, Section IV, Private Roadways and Driveways, B., 5)
- Right of Way paving sections are less than 24-feet wide (Engineering Standards, I., Structural Design Criteria, Table 3.13 Design Elements Summary)
- Private alleys are narrower than the suggested paving sections (Engineering Standards, I., Structural Design Criteria, Table 3.13 Design Elements Summary)

**Point Analysis (Section: 9-1-17-3):** We have found the modification to the Master Plan complies with all Absolute Policies listed. The Wellington Neighborhood Phase II Master Plan (PC#2005042) received positive three (+3) points under Policy 20/R Recreational Facilities and positive ten (+10) points under 24/R Social Community, Employee Housing. This modification will reflect the same. The total passing score is positive thirteen (+13) points.

### **Planning Commission Recommendation**

The Planning Commission recommends approval the attached Point Analysis for Lincoln Park at the Wellington Neighborhood Phase II, Master Plan Modification (7th Master Plan Amendment of Wellington Neighborhood Master Plan) PC#2014038, with a vote of 5-0, showing a passing score of positive thirteen (+13) points.

The Planning Commission recommends approval of the Lincoln Park at the Wellington Neighborhood Phase II, Master Plan Modification (7th Master Plan Amendment of Wellington Neighborhood Master Plan) PC#2014038, with a vote of 5-0, with the attached Finding and Conditions.

## Memorandum

**TO:** TOWN COUNCIL  
**FROM:** Public Works Staff  
**DATE:** April 22, 2015  
**RE:** Lincoln Park at Wellington Neighborhood Phasing Plan

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An application has been submitted to modify the 2006 Wellington Neighborhood Master Plan. The proposed phasing of the Master Plan has been questioned, mostly in regards to timing of the installation of the Bridge Street bridge. Staff agreed to and supports construction of the bridge in Phase 2 of the project to facilitate the increased transit service as requested by the existing residents of the Wellington Neighborhood over the last few years.

One of the key concepts for circulation in the Wellington Neighborhood Master Plan is the availability of public transit. There is a current demand to extend bus service to more than 75 existing homes that are located farther than 1,000 feet from the Olivia Lane bus stop which is the only existing bus stop in the Wellington Neighborhood. Generally, bus stop spacing should be a maximum of 800-1,000 feet.

Bus service to the upper neighborhood has been planned on Bridge Street since the 2006 Wellington Neighborhood Master Plan. Once the bridge is constructed as part of the Lincoln Park project, the Town will be able to establish a transit route that serves the upper Wellington Neighborhood homes (and Lincoln Park once the street is completed).

A petition was submitted to the Town to change the construction of the bridge from Phase 2 to Phase 4. This change in construction phasing of the bridge would delay the ability to provide transit service to the upper Wellington Neighborhood until Phase 4.

Staff is available to answer any questions regarding the proposed Master Plan amendments and proposed phasing.

<b>De Novo - Final Hearing Impact Analysis</b>				
Project:	Lincoln Park at the Wellington Neighborhood Phase II, Master Plan (7th Master Plan Amendment of Wellington Neighborhood Master Plan)		<b>Positive Points</b>	<b>+13</b>
PC#	2014038			
Date:	3/19/2015		<b>Negative Points</b>	<b>0</b>
Staff:	Michael Mosher, Planner III			
			<b>Total Allocation:</b>	<b>+13</b>
Items left blank are either not applicable or have no comment				
<b>Sect.</b>	<b>Policy</b>	<b>Range</b>	<b>Points</b>	<b>Comments</b>
<b>1/A</b>	<b>Codes, Correlative Documents &amp; Plat Notes</b>	Complies		
<b>2/A</b>	<b>Land Use Guidelines</b>	Complies		Complies with LUD 16 and existing Master Plan
2/R	Land Use Guidelines - Uses	4x(-3/+2)		
2/R	Land Use Guidelines - Relationship To Other Districts	2x(-2/0)		
2/R	Land Use Guidelines - Nuisances	3x(-2/0)		
<b>3/A</b>	<b>Density/Intensity</b>	Complies		
3/R	Density/ Intensity Guidelines	5x (-2>-20)	0	Density established by Master Plan
4/R	Mass	5x (-2>-20)	0	Mass established by Master Plan
<b>5/A</b>	<b>Architectural Compatibility</b>	Complies		
5/R	Architectural Compatibility - Aesthetics	3x(-2/+2)		
<b>6/A</b>	<b>Building Height</b>	Complies		
6/R	Relative Building Height - General Provisions	1X(-2,+2)		
	For all structures except Single Family and Duplex Units outside the Historic District			
6/R	Building Height Inside H.D. - 23 feet	(-1>-3)		
6/R	Building Height Inside H.D. - 25 feet	(-1>-5)		
6/R	Building Height Outside H.D. / Stories	(-5>-20)		
6/R	Density in roof structure	1x(+1/-1)		
6/R	Broken, interesting roof forms that step down at the edges	1x(+1/-1)		
	For all Single Family and Duplex/Multi-family Units outside the Conservation District			
6/R	Density in roof structure	1x(+1/-1)		
6/R	Broken, interesting roof forms that step down at the edges	1x(+1/-1)		
6/R	Minimum pitch of eight in twelve (8:12)	1x(0/+1)		
7/R	Site and Environmental Design - General Provisions	2X(-2/+2)		
7/R	Site and Environmental Design / Site Design and Grading	2X(-2/+2)		
7/R	Site and Environmental Design / Site Buffering	4X(-2/+2)		
7/R	Site and Environmental Design / Retaining Walls	2X(-2/+2)		
7/R	Site and Environmental Design / Driveways and Site Circulation Systems	4X(-2/+2)		
7/R	Site and Environmental Design / Site Privacy	2X(-1/+1)		
7/R	Site and Environmental Design / Wetlands	2X(0/+2)		
7/R	Site and Environmental Design / Significant Natural Features	2X(-2/+2)		
<b>8/A</b>	<b>Ridgeline and Hillside Development</b>	Complies		
<b>9/A</b>	<b>Placement of Structures</b>	Complies		
9/R	Placement of Structures - Public Safety	2x(-2/+2)		
9/R	Placement of Structures - Adverse Effects	3x(-2/0)		
9/R	Placement of Structures - Public Snow Storage	4x(-2/0)		
9/R	Placement of Structures - Setbacks	3x(0/-3)	0	Allowed reduction in Annexation Agreement
<b>12/A</b>	<b>Signs</b>	Complies		
<b>13/A</b>	<b>Snow Removal/Storage</b>	Complies		
13/R	Snow Removal/Storage - Snow Storage Area	4x(-2/+2)		
<b>14/A</b>	<b>Storage</b>	Complies		
14/R	Storage	2x(-2/0)		
<b>15/A</b>	<b>Refuse</b>	Complies		
15/R	Refuse - Dumpster enclosure incorporated in principal structure	1x(+1)		
15/R	Refuse - Rehabilitated historic shed as trash enclosure	1x(+2)		
15/R	Refuse - Dumpster sharing with neighboring property (on site)	1x(+2)		
<b>16/A</b>	<b>Internal Circulation</b>	Complies		
16/R	Internal Circulation / Accessibility	3x(-2/+2)		
16/R	Internal Circulation - Drive Through Operations	3x(-2/0)		
<b>17/A</b>	<b>External Circulation</b>	Complies		
<b>18/A</b>	<b>Parking</b>	Complies		
18/R	Parking - General Requirements	1x(-2/+2)	0	Meets current policy with addition of Bonus Rooms with water and sewer hook-up required to add one on-site parking space

18/R	Parking-Public View/Usage	2x(-2/+2)		
18/R	Parking - Joint Parking Facilities	1x(+1)		
18/R	Parking - Common Driveways	1x(+1)		
18/R	Parking - Downtown Service Area	2x(-2/+2)		
<b>19/A</b>	<b>Loading</b>	Complies		
20/R	Recreation Facilities	3x(-2/+2)	+3	Dedication of open space and public trail system throughout neighborhood
21/R	Open Space - Private Open Space	3x(-2/+2)		Provided with original Master Plan
21/R	Open Space - Public Open Space	3x(0/+2)		Provided with original Master Plan
<b>22/A</b>	<b>Landscaping</b>	Complies		
22/R	Landscaping	2x(-1/+3)	0	Per individual applications
<b>24/A</b>	<b>Social Community</b>	Complies		
24/A	Social Community / Above Ground Density 12 UPA	(-3>-18)		
24/A	Social Community / Above Ground Density 10 UPA	(-3>-6)		
24/R	Social Community - Employee Housing	1x(-10/+10)	+10	
24/R	Social Community - Community Need	3x(0/+2)		
24/R	Social Community - Social Services	4x(-2/+2)		
24/R	Social Community - Meeting and Conference Rooms	3x(0/+2)		
5/R	Social Community - Conservation District	3x(-5/0)		
24/R	Social Community - Historic Preservation	3x(0/+5)		
24/R	Social Community - Primary Structures - Historic Preservation/Restoration - Benefit	+1/3/6/9/12		
24/R	Social Community - Secondary Structures - Historic Preservation/Restoration - Benefit	+1/2/3		
24/R	Social Community - Moving Primary Structures	-3/10/15		
24/R	Social Community - Moving Secondary Structures	-3/10/15		
24/R	Social Community - Changing Orientation Primary Structures	-10		
24/R	Social Community - Changing Orientation Secondary Structures	-2		
24/R	Social Community - Returning Structures To Their Historic Location	+2 or +5		
25/R	Transit	4x(-2/+2)		
<b>26/A</b>	<b>Infrastructure</b>	Complies		
26/R	Infrastructure - Capital Improvements	4x(-2/+2)		
<b>27/A</b>	<b>Drainage</b>	Complies		
27/R	Drainage - Municipal Drainage System	3x(0/+2)		
<b>28/A</b>	<b>Utilities - Power lines</b>	Complies		
<b>29/A</b>	<b>Construction Activities</b>	Complies		
<b>30/A</b>	<b>Air Quality</b>	Complies		
30/R	Air Quality - wood-burning appliance in restaurant/bar	-2		
30/R	Beyond the provisions of Policy 30/A	2x(0/+2)		
<b>31/A</b>	<b>Water Quality</b>	Complies		
31/R	Water Quality - Water Criteria	3x(0/+2)		
<b>32/A</b>	<b>Water Conservation</b>	Complies		
33/R	Energy Conservation - Renewable Energy Sources	3x(0/+2)		
33/R	Energy Conservation - Energy Conservation	3x(-2/+2)		
	HERS index for Residential Buildings			
33/R	Obtaining a HERS index	+1		
33/R	HERS rating = 61-80	+2		
33/R	HERS rating = 41-60	+3		
33/R	HERS rating = 19-40	+4		
33/R	HERS rating = 1-20	+5		
33/R	HERS rating = 0	+6		
	Commercial Buildings - % energy saved beyond the IECC minimum standards			
33/R	Savings of 10%-19%	+1		
33/R	Savings of 20%-29%	+3		
33/R	Savings of 30%-39%	+4		
33/R	Savings of 40%-49%	+5		
33/R	Savings of 50%-59%	+6		
33/R	Savings of 60%-69%	+7		
33/R	Savings of 70%-79%	+8		
33/R	Savings of 80% +	+9		
33/R	Heated driveway, sidewalk, plaza, etc.	1X(-3/0)		
33/R	Outdoor commercial or common space residential gas fireplace (per fireplace)	1X(-1/0)		
33/R	Large Outdoor Water Feature	1X(-1/0)		
	Other Design Feature	1X(-2/+2)		
<b>34/A</b>	<b>Hazardous Conditions</b>	Complies		

34/R	Hazardous Conditions - Floodway Improvements	3x(0/+2)		
35/A	<b>Subdivision</b>	Complies		
36/A	<b>Temporary Structures</b>	Complies		
37/A	<b>Special Areas</b>	Complies		
37/R	Special Areas - Community Entrance	4x(-2/0)		
37/R	Special Areas - Individual Sites	3x(-2/+2)		
37/R	Special Areas - Blue River	2x(0/+2)		
37R	Special Areas - Cucumber Gulch/Setbacks	2x(0/+2)		
37R	Special Areas - Cucumber Gulch/Impervious Surfaces	1x(0/-2)		
38/A	<b>Home Occupation</b>	Complies		
38.5/A	<b>Home Childcare Businesses</b>	Complies		
39/A	<b>Master Plan</b>	Complies		
40/A	<b>Chalet House</b>	Complies		
41/A	<b>Satellite Earth Station Antennas</b>	Complies		
42/A	<b>Exterior Loudspeakers</b>	Complies		
43/A	<b>Public Art</b>	Complies		
43/R	Public Art	1x(0/+1)		
44/A	<b>Radio Broadcasts</b>	Complies		
45/A	<b>Special Commercial Events</b>	Complies		
46/A	<b>Exterior Lighting</b>	Complies		
47/A	<b>Fences, Gates And Gateway Entrance Monuments</b>	Complies		
48/A	<b>Voluntary Defensible Space</b>	Complies		
49/A	<b>Vendor Carts</b>	Complies		

## TOWN OF BRECKENRIDGE

### Lincoln Park at the Wellington Neighborhood Phase II, Master Plan 7th Master Plan Amendment of Wellington Neighborhood Master Plan Lots 1, 2, 3 and 4, Block 6, Wellington Neighborhood PERMIT #2014038

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**STAFF RECOMMENDATION:** Staff recommends the Planning Commission approve this application with the following findings and conditions.

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#### FINDINGS

1. The proposed project is in accord with the Development Code and does not propose any prohibited use.
2. The project will not have a significant adverse environmental impact or demonstrative negative aesthetic effect.
3. All feasible measures mitigating adverse environmental impacts have been included, and there are no economically feasible alternatives which would have less adverse environmental impact.
4. This approval is based on the staff report dated **April 15, 2015** and findings made by the Town Council with respect to the project. Your project was approved based on the proposed design of the project and your acceptance of these terms and conditions imposed.
5. The terms of approval include any representations made by you or your representatives in any writing or plans submitted to the Town of Breckenridge, and at the hearings on the project held on April 7, 2015 at the Planning Commission and **April 28, 2015** at Town Council as to the nature of the project. In addition to Commission and Council minutes, the audio of the meetings of the Planning Commission and Town Council are recorded.
6. If the real property which is the subject of this application is subject to a severed mineral interest, the applicant has provided notice of the initial public hearing on this application to any mineral estate owner and to the Town as required by Section 24-65.5-103, C.R.S.
7. This Master Plan is subject to the provisions of the Amendment to Annexation Agreement dated 03/22/2006, reception number 817872.

#### CONDITIONS

1. This permit does not become effective, and the project may not be commenced, unless and until the applicant accepts the preceding findings and following conditions in writing and transmits the acceptance to the Town of Breckenridge.
2. If the terms and conditions of the approval are violated, the Town, in addition to criminal and civil judicial proceedings, may, if appropriate, issue a stop order requiring the cessation of work, revoke this permit, require removal of any improvements made in reliance upon this permit with costs to constitute a lien on the property and/or restoration of the property.
3. The vested period for this master plan expires three (3) years from the date of Town Council approval, on **April 28, 2018**, in accordance with the vesting provisions of Policy 39 of the Development Code. In addition, if this permit is not signed and returned to the Town within thirty (30) days of the permit mailing date, the permit shall only be valid for eighteen (18) months, rather than three (3) years.



4. The terms and conditions of this permit are in compliance with the statements of the staff and applicant made on the evidentiary forms and policy analysis forms.
5. Nothing in this permit shall constitute an agreement by the Town of Breckenridge to issue a certificate of compliance for the project covered by this permit. The determination of whether a certificate of compliance should be issued for such project shall be made by the Town in accordance with the applicable provisions of the Town Code, including, but not limited to the building code.
6. This Master Plan is entered into pursuant to Policy 39 (Absolute) of the Breckenridge Development Code (Chapter 1 of Title 9 of the Breckenridge Town Code). Uses specifically approved in this Master Plan shall supersede the Town's Land Use Guidelines and shall serve as an absolute development policy under the Development Code during the vesting period of this Master Plan. The provisions and procedures of the Development Code (including the requirement for a point analysis) shall govern any future site specific development of the property subject to this Master Plan.
7. Approval of a Master Plan is limited to the general acceptability of the land uses proposed and their interrelationships, and shall not be construed to endorse the precise location of uses or engineering feasibility.
8. Concurrently with the issuance of a Development Permit, applicant shall submit a 24"x36" mylar document of the final master plan, including all maps and text, as approved by Planning Commission at the final hearing, and reflecting any changes required. The name of the architect, and signature block signed by property owner of record or agent with power of attorney shall appear on the mylar:

*MASTER PLAN CERTIFICATE AND AGREEMENT*

*A master plan is governed by and is subject to Policy 39 (Absolute) of the Breckenridge Development Code, Chapter 1 of Title 9 of the Breckenridge Town Code, as amended from time to time. Although a master plan is a site specific plan as that term is defined by law, a master plan is only a general, conceptual plan for the future development of the subject property. The approval of a master plan is not the Town's final approval for the development of the subject property. Approval to actually develop the subject property requires one or more further site specific approvals from the Town in the form of additional development permit(s) issued pursuant to the Town's Development Code, as well as the issuance of any required permits under the Town's building and technical codes.*

*Upon the issuance of a development permit by the Town approving this master plan, this master plan is binding upon the permittee, and all subsequent owners of the property that is subject to the master plan in accordance with and subject to the terms and conditions of the Town of Breckenridge Development Code.*

*Interested parties should check with the Town of Breckenridge Department of Community Development to determine the duration of the vested property rights for the approved master plan, as well as the duration of the approved master plan.*

*This master plan may be amended, abandoned, or withdrawn only in accordance with the applicable provisions of the Town of Breckenridge Development Code.*

*APPROVAL OF THIS MASTER PLAN IS NO ASSURANCE THAT THE SUBJECT PROPERTY WILL ULTIMATELY BE DEVELOPED IN THE MANNER DESCRIBED IN THE APPROVED MASTER PLAN. INTERESTED PERSONS SHOULD OBTAIN AND REVIEW COPIES OF ALL FUTURE SITE SPECIFIC DEVELOPMENT PERMITS, SUBDIVISION PLATS, OTHER TOWN-ISSUED LAND USE APPROVALS, AND APPLICABLE TITLE INFORMATION FOR THE SUBJECT PROPERTY BEFORE DECIDING TO PURCHASE OR INVEST IN ANY OF THE REAL PROPERTY THAT IS SUBJECT TO THE APPROVED MASTER PLAN.*

*Owner Signature:* \_\_\_\_\_

*Owner Name (please print)* \_\_\_\_\_

*Architect Signature:* \_\_\_\_\_

*Director of Community Development:* \_\_\_\_\_

9. Applicant shall record with the Summit County Clerk and Recorder a written notice of the approval of the Master Plan Amendment, in a form acceptable to the Town attorney, in order to give notice thereof to all interested parties.

# MASTER PLAN FOR LINCOLN PARK AT WELLINGTON NEIGHBORHOOD PHASE II TOWN OF BRECKENRIDGE, COUNTY OF SUMMIT, STATE OF COLORADO

## April 7, 2015

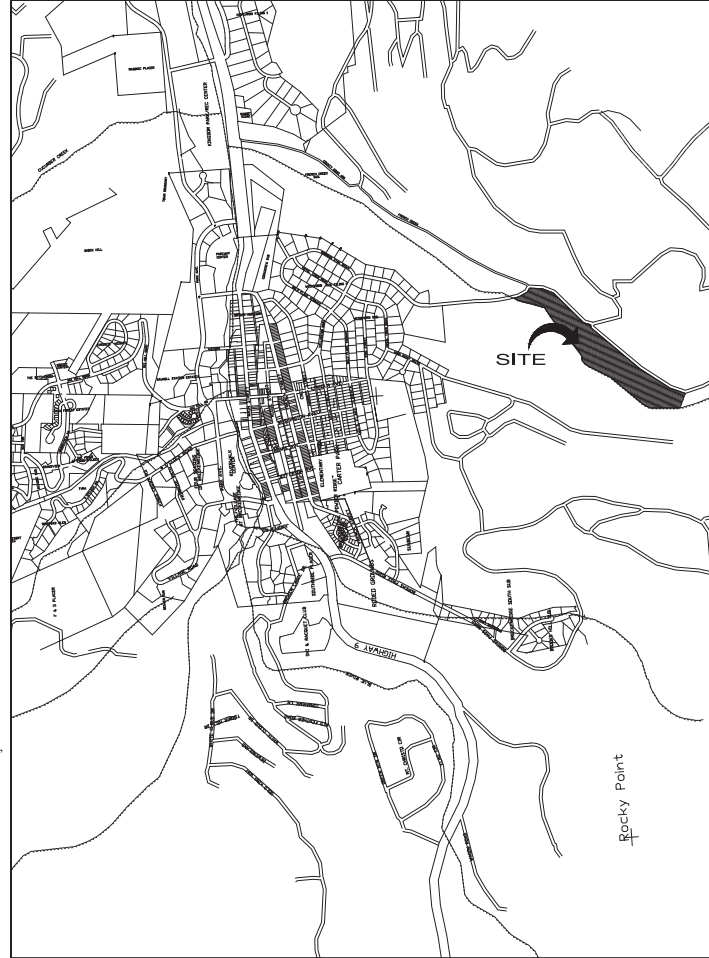
### MASTER PLAN NOTES:

- As provided in the Amendment to Annexation Agreement (rec#817872), as amended, ("Annexation Agreement") and the Employee Housing Restrictive Covenants ("Covenants") for Wellington Neighborhood: approximately 80% of the total units are subject to restrictions providing a local occupancy, an owner occupancy requirement and resale price limitations; and approximately 20% of the total units, not to exceed 32 pursuant to the terms of the Annexation Agreement, may be converted to market rate units and sold without restrictions, subject to satisfaction of certain conditions provided for in the Annexation Agreement and Covenants.
- Property within Lincoln Park at the Wellington Neighborhood Phase II shall be used and developed consistent with the Master Plan for the Lincoln Park at the Wellington Neighborhood Phase II, as amended, and all applicable provisions of the Town's District #16 Land Use Guidelines, and the Town's Development Code to the extent not inconsistent with the Master Plan.
- Allowed density and mass within the Master Plan for Lincoln Park at the Wellington Neighborhood Phase II shall be restricted to the following maximum square footage (with an SFE referring to a "single family equivalent"):

-Single Family Residential SFE:	
-Small Lot Single Family SFE:	Maximum density of 2,250 sq. ft. per SFE
-Large Lot Single Family SFE:	Maximum density of 3,600 sq. ft. per SFE or .65 to 1 FAR, whichever is less.
-Double House (duplex) SFE:	Maximum density of 1,600 sq. ft. per SFE (per individual unit)
-Multifamily (triplex) SFE:	Maximum density of 1,200 sq. ft. per SFE (per individual unit)

All single family lots shall be considered "Small Lot Single Family SFEs". Notwithstanding, if at the time of issuance of a certificate of occupancy a) the density of the improvements on a lot is in excess of 2,250 square feet or b) the developer designates the lot as a "market rate lot"; then, in either event the lot shall be designated a "Large Lot Single Family SFE". The number of lots designated Large Lot Single Family SFEs shall not exceed 40.

- All residential units shall be allocated "Mass" in accordance with the provisions of the Town's Development Code based on unit type.
- Carriage houses may be allowed above garages, on market rate lots, if the total density of the carriage house and the primary structure does not exceed that allowed for the lot on which the carriage house is located, the carriage house is kept in the same ownership as the ownership of the primary structure, and can not be separated in any manner, and a minimum of one additional parking space is provided on-site for exclusive use of the carriage house. Carriage House exterior dimensions (excluding exterior stairs, porches and eaves) shall not exceed 24' x 24' with a 12' sidewall. Carriage Houses are allowed a maximum of a twelve (12) foot sidewall plate height. Where there are two or more homes in a row along an alley, no more than 50% of those homes shall have a Carriage House and no more than 2 Carriage Houses in a row, unless approved by Planning Commission. All Carriage Houses (Market Rate only) and Bonus Garages that are finished with a water and sewer stub or connection must provide one additional on-site parking space within the lot. Bonus Rooms are allowed a maximum of a 10' sidewall plate height. Garages (without any added room above) are allowed a maximum of a 9' sidewall plate height.
- The locations of trails on the Master Plan, if any, are approximate. Exact locations of trails shall be specified and easements granted at the time of each subdivision filing in consultation with Town Department of Community Development and the Wellington Neighborhood Association. All trails so created shall be subject to public access easements.
- The design concept for the Lincoln Park at the Wellington Neighborhood Phase II is to create a neighborhood that is compatible with the existing historic character of the community, utilizing building sizes, types, and designs that are similar in nature to the first phase of Wellington Neighborhood.
- All subdivision plats shall contain the following notes: a) The property is located adjacent to the Town stables and, as such, may be impacted; and b) Required parking spaces shall be used exclusively for parking and not for storage, such requirement to be enforced by the Wellington Neighborhood Association.
- Alleys, private drives, parking areas, private open space, including the "greens," and other common areas shall be held and maintained by the Wellington Neighborhood Association (the "Association") subject to such reasonable rules and regulations as the Association may from time to time adopt.
- This Master Plan for Lincoln Park at the Wellington Neighborhood shall be deemed a site specific development plan and have vested property rights for a period of three (3) years from the date of approval by the Town Council.
- The town of Breckenridge agrees that any and all annexation surcharges, water plant investment fees, water line connection or tap fees, development permit fees, design or plan review fees, building permit fees or other similar fees or charges for or in connection with the construction of improvements to real property in the town of Breckenridge shall be and hereby are waived for tracts, lots, parcels or other improvable real property subject to the Phase II Wellington Neighborhood Employee Housing Restrictive Covenant and Agreement recorded September 22, 2006 as reception number 833733 as amended, ("covenant").



### LOCATION MAP

SCALE 1" = 1000'

NORTH

### OWNER'S CERTIFICATE

Brynn Grey V, LLC, a Colorado limited liability company, being sole owner in fee simple of the real property situated in the Town of Breckenridge, County of Summit, and State of Colorado that is more particularly described as:

LOTS 1-3, BLOCK 6 AND THE REMAINDER OF LOT 4, BLOCK 6, WELLINGTON NEIGHBORHOOD

has laid out and master planned the same as set forth on this Master Plan for Lincoln Park at the Wellington Neighborhood Phase II.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2015

BY: BRYNN GREY V, LLC  
a Colorado limited liability company

David G. O'Neil, Manager

STATE OF COLORADO )  
) SS.  
COUNTY OF SUMMIT )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015,  
by David G. O'Neil, as Manager of Brynn Grey V, LLC

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

My commission expires:  
(NOTARY SEAL)

### MASTER PLAN CERTIFICATE AND AGREEMENT

A master plan is governed by and is subject to Policy 39 (Absolute) of the Breckenridge Development Code, Chapter 1 of Title 9 of the Breckenridge Town Code, as amended from time to time. Although a master plan is a site specific plan as that term is defined by law, a master plan is only a general, conceptual plan for the future development of the subject property. The approval of a master plan is not the Town's final approval for the development of the subject property. Approval to actually develop the subject property requires one or more further site specific approvals from the Town in the form of additional development permit(s) issued pursuant to the Town's Development Code, as well as the issuance of any required permits under the Town's building and technical codes.

Upon the issuance of a development permit by the Town approving this master plan, this master plan is binding upon the permittee, and all subsequent owners of the property that is subject to the master plan in accordance with and subject to the terms and conditions of the Town of Breckenridge Development Code.

Interested parties should check with the Town of Breckenridge Department of Community Development to determine the duration of the vested property rights for the approved master plan, as well as the duration of the approved master plan.

This master plan may be amended, abandoned, or withdrawn only in accordance with the applicable provisions of the Town of Breckenridge Development Code.

APPROVAL OF THIS MASTER PLAN IS NO ASSURANCE THAT THE SUBJECT PROPERTY WILL ULTIMATELY BE DEVELOPED IN THE MANNER DESCRIBED IN THE APPROVED MASTER PLAN. INTERESTED PERSONS SHOULD OBTAIN AND REVIEW COPIES OF ALL FUTURE SITE SPECIFIC DEVELOPMENT PERMITS, SUBDIVISION PLATS, OTHER TOWN-ISSUED LAND USE APPROVALS, AND APPLICABLE TITLE INFORMATION FOR THE SUBJECT PROPERTY BEFORE DECIDING TO PURCHASE OR INVEST IN ANY OF THE REAL PROPERTY THAT IS SUBJECT TO THE APPROVED MASTER PLAN.

Brynn Gray V, LLC  
a Colorado limited liability

By: \_\_\_\_\_  
David G. O'Neil, Manager

Tom Lyon, Architect

Director of Community Development

### TOWN OF BRECKENRIDGE CERTIFICATE

This Master Plan has been approved by the Planning Commission, on \_\_\_\_\_, 2015, and the Town Council, on \_\_\_\_\_, 2015, of the Town of Breckenridge, Colorado, in accordance with the Town Code of Breckenridge, Colorado.

\_\_\_\_\_  
Director, Department of Community Development

## WOLFF • LYON ARCHITECTS

WELLINGTON  
NEIGHBORHOOD

BRECKENRIDGE, COLORADO

CLIENT:  
WELLINGTON NEIGHBORHOOD LLC  
PO BOX 4628  
BRECKENRIDGE, CO 80424

ARCHITECT:  
WOLFF-LYON ARCHITECTS  
777 FRANK STREET SUITE 210  
BOULDER, CO 80506  
T: (303) 447-9700  
F: (303) 447-9808

IN COLLABORATION WITH:  
PEL-ONA ARCHITECTS & URBANISTS  
4676 IRONWAY  
BOULDER, CO 80504  
T: (303) 443-7070  
F: (303) 449-3270

MASTER PLAN FOR  
**LINCOLN PARK**  
 AT THE WELLINGTON NEIGHBORHOOD  
 Breckenridge, Colorado

ISSUE DATES:	DATE	DESCRIPTION
	2015-04-07	MASTER PLAN RESUBMITTAL

REVISIONS:	DATE	DESCRIPTION

**MASTER PLAN  
FOR LINCOLN PARK AT  
WELLINGTON NEIGHBORHOOD PHASE II  
TOWN OF BRECKENRIDGE, COUNTY OF SUMMIT, STATE OF COLORADO  
APRIL 7, 2015**

**WOLFF • LYON  
ARCHITECTS**

WELLINGTON  
NEIGHBORHOOD  
BRECKENRIDGE, COLORADO

CLIENT:  
WELLINGTON NEIGHBORHOOD LLC  
PO BOX 4858  
BRECKENRIDGE, CO 80424

ARCHITECT:  
WOLFF-LYON ARCHITECTS  
777 FRANK STREET, SUITE 210  
Boulder, CO 80502  
T: (303) 447-8766  
F: (303) 447-8968

IN COLLABORATION WITH:  
PEL-OMA ARCHITECTS & URBANISTS  
4875 BROADWAY  
Boulder, CO 80504  
T: (303) 443-7979  
F: (303) 448-5275





MASTER PLAN FOR  
**LINCOLN PARK**  
AT THE WELLINGTON NEIGHBORHOOD  
Breckenridge, Colorado

ISSUE DATES:  
DATE DESCRIPTION  
2015-04-07 MASTER PLAN SUBMITTAL













REVISIONS:  
DATE DESCRIPTION

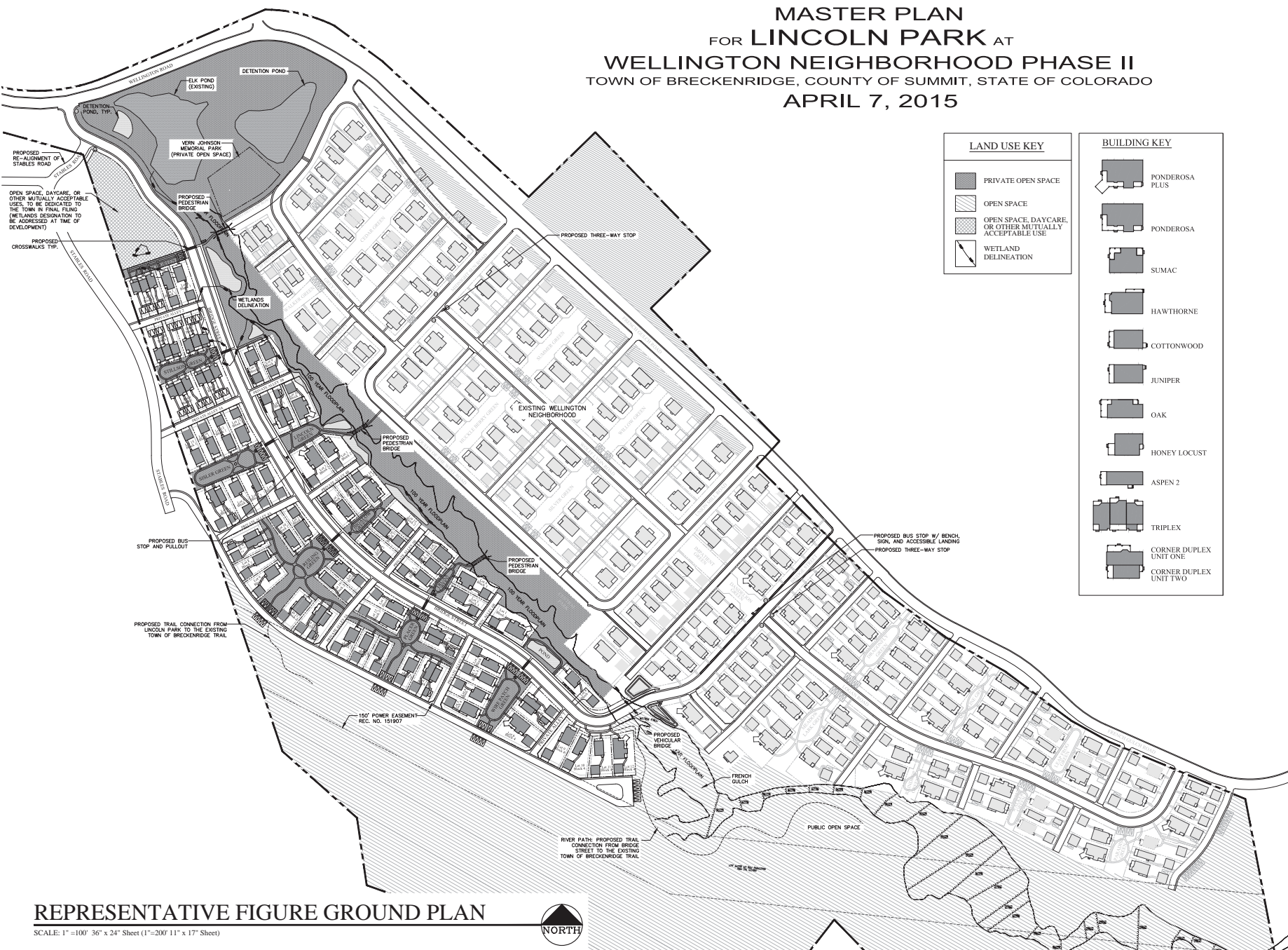
**SHEET  
2 of 6**

**LAND USE KEY**

	PRIVATE OPEN SPACE
	OPEN SPACE
	OPEN SPACE, DAYCARE, OR OTHER MUTUALLY ACCEPTABLE USE
	WETLAND DELINEATION

**BUILDING KEY**

	PONDEROSA PLUS
	PONDEROSA
	SUMAC
	HAWTHORNE
	COTTONWOOD
	JUNIPER
	OAK
	HONEY LOCUST
	ASPEN 2
	TRIPLEX
	CORNER DUPLEX UNIT ONE
	CORNER DUPLEX UNIT TWO



**REPRESENTATIVE FIGURE GROUND PLAN**

SCALE: 1" = 100' 36" x 24" Sheet (1" = 200' 11" x 17" Sheet)





**MASTER PLAN  
FOR LINCOLN PARK AT  
WELLINGTON NEIGHBORHOOD PHASE II  
TOWN OF BRECKENRIDGE, COUNTY OF SUMMIT, STATE OF COLORADO  
APRIL 7, 2015**

**WOLFF • LYON  
ARCHITECTS**

WELLINGTON  
NEIGHBORHOOD  
BRECKENRIDGE, COLORADO

CLIENT:  
WELLINGTON NEIGHBORHOOD LLC  
PO BOX 4828  
BRECKENRIDGE, CO 80424

ARCHITECT:  
WOLFF • LYON ARCHITECTS  
777 FRANK STREET, SUITE 210  
Boulder, CO 80502  
P: (303) 447-8768  
F: (303) 447-8968

IN COLLABORATION WITH:  
P.L. OMA ARCHITECTS & URBANISTS  
4875 BRADLEY  
BOULDER, CO 80504  
P: (303) 445-7878  
F: (303) 448-5275

MASTER PLAN FOR  
**LINCOLN PARK**  
AT THE WELLINGTON NEIGHBORHOOD  
Breckenridge, Colorado

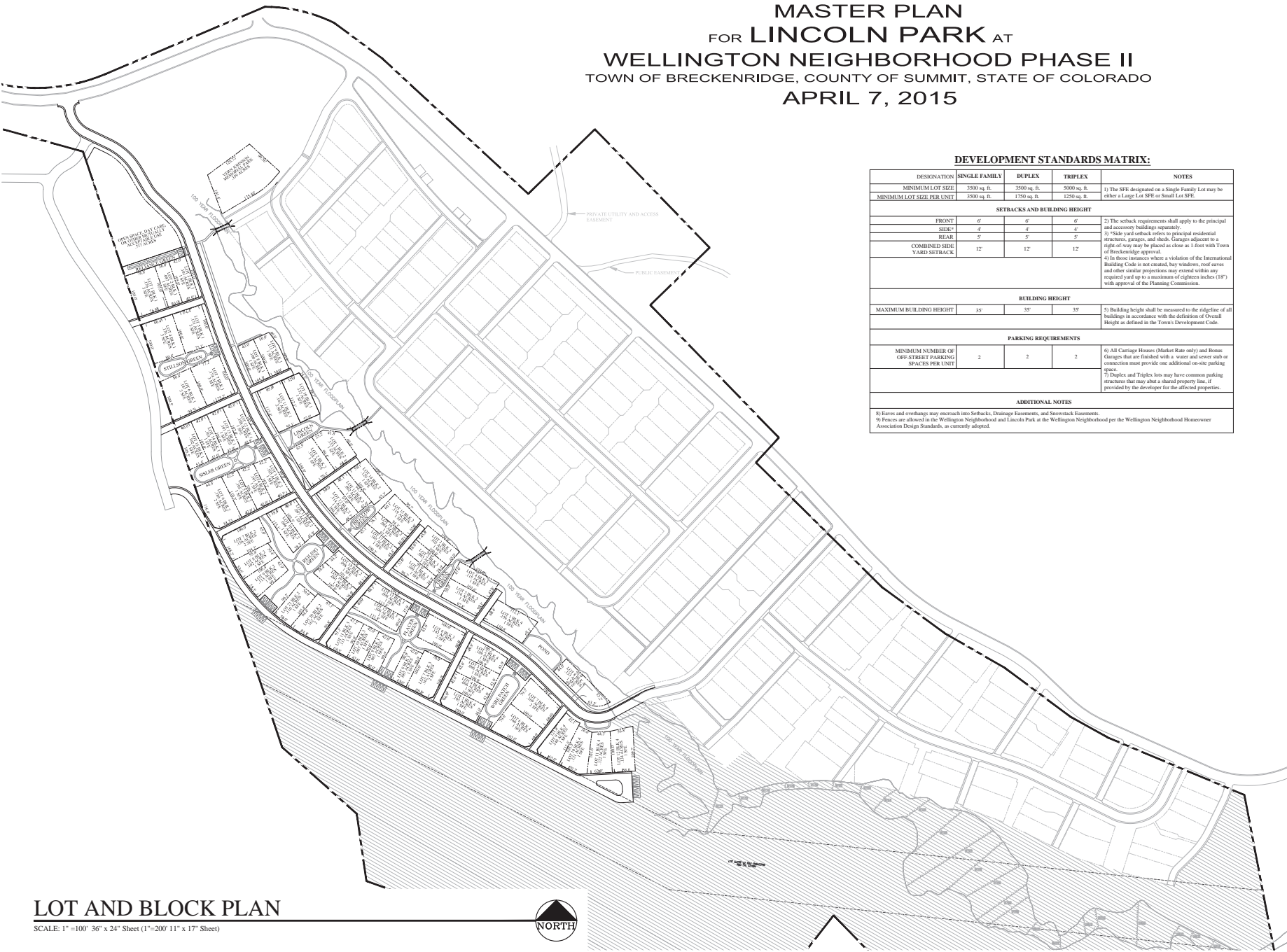
ISSUE DATES:      DESCRIPTION  
DATE      MASTER PLAN SUBMITTAL  
2015-04-07

REVISIONS:  
DATE      DESCRIPTION

SHEET  
3 of 6

**DEVELOPMENT STANDARDS MATRIX:**

DESIGNATION	SINGLE FAMILY	DUPLEX	TRIPLEX	NOTES
MINIMUM LOT SIZE	3500 sq. ft.	3500 sq. ft.	5000 sq. ft.	1) The SFE designated on a Single Family Lot may be either a Large Lot SFE or Small Lot SFE.
MINIMUM LOT SIZE PER UNIT	3500 sq. ft.	1750 sq. ft.	1250 sq. ft.	
<b>SETBACKS AND BUILDING HEIGHT</b>				
FRONT	6'	6'	6'	2) The setback requirements shall apply to the principal and accessory buildings separately. 3) Side yard setback refers to principal residential structures, garages, and sheds. Garages adjacent to a right-of-way may be placed as close as 1 foot with Town of Breckenridge approval. 4) In those instances where a violation of the International Building Code is not created, bay windows, roof eaves and other similar projections may extend within any required yard up to a maximum of eighteen inches (18") with approval of the Planning Commission.
SIDE*	4'	4'	4'	
REAR	5'	5'	5'	
COMBINED SIDE/ YARD SETBACK	12'	12'	12'	
<b>BUILDING HEIGHT</b>				
MAXIMUM BUILDING HEIGHT	35'	35'	35'	5) Building height shall be measured to the ridge-line of all buildings in accordance with the definition of Overall Height as defined in the Town's Development Code.
<b>PARKING REQUIREMENTS</b>				
MINIMUM NUMBER OF OFF-STREET PARKING SPACES PER UNIT	2	2	2	6) All Carriage Houses (Market Rate only) and Bonus Garages that are finished with a water and sewer sub or connection must provide one additional on-site parking space. 7) Duplex and Triplex lots may have common parking structures that may share a shared property line, if provided by the developer for the affected properties.
<b>ADDITIONAL NOTES</b>				
8) Eaves and overhangs may encroach into Setbacks, Drainage Easements, and Snowstack Easements.				
9) Fences are allowed in the Wellington Neighborhood and Lincoln Park at the Wellington Neighborhood per the Wellington Neighborhood Homeowner Association Design Standards, as currently adopted.				



**LOT AND BLOCK PLAN**

SCALE: 1" = 100' 36" x 24" Sheet (1" = 200' 11" x 17" Sheet)



**MASTER PLAN**  
**FOR LINCOLN PARK AT**  
**WELLINGTON NEIGHBORHOOD PHASE II**  
 TOWN OF BRECKENRIDGE, COUNTY OF SUMMIT, STATE OF COLORADO  
 APRIL 7, 2015



**OPEN SPACE & PARKS KEY**

- DEVELOPED AREA
- PRIVATE OPEN SPACE
- EXISTING PUBLIC OPEN SPACE
- FUTURE DEDICATION (AFTER CONCLUSION OF PLATING PROCESS)
- OPEN SPACE, DAYCARE, OR OTHER MUTUALLY ACCEPTABLE USE

**WOLFF • LYON**  
ARCHITECTS

WELLINGTON  
NEIGHBORHOOD  
BRECKENRIDGE, COLORADO

CLIENT:  
WELLINGTON NEIGHBORHOOD LLC  
3115 2ND AVE  
BRECKENRIDGE, CO 80424

ARCHITECT:  
WOLFF • LYON ARCHITECTS  
1111 PEARL STREET - SUITE 800  
DENVER, CO 80202  
P: (303) 447-0000

IN COLLABORATION WITH:  
PCL-CNA ARCHITECTS & URBANISTS  
6476 ARCADE  
DENVER, CO 80202  
P: (303) 443-7878  
F: (303) 448-0278

MASTER PLAN FOR  
**LINCOLN PARK**  
 AT THE WELLINGTON NEIGHBORHOOD  
 Breckenridge, Colorado

ISSUE DATES

DATE	DESCRIPTION
2015-04-07	MASTER PLAN SUBMITTED

**SHEET**  
**4 of 6**

**LAND USE PLAN**

SCALE: 1" = 150' 30" x 24" Sheet (1" = 300' 12" x 17" Sheet)







**MASTER PLAN  
FOR LINCOLN PARK AT  
WELLINGTON NEIGHBORHOOD PHASE II  
TOWN OF BRECKENRIDGE, COUNTY OF SUMMIT, STATE OF COLORADO  
APRIL 7, 2015**

**WOLFF • LYON  
ARCHITECTS**

WELLINGTON  
NEIGHBORHOOD  
BRECKENRIDGE, COLORADO

CLIENT:  
WELLINGTON NEIGHBORHOOD LLC  
PO BOX 4688  
BRECKENRIDGE, CO 80464

ARCHITECT:  
WOLFF-LYON ARCHITECTS  
177 FRANK STREET SUITE 210  
BOULDER, CO 80508  
T: (303) 447-8788  
F: (303) 447-8868

IN COLLABORATION WITH:  
P2-OHA ARCHITECTS & URBANISTS  
4878 BROADWAY  
BOULDER, CO 80504  
T: (303) 443-7070  
F: (303) 449-3275

**PHASING PLAN NOTES:**

THERE WILL BE FIVE PHASES TO COINCIDE WITH AND INCLUDE THE IMPROVEMENTS SHOWN FOR BLOCKS 1 THROUGH 4.

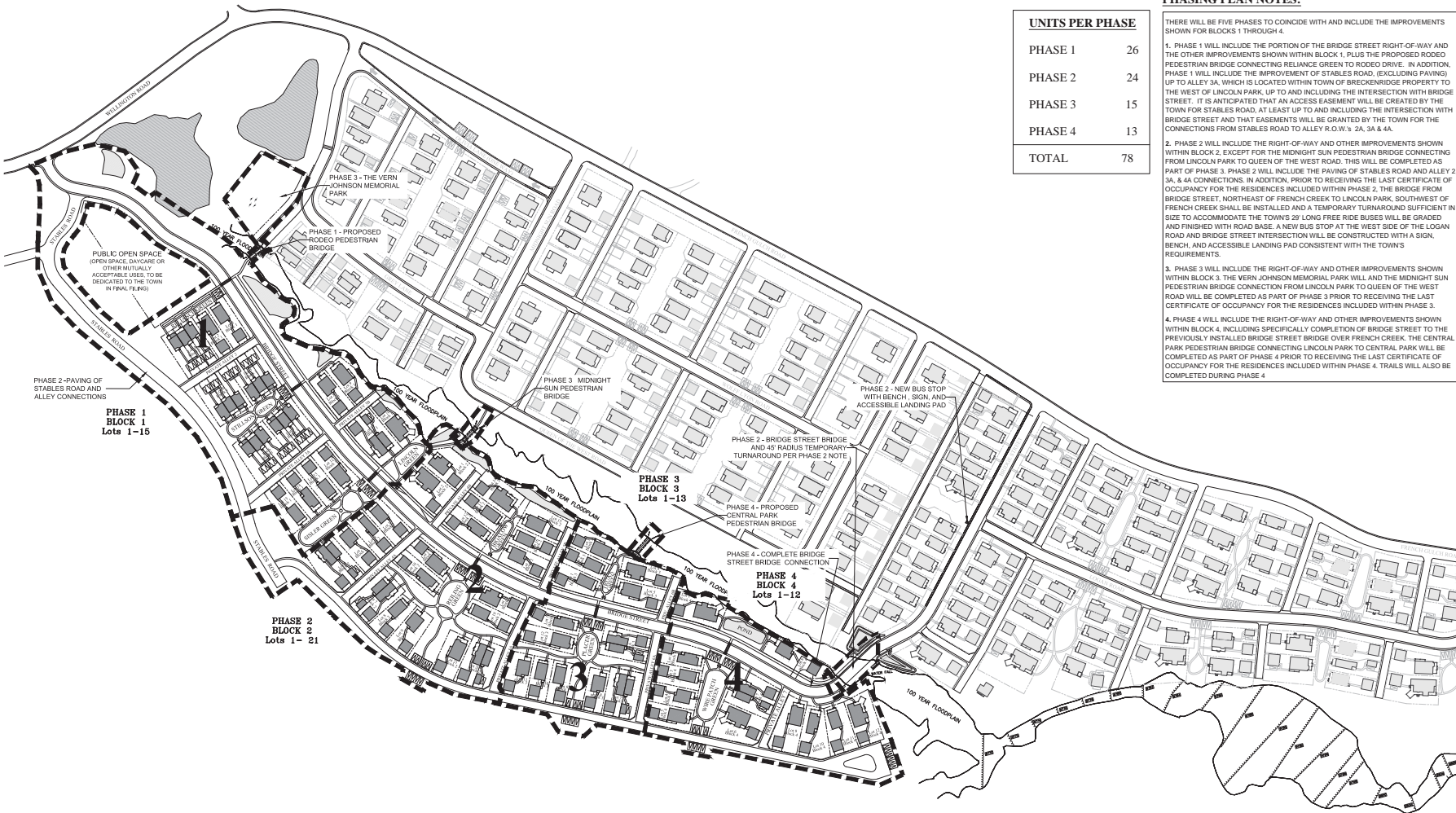
1. PHASE 1 WILL INCLUDE THE PORTION OF THE BRIDGE STREET RIGHT-OF-WAY AND THE OTHER IMPROVEMENTS SHOWN WITHIN BLOCK 1, PLUS THE PROPOSED RODEO PEDESTRIAN BRIDGE CONNECTING RELIANCE GREEN TO RODEO DRIVE. IN ADDITION, PHASE 1 WILL INCLUDE THE IMPROVEMENT OF STABLES ROAD, (EXCLUDING PAVING) UP TO ALLEY 3A, WHICH IS LOCATED WITHIN TOWN OF BRECKENRIDGE PROPERTY TO THE WEST OF LINCOLN PARK, UP TO AND INCLUDING THE INTERSECTION WITH BRIDGE STREET. IT IS ANTICIPATED THAT AN ACCESS EASEMENT WILL BE CREATED BY THE TOWN FOR STABLES ROAD, AT LEAST UP TO AND INCLUDING THE INTERSECTION WITH BRIDGE STREET AND THAT EASEMENTS WILL BE GRANTED BY THE TOWN FOR THE CONNECTIONS FROM STABLES ROAD TO ALLEY R.O.W.'s 2A, 3A & 4A.

2. PHASE 2 WILL INCLUDE THE RIGHT-OF-WAY AND OTHER IMPROVEMENTS SHOWN WITHIN BLOCK 2, EXCEPT FOR THE MIDNIGHT SUN PEDESTRIAN BRIDGE CONNECTING FROM LINCOLN PARK TO QUEEN OF THE WEST ROAD. THIS WILL BE COMPLETED AS PART OF PHASE 3. PHASE 2 WILL INCLUDE THE PAVING OF STABLES ROAD AND ALLEY 2, 3A, & 4A CONNECTIONS. IN ADDITION, PRIOR TO RECEIVING THE LAST CERTIFICATE OF OCCUPANCY FOR THE RESIDENCES INCLUDED WITHIN PHASE 2, THE BRIDGE FROM BRIDGE STREET, NORTHEAST OF FRENCH CREEK TO LINCOLN PARK, SOUTHWEST OF FRENCH CREEK SHALL BE INSTALLED AND A TEMPORARY TURNAROUND SUFFICIENT IN SIZE TO ACCOMMODATE THE TOWN'S 29' LONG FREE RIDE BUSES WILL BE GRADED AND FINISHED WITH ROAD BASE. A NEW BUS STOP AT THE WEST SIDE OF THE LOGAN ROAD AND BRIDGE STREET INTERSECTION WILL BE CONSTRUCTED WITH A SIGN, BENCH, AND ACCESSIBLE LANDING PAD CONSISTENT WITH THE TOWN'S REQUIREMENTS.

3. PHASE 3 WILL INCLUDE THE RIGHT-OF-WAY AND OTHER IMPROVEMENTS SHOWN WITHIN BLOCK 3. THE VERN JONHONSON MEMORIAL PARK WILL AND THE MIDNIGHT SUN PEDESTRIAN BRIDGE CONNECTION FROM LINCOLN PARK TO QUEEN OF THE WEST ROAD WILL BE COMPLETED AS PART OF PHASE 3 PRIOR TO RECEIVING THE LAST CERTIFICATE OF OCCUPANCY FOR THE RESIDENCES INCLUDED WITHIN PHASE 3.

4. PHASE 4 WILL INCLUDE THE RIGHT-OF-WAY AND OTHER IMPROVEMENTS SHOWN WITHIN BLOCK 4, INCLUDING SPECIFICALLY COMPLETION OF BRIDGE STREET TO THE PREVIOUSLY INSTALLED BRIDGE STREET BRIDGE OVER FRENCH CREEK. THE CENTRAL PARK PEDESTRIAN BRIDGE CONNECTING LINCOLN PARK TO CENTRAL PARK WILL BE COMPLETED AS PART OF PHASE 4 PRIOR TO RECEIVING THE LAST CERTIFICATE OF OCCUPANCY FOR THE RESIDENCES INCLUDED WITHIN PHASE 4. TRAILS WILL ALSO BE COMPLETED DURING PHASE 4.

UNITS PER PHASE	
PHASE 1	26
PHASE 2	24
PHASE 3	15
PHASE 4	13
<b>TOTAL</b>	<b>78</b>



**MASTER PLAN FOR  
LINCOLN PARK  
AT THE WELLINGTON NEIGHBORHOOD  
Breckenridge, Colorado**

ISSUE DATES:	DATE	DESCRIPTION
	2015-04-07	MASTER PLAN RESUBMITTAL

REVISIONS:	DATE	DESCRIPTION

**SHEET  
6 of 6**

**PHASING PLAN**

SCALE: 1"=50' 36" x 24" Sheet (1"=100' 11" x 17" Sheet)

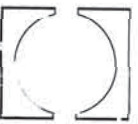




# MASTER PLAN FOR THE WELLINGTON NEIGHBORHOOD PHASE II TOWN OF BRECKENRIDGE, COUNTY OF SUMMIT, STATE OF COLORADO FEBRUARY 28, 2006



WELLINGTON NEIGHBORHOOD  
PHASE II  
BRECKENRIDGE, COLORADO

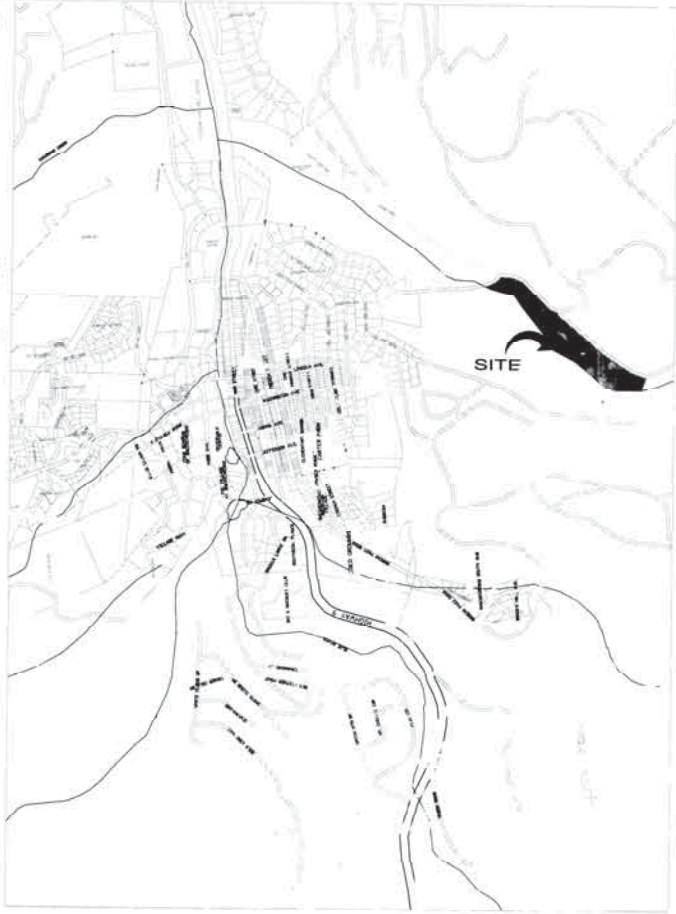


ISSUE/DATE
1 29 APRIL 2006
2 26 APRIL 2006
3 16 OCTOBER 2006
4 12 DECEMBER 2006
5 7 JANUARY 2006
6 7 FEBRUARY 2006

SHEET  
1 of 6

### MASTER PLAN NOTES:

- As provided in the restrictive covenants for Wellington Neighborhood approximately 80% of the total units will be subject to a covenant providing a local occupancy restriction, owner occupancy requirement and limiting resale price; and approximately 20% of the total units, not to exceed 32% pursuant to the terms of the Annexation Agreement, will be converted to market rate units, and sold without restrictions. The provisions of the restrictive covenant and conditions precedent to the Town providing the market density are also described as part of the Wellington Neighborhood Annexation Agreement as amended.
- Property within Wellington Neighborhood Phase II shall be used and developed consistent with this Master Plan, and all applicable provisions of the Town's District Land Use Guidelines and the Town's Development Code, which are not already covered within this Master Plan.
- Allow-d density and mass within the Wellington Neighborhood Phase II Master Plan shall be restricted to the following maximum square footages (with an SFE reference to a "single family equivalent"):
  - Single Family Residential SFE:
    - Large Lot Single Family SFE: Maximum density of 2,250 sq. ft. per SFE
    - Large Lot Single Family SFE: Maximum density of 3,600 sq. ft. per SFE or .65 to 1 FAR, whichever is less
  - Double House (duplex) SFE: Maximum density of 1,600 sq. ft. per individual unit
  - Multi-family (plex) SFE: Maximum density of 1,200 sq. ft. per SFE (per individual unit)
- All single family lots shall be considered "Small Lot Single Family SFEs". Notwithstanding, if at the time of issuance of certificate of occupancy the density of the improvements on a lot is in excess of 2,250 square feet or b) the developer designates the lot as a "market rate lot"; then, in either event the lot shall be designated a "Large Lot Single Family SFE". The number of lots designated Large Lot Single Family SFEs shall not exceed 40.
- All residential units shall be allocated "Mass" in accordance with the provisions of the Town's Development Code based on unit type.
  - Carriage houses may be allowed above garages on market rate lots, if the total density of the carriage house and the primary structure does not exceed that allowed for the lot on which the carriage house is located. The carriage house is kept in the same ownership as the ownership of the primary structure and can not be separated in any way. A maximum of 100 sq. ft. of additional parking space is provided for the exclusive use of the carriage house. Carriage house exterior dimensions (including exterior stairs, porches and eaves) shall not exceed 24' x 24' w/ a 12' sidewall. Carriage Houses are allowed a maximum of a twelve (12) foot sidewall plate height. Bonus Rooms are allowed a maximum of a nine (9) foot sidewall plate height. Light, single Garages (without any added room above) are allowed a maximum of a nine (9) foot sidewall plate height. House and no more than 2 Carriage Houses in a row, unless approved by Planning Commission. Bonus rooms above garages, which do not have kitchen facilities, shall not be considered as carriage houses, but instead shall be considered as a component of the primary dwelling unit.
  - Notwithstanding applicable provisions of the Town's Development Code, including but not limited to all policies related to setbacks as they exist, or may be amended or adopted in the future, structures shall be set back and setbacks established in accordance with the Development Standards included in this Master Plan, which includes the allowance of reduced setback for garages.
- The location of trails on the Master Plan, if any, are approximate. Exact locations of trails shall be specified and approved by the Town and at the time of each subdivision filing in consultation with Town Planning Staff and the Association. All trails so located shall be subject to a public access easement.
- The design concept for the second phase of the Wellington Neighborhood is to create a neighborhood that is compatible with the existing historical character of the community, utilizing building styles, types, and designs that are similar in nature to the first phase of Wellington Neighborhood.
- All subdivision plats shall contain the following notes: a) The property is located adjacent to the Town's stables and, as such, may be impacted; and b) Required parking spaces shall be used exclusively for parking and not for storage, such requirement to be enforced by the Wellington Neighborhood Association.
- Alleys, private drives, parking areas, private open space, the "greens" and common areas shall be held and maintained by the Wellington Neighborhood Association (the "Association") subject to such reasonable rules and regulations as the Association may from time to time adopt. All private open space shall be available to the general public.
- This Master Plan shall be deemed a site specific development plan and a vested property right for a period of ten (10) years pursuant to the Development Agreement dated 02/13/06 Reception Number B17813.



LOCATION MAP  
Scale: 3/4" = 1" = 1000' NORTH

### CERTIFICATE OF BRYNN GREY V, LLC

**THE OWNER OF LOTS 1-4, BLOCK 6 IS:**  
Brynn Grey V, LLC. A Colorado limited liability company, being sole owner in fee simple of the real property situated in the Town of Breckenridge, County of Summit, and State of Colorado that is more particularly described as:  
"LOTS 1-4, BLOCK 6 Wellington Neighborhood"  
has laid out and master planned the same into style of the Master Plan for the Wellington Neighborhood.  
Dated this 17th day of March, 2006  
BRYNN GREY V, LLC  
a Colorado limited liability company  
David G. O'Neil  
Member/Manager  
The foregoing instrument was acknowledged before me this 17th day of March, 2006 by David G. O'Neil, as Member/Manager for Brynn Grey V, LLC  
Witness my hand and official seal.  
Notary Public

My commission expires: (NOTARY SEAL)  
STATE OF COLORADO )  
COUNTY OF SUMMIT )

### MASTER PLAN CERTIFICATE

The provisions of the Master Plan are binding upon all current and future owners of all or any portion of a real property which is the subject of this Master Plan, until the first to occur: (1) the termination by the Town of a final plat of the plat of the subject property or a Certificate of Final Plat for all of the improvements described in the Master Plan pursuant to the Town's Development Code; (2) the amendment of this Master Plan pursuant to the Town's Development Code; or (3) the abandonment of this Master Plan pursuant to the Town's Development Code. Prior to such termination, amendment or abandonment, all building permits which are issued for the construction of improvements within the subject property shall be subject to the terms and conditions of the Development Permit which approved this Master Plan. This Master Plan, including the Annexation Agreement, and the Development Agreement between the undersigned owner and the Town represents the entire understanding between the undersigned owner and the Town with regard to development rights and density remaining on the site.  
Dated this 17th day of March, 2006  
BRYNN GREY V, LLC  
a Colorado limited liability company  
David G. O'Neil  
Member/Manager  
The foregoing instrument was acknowledged before me this 17th day of March, 2006 by David G. O'Neil, as Member/Manager for Brynn Grey V, LLC  
Witness my hand and official seal.  
Notary Public

My commission expires: (NOTARY SEAL)  
STATE OF COLORADO )  
COUNTY OF SUMMIT )

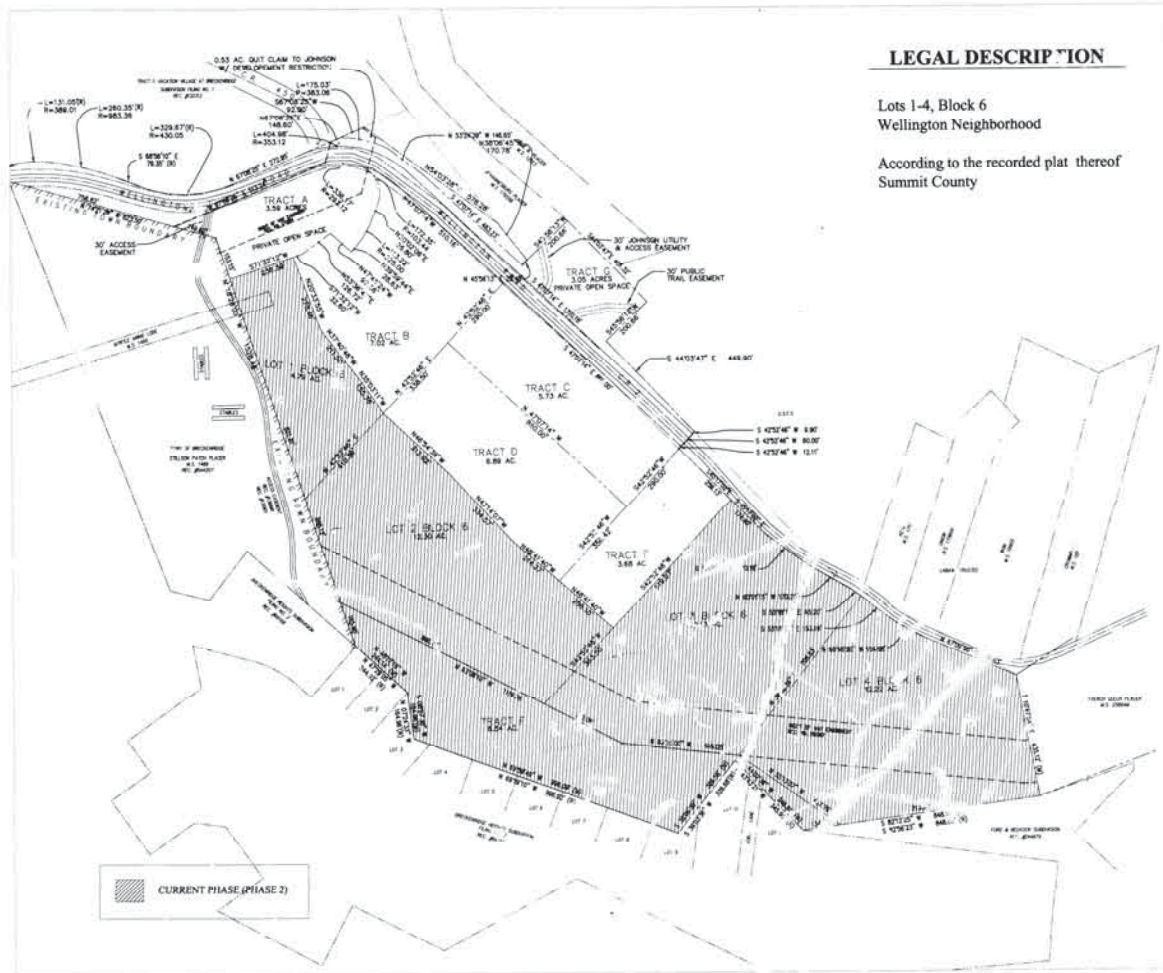
### TOWN OF BRECKENRIDGE CERTIFICATE

This Master Plan has been approved by the Planning Commission on February 21, 2006, and the Town Council on February 28, 2006, Town of Breckenridge, Colorado, in accordance with the Town Code of Breckenridge, Colorado.

Director, Department of Summit Development  
**CLERK AND RECORDER'S CERTIFICATE**  
STATE OF COLORADO )  
COUNTY OF SUMMIT )  
I hereby certify that this instrument was filed in my office on 02/28/06 at 10:00 AM on this 22 day of March, 2006, and filed under Reception Number Rec# = 381005  
Summit County Clerk and Recorder

2006  
MASTER PLAN  
1 of 6  
Wellington Neighborhood  
Master Plan Phase II

**MASTER PLAN**  
FOR THE  
**WELLINGTON NEIGHBORHOOD PHASE II**  
TOWN OF BRECKENRIDGE, COUNTY OF SUMMIT, STATE OF COLORADO  
**FEBRUARY 28, 2006**



**LEGAL DESCRIPTION**

Lots 1-4, Block 6  
Wellington Neighborhood

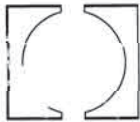
According to the recorded plat thereof  
Summit County

CURRENT PHASE (PHASE 2)

**SUBDIVISION PLAN**  
SCALE: 1" = 200'



**WELLINGTON NEIGHBORHOOD**  
**PHASE II**  
BRECKENRIDGE, COLORADO



ISSUE / DATE
1 25 APRIL 2005
2 11 APRIL 2005
3 26 OCTOBER 2005
4 9 DECEMBER 2005
5 17 JANUARY 2006
6 1 FEBRUARY 2006

**SHEET**  
**2 of 6**

2006

MASTER PLAN  
2 of 6

Wellington Neighborhood  
Master Plan Phase II



**MASTER PLAN**  
FOR THE  
**WELLINGTON NEIGHBORHOOD PHASE II**  
TOWN OF BRECKENRIDGE, COUNTY OF SUMMIT, STATE OF COLORADO  
**FEBRUARY 28, 2006**



**OPEN SPACE & PARKS KEY**

- PRIVATE OPEN SPACE
- PARK AREA

**BUILDING KEY**

- PINON
- OAK
- COTTONWOOD
- JUNIPER
- HAWTHORNE
- YUCCA/DEVERA
- COPPER ROCK
- MOUNTAIN ASH/BUCKTHORN
- COLMBINE
- LUPINE
- KINNIKINNICK

**REPRESENTATIVE FIGURE GROUND PLAN**  
SCALE: 1" = 100'-0" 3/8" x 24" Sheet

NOTE: BUILDING TYPES AND LOCATIONS ARE REPRESENTATIVE ONLY. ACTUAL BUILDINGS AND PLACEMENTS WILL BE PRESENTED IN THE CLASS C REVIEW.



WELLINGTON NEIGHBORHOOD  
PHASE II  
BRECKENRIDGE, COLORADO



NO.	REVISION / DATE
1	15 APRIL 2005
2	28 APRIL 2005
3	20 OCTOBER 2005
4	2 DECEMBER 2005
5	17 JANUARY 2006
6	7 FEBRUARY 2006

SHEET  
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2006  
MASTER PLAN  
3 of 6  
Wellington Neighborhood  
Master Plan Phase II

**MASTER PLAN  
FOR THE  
WELLINGTON NEIGHBORHOOD PHASE II  
TOWN OF BRECKENRIDGE, COUNTY OF SUMMIT, STATE OF COLORADO  
FEBRUARY 28, 2006**



**DEVELOPMENT STANDARDS MATRIX:**

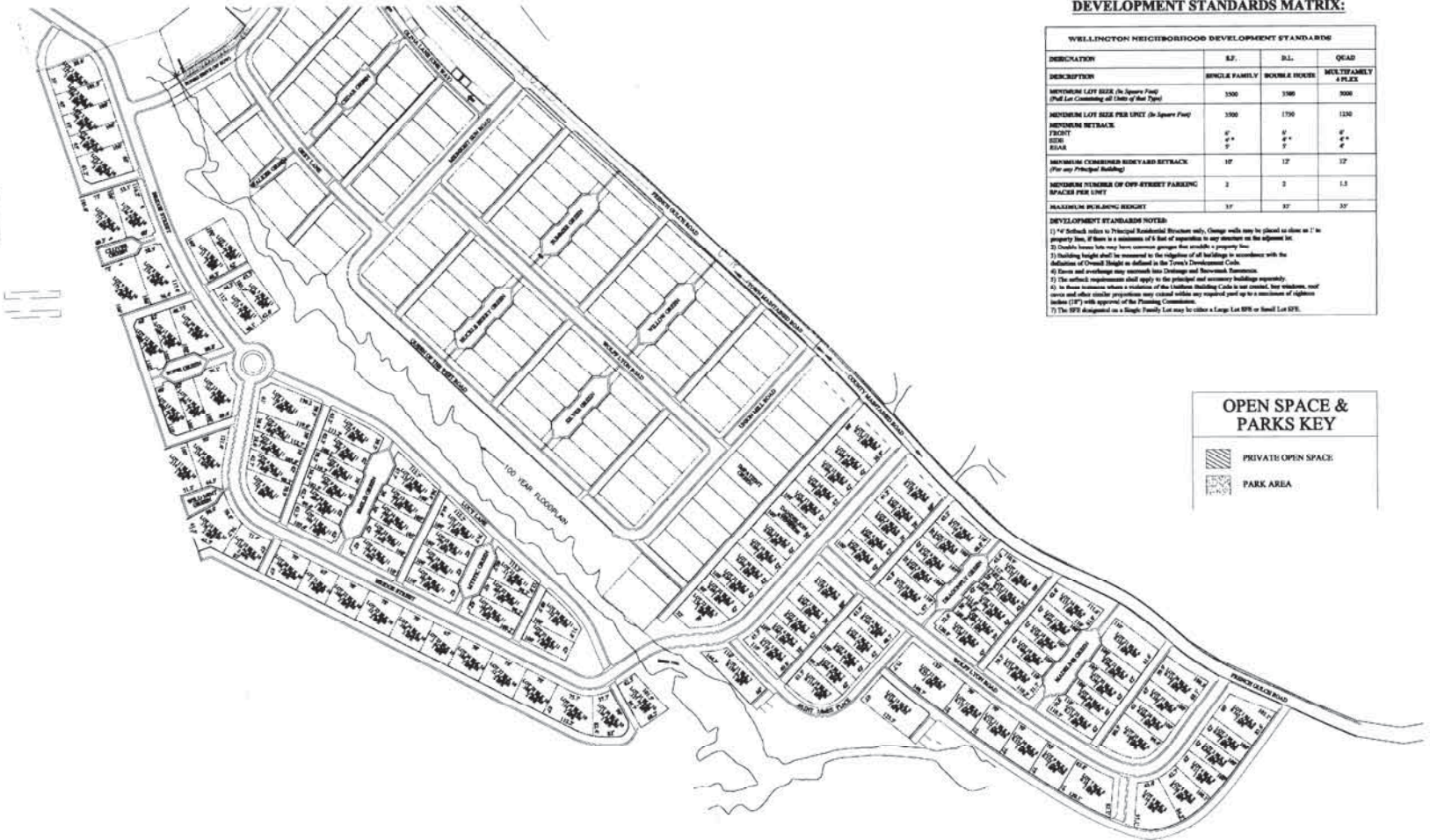
WELLINGTON NEIGHBORHOOD DEVELOPMENT STANDARDS			
DEDICATION	S.F.	B.L.	OCAD
DESCRIPTION	SINGLE FAMILY	INCOME HOUSE	MULTIFAMILY A-FLEX
MINIMUM LOT SIZE (In Square Feet) (Full Lot Containing all Units of that Type)	3500	3300	3000
MINIMUM LOT SIZE PER UNIT (In Square Feet)	1500	1750	1150
MINIMUM SETBACK			
FRONT	5'	5'	5'
SIDE	5'	5'	5'
REAR	5'	5'	5'
MINIMUM COMBINED SIDEYARD SETBACK (For any Principal Building)	10'	12'	12'
MINIMUM NUMBER OF OFF-STREET PARKING SPACES PER UNIT	2	2	1.5
MAXIMUM BUILDING HEIGHT	15'	20'	20'

**DEVELOPMENT STANDARDS NOTES:**

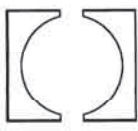
- 1) 1/2 Setback refers to Principal Residential Structure only. Garage walls may be placed as close as 2' to property line, if there is a minimum of 6 feet of separation to any structure on the adjacent lot.
- 2) Double garage lots may have customer garage floor outside of property line.
- 3) Building height shall be measured to the ridgepole of all buildings in accordance with the definition of Overall Height as defined in the Town's Development Code.
- 4) Signs and awnings may encroach into Driveway and Streetway Encroachment.
- 5) The setback requirements shall apply to the principal and accessory buildings separately.
- 6) In those instances where a violation of the Ordinance Building Code is not corrected, the applicant, not owner and other similar provisions may control within any required yard up to a maximum of eighteen inches (18") with approval of the Planning Commission.
- 7) The SFPS designated as a Single Family Lot may be either a Large Lot SFPS or Small Lot SFPS.

**OPEN SPACE & PARKS KEY**

PRIVATE OPEN SPACE  
 PARK AREA



WELLINGTON NEIGHBORHOOD  
PHASE II  
BRECKENRIDGE, COLORADO



ISSUE / DATE
1 26 APRIL 2005
2 24 APRIL 2005
3 20 OCTOBER 2005
4 6 DECEMBER 2005
5 17 JANUARY 2006
6 7 FEBRUARY 2006

SHEET  
4 of 6

LOT and BLOCK PLAN  
SCALE: 1" = 100'-0" 36" x 24" Sheet



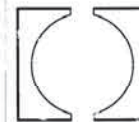
2006  
 MASTER PLAN  
 4 of 6  
 Wellington Neighborhood  
 Master Plan Phase II



**MASTER PLAN**  
 FOR THE  
**WELLINGTON NEIGHBORHOOD PHASE II**  
 TOWN OF BRECKENRIDGE, COUNTY OF SUMMIT, STATE OF COLORADO  
**FEBRUARY 28, 2006**

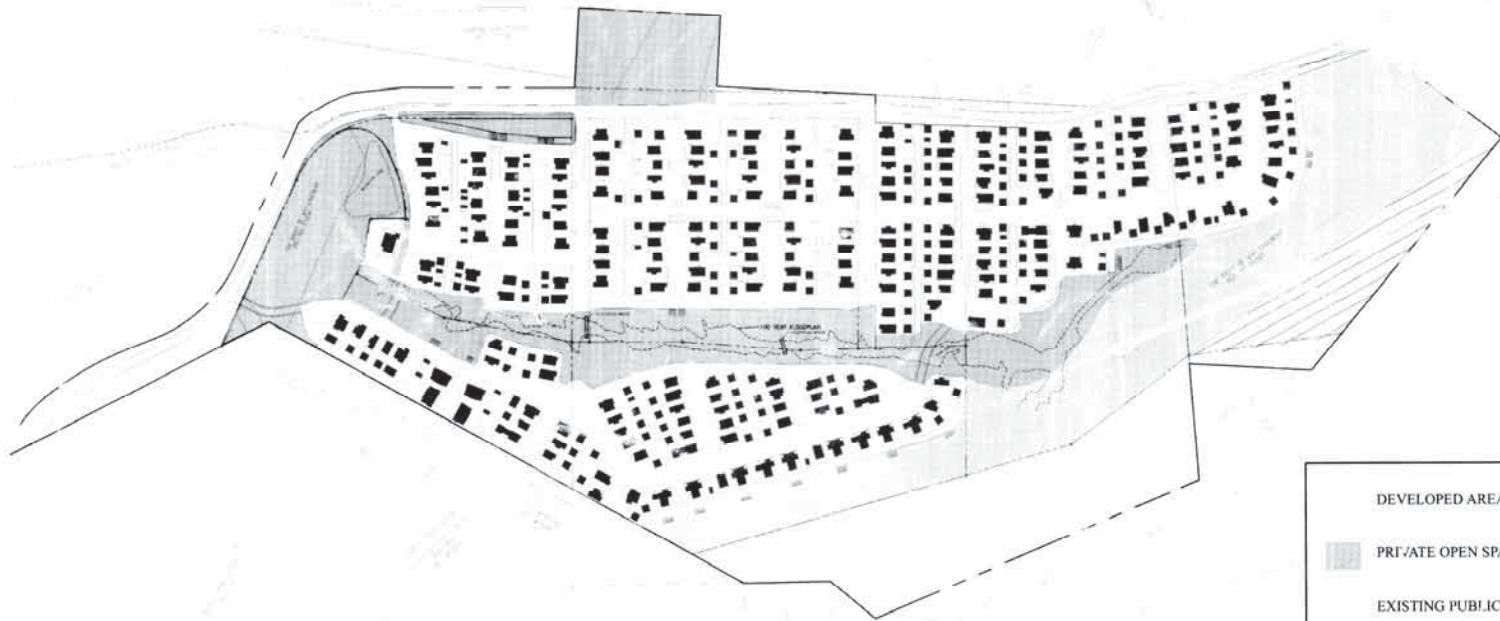


**WELLINGTON NEIGHBORHOOD**  
**PHASE II**  
 BRECKENRIDGE, COLORADO



ISSUE / DATE
1 25 APRIL 2005
2 24 APRIL 2005
3 20 OCTOBER 2005
4 9 DECEMBER 2005
5 17 JANUARY 2006
6 28 FEBRUARY 2006

**SHEET**  
**5 of 6**



DEVELOPED AREA

PRIVATE OPEN SPACE

EXISTING PUBLIC OPEN SPACE

NEWLY DEDICATED PUBLIC OPEN SPACE

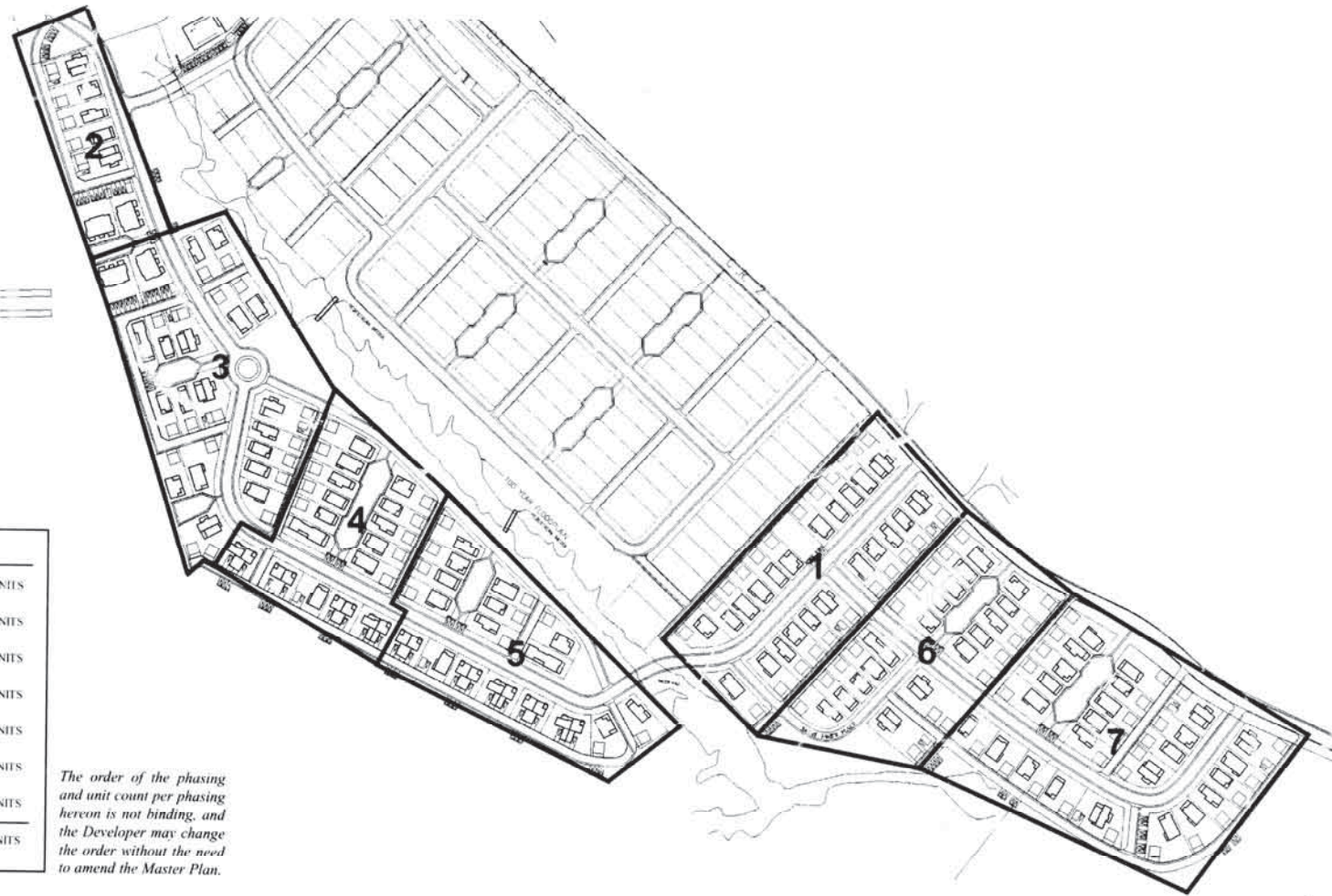
FUTURE DEDICATION  
(AFTER CONCLUSION OF PLATTING PROCESS)

LAND USE PLAN



Wellington Neighborhood Master Plan Phase II  
 5 of 6  
 MASTER PLAN  
 2006

**MASTER PLAN**  
FOR THE  
**WELLINGTON NEIGHBORHOOD PHASE II**  
TOWN OF BRECKENRIDGE, COUNTY OF SUMMIT, STATE OF COLORADO  
**FEBRUARY 28, 2006**



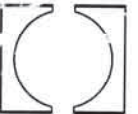
UNITS PER PHASE	
PHASE 1	25 UNITS
PHASE 2	15 UNITS
PHASE 3	30 UNITS
PHASE 4	20 UNITS
PHASE 5	22 UNITS
PHASE 6	19 UNITS
PHASE 7	29 UNITS
TOTAL: 160 UNITS	

*The order of the phasing and unit count per phasing hereon is not binding, and the Developer may change the order without the need to amend the Master Plan.*

SCALE: 1" = 100'-0" 36" x 24" Sheet



WELLINGTON NEIGHBORHOOD  
FILE E II  
BRECKENRIDGE, COLORADO



ISSUE / DATE
1 25 APRIL 2005
2 26 APRIL 2005
3 19 OCTOBER 2005
4 9 DECEMBER 2005
5 17 JANUARY 2006
6 1 FEBRUARY 2006

SHEET  
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Master Plan Phase II



River within the McCain property flows primarily under the cobble rocks. This stretch of river is planned to be restored by the Town over the next several years, with work anticipated to begin this summer.

A portion of the property is leased to Alpine Rock for their concrete plant and for material and aggregate storage. The property is also used by the Town for storage of construction material and a 500 KW solar garden (on approximately 3 acres) that was constructed in 2013. There are also several tenants with leases, primarily for construction and storage yards. There is also a large pit where Alpine Rock mined for aggregate up until 2011. The mining permit is now inactive and there is no further mining activity planned on the property.

In 2013 the Council approved a Master Plan for the McCain property. The Plan established two distinct Tracts. Tract 1 is approximately 90 acres and allows open space as well as Governmental Uses including solar gardens, snow storage, overflow parking, recycling facilities, water treatment facilities, water storage/reservoir, and public works storage. A solar garden has already been constructed within Tract 1 and the Town is currently considering this property for a new water treatment plant. Tract 2 is approximately 38 acres along the western edge of the property along the Blue River, and is planned for open space and trails, as well as the river/habitat restoration. This portion of the site proposed for the recycling center is located in Tract 1 and has been identified as a good location for a recycling center. The Town is currently working with a consultant (Norris Design) to develop a more detailed plan for the entire McCain property.

The Planning Commission held a public hearing on the Summit County Recycling Center at their April 21<sup>st</sup> meeting.

### **Staff/Planning Commission Comments**

**Land Use (Policies 2/A & 2/R):** The proposed recycling center is consistent with the McCain Master Plan Governmental Uses approved in 2013. The Planning Commission had no concerns.

**Site and Environmental Design (7/R):** The recycling facility is located on an existing benched area of the McCain property off of the intersection of Coyne Valley Road and Airport Road. There is a 30 inch concrete wall designed to “sink” the recycling containers down slightly on the north side of the wall. The wall then creates an 18 inch wall on the pedestrian side of the wall (south), making the wall a total of 3 ½ feet (see site section attached for visual perspective). This will reduce views of the containers from the Coyne Valley Road along with proposed landscaping and two foot berm. This stepped design is “user friendly”, allowing the public to access the containers without the need for catwalks or stairs as in the existing County Road 450 site. Due to the industrial use of this site- moving recycling containers in and out of the stepped wall design and potential spills, there would be many difficulties of cleaning and maintain a wall faced with natural materials such as rock or timber as encouraged by this policy. The wall is 90-120 feet away from the property line. Due to the unique use of this site, the Planning Commission finds that this policy is not applicable.

**Access / Circulation (16/A & 16/R; 17/A & 17/R):** The drive isle is one way only. The driveway is off set from Denison Placer Road due to the existing high pressure gas line venting on the property. Since the driveway is one way only, the Engineering Department does not see a conflict with the Denison Placer intersection. The driveway exit at the Airport Road/Coyne Valley intersection will have a stop sign for exiting vehicles.



The site is split into a publicly accessible front of house section and back of house operational section. In the public section (south), the public drives into the site, parks along the north of the drive isle and exits their vehicles, dropping off the recycling in various containers in the cross hatched pedestrian only section marked 'no parking' on the plans. Signage and striping will be installed along the parking isle to distinguish the parking from the pedestrian only area.

**Parking (18/A & 18/R):** There is no specific parking requirement for a recycling center use. Based on the current site use and project usage, the applicant is comfortable with the 14 spaces provided. The Planning Commission has no concerns.

**Landscaping (22/A & 22/R):** Existing trees have been preserved to the east and west of the site. Additional trees have been proposed to provide screening from Coyne Valley Road and the eastern portion of the site which would be visible from Highway 9. Proposed landscaping includes: 15 aspen (1.5-2 inch caliper); 6 narrow leaf cottonwood trees (1.5-2 inch caliper); 33 blue spruce (8-10 feet); and 16 bristlecone pine (6-8 feet). 55 shrubs are also proposed. The addition of top soil will be needed for the site. Irrigation will be provided to new landscaping. The Planning Commission has no concerns.

**Fences, Gates, and Gateway Monuments (47/A):** A fence is allowed per the exemption in Policy 47/A (C) (10) *Fencing at public improvement projects proposed by the Town*. The proposed fence is a 6 foot tall cedar fence with cedar cap (fence in the lower left corner of the fence detail attachment). This fence is intended to provide the operational back of house operations with screening from the McCain property below as well as from the public right of way. In addition, the fence will assist in preventing any loose materials from being blown off the site. Chain link gates with wood slates are proposed at either end of the back of house entry points adjacent to containers to prevent general public access. As this fence and gate will separate the public from the back of house operations for safety, security and to provide a wind buffer, the Planning Commission is supportive of the fence and chain link gates with wood slat inserts. The Planning Commission voiced concern regarding wind blowing debris from the site and some of the Commissioners had a preference for the entire site to be fenced, perhaps with an additional 4 foot fence behind the landscaping along Coyne Valley Road. The applicant has provided additional fence examples in the packet should the Town Council prefer one of the alternative fence designs.

**Storage (14/A & 14/R):** Storage for commercial uses are required to be screened. The proposed fence achieves this and the Planning Commission has no concerns.

**Drainage (27/A & 27/R):** The site naturally drains west to east across the site. A portion of Coyne Valley Road discharges to the project area, flowing west to east along Coyne Valley Road in an informal ditch within the utility easement. The proposed drainage runs on the south side of the public driveway access and along the rear fence to the north. Both drainage ways lead to a water quality pond which then discharge to rip rap spillways on the east side of the site and ultimately flow down the vegetated embankment toward the river. The Engineering Department is in support of the drainage plan.

**Snow Removal and Storage (13/A & 13/R):** The snow storage provided exceeds the code requirement. Snow storage is shown to be located in one large area within the fence in the northern section of the site. Staff has no concerns with this configuration since this area is internal to the back of house operations and machinery will be able to move the snow on site. Snow storage is also along the public drive isle. The Commission has no concerns with the snow storage configuration.

**Utilities (28/A):** All utilities running to the site will be underground. Irrigation will be provided to the site for landscaping. The Town Council voiced concern at a work session that future equipment, technology or lighting could require electricity to the site. Some electric has been proposed to the site to run the irrigation system however the electric service may not have the capacity to light the site should that be added in the future.

**Exterior Lighting (Sec. 9-12):** No lighting is proposed. The Town Council voiced concern at a work session regarding a potential need for lighting for public safety reasons as this facility will be open twenty four hours a day.

**Architectural Compatibility (5/A &5/R):** A shed is depicted on the north portion of the site plan. Staff has not received any details on the shed. Should a shed be proposed in the future, it must meet Policy 5 and a Class D permit will be required.

**Point Analysis (Section: 9-1-17-3):** The Planning Commission finds no reason to assign any negative points to this project and finds that Policy 7/R is not applicable with regard to the wall surface material. The application was found to meet all Absolute policies.

### **Planning Commission Recommendation**

This is a Town Project pursuant to the ordinance amending the Town Projects Process (Council Bill No. 1, Series 2013). As a result, the Planning Commission is asked to identify any concerns with this project, and any code issues and make a recommendation to the Town Council.

The Planning Commission recommends approval of the Summit County Recycling Center Drop Off (PL#2015-0051) located at 284 Coyne Valley Road with a passing point analysis of zero (0) and the attached Findings, with a vote of 7-0.

We welcome questions during the meeting on Tuesday evening.

<b>Town Project Hearing</b>				
Project:	Summit County Recycling Center Drop Off	<b>Positive Points</b>	<b>0</b>	
PC#:	20150051			
Date:	4/15/2015	<b>Negative Points</b>	<b>0</b>	
Staff:	Julia Puester, AICP			
		<b>Total Allocation:</b>	<b>0</b>	
Items left blank are either not applicable or have no comment				
<b>Sect.</b>	<b>Policy</b>	<b>Range</b>	<b>Points</b>	<b>Comments</b>
1/A	<b>Codes, Correlative Documents &amp; Plat Notes</b>	Complies		
2/A	<b>Land Use Guidelines</b>	Complies		
2/R	Land Use Guidelines - Uses	4x(-3/+2)		
2/R	Land Use Guidelines - Relationship To Other Districts	2x(-2/0)		
2/R	Land Use Guidelines - Nuisances	3x(-2/0)		
3/A	<b>Density/Intensity</b>	Complies		
3/R	Density/ Intensity Guidelines	5x (-2>-20)		
4/R	Mass	5x (-2>-20)		
5/A	<b>Architectural Compatibility / Historic Priority Policies</b>	Complies		
5/R	Architectural Compatibility - Aesthetics	3x(-2/+2)		
5/R	Architectural Compatibility / Conservation District	5x(-5/0)		
5/R	Architectural Compatibility H.D. / Above Ground Density 12 UPA	(-3>-18)		
5/R	Architectural Compatibility H.D. / Above Ground Density 10 UPA	(-3>-6)		
6/A	<b>Building Height</b>	Complies		
6/R	Relative Building Height - General Provisions	1X(-2,+2)		
	For all structures except Single Family and Duplex Units outside the Historic District			
6/R	Building Height Inside H.D. - 23 feet	(-1>-3)		
6/R	Building Height Inside H.D. - 25 feet	(-1>-5)		
6/R	Building Height Outside H.D. / Stories	(-5>-20)		
6/R	Density in roof structure	1x(+1/-1)		
6/R	Broken, interesting roof forms that step down at the edges	1x(+1/-1)		
	For all Single Family and Duplex Units outside the Conservation District			
6/R	Density in roof structure	1x(+1/-1)		
6/R	Broken, interesting roof forms that step down at the edges	1x(+1/-1)		
6/R	Minimum pitch of eight in twelve (8:12)	1x(0/+1)		
7/R	Site and Environmental Design - General Provisions	2X(-2/+2)		
7/R	Site and Environmental Design / Site Design and Grading	2X(-2/+2)		
7/R	Site and Environmental Design / Site Buffering	4X(-2/+2)		
7/R	Site and Environmental Design / Retaining Walls	2X(-2/+2)		Not applicable
7/R	Site and Environmental Design / Driveways and Site Circulation Systems	4X(-2/+2)		
7/R	Site and Environmental Design / Site Privacy	2X(-1/+1)		
7/R	Site and Environmental Design / Wetlands	2X(0/+2)		
7/R	Site and Environmental Design / Significant Natural Features	2X(-2/+2)		
8/A	<b>Ridgeline and Hillside Development</b>	Complies		
9/A	<b>Placement of Structures</b>	Complies		
9/R	Placement of Structures - Public Safety	2x(-2/+2)		
9/R	Placement of Structures - Adverse Effects	3x(-2/0)		
9/R	Placement of Structures - Public Snow Storage	4x(-2/0)		
9/R	Placement of Structures - Setbacks	3x(0/-3)		
12/A	Signs	Complies		
13/A	<b>Snow Removal/Storage</b>	Complies		
13/R	Snow Removal/Storage - Snow Storage Area	4x(-2/+2)		
14/A	<b>Storage</b>	Complies		
14/R	Storage	2x(-2/0)		
15/A	<b>Refuse</b>	Complies		
15/R	Refuse - Dumpster enclosure incorporated in principal structure	1x(+1)		
15/R	Refuse - Rehabilitated historic shed as trash enclosure	1x(+2)		
15/R	Refuse - Dumpster sharing with neighboring property (on site)	1x(+2)		
16/A	Internal Circulation	Complies		
16/R	Internal Circulation / Accessibility	3x(-2/+2)		
16/R	Internal Circulation - Drive Through Operations	3x(-2/0)		
17/A	<b>External Circulation</b>	Complies		

18/A	<b>Parking</b>	Complies		
18/R	Parking - General Requirements	1x(-2/+2)		
18/R	Parking-Public View/Usage	2x(-2/+2)		
18/R	Parking - Joint Parking Facilities	1x(+1)		
18/R	Parking - Common Driveways	1x(+1)		
18/R	Parking - Downtown Service Area	2x(-2/+2)		
19/A	<b>Loading</b>	Complies		
20/R	Recreation Facilities	3x(-2/+2)		
21/R	Open Space - Private Open Space	3x(-2/+2)		
21/R	Open Space - Public Open Space	3x(0/+2)		
22/A	<b>Landscaping</b>	Complies		
22/R	Landscaping	2x(-1/+3)		
24/A	<b>Social Community</b>	Complies		
24/R	Social Community - Employee Housing	1x(-10/+10)		
24/R	Social Community - Community Need	3x(0/+2)		
24/R	Social Community - Social Services	4x(-2/+2)		
24/R	Social Community - Meeting and Conference Rooms	3x(0/+2)		
24/R	Social Community - Historic Preservation	3x(0/+5)		
24/R	Social Community - Historic Preservation/Restoration - Benefit	+3/6/9/12/15		
25/R	Transit	4x(-2/+2)		
26/A	<b>Infrastructure</b>	Complies		
26/R	Infrastructure - Capital Improvements	4x(-2/+2)		
27/A	<b>Drainage</b>	Complies		
27/R	Drainage - Municipal Drainage System	3x(0/+2)		
28/A	<b>Utilities - Power lines</b>	Complies		
29/A	<b>Construction Activities</b>	Complies		
30/A	<b>Air Quality</b>	Complies		
30/R	Air Quality - wood-burning appliance in restaurant/bar	-2		
30/R	Beyond the provisions of Policy 30/A	2x(0/+2)		
31/A	<b>Water Quality</b>	Complies		
31/R	Water Quality - Water Criteria	3x(0/+2)		
32/A	<b>Water Conservation</b>	Complies		
33/R	Energy Conservation - Renewable Energy Sources	3x(0/+2)		
33/R	Energy Conservation - Energy Conservation	3x(-2/+2)		
	HERS index for Residential Buildings			
33/R	Obtaining a HERS index	+1		
33/R	HERS rating = 61-80	+2		
33/R	HERS rating = 41-60	+3		
33/R	HERS rating = 19-40	+4		
33/R	HERS rating = 1-20	+5		
33/R	HERS rating = 0	+6		
	Commercial Buildings - % energy saved beyond the IECC minimum standards			
33/R	Savings of 10%-19%	+1		
33/R	Savings of 20%-29%	+3		
33/R	Savings of 30%-39%	+4		
33/R	Savings of 40%-49%	+5		
33/R	Savings of 50%-59%	+6		
33/R	Savings of 60%-69%	+7		
33/R	Savings of 70%-79%	+8		
33/R	Savings of 80% +	+9		
33/R	Heated driveway, sidewalk, plaza, etc.	1X(-3/0)		
33/R	Outdoor commercial or common space residential gas fireplace (per fireplace)	1X(-1/0)		
33/R	Large Outdoor Water Feature	1X(-1/0)		
	Other Design Feature	1X(-2/+2)		
34/A	<b>Hazardous Conditions</b>	Complies		
34/R	Hazardous Conditions - Floodway Improvements	3x(0/+2)		
35/A	<b>Subdivision</b>	Complies		
36/A	<b>Temporary Structures</b>	Complies		
37/A	<b>Special Areas</b>	Complies		
37/R	Community Entrance	4x(-2/0)		
37/R	Individual Sites	3x(-2/+2)		
37/R	Blue River	2x(0/+2)		
37R	Cucumber Gulch/Setbacks	2x(0/+2)		
37R	Cucumber Gulch/Impervious Surfaces	1x(0/-2)		
38/A	<b>Home Occupation</b>	Complies		
39/A	<b>Master Plan</b>	Complies		
40/A	<b>Chalet House</b>	Complies		

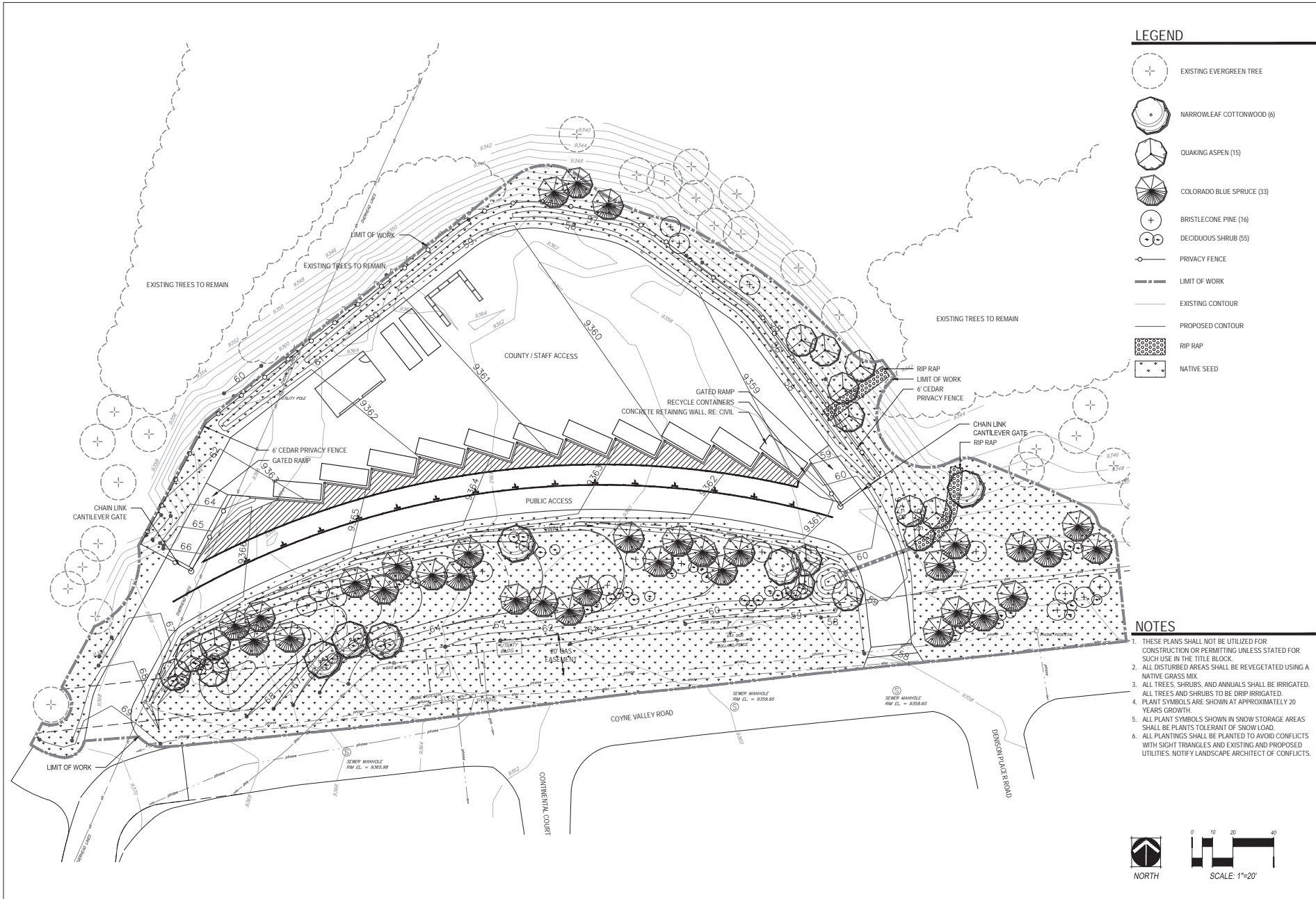
41/A	<b>Satellite Earth Station Antennas</b>	Complies		
42/A	<b>Exterior Loudspeakers</b>	Complies		
43/A	<b>Public Art</b>	Complies		
43/R	Public Art	1x(0/+1)		
44/A	<b>Radio Broadcasts</b>	Complies		
45/A	<b>Special Commercial Events</b>	Complies		
46/A	<b>Exterior Lighting</b>	Complies		
47/A	<b>Fences, Gates And Gateway Entrance Monuments</b>	Complies		
48/A	<b>Voluntary Defensible Space</b>	Complies		
49/A	<b>Vendor Carts</b>	Complies		

## TOWN OF BRECKENRIDGE

**Summit County Recycling Center Drop Off  
Unsubdivided  
284 Coyne Valley Road  
PERMIT #2015-0051**

### FINDINGS

1. This project is “Town Project” as defined in Section 9-4-1 of the Breckenridge Town Code because it involves the planning and design of a public project.
2. The process for the review and approval of a Town Project as described in Section 9-14-4 of the Breckenridge Town Code was followed in connection with the approval of this Town Project.
3. The Planning Commission reviewed and considered this Town Project on **April 21, 2015**, scheduled and held a public hearing on April 21, 2015, notice of which was published on the Town’s website for at least five (5) days prior to the hearing as required by Section 9-14-4(2) of the Breckenridge Town Code. At the conclusion of its public hearing, the Planning Commission recommended approval of this Town Project to the Town Council.
4. The Town Council’s final decision with respect to this Town Project was made at the regular meeting of the Town Council that was held on April 28, 2015. This Town Project was listed on the Town Council’s agenda for the April 28, 2015 agenda that was posted in advance of the meeting on the Town’s website. Before making its final decision with respect to this Town Project, the Town Council accepted and considered any public comment that was offered.
5. Before approving this Town Project the Town Council received from the Director of the Department of Community Development, and gave due consideration to, a point analysis for the Town Project in the same manner as a point analysis is prepared for a final hearing on a Class A development permit application under the Town’s Development Code (Chapter 1 of Title 9 of the Breckenridge Town Code).
6. The Town Council finds and determines that the Town Project is necessary or advisable for the public good, and that the Town Project shall be undertaken by the Town.



**LEGEND**

- EXISTING EVERGREEN TREE
- NARROWLEAF COTTONWOOD (6)
- QUAKING ASPEN (15)
- COLORADO BLUE SPRUCE (33)
- BRISTLECONE PINE (16)
- DECIDUOUS SHRUB (55)
- PRIVACY FENCE
- LIMIT OF WORK
- EXISTING CONTOUR
- PROPOSED CONTOUR
- RIP RAP
- NATIVE SEED

**NOTES**

1. THESE PLANS SHALL NOT BE UTILIZED FOR CONSTRUCTION OR PERMITTING UNLESS STATED FOR SUCH USE IN THE TITLE BLOCK.
2. ALL DISTURBED AREAS SHALL BE REVEGETATED USING A NATIVE GRASS MIX.
3. ALL TREES, SHRUBS, AND ANNUALS SHALL BE IRRIGATED. ALL TREES AND SHRUBS TO BE DRIP IRRIGATED.
4. PLANT SYMBOLS ARE SHOWN AT APPROXIMATELY 20 YEARS GROWTH.
5. ALL PLANT SYMBOLS SHOWN IN SNOW STORAGE AREAS SHALL BE PLANTS TOLERANT OF SNOW LOAD.
6. ALL PLANTINGS SHALL BE PLANTED TO AVOID CONFLICTS WITH SIGHT TRIANGLES AND EXISTING AND PROPOSED UTILITIES. NOTIFY LANDSCAPE ARCHITECT OF CONFLICTS.



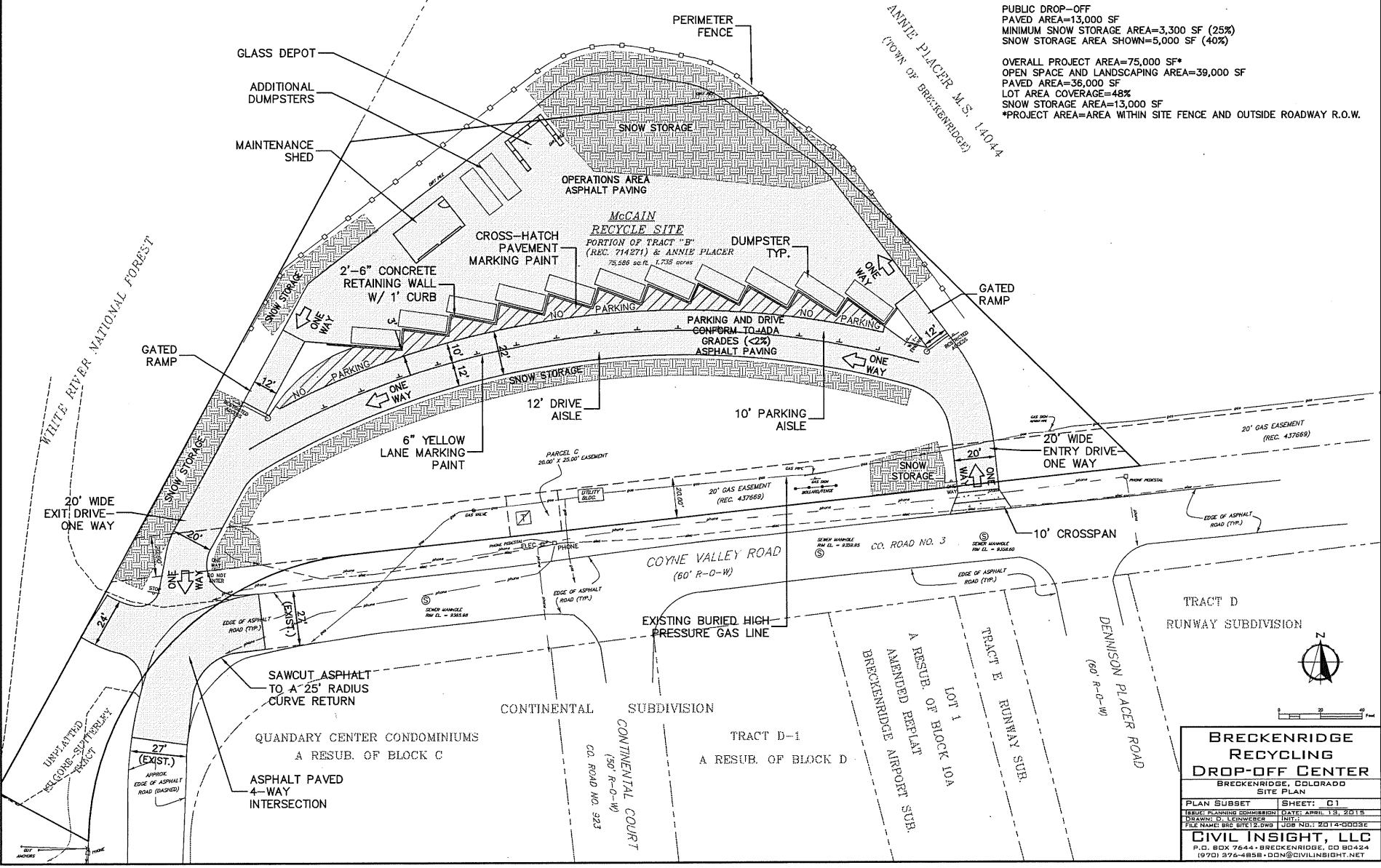


ANNIE PLACER M.S. 14044  
(TOWN OF BRECKENRIDGE)

OPERATIONS AREA  
PAVED AREA=23,000 SF  
MINIMUM SNOW STORAGE AREA=6,000 SF (25%)  
SNOW STORAGE AREA SHOWN=8,000 SF (35%)

PUBLIC DROP-OFF  
PAVED AREA=13,000 SF  
MINIMUM SNOW STORAGE AREA=3,300 SF (25%)  
SNOW STORAGE AREA SHOWN=5,000 SF (40%)

OVERALL PROJECT AREA=75,000 SF\*  
OPEN SPACE AND LANDSCAPING AREA=39,000 SF  
PAVED AREA=36,000 SF  
LOT AREA COVERAGE=48%  
SNOW STORAGE AREA=13,000 SF  
\*PROJECT AREA=AREA WITHIN SITE FENCE AND OUTSIDE ROADWAY R.O.W.



**BRECKENRIDGE  
RECYCLING  
DROP-OFF CENTER**  
BRECKENRIDGE, COLORADO  
SITE PLAN

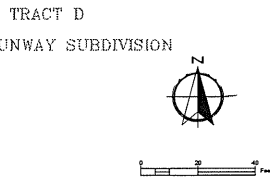
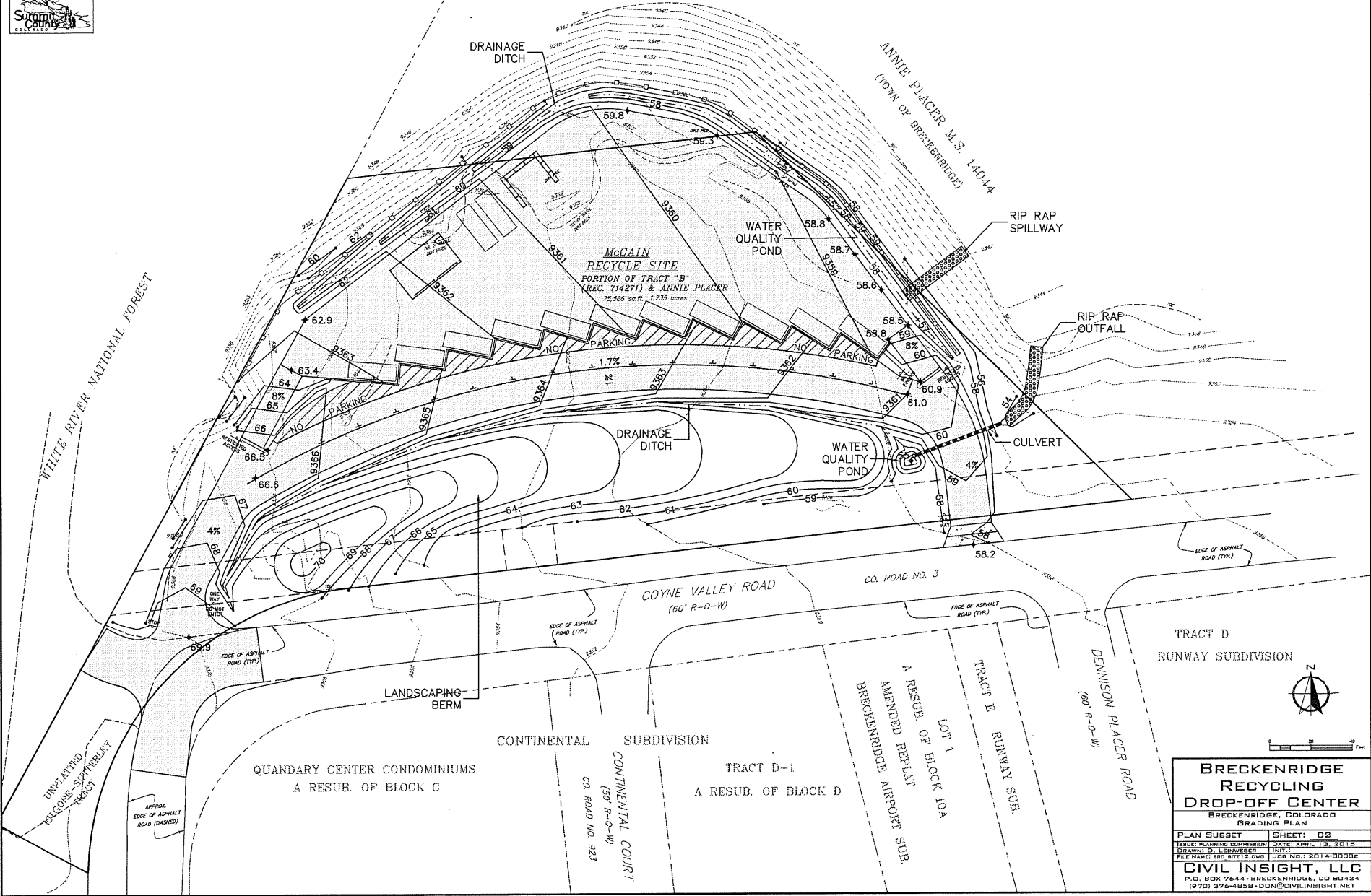
PLAN SUBSET	SHEET: C1
ISSUE: PLANNING COMMISSION	DATE: APRIL 13, 2015
DRAWING: D. LEIDIGER	DATE:
FILE NAME: BRG_SPL_DROP	JOB NO.: 2012-0008
<b>CIVIL INSIGHT, LLC</b>	
P.O. BOX 7644 • BRECKENRIDGE, CO 80424	
(970) 376-4858 • DON@CIVILINSIGHT.NET	

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ANNIE PLACER M.S. 14044  
(TOWN OF BRECKENRIDGE)



<b>BRECKENRIDGE RECYCLING DROP-OFF CENTER</b>	
BRECKENRIDGE, COLORADO GRADING PLAN	
PLAN SUBSET	SHEET: C2
ISSUE: PLANNING COMMISSION	DATE: APRIL 13, 2015
DRAWN: D. LEWIS	INT:
FILE NAME: BRC SITE2.DWG	JOB NO.: 2014-0003E
<b>CIVIL INSIGHT, LLC</b>	
P.O. BOX 7644 • BRECKENRIDGE, CO 80424 (970) 376-4858 • DDM@CIVILINSIGHT.NET	

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ANNIE PLACER M.S. 14044  
(TOWN OF BRECKENRIDGE)

ANNIE PLACER M.S. 14044  
(TOWN OF BRECKENRIDGE)

WHITE RIVER NATIONAL FOREST

**McCain RECYCLE SITE**  
PORTION OF TRACT "B"  
(REC. 714271) & ANNIE PLACER  
75,585 sq. ft., 1.735 acres

CROSS-HATCH PAVEMENT MARKING PAINT FOR PEDESTRIAN CIRCULATION

PARKING

10' PARALLEL PARKING AISLE

12' DRIVE AISLE

PEDESTRIAN TRAVEL ROUTE TYP.

6" YELLOW LANE MARKING PAINT

PARCEL C  
20.00' x 20.00' EASEMENT

20' GAS EASEMENT  
(REC. 437669)

20' GAS EASEMENT  
(REC. 437669)

COYNE VALLEY ROAD  
(60' R-O-W)

COYNE ROAD - 1/2" S

VEHICULAR TRAVEL ROUTE

TRACT D  
RUNWAY SUBDIVISION



**BRECKENRIDGE RECYCLING DROP-OFF CENTER**  
BRECKENRIDGE, COLORADO  
CIRCULATION PLAN

PLAN SUBSET	SHEET: 03
ISSUE PLANNING COMMISSION	DATE: APRIL 18, 2012
DRAWN: D. LEWIS	INCHES:
FILE NAME: BRC SITE12.DWG	JOB NO.: 2012-0003C
<b>CIVIL INSIGHT, LLC</b>	
P.O. BOX 7644 • BRECKENRIDGE, CO 80424	
(970) 876-4858 • CDM@CIVILINSIGHT.NET	

QUANDARY CENTER CONDOMINIUMS  
A RESUB. OF BLOCK C

CONTINENTAL SUBDIVISION

CONTINENTAL COURT  
(50' R-O-W)  
CO. ROAD NO. 923

TRACT D-1  
A RESUB. OF BLOCK D

A RESUB. OF BLOCK 10A  
BRECKENRIDGE AIRPORT SUB.  
ALLENED BEFLAT

LOT 1

TRACT E RUNWAY SUB.

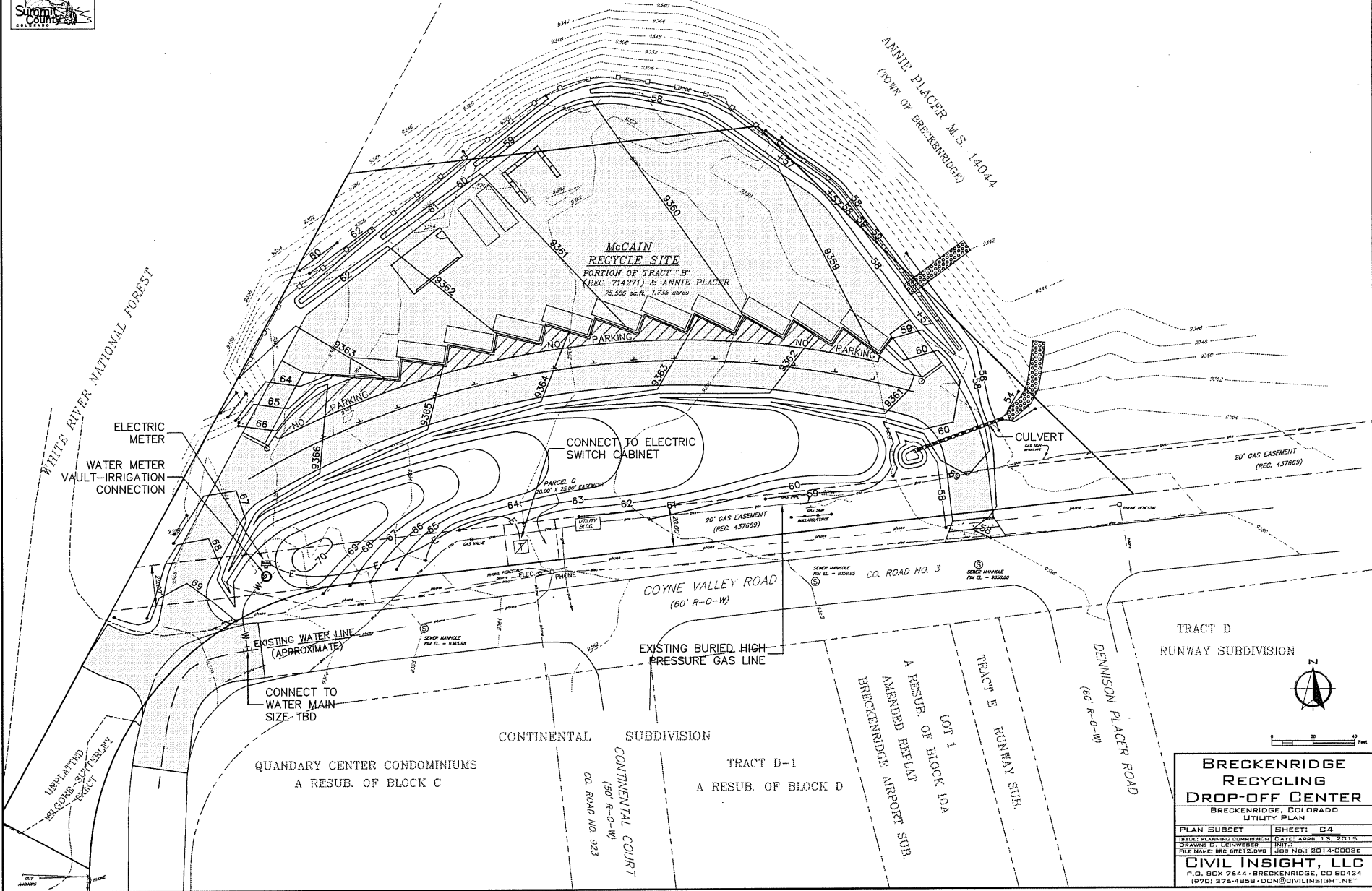
DENNINGSON PLACER ROAD  
(60' R-O-W)

UNIM. 1417HD  
RECLONG SUBDIVISION

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ANNIE PLACER M.S. 14044  
(TOWN OF BRECKENRIDGE)



**BRECKENRIDGE RECYCLING DROP-OFF CENTER**  
BRECKENRIDGE, COLORADO  
UTILITY PLAN

PLAN SUBSET	SHEET: C4
TARGET PLANNING COMMISSION	DATE: APRIL 19, 2013
DRAWN BY: L. CONVERSE	DATE:
FILE NAME: BRG 0712.DWG	JOB NO.: 2014-0003E

**CIVIL INSIGHT, LLC**  
P.O. BOX 7644 • BRECKENRIDGE, CO 80424  
(970) 376-4858 • CON@CIVILINSIGHT.NET

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ANNIE PLACER M.S. 14044  
(TOWN OF BRECKENRIDGE)

275 LF (3,000 CF)  
BIOSWALE  
DRAINAGE DITCH

INSTALL SOIL  
RETENTION BLANKET  
IN SWALE

12" HIGH  
PERMANENT STONE  
CHECK DAM TYP.

SILT FENCE TYP.

ANNIE PLACER M.S. 14044  
(TOWN OF BRECKENRIDGE)

INSTALL SOIL  
RETENTION BLANKET  
IN SWALE

1,200 CF WATER  
QUALITY POND

RIP RAP  
SPILLWAY

McCain  
RECYCLE SITE  
PORTION OF TRACT "B"  
(REC. 714271) & ANNIE PLACER  
75,586 sq. ft. 1.735 acres

RIP RAP  
OUTFALL

SILT FENCE TYP.

WHITE RIVER NATIONAL FOREST

DRAINAGE

DRAINAGE

DRAINAGE

DRAINAGE

CULVERT  
WITH PERFORATED  
VERTICAL RISER  
PIPE SPILLWAY

385 LF (3,000 CF)  
BIOSWALE  
DRAINAGE DITCH

500 CF WATER  
QUALITY POND

CONSTRUCTION  
ACCESS WITH  
VEHICLE  
TRACKING PAD

12" HIGH  
PERMANENT STONE  
CHECK DAM TYP.  
COYNE VALLEY ROAD  
(60' R-O-W)

CO. ROAD NO. 3

TRACT D  
RUNWAY SUBDIVISION



UNPLANNED  
SUBDIVISION

QUANDARY CENTER CONDOMINIUMS  
A RESUB. OF BLOCK C

CONTINENTAL SUBDIVISION

CONTINENTAL COURT  
(50' R-O-W)  
CO. ROAD NO. 323

TRACT D-1  
A RESUB. OF BLOCK D

TRACT E  
RUNWAY SUB.  
A RESUB. OF BLOCK 10A  
BRECKENRIDGE AIRPORT SUB.

DENNISON PLACER ROAD  
(60' R-O-W)

**BRECKENRIDGE  
RECYCLING  
DROP-OFF CENTER**  
BRECKENRIDGE, COLORADO  
DRAINAGE AND EROSION CONTROL PLAN

PLAN SUBSET	SHEET: 05
ISSUED FOR PLANNING COMMISSION	DATE: APRIL 13, 2015
DRAWN BY: LEHNER	INCH
FILE NAME: BRD SITE15.dwg	JOB NO.: 2014-0005C

**CIVIL INSIGHT, LLC**  
P.O. BOX 7644 • BRECKENRIDGE, CO 80424  
(970) 375-4858 • DON@CIVILINSIGHT.NET

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horizontal with gaps



horizontal with different size slats



vertical with highlighted posts and caps

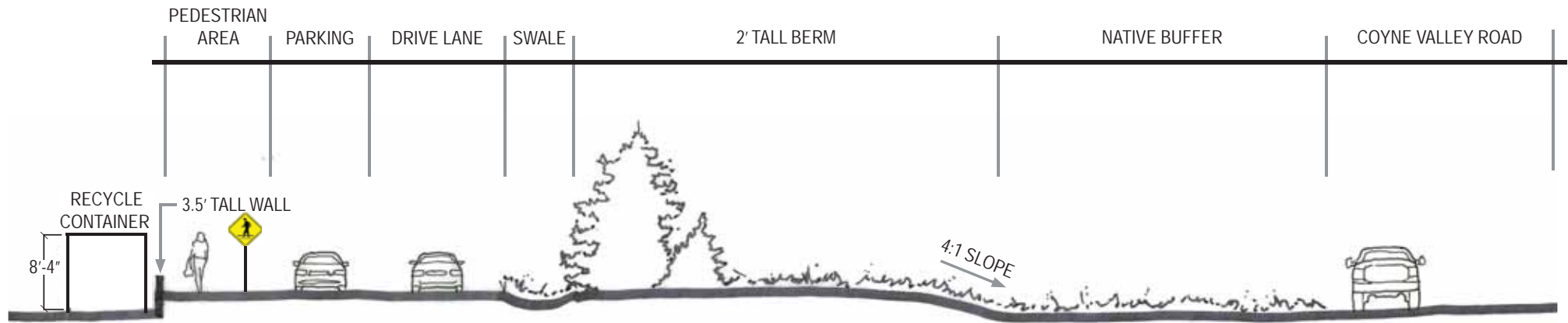


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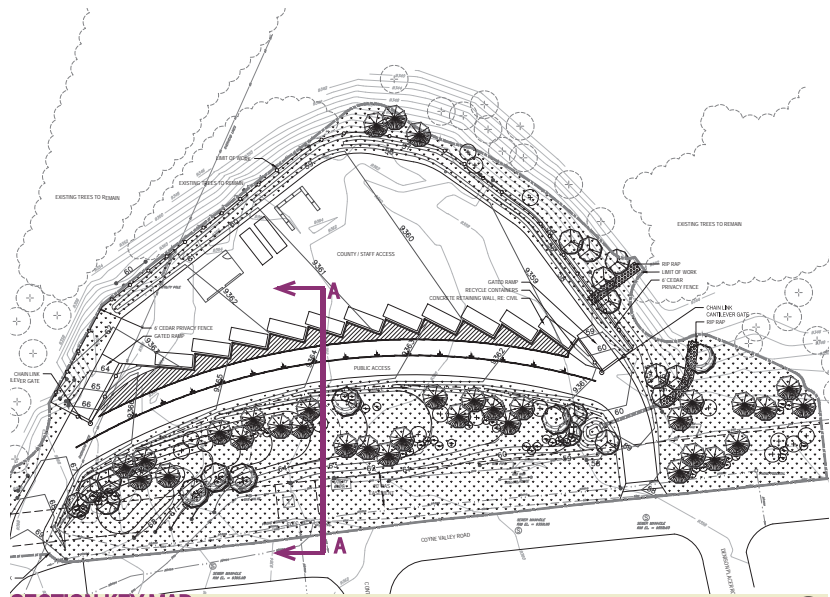
**SUMMIT COUNTY RECYCLE CENTER**

FENCE CHARACTER IMAGES  
APRIL 21, 2015





**SECTION AA**  
SCALE: 1"=10'



**SECTION KEY MAP**  
SCALE: NTS



**GABLE TOP RECYCLE CONTAINER EXISTING IMAGE**  
SCALE: NTS

**SUMMIT COUNTY RECYCLE CENTER**

CROSS-SECTION  
APRIL 21, 2015







SUMMIT COUNTY RECYCLE CENTER  
CAMERA LOCATIONS  
APRIL 21, 2015





SUMMIT COUNTY RECYCLE CENTER  
CAMERA 1  
APRIL 21, 2015





SUMMIT COUNTY RECYCLE CENTER  
CAMERA 1  
APRIL 21, 2015



SUMMIT COUNTY RECYCLE CENTER  
CAMERA 2  
APRIL 21, 2015





SUMMIT COUNTY RECYCLE CENTER  
CAMERA 2  
APRIL 21, 2015

**MEMORANDUM**

**To:** Town Council

**From:** Julia Puester, Senior Planner

**Date:** April 22, 2015

**Re:** Planning Commission Decisions of the April 21, 2015, Meeting.

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***DECISIONS FROM THE PLANNING COMMISSION AGENDA OF APRIL 21, 2015:***

**CLASS C APPLICATIONS:**

- 1) Hawks Hideaway, PL-2015-0057, 86 New England Drive  
Construct a new, single family residence with 5 bedrooms, 6.5 bedrooms, 4,756 sq. ft. of density and 5,471 sq. ft. of mass for a F.A.R. of 1:3.31. *Approved.*
- 2) Liberato Residence Addition, PL-2015-0065, 220 Royal Tiger Road  
Addition to existing single family residence to create a total of 4 bedrooms, 3.5 bathrooms, 2,261 sq. ft. of density and 2,895 sq. ft. of mass for a F.A.R. of 1:12.68. *Approved.*

**CONTINUED APPLICATIONS:**

- 1) Shock Hill Overlook Master Plan Modification, PL-2014-0174, 260 Shock Hill Drive (Class A)  
Amend the 2007 Shock Hill Master Plan and, in accordance with Policy 39 of the Development Code, master plan Tract E for the development of up to 20 units in the form of duplexes and/or cluster single-family homes. The modification proposes to utilize no more than 31.25 residential SFEs at 1,600 square feet per SFE of the existing 60.7 SFEs. As a result 29.45 SFEs of residential development rights will be sunsetted. Additionally, none of the 5.3 SFEs of commercial density will be used and will also be sunsetted. *Approved.*
- 2) Shock Hill Overlook Subdivision, PL-2014-0175, 260 Shock Hill Drive (Class B)  
Subdivide Tract E of Shock Hill into Tract E-1 (4.361 acres) as the development area and Tract E-2 (2.308 acres) which shall be dedicated as public open space. Future re-subdivisions of footprint lots of each development site will be processed as separate Class C Subdivision permits. *Approved.*

**CLASS B APPLICATIONS:** None.

**CLASS A APPLICATIONS:** None.

**TOWN PROJECT HEARINGS:**

- 1) Summit County Recycling Center Drop Off, PL-2015-0052, 284 Coyne Valley Road  
Construct a new recycling center drop off facility to replace the existing facility on County Road 450. *Recommendation that the Town Council approve.*

**OTHER:** None.

Summit County  
Recycling Center Drop  
Off  
284 Coyne Valley Road

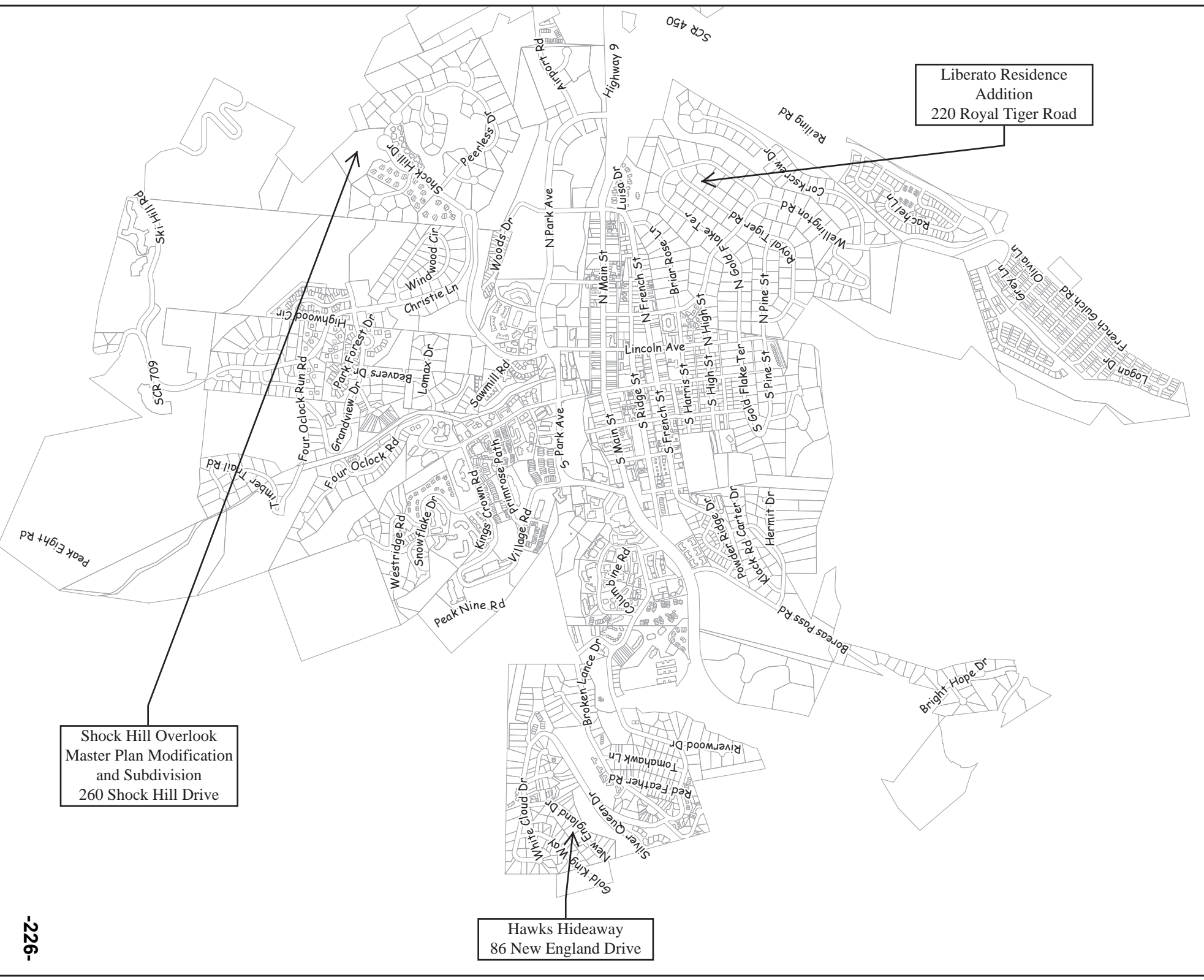


Town of Breckenridge and Summit County governments  
assume no responsibility for the accuracy of the data, and  
use of the product for any purpose is at user's sole risk.

### Breckenridge North

# Breckenridge South

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



Shock Hill Overlook  
Master Plan Modification  
and Subdivision  
260 Shock Hill Drive

Hawks Hideaway  
86 New England Drive

Liberato Residence  
Addition  
220 Royal Tiger Road



## PLANNING COMMISSION MEETING

The meeting was called to order at 7:00 pm

### ROLL CALL

Kate Christopher            Gretchen Dudney            Jim Lamb  
Ron Schuman                Eric Mamula                Dan Schroder

Dave Pringle arrived at 7:03pm.

Wendy Wolfe, Town Council Liaison

Also in attendance was Ben Brewer, Town Councilman

### APPROVAL OF MINUTES

With no changes, the April 7, 2015, Planning Commission Minutes were approved as presented.

### APPROVAL OF AGENDA

With no changes, the April 21, 2015, Planning Commission Agenda was approved as presented.

### CONSENT CALENDAR:

- 1) Hawks Hideaway (SG) PL-2015-0057, 86 New England Drive
- 2) Liberato Residence Addition (MGT) PL-2015-0065, 220 Royal Tiger Road

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

### TOWN COUNCIL REPORT:

Ms. Wolfe and Mr. Brewer:

- Ms. Wolfe is the new Town representative for Planning Commission, but since she missed the last Town Council meeting Mr. Brewer updated Planning Commission and thanked the Planning Commission for the collaborative work over the past year.
- Discussed off street parking ordinance. Council had some questions, but didn't weigh in very heavily one way or another. Questioned why circular driveways are frowned upon and staff did a good job explaining why and Council was not concerned. Passed at first reading.
- Appointed the three returning candidates to BOSAC out of five great candidates.
- John Warner appointed Town Council members to their new committees. Mr. Brewer is off to sustainability, childcare and grants and Ms. Wolfe is on Planning Commission.
- In regard to the Wellington Neighborhood, there were only 4 members of Council who could vote and they voted unanimously to call up the Wellington Neighborhood master plan. Elizabeth Lawrence and Ben Brewer couldn't vote because they were on the list to buy a house in Lincoln Park, but now Elizabeth is buying a house in the existing neighborhood so there may be more voting Town Council members who can weigh in on the discussion.
- This will be the first call up that Mr. Brewer has experienced as a Council Member. The Planning Commission decision is completely vacated and Council hears the issues again to decide. The bulk of the Planning Commission's work will probably stay in place. Effectively the Town Council will become the Planning Commission in theory on this project now, hearing it all over again. The only thing that is really being considered for change is the phasing for the master plan. You made two decisions: the master plan and the points. The Call Up is next Tuesday at Town Council; it is a public hearing meeting so anyone can attend including Planning Commissioners.

### COMBINED HEARINGS:

- 1) Shock Hill Overlook Master Plan Modification (MM) PL-2014-0174, 260 Shock Hill Drive

This project was presented at the April 7 meeting, and public comment was taken at that time. For this meeting, we will just hear final comments from the Commission, and then proceed to a vote on the project.

*Commissioner Questions / Comments:*

- Mr. Schroder: Since I was absent last meeting it I would like it to be noted that I read the meeting minutes and listened to the last meeting on tape as well as the executive session and read the staff reports.
- Mr. Mamula: I did the same and also spoke to Julia Puester and asked her some questions.
- Ms. Dudney: Question for the staff: was there a resolution to the issue of contemporary architecture? It seemed that the applicant said that it may be contemporary but this seemed like something that the neighborhood did not want. (Ms. Puester: I haven't had any other discussions with the applicant since the last meeting. We will be reviewing development permit application per the Development code policies for Architectural compatibility 5/A and 5/R.) There was also a concern about restricting the numbers of future building of duplex homes/ cluster single family. (Ms. Puester: No further discussions have occurred, but the master plan does allow for both duplex homes and single family as presented without specification of numbers of which type.)
- Ms. Christopher: During the last meeting, we said we would like to see 3 of those homes remain single family but Mr. Moser said you can't do that. (Ms. Puester: The Master Plan as presented would allow the applicant to change the type of housing between duplex and cluster single family homes which would likely happen based on market conditions. The intent of the master plan is not to be a site specific plan. That said, a master plan modification could specify the number of a type of structure such as single family or duplex if the applicant agreed however, again, you would not be locating specifically on the site.) (Mr. Berry: You can't ask the applicants a question at this point in the hearing). I don't think that the exact location was important but I would like to see a number of single family residences and duplex units.
- Ms. Dudney: The Master Plan allows for modifications for the future as long as it complies with density.

*Commissioner Final Comments:*

- Mr. Pringle: I understand the concerns of the neighbors and Shock Hill residences and I personally may share some of them, but I'm looking at plans tonight that comply with all of the Town requirements.
- Ms. Dudney: I agree with Mr. Pringle. The issue of viability came up and that is not relevant to the Commission decision. The issue with density which we received a legal opinion on it is allowable to use the density even though the uses have changed. Given that, I have to approve the plan. It is too bad that we can't stipulate the three single family homes as shown at this point, but that is the way a Master Plan operates. If they decide to come back and modify it this issue, it can be discussed again. The final issue is the guidelines of the HOA of which we have no control or role in relationship to promises to the HOA. I will vote to approve the Master Plan.
- Mr. Pringle: I didn't get the decision in the packet.
- Mr. Mamula: It came as a separate e-mail (read it now).
- Mr. Lamb: I agree that the economic viability and the HOA Design Standards is something we can't address. This meets code.
- Ms. Christopher: I really like how the development is set up to be heavy on one side and preserves the Cucumber Gulch. I encourage the applicant to build the three single families.
- Mr. Schroder: It meets the code and I support what has been presented by staff.
- Mr. Schuman: I want to thank everyone for their time and effort in being present at these meetings. I do approve this.
- Mr. Mamula: I want to thank Ms. Christopher for doing a good job in my absence last meeting. The applicant is allowed two units per acre, even with the 60 SFE's currently allowed on this property, this is under the 2 UPA for the entire subdivision. The plat going back to 1998 has this site shown as a multi-family and a lodge with 60 SFEs plus. The Master Plan and the



land use guidelines are satisfied. As for density, the 60.7 SFEs has been slated since the original Master Plan. I applaud that there is reduced density and commercial SFEs on this property. This plan has 50,000 sq. ft as compared to 96,000 sq. ft. currently approved as a lodge. This is similar UPA's to Shock Hill Condos and Landing next door and from the Gulch there is a height reduction of 55 feet to 35 feet. It's rare we get to see a reduction in density and this meets a goal of the JUMP (Joint Upper Blue Master Plan). I have a concern about the ridgeline. Sites 3, 4, 5 should come back as Class C's and I ask the Planning Staff to keep this in mind as permit come in. I think it is important that we get a close look at those potential locations. Water monitoring needs to be noted and called out as it is important, it's already a condition here. I understand that a lot of people want a lodge but that is not within our scope. I see no way that the Planning Commission can deny this plan.

Mr. Pringle: I have one question, in the original drawing of Shock Hill subdivision was there ever a change to Tract E and the ridgeline and the subsequent PMA with a greater set back?

Mr. Mamula: No I don't think so because with the subdivision of E1 and E2 this is a greater setback than before. The Cucumber Overlay District was done after it was already platted.

Mr. Pringle made a motion to approve the Shock Hill Overlook Master Plan Modification, (an amendment of Tract E of the 2007 Second Amended Shock Hill Master Plan for the Shock Hill Subdivision Property), PL-2014-0174, 260 Shock Hill Drive, with the point analysis and Findings and Conditions Mr. Berry sent under separate cover. Mr. Lamb seconded, and the motion was carried unanimously (7-0).

## 2) Shock Hill Overlook Subdivision (MM) PL-2014-0175, 260 Shock Hill Drive

This project was presented at the April 7 meeting, and public comment was taken at that time. For this meeting, we will just hear final comments from the Commission, and then proceed to a vote on the project.

### *Commissioner Final Comments:*

Mr. Pringle: My only question is that the PMA regulations are being addressed with this subdivision. (Ms. Puester: It complies and would comply with development per code.)

Ms. Dudney: No comment.

Mr. Lamb: No comment.

Ms. Christopher: No comment.

Ms. Schroder: No comment.

Mr. Schuman: No comment.

Mr. Mamula: No comment.

Mr. Pringle made a motion to approve the Shock Hill Overlook Subdivision, P6-2014-175, 260 Shock Hill Drive, with the presented point analysis and findings and conditions. Mr. Lamb seconded, and the motion was carried unanimously (7-0).

Ms. Dudney: Is the opinion of the findings and conditions public, the email that we received?

Mr. Mamula: Yes, it is public record. (Mr. Berry handed out the finding and conditions to interested parties).

### **TOWN PROJECT HEARINGS:**

#### 1) Summit County Recycling Center Drop Off (JP) PL-2015-0052, 284 Coyne Valley Road

Ms. Puester presented a proposal to construct a new, twenty four hour recycling center drop off facility to replace the existing facility on County Road 450. This is a Town Project pursuant to the ordinance amending the Town Projects Process (Council Bill No. 1, Series 2013). As a result, the Planning Commission is asked to identify any concerns with this project, and any code issues and make a recommendation to the Town Council.

Staff suggested that the Planning Commission recommend approval of the Summit County Recycling Center Drop Off (PL-2015-0051) located at 284 Coyne Valley Road with a passing point analysis of zero (0) points and the presented Findings. Staff welcomed questions from the Commission.

Mr. Mamula opened the hearing to public comment. He acknowledged a letter received from May Siekman Whatley and asked her if she would like to come to the podium to add to the letter. Declining, there was no public comment and the hearing was closed.

*Commissioner Questions / Comments:*

Ms. Dudney: Is the picture that shows simulated landscaping is that the truly the plan? (The Applicant explained the process of simulating. 6-12' tall trees are shown which is what they are proposing to plant upfront.) Is this possible to receive positive points if they bump up the number of deciduous trees? (Ms. Puester: Yes, if the size of the deciduous trees get larger. Have not addressed this with the applicant).

Ms. Christopher: Is the pedestrian walkway the same grade as the parking? (Ms. Puester: Yes.)

Mr. Schuman: Are you looking for any electricity? (Ms. Puester: Will let the applicant address that.)

Mr. Mamula: Can you explain the 30" wall in the front? (Ms. Puester: It is 30" high drop at the container side and it is a 3'5" tall wall total.)

Ms. Christopher: Will people be stepping up on the wall lip to drop off recyclables?

*Applicant Presentation:*

Mr. Don Leinweber, Engineer for the Applicant: The 30" drop on the back is with a 1'5" curb on pedestrian side. The 30" is so that it doesn't meet a building code condition for a handrail. We have open at grade access from the parking spaces; there would be no restriction on the site if someone is walking around it carrying recyclables. No trip hazard.

Mr. Leinweber: This is a scaled back version from the earlier plan and serves the recycling function. At the current location there is a lot of conflict for emptying the dumpsters so that was as a priority for designing this site. We over did the snow storage on purpose to show us internally how Aaron's staff can manage it. The fence is very important for Mr. Burn and his staff. Drainage and Water Quality, we worked on a specific site here where it is more industrial.

*Commissioner Questions / Comments:*

Mr. Pringle: Are you intending to have recycling for oil and how are we going to address spillage since this is adjacent to Blue River? (Mr. Burn: We are considering stopping the oil recycling here. Oil is not something we want to do here moving forward; we do have containment issues. We are seeing large quantities of oil; our intentions are to propose the existing recycling here without the oil.) The fence in front; since the wind comes from the north and northwest, I think it will be beneficial to have a 4 foot fence behind the landscaping also on the south side for trapping the trash. I use the recycling centers and I really like the one in Frisco. I don't know who made the decision to not have lighting. I think it is important to have some even though it should be low.

Ms. Dudney: I think Mr. Pringle makes excellent points.

Mr. Schuman: I do agree with the electricity and lighting. The corner at Airport; are you going to rebuild the entire corner to make it a four way stop? (Mr. Leinweber: Yes, the plan is to make it four way stop and I'd like to see it squared up, the cut is too big right now and tightening it up will make movements safer. On the utility question, we will need to run power for the irrigation system, so there will be a small amount of electricity for now. We did talk about low level pedestrian scale lighting but not proposed here. We may have compacting cardboard dumpsters down the road.)

Mr. Mamula: Please explain the wall. (Mr. Leinweber: At the County Road 450 site, there is a platform between the dumpsters. With the wall proposed, you can effectively walk up and dump your

recyclables. It is a 1' 6" wall on the front and 30" wall on the back by the dumpsters. It will have a structural concrete design with a full footing; it is an engineered retaining wall. One and a half foot curb on the front and screened by the dumpsters on the backside.) Could you stain the concrete? What will stop me from parking in the no parking area? (Mr. Leinweber: Nothing except your good conscience. The issue with putting a curb there is that it becomes a nightmare for snow removal. And we would need one handicap spot but we felt that was restrictive. We feel this is a good compromise, we will do our best to stripe it.) (Mr. Burn: The curb setup, I went to the Breckenridge recycling area and watched people carry so much that they couldn't see where they were walking and I didn't want there to be a trip hazard.) Vehicle / pedestrian conflicts would still be there even if we had a curb. What about bear proofing preventative measures? (Mr. Burn: We have not had any bear issues because recycling is clean at the existing Frisco and Breckenridge sites.)

Mr. Pringle: Are there going to be any duplications of recycling dumpsters? If I had to go to multiple dumpsters, honestly I would move my car. (Mr. Burn: We have more capacity here and we want to move the cans so that it can be as efficient as possible. We will be doubling the capacity of our most popular recyclables. We will be open 24 hours a day, 7 days a week.)

Ms. Dudney: What do you think about the winds blowing and the trash issue? (Mr. Thad Knoll, Assistant Summit County Manager: We originally proposed a fence all the way around and the Town Council said no fence. Yes, a fence is better for trapping trash.) If the Town Council doesn't want to add the fence now for budgetary or aesthetics, could a fence be added later? (Mr. Burn: Yes, we could add the fence later if needed, on the south side of the ditch.)

Ms. Christopher: Has the Town considered putting a regular trash dumpster at the recycling center? Because guests at condos don't have a place to put their trash. (Mr. Burn: Unmanned site, having that access that trash is accepted, we would see trash at that site 7 days a week and a potential bear issue.) There is a problem I see at the Welcome Center that guests are putting trash into the trashcans on the street. (Mr. Knoll: This is a big problem everywhere, but it is the responsibility of the guest.) (Mr. Leinweber: This would be tough.) The fence goes around the back of the property.

Mr. Lamb: I like Ms. Christopher's idea to have trash receptacle but you will have bears and a mess. The existing site doesn't have lighting and it seems to be functioning well without it. I think the screening is good and the layout. I like the size, I think this will work much better.

Mr. Pringle: I appreciate that the landfill is open on Saturday now, because town cleanup day is an issue without a place to put trash. I think we need to be proactive with having a location for oil. People will need to get rid of it. I do recycle late at night and I do like having it lit. The Frisco site is lit with nearby ambient light so I'm a proponent for some sort of subtle lighting even if it is solar. I think that if you put a 4' fence behind the front landscaping that would go a long way to trap the trash and as trees mature they will cover up the fence. I'm looking at the alignment and I don't have a good suggestion except for the barn fence non-defined parking situation; I hope we are not encouraging people to get in their cars and moving down to different spots to recycle. I think it is great. Why can't we find some way to get a fee to pay for this?

Ms. Dudney: No comments; I would encourage the Town Council to approve.

Ms. Christopher: I agree with Mr. Pringle to encourage some lighting and the fence.

Mr. Schroder: I support the project. Staff asked us if we had any issue with policy 7/R with that wall design and I say no concerns.

Mr. Schuman: I don't think policy 7/R applies here. I think it needs electricity. I think it needs better fencing; maybe a public art contest to make the fence look better? I don't think we should have a fee; I pay enough taxes.

Mr. Mamula: I would like to see the concrete wall stained but I'm the only one on that. I think the Council should think about the fence again because I'm worried about the trash blowing. I would like to see lighting here and would like the oil stay at the landfill. I would like to see you put

some cameras up; whether they work or not they will keep people from leaving items that they shouldn't be.

Mr. Pringle made a motion to recommend the Town Council approve the Summit County Recycling Center Drop Off, PL-2015-0052, 284 Coyne Valley Road Town Project, with the presented Findings. Ms. Christopher seconded, and the motion was carried unanimously (7-0).

**OTHER:**

- 1) Class C Subdivisions Approved for Q1, 2015 (JP) (Memo Only)
- 2) Class D Majors Approved for Q1, 2015 (JP) (Memo Only)

*Commissioner Questions / Comments:*

No questions or comments.

- 3) Staff Update: Ms. Puester noted that on May 13<sup>th</sup>, 2015, there would be a County wide Planning Commission training event presented by DOLA from 5:00-7:30pm in Frisco. Location to be announced. Light dinner will be served. Please let Ms. Puester or Ms. Brewster know if you plan to attend. A reminder will be sent out.

**ADJOURNMENT:**

The meeting was adjourned at 8:38pm.

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Eric Mamula, Chair



## Scheduled Meetings, Important Dates and Events

**Shading indicates Council attendance – others are optional**

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

### APRIL 2015

Tuesday, April 28, 2015; 3:00/7:30 pm Second Meeting of the Month

Tuesday, April 28, 2015; 9:30 pm Breckenridge Housing Authority Meeting

### MAY 2015

Tuesday, May 12, 2015 CANCELED - First Meeting of the Month

Tuesday, May 12, 2015; 8am – 5pm; BGVCC Town Council Spring Retreat

Friday, May 15, 2015; 8-9am; Cuppa Joe Coffee Talk

Tuesday, May 26, 2015; 3:00/7:30 pm Second Meeting of the Month

### JUNE 2015

Tuesday, June 9, 2015; 3:00/7:30 pm First Meeting of the Month

Saturday, June 13, 2015 Breckenridge Skate Park Opening Event

Friday, June 19, 2015; 8-9am; TBA Coffee Talk

Tuesday, June 23, 2015; 3:00/7:30 pm Second Meeting of the Month

Tuesday, June 23, 2015; TBA Pinewood 2 Groundbreaking Ceremony

### OTHER MEETINGS

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

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

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## Town of Breckenridge Executive Summary

### Economic Indicators

(Published April 22, 2015)

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#### Indicator Monitoring System

Up and down arrow symbols are used to show whether the indicator appears to be getting better, appears stable, or is getting worse. We have also designated the color green, yellow or red to display if the indicator is currently good, fair or poor. Please note months of data will vary with indicator, based on the most recent information available.




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#### Unemployment: Local (February 2015)

Summit County's unemployment rate increased slightly to 2.6% in February. This rate is lower than the February 2014 rate of 4.4% and the February 2013 rate of 5.3%. Summit's February rate is lower than that of Pitkin County (3.5 %) and Eagle County (3.4 %).

(Source: BLS)




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#### Unemployment: State (February 2015)

The Colorado State unemployment rate remained at 4.2 % in February. This rate is lower than the February 2014 rate of 6.1 %. (Source: State of Colorado)




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#### Unemployment: National (February 2015)

The national unemployment rate decreased to 5.5% in February. Since 2011, we have seen the national rate continue a general incremental downward trend. February 2015 has seen a notable drop from last February's rate of 6.7% and the February 2013 rate of 7.7%. (Source: BLS)




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#### Destination Lodging Reservations Activity (March 2015)

Occupancy rates decreased a slight 0.4 % for the month of March compared to March 2014, with an increase of 7.6 % in the Average Daily Rate (ADR) for the month. On average, the occupancy rates for all Colorado mountain resort destinations decreased by 0.1 % for the month. (Source: DestiMetrics)




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#### 6 Month Projected YTD Occupancy (April-September 2015)

Future bookings for the upcoming April-September 2015 period show an increase of 17.4 % in projected occupancy rate over the corresponding period last year. The Average Daily Rate for the same time period is up 5.3 %. (Source: DestiMetrics)



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**Traffic Count at Eisenhower Tunnel (March 2015)**

During the month of March, the traffic count at the Eisenhower tunnel (westbound) totaled 561,051 vehicles compared to March 2014 traffic counts (535,532 vehicles), representing a 4.8% increase. Data showed March traffic coming into town on Highway 9 remained about the same compared to March 2014. These traffic flows indicate that the Town decreased its relative capture rate coming from the tunnel. (Source: CDOT)



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**Consumer Confidence Index-CCI (March 2015)**

The Consumer Confidence Index (CCI) increased in March to 101.3, an increase of 2.5 percentage points from February. Overall the CCI has maintained a generally positive upward trend since spring of 2013. (Source: CCB)



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**Mountain Communities Sales Tax Comparisons (February 2015)**

The amount of taxable sales in Town for February 2015 was up 9.7 % from February 2014 levels. All mountain towns monitored experienced an increase in sales as compared to February 2014. The average taxable sales change in mountain towns was an increase of 12.7 %. (Source: Steamboat Springs Finance Dept.)



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**Standard & Poor's 500 Index (March 2015)**

The S&P 500 average monthly adjusted closing price took a slight 1.4% dip to 2074 in March, after reaching an all-time high last month. Overall, there has been an upward trend in the index that started over three years ago. (Source: S&P 500 and Town Finance)



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**Town of Breckenridge RETT Collection (March 2015)**

March 2015 RETT collection (\$320,123) was 12 % less than March 2014 (\$364,107) collections and above March 2013 collections (\$281,202). 2015 RETT collections to date (\$949,335) were 3.5 % higher than 2014 collections year-to-date (\$921,230) and higher than 2012 collections (\$482,508). (Source: Town Finance)



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**Real Estate Sales for Summit County/Breckenridge (February 2015)**

February Summit County real estate sales increased by 25 % in \$ volume and 28 % in the number of transactions compared to February 2014. Of that, Breckenridge took in 47% of the \$ volume and 35% of the transactions countywide for the month. (Source: Land Title)



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**Foreclosure Stressed Properties (February 2015)**

No properties in Breckenridge (excluding timeshares) were in the foreclosure process in February. (Two timeshare units were in the foreclosure process as of February.) (Source: Land Title)

