



BRECKENRIDGE TOWN COUNCIL WORK SESSION

Tuesday, June 09, 2015; 2:00 PM

Town Hall Auditorium

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

| | | | |
|--------------------|------------|--|-----------|
| 2:00-2:45pm | I | <u>PREVIEW TOUR: OLD MASONIC HALL (2 PM)</u> | |
| 3:00-3:15pm | II | <u>PLANNING COMMISSION DECISIONS</u> | 2 |
| 3:15-4:15pm | III | <u>LEGISLATIVE REVIEW*</u> | |
| | | Ordinance Approving a Deed of Dedication on Town Owned Property | 11 |
| | | Utility Easement Dedication for Summit Public Radio | 17 |
| | | Lomax Local Landmarking | 26 |
| | | Sign Code Amendments | 29 |
| | | TDR-Wetland Lots | 35 |
| | | Ordinance Approving the Sale of Town Owned Property | 39 |
| | | Resolution Approving a Loan from the General Fund to the Open Space Fund | 61 |
| 4:15-4:45pm | IV | <u>MANAGERS REPORT</u> | |
| | | Public Projects Update | 64 |
| | | Housing/Childcare Update | |
| | | Committee Reports | 69 |
| | V | <u>OTHER</u> | |
| 4:45-5:30pm | VI | <u>PLANNING MATTERS</u> | |
| | | Breckenridge Bike Bus Street Use Permit Public Hearing for New Location at Gold Rush Lot | 71 |
| 5:45-7:15pm | VII | <u>EXECUTIVE SESSION - NEGOTIATIONS</u> | |

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

MEMORANDUM

To: Town Council

From: Peter Grosshuesch, Director of Community Development

Date: June 3, 2015

Re: Planning Commission Decisions of the June 2, 2015, Meeting.

DECISIONS FROM THE PLANNING COMMISSION AGENDA OF June 2, 2015:

CLASS C APPLICATIONS: None.

CLASS B APPLICATIONS:

- 1) Kelley Residence (MM) PC#2013111; 210 North Ridge Street
Construct a new, 2,242 sq. ft. single family residence with 3 bedrooms, 4 bathrooms, 2,235 sq. ft. of density and 2,242 sq. ft. of mass for a F.A.R. of 1:2. *Approved (5-0).*
- 2) Miller-Huntress Restoration (MGT) PL-2015-0075; 309 South Main Street
Restore the front façade of building per historic photo; add an ADA compliant door to north elevation; add ramp with handrails; addition to on grade patio / deck. *Approved (5-0).*
- 3) Gold Pan North Elevation Siding (MGT) PL-2015-0087; 103 North Main Street
Replace the north exterior elevation materials of the existing building with 22-gauge corrugated rusted steel on the first floor and vertical pine shiplap siding of various widths on the second floor. *Approved (5-0).*

CLASS A APPLICATIONS: None.

TOWN PROJECT HEARINGS:

- 1) Milne Park Site Improvements (MGT) PL-2015-0159; 102 North Harris Street
Remove the corner section of the fence at Milne Park to allow pedestrian access into the redesigned park and repair fencing where necessary. Add pedestrian crosswalk striping across Lincoln Avenue and North Harris Street to connect the park to the Breckenridge Grand Vacations Community Center. *Recommendation the Town Council approve the Town Project (5-0).*

OTHER: None.



Gold Pan North
Elevation Siding
103 North Main Street

Kelley Residence
210 North Ridge Street

Miller-Huntress
Restoration
309 South Main Street

Milne Park Site
Improvements
102 North Harris Street

Breckenridge South

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



PLANNING COMMISSION MEETING

The meeting was called to order at 7:00 pm

ROLL CALL

Kate Christopher Gretchen Dudney Jim Lamb
Dan Schroder Dave Pringle arrived at 7:13pm
Wendy Wolfe, Town Council Liaison
Eric Mamula and Ron Schuman were absent.

APPROVAL OF MINUTES

With no changes, the May 19, 2015, Planning Commission Minutes were approved as presented.

APPROVAL OF AGENDA

With no changes, the June 2, 2015, Planning Commission Agenda was approved as presented.

TOWN COUNCIL REPORT:

Ms. Wolfe:

- Last Council meeting was light so wanted to talk more about Work Session.
- Wetlands TDR's was one topic. It is cheaper for developers to buy wetlands lots than backcountry lots when development happens that needs TDRs. We are on track to pass an ordinance to limit any TDR transaction to a maximum of using 25% of wetlands lots as TDR's. This will be discussed at the next Council Meeting.
- Sign code was also discussed. This is still on track, big thanks to the Planning Commission for your input on this topic. This has been an ongoing conversation and Council went on a Main Street field trip and we are definitely sticking to our decision to ban sandwich boards. Council feels that window sign wraps, like Blue Sage Spa has, that are tastefully done are probably acceptable. We also have varying incidences of directory signs with stores not directly on Main Street. We want to work on these so that everyone has a better directory sign--we are working on sizing and a look for these signs. This will help places like La Cima and Main Street Station to have tasteful directory signs even though they may be tucked in off of Main Street. Also working on seasonal decorations, the garland and bows get a little bit tired by spring break so we are going to rework the code so that those come down right after President's weekend. This will be a plan for Main Street commercial areas. The overall sign ordinance will take effect the end of July but active enforcement is planned in September.
- The parking structure is the anchor to the big parking plan. Tomorrow there will be the first meeting with various constituents in the Community starting with the Restaurant Association, there may several Council members present at this meeting. The meeting will mostly be focused on the parking structure but will also discuss the overall parking bundle of solutions. We believe that the structure should eventually tie in with all the other parking plans because it opens up other possibilities for public and employee parking. We really want to get feedback from the Community on the structure first.

FINAL HEARINGS:

1) Kelley Residence (MM) PC#2013111; 210 North Ridge Street

Mr. Mosher presented a proposal to construct a new, 2,242 square foot, 3 bedroom, 4.5 bathroom, single family home with an attached 2-car garage. At the last hearing, the Commission was supportive of the site layout, building massing and architectural details. The proposed landscaping warrants positive points, though not needed for a passing score, and the Commission was supportive of positive two (+2) points. Since the last review, the Town has removed the un-platted public water line that was crossing the north edge of the property. The applicants have modified the finishes of the garage to abide with the design guidelines of the Handbook of Historic Standards. Otherwise, the report is essentially the same as the last report. Changes reflect the design of the garage. The finishes and color of the garage have been modified since the July 1,

2014, submittal.

With this proposal falling within the recommendations of all associated Development Code policies, Staff finds the proposal meets all absolute policies and have awarded positive two (+2) points under Policy 22R, Landscaping with the addition of two more spruce trees. The applicant's agent has worked closely with Staff for this proposal. The only outstanding issue from the last review was the finishes for the garage. This has been addressed and we have no concerns.

The Planning Department recommended approval of Point Analysis for the Kelly Residence (PC#2013111) showing a passing score of positive two (+2) points. The Planning Department recommended approval of the Kelly Residence (PC#2013111) along with the presented findings and conditions.

Commissioner Questions / Comments:

No questions for staff.

Applicant Presentation (Mr. Mark Provino, Architect for the Applicant):

No other comments.

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

Commissioner Questions / Comments:

Mr. Lamb: I like it.

Mr. Pringle: I think that the code wants the garage to be subordinate to the main structure and not compete with the primary structure. I'm hoping that we can modify the garage, secondary structure to not compete with the main structure with future applications. I concur with the point analysis. (Mr. Mosher - The Development Code supports this design that has the main house and secondary building as being different.)

Ms. Dudney: I think this is very attractive and a great addition to the block.

Mr. Schroder: I agree it will look great in town.

Ms. Christopher: I also agree.

Mr. Pringle made a motion to approve the point analysis for the Kelley Residence, PC#2013111, 210 North Ridge Street, showing a passing score of positive two (+2) points. Mr. Lamb seconded, and the motion was carried unanimously (5-0).

Mr. Pringle made a motion to approve the Kelley Residence, PL#2013111, 210 North Ridge Street, with the presented findings and conditions. Mr. Lamb seconded, and the motion was carried unanimously (5-0).

2) Miller-Huntress Restoration (MGT) PL-2015-0075; 309 South Main Street

Mr. Thompson presented a proposal to restore the front façade of the building per the historic photo, including adding an ADA compliant door to the north elevation, adding a ramp with handrails and an patio /deck addition.

Changes from the May 19, 2015, Preliminary Hearing:

- The applicant has designed the detention areas to the satisfaction of the Town of Breckenridge Engineering Department.
- The snow storage area between the paved parking lot and the Riverwalk will have top soil and grass seed as requested by Staff.
- Applicant has agreed to remove the deck encroachment over the property line.

Staff recommended positive one (+1) point under Policy 24/R, for: *On site historic preservation/restoration effort of minimal public benefit*, for a passing point analysis of positive one (+1) point. Staff recommended the Planning Commission approve the Miller/Huntress Restoration, PL-2015-0075, located at Block 6, Lot 5, Stiles, 309 South Main Street, with a passing point analysis of positive one (+1) point and with the presented Findings and Conditions.

Commissioner Questions / Comments:

Mr. Pringle: Is the deck going to look like the one that was approved previously? (Mr. Thompson: The code allows a zero setback and so we are ok with this plan; we have a preliminary agreement to allow the Crepe Cart to be over the property line and this will be a condition for the C.O.) Will we have any idea of what the deck will look like? Will we have a picture or what it looks like? There is no detail here and would like to see that buttoned up. (Mr. Thompson: The stairs will remain it will just be pulled back and then a new deck added onto the back of that. I don't have a picture.) It would be nice to have a record of what we approve tonight because in the future we want to have this record in case it isn't constructed the way we approve it. I want to see an elevation so that we can have it for future reference. (Mr. Thompson: There is a condition of approval that it be cut back to the property line.) (Ms. Puester: You could add a condition of approval that they submit a Class D minor for the deck so that staff double checks that this is done correctly and there are no code design issues.) (Mr. Thompson: This will also go through all the building codes too and make sure it complies.)

Applicant Presentation (Mr. Marc Hogan, Architect for the Applicant):

We met over at the site today with the Crepe Cart owner and we will cut the deck that is 12" high so no guard rail is required. There are currently flag stone pavers that are over the steps so we will extend those pavers to the new deck and we have no problem with the additional condition. (Mr. Barry Noam, Applicant: Thanks for everyone who we worked with at the Planning Department, Matt, Julia, and Peter.) (Mr. Pringle: A lot of this is your give and take too, so thank you.)

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

Commissioner Questions / Comments:

Mr. Pringle: I don't have any problems; I'm glad to see you bringing this property back to life. I would like to see the Class D approval for the deck be added.

Ms. Dudney: I think this is terrific and I would like to thank staff and the applicant for getting this done so quickly; I didn't think this would happen so quickly. (Ms. Puester: If we want to add a Class D minor permit for a deck, put it on condition number 19 as prior to a building permit and then all the conditions will fall after.)

Mr. Schroder: I think it is a great project and great to see something happening here.

Mr. Lamb: I think it is a great project. I'm not concerned with the deck, but I could go along with the Class D for the deck.

Ms. Christopher: I also agree, thanks to all the cooperation between applicant and staff. I'm fine with the Class D.

Mr. Pringle made a motion to approve the point analysis for the Miller-Huntress Restoration, PL-2015-0075, 309 South Main Street, showing a passing point analysis of positive one (+1) point. Mr. Lamb seconded, and the motion was carried unanimously (5-0).

Mr. Pringle made a motion to approve the Miller-Huntress Restoration, PL-2015-0075, 309 South Main Street, with the presented findings and conditions including a Class D minor permit for a deck, put it on

condition number 19 as prior to a building permit and then all the conditions will fall after. Mr. Lamb seconded, and the motion was carried unanimously (5-0).

COMBINED HEARINGS:

1) Gold Pan North Elevation Siding (MGT) PL-2015-0087; 103 North Main Street

Mr. Thompson presented a proposal to install 22-gauge corrugated rusted steel on the exterior of the first floor of the north elevation of the building and install vertical pine shiplap siding of various widths on the second floor of the north elevation of the building. The historic windows will remain the same. Priority Policy 220: Maintain the clear distinction between first and upper floors. Policy 225: Maintain the present balance building materials found in the Core Commercial Character Area. While the applicant is not proposing painted wood lap siding as the primary building material, they have provided a photo from the past showing vertical stained wood for the entire north elevation. Also, Policy 225 is not a priority policy. Priority Policy 220, *Maintain the clear distinction between first and upper floors*, is a priority policy. Furthermore, taking into consideration that this is the north side of a two story building, which will have a new building (The Elk) built within five (5') of the existing Gold Pan, the snow will get trapped in between the two buildings, sitting up against the building siding. Hence, Staff feels that it is an acceptable concept to propose rusted metal siding on the first floor, and vertical shiplap siding on the second floor. It will be a considerable improvement on the existing rolled asphalt faux brick pattern existing on the north elevation. Also, the metal siding will protect the historic structure from the effects of snow right up against the wall of the building.

Staff does not believe this application warrants positive or negative points. The application is found to meet all absolute policies. The Planning Department recommends that the Planning Commission approve the new siding proposed for the north elevation of the Gold Pan building, PL-2015-0087, located at 103 North Main Street, Lots 81-82, Bartlett & Shock, with a passing point analysis of zero (0) and the presented Findings and Conditions.

Commissioner Questions / Comments:

Mr. Pringle: The Elk building to the north will be set back so that the north window on the second floor will be exposed so that the west edge to the window will be visible? (Mr. Thompson: Yes. There is fear that if it wasn't set back then there would be too much snow piling up against the window of the Gold Pan, which could damage the historic fabric.)

Mr. Schroder: Will there be a fence between the buildings? (Ms. Janet Sutterley, Architect for the Applicant: No fence and also there will only be a two feet separation between buildings.) I was worried about people sleeping late at night in between the buildings. (Ms. Sutterley: There is a connector. There is only 2 to 3 feet here in between buildings for about 18 feet. The corrugated metal was to really provide a weathering base. The historic picture shows stone wainscoting here. The Elk building starts just behind the first window of the Gold Pan.) It seems to me that the question is, would we be able to see it?

Mr. Pringle: I'm just trying to decide is the corrugated metal appropriate for this area? A ten foot panel that comes out all the way to the street corner? I'm wondering if this is appropriate for this visible section.

Mr. Lamb: It seems ok. The Theobald building has corrugated metal. I would argue that there is precedence. (Ms. Sutterley: To me the photo shows historically it was vertical wood siding.)

Mr. Pringle: I'm just wondering if we want to go with the siding material of metal all the way out to the front corner. Is this truly the best historical interpretation?

Ms. Christopher: I just don't know where you make the distinction- between a 2 or 3' wainscot for 5' and then shoot it up to the whole first floor?

Mr. Pringle: Yes. I would like the vertical siding coming down to the window that is exposed, have a small amount of metal wainscoting and then go back to the whole first floor.

Ms. Dudney: What materials?

Mr. Pringle: The wainscot could be just the corrugated metal and then vertical wood would go up the rest

of the wall.

Ms. Christopher: If the Elk building wasn't there I think this would look kind of jig sawing. So with that I'm ok with the whole first floor being metal.

Mr. Lamb: I think the whole first floor being metal is appropriate.

Ms. Christopher: I think protecting the Gold Pan is top priority to me.

Mr. Pringle: This will be a very public view of the building and I'm not sure if 10' of corrugated metal is historically correct.

Mr. Lamb: Theobald did it. I see other examples of historic buildings with metal siding around Town.

Mr. Pringle: But I don't want to keep making the same mistakes.

Ms. Christopher: Can we make it clear that this is not to be followed in the future? (Ms. Puester: You could create a special finding for this property.)

Mr. Pringle: This used to be a big deal, but I guess it isn't any more.

Ms. Dudney: I see both sides but since this is not a priority policy, I don't have a personal objection to the corrugated metal. I'm following the lead of the staff and I don't hear them saying that this is a big deviation to the historic standards.

Mr. Pringle: Corrugated metal wasn't a historic material; it was used later when people needed a different material. As a dominant side this looks like an addition material as opposed to a historic material. (Ms. Puester: Being as this is not the primary elevation on a historic structure that needs protection, staff feels we can allow it. If it was a primary elevation we probably wouldn't support it.)

Ms. Dudney: If we had lower corrugated metal on the lower portion on the front five feet. If the Elk Building wasn't going to be built, how would you feel about the corrugated treatment?

Mr. Pringle: I would go with a more historically accurate look because that corner of that building is going to be exposed.

Mr. Lamb: Aren't there other historic buildings in town that have metal siding? (Ms. Sutterley: Yes there are other buildings like the Brown that have metal siding.) There are buildings that exist.

Mr. Pringle: Yes, but those aren't the original condition of the buildings, they were done in the 1940's or later. Anyway, we do know that there will be another building built there. (Mr. Thompson: Per the historic guidelines is that any building pre-1942 is considered historic. That's why the Theobald building metal siding was approved because the metal siding was added prior to 1942.)

Ms. Dudney: I think it is going to look nice the way that it was proposed and meets the intent of the Code.

Mr. Lamb: I agree with Ms. Dudney.

Ms. Christopher: I too like the full story of metal. I like saying that this is not precedent for other buildings, this is a unique situation. Would be ok with a special finding if that makes other Commissioners more comfortable.

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

Commissioner Questions / Comments:

Mr. Schroder: It is not a primary façade; I too see precedent around town that shows this material does a good job and shows that this distinguishes the two floors per Priority Policy 220.

Mr. Lamb: I agree too; it follows Priority Policy 220 that keeps the top floor different from the bottom. I think that metal was used historically. I think it will look much better.

Mr. Pringle: I don't believe that it complies with 5A and is an incorrect interpretation of use of a building material. I can't give it a full endorsement.

Ms. Dudney: I support it as presented.

Ms. Christopher: I support it too, even if it isn't a historic material I think it does a good job of protecting the building.

Mr. Lamb made a motion to approve the point analysis for the Gold Pan North Elevation Siding, PL-2015-0087, 103 North Main Street, showing a passing point analysis of zero (0) points. Mr. Schroder seconded, and the motion was carried (4-1).

Mr. Lamb made a motion to approve the Gold Pan North Elevation Siding, PL-2015-0087, 103 North Main Street, with the presented findings and conditions. Mr. Schroder seconded, and the motion was carried unanimously (5-0).

TOWN PROJECT HEARINGS:

1) Milne Park Site Improvements (MGT) PL-2015-0159; 102 North Harris Street

Mr. Thompson presented a proposal to remove the corner section of the fence at Milne Park to allow pedestrian access into the park (repair fencing where necessary). Add pedestrian cross walk stripping across Lincoln Avenue and then across North Harris Street to connect to the Breckenridge Grand Vacations Community Center. Add stone pillar gateway signs with brick landing as an entry feature. Thin and prune existing trees for visibility into the park. Add cottonwood trees to the park along Lincoln Avenue. Provide new interpretative signs to identify and provide history of the Milne House, Briggie House and the Eberlein House. Build new benches for seating. Add top soil to smooth out undulating areas on approximately half the lawn area and re-vegetate with native grasses and wildflowers.

Staff finds no reason to assign any negative or positive points to this project. The application was found to meet all Absolute policies. 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. In addition, the Commission is asked to make a recommendation to the Town Council.

Planning Staff suggested that the Planning Commission recommend approval of the Milne Park Improvements, PL-2015-0159, located at 100 and 102 North Harris Street with the presented Findings.

Commissioner Questions / Comments:

Ms. Dudney: Do you know where the benches would be? (Mr. Thompson: Showed them on the plan and the interpretive signs too.)

Applicant Presentation (Ms. Mary Hart, Designer for the Applicant):

I'm here to answer any questions. A simple project that is designed to improve accessibility we are not trying to make it really manicured, a little rough around the edges and still feeling fairly native. (Ms. Dudney: Is the goal to bring people into the site to get a hands-on feel for it?) Yes, we would like people to get in there. Right now they walk on by thinking that it is just a private area. With the library so close, people can probably get WIFI and use this public space. (Ms. Dudney: Is that a wooden walkway?) Yes, it is existing and used when BHA does tours there; we are hoping that this continues and is still a public use area. (Ms. Dudney: So this is not a winter space?) Yes, that is true; it is just for the summer, it is not maintained during the winter. (Ms. Dudney: Are the buildings only open for tours?) Yes, the buildings are only open to tours.

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

Commissioner Questions / Comments:

Mr. Schroder: I think it is great; I support the application as presented.

Mr. Lamb: I support it 100%; up until now I always feel like it is trespassing when I'm there. I especially like the crosswalk.

Mr. Pringle: I also fully support it.

Ms. Dudney: I am fully behind it also.
Ms. Christopher: I approve of it as well.

Mr. Schroder made a motion to recommend the Town Council approve the Milne Park Improvements, PL-2015-0159, 102 North Harris Street. Mr. Pringle seconded, and the motion was carried unanimously (5-0).

OTHER MATTERS:

Update on Track E, Shock Hill and Lincoln Park Master Plan: The 30 day challenge periods have ended and no one challenged either application and so the decisions stand on both of those.

ADJOURNMENT:

The meeting was adjourned at 8:14 pm.

Eric Mamula, Chair

MEMO

TO: Town Council

FROM: Town Attorney

RE: Council Bill No. 15 (Approving Creation of Public ROW Over Lot 4, Block 5, Airport Subdivision)

DATE: June 2, 2015 (for June 9th meeting)

The second reading of the ordinance approving a Deed of Dedication that will create a public right of way over the Town's Lot 4, Block 5, Breckenridge Airport subdivision property is scheduled for your meeting on June 9th. There are no changes proposed to ordinance or the Deed of Dedication document from first reading.

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

1 **FOR WORKSESSION/SECOND READING – JUNE 9**

2
3 **NO CHANGE FROM FIRST READING**

4
5 COUNCIL BILL NO. 15

6
7 Series 2015

8
9 AN ORDINANCE APPROVING A DEED OF DEDICATION TO CREATE A
10 PUBLIC RIGHT-OF-WAY
11 (Part of Lot 4, Block 5, Breckenridge Airport Subdivision)

12
13 WHEREAS, the Town of Breckenridge owns Lot 4, Block 5, Breckenridge Airport
14 Subdivision, as depicted on the plat of “A Resubdivision Of Lot 3 Block 5 Of A Resubdivision Of
15 Lot 3 Block 5 And Lot 3 Block 4, An Amended Replat Of Breckenridge Airport Subdivision”
16 recorded August 28, 1997 at Reception Number 545877 of the records of the Clerk and Recorder of
17 Summit County, Colorado; and

18
19 WHEREAS, the Town desires to dedicate a public right-of-way over, across, and through
20 the southerly fifty (50) feet of said Lot 4, Block 5, Breckenridge Airport Subdivision; and

21
22 WHEREAS, a proposed Deed of Dedication for such right-of-way parcel has been
23 prepared, a copy of which is marked **Exhibit “A”**, attached hereto, and incorporated herein by
24 reference; and

25
26 WHEREAS, the Town Council has reviewed the proposed Deed of Dedication, and finds
27 and determines that its approval is necessary and appropriate.

28
29 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF
30 BRECKENRIDGE, COLORADO:

31
32 Section 1. The Deed of Dedication attached to this ordinance as **Exhibit “A”** is
33 approved, and the Mayor is authorized, empowered, and directed to execute such Deed of
34 Dedication on behalf of the Town of Breckenridge. After the Deed of Dedication has been
35 executed by the Mayor and properly acknowledged, the Town Clerk shall then promptly record
36 the Deed of Dedication with the Clerk and Recorder of Summit County, Colorado.

37
38 Section 2. Upon the recording of the approved Deed of Dedication the density associated
39 with the dedicated land, as provided in the Town of Breckenridge Development Code and related land
40 use rules and regulations, shall be reserved to and shall remain on the remainder of Lot 4, Block 5,
41 Breckenridge Airport Subdivision. No further action shall be required to reserve such density to the
42 remainder of said Lot 4, Block 5, Breckenridge Airport Subdivision other the recording of the Deed of
43 Dedication. The reservation of the density to the remainder of said Lot 4, Block 5, Breckenridge
44 Airport Subdivision shall not be deemed to be a density transfer within the meaning of Section 9-1-
45 17-12 of the Breckenridge Town Code. The use of such reserved density shall be subject to the

1 applicable requirements and limitations of the Town of Breckenridge Development Code and related
2 land use rules and regulations. No assurance is given or implied that such density may actually be
3 developed or otherwise used by the owner of said Lot 4, Block 5, Breckenridge Airport Subdivision.
4

5 Section 3. The dedication of the public right-of-way as approved in Section 1 of this
6 ordinance is not a “subdivision” of land as defined in Section 9-2-2 of the Breckenridge Town
7 Code, and no approval of such action under the Town of Breckenridge Subdivision Ordinance
8 (Chapter 2 of Title 9 of the Breckenridge Town Code) is required.
9

10 Section 4. The Town Council hereby finds, determines and declares that it has the power
11 to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article
12 XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.
13

14 Section 5. This ordinance shall be published and become effective as provided by
15 Section 5.9 of the Breckenridge Town Charter.
16

17 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
18 PUBLISHED IN FULL this ____ day of _____, 2015. A Public Hearing shall be
19 held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the
20 ____ day of _____, 2015, at 7:30 P.M., or as soon thereafter as possible in the
21 Municipal Building of the Town.
22

23 TOWN OF BRECKENRIDGE, a Colorado
24 municipal corporation
25

26
27
28 By: _____
29 John G. Warner, Mayor
30

31 ATTEST:
32
33
34
35

36 _____
37 Helen Cospolich
38 Town Clerk
39
40
41
42
43
44
45
46
47

1 **EXHIBIT "A"**

2
3 DEED OF DEDICATION

4
5 This Deed of Dedication is dated _____, 2015.

6
7 The TOWN OF BRECKENRIDGE, Colorado municipal corporation, whose address is
8 P. O. Box 168, Breckenridge, CO 80424 ("Town"), as the owner in fee simple absolute of the
9 following described real property situate in the Town of Breckenridge, County of Summit and State
10 of Colorado:

11
12 A 50 FOOT ROAD RIGHT OF WAY ACROSS THE SOUTH 50 FEET OF LOT
13 4, BLOCK 5, BRECKENRIDGE AIRPORT SUBDIVISION AS DEPICTED ON
14 THE PLAT OF "A RESUBDIVISION OF LOT 3 BLOCK 5 OF A
15 RESUBDIVISION OF LOT 3 BLOCK 5 AND LOT 3 BLOCK 4, AN
16 AMENDED REPLAT OF BRECKENRIDGE AIRPORT SUBDIVISION"
17 RECORDED AUGUST 28, 1997 AT RECEPTION NUMBER 545877,
18 SUMMIT COUNTY, COLORADO, SAID RIGHT OF WAY BEING MORE
19 PARTICULARLY DESCRIBED AS FOLLOWS:

20
21 BEGINNING AT THE SOUTHWEST CORNER OF LOT 4 BLOCK 5;

22
23 THENCE N 00°23'37" E, 50.00 FEET ALONG THE WESTERLY LINE OF
24 LOT 4, BLOCK 5, COMMON WITH THE EASTERLY RIGHT OF WAY OF
25 AIRPORT ROAD, A 60 FOOT PUBLIC RIGHT OF WAY, TO THE
26 NORTHWEST CORNER OF THIS RIGHT OF WAY;

27
28 THENCE S 89°36'23' E, 254.71 FEET TO A POINT ON THE EASTERLY
29 LINE OF LOT 4, BLOCK 5 WHICH IS THE NORTHEAST CORNER OF THIS
30 RIGHT OF WAY;

31
32 THENCE S 06°01'06" E, 50.31 FEET ALONG THE EASTERLY LINE OF LOT
33 4, BLOCK 5, COMMON WITH THE WESTERLY LINE OF TRACT D,
34 BLOCK 11 ACCORDING TO "A REPLAT OF BLOCK 11, AN AMENDED
35 REPLAT OF BRECKENRIDGE AIRPORT SUBDIVISION" RECORDED
36 AUGUST 3, 2005 AT RECEPTION NUMBER 797050, SUMMIT COUNTY,
37 COLORADO TO THE SOUTHEAST CORNER OF LOT 4, BLOCK 5;

38
39 THENCE N 89°36'23" W, 260.33 FEET ALONG THE SOUTHERLY LINE OF
40 LOT 4, BLOCK 5, COMMON WITH THE NORTHERLY LINE OF LOT 5,
41 BLOCK 5, BRECKENRIDGE AIRPORT SUBDIVISION ACCORDING TO
42 THE PLAT OF "A RESUBDIVISION OF LOT 3 BLOCK 5 AND LOT 3
43 BLOCK 4, AN AMENDED REPLAT OF BRECKENRIDGE AIRPORT
44 SUBDIVISION" RECORDED NOVEMBER 22, 1995 AT RECEPTION
45 NUMBER 503766, SUMMIT COUNTY COLORADO TO THE POINT OF
46 BEGINNING.

1
2 CONTAINING 12,876 square feet or 0.296 acre more or less.

3
4 (the "Dedicated Land")

5
6 hereby dedicates the Dedicated Land in fee simple absolute to the perpetual benefit of the public for
7 use as a public right-of-way.
8

9 Upon the recording of this Deed of Dedication with the Clerk and Recorder of Summit
10 County, Colorado the density associated with the Dedicated Land, as provided in the Town of
11 Breckenridge Development Code and related land use rules and regulations, shall be and is reserved
12 to and shall remain on the remainder of said Lot 4, Block 5, Breckenridge Airport Subdivision, as
13 depicted on the plat of "A Resubdivision Of Lot 3 Block 5 Of A Resubdivision Of Lot 3 Block 5
14 And Lot 3 Block 4, An Amended Replat Of Breckenridge Airport Subdivision" recorded August
15 28, 1997 at Reception Number 545877, of the records of the Clerk and Recorder of Summit
16 County, Colorado. No further action shall be required to reserve such density to the remainder of
17 said Lot 4, Block 5, Breckenridge Airport Subdivision other the recording of this Deed of
18 Dedication. The reservation of the density to the remainder of said Lot 4, Block 5, Breckenridge
19 Airport Subdivision shall not be deemed to be a density transfer within the meaning of Section 9-
20 1-17-12 of the Breckenridge Town Code. The use of such reserved density shall be subject to the
21 applicable requirements and limitations of the Town of Breckenridge Development Code and
22 related land use rules and regulations. No assurance is given or implied that such density may
23 actually be developed or otherwise used by the owner of said Lot 4, Block 5, Breckenridge Airport
24 Subdivision.
25

26 TOWN OF BRECKENRIDGE, a Colorado
27 municipal corporation
28
29

30
31 By: _____
32 John G. Warner, Mayor

33 ATTEST:
34
35
36

37 _____
38 Helen Cospolich
39 Town Clerk
40
41

1 STATE OF COLORADO)
2) ss.
3 COUNTY OF SUMMIT)
4

5 The foregoing instrument was acknowledged before me this ____ day of
6 _____, 2015, by John G. Warner, Mayor, and Helen Cospolich, Town Clerk, of
7 the Town of Breckenridge, a Colorado municipal corporation.
8

9 WITNESS my hand and official seal.

10
11 My commission expires: _____.
12
13
14
15
16

17 _____
18 Notary Public
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46

MEMO

TO: Town Council

FROM: Town Attorney

RE: Council Bill No.16 (Approving Summit Public Radio & TV, Inc. Easement)

DATE: June 2, 2015 (for June 9th meeting)

The second reading of the ordinance approving the new utility easement for Summit Public Radio & TV, Inc. is scheduled for your meeting on June 9th.

A few minor edits have been made to the easement document since first reading. They are reflected in the form of the easement that is included with this memo. Staff has reviewed the changes and has no concerns with them.

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

1 ***FOR WORKSESSION/SECOND READING – JUNE 9***

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

5
6 COUNCIL BILL NO. 16

7
8 Series 2015

9
10 AN ORDINANCE AUTHORIZING THE GRANTING OF AN EASEMENT TO
11 SUMMIT PUBLIC RADIO & TV, INC.

12
13 WHEREAS, Summit Public Radio & TV, Inc. has requested the granting of an easement
14 over, across, and through certain property owned jointly by the Town of Breckenridge and the
15 Board of County Commissioners of Summit County, Colorado; and

16 WHEREAS, the Town Council has determined that it should grant the requested
17 easement; and

18 WHEREAS, the Town Attorney has informed the Town Council that, in his opinion,
19 Section 15.3 of the Breckenridge Town Charter requires that the granting of the easement be
20 authorized by ordinance.

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

23
24 Section 1. The Town Manager is authorized, empowered, and directed to execute,
25 acknowledge, and deliver to Summit Public Radio & TV, Inc. an easement substantially in the
26 form marked Exhibit “A”, attached hereto, and incorporated herein by reference.

27
28 Section 2. The Town Council finds, determines, and declares that it has the power to
29 adopt this ordinance pursuant to the authority granted to home rule municipalities by Article XX
30 of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.

31 Section 3. This ordinance shall be published and become effective as provided by Section
32 5.9 of the Breckenridge Town Charter.

33 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
34 PUBLISHED IN FULL this ____ day of _____, 2015. A Public Hearing shall be held at the
35 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
36 _____, 2015, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
37 Town.

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

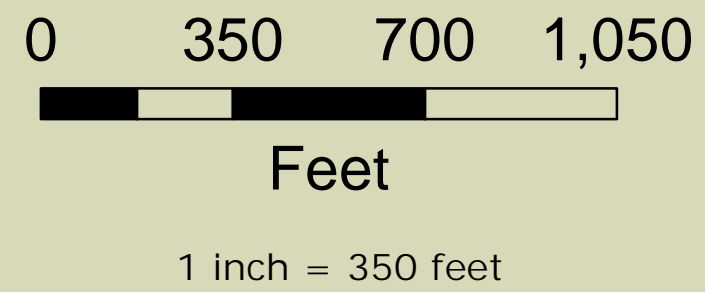
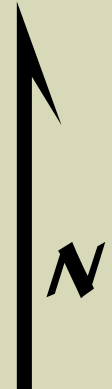
By: _____
John G. Warner, Mayor

ATTEST:

Helen Cospolich
Town Clerk

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

Summit Public Radio Baldy Mountain Site

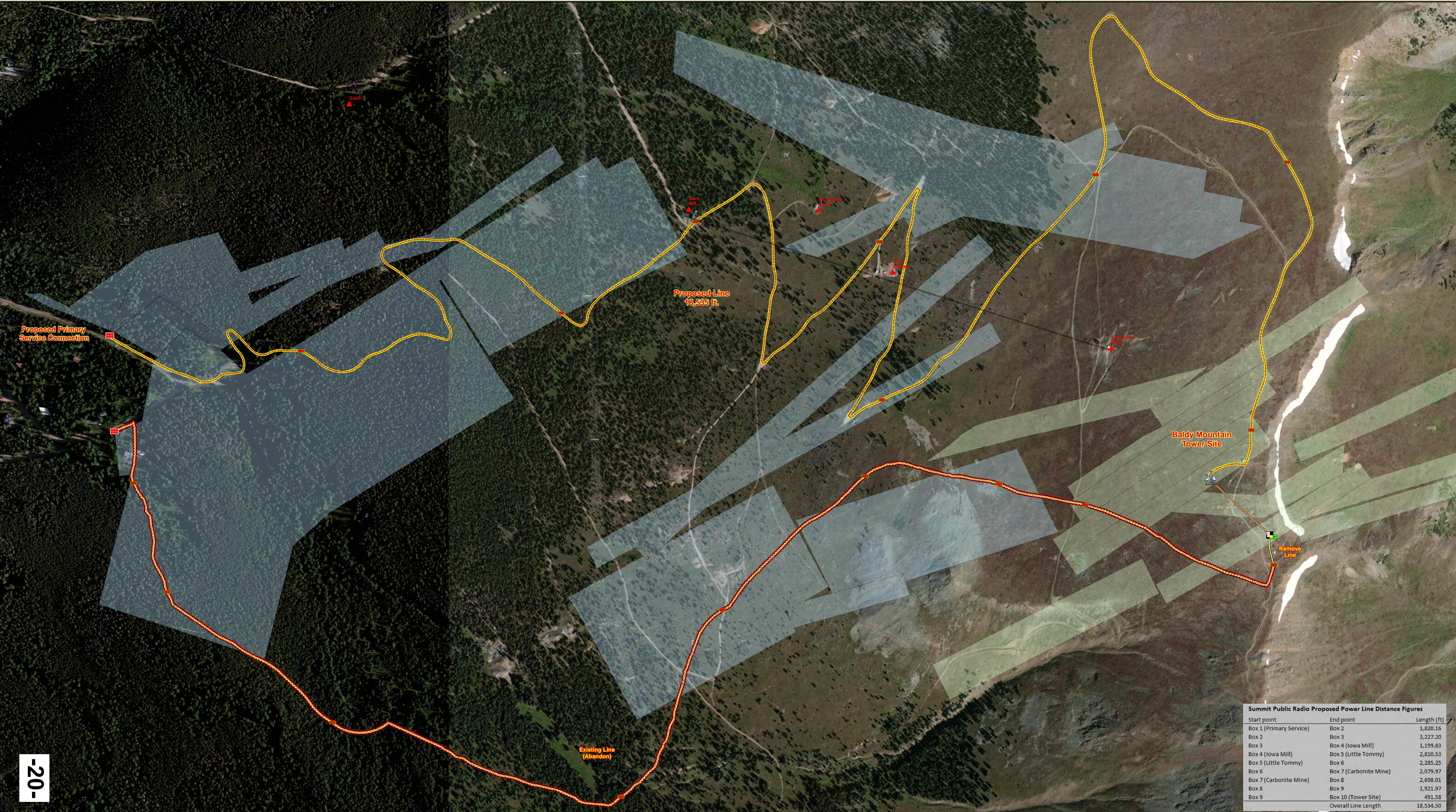


| Power Line | GPS Points | Other Features |
|---------------|--------------|------------------|
| Proposed Line | Pedestal | Old Head End |
| Existing Line | Junction Box | Fuse Box |
| Abandon | Tower | Box Head |
| 1" Conduit | Test Hole | Surveyed Parcels |
| 2" Conduit | | Other Parcels |
| | | Aerial Tram |
| | | Mines/Cabins |

The data shown on this map is not survey accurate and was created from the best available data. The surveyed parcels are from Range West, Inc, and overlaid on the GIS. GPS points were collected in 2010, 2013, and 2014 and used to locate the powerline alignment and related assets or conditions. North Line GIS, LLC, assumes no responsibility for the data shown on this map. Map printed March 2015.

NORTH LINE GIS, LLC
GIS SERVICES, CUSTOM MAPPING & TRAINING

North Line GIS, LLC
Breckenridge, Colorado
888.453.4471
www.northlinegis.com
maps@northlinegis.com



| Start point | End point | Length (ft) |
|-------------------------|------------------------|-------------|
| Box 1 (Primary Service) | Box 2 | 1,820.16 |
| Box 2 | Box 3 | 3,227.20 |
| Box 3 | Box 4 (Iowa Mill) | 1,199.83 |
| Box 4 (Iowa Mill) | Box 5 (Little Tommy) | 2,810.53 |
| Box 5 (Little Tommy) | Box 6 | 2,285.25 |
| Box 6 | Box 7 (Carbonite Mine) | 2,079.97 |
| Box 7 (Carbonite Mine) | Box 8 | 2,698.01 |
| Box 8 | Box 9 | 1,921.97 |
| Box 9 | Box 10 (Tower Site) | 491.58 |
| Overall Line Length | | 18,534.50 |

UTILITY EASEMENT AGREEMENT
for
SUMMIT PUBLIC RADIO & TV, INC.

This Utility Easement Agreement, is made by and between **Summit Public Radio & TV, Inc.**, a Colorado nonprofit corporation (*Summit Public*), with an address of P.O. Box 627, Frisco, Colorado 80443-0627, and the **Board of County Commissioners of Summit County, Colorado**, with an address of P.O. Box 68, Breckenridge, Colorado 80424-0068, and the **Town of Breckenridge**, with an address of P.O. Box 168, Breckenridge, Colorado 80424-0168, (*SC/TOB or Owners*), for the purpose of creating a nonexclusive, private utility easement.

RECITALS

A. Summit Public is a charitable organization authorized under IRC § 501(c)(3) which through facilities on Baldy Mountain provides free radio and television services for 5 FM stations and 10 over-the-air television channels to Summit County. Summit Public is the owner of the Jove Lode, MS # 7353, Summit County, Colorado and the holder of a license agreement from the Owners, dated August 31, 2012 and recorded at Reception No. 1002091 in the records of the Summit County Clerk and Recorder (the *License*), to occupy the Morningstar Lode, MS # 8013 Summit County, Colorado, (the Baldy Mountain Electronics Site), where through towers, antennae, translators, buildings and equipment Summit Public rebroadcasts signals from distant stations pursuant to the terms of the Conditional Use Permit dated May 28, 2009 and recorded at Reception No. 925208 in the records of the Summit County Clerk and Recorder (the *CUP*) and telecommunications licenses issued by the Federal Communications Commission(*FCC*).

Deleted: .

Deleted: (the Baldy Mountain Electronics Site)

B. Since the 1970s electric power has been provided to the Baldy Mountain Electronics Site through an underground electric power line and related equipment owned by Summit Public. The power line and related Summit Public equipment is approximately 10,000 feet in length beginning at a power meter pedestal on County Road 532 and crosses US Forest Service pursuant to the terms of special use permits from the USDA Forest Service, the current version dated October 2, 2006, and private land before connection to the Baldy Mountain Electronics Site (the *Existing Power Line*).

C. The Existing Power Line is nearing the end of its useful life and Summit Public desires to install a new underground power line, fiber optic cable, and related equipment and facilities under existing roads on public and private lands to provide electric power and transmit telecommunication signals to the Baldy Mountain Electronics Site (the *Replacement Power Line*).

Deleted: at

Deleted: abandon it and

D. SC/TOB are the owners of real property in Summit County, Colorado (*Owners' Property*) which is described as follows:

- **LAURIUM LODGE MS #2673, WEST LAURIUM LODGE MS #2674, WALKER LODGE MS #4247, DEXTER LODGE MS 5395, ALICE E. LODGE MS #12362, LAURIUM NO. 2 LODGE MS #12362, LAURIUM NO. 3 LODGE MS #12362, ILLINOIS PLACER MS #13636 AND EXCELSIOR LODGE MS #2045, AS**

LOCATED IN SECTIONS 3, 4 AND 9, TOWNSHIP 7 SOUTH, RANGE 77 WEST OF THE 6TH P.M.

(Assessor Schedule No. 2809678);

- TR 7-77 Sec 10 Qtr 2 Mining Claim(s) containing 18.2700 acres **NEW YORK CITY MS# 6570, CHICAGO MS# 6570, ST LOUIS LODE MS# 6570, DENVER CITY LODE MS# 6570**
(Assessor Schedule No. 6512871);
- TR 7-77 Sec 10 Qtr 1 Mining Claim(s) containing 9.280 acres **DOUBLE STANDARD MS# 12210, MORNING STAR MS# 12210**
(Assessor Schedule No. 6512016);

E. Owners desire to grant and Summit Public desires to receive an easement on the Owners' Property for the Replacement Power Line to provide power and utility services to the Baldy Mountain Electronics Site.

NOW, THEREFORE, for \$10 and other good and valuable consideration the receipt and sufficiency of which is acknowledged, Owners and Summit Public make the following grants, agreements, and covenants:

1. Grant of Utility Easement. Subject to the terms hereof, Owners hereby grant and convey to Summit Public nonexclusive easements over, across and under Owners' Property to survey, construct, operate, maintain, repair, replace and remove the Existing and Replacement Power Lines (the Utility Easement). The Utility Easement locations comprise two separate strips of land crossing Owners' Property being fifteen feet in width measured 7.5 feet on each side of the respective centers of the Existing Power Line and Replacement Power Line as depicted on the map attached as Exhibit A and incorporated by this reference (the *Easement Areas*). Other than the pedestals as depicted on Exhibit A, Summit Public may not construct any above ground facilities or appurtenances on this easement.

Deleted: except as depicted on Exhibit A

2. Construction and Maintenance. Construction and maintenance of the Utility Easement and any improvements located therein shall be the sole obligation and responsibility of Summit Public and Owners shall have no liability therefore. Summit Public's activities on Owners' Property shall be contained within the Easement Areas. Should Summit Public disturb the surface of the lands encumbered by the easement during the exercise of the rights granted hereunder, Summit Public shall restore the surface of the easement to a state that is substantially equivalent to its original level and condition, including re-vegetating disturbed natural surface areas with native grasses and restoring any improvements. Summit Public shall use its best efforts to avoid and not harm any trees in or adjacent to the Easement Areas. Summit Public shall notify Owners' at least seven (7) days prior to any construction or maintenance work in the Easement Areas. When construction, reconstruction, or removal activities are proposed, said notification shall include a staging plan indicating the location and duration of all actions associated with such activities. The surface of the road containing the Utility Easement will be restored after initial construction in accordance with plans approved by Summit County and the United States Forest Service. If Summit Public fails to adequately construct, maintain or repair

Deleted: Owners

the Easement Areas within thirty days of receipt of written notice from Owners, Owners may undertake the repairs and charge the costs of such to Summit Public. Any amounts owing hereunder for longer than thirty days shall accrue interest at the rate of twelve percent (12%) per annum. Summit Public shall not permit any mechanic's or materialman's liens to be enforced against the Easement Areas and if such lien is filed Summit Public shall cause it to be removed within thirty days.

Deleted: or such longer period if Summit Public is correcting the defective maintenance or repairs consistent with reasonable business practice,

3. Use by Permission. All employees, agents, tenants and contractors of Summit Public shall be permitted to exercise the rights granted hereunder. All use and occupancy of the Easement Areas by Summit Public shall be in compliance with the terms hereof and those of all applicable local, state and federal licenses, permits, laws and regulations.

4. Reservation of Rights. Exclusive use of the Utility Easement is not granted and Owners expressly reserve the right to use the Easement Areas for any purpose that does not unreasonably interfere with Summit Public's use and enjoyment of the Easement. Owners' further expressly reserve the right to grant additional easements and other rights to third parties over, across and under the Easement Areas on the condition that such easements and other rights do not unreasonably interfere with Summit Public's use and enjoyment of the Easement Areas. Such reservations by Owners shall in no event include the right to erect or cause to be erected any buildings or structures upon the Utility Easement or to locate any mobile home or trailer units thereon.

Deleted: ¶
Deleted: hereby
Formatted: Indent: First line: 0"
Deleted: rights
Deleted: , permit others to use and grant additional easements over, under and across
Deleted: so long as such use or occupancy
Deleted: Utility

5. Relocation of Easement Premises. If Owners determine that the location of the Utility Easement premises interferes with the use or development of the Owners' Property, Owners may at their expense elect to relocate the power line and other equipment from the Utility Easement to another location on the Owners' Property provided that Owners provide written notice of the need to relocate to Summit Public and that Owners provide alternative easement premises that provides adequate access and usage similar to that provided under this Agreement. The Parties agree to mutually work in good faith towards a relocation of the Utility Easement premises that best resolve Owners' use concerns while still providing uninterrupted service for permitted uses.

6. Running of Benefits and Burdens. All provisions of this instrument, including all benefits and burdens, shall run with the lands of the grantors and grantee, and are binding upon and shall inure to the benefit of the assigns and successors of Owners and Summit Public.

7. Indemnification. Summit Public shall hold harmless, indemnify and defend Owners from all liability, penalties, losses, damages, costs, expenses, causes of action, liens, claims, attorneys' fees, and/or judgments arising by reason of any injury or death of any person or persons, or damage to the property or any person or persons arising from or relating to Summit Public's use of the Utility Easement or arising from or relating to the Summit Public's breach of any of the covenants or provisions set forth in this Easement Agreement.

8. Amendment or Termination. This Easement Grant may be amended or terminated by a written agreement signed by both Summit Public and Owners, or their successors, heirs or assigns, which is duly recorded in the records of the Summit County Clerk

and Recorder.

9. Abandonment. ~~If Summit Public determines that~~ the Existing Power Line is no longer of use as a back-up power source, ~~and abandonment is warranted. Summit Public shall notify Owners and with consent of Owners and the USFS obtain all permits required by law to remove any facilities or equipment from such area within a reasonable amount of time. The Easement shall then terminate automatically for the portion of the Easement Areas containing the Existing Power Line.~~

Deleted: Upon completion of installation and adequate testing of the Replacement Power Line and when

Deleted: line cannot be used

Deleted: an alternate,

Deleted: , the Existing Power Line

Deleted: be abandoned

Deleted: and Summit Public shall remove any facilities or equipment from such area consistent with reasonable business practice and within a reasonable amount of time not to exceed one year. Any equipment remaining on Owners' Property for longer than one-year following termination of this Easement or any portion of it shall be deemed abandoned by Summit Public, however, no such abandonment shall release Summit Public from any obligation arising hereunder or otherwise

Board of County Commissioners of Summit County, Colorado,

By: Dan Gibbs, Title: Chair

STATE OF COLORADO)
) ss.

County of Summit)

Deleted:

The foregoing Utility Easement Agreement was acknowledged before me this ____ day of _____, 2015 by Dan Gibbs, as Chair of the Board of County Commissioners of Summit County.

My Commission Expires: _____

SEAL

Notary Public

Town of Breckenridge

By: _____, Title: _____

STATE OF COLORADO)
) ss.
County of _____)

The foregoing Utility Easement Agreement was acknowledged before me this ____ day of _____, 2015 by _____, as _____ for the Town of Breckenridge.

My Commission Expires: _____

SEAL

Notary Public

Summit Public Radio & TV, Inc., a Colorado nonprofit corporation

By: _____, Title: _____

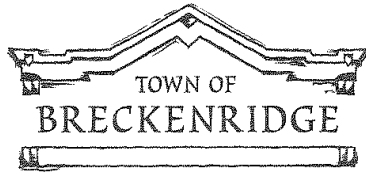
STATE OF COLORADO)
) ss.
County of Summit)

The foregoing Utility Easement Agreement was acknowledged before me this ____ day of _____, 2015 by _____, as _____ for Summit Public Radio & TV, Inc., a Colorado nonprofit corporation.

My Commission Expires: _____

SEAL

Notary Public



MEMORANDUM

TO: Town Council

FROM: Matt Thompson, AICP, Planner II

DATE: June 3, 2015 for meeting of June 9, 2015

SUBJECT: First Reading: Landmarking of Lomax Gulch Historic Site

The Town Council reviewed the 2013 SustainableBreck Annual Report in January 2014. During the review of the report's Land Use section, the Council noted that the number of locally landmarked historic buildings and sites in Town appeared low and that more buildings were eligible for landmarking designation. One of the primary benefits of having local landmark designation is that it increases the property's eligibility for grants. Further, local landmark designation identifies the property as having significant local historical value. Staff has worked this year to bring forward more Town properties for landmark designation, as time has permitted.

At their May 5 meeting, the Planning Commission reviewed the Landmarking Lomax Gulch Historic Site and recommended that the Town Council adopt ordinances approving local landmark status for the properties. The Commission found that all properties fulfilled the criteria in Title 9, Chapter 11 *Historic Preservation* of the Development Code.

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

1 **FOR WORKSESSION/FIRST READING – JUNE 9**

2
3 COUNCIL BILL NO. _____

4
5 Series 2015

6
7 AN ORDINANCE DESIGNATING CERTAIN REAL PROPERTY AS A LANDMARK
8 UNDER CHAPTER 11 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE
9 (Lomax Gulch Historic Site)

10
11 BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE,
12 COLORADO:

13
14 Section 1. Findings. The Town Council of the Town of Breckenridge finds and
15 determines as follows:

16
17 A. The Town of Breckenridge owns the hereinafter described real property. Such real
18 property is located within the corporate limits of the Town of Breckenridge, County of Summit
19 and State of Colorado.

20 B. The Town filed an application pursuant to Chapter 11 of Title 9 of the Breckenridge
21 Town Code seeking to have the hereinafter described real property designated as a landmark
22 (“Application”).

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

25 D. The improvements located on hereinafter described real property are at least fifty (50)
26 years old.

27 E. The hereinafter described real property meets the “social” designation criteria for a
28 landmark as set forth in Section 9-11-4(A)(1)(b) of the Breckenridge Town Code because the
29 property exemplifies the cultural, political, economic or social heritage of the community.

30 F. The hereinafter described real property meets the “physical integrity” criteria for a
31 landmark as set forth in Section 9-11-4(A)(3) of the Breckenridge Town Code because the
32 property shows character, interest or value as part of the development, heritage or cultural
33 characteristics of the community, region, state, or nation.

34 G. In accordance with the requirements of Section 9-11-3(B)(3) of the Breckenridge
35 Town Code, on May 5, 2015 the Application was reviewed by the Breckenridge Planning
36 Commission. On such date the Planning Commission recommended to the Town Council that the
37 Application be granted.

38 H. The Application meets the applicable requirements of Chapter 11 of Title 9 of the
39 Breckenridge Town Code, and should be granted without conditions.

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

4 Section 2. Designation of Property as Landmark. The following described real property:

5
6 HISTORIC CENTER SITE I, CHRISTIE HEIGHTS, ACCORDING TO THE
7 PLAT FILED JUNE 10, 1986 UNDER RECEPTION NO. 318461, COUNTY OF
8 SUMMIT, STATE OF COLORADO; ALSO KNOWN AS 301 SKI HILL
9 ROAD, BRECKENRIDGE, COLORADO 80424

10
11 is designated as a landmark pursuant to Chapter 11 of Title 9 of the Breckenridge Town
12 Code.

13
14 Section 3. Police Power Finding. The Town Council finds, determines, and declares that
15 this ordinance is necessary and proper to provide for the safety, preserve the health, promote the
16 prosperity, and improve the order, comfort and convenience of the Town of Breckenridge and
17 the inhabitants thereof.

18
19 Section 4. Town Authority. The Town Council finds, determines, and declares that it has
20 the power to adopt this ordinance pursuant to the authority granted to home rule municipalities
21 by Article XX of the Colorado Constitution and the powers contained in the Breckenridge Town
22 Charter.

23
24 Section 5. Effective Date. This ordinance shall be published and become effective as
25 provided by Section 5.9 of the Breckenridge Town Charter.

26
27 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
28 PUBLISHED IN FULL this ____ day of _____, 2015. A Public Hearing shall be held at the
29 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
30 _____, 2015, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
31 Town.

32
33 TOWN OF BRECKENRIDGE, a Colorado
34 municipal corporation

35
36
37 By: _____
38 John G. Warner, Mayor

39
40 ATTEST:

41
42
43 _____
44 Helen Cospolich
45 Town Clerk

46 500-106-1\Lomax Landmarking Ordinance (First Reading)(05-12-15)

MEMORANDUM

TO: Town Council

FROM: Mark Truckey, Assistant Director Community Development
Matt Thompson, Planner II

DATE: June 3, 2015 for June 9 Council Meeting

SUBJECT: Sign Code Amendments Ordinance

At the May 26 Council work session staff discussed the proposed amendments to the Sign Code that had been developed working with the Council's Sign subcommittee. The amendments include:

- Allowances for window sign wraps
- Additional square footage allowances for directory signs, allowing businesses located off the street to still have some street presence
- Various miscellaneous amendments to address subjects such as sign materials, internally lit signs, and neon signs

In addition, at the May 26 meeting the Council endorsed two additional amendments:

- Seasonal decorations: The Council generally felt that winter holiday decorations such as wreaths, bows, etc. should be taken down earlier in the year than holiday lights are allowed to stay on (end of the ski season). Staff has drafted language in the attached ordinance that addresses this and that requires winter holiday decorations to be removed by the day after President's Day.
- Window Posters and Photographs: The Council noted examples of some tasteful window displays that incorporated posters and photographs as portions of the display. In these situations, the posters and photographs were set back some distance from the window as opposed to being directly affixed to the window. Staff has drafted a provision in the attached ordinance that allows for posters and photographs provided they are set back at least 12 inches from the window.

Council Action

Attached is a draft ordinance for first reading that includes all of the changes discussed above. Staff will be available to answer any questions Council may have.

1 ***FOR WORKSESSION/FIRST READING – JUNE 9***

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

5
6 COUNCIL BILL NO. 18

7
8 Series 2015

9
10 AN ORDINANCE MAKING MISCELLANEOUS AMENDMENTS TO CHAPTER 2 OF
11 TITLE 8 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE “BRECKENRIDGE
12 SIGN ORDINANCE”

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

16
17 Section 1. The definition of “Backlit Sign” in Section 8-2-3 of the Breckenridge Town
18 Code is repealed and replaced with the following definition:

19
~~BACKLIT~~ **INTERNALLY LIT**
SIGN:

An indirect source of light which illuminates a sign by shining through a translucent surface or a sign, including plastic signs, lit from an internal light source.

20
21 Section 2. The definition of “Highway Sign” in Section 8-2-3 of the Breckenridge Town
22 Code is repealed.

23
24 Section 3. The definition of “Neon Sign” in Section 8-2-3 of the Breckenridge Town
25 Code is amended to read as follows:

26
NEON SIGN:

Any sign that is illuminated by the tubes filled with neon, argon, krypton and related inert gases, including any display of neon lighting tubes ~~which is in view of the general public from a public right of way or from any public area~~, regardless of the shape, size, design or configuration.

27
28 Section 4. Section 8-2-3 of the Breckenridge Town Code is amended by the addition of
29 the following definitions:

30
SEASONAL DECORATION:

Temporary, noncommercial decorations or displays, when such are clearly incidental to the primary use of the building, and are customarily or commonly associated with,

any national, local or religious celebration.

WINDOW SIGN WRAP:

A sign that extends horizontally across a business window or series of business windows that is placed towards the top or bottom of the window as not to detract from the inside display of merchandise.

1
2 Section 5. Section 8-2-6Q of the Breckenridge Town Code is amended to read as follows:
3

4 Q. Seasonal Decorations: ~~Temporary, noncommercial decorations or displays,~~
5 ~~when such are clearly incidental to, and are customarily or commonly associated~~
6 ~~with, any national, local or religious celebration;~~ **Seasonal decorations** provided,
7 that such decorations ~~or displays~~ are maintained in an attractive condition, ~~and~~ do
8 not constitute a fire hazard, **and are removed after the season associated with**
9 **the celebration has ended. Temporary winter holiday decorations must be**
10 **removed by the day after the third Monday in February (when President's**
11 **Day is celebrated).** Temporary winter holiday lighting is allowed in accordance
12 with subsection 9-12-8B of this code.
13

14 Section 6. Section 8-2-6 of the Breckenridge Town Code is amended by the addition of a
15 new section Y, which shall read as follows:
16

17 **Y. Window Sign Wraps: In addition to the window signage square foot**
18 **allowance provided in Section 8-2-12D11, each business is entitled to one (1)**
19 **window sign wrap that may extend across the width of the storefront**
20 **windows. The window sign wrap may be a maximum of twelve (12) inches in**
21 **height and must be composed of materials that are affixed to the window in a**
22 **semi-permanent manner that is not easily changed (e.g., paper cannot be**
23 **used). The window sign wrap must be placed within six (6) inches of either**
24 **the top or bottom of the window, so as not to detract from the inside display**
25 **of merchandise. Examples of acceptable window sign wraps are shown**
26 **below.**
27



1
2
3 Section 7. Section 8-2-6 of the Breckenridge Town Code is amended by the addition of a
4 new section Z, which shall read as follows:
5

6 **Z. Window Posters and Photographs: Posters and photographs advertising a**
7 **business or products sold in a business that are located inside a building, but**
8 **are visible through the business windows, are allowed provided they are not**
9 **directly affixed to windows and are set back a minimum of twelve (12) inches**
10 **from any window. Such posters and photographs do not count towards the**
11 **window signage square foot allowance provided in Section 8-2-12D11.**
12

13 Section 8. Section 8-2-13(D) of the Breckenridge Town Code is amended to read as
14 follows:
15

16 D. Directory Signs: Directory signs may be wall mounted or freestanding, ~~and the~~
17 ~~aggregate area of such sign shall be charged against the allowable sign area~~
18 ~~established by this chapter.~~ **The aggregate area of directory signs does not**
19 **count towards each business's allowable sign area.** The individual signs of a
20 directory sign shall be of a coordinated design, with each of the individual signs
21 sharing at least two (2) of the following as design elements in common: size,
22 shape, materials, letter style and colors. **Each individual business sign in a**
23 **directory sign shall not exceed three (3) square feet in size. In no case may**
24 **the aggregate area of a directory sign exceed twenty (20) square feet in size.**
25 **Where the number of businesses served would not fit onto the maximum size**
26 **allowed for a directory sign, then additional directory signs may be allowed.**
27 **Additional directory signs must be located at least twenty five (25) feet from**
28 **other directory signs to avoid creating a cluttered appearance.**
29

30 Section 9. Section 8-2-13(K) of the Breckenridge Town Code is amended to read as
31 follows:
32

1 K. Permanent Window Signs: Subject to the area limitations of subsection 8-2-6S
2 of this chapter, each window may contain no more than two (2) permanent
3 window signs, **except as provided in 8-2-6S1.**
4

5 Section 10. Section 8-2-15(B) of the Breckenridge Town Code is amended to read as
6 follows:
7

8 B. Backlit Signs. Internally Lit Signs placed on the exterior of a building
9 **or on the interior of the building within five feet of a window.**
10

11 Section 11. Section 8-2-15(E) of the Breckenridge Town Code is amended to read as
12 follows:
13

14 E. Neon signs **placed on the exterior of a building or on the interior of the**
15 **building within five feet of a window.**
16

17 Section 12. Except as specifically amended hereby, the Breckenridge Town Code, and
18 the various secondary codes adopted by reference therein, shall continue in full force and effect.
19

20 Section 13. The Town Council hereby finds, determines and declares that this ordinance
21 is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and
22 improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants
23 thereof.
24

25 Section 14. The Town Council hereby finds, determines and declares that it has the
26 power to adopt this ordinance pursuant to: (i) the Local Government Land Use Control Enabling
27 Act, Article 20 of Title 29, C.R.S.; (ii) Part 3 of Article 23 of Title 31, C.R.S. (concerning
28 municipal zoning powers); (iii) Section 31-15-103, C.R.S. (concerning municipal police powers);
29 (iv) Section 31-15-401, C.R.S.(concerning municipal police powers); (v) the authority granted to
30 home rule municipalities by Article XX of the Colorado Constitution; and (vi) the powers
31 contained in the Breckenridge Town Charter.
32

33 Section 15. This ordinance shall be published and become effective as provided by
34 Section 5.9 of the Breckenridge Town Charter.
35

36 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
37 PUBLISHED IN FULL this ____ day of _____, 2015. A Public Hearing shall be held at the
38 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
39 _____, 2015, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
40 Town.
41
42

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By _____
John G. Warner, Mayor

ATTEST:

Helen Cospolich
Town Clerk

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59

MEMORANDUM

TO: Town Council

FROM: Mark Truckey, Assistant Director of Community Development

DATE: June 2, 2015 for June 9 Council Meeting

SUBJECT: TDR Code Amendments First Reading

Background

The Council discussed the proposed amendments to the TDR provisions of the Development Code at its May 26 meeting and was supportive of the changes proposed by staff. The proposed amendments would limit the number of qualifying wetlands lots that can be used in any TDR transaction, where the TDR's would be used in the Town, to 25 percent of the total transaction, with a maximum of two wetlands lots per transaction.

One issue that was raised by Council at the May 26 meeting was a concern that someone may have purchased wetlands lots in anticipation of use as TDRs and that the proposed Code amendment might preclude their ability to utilize the wetlands lots for TDRs. Staff has added a new section to the ordinance to address this issue should it arise, as listed below:

Section 2. The provisions limiting use of wetlands lots in Section 1 of this ordinance shall not apply to any wetlands lot located in either the Town or unincorporated Summit County, Colorado when it is demonstrated, to the reasonable satisfaction of the Town Council, that the owner of the wetlands lot had entered into a legally binding contract to sell such lot for purposes of use in the TDR program prior to the approval of this ordinance on first reading on June 9, 2015.

Council Action

Attached is the first reading for the ordinance adopting the proposed TDR Code amendments. Staff will be available to answer any questions Council may have.

1 ***FOR WORKSESSION/FIRST READING – JUNE 9***

2
3 Additions To the Ordinance As Reviewed At The March 26, 2015 Worksession Are Indicated
4 By **Bold + Double Underline**; Deletions By ~~Strikeout~~

5
6 COUNCIL BILL NO. ____

7
8 Series 2015

9
10 AN ORDINANCE AMENDING SECTION 9-1-17-12 OF THE BRECKENRIDGE TOWN
11 CODE, KNOWN AS THE “BRECKENRIDGE DEVELOPMENT CODE,” CONCERNING
12 THE TRANSFER OF DENSITY FROM WETLANDS

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

16
17 Section 1. Section 9-1-17-12(B) of the Breckenridge Town Code is amended to read as
18 follows:

19
20 B. Other Transfers: A transfer of density to a lot or parcel within the town from
21 either one lot or parcel located outside of the town, but within the Upper Blue
22 River Basin, or pursuant to a certificate of development rights issued pursuant to
23 that certain “Intergovernmental Agreement Concerning Transferred Development
24 Rights between the Town and Summit County, Colorado”, as amended from time
25 to time, may be approved by the town only in compliance with this chapter. In no
26 case may a density transfer be allowed into the Historic District or Land Use
27 District 1. A density transfer pursuant to the referenced intergovernmental
28 agreement that includes a Transfer of Development Rights Sending Area wetland
29 lot shall be limited so that no more than 25% of any density approved for transfer
30 (not to exceed two development rights) may originate from a qualifying wetland
31 lot of “high importance” or “concern” as defined in the intergovernmental
32 agreement; only whole development rights are eligible for transfer from wetlands
33 lots. If a density transfer is approved, the transfer shall be evidenced by a written
34 covenant which shall be in a form and substance acceptable to the town attorney.
35 Such covenant shall provide: 1) the amount of density transferred; 2) the new total
36 amount of density on the receiving parcel; 3) the total new amount of density on
37 the sending parcel; and 4) an acknowledgment by the owner of the receiving
38 parcel that the density which has been transferred may be used on the receiving
39 parcel only in accordance with this chapter. The covenant shall be recorded with
40 the clerk and recorder of Summit County, and shall conclusively establish the
41 amount of density on the receiving parcel as of the date of such covenant. Upon
42 the execution of the density transfer covenant described above, the owner of the
43 receiving parcel shall execute such documents as may be required by the director
44 in order to assure that the records of the town correctly reflect the current amount
45 of allowed density on the receiving parcel. Development approval shall include a
46 condition of approval that specifies the time or times at which all requirements as

1 set forth above are complied with (e.g., prior to issuance of building permits).
2 Development permit conditions of approval shall state the amount of density
3 required to be transferred and shall not include specific dollar amounts for
4 purchasing such density. The cost of purchasing density shall be based on the
5 current rate established for sale of TDRs at the time of purchase, as outlined in the
6 Intergovernmental Agreement.
7

8 **Section 2. The provisions limiting use of wetlands lots in Section 1 of this ordinance**
9 **shall not apply to any wetlands lot located in either the Town or unincorporated Summit**
10 **County, Colorado when it is demonstrated, to the reasonable satisfaction of the Town**
11 **Council, that the owner of the wetlands lot had entered into a legally binding contract to**
12 **sell such lot for purposes of use in the TDR program prior to the approval of this ordinance**
13 **on first reading on June 9, 2015.**
14

15 Section 3. Except as specifically amended by this ordinance, the Breckenridge Town
16 Code, and the various secondary codes adopted by reference therein, shall continue in full force
17 and effect.
18

19 Section 4. The Town Council finds, determines, and declares that this ordinance is
20 necessary and proper to provide for the safety, preserve the health, promote the prosperity, and
21 improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants
22 thereof.
23

24 Section 5. The Town Council finds, determines, and declares that it has the power to
25 adopt this ordinance pursuant to: (i) the Local Government Land Use Control Enabling Act,
26 Article 20 of Title 29, C.R.S.; (ii) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal
27 zoning powers); (iii) Section 31-15-103, C.R.S. (concerning municipal police powers); (iv)
28 Section 31-15-401, C.R.S. (concerning municipal police powers); (v) the authority granted to
29 home rule municipalities by Article XX of the Colorado Constitution; and (vi) the powers
30 contained in the Breckenridge Town Charter.
31

32 Section 6. This ordinance shall be published and become effective as provided by Section
33 5.9 of the Breckenridge Town Charter.
34

35 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
36 PUBLISHED IN FULL this ____ day of _____, 2015. A Public Hearing shall be held at the
37 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
38 _____, 2015, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
39 Town.
40

41 TOWN OF BRECKENRIDGE, a Colorado
42 municipal corporation
43

44
45 By: _____
46 John G. Warner, Mayor

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64

ATTEST:

Helen Cospolich
Town Clerk

MEMO

TO: Town Council

FROM: Town Attorney

RE: Ordinance Approving Sale of Lot 4, Block 5, Breckenridge Airport Subdivision

DATE: June 2, 2015 (for June 9th meeting)

Section 15.3 of the Town Charter requires either an ordinance or an election to authorize the sale of Town-owned real property.

Enclosed with this memo is an ordinance to authorize and approve the sale of the portion of Lot 4, Block 5, Breckenridge Airport Subdivision, which will be left after the 50 foot public right of way over the southerly portion of the lot has been created.

The terms of the proposed sale are set forth on the Contract to Buy and Sell Real Estate (Land) that is attached to the ordinance. The Council has been made aware of this sale before, so I will just mention the key deal points that are reflected in the contract:

1. Buyer: Kim Resort, LLC, a Colorado limited liability company
2. Sale Price: \$999,000. \$10,000 earnest money upon signing of contract. Balance due in cash at closing.
3. Date of Closing: August 14, 2015
4. Form of Deed: special warranty deed
5. Special Provisions:
 - A. The density attributable to the 50 foot public right of way parcel will remain on the remainder of the Property. The use of such density by Buyer shall be subject to the applicable requirements and limitations of the Town's Development Code and related land use rules and regulations. No assurance is given or implied by Town that such density may actually be developed or otherwise used by the Buyer on the Property.
 - B. Buyer acknowledges that the Property will be conveyed and transferred "AS IS," "WHERE IS," and "WITH ALL FAULTS."
 - C. After Closing Buyer may access the Property either from Airport Road or the 50 foot public right-of-way described in the legal description of the Property, at Buyer's option and election, subject, however, to Town's approval as part of the normal land use review and approval process for the development of the Property. Buyer will not

be permitted to access the Property from both Airport Road and the 50 foot public right of way.

- D. At closing the Buyer will execute a restrictive covenant in the Town's favor perpetually prohibiting the growing, processing, or cultivation of marijuana in any form and in any manner on or at the Property. The restrictive covenant shall be recorded with the Clerk and Recorder of Summit County, Colorado; shall run with the land; and shall not be subordinate to any lien or encumbrance, except the lien of the general property taxes for 2015 and subsequent years.

Because of timing issues the contract has already been signed by the Town Manager. The ordinance ratifies the Town Manager's signature on the contract, and authorizes him to proceed to close the transaction in accordance with the contract.

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

1 **FOR WORKSESSION/FIRST READING – JUNE 9**

2
3 COUNCIL BILL NO. ____

4
5 Series 2015

6
7 AN ORDINANCE APPROVING THE SALE OF TOWN-OWNED
8 REAL PROPERTY

9 (Part of Lot 4, Block 5, Breckenridge Airport Subdivision – Kim Resort, LLC)

10
11 WHEREAS, the Town of Breckenridge is the owner of the following described real
12 property:

13
14 LOT 4, BLOCK 5, BRECKENRIDGE AIRPORT SUBDIVISION AS
15 DEPICTED ON THE PLAT OF “A RESUBDIVISION OF LOT 3 BLOCK 5 OF
16 A RESUBDIVISION OF LOT 3 BLOCK 5 AND LOT 3 BLOCK 4, AN
17 AMENDED REPLAT OF BRECKENRIDGE AIRPORT SUBDIVISION”
18 RECORDED AUGUST 28, 1997 AT RECEPTION NUMBER 545877,
19 SUMMIT COUNTY, COLORADO, EXCEPT THE FOLLOWING PORTION
20 OF SAID LOT 4 WHICH IS A DEDICATED PUBLIC RIGHT-OF-WAY, AND
21 WHICH IS NOT PART OF THE PROPERTY:

22
23 BEGINNING AT THE SOUTHWEST CORNER OF LOT 4 BLOCK 5;

24
25 THENCE N 00°23’37” E, 50.00 FEET ALONG THE WESTERLY LINE OF
26 LOT 4, BLOCK 5, COMMON WITH THE EASTERLY RIGHT OF WAY OF
27 AIRPORT ROAD, A 60 FOOT PUBLIC RIGHT OF WAY, TO THE
28 NORTHWEST CORNER OF THIS RIGHT OF WAY;

29
30 THENCE S 89°36’23” E, 254.71 FEET TO A POINT ON THE EASTERLY
31 LINE OF LOT 4, BLOCK 5 WHICH IS THE NORTHEAST CORNER OF THIS
32 RIGHT OF WAY;

33
34 THENCE S 06°01’06” E, 50.31 FEET ALONG THE EASTERLY LINE OF LOT
35 4, BLOCK 5, COMMON WITH THE WESTERLY LINE OF TRACT D,
36 BLOCK 11 ACCORDING TO “A REPLAT OF BLOCK 11, AN AMENDED
37 REPLAT OF BRECKENRIDGE AIRPORT SUBDIVISION” RECORDED
38 AUGUST 3, 2005 AT RECEPTION NUMBER 797050, SUMMIT COUNTY,
39 COLORADO TO THE SOUTHEAST CORNER OF LOT 4, BLOCK 5;

40
41 THENCE N 89°36’23” W, 260.33 FEET ALONG THE SOUTHERLY LINE OF
42 LOT 4, BLOCK 5, COMMON WITH THE NORTHERLY LINE OF LOT 5,
43 BLOCK 5, BRECKENRIDGE AIRPORT SUBDIVISION ACCORDING TO
44 THE PLAT OF “A RESUBDIVISION OF LOT 3 BLOCK 5 AND LOT 3
45 BLOCK 4, AN AMENDED REPLAT OF BRECKENRIDGE AIRPORT
46 SUBDIVISION” RECORDED NOVEMBER 22, 1995 AT RECEPTION

1 NUMBER 503766, SUMMIT COUNTY COLORADO TO THE POINT OF
2 BEGINNING.

3
4 (“Property”)

5 ; and

6
7 WHEREAS, the Town desires to sell the Property to Kim Resort, LLC, a Colorado limited
8 liability company; and

9
10 WHEREAS, a proposed Contract to Buy and Sell Real Estate (Land) between the Town and
11 Kim Resort, LLC, a Colorado limited liability company, has been prepared, a copy of which is
12 marked Exhibit “A.” attached hereto, and incorporated herein by reference (“Agreement”); and

13
14 WHEREAS, the Town Council has reviewed the Agreement, and finds and determines that
15 it would be in the best interest of the Town and its residents for the Town to sell the Property to Kim
16 Resort, LLC, a Colorado limited liability company, pursuant to the Agreement; and

17
18 WHEREAS, Section 15.3 of the Breckenridge Town Charter provides that the Town
19 Council may lawfully authorize the sale of Town-owned real property by ordinance; and

20
21 WHEREAS, the Agreement has previously been executed by the Town Manager on
22 behalf of the Town, and it necessary and appropriate for the Town Council to ratify the previous
23 execution of the Agreement by the Town Manager.

24
25 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF
26 BRECKENRIDGE, COLORADO:

27
28 Section 1. The Agreement between the Town and Kim Resort, LLC, a Colorado limited
29 liability company (Exhibit “A” hereto), is approved, and the Town Manager’s previous execution
30 of such Agreement for and on behalf of the Town of Breckenridge is ratified, confirmed, and
31 approved.

32
33 Section 2. The Town Manager is authorized, empowered, and directed to take all necessary
34 and appropriate action to close the sale of the Property contemplated by the Agreement. In
35 connection therewith, the Town Manager shall have full power and authority to do and perform all
36 matters and things necessary to the sale of the Property pursuant to the Agreement, including, but
37 not limited to, the following:

- 38
39 1. The making, execution, and acknowledgement of settlement
40 statements, closing agreements, and other usual and customary
41 closing documents;
42
43 2. The execution, acknowledgement and delivery to the Buyer of the
44 deed of conveyance for the Property; and
45

1 3. The performance of all other things necessary to the sale of the
2 Property by the Town pursuant to the Agreement.

3
4 All action taken by the Town Manager pursuant to the authority granted by this Section 2 is ratified,
5 confirmed, and approved in advance by the Town Council.

6
7 Section 3. The Town Council finds, determines, and declares that it has the power to
8 adopt this ordinance pursuant to the authority granted to home rule municipalities by Article XX
9 of the Colorado Constitution and Section 15.3 of the Breckenridge Town Charter.

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

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

19
20 TOWN OF BRECKENRIDGE, a Colorado
21 municipal corporation

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

27
28 ATTEST:

29
30
31
32 _____
33 Helen Cospolich
34 Town Clerk



CORNERSTONE
REAL ESTATE COMPANY, LLC

Cornerstone Real Estate Company, LLC
23110 US Hwy 6, #107 Keystone, CO 80435
Kaycee Tolmie
Ph: 970-513-8200

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission.
(CBS4-8-13) (Mandatory 1-14)

THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.

**CONTRACT TO BUY AND SELL REAL ESTATE
(LAND)**

Property with No Residences)
 Property with Residences-Residential Addendum Attached)

Date: 5/29/2015

AGREEMENT

1. AGREEMENT. Buyer, identified in § 2.1, agrees to buy, and Seller, identified in § 2.3, agrees to sell, the Property described below on the terms and conditions set forth in this contract (Contract).

2. PARTIES AND PROPERTY.

2.1. Buyer. Buyer, *Kim Resort LLC*, will take title to the Property described below as

Joint Tenants Tenants In Common Other .

2.2. Assignability and Inurement. This Contract **Is** **Is Not** assignable by Buyer without Seller's prior written consent. Except as so restricted, this Contract inures to the benefit of and is binding upon the heirs, personal representatives, successors and assigns of the parties.

2.3. Seller. Seller, *Town of Breckenridge*, is the current owner of the Property described below.

2.4. Property. The Property is the following legally described real estate in the County of

Summit, Colorado:

LOT 4, BLOCK 5, BRECKENRIDGE AIRPORT SUBDIVISION AS DEPICTED ON THE PLAT OF "A RESUBDIVISION OF LOT 3 BLOCK 5 OF A RESUBDIVISION OF LOT 3 BLOCK 5 AND LOT 3 BLOCK 4, AN AMENDED REPLAT OF BRECKENRIDGE AIRPORT SUBDIVISION" RECORDED AUGUST 28, 1997 AT RECEPTION NUMBER 545877, SUMMIT COUNTY, COLORADO, EXCEPT THE FOLLOWING PORTION OF SAID LOT 4 WHICH WILL BE DEDICATED BY SELLER AS A PUBLIC RIGHT-OF-WAY BEFORE CLOSING, AND WHICH IS NOT PART OF THE PROPERTY:

**BEGINNING AT THE SOUTHWEST CORNER OF LOT 4 BLOCK 5;
THENCE N 00°23'37" E, 50.00 FEET ALONG THE WESTERLY LINE OF LOT 4, BLOCK 5, COMMON WITH THE EASTERLY RIGHT OF WAY OF AIRPORT ROAD, A 60 FOOT PUBLIC RIGHT OF WAY, TO THE NORTHWEST CORNER OF THIS RIGHT OF WAY;
THENCE S 89°36'23" E, 254.71 FEET TO A POINT ON THE EASTERLY LINE OF LOT 4, BLOCK 5 WHICH IS THE NORTHEAST CORNER OF THIS RIGHT OF WAY;
THENCE S 06°01'06" E, 50.31 FEET ALONG THE EASTERLY LINE OF LOT 4, BLOCK 5, COMMON WITH THE WESTERLY LINE OF TRACT D, BLOCK 11 ACCORDING TO "A REPLAT OF BLOCK 11, AN AMENDED REPLAT OF BRECKENRIDGE AIRPORT SUBDIVISION" RECORDED AUGUST 3, 2005 AT RECEPTION NUMBER 797050, SUMMIT COUNTY, COLORADO TO THE SOUTHEAST CORNER OF LOT 4, BLOCK 5;
THENCE N 89°36'23" W, 260.33 FEET ALONG THE SOUTHERLY LINE OF LOT 4, BLOCK 5, COMMON WITH THE NORTHERLY LINE OF LOT 5, BLOCK 5, BRECKENRIDGE AIRPORT SUBDIVISION ACCORDING TO THE PLAT OF "A RESUBDIVISION OF LOT 3 BLOCK 5 AND LOT 3 BLOCK 4, AN AMENDED REPLAT OF BRECKENRIDGE AIRPORT SUBDIVISION" RECORDED NOVEMBER 22, 1995 AT RECEPTION NUMBER 503766, SUMMIT COUNTY COLORADO TO THE POINT OF BEGINNING.**

known as No. *1730 AIRPORT Breckenridge CO 80424*,

together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto, and all interest of Seller in vacated streets and alleys adjacent thereto, except as herein excluded (Property).

79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156

2.5. Inclusions. The Purchase Price includes the following items (Inclusions):

2.5.1. Fixtures. All fixtures attached to the Property on the date of this Contract.

Other Fixtures: n/a

If any fixtures are attached to the Property after the date of this Contract, such additional fixtures are also included in the Purchase Price.

2.5.2. Personal Property. If on the Property, whether attached or not, on the date of this Contract, the following items are included: n/a

Other Personal Property:

n/a

The Personal Property to be conveyed at Closing must be conveyed by Seller free and clear of all taxes (except personal property taxes for the year of Closing), liens and encumbrances, except n/a. Conveyance will be by bill of sale or other applicable legal instrument.

2.5.3. Trade Fixtures: With respect to trade fixtures, Seller and Buyer agree as follows:

n/a

The Trade Fixtures to be conveyed at Closing will be conveyed by Seller free and clear of all taxes (except personal property taxes for the year of Closing), liens and encumbrances, except n/a. Conveyance will be by bill of sale or other applicable legal instrument.

2.6. Exclusions. The following items are excluded (Exclusions): n/a

2.7. Water Rights, Well Rights, Water and Sewer Taps.

2.7.1. Deeded Water Rights. The following legally described water rights:

n/a

Any deeded water rights will be conveyed by a good and sufficient n/a deed at Closing.

2.7.2. Other Rights Relating to Water. The following rights relating to water not included in §§ 2.7.1, 2.7.3, 2.7.4 and 2.7.5, will be transferred to Buyer at Closing: n/a

2.7.3. Well Rights. Seller agrees to supply required information to Buyer about the well. Buyer understands that if the well to be transferred is a "Small Capacity Well" or a "Domestic Exempt Water Well" used for ordinary household purposes, Buyer must, prior to or at Closing, complete a Change in Ownership form for the well. If an existing well has not been registered with the Colorado Division of Water Resources in the Department of Natural Resources (Division), Buyer must complete a registration of existing well form for the well and pay the cost of registration. If no person will be providing a closing service in connection with the transaction, Buyer must file the form with the Division within sixty days after Closing. The Well Permit # is n/a.

2.7.4. Water Stock Certificates: The water stock certificates to be transferred at Closing are as follows: n/a

2.7.5. Water and Sewer Taps. Note: Buyer is advised to obtain, from the provider, written confirmation of the amount remaining to be paid, if any, time and other restrictions for transfer and use of the taps.

2.7.6. Conveyance. If Buyer is to receive any rights to water pursuant to § 2.7.2 (Other Rights Relating to Water), § 2.7.3 (Well Rights), or § 2.7.4 (Water Stock Certificates), Seller agrees to convey such rights to Buyer by executing the applicable legal instrument at Closing.

2.8. Growing Crops. With respect to growing crops, Seller and Buyer agree as follows:

n/a

3. DATES AND DEADLINES.

| Item No. | Reference | Event | Date or Deadline | |
|------------------------------|-----------|--|------------------|--------|
| 1 | § 4.3 | Alternative Earnest Money Deadline | 5/29/2015 | Friday |
| Title | | | | |
| 2 | § 8.1 | Record Title Deadline | 6/8/2015 | Monday |
| 3 | § 8.2 | Record Title Objection Deadline | 6/15/2015 | Monday |
| 4 | § 8.3 | Off-Record Title Deadline | 6/8/2015 | Monday |
| 5 | § 8.3 | Off-Record Title Objection Deadline | 6/15/2015 | Monday |
| 6 | § 8.4 | Title Resolution Deadline | 6/22/2015 | Monday |
| 7 | § 8.6 | Right of First Refusal Deadline | | |
| Owners' Association | | | | |
| 8 | § 7.3 | Association Documents Deadline | | |
| 9 | § 7.4 | Association Documents Objection Deadline | | |
| Seller's Property Disclosure | | | | |

| | | | | | |
|-----|----|--------|--|-----------|---------|
| 157 | 10 | § 10.1 | Seller's Property Disclosure Deadline | | |
| 158 | | | Loan and Credit | | |
| 159 | 11 | § 5.1 | Loan Application Deadline | 6/5/2015 | Friday |
| 160 | 12 | § 5.2 | Loan Objection Deadline | 8/7/2015 | Friday |
| 161 | 13 | § 5.3 | Buyer's Credit Information Deadline | | |
| 162 | 14 | § 5.3 | Disapproval of Buyer's Credit Information Deadline | | |
| 163 | 15 | § 5.4 | Existing Loan Documents Deadline | | |
| 164 | 16 | § 5.4 | Existing Loan Documents Objection Deadline | | |
| 165 | 17 | § 5.4 | Loan Transfer Approval Deadline | | |
| 166 | 18 | § 4.7 | Seller or Private Financing Deadline | | |
| 167 | | | Appraisal | | |
| 171 | 19 | § 6.2 | Appraisal Deadline | 7/27/2015 | Monday |
| 172 | 20 | § 6.2 | Appraisal Objection Deadline | 7/31/2015 | Friday |
| 173 | | | Survey | | |
| 174 | 21 | § 9.1 | Current Survey Deadline | | |
| 175 | 22 | § 9.2 | Current Survey Objection Deadline | | |
| 176 | 23 | § 9.2 | Current Survey Resolution Deadline | | |
| 177 | | | Inspection and Due Diligence | | |
| 178 | 24 | § 10.2 | Inspection Objection Deadline | 7/27/2015 | Monday |
| 179 | 25 | § 10.3 | Inspection Resolution Deadline | 7/31/2015 | Friday |
| 180 | 26 | § 10.5 | Property Insurance Objection Deadline | 7/31/2015 | Friday |
| 181 | 27 | § 10.6 | Due Diligence Documents Delivery Deadline | | |
| 182 | 28 | § 10.6 | Due Diligence Documents Objection Deadline | | |
| 183 | 29 | § 10.6 | Due Diligence Documents Resolution Deadline | | |
| 184 | 30 | § 10.6 | Environmental Inspection Objection Deadline | | |
| 185 | 31 | § 10.6 | ADA Evaluation Objection Deadline | | |
| 186 | 32 | § 10.7 | Conditional Sale Deadline | | |
| 187 | 33 | § 11.1 | Tenant Estoppel Statements Deadline | | |
| 188 | 34 | § 11.2 | Tenant Estoppel Statements Objection Deadline | | |
| 189 | | | Closing and Possession | | |
| 190 | 35 | § 12.3 | Closing Date | 8/14/2015 | Friday |
| 191 | 36 | § 17 | Possession Date | | |
| 192 | 37 | § 17 | Possession Time | | |
| 193 | 38 | § 28 | Acceptance Deadline Date | 6/2/2015 | Tuesday |
| 194 | 39 | § 28 | Acceptance Deadline Time | 5 PM MST | |
| 195 | 40 | n/a | | | |
| 196 | 41 | n/a | | | |

3.1. **Applicability of Terms.** Any box checked in this Contract means the corresponding provision applies. Any box, blank or line in this Contract left blank or completed with the abbreviation "N/A", or the word "Deleted" means such provision, including any deadline, is not applicable and the corresponding provision of this Contract to which reference is made is deleted.

The abbreviation "MEC" (mutual execution of this Contract) means the date upon which both parties have signed this Contract.

4. PURCHASE PRICE AND TERMS.

4.1. **Price and Terms.** The Purchase Price set forth below is payable in U.S. Dollars by Buyer as follows:

| Item No. | Reference | Item | Amount | Amount |
|----------|-----------|--------------------|--------------|--------------|
| 1 | § 4.1 | Purchase Price | \$999,000.00 | |
| 2 | § 4.3 | Earnest Money | | \$10,000.00 |
| 3 | § 4.5 | New Loan | | \$699,300.00 |
| 4 | § 4.6 | Assumption Balance | | |
| 5 | § 4.7 | Private Financing | | |
| 6 | § 4.7 | Seller Financing | | |

| | | | | | |
|-----|----|-------|-----------------|--------------|--------------|
| 235 | 7 | n/a | n/a | | |
| 236 | 8 | n/a | n/a | | |
| 237 | 9 | § 4.4 | Cash at Closing | | \$289,700.00 |
| 238 | 10 | | TOTAL | \$999,000.00 | \$999,000.00 |

242 **4.2. Seller Concession.** Seller, at Closing, will credit, as directed by Buyer, an amount of \$ n/a to
 243 assist with any or all of the following: Buyer's closing costs, (Seller Concession). Seller Concession is in addition to
 244 any sum Seller has agreed to pay or credit Buyer elsewhere in this Contract. Seller Concession will be reduced to
 245 the extent it exceeds the aggregate of what is allowed by Buyer's lender as set forth in the Closing Statement,
 246 Closing Disclosure or HUD-1, at Closing.

248 **4.3. Earnest Money.** The Earnest Money set forth in this section, in the form of personal check,
 249 will be payable to and held by Land Title (Earnest Money Holder), in its trust account, on behalf of both Seller
 250 and Buyer. The Earnest Money deposit must be tendered, by Buyer, with this Contract unless the parties mutually
 251 agree to an **Alternative Earnest Money Deadline** (§ 3) for its payment. The parties authorize delivery of the
 252 Earnest Money deposit to the company conducting the Closing (Closing Company), if any, at or before Closing. In
 253 the event Earnest Money Holder has agreed to have interest on Earnest Money deposits transferred to a fund
 254 established for the purpose of providing affordable housing to Colorado residents, Seller and Buyer acknowledge
 255 and agree that any interest accruing on the Earnest Money deposited with the Earnest Money Holder in this
 256 transaction will be transferred to such fund.

259 **4.3.1. Alternative Earnest Money Deadline.** The deadline for delivering the Earnest Money, if
 260 other than at the time of tender of this Contract, is as set forth as the **Alternative Earnest Money Deadline** (§ 3).

262 **4.3.2. Return of Earnest Money.** If Buyer has a Right to Terminate and timely terminates,
 263 Buyer is entitled to the return of Earnest Money as provided in this Contract. If this Contract is terminated as set
 264 forth in § 25 and, except as provided in § 24, if the Earnest Money has not already been returned following receipt
 265 of a Notice to Terminate, Seller agrees to execute and return to Buyer or Broker working with Buyer, written mutual
 266 instructions (e.g., Earnest Money Release form), within three days of Seller's receipt of such form.

268 **4.4. Form of Funds; Time of Payment; Available Funds.**

269 **4.4.1. Good Funds.** All amounts payable by the parties at Closing, including any loan
 270 proceeds, Cash at Closing and closing costs, must be in funds that comply with all applicable Colorado laws,
 271 including electronic transfer funds, certified check, savings and loan teller's check and cashier's check (Good
 272 Funds).

274 **4.4.2. Time of Payment; Available Funds.** All funds, including the Purchase Price to be paid
 275 by Buyer, must be paid before or at Closing or as otherwise agreed in writing between the parties to allow
 276 disbursement by Closing Company at Closing **OR SUCH NONPAYING PARTY WILL BE IN DEFAULT.** Buyer
 277 represents that Buyer, as of the date of this Contract, Does Does Not have funds that are immediately
 278 verifiable and available in an amount not less than the amount stated as Cash at Closing in § 4.1.

280 **4.5. New Loan.**

281 **4.5.1. Buyer to Pay Loan Costs.** Buyer, except as provided in § 4.2, if applicable, must timely
 282 pay Buyer's loan costs, loan discount points, prepaid items and loan origination fees, as required by lender.

283 **4.5.2. Buyer May Select Financing.** Buyer may pay in cash or select financing appropriate and
 284 acceptable to Buyer, including a different loan than initially sought, except as restricted in § 4.5.3 or § 30
 285 (Additional Provisions).

286 **4.5.3. Loan Limitations.** Buyer may purchase the Property using any of the following types of
 287 loans: Conventional Other

288 **4.6. Assumption.** (Omitted as inapplicable)

291 **4.7. Seller or Private Financing.** (Omitted as inapplicable)

**TRANSACTION
PROVISIONS**

297 **5. FINANCING CONDITIONS AND OBLIGATIONS.**

298 **5.1. Loan Application.** If Buyer is to pay all or part of the Purchase Price by obtaining one or more new
 299 loans (New Loan), or if an existing loan is not to be released at Closing, Buyer, if required by such lender, must
 300 make an application verifiable by such lender, on or before **Loan Application Deadline** (§ 3) and exercise
 301 reasonable efforts to obtain such loan or approval.

302 **5.2. Loan Objection.** If Buyer is to pay all or part of the Purchase Price with a New Loan, this Contract is
 303 conditional upon Buyer determining, in Buyer's sole subjective discretion, whether the New Loan is satisfactory to
 304 Buyer, including its availability, payments, interest rate, terms, conditions, and cost of such New Loan. This
 305 condition is for the sole benefit of Buyer. Buyer has the Right to Terminate under § 25.1, on or before Loan
 306
 307
 308
 309
 310
 311
 312

313 **Objection Deadline** (§ 3), if the New Loan is not satisfactory to Buyer, in Buyer's sole subjective discretion. **IF**
 314 **SELLER IS NOT IN DEFAULT AND DOES NOT TIMELY RECEIVE BUYER'S WRITTEN NOTICE TO**
 315 **TERMINATE, BUYER'S EARNEST MONEY WILL BE NONREFUNDABLE**, except as otherwise provided in this
 316 Contract (e.g., Appraisal, Title, Survey).
 317

318 **5.3. Credit Information and Buyer's New Senior Loan. (Omitted as inapplicable)**
 319

320 **5.4. Existing Loan Review. (Omitted as inapplicable)**
 321
 322

323 **6. APPRAISAL PROVISIONS.**
 324

325 **6.1. Lender Property Requirements.** If the lender imposes any requirements or repairs (Requirements) to
 326 be made to the Property (e.g., roof repair, repainting), beyond those matters already agreed to by Seller in this
 327 Contract, Seller has the Right to Terminate under § 25.1, (notwithstanding § 10 of this Contract), on or before three
 328 days following Seller's receipt of the Requirements, based on any unsatisfactory Requirements, in Seller's sole
 329 subjective discretion. Seller's Right to Terminate in this § 6.1 does not apply if, on or before any termination by
 330 Seller pursuant to this § 6.1: (1) the parties enter into a written agreement regarding the Requirements; or (2) the
 331 Requirements have been completed; or (3) the satisfaction of the Requirements is waived in writing by Buyer.
 332

333 **6.2. Appraisal Condition.** The applicable Appraisal provision set forth below applies to the respective
 334 loan type set forth in § 4.5.3, or if a cash transaction, (i.e. no financing), § 6.2.1 applies.
 335

336 **6.2.1. Conventional/Other.** Buyer has the sole option and election to terminate this Contract if
 337 the Property's valuation, determined by an appraiser engaged on behalf of buyer's lender is less than the
 338 Purchase Price. The appraisal must be received by Buyer or Buyer's lender on or before **Appraisal Deadline** (§
 339 3). Buyer has the Right to Terminate under § 25.1, on or before **Appraisal Objection Deadline** (§ 3), if the
 340 Property's valuation is less than the Purchase Price and Seller's receipt of either a copy of such appraisal or
 341 written notice from lender that confirms the Property's valuation is less than the Purchase Price. This § 6.2.1 is for
 342 the sole benefit of Buyer.
 343

344 **6.3. Cost of Appraisal.** Cost of any appraisal to be obtained after the date of this Contract must be
 345 timely paid by Buyer Seller. The cost of the appraisal may include any and all fees paid to the appraiser,
 346 appraisal management company, lender's agent or all three.
 347
 348

349 **7. OWNERS' ASSOCIATIONS.** This Section is applicable if the Property is located within a Common
 350 Interest Community and subject to such declaration.
 351

352 **7.1. Owners' Association Documents.** Owners' Association Documents (Association Documents)
 353 consist of the following:
 354

355 **7.1.1.** All Owners' Association declarations, articles of incorporation, bylaws, articles of
 356 organization, operating agreements, rules and regulations, party wall agreements;
 357

358 **7.1.2.** Minutes of most recent annual owners' meeting;
 359

360 **7.1.3.** Minutes of any directors' or managers' meetings during the six-month period immediately
 361 preceding the date of this Contract. If none of the preceding minutes exist, then the most recent minutes, if any (§§
 362 7.1.1, 7.1.2 and 7.1.3, collectively, Governing Documents); and
 363

364 **7.1.4.** The most recent financial documents which consist of: (1) annual and most recent
 365 balance sheet, (2) annual and most recent income and expenditures statement, (3) annual budget, (4) reserve
 366 study, and (5) notice of unpaid assessments, if any (collectively, Financial Documents).
 367

368 **7.2. Common Interest Community Disclosure.** **THE PROPERTY IS LOCATED WITHIN A**
 369 **COMMON INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR SUCH COMMUNITY.**
 370 **THE OWNER OF THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE OWNERS'**
 371 **ASSOCIATION FOR THE COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES AND**
 372 **REGULATIONS OF THE ASSOCIATION. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS**
 373 **WILL IMPOSE FINANCIAL OBLIGATIONS UPON THE OWNER OF THE PROPERTY, INCLUDING AN**
 374 **OBLIGATION TO PAY ASSESSMENTS OF THE ASSOCIATION. IF THE OWNER DOES NOT PAY THESE**
 375 **ASSESSMENTS, THE ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY AND POSSIBLY SELL IT**
 376 **TO PAY THE DEBT. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS OF THE COMMUNITY**
 377 **MAY PROHIBIT THE OWNER FROM MAKING CHANGES TO THE PROPERTY WITHOUT AN**
 378 **ARCHITECTURAL REVIEW BY THE ASSOCIATION (OR A COMMITTEE OF THE ASSOCIATION) AND THE**
 379 **APPROVAL OF THE ASSOCIATION. PURCHASERS OF PROPERTY WITHIN THE COMMON INTEREST**
 380 **COMMUNITY SHOULD INVESTIGATE THE FINANCIAL OBLIGATIONS OF MEMBERS OF THE**
 381 **ASSOCIATION. PURCHASERS SHOULD CAREFULLY READ THE DECLARATION FOR THE COMMUNITY**
 382 **AND THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION.**
 383

384 **7.3. Association Documents to Buyer.**
 385

386 **7.3.1. Seller to Provide Association Documents.** Seller will cause the Association Documents to
 387 be provided to Buyer, at Seller's expense, on or before **Association Documents Deadline** (§ 3).
 388

389 **7.3.2. Seller Authorizes Association.** Seller authorizes the Association to provide the Association
 390 Documents to Buyer, at Seller's expense.

391 **7.3.3. Seller's Obligation.** Seller's obligation to provide the Association Documents is fulfilled upon
 392 Buyer's receipt of the Association Documents, regardless of who provides such documents.

393 **Note:** If neither box in this § 7.3 is checked, the provisions of § 7.3.1 apply.

394 **7.4. Conditional on Buyer's Review.** Buyer has the right to review the Association Documents. Buyer
 395 has the Right to Terminate under § 25.1, on or before **Association Documents Objection Deadline** (§ 3), based
 396 on any unsatisfactory provision in any of the Association Documents, in Buyer's sole subjective discretion. Should
 397 Buyer receive the Association Documents after **Association Documents Deadline** (§ 3), Buyer, at Buyer's option,
 398 has the Right to Terminate under § 25.1 by Buyer's Notice to Terminate received by Seller on or before ten days
 399 after Buyer's receipt of the Association Documents. If Buyer does not receive the Association Documents, or if
 400 Buyer's Notice to Terminate would otherwise be required to be received by Seller after **Closing Date** (§ 3), Buyer's
 401 Notice to Terminate must be received by Seller on or before Closing. If Seller does not receive Buyer's Notice to
 402 Terminate within such time, Buyer accepts the provisions of the Association Documents as satisfactory, and Buyer
 403 waives any Right to Terminate under this provision, notwithstanding the provisions of § 8.6. (Right of First Refusal
 404 or Contract Approval).
 405
 406
 407
 408
 409

410 8. TITLE INSURANCE, RECORD TITLE AND OFF-RECORD TITLE.

411 8.1. Evidence of Record Title.

412 **8.1.1. Seller Selects Title Insurance Company.** If this box is checked, Seller will
 413 select the title insurance company to furnish the owner's title insurance policy at Seller's expense. On or before
 414 **Record Title Deadline** (§ 3), Seller must furnish to Buyer, a current commitment for owner's title insurance policy
 415 (Title Commitment), in an amount equal to the Purchase Price, or if this box is checked, an **Abstract of Title**
 416 certified to a current date. Seller will cause the title insurance policy to be issued and delivered to Buyer as soon
 417 as practicable at or after Closing.
 418

419 **8.1.2. Buyer Selects Title Insurance Company.** If this box is checked, Buyer will select the title
 420 insurance company to furnish the owner's title insurance policy at Buyer's expense. On or before **Record Title**
 421 **Deadline** (§ 3), Buyer must furnish to Seller, a current commitment for owner's title insurance policy (Title
 422 Commitment), in an amount equal to the Purchase Price.
 423 If neither box in § 8.1.1 or § 8.1.2 is checked, § 8.1.1 applies.
 424
 425
 426

427 **8.1.3. Owner's Extended Coverage (OEC).** The Title Commitment **Will** **Will Not** commit to
 428 delete or insure over the standard exceptions which relate to: (1) parties in possession, (2) unrecorded easements,
 429 (3) survey matters, (4) unrecorded mechanics' liens, (5) gap period (effective date of commitment to date deed is
 430 recorded), and (6) unpaid taxes, assessments and unredeemed tax sales prior to the year of Closing (OEC). If the
 431 title insurance company agrees to provide an endorsement for OEC, any additional premium expense to obtain an
 432 endorsement for OEC will be paid by **Buyer** **Seller** **One-Half by Buyer and One-Half by Seller**
 433 **Other n/a.**
 434

435 **Note:** The title insurance company may not agree to delete or insure over any or all of the standard exceptions.
 436

437 **8.1.4. Title Documents.** Title Documents consist of the following: (1) copies of any plats,
 438 declarations, covenants, conditions and restrictions burdening the Property, and (2) copies of any other documents
 439 (or, if illegible, summaries of such documents) listed in the schedule of exceptions (Exceptions) in the Title
 440 Commitment furnished to Buyer (collectively, Title Documents).
 441

442 **8.1.5. Copies of Title Documents.** Buyer must receive, on or before **Record Title Deadline** (§
 443 3), copies of all Title Documents. This requirement pertains only to documents as shown of record in the office of
 444 the clerk and recorder in the county where the Property is located. The cost of furnishing copies of the documents
 445 required in this Section will be at the expense of the party or parties obligated to pay for the owner's title insurance
 446 policy.
 447

448 **8.1.6. Existing Abstracts of Title.** Seller must deliver to Buyer copies of any abstracts of title
 449 covering all or any portion of the Property (Abstract of Title) in Seller's possession on or before **Record Title**
 450 **Deadline** (§ 3).
 451

452 **8.2. Record Title.** Buyer has the right to review and object to the Abstract of Title or Title Commitment
 453 and any of the Title Documents, as set forth in § 8.4 (Right to Object to Title, Resolution) on or before **Record Title**
 454 **Objection Deadline** (§ 3). Buyer's objection may be based on any unsatisfactory form or content of Title
 455 Commitment or Abstract of Title, notwithstanding § 13, or any other unsatisfactory title condition, in Buyer's sole
 456 subjective discretion. If the Abstract of Title, Title Commitment or Title Documents are not received by Buyer, on or
 457 before the **Record Title Deadline** (§ 3), or if there is an endorsement to the Title Commitment that adds a new
 458 Exception to title, a copy of the new Exception to title and the modified Title Commitment will be delivered to
 459 Buyer. Buyer has until the earlier of Closing or ten days after receipt of such documents by Buyer to review and
 460 object to: (1) any required Title Document not timely received by Buyer, (2) any change to the Abstract of Title,
 461 Title Commitment or Title Documents, or (3) any endorsement to the Title Commitment. If Seller receives Buyer's
 462 Notice to Terminate or Notice of Title Objection, pursuant to this § 8.2 (Record Title), any title objection by Buyer is
 463 governed by the provisions set forth in § 8.4 (Right to Object to Title, Resolution). If Seller has fulfilled all Seller's
 464 obligations, if any, to deliver to Buyer all documents required by § 8.1 (Evidence of Record Title) and Seller does
 465 not receive Buyer's Notice to Terminate or Notice of Title Objection by the applicable deadline specified above,
 466
 467
 468

469 Buyer accepts the condition of title as disclosed by the Abstract of Title, Title Commitment and Title Documents as
 470 satisfactory.

471 **8.3. Off—Record Title.** Seller must deliver to Buyer, on or before **Off-Record Title Deadline** (§ 3), true
 472 copies of all existing surveys in Seller's possession pertaining to the Property and must disclose to Buyer all
 473 easements, liens (including, without limitation, governmental improvements approved, but not yet installed) or
 474 other title matters (including, without limitation, rights of first refusal and options) not shown by public records, of
 475 which Seller has actual knowledge (Off-Record Matters). Buyer has the right to inspect the Property to investigate
 476 if any third party has any right in the Property not shown by public records (e.g., unrecorded easement, boundary
 477 line discrepancy or water rights). Buyer's Notice to Terminate or Notice of Title Objection of any unsatisfactory
 478 condition (whether disclosed by Seller or revealed by such inspection, notwithstanding § 8.2 and § 13), in Buyer's
 479 sole subjective discretion, must be received by Seller on or before **Off-Record Title Objection Deadline** (§ 3). If
 480 an Off-Record Matter is received by Buyer after the **Off-Record Title Deadline** (§ 3), Buyer has until the earlier of
 481 Closing or ten days after receipt by Buyer to review and object to such Off-Record Matter. If Seller receives
 482 Buyer's Notice to Terminate or Notice of Title Objection pursuant to this § 8.3 (Off-Record Title), any title objection
 483 by Buyer and this Contract are governed by the provisions set forth in § 8.4 (Right to Object to Title, Resolution). If
 484 Seller does not receive Buyer's Notice to Terminate or Notice of Title Objection by the applicable deadline
 485 specified above, Buyer accepts title subject to such rights, if any, of third parties of which Buyer has actual
 486 knowledge.

487 **8.4. Right to Object to Title, Resolution.** Buyer's right to object to any title matters includes, but is not
 488 limited to those matters set forth in §§ 8.2 (Record Title), 8.3 (Off-Record Title) and 13 (Transfer of Title), in
 489 Buyer's sole subjective discretion. If Buyer objects to any title matter, on or before the applicable deadline, Buyer
 490 has the following options:

491 **8.4.1. Title Objection, Resolution.** If Seller receives Buyer's written notice objecting to any title
 492 matter (Notice of Title Objection) on or before the applicable deadline, and if Buyer and Seller have not agreed to a
 493 written settlement thereof on or before **Title Resolution Deadline** (§ 3), this Contract will terminate on the
 494 expiration of **Title Resolution Deadline** (§ 3), unless Seller receives Buyer's written withdrawal of Buyer's Notice
 495 of Title Objection (i.e., Buyer's written notice to waive objection to such items and waives the Right to Terminate
 496 for that reason), on or before expiration of **Title Resolution Deadline** (§ 3). If either the Record Title Deadline or
 497 the Off-Record Title Deadline, or both, are extended to the earlier of Closing or ten days after receipt of the
 498 applicable documents by Buyer, pursuant to § 8.2 (Record Title) or § 8.3 (Off-Record Title), the Title Resolution
 499 Deadline also will be automatically extended to the earlier of Closing or fifteen days after Buyer's receipt of the
 500 applicable documents; or

501 **8.4.2. Title Objection, Right to Terminate.** Buyer may exercise the Right to Terminate under §
 502 25.1, on or before the applicable deadline, based on any unsatisfactory title matter, in Buyer's sole subjective
 503 discretion.

504 **8.5. Special Taxing Districts. SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL**
 505 **OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON**
 506 **THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE**
 507 **PLACED AT RISK FOR INCREASED MILL LEVIES AND TAX TO SUPPORT THE SERVICING OF SUCH DEBT**
 508 **WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE**
 509 **SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYERS SHOULD INVESTIGATE**
 510 **THE SPECIAL TAXING DISTRICTS IN WHICH THE PROPERTY IS LOCATED BY CONTACTING THE**
 511 **COUNTY TREASURER, BY REVIEWING THE CERTIFICATE OF TAXES DUE FOR THE PROPERTY, AND BY**
 512 **OBTAINING FURTHER INFORMATION FROM THE BOARD OF COUNTY COMMISSIONERS, THE COUNTY**
 513 **CLERK AND RECORDER, OR THE COUNTY ASSESSOR.**

514 Buyer has the Right to Terminate under § 25.1, on or before **Off-Record Title Objection Deadline** (§ 3), based
 515 on any unsatisfactory effect of the Property being located within a special taxing district, in Buyer's sole subjective
 516 discretion.

517 **8.6. Right of First Refusal or Contract Approval.** If there is a right of first refusal on the Property or a
 518 right to approve this Contract, Seller must promptly submit this Contract according to the terms and conditions of
 519 such right. If the holder of the right of first refusal exercises such right or the holder of a right to approve
 520 disapproves this Contract, this Contract will terminate. If the right of first refusal is waived explicitly or expires, or
 521 the Contract is approved, this Contract will remain in full force and effect. Seller must promptly notify Buyer in
 522 writing of the foregoing. If expiration or waiver of the right of first refusal or approval of this Contract has not
 523 occurred on or before **Right of First Refusal Deadline** (§ 3), this Contract will then terminate.

524 **8.7. Title Advisory.** The Title Documents affect the title, ownership and use of the Property and should
 525 be reviewed carefully. Additionally, other matters not reflected in the Title Documents may affect the title,
 526 ownership and use of the Property, including, without limitation, boundary lines and encroachments, set-back
 527 requirements, area, zoning, building code violations, unrecorded easements and claims of easements, leases and
 528 other unrecorded agreements, water on or under the Property, and various laws and governmental regulations
 529 concerning land use, development and environmental matters. **The surface estate may be owned separately**
 530 **from the underlying mineral estate, and transfer of the surface estate does not necessarily include transfer**
 531 **of the mineral rights or water rights. Third parties may hold interests in oil, gas, other minerals,**

547 geothermal energy or water on or under the Property, which interests may give them rights to enter and
 548 use the Property. Such matters, and others, may be excluded from or not covered by the owner's title insurance
 549 policy. Buyer is advised to timely consult legal counsel with respect to all such matters as there are strict time limits
 550 provided in this Contract [e.g., Record Title Objection Deadline (§ 3) and Off-Record Title Objection Deadline
 551 (§ 3)].
 552
 553

554 9. CURRENT SURVEY REVIEW.

555 **9.1. Current Survey Conditions.** If the box in § 9.1.1 or § 9.1.2 is checked, Buyer, the issuer of the Title
 556 Commitment or the provider of the opinion of title if an Abstract of Title, and *n/a* will receive Improvement Location
 557 Certificate, Improvement Survey Plat or other form of survey set forth in § 9.1.2 (collectively, Current Survey), on
 558 or before Current Survey Deadline (§ 3). The Current Survey will be certified by the surveyor to all those who are
 559 to receive the Current Survey.
 560

561 **9.1.1. Improvement Location Certificate.** If the box in this § 9.1.1 is checked, Seller Buyer will
 562 order or provide, and pay, on or before Closing, the cost of an Improvement Location Certificate.
 563

564 **9.1.2. Other Survey.** If the box in this § 9.1.2 is checked, a Current Survey, other than an Improvement
 565 Location Certificate, will be an Improvement Survey Plat or *n/a*. The parties agree that payment of the cost
 566 of the Current Survey and obligation to order or provide the Current Survey as follows: *n/a*
 567

568 **9.2. Current Survey Objection.** Buyer has the right to review and object to the Current Survey. If the
 569 Current Survey is not timely received by Buyer or is unsatisfactory to Buyer, in Buyer's sole subjective discretion,
 570 Buyer may, on or before Current Survey Objection Deadline (§ 3), notwithstanding § 8.3 or § 13:
 571

572 **9.2.1. Notice to Terminate.** Notify Seller in writing that this Contract is terminated; or
 573

574 **9.2.2. Current Survey Objection.** Deliver to Seller a written description of any matter that was to be
 575 shown or is shown in the Current Survey that is unsatisfactory and that Buyer requires Seller to correct.
 576

577 **9.3. Current Survey Resolution.** If a Current Survey Objection is received by Seller, on or before Current
 578 Survey Objection Deadline (§ 3), and if Buyer and Seller have not agreed in writing to a settlement thereof on or
 579 before Current Survey Resolution Deadline (§ 3), this Contract will terminate on the Current Survey
 580 Resolution Deadline (§ 3), unless Seller receives Buyer's written withdrawal of the Current Survey Objection
 581 before such termination, i.e., on or before expiration of Current Survey Resolution Deadline (§ 3).
 582

583 DISCLOSURE, INSPECTION AND DUE DILIGENCE

584 10. PROPERTY DISCLOSURE, INSPECTION, INDEMNITY, INSURABILITY, DUE DILIGENCE AND

585 SOURCE OF WATER.

586 **10.1. Seller's Property Disclosure.** On or before Seller's Property Disclosure Deadline (§ 3), Seller
 587 agrees to deliver to Buyer the most current version of the applicable Colorado Real Estate Commission's Seller's
 588 Property Disclosure form completed by Seller to Seller's actual knowledge, current as of the date of this Contract.
 589

590 **10.2. Inspection Objection.** Unless otherwise provided in this Contract, Buyer acknowledges that Seller
 591 is conveying the Property to Buyer in an "as is" condition, "where is" and "with all faults." Colorado law requires that
 592 Seller disclose to Buyer any latent defects actually known by Seller. Disclosure of latent defects must be in writing.
 593 Buyer, acting in good faith, has the right to have inspections (by one or more third parties, personally or both) of
 594 the Property and Inclusions (Inspection), at Buyer's expense. If (1) the physical condition of the Property, including,
 595 but not limited to, the roof, walls, structural integrity of the Property, the electrical, plumbing, HVAC and other
 596 mechanical systems of the Property, (2) the physical condition of the Inclusions, (3) service to the Property
 597 (including utilities and communication services), systems and components of the Property (e.g., heating and
 598 plumbing), (4) any proposed or existing transportation project, road, street or highway, or (5) any other activity,
 599 odor or noise (whether on or off the Property) and its effect or expected effect on the Property or its occupants is
 600 unsatisfactory, in Buyer's sole subjective discretion, Buyer may, on or before Inspection Objection Deadline (§
 601 3):
 602

603 **10.2.1. Notice to Terminate.** Notify Seller in writing that this Contract is terminated; or
 604

605 **10.2.2. Inspection Objection.** Deliver to Seller a written description of any unsatisfactory physical
 606 condition that Buyer requires Seller to correct.
 607

608 **10.3. Inspection Resolution.** If an Inspection Objection is received by Seller, on or before Inspection
 609 Objection Deadline (§ 3) and if Buyer and Seller have not agreed in writing to a settlement thereof on or before
 610 Inspection Resolution Deadline (§ 3), this Contract will terminate on Inspection Resolution Deadline (§ 3)
 611 unless Seller receives Buyer's written withdrawal of the Inspection Objection before such termination, i.e., on or
 612 before expiration of Inspection Resolution Deadline (§ 3).
 613

614 **10.4. Damage, Liens and Indemnity.** Buyer, except as otherwise provided in this Contract or other
 615 written agreement between the parties, is responsible for payment for all inspections, tests, surveys, engineering
 616 reports, or other reports performed at Buyer's request (Work) and must pay for any damage that occurs to the
 617 Property and Inclusions as a result of such Work. Buyer must not permit claims or liens of any kind against the
 618 Property for Work performed on the Property. Buyer agrees to indemnify, protect and hold Seller harmless from
 619 and against any liability, damage, cost or expense incurred by Seller and caused by any such Work, claim, or lien.
 620
 621
 622
 623
 624

625 This indemnity includes Seller's right to recover all costs and expenses incurred by Seller to defend against any
 626 such liability, damage, cost or expense, or to enforce this section, including Seller's reasonable attorney fees, legal
 627 fees and expenses. The provisions of this section survive the termination of this Contract. This § 10.4 does not
 628 apply to items performed pursuant to an Inspection Resolution.
 629

630 **10.5. Insurability.** Buyer has the right to review and object to the availability, terms and conditions of and
 631 premium for property insurance (Property Insurance). Buyer has the Right to Terminate under § 25.1, on or before
 632 **Property Insurance Objection Deadline** (§ 3), based on any unsatisfactory provision of the Property Insurance,
 633 in Buyer's sole subjective discretion.
 634

635 **10.6. Due Diligence.**

636 **10.6.1. Due Diligence Documents.** If the respective box is checked, Seller agrees to deliver
 637 copies of the following documents and information pertaining to the Property (Due Diligence Documents) to Buyer
 638 on or before **Due Diligence Documents Delivery Deadline**(§ 3):
 639

640 **10.6.1.1.** All contracts relating to the operation, maintenance and management of the
 641 Property;

642 **10.6.1.2.** Property tax bills for the last years;

643 **10.6.1.3.** As-built construction plans to the Property and the tenant improvements,
 644 including architectural, electrical, mechanical, and structural systems, engineering reports, and permanent
 645 Certificates of Occupancy, to the extent now available;

646 **10.6.1.4.** A list of all Inclusions to be conveyed to Buyer;

647 **10.6.1.5.** Operating statements for the past years;

648 **10.6.1.6.** A rent roll accurate and correct to the date of this Contract;

649 **10.6.1.7.** All current leases, including any amendments or other occupancy agreements,
 650 pertaining to the Property. Those leases or other occupancy agreements pertaining to the Property that survive
 651 Closing are as follows (Leases): n/a

652 **10.6.1.8.** A schedule of any tenant improvement work Seller is obligated to complete but
 653 has not yet been completed and capital improvement work either scheduled or in process on the date of this
 654 Contract;

655 **10.6.1.9.** All insurance policies pertaining to the Property and copies of any claims which
 656 have been made for the past n/a years;

657 **10.6.1.10.** Soils reports, Surveys and engineering reports or data pertaining to the
 658 Property (if not delivered earlier under § 8.3);

659 **10.6.1.11.** Any and all existing documentation and reports regarding Phase I and II
 660 environmental reports, letters, test results, advisories, and similar documents respective to the existence or
 661 nonexistence of asbestos, PCB transformers, or other toxic hazardous or contaminated substances, and/or
 662 underground storage tanks and/or radon gas. If no reports are in Seller's possession or known to Seller, Seller
 663 warrants that no such reports are in Seller's possession or known to Seller;

664 **10.6.1.12.** Any *Americans with Disabilities Act* reports, studies or surveys concerning the
 665 compliance of the Property with said Act;

666 **10.6.1.13.** All permits, licenses and other building or use authorizations issued by any
 667 governmental authority with jurisdiction over the Property and written notice of any violation of any such permits,
 668 licenses or use authorizations, if any; and

669 **10.6.1.14.** Other documents and information:

670 n/a

671 **10.6.2. Due Diligence Documents Review and Objection.** Buyer has the right to review and
 672 object to Due Diligence Documents. If the Due Diligence Documents are not supplied to Buyer or are
 673 unsatisfactory in Buyer's sole subjective discretion, Buyer, may, on or before **Due Diligence Documents**
 674 **Objection Deadline** (§ 3):

675 **10.6.2.1. Notice to Terminate.** Notify Seller in writing that this Contract is terminated; or

676 **10.6.2.2. Due Diligence Documents Objection.** Deliver to Seller a written description of
 677 any unsatisfactory Due Diligence Documents that Buyer requires Seller to correct.

678 **10.6.3. Due Diligence Documents Resolution.** If a Due Diligence Documents Objection is
 679 received by Seller, on or before **Due Diligence Documents Objection Deadline** (§ 3), and if Buyer and Seller
 680 have not agreed in writing to a settlement thereof on or before **Due Diligence Documents Resolution Deadline**
 681 (§ 3), this Contract will terminate on **Due Diligence Documents Resolution Deadline** (§ 3) unless Seller receives
 682 Buyer's written withdrawal of the Due Diligences Document Objection before such termination, i.e., on or before
 683 expiration of **Due Diligence Documents Resolution Deadline** (§ 3).

684 **10.6.4. Zoning.** Buyer has the Right to Terminate under § 25.1, on or before **Due Diligence**
 685 **Documents Objection Deadline** (§ 3), based on any unsatisfactory zoning and any use restrictions imposed by
 686 any governmental agency with jurisdiction over the Property, in Buyer's sole subjective discretion.

687 **10.6.5. Due Diligence – Environmental, ADA.** Buyer has the right to obtain environmental
 688 inspections of the Property including Phase I and Phase II Environmental Site Assessments, as applicable.

703 Seller Buyer will order or provide Phase I Environmental Site Assessment, Phase II Environmental
 704 Site Assessment (compliant with ASTM E1527-05 standard practices for Environmental Site Assessments)
 705 and/or n/a, at the expense of Seller Buyer (Environmental Inspection). In addition, Buyer, at Buyer's
 706 expense, may also conduct an evaluation whether the Property complies with the *Americans with Disabilities Act*
 707 (ADA Evaluation). All such inspections and evaluations must be conducted at such times as are mutually
 708 agreeable to minimize the interruption of Seller's and any Seller's tenants' business uses of the Property, if any.
 709

710 If Buyer's Phase I Environmental Site Assessment recommends a Phase II Environmental Site
 711 Assessment, the Environmental Inspection Objection Deadline (§ 3) will be extended by days (Extended
 712 Environmental Inspection Objection Deadline) and if such Extended Environmental Inspection Objection Deadline
 713 extends beyond the Closing Date (§ 3), the Closing Date (§ 3) will be extended a like period of time. In such
 714 event, Seller Buyer must pay the cost for such Phase II Environmental Site Assessment.
 715

716 Notwithstanding Buyer's right to obtain additional environmental inspections of the Property in this §
 717 10.6.5, Buyer has the Right to Terminate under § 25.1, on or before Environmental Inspection Objection
 718 Deadline (§ 3), or if applicable the Extended Environmental Inspection Objection Deadline, based on any
 719 unsatisfactory results of Environmental Inspection, in Buyer's sole subjective discretion.
 720

721 Buyer has the Right to Terminate under § 25.1, on or before ADA Evaluation Objection Deadline (§ 3),
 722 based on any unsatisfactory ADA Evaluation, in Buyer's sole subjective discretion.
 723

724 **10.7. Conditional Upon Sale of Property.** This Contract is conditional upon the sale and closing of
 725 that certain property owned by Buyer and commonly known as n/a. Buyer has the Right to Terminate under § 25.1
 726 effective upon Seller's receipt of Buyer's Notice to Terminate on or before Conditional Sale Deadline (§ 3) if such
 727 property is not sold and closed by such deadline. This § 10.7 is for the sole benefit of Buyer. If Seller does not
 728 receive Buyer's Notice to Terminate on or before Conditional Sale Deadline (§ 3), Buyer waives any Right to
 729 Terminate under this provision.
 730

731 **10.8. Source of Potable Water (Residential Land and Residential Improvements Only).** Buyer
 732 Does Does Not acknowledge receipt of a copy of Seller's Property Disclosure or Source of
 733 Water Addendum disclosing the source of potable water for the Property. Buyer Does Does Not
 734 acknowledge receipt of a copy of the current well permit. There is No Well.
 735

736 **Note to Buyer: SOME WATER PROVIDERS RELY, TO VARYING DEGREES, ON NONRENEWABLE**
 737 **GROUND WATER. YOU MAY WISH TO CONTACT YOUR PROVIDER (OR INVESTIGATE THE DESCRIBED**
 738 **SOURCE) TO DETERMINE THE LONG-TERM SUFFICIENCY OF THE PROVIDER'S WATER SUPPLIES.**
 739

740 **10.9. Existing Leases; Modification of Existing Leases; New Leases.** Seller states that none of the
 741 Leases to be assigned to the Buyer at the time of Closing contain any rent concessions, rent reductions or rent
 742 abatements except as disclosed in the Lease or other writing received by Buyer. Seller will not amend, alter,
 743 modify, extend or cancel any of the Leases nor will Seller enter into any new leases affecting the Property without
 744 the prior written consent of Buyer, which consent will not be unreasonably withheld or delayed.
 745
 746
 747
 748

749 11. TENANT ESTOPPEL STATEMENTS.

750 **11.1. Tenant Estoppel Statements Conditions.** Buyer has the right to review and object to any
 751 Estoppel Statements. Seller must obtain and deliver to Buyer on or before Tenant Estoppel Statements
 752 Deadline (§ 3), statements in a form and substance reasonably acceptable to Buyer, from each occupant or tenant
 753 at the Property (Estoppel Statement) attached to a copy of the Lease stating:
 754

755 11.1.1. The commencement date of the Lease and scheduled termination date of the Lease;

756 11.1.2. That said Lease is in full force and effect and that there have been no subsequent
 757 modifications or amendments;

758 11.1.3. The amount of any advance rentals paid, rent concessions given, and deposits paid to
 759 Seller;

760 11.1.4. The amount of monthly (or other applicable period) rental paid to Seller;

761 11.1.5. That there is no default under the terms of said Lease by landlord or occupant; and

762 11.1.6. That the Lease to which the Estoppel is attached is a true, correct and complete copy of
 763 the Lease demising the premises it describes.
 764

765 **11.2. Tenant Estoppel Statements Objection.** Buyer has the Right to Terminate under § 25.1, on or
 766 before Tenant Estoppel Statements Objection Deadline (§ 3), based on any unsatisfactory Estoppel Statement,
 767 in Buyer's sole subjective discretion, or if Seller fails to deliver the Estoppel Statements on or before Tenant
 768 Estoppel Statements Deadline (§ 3). Buyer also has the unilateral right to waive any unsatisfactory Estoppel
 769 Statement.
 770
 771
 772

773 CLOSING PROVISIONS

774 12. CLOSING DOCUMENTS, INSTRUCTIONS AND CLOSING.

775 **12.1. Closing Documents and Closing Information.** Seller and Buyer will cooperate with the Closing
 776 Company to enable the Closing Company to prepare and deliver documents required for Closing to Buyer and
 777
 778
 779
 780

781 Seller and their designees. If Buyer is obtaining a new loan to purchase the Property, Buyer acknowledges Buyer's
 782 lender is required to provide the Closing Company, in a timely manner, all required loan documents and financial
 783 information concerning Buyer's new loan. Buyer and Seller will furnish any additional information and documents
 784 required by Closing Company that will be necessary to complete this transaction. Buyer and Seller will sign and
 785 complete all customary or reasonably required documents at or before Closing.
 786

787 **12.2. Closing Instructions.** Colorado Real Estate Commission's Closing Instructions Are Are Not
 788 executed with this Contract.
 789

790 **12.3. Closing.** Delivery of deed from Seller to Buyer will be at closing (Closing). Closing will be on the date
 791 specified as the **Closing Date** (§ 3) or by mutual agreement at an earlier date. The hour and place of Closing will
 792 be as designated by **Title Co Representative**.
 793

794 **12.4. Disclosure of Settlement Costs.** Buyer and Seller acknowledge that costs, quality, and extent of
 795 service vary between different settlement service providers (e.g., attorneys, lenders, inspectors and title
 796 companies).
 797

798 **13. TRANSFER OF TITLE.** Subject to tender of payment at Closing as required herein and compliance by
 799 Buyer with the other terms and provisions hereof, Seller must execute and deliver a good and sufficient **special**
 800 **warranty** deed to Buyer, at Closing, conveying the Property free and clear of all taxes except the general taxes
 801 for the year of Closing. Except as provided herein, title will be conveyed free and clear of all liens, including any
 802 governmental liens for special improvements installed as of the date of Buyer's signature hereon, whether
 803 assessed or not. Title will be conveyed subject to:
 804

805 **13.1.** Those specific Exceptions described by reference to recorded documents as reflected in the Title
 806 Documents accepted by Buyer in accordance with **Record Title** (§ 8.2),
 807

808 **13.2.** Distribution utility easements (including cable TV),
 809

810 **13.3.** Those specifically described rights of third parties not shown by the public records of which
 811 Buyer has actual knowledge and which were accepted by Buyer in accordance with **Off-Record Title**
 812 (§ 8.3) and **Current Survey Review** (§ 9),
 813

814 **13.4.** Inclusion of the Property within any special taxing district,
 815

816 **13.5.** Any special assessment if the improvements were not installed as of the date of Buyer's signature
 817 hereon, whether assessed prior to or after Closing, and
 818

819 **13.6.** Other n/a.
 820

821 **14. PAYMENT OF ENCUMBRANCES.** Any encumbrance required to be paid will be paid at or before
 822 Closing from the proceeds of this transaction or from any other source.
 823

824 **15. CLOSING COSTS, CLOSING FEE, ASSOCIATION FEES AND TAXES.**

825 **15.1. Closing Costs.** Buyer and Seller must pay, in Good Funds, their respective closing costs and
 826 all other items required to be paid at Closing, except as otherwise provided herein.
 827

828 **15.2. Closing Services Fee.** The fee for real estate closing services must be paid at Closing by
 829

830 Buyer Seller One-Half by Buyer and One-Half by Seller
 831

832 Other .
 833

834 **15.3. Status Letter and Record Change Fees.** Any fees incident to the issuance of Association's
 835 statement of assessments (Status Letter) must be paid by Buyer Seller One-Half by Buyer and **One-**
 836 **Half by Seller** None. Any record change fee assessed by the Association including, but not limited to,
 837 ownership record transfer fees, regardless of name or title of such fee (Association's Record Change Fee) must be
 838 paid by Buyer Seller One-Half by Buyer and One-Half by Seller None.
 839

840 **15.4. Local Transfer Tax.** The Local Transfer Tax of 1 % of the Purchase Price
 841 must be paid at Closing by Buyer Seller One-Half by Buyer and One-Half by Seller. None.
 842

843 **15.5. Private Transfer Fee.** Private transfer fees and other fees due to a transfer of the Property,
 844 payable at Closing, such as community association fees, developer fees and foundation fees, must be paid at
 845 Closing by Buyer Seller One-Half by Buyer and One-Half by Seller None. The Private Transfer fee,
 846 whether one or more, is for the following association(s): n/a in the total amount of % of the Purchase Price or \$.
 847

848 **15.6. Water Transfer Fees.** The Water Transfer Fees can change. The fees, as of the date of this
 849 Contract, do not exceed \$ n/a for:
 850

851 Water Stock/Certificates Water District
 852

853 Augmentation Membership Small Domestic Water Company n/a and must be paid at Closing by
 854 Buyer Seller One-Half by Buyer and One-Half by Seller None.
 855

856 **15.7. Sales and Use Tax.** Any sales and use tax that may accrue because of this transaction
 857 must be paid when due by Buyer Seller One-Half by Buyer and One-Half by Seller None.
 858

- 859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
16. **PRORATIONS.** The following will be prorated to the **Closing Date** (§ 3), except as otherwise provided:
- 16.1. **Taxes.** Personal property taxes, if any, special taxing district assessments, if any, and general real estate taxes for the year of Closing, based on Taxes for the Calendar Year Immediately Preceding Closing Most Recent Mill Levy and Most Recent Assessed Valuation, or **Other** *There will be no tax proration at Closing because the Property has been tax exempt while owned by the Town, and that Buyer will be responsible for any 2015 general property taxes (due in 2016) levied against the Property for the time period beginning with Closing.*
- 16.2. **Rents.** Rents based on Rents Actually Received Accrued. At Closing, Seller will transfer or credit to Buyer the security deposits for all Leases assigned, or any remainder after lawful deductions, and notify all tenants in writing of such transfer and of the transferee's name and address. Seller must assign to Buyer all Leases in effect at Closing and Buyer must assume Seller's obligations under such Leases.
- 16.3. **Association Assessments.** Current regular Association assessments and dues (Association Assessments) paid in advance will be credited to Seller at Closing. Cash reserves held out of the regular Association Assessments for deferred maintenance by the Association will not be credited to Seller except as may be otherwise provided by the Governing Documents. Buyer acknowledges that Buyer may be obligated to pay the Association, at Closing, an amount for reserves or working capital. Any special assessment assessed prior to Closing Date (§ 3) by the Association will be the obligation of Buyer Seller. Except however, any special assessment by the Association for improvements that have been installed as of the date of Buyer's signature hereon, whether assessed prior to or after Closing, will be the obligation of Seller. Seller represents that the Association Assessments are currently payable at approximately \$ *n/a* per *n/a* and that there are no unpaid regular or special assessments against the Property except the current regular assessments and *n/a*. Such assessments are subject to change as provided in the Governing Documents. Seller agrees to promptly request the Association to deliver to Buyer before Closing Date (§ 3) a current Status Letter.
- 16.4. **Other Prorations.** Water and sewer charges, propane, interest on continuing loan, and *n/a*.
- 16.5. **Final Settlement.** Unless otherwise agreed in writing, these prorations are final.

17. **POSSESSION.** Possession of the Property will be delivered to Buyer on **Possession Date** (§ 3) at **Possession Time** (§ 3), subject to the Leases as set forth in § 10.6.1.7.
n/a

If Seller, after Closing, fails to deliver possession as specified, Seller will be subject to eviction and will be additionally liable to Buyer for payment of \$ **200.00** per day (or any part of a day notwithstanding § 18.1) from **Possession Date** (§ 3) and **Possession Time** (§ 3) until possession is delivered.

GENERAL PROVISIONS

18. **DAY; COMPUTATION OF PERIOD OF DAYS, DEADLINE.**
- 18.1. **Day.** As used in this Contract, the term "day" means the entire day ending at 11:59 p.m., United States Mountain Time (Standard or Daylight Savings as applicable).
- 18.2. **Computation of Period of Days, Deadline.** In computing a period of days, when the ending date is not specified, the first day is excluded and the last day is included (e.g., three days after MEC). If any deadline falls on a Saturday, Sunday or federal or Colorado state holiday (Holiday), such deadline Will Will Not be extended to the next day that is not a Saturday, Sunday or Holiday. Should neither box be checked, the deadline will not be extended.
19. **CAUSES OF LOSS, INSURANCE; DAMAGE TO INCLUSIONS AND SERVICES; CONDEMNATION; AND WALK—THROUGH.** Except as otherwise provided in this Contract, the Property, Inclusions or both will be delivered in the condition existing as of the date of this Contract, ordinary wear and tear excepted.
- 19.1. **Causes of Loss, Insurance.** In the event the Property or Inclusions are damaged by fire, other perils or causes of loss prior to Closing in an amount of not more than ten percent of the total Purchase Price (Property Damage), Seller is obligated to repair the same before **Closing Date** (§ 3). Buyer has the Right to Terminate under § 25.1, on or before **Closing Date** (§ 3), if the Property Damage is not repaired before **Closing Date** (§ 3) or if the damage exceeds such sum. Should Buyer elect to carry out this Contract despite such Property Damage, Buyer is entitled to a credit at Closing for all insurance proceeds that were received by Seller (but not the Association, if any) resulting from such damage to the Property and Inclusions, plus the amount of any deductible provided for in such insurance policy. Such credit must not exceed the Purchase Price. In the event Seller has not received such insurance proceeds prior to Closing, the parties may agree to extend the **Closing Date** (§ 3) or, at the option of Buyer, Seller must assign such proceeds at Closing, plus credit Buyer the amount of any deductible provided for in such insurance policy, but not to exceed the total Purchase Price.
- 19.2. **Damage, Inclusions and Services.** Should any Inclusion or service (including utilities and communication services), system, component or fixture of the Property (collectively Service), e.g., heating or

937 plumbing, fail or be damaged between the date of this Contract and Closing or possession, whichever is earlier,
 938 then Seller is liable for the repair or replacement of such Inclusion or Service with a unit of similar size, age and
 939 quality, or an equivalent credit, but only to the extent that the maintenance or replacement of such Inclusion or
 940 Service is not the responsibility of the Association, if any, less any insurance proceeds received by Buyer covering
 941 such repair or replacement. If the failed or damaged Inclusion or Service is not repaired or replaced on or before
 942 Closing or possession, whichever is earlier, Buyer has the Right to Terminate under § 25.1, on or before **Closing**
 943 **Date** (§ 3), or, at the option of Buyer, Buyer is entitled to a credit at Closing for the repair or replacement of such
 944 Inclusion or Service. Such credit must not exceed the Purchase Price. If Buyer receives such a credit, Seller's right
 945 for any claim against the Association, if any, will survive Closing. Seller and Buyer are aware of the existence of
 946 pre-owned home warranty programs that may be purchased and may cover the repair or replacement of such
 947 Inclusions.
 948
 949

950 **19.3. Condemnation.** In the event Seller receives actual notice prior to Closing that a pending
 951 condemnation action may result in a taking of all or part of the Property or Inclusions, Seller must promptly notify
 952 Buyer, in writing, of such condemnation action. Buyer has the Right to Terminate under § 25.1, on or before
 953 **Closing Date** (§ 3), based on such condemnation action, in Buyer's sole subjective discretion. Should Buyer elect
 954 to consummate this Contract despite such diminution of value to the Property and Inclusions, Buyer is entitled to a
 955 credit at Closing for all condemnation proceeds awarded to Seller for the diminution in the value of the Property or
 956 Inclusions but such credit will not include relocation benefits or expenses, or exceed the Purchase Price.
 957

958 **19.4. Walk-Through and Verification of Condition.** Buyer, upon reasonable notice, has the right to
 959 walk through the Property prior to Closing to verify that the physical condition of the Property and Inclusions
 960 complies with this Contract.
 961

962 **19.5. Risk of Loss — Growing Crops.** The risk of loss for damage to growing crops by fire or other
 963 casualty will be borne by the party entitled to the growing crops as provided in § 2.8 and such party is entitled to
 964 such insurance proceeds or benefits for the growing crops.
 965
 966

967 **20. RECOMMENDATION OF LEGAL AND TAX COUNSEL.** By signing this Contract, Buyer and Seller
 968 acknowledge that the respective broker has advised that this Contract has important legal consequences and has
 969 recommended the examination of title and consultation with legal and tax or other counsel before signing this
 970 Contract.
 971

972 **21. TIME OF ESSENCE, DEFAULT AND REMEDIES.** Time is of the essence hereof. If any note or check
 973 received as Earnest Money hereunder or any other payment due hereunder is not paid, honored or tendered when
 974 due, or if any obligation hereunder is not performed or waived as herein provided, the nondefaulting party has the
 975 following remedies:
 976
 977

978 **21.1. If Buyer is in Default:**

979 **21.1.1. Specific Performance.** Seller may elect to treat this Contract as canceled, in which case
 980 all Earnest Money (whether or not paid by Buyer) will be paid to Seller and retained by Seller; and Seller may
 981 recover such damages as may be proper; or Seller may elect to treat this Contract as being in full force and effect
 982 and Seller has the right to specific performance or damages, or both.
 983

984 **21.1.2. Liquidated Damages, Applicable.** This § 21.1.2 applies unless the box in § 21.1.1. is
 985 **checked.** All Earnest Money (whether or not paid by Buyer) will be paid to Seller, and retained by Seller. Both
 986 parties will thereafter be released from all obligations hereunder. It is agreed that the Earnest Money specified in §
 987 4.1 is LIQUIDATED DAMAGES, and not a penalty, which amount the parties agree is fair and reasonable and
 988 (except as provided in §§ 10.4, 22, 23 and 24), said payment of Earnest Money is SELLER'S ONLY REMEDY for
 989 Buyer's failure to perform the obligations of this Contract. Seller expressly waives the remedies of specific
 990 performance and additional damages.
 991

992 **21.2. If Seller is in Default:** Buyer may elect to treat this Contract as canceled, in which case all Earnest
 993 Money received hereunder will be returned and Buyer may recover such damages as may be proper, or Buyer
 994 may elect to treat this Contract as being in full force and effect and Buyer has the right to specific performance or
 995 damages, or both.
 996
 997
 998
 999

1000 **22. LEGAL FEES, COST AND EXPENSES.** Anything to the contrary herein notwithstanding, in the event of
 1001 any arbitration or litigation relating to this Contract, prior to or after **Closing Date** (§ 3), the arbitrator or court must
 1002 award to the prevailing party all reasonable costs and expenses, including attorney fees, legal fees and expenses.
 1003
 1004

1005 **23. MEDIATION.** If a dispute arises relating to this Contract, prior to or after Closing, and is not resolved, the
 1006 parties must first proceed in good faith to submit the matter to mediation. Mediation is a process in which the
 1007 parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators
 1008 cannot impose binding decisions. The parties to the dispute must agree, in writing, before any settlement is
 1009 binding. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation.
 1010 The mediation, unless otherwise agreed, will terminate in the event the entire dispute is not resolved within thirty
 1011 days of the date written notice requesting mediation is delivered by one party to the other at the party's last known
 1012 address. This section will not alter any date in this Contract, unless otherwise agreed.
 1013
 1014

1015
1016
1017
1018
1019
1020
1021
1022
1023
1024
1025
1026
1027
1028
1029
1030
1031
1032
1033
1034
1035
1036
1037
1038
1039
1040
1041
1042
1043
1044
1045
1046
1047
1048
1049
1050
1051
1052
1053
1054
1055
1056
1057
1058
1059
1060
1061
1062
1063
1064
1065
1066
1067
1068
1069
1070
1071
1072
1073
1074
1075
1076
1077
1078
1079
1080
1081
1082
1083
1084
1085
1086
1087
1088
1089
1090
1091
1092

24. EARNEST MONEY DISPUTE. Except as otherwise provided herein, Earnest Money Holder must release the Earnest Money following receipt of written mutual instructions, signed by both Buyer and Seller. In the event of any controversy regarding the Earnest Money, Earnest Money Holder is not required to release the Earnest Money. Earnest Money Holder, in its sole subjective discretion, has several options: (1) wait for any proceeding between Buyer and Seller; (2) interplead all parties and deposit Earnest Money into a court of competent jurisdiction, (Earnest Money Holder is entitled to recover court costs and reasonable attorney and legal fees incurred with such action); or (3) provide notice to Buyer and Seller that unless Earnest Money Holder receives a copy of the Summons and Complaint or Claim (between Buyer and Seller) containing the case number of the lawsuit (Lawsuit) within one hundred twenty days of Earnest Money Holder's notice to the parties, Earnest Money Holder is authorized to return the Earnest Money to Buyer. In the event Earnest Money Holder does receive a copy of the Lawsuit, and has not interpleaded the monies at the time of any Order, Earnest Money Holder must disburse the Earnest Money pursuant to the Order of the Court. The parties reaffirm the obligation of **Mediation** (§ 23). This Section will survive cancellation or termination of this Contract.

25. TERMINATION.

25.1. Right to Terminate. If a party has a right to terminate, as provided in this Contract (Right to Terminate), the termination is effective upon the other party's receipt of a written notice to terminate (Notice to Terminate), provided such written notice was received on or before the applicable deadline specified in this Contract. If the Notice to Terminate is not received on or before the specified deadline, the party with the Right to Terminate accepts the specified matter, document or condition as satisfactory and waives the Right to Terminate under such provision.

25.2. Effect of Termination. In the event this Contract is terminated, all Earnest Money received hereunder will be returned and the parties are relieved of all obligations hereunder, subject to §§ 10.4, 22, 23 and 24.

26. ENTIRE AGREEMENT, MODIFICATION, SURVIVAL. This Contract, its exhibits and specified addenda, constitute the entire agreement between the parties relating to the subject hereof, and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Contract. No subsequent modification of any of the terms of this Contract is valid, binding upon the parties, or enforceable unless made in writing and signed by the parties. Any right or obligation in this Contract that, by its terms, exists or is intended to be performed after termination or Closing survives the same.

27. NOTICE, DELIVERY, AND CHOICE OF LAW.

27.1. Physical Delivery. All notices must be in writing, except as provided in § 27.2. Any document, including a signed document or notice, from or on behalf of Seller, and delivered to Buyer is effective when physically received by Buyer, any signatory on behalf of Buyer, any named individual of Buyer, any representative of Buyer, or Brokerage Firm of Broker working with Buyer (except for delivery, after Closing, of the notice requesting mediation described in § 23 and except as provided in § 27.2). Any document, including a signed document or notice, from or on behalf of Buyer, and delivered to Seller is effective when physically received by Seller, any signatory on behalf of Seller, any named individual of Seller, any representative of Seller, or Brokerage Firm of Broker working with Seller (except for delivery, after Closing, of the notice requesting mediation described in § 23 and except as provided in § 27.2).

27.2. Electronic Delivery. As an alternative to physical delivery, any document, including a signed document or written notice, may be delivered in electronic form only by the following indicated methods:
 Facsimile E-mail Internet. If no box is checked, this § 27.2 is not applicable and § 27.1 governs notice and delivery. Documents with original signatures will be provided upon request of any party.

27.3. Choice of Law. This Contract and all disputes arising hereunder are governed by and construed in accordance with the laws of the State of Colorado that would be applicable to Colorado residents who sign a contract in Colorado for property located in Colorado.

28. NOTICE OF ACCEPTANCE, COUNTERPARTS. This proposal will expire unless accepted in writing, by Buyer and Seller, as evidenced by their signatures below, and the offering party receives notice of such acceptance pursuant to § 27 on or before **Acceptance Deadline Date** (§ 3) and **Acceptance Deadline Time** (§ 3). If accepted, this document will become a contract between Seller and Buyer. A copy of this Contract may be executed by each party, separately, and when each party has executed a copy thereof, such copies taken together are deemed to be a full and complete contract between the parties.

29. GOOD FAITH. Buyer and Seller acknowledge that each party has an obligation to act in good faith, including but not limited to exercising the rights and obligations set forth in the provisions of **Financing Conditions and Obligations** (§ 5), **Title Insurance, Record Title and Off—Record Title** (§ 8), **Current Survey Review** (§ 9) and **Property Disclosure, Inspection, Indemnity, Insurability, Due Diligence and Source of Water** (§ 10).

ADDITIONAL PROVISIONS AND ATTACHMENTS

1093
1094
1095
1096
1097
1098
1099
1100
1101
1102
1103
1104
1105
1106
1107
1108
1109
1110
1111
1112
1113
1114
1115
1116
1117
1118
1119
1120
1121
1122
1123
1124
1125
1126
1127
1128
1129
1130
1131
1132
1133
1134
1135
1136
1137
1138
1139
1140
1141
1142
1143
1144
1145
1146
1147
1148
1149
1150
1151
1152
1153
1154
1155
1156
1157
1158
1159
1160
1161
1162
1163
1164
1165
1166
1167
1168
1169
1170

30. ADDITIONAL PROVISIONS. (The following additional provisions have not been approved by the Colorado Real Estate Commission.)

A. The density attributable to the 50 foot public right of way parcel described in the legal description of the Property shall remain on the remainder of the Property. The use of such density by Buyer shall be subject to the applicable requirements and limitations of the Town of Breckenridge Development Code and related land use rules and regulations. No assurance is given or implied by Seller that such density may actually be developed or otherwise used by the Buyer on the Property.

B. Buyer acknowledges that the Property shall be conveyed and transferred "AS IS," "WHERE IS" and "WITH ALL FAULTS", and that Seller does not warrant or make any representation, express or implied, relating to the Property, other than the warranties of title contained in the Special Warranty Deed to be delivered to Buyer at Closing. Seller has no liability whatsoever to undertake any repairs, alterations, removal, remedial actions, or other work of any kind with respect to any portion of the Property. Buyer also acknowledges and agrees that the provisions in this Contract for inspection and investigation of the Property by Buyer should be, and are, adequate to enable Buyer to make Buyer's own determination with respect to all aspects of the Property. This disclaimer shall survive Closing; shall not be merged into the deed for the Property; and shall be fully effective after Closing.

C. Without limiting the generality of Subsection 30(B), Seller makes no warranty or representation concerning the environmental condition of the Property (including, without limitation, land, surface water, ground water, air, and any improvements). Without limiting the generality of the preceding sentence, Seller specifically disclaims any and all warranties or representations with respect to the location or presence on the Property of: (i) any "hazardous water", "underground storage tanks", "petroleum", "regulated substance", or "used oil" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§6901, et seq.), as amended, or by any regulations promulgated thereunder; (ii) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §§9601, et seq.), as amended, or by any regulations promulgated thereunder (including, but not limited to, asbestos and radon); (iii) any "petroleum" and "fuel products", as defined by Section 25-15-101 et seq., C.R.S., as amended, or by any regulations promulgated thereunder; (iv) any "hazardous waste" as defined by the Colorado Hazardous Waste Act, Section 25-15-101, et seq., C.R.S., or by any regulations promulgated thereunder; (v) any substance the presence of which on, in or under the Property is prohibited or regulated by any law similar to those set forth above; and (vi) any other substance which by law, regulation or ordinance requires special handling in its collection, storage, treatment or disposal. This disclaimer shall survive Closing; shall not be merged into the deed for the Property; and shall be fully effective after Closing.

D. After Closing Buyer may access the Property either from Airport Road or the 50 foot public right-of-way described in the legal description of the Property, at Buyer's option and election, subject, however, to Seller's approval as part of the Town of Breckenridge governmental land use review and approval process for the development of the Property. Provided, however, Buyer shall not be permitted to access the Property from both Airport Road and the 50 foot public right of way. This limitation shall be incorporated into the Special Warranty Deed given to Buyer by Seller at Closing and shall run with the land.

E. At closing the Buyer shall execute a restrictive covenant in favor of the Seller perpetually prohibiting the growing, processing, or cultivation of marijuana in any form and in any manner on or at the Property. Without limiting the generality of the preceding sentence, the restrictive covenant shall prohibit the use of the Property, or any portion of the Property, as:
(i) a "marijuana cultivation facility," or (ii) an "optional premises cultivation" facility as both terms are defined by applicable law. For the purpose of the restrictive covenant, the term "marijuana" shall have the same meaning as is provided in Section 16(2)(f) of Article XVIII of the Colorado Constitution (also known as "Amendment 64"). The restrictive covenant shall be recorded with the Clerk and Recorder of Summit County, Colorado; shall run with the land; and shall not be subordinate to any lien or encumbrance, except the lien of the general property taxes for 2015 and

1171 subsequent years. The restrictive covenant shall provide that if there is a violation of the restrictive
1172 covenant the Seller shall have the right to specifically enforce the restrictive covenant in a court of
1173 competent jurisdiction and, if the Seller prevails in such enforcement action, Seller shall be
1174 entitled to recover its reasonable attorneys' fees, court costs, and expert witness fees from the
1175 then-owner of the Property. The restrictive covenant shall be acceptable in form and substance to
1176 the Seller's attorney.
1177
1178

1179
1180 F. The Acceptance Date of this contract is the date the contract is signed by the Town Manager of
1181 the Town of Breckenridge. However, this contract shall not be valid and binding upon Seller until
1182 the Town Manager's signature hereon is ratified and this contract approved by ordinance adopted
1183 by the Town Council as required by Section 15.3 of the Breckenridge Town Charter.

31. ATTACHMENTS.

31.1. The following attachments are a part of this Contract:

n/a

31.2. The following disclosure forms are attached but are not a part of this Contract:

n/a

SIGNATURES

Kim Pennington, Principal

Date: 5/29/2015

Buyer: *Kim Resort LLC*
By: *Kim Pennington, Principal*

[NOTE: If this offer is being countered or rejected, do not sign this document. Refer to § 32]

Tim Gagen

Date: 6/2/2015

Seller: *Town of Breckenridge*
By: *Tim Gagen, Town manager*

32. COUNTER; REJECTION. This offer is Countered Rejected.
Initials only of party (Buyer or Seller) who countered or rejected offer

END OF CONTRACT TO BUY AND SELL REAL ESTATE

33. BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.

(To be completed by Broker working with Buyer)

Broker Does Does Not acknowledge receipt of Earnest Money deposit and, while not a party to the Contract, agrees to cooperate upon request with any mediation concluded under § 23. Broker agrees that if Brokerage Firm is the Earnest Money Holder and, except as provided in § 24, if the Earnest Money has not already been returned following receipt of a Notice to Terminate or other written notice of termination, Earnest Money Holder will release the Earnest Money as directed by the written mutual instructions. Such release of Earnest Money will be made within five days of Earnest Money Holder's receipt of the executed written mutual instructions, provided the Earnest Money check has cleared.

Broker is working with Buyer as a Buyer's Agent Seller's Agent Transaction-Broker in this transaction. This is a Change of Status.

Brokerage Firm's compensation or commission is to be paid by Listing Brokerage Firm
 Buyer Other n/a.

Brokerage Firm's Name: **Cornerstone Real Estate Company, LLC**

Kaycee Tolmie

Date: 5/29/2015

Broker's Name: **Kaycee Tolmie**

Address: **23110 US Hwy 6, #107 Keystone, CO 80435**

Ph: **970-513-8200** Fax: Email: **KTolmie@mindspring.com**

34. BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.

(To be completed by Broker working with Seller)

Broker Does Does Not acknowledge receipt of Earnest Money deposit and, while not a party to the Contract, agrees to cooperate upon request with any mediation concluded under § 23. Broker agrees that if Brokerage Firm is the Earnest Money Holder and, except as provided in § 24, if the Earnest Money has not already been returned following receipt of a Notice to Terminate or other written notice of termination, Earnest Money Holder will release the Earnest Money as directed by the written mutual instructions. Such release of Earnest Money will be made within five days of Earnest Money Holder's receipt of the executed written mutual instructions, provided the Earnest Money check has cleared.

Broker is working with the Seller as a Seller's Agent Buyer's Agent Transaction-Broker in this transaction. This is a Change of Status.

Brokerage Firm's compensation or commission is to be paid by Seller Buyer Other n/a.

Brokerage Firm's Name: **COLDWELL BANKER-ROUNDS PORTER**

JOHN (TURK) MONTEPARE

Date: 6/1/2015

Broker's Name: **JOHN (TURK) MONTEPARE**

Address: **n/a n/a, n/a n/a**

Ph: **n/a** Fax: **n/a** Email:

CBS4-8-13. CONTRACT TO BUY AND SELL REAL ESTATE (LAND)

CTM eContracts - ©2015 CTM Software Corp.

TO: BRECKENRIDGE TOWN COUNCIL
FROM: BRIAN WALDES, FINANCIAL SERVICES MANAGER
SUBJECT: INTER FUND LOAN RESOLUTION
DATE: 5/26/15
CC: TIM GAGEN, RICK HOLMAN

This memo is to inform Council of the need for the attached resolution.

Background

As part of a plan to affect long term interest savings for the Town, Council has directed Staff to retire the 2005 B&B Bond debt. This follows the recommendations of the Breckenridge Open Space Advisory Committee (BOSAC). The bonds were to be retired in 2026.

The principle amount of the bonds is currently \$2.7M. The Open Space fund balance is \$979,000 and, as such, is not adequate to cover the payment required to retire the bonds.

A loan from the General Fund to the Open Space fund of \$2M will allow for the retirement of the bonds as well as for continued operations/acquisitions in the Open Space fund. The loan rate of 3.0% for the inter fund loan is not much less than the 3.35% rate on the bonds. So the savings to the Open Space fund will not be great, but the fact that the interest payments will stay with the Town do represent a substantial savings for our organization as a whole.

Next Steps

Staff requests that Council approve the attached resolution authorizing the above described inter-fund loan for the purpose of retiring the B&B Bond debt.

Staff will be at work session to answer any questions Council may have.

1 ***FOR WORKSESSION/ADOPTION – JUNE 6***

2
3 RESOLUTION NO. ____

4
5 Series 2015

6
7 **A RESOLUTION OF THE BRECKENRIDGE TOWN COUNCIL APPROVING A**
8 **TRANSFER OF FUNDS AND AN INTER-FUND LOAN BETWEEN THE GENERAL**
9 **FUND AND OPEN SPACE FUND TO FACILITATE INTEREST EXPENSE SAVINGS**
10 **THROUGH THE EARLY RETIREMENT OF THE OPEN SPACE B&B BONDS**
11

12 WHEREAS, the Breckenridge Town Council has communicated to Staff its intention to retire
13 the outstanding Open Space B&B Bond Debt held by the Colorado Water Resources and Power
14 Development Authority (the “Authority”); and
15

16 WHEREAS, the Authority has communicated to the Town the opportunity to exercise this
17 right exists in the year 2015; and
18

19 WHEREAS, the costs associated with the retirement of this debt are accounted for in the
20 Open Space and General Funds; and
21

22 WHEREAS, the Open Space Fund balance is not sufficient to meet the entirety of the debt
23 retirement expenses; and
24

25 WHEREAS, the intent of Town Council is to avoid the remaining debt service expenses
26 related to the B&B debt; and
27

28 WHEREAS, the fund balance of the General Fund is sufficient to cover these expenses and
29 maintain its ability to fund current operations.
30

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

34 Section 1. An inter-fund loan from the General Fund to the Open Space Fund of
35 \$2,000,000 is hereby approved. The loan shall be repaid semi-annually from the Open Space
36 Fund to the General Fund at an annual interest rate of 3.0% over a five year term. The loan may
37 be prepaid at anytime without penalty.
38

39 Section 2. 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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

Memorandum

TO: TOWN COUNCIL
FROM: Dale Stein P.E., Assistant Town Engineer
DATE: June 3, 2015
RE: Public Projects Update

South Main Street Electric (Transformer)

The electric transformer on South Main Street is currently being installed by Xcel Energy. Once the transformer installation is complete, the electrician will connect the Main Street outlets to the transformer and Xcel will set the electric meter. Once this is completed, all of the electrical outlets installed along Main Street will be operational. This is scheduled to be completed by the 4th of July Holiday.

Asphalt Overlay and Concrete Replacement

Columbine Hills Concrete is on schedule to complete all of the 2015 overlays locations this week and will be progressing on final clean-up and roadway shouldering next week. Similarly the concrete rehabilitation contractor, All Concrete Solutions, has also completed the planned 2015 replacements of curb & gutter and sidewalk at various locations around Town.

Breckenridge Theater

The Breckenridge Theater expansion project is undergoing final Building Permit review and is slated to begin the week of June 22nd with excavation beginning the week of June 29th. The project is scheduled to be completed in approximately 12 months and the theater reopened for the summer 2016 season.

North Ridge Waterline Replacement

Utility and contractor crews have completed the relocation of water and electric lines on N. Ridge Street. The streets have been graded, paved, and reopened to the public.

Breckenridge Grand Vacations Community Center (Landscaping)

With the more favorable weather, crews were able to progress well on the final landscaping of the Community Center this past week. The remaining new trees and shrubs were placed and the new irrigation system was installed and commissioned for use. Due to wet weather on the Front Range this past month, harvesting sod and installation of sod on the remaining areas on the north side of the building have been delayed until early next week. Planting of annuals and perennials is still on schedule for later in June.

In addition to completing landscaping over the next couple weeks, Staff expects that the contractor will also paint the outside deck railing, place a concrete coating on the new concrete stairs, install the remaining masonry cap sections at the Speakeasy addition, complete final masonry repairs, and install the glass wind screen on the deck. All work is scheduled to be completed prior to the theatre summer reopening on June 19th.

Main Street Prospector Park

The landscaping and playground installation work at Prospector Park was completed last week. The park is now open to the public. The “Tom’s Baby” sculpture and the BHA mining exhibit are expected to be installed in the park this fall.



Concrete sculpture base for “Tom’s Baby”, which will be installed in fall of 2015.



Prospector Park from Ridge Street Alley

SH 9 Median and Roundabout (Section B)

Construction continues on Section B of the SH 9 Median & Roundabout Beautification Project. The colored, non-stamped concrete on the northern half of the section has been poured over the last week. Over the next couple weeks, the contractor will pour the colored, stamped concrete, the concrete “ski track ribbon”, and install the banner poles. The project is still on schedule to be completed prior to the 4th of July holiday



Colored concrete near Coyne Valley Road.

SH 9 Median and Roundabout (Section C)

Landscaping work continues on Section C of the SH 9 Median & Roundabout Beautification Project. The contractor has been installing irrigation utilities, constructing stone retaining walls, finishing grading work, and planting trees and perennials. This week, an existing irrigation mainline had to be replaced due to freeze damage which occurred to the pipe over winter. The irrigation replacement added an unanticipated cost to the project, but the budget is still within the project contingency. Next, the contractor will finish constructing the retaining walls, install electrical outlets in the median, and begin planting trees and annuals in the medians north of the roundabout. The project is still on schedule to be completed prior to the July 4th Holiday.



Spring Snow Crabapple Trees being planted in the roundabout.



Stone retaining walls being constructed in the medians north of the roundabout.

Old Masonic Hall

The Old Masonic Hall project is nearly completed and is anticipated to receive a Certificate of Occupancy the week of June 1st. The good weather has allowed for landscaping to start, as well as exterior painting and final concrete to be completed. A public open house will be held for the Old Masonic Hall on June 13th from 6-9 P.M. as part of the BCA's Creativity Crawl which will showcase merchants, restaurants, the Arts District, and other creative businesses within the Town.



Peak 7 Water Main – Phase 2

The Town of Breckenridge Water Division will start Phase 2 of the Peak 7 water main replacement project on June 3, 2015 with mobilization of equipment, delivery of materials, and assembly of parts. Digging will start on Monday, June 8, 2015 at the Blue Ridge/Snowstorm intersection with traffic control. There will be eventual road closures on the east American Way side with detours via the west American Way side. Future updates to follow.

MEMO

TO: Mayor & Town Council
FROM: Tim Gagen, Town Manager
DATE: June 4, 2015
SUBJECT: Committee Reports for 6-9-2015 Council Packet

Breckenridge Events Committee

May 7, 2015

Kim Dykstra

Highlights from the monthly meeting include:

- ❖ **Events & Activities Updates – Spartan Race:** Contract in final stages; signage will encourage participants to park in Satellite lot and use free shuttle, shuttle service has been increased to address the number of riders; Peak 8 Super Connect will run to move spectators up the mountain, bringing them back down on the gondola; expecting between 4,000 - 8,000 racers.
- ❖ **Events Ordinance –** Second reading is May 12; make-up of the Events Committee and how members will be selected going forward was discussed at Town Council.
- ❖ **Arts Festival Evaluation -** “Intercept Survey” responded to the RFP for the survey for the Breckenridge Main Street Arts festival (end of July); expense of \$2,750 was supported by BEC to move forward and was suggested reaching to organizer to sharing this expense; BTO will cover within Research.
- ❖ **General Updates: *Bike Event Discussion*** - BTO is working with Bicycle Village to put on a bicycle event the last weekend in June, which will incorporate demo days, an expo area in south gondola lot, animation, and group rides to promote the cycling message in town. ***New Fee Structure for Events*** - BTO met with ToB public works to develop a few structure for basic services, (spider boxes, signs, barricades, etc.); SEPA Administrator will collect fees and remit to ToB. ***Comprehensive Lodging Strategy*** - BEC agreed to start discussions surrounding paid vs. comp lodging and the challenges for event organizers; an Ad Hoc Committee was formed to analyze how more value can be created to the lodging community for the comp lodging they provide; BTO’s Bill Wishowski to head up; Ad Hoc committee will incorporate representatives from BTO, BSR, BCA, Summit Foundation and the lodging community.
- ❖ **Miscellaneous:** Breck Mtn Rotary is teaming up with Rocky Mtn Events for two new events held at Main Street Station - ***a wine festival*** (end of July) and a ***“Hogfest”*** (bacon and bourbon) over Labor Day weekend. BEC discussed alcohol events and how many is too many; the ToB liquor board may weigh in at some point; all agreed it is important to protect the brand and events that focus on food and entertainment should be encouraged. The ***Grand Opening for the Skate Park and Turf Field*** will be held on June 13, with ribbon cutting by the mayor.
- ❖ **SEPA Consent Items –** Committee reviewed and approved the following SEPAs: Summit County Camino (6.7.15), Creativity Crawl (6.13.15), Summit Mountain Challenge, Gold Run Rush (6.17.15), Town Party (6.19.15), Breck Bike Demo (6.25-6.28.15), Latenight @ the District (6.26.15 & every Fri. night through late Aug), BCA Street Arts Festival (7.3-7.5.15), Breckenridge July Art Festival (7.3-7.5.15), 3 on 3 at the Summit (7.11.15), Breckenridge Main Street Art Festival (7.24-7.26.15), and Breckenridge Gathering at the Great Divide (9.5-9.7.15).

Summit Stage Advisory Board Meeting/Annual Planning Retreat

May 27, 2015

James Phelps

Under Old Business – The board had brief discussion of the Silverthorne Loop. Silverthorne residents are requesting a change of a bus stop location that travels on several residential roadways. The board is unable to make any recommendation of the request until Silverthorne officials state their position of interest and commitment of infrastructure improvement. Results from the March on-board survey were presented. Significant findings: 59% surveyed consider themselves to be SC residents, 44% surveyed ride the bus every day, surveyed riders indicated interest of more ½ service earlier and later in the day over current service times, interest of expansion of Express bus services, Summit Cove service, Alma-Fairplay service and Vail connections were additionally recorded as comments. New Business- Transit Director Jim Andrews presented a brief overview of the Stage, Year in Review. Tax collection has been positive thru Q1 or 9.8% over 2014. The 2015 budget projects a \$400K savings. The 2014 budget netted a

\$350K savings. Revenue savings are marked for buildup of the reserve fund. The yearend reserve fund is projected to be approximately \$750-800k. The board took up general discussion of new and existing service areas and expanding service hours. Based on results of recent survey the board identified three key interests: Blue River, Summit Cove and Extending ½ service hours. Park County is in process of submitting an application (June '15) for potential grant funding of new service between Fairplay/Alma and Breckenridge. Summit Cove bus service discussion had insufficient information for any discussion. Expanding ½ hour service for main routes - the board requested of the Summit Stage Planning staff to present options of route service expansions based on survey results. The board was in agreement that any new service would be challenging based on the current revenues/expenses. Jim Andrews discussed the short and long term capital needs of the Stage. There are significant expenses over the next 5 years of bus replacements and operational building improvements. At conclusion of meeting there was consensus that any new service would be challenging with limited reserve funds and capital needs outlook.

| Committees | Representative | Report Status |
|--|-----------------------|----------------------|
| CAST | Mayor Warner | Verbal Report |
| CDOT | Tim Gagen | No Meeting/Report |
| CML | Tim Gagen | No Meeting/Report |
| I-70 Coalition | Tim Gagen | No Meeting/Report |
| Mayors, Managers & Commissioners Meeting | Mayor Warner | Verbal Report |
| Liquor Licensing Authority* | Helen Cospolich | No Meeting/Report |
| Wildfire Council | Matt Thompson | No Meeting/Report |
| Breckenridge Creative Arts | Robb Woulfe | No Meeting/Report |
| Summit Stage Advisory Board* | James Phelps | Included |
| Police Advisory Committee | Chief Haynes | No Meeting/Report |
| CMC Advisory Committee | Tim Gagen | No Meeting/Report |
| Recreation Advisory Committee | Mike Barney | No Meeting/Report |
| Housing and Childcare Committee | Laurie Best | No Meeting/Report |
| Childcare Advisory Committee | Laurie Best | No Meeting/Report |
| Breckenridge Events Committee | Kim Dykstra | Included |
| Sustainability Task Force | Mark Truckey | No Meeting/Report |

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

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

Town Council Staff Report

- Subject:** Breckenridge Bike Bus Street Use Permit
(Street Use Public Hearing; SUP-0001)
- Proposal:** This proposal is to operate a pedal bus on Town Streets and store the pedal bus in a trailer at the Gold Rush parking lot when not in use.
- Date:** June 1, 2015 (for meeting of June 9, 2015)
- Project Manager:** Julia Puester, AICP
- Applicant/Owner:** Curt Cavnar, Applicant/Business Owner
Vail Resorts, Property Owner
- Address:** 415 N. Park Avenue
- Legal Description:** Lot 1B, Block 4 Parkway Center Subdivision Amended # 1 Resubdivision
Parkway Center Subdivision Block 4, Lot 1 and Shock Hill Subdivision,
Tract Q
- Site Area:** 6 acres (261,360 square feet)
- Land Use District:** 9-2: Residential (10 UPA)
1: Low Density Residential, Recreational (1 unit per 10 acres)
- Site Conditions:** There is an existing dirt parking lot that sits in the lower portion of the site and is used primarily as overflow skier parking and skier bus parking. The access is from Woods Drive. Existing landscaping including mostly mature lodge pole pine trees are scattered along Park Avenue. The site gains steep grade toward the rear of the property and includes existing mature trees on the hillside.
- Adjacent Uses:** North: Parkway Center Commercial uses, USFS property
East: City Market Plaza, vacant commercial property
South: Vail Resorts owned parking lot, wetlands
West: Tract P, Shock Hill (Town owned open space)

Item History

The Breck Bike Bus was approved by the Town Council originally in October 2011 to operate from the 600 S. Ridge Street (Breckenridge Mountain Lodge). The permit was renewed administratively on a yearly basis since that approval. As the Lodge site will be under construction this summer, the owner of the Breck Bike Bus had to secure a new location to park the pedal bus.

The pedal bus is the same bus utilized since 2011. It is a 16 passenger pedal powered bus. The applicant has stated that *“The BikeBus can be chartered for various excursions that include town tours, pub crawls, progressive wine dinners, wine tastings, birthday parties, etc. Individual seats can also be purchased. Tours range from 1-2 hours (a town tour is one hour long with all other excursions being 2 hours). The BikeBus will be staged at the Gold Rush Parking Lot. Excursions begin and end at various places, depending upon the type and the final bar or restaurant chosen for a pub crawl or progressive dinner. The main route utilizes Main Street between French Street and Ridge Street from its southernmost point to its northernmost point.”*



Staff Review

Staff has reviewed this application in conformance with Title 4, Chapter 15 *Permits Required to Conduct Certain Businesses on Town Streets*. Because this application includes a new location, the Gold Rush parking lot, a new application has been processed and publicly noticed.

Bike Bus Storage

The Bike Bus is proposed to be stored in the southwestern portion of the site tucked behind existing evergreen trees along N. Park Avenue at the Gold Rush parking lot in an enclosed trailer (photo below). The ski area is planning to pave the Gold Rush parking lot late summer. During the paving project, the owner will store the trailer and bike bus at his residence at Tiger Run RV Park (per Mr. Cavnar, this is permitted at the RV park).



Hours of Operation

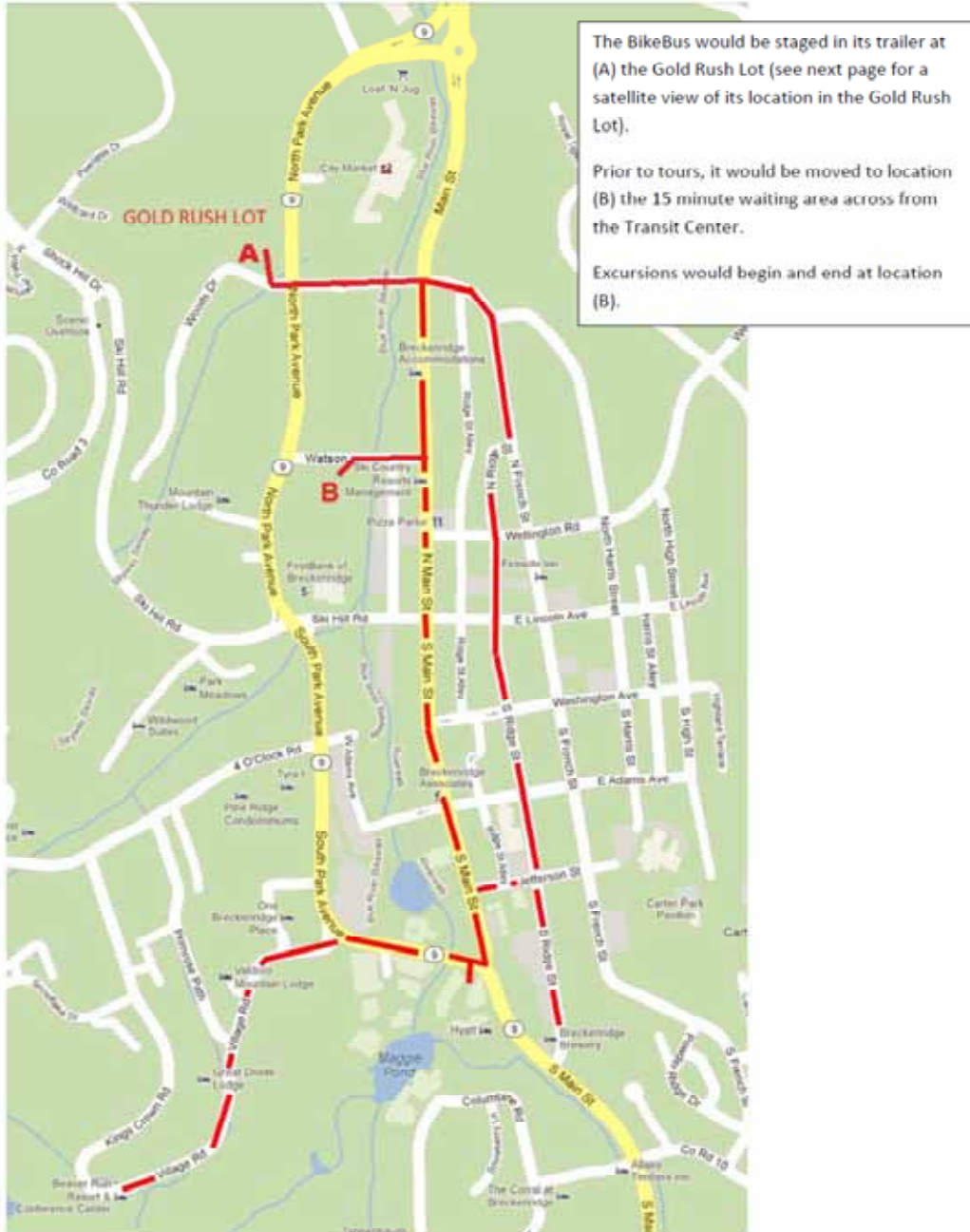
Town tours would begin each day at 11 a.m. and 1 p.m. and lasts one hour. Other private excursions are 2 hours long and begin at 3 p.m., 6 p.m., and 9 p.m. The last tour would end at 11 p.m. The bike bus runs 7 days a week as chartered with the season being from Memorial Day through Labor Day with a few tours possible in March, April, September and October.



Bike Bus Routes

Using motorized assist, the pedal bus will cross N. Park Avenue to N. French Street and travel down N. Main Street to Watson Avenue to pick up passengers at the 15 minute passenger pick location at the South Gondola parking lot (subject to continued approval by the Breckenridge Ski Resort). To address concerns voiced by the Police and Transit Departments regarding passenger safety on a busy section of N. Park Avenue, no passengers will be allowed to board the pedal bus at the Gold Rush parking lot. This has been added as a permit condition. The bike bus will make stops at locations in designated parking spots unless otherwise approved by the Police Department. The map below indicates the routes proposed to be used by the pedal bus, which include Main Street, Ridge Street, South Park Avenue, and Village Road.

Routes/Streets used in RED.



Staff Recommendation

The application has been routed through the Police Department, Public Works, Transit and the Community Development Department. With the permit conditions included as attached, the applicant has addressed the concerns from Town Departments. Over the past four years of operation, the owner has addressed issues as they arise from staff.

Town Staff recommends the Town Council approve the Breckenridge Bike Bus Street Use Permit (SUP# 2015-001) located at 415 N. Park Avenue with permit and the Findings and Conditions attached.

Per the ordinance, the Street Use permit is valid for one year. If the application remains substantially the same as this permit, if approved, and there are no issues during the permit duration, it may be renewed administratively by the Town Manager's office.



**TOWN OF BRECKENRIDGE STREET USE PERMIT
(Issued Under Chapter 15 of Title 4 of the Breckenridge Town Code)**

Permit No. 15-001

Name of Permittee: BIKEBUS, LLC, a Colorado limited liability company

Name of Permittee's Business: Breckenridge Bike Bus

Type of Business: Pedal Bus

Address At Which Permittee Is Authorized to Operate Business (to park Pedal Bus):

415 N. Park Avenue

Date of Issuance of Permit: June 9, 2015.

Date of Expiration of Permit: June 9, 2016.

**THIS PERMIT IS SUBJECT TO SUSPENSION OR REVOCATION IN ACCORDANCE
WITH THE TOWN OF BRECKENRIDGE "STREET USE LICENSING ORDINANCE",
CHAPTER 15 OF TITLE 4 OF THE BRECKENRIDGE TOWN CODE**

PERMIT CONDITIONS

It is a condition of this Permit that the Permittee shall at all times:

1. Comply with all of the terms and conditions of this Permit.
2. Comply with all of the requirements of Chapter 15 of Title 4 of the Breckenridge Town Code.
3. Comply with all other Town ordinances that are applicable to the business for which the Permit was issued.
4. Procure and continuously maintain throughout the term of the Permit a policy of comprehensive commercial general liability insurance with limits of liability not less than One

STREET USE PERMIT

Million Dollars (\$1,000,000) per claim, One Million Dollars (\$1,000,000) aggregate, and Fifty Thousand Dollars (\$50,000) for property damage. The Town of Breckenridge shall be named as an additional insured under such insurance policy. An ACORD Form 27, or other certificate of insurance acceptable to Town Clerk, shall be completed by the Permittee's insurance agent and provided to the Town Clerk as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect and shall be reviewed and approved by Town prior to commencement of the operations of the business pursuant to the Permit, and on each renewal or replacement of the policy during the term of the Permit.

5. Indemnify and defend the Town of Breckenridge, its officers, employees, insurers, and self-insurance pool (with counsel acceptable to the Town), from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, arising out of or in any manner connected with the operation of the business for which the Permit was issued. The Permittee shall investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims, or demands at the sole expense of the Permittee, and bear all other costs and expenses related thereto, including court costs and attorney fees. The indemnity obligations of this condition shall survive the expiration or revocation of the Permit, and shall continue to be fully enforce

6. With respect to the Permittee's pedal bus for which this Permit is issued, the following special conditions shall apply:

- A. When not is use the pedal bus shall be parked in a trailer out of public view and stored inside of the trailer (photo submitted with the application in incorporated into this Decision as part of the record) at 415 N. Park Avenue aka Gold Rush parking lot.
- B. The approved staging area for the pedal bus is shown on the attached Exhibit "A," which is incorporated into this Decision by reference. The pedal bus employee shall cross N. Park Avenue at N. French Street and travel down N. Main Street to Watson Avenue to pick up passengers at the 15 minute passenger pick location at the South Gondola parking lot (subject to approval by the Breckenridge Ski Resort). No passengers shall board the pedal bus at the Gold Rush parking lot.
- C. The approved route of travel for the pedal bus shall be as shown on the attached Exhibit "B," which is incorporated into this Decision by reference. There shall be no deviation from the approved route of travel of the pedal bus except in the case of a bona fide emergency requiring a change of route.
- D. The driver or operator of the pedal bus must be at least 18 years of age, and have a valid Colorado driver's license.
- E. The driver of operator of the pedal bus must be qualified to safely operate the pedal bus.

STREET USE PERMIT

- F. The driver or operator of the pedal bus must register with the Police Chief by providing the Police Chief with a copy of the driver's or operator's current Colorado driver's license.
- G. The Applicant shall maintain the pedal bus in a clean and safe condition.
- H. The Applicant shall operate the pedal bus in accordance with all applicable state and local traffic laws.
- I. The Applicant shall not permit any person to possess any alcoholic beverage in any open container in the pedal bus, or to consume any alcoholic beverage in the pedal bus, while the pedal bus is either parked on a public street, right of way, or alley within the Town of Breckenridge, or while the pedal bus is being operated on a public street, right of way, or alley within the Town of Breckenridge. An alcoholic beverage includes both a "fermented malt beverage" as defined in the Colorado Beer Code, and "malt, vinous and spirituous liquor" as defined in the Colorado Liquor Code.
- J. The Applicant shall not permit any person to possess any marijuana in any open marijuana container, or to consume marijuana in the pedal bus, while the pedal bus is either parked on a public street, right of way, or alley within the Town of Breckenridge, or while the pedal bus is being operated on a public street, right of way, or alley within the Town of Breckenridge. "Marijuana" has the meaning provided in Section 6-3I-1 of the Breckenridge Town Code.
- K. A triangular "slow vehicle" reflector shall be displayed on the rear of the pedal bus at all times while the pedal bus is in operation pursuant to CRS 42-4-234. A pedal bus that operates at night shall be lit with a minimum of one white light at the front and two red lights at the rear, with side reflectors, in accordance with CRS 42-4-211(7).
- L. The Applicant shall work with Town staff to determine an appropriate pedal bus waiting location. This location will be based upon public safety issues, snow removal needs, emergency vehicle access, handicapped parking and general parking concerns. The Town has the final authority to designate a waiting location, or to remove previously approved waiting locations.
- M. Pedal bus waiting locations or drop-off locations shall not utilize public transit stops or emergency vehicle designated areas. The Applicant shall obtain written permission for all waiting locations on private property.
- N. The Applicant shall obtain a Shuttle Permit from the Breckenridge Police Department prior to use of any Shuttle Stop in the Town of Breckenridge. Applicant shall comply with all applicable Shuttle Stop rules and regulations.
- O. Pedal bus drivers shall not operate on sidewalks, Blue River Plaza, or the Riverwalk immediately adjacent to the Blue River.

STREET USE PERMIT

- P. No signs are authorized by this permit, including sandwich board signs. Any signs or advertising on the pedal bus shall require a separate Town of Breckenridge sign permit, including any signage or advertising proposed for display on the pedal bus.
- Q. Pedal bus drivers shall pull the pedal bus over to the side of the road should traffic back up behind the pedal bus.
- R. The Applicant's pedal bus shall not be operated in such a manner as to become a nuisance. Drivers shall not aggressively solicit or "hawk" potential riders.
- S. The pedal bus must be operated by human power. A small motor, as approved by the Town, is permitted to be engaged for the bike bus to cross Park Avenue (with employee only), or in emergency and/or safety situations only.
- T. The pedal bus shall not be allowed to wait or park on any Town Street or public or private property without an active tour.
- U. Pedal bus drivers shall wear protective eyewear when operating the pedal bus.
- V. A maximum of one (1) pedal bus is authorized by this permit. If the Applicant desires to operate more than one (1) pedal bus within the Town of Breckenridge, a permit modification must first be obtained from the Town of Breckenridge.
- W. Vehicles must be stored on private property out of public view when not in operation. The pedal bus shall not occupy any required parking space within the Town of Breckenridge.
- X. Pedal bus drivers shall not allow passengers to operate the pedal bus at any time.
- Y. Pedal bus drivers shall not allow passengers to enter or exit the pedal bus while the pedal bus is in motion.
- Z. No intoxicated persons may ride on the pedal bus at any time. It is the responsibility of the driver to monitor the sobriety of the passengers.
- AA. Drivers shall remain with the pedal bus and in control at all times. In case a driver needs to be away from a pedal bus to use bathroom facilities, unattended vehicles shall be locked and inoperable.

Dated: June 10, 2015

TOWN OF BRECKENRIDGE

By: _____
 Timothy J. Gagen, Town Manager

STREET USE PERMIT

ACCEPTANCE OF PERMIT AND CONDITIONS

The undersigned Permittee acknowledges receipt of this Permit, and agrees to be bound by all of the conditions of approval set forth in this Permit.

Dated: June 10, 2015

BIKEBUS, LLC, a Colorado limited liability company

By: _____

Title: _____

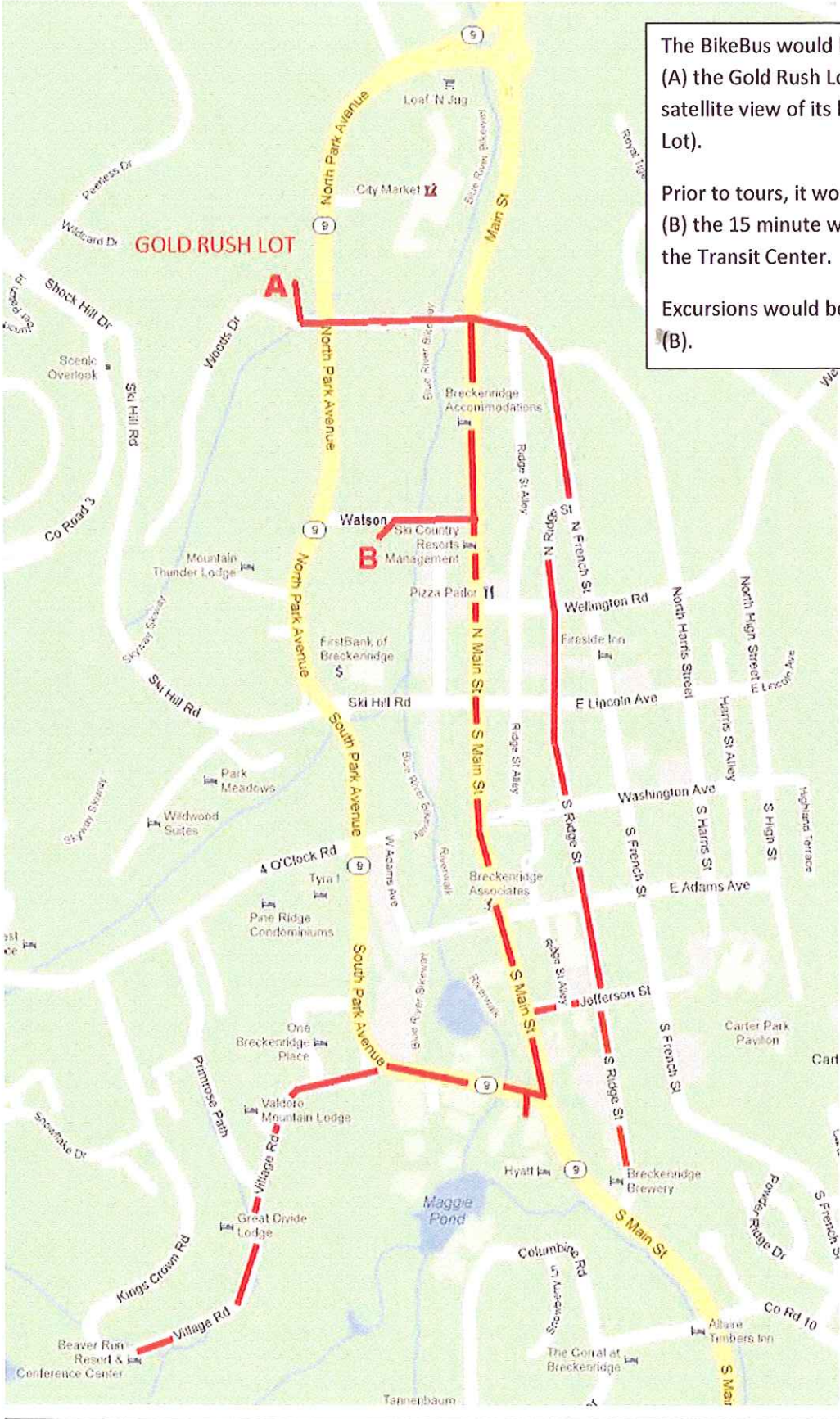
EXHIBIT A

Location where trailer would be staged in the Gold Rush Lot



EXHIBIT B

Routes/Streets used in RED.



The BikeBus would be staged in its trailer at (A) the Gold Rush Lot (see next page for a satellite view of its location in the Gold Rush Lot).

Prior to tours, it would be moved to location (B) the 15 minute waiting area across from the Transit Center.

Excursions would begin and end at location (B).



**IN THE MATTER OF THE APPLICATION OF BIKE BUS, LLC, A COLORADO LIMITED LIABILITY COMPANY, FOR THE ISSUANCE OF A TOWN OF BRECKENRIDGE STREET USE PERMIT
(Pursuant to Chapter 15 of Title 4 of the Breckenridge Town Code)**

Permit No. 15-001

Name of Applicant: BIKEBUS, LLC, a Colorado limited liability company

Name of Applicant’s Business: Breckenridge Bike Bus

Type of Business: Pedal Bus

Address At Which Applicant Is Authorized to Operate Business: 415 N. Park Avenue, Breckenridge, Colorado 80424

Timothy J. Gagen, Town Manager of the Town of Breckenridge, acting pursuant to the authority granted to him in Section 4-15-16(G) of the Breckenridge Town Code, also known as the “Town of Breckenridge Street Use Licensing Ordinance,” makes the following findings and renders the following decision with respect to the application of BikeBus, LLC, a Colorado limited liability company (“**Applicant**”), for the issuance of a new Street Use Permit for the business known Breckenridge Bike Bus.

FINDINGS

1. The Town of Breckenridge previously issued a permit to the Applicant pursuant to the Town of Breckenridge Street Use Licensing Ordinance for the location at 600 S. Ridge Street in Breckenridge, Colorado. Such permit was neither suspended nor revoked during the term of the permit.

2. On April 20, 2015 the Applicant filed an application for a new street use permit application for a new location. In the application the Applicant proposed to change its location from 600 S. Ridge Street to 415 N. Park Avenue, aka the Gold Rush Parking Lot owned by the Breckenridge Ski Area. Because the Applicant proposes a change of location I have determined that the Application should be treated as a new application, and not a renewal of the Applicant’s previous permit.

3. The application is governed by the “Town of Breckenridge Street Use Licensing Ordinance,” codified as Chapter 15 of Title 4 of the Breckenridge Town Code.

4. A public hearing was required to be held with respect to the Applicant’s renewal application. The public hearing was held on June 9, 2015.

5. The Applicant has paid the application fee required by Section 4-15-16(E) of the Breckenridge Town Code.

6. The application does not contain a material falsehood or misrepresentation.

7. The application complies with all of the applicable requirements of the “Town of Breckenridge Street Use Licensing Ordinance.”

8. The primary location of the business will not substantially interfere with motor vehicle or pedestrian travel, or pose a threat to the public health, safety or welfare.

9. Having considered the factors set forth in Section 4-15-10(B)(6) of the Breckenridge Town Code, I find that the continued operation of the proposed business on the Town streets and alleys is not likely to:

A. Cause substantial disruption of traffic or pedestrian flow in the area of the Town where the business will operate;

B. Create a substantial inconvenience or annoyance to the public; or

C. Cause a public nuisance.

10. The granting of the application will not endanger public health or safety.

11. None of the factors requiring denial of the renewal application as set forth in Section 4-5-10(C) apply.

12. At the time of a permit issuance, the Town Manager may impose any condition on the permit that the Town Council could lawfully impose pursuant to this Chapter.

13. The Applicant is entitled to the Street Use Permit, subject to the conditions set forth below.

14. The conditions set forth below are necessary to protect the public health, safety, and welfare from the adverse or potentially adverse impacts of the Applicant’s business for which the Permit is issued.

DECISION

ACCORDINGLY, the Applicant's Street Use Permit application is **GRANTED** and a one year Street Use Permit shall issue to the Applicant; subject, however to the following terms and conditions:

CONDITIONS OF APPROVAL:

The Street Use Permit shall not become effective until the Applicant agrees in writing to be bound by and to continuously comply with all of these conditions. It is a condition of the renewed Permit that the Applicant shall at all times:

1. Comply with all of the terms and conditions of the Permit.
2. Comply with all of the requirements of Chapter 15 of Title 4 of the Breckenridge Town Code.
3. Comply with all other Town ordinances that are applicable to the business for which the Permit was issued.
4. Procure and continuously maintain throughout the term of the Permit a policy of comprehensive commercial general liability insurance with limits of liability not less than One Million Dollars (\$1,000,000) per claim, One Million Dollars (\$1,000,000) aggregate, and Fifty Thousand Dollars (\$50,000) for property damage. The Town shall be named as an additional insured under such insurance policy. An ACORD Form 27, or other certificate of insurance acceptable to Town Clerk, shall be completed by the Applicant's insurance agent and provided to the Town Clerk as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect and shall be reviewed and approved by Town prior to renewed Permit becoming effective, and on each renewal or replacement of the policy during the term of the Permit.
5. Indemnify and defend the Town, its officers, employees, insurers, and self-insurance pool (with counsel acceptable to the Town), from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, arising out of or in any manner connected with the operation of the business for which the Permit was issued. The Applicant shall investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims, or demands at the sole expense of the Applicant, and bear all other costs and expenses related thereto, including court costs and attorney fees. The indemnity obligations of this condition shall survive the expiration or revocation of the Permit, and shall continue to be fully enforceable thereafter.
6. **Comply with the following special conditions:**
 - A. When not it use the pedal bus shall be parked in a trailer out of public view and stored inside of the trailer (photo submitted with the application in incorporated into this Decision as part of the record) at 415 N. Park Avenue aka Gold Rush parking lot.

B. The approved staging area for the pedal bus is shown on the attached Exhibit “A,” which is incorporated into this Decision by reference. The pedal bus employee shall cross N. Park Avenue at N. French Street and travel down N. Main Street to Watson Avenue to pick up passengers at the 15 minute passenger pick location at the South Gondola parking lot (subject to approval by the Breckenridge Ski Resort). No passengers shall board the pedal bus at the Gold Rush parking lot.

C. The approved route of travel for the pedal bus shall be as shown on the attached Exhibit “B,” which is incorporated into this Decision by reference. There shall be no deviation from the approved route of travel of the pedal bus except in the case of a bona fide emergency requiring a change of route.

D. The driver or operator of the pedal bus must be at least 18 years of age, and have a valid Colorado driver’s license.

E. The driver of operator of the pedal bus must be qualified to safely operate the pedal bus.

F. The driver or operator of the pedal bus must register with the Police Chief by providing the Police Chief with a copy of the driver’s or operator’s current Colorado driver’s license.

G. The Applicant shall maintain the pedal bus in a clean and safe condition.

H. The Applicant shall operate the pedal bus in accordance with all applicable state and local traffic laws.

I. The Applicant shall not permit any person to possess any alcoholic beverage in any open container in the pedal bus, or to consume any alcoholic beverage in the pedal bus, while the pedal bus is either parked on a public street, right of way, or alley within the Town of Breckenridge, or while the pedal bus is being operated on a public street, right of way, or alley within the Town of Breckenridge. An alcoholic beverage includes both a “fermented malt beverage” as defined in the Colorado Beer Code, and “malt, vinous and spirituous liquor” as defined in the Colorado Liquor Code.

J. The Applicant shall not permit any person to possess any marijuana in any open marijuana container, or to consume marijuana in the pedal bus, while the pedal bus is either parked on a public street, right of way, or alley within the Town of Breckenridge, or while the pedal bus is being operated on a public street, right of way, or alley within the Town of Breckenridge. “Marijuana” has the meaning provided in Section 6-3I-1 of the Breckenridge Town Code.

K. A triangular “slow vehicle” reflector shall be displayed on the rear of the pedal bus at all times while the pedal bus is in operation pursuant to CRS 42-4-234. A pedal bus that operates at night shall be lit with a minimum of one white light at the front and two red lights at the rear, with side reflectors, in accordance with CRS 42-4-211(7).

L. The Applicant shall work with Town staff to determine an appropriate pedal bus waiting location. This location will be based upon public safety issues, snow removal needs, emergency vehicle access, handicapped parking and general parking concerns. The Town has the final authority to designate a waiting location, or to remove previously approved waiting locations.

M. Pedal bus waiting locations or drop-off locations shall not utilize public transit stops or emergency vehicle designated areas. The Applicant shall obtain written permission for all waiting locations on private property.

N. The Applicant shall obtain a Shuttle Permit from the Breckenridge Police Department prior to use of any Shuttle Stop in the Town of Breckenridge. Applicant shall comply with all applicable Shuttle Stop rules and regulations.

O. Pedal bus drivers shall not operate on sidewalks, Blue River Plaza, or the Riverwalk immediately adjacent to the Blue River.

P. No signs are authorized by this permit, including sandwich board signs. Any signs or advertising on the pedal bus shall require a separate Town of Breckenridge sign permit, including any signage or advertising proposed for display on the pedal bus.

Q. Pedal bus drivers shall pull the pedal bus over to the side of the road should traffic back up behind the pedal bus.

R. The Applicant's pedal bus shall not be operated in such a manner as to become a nuisance. Drivers shall not aggressively solicit or "hawk" potential riders.

S. The pedal bus must be operated by human power. A small motor, as approved by the Town, is permitted to be engaged for the bike bus to cross Park Avenue (with employee only), or in emergency and/or safety situations only.

T. The pedal bus shall not be allowed to wait or park on any Town Street or public or private property without an active tour.

U. Pedal bus drivers shall wear protective eyewear when operating the pedal bus.

V. A maximum of one (1) pedal bus is authorized by this permit. If the Applicant desires to operate more than one (1) pedal bus within the Town of Breckenridge, a permit modification must first be obtained from the Town of Breckenridge.

W. Vehicles must be stored on private property out of public view when not in operation. The pedal bus shall not occupy any required parking space within the Town of Breckenridge.

X. Pedal bus drivers shall not allow passengers to operate the pedal bus at any time.

Y. Pedal bus drivers shall not allow passengers to enter or exit the pedal bus while the pedal bus is in motion.

Z. No intoxicated persons may ride on the pedal bus at any time. It is the responsibility of the driver to monitor the sobriety of the passengers.

AA. Drivers shall remain with the pedal bus and in control at all times. In case a driver needs to be away from a pedal bus to use bathroom facilities, unattended vehicles shall be locked and inoperable.

A copy of this decision document shall be mailed to the Applicant by regular mail, postage prepaid, at the address shown in the application.

Dated: _____, 2015

TOWN OF BRECKENRIDGE

By: _____
Timothy J. Gagen, Town Manager

CERTIFICATE OF MAILING

I, Helen Cospolich, the duly appointed and acting Town Clerk of the Town of Breckenridge, do hereby certify that I have this day mailed a copy of this document with sufficient prepaid postage affixed thereon to assure delivery to:

BikeBus, LLC
1810 West 129th Drive
Westminster, CO 80234

DATED: _____, 2015.

Helen Cospolich
Town Clerk

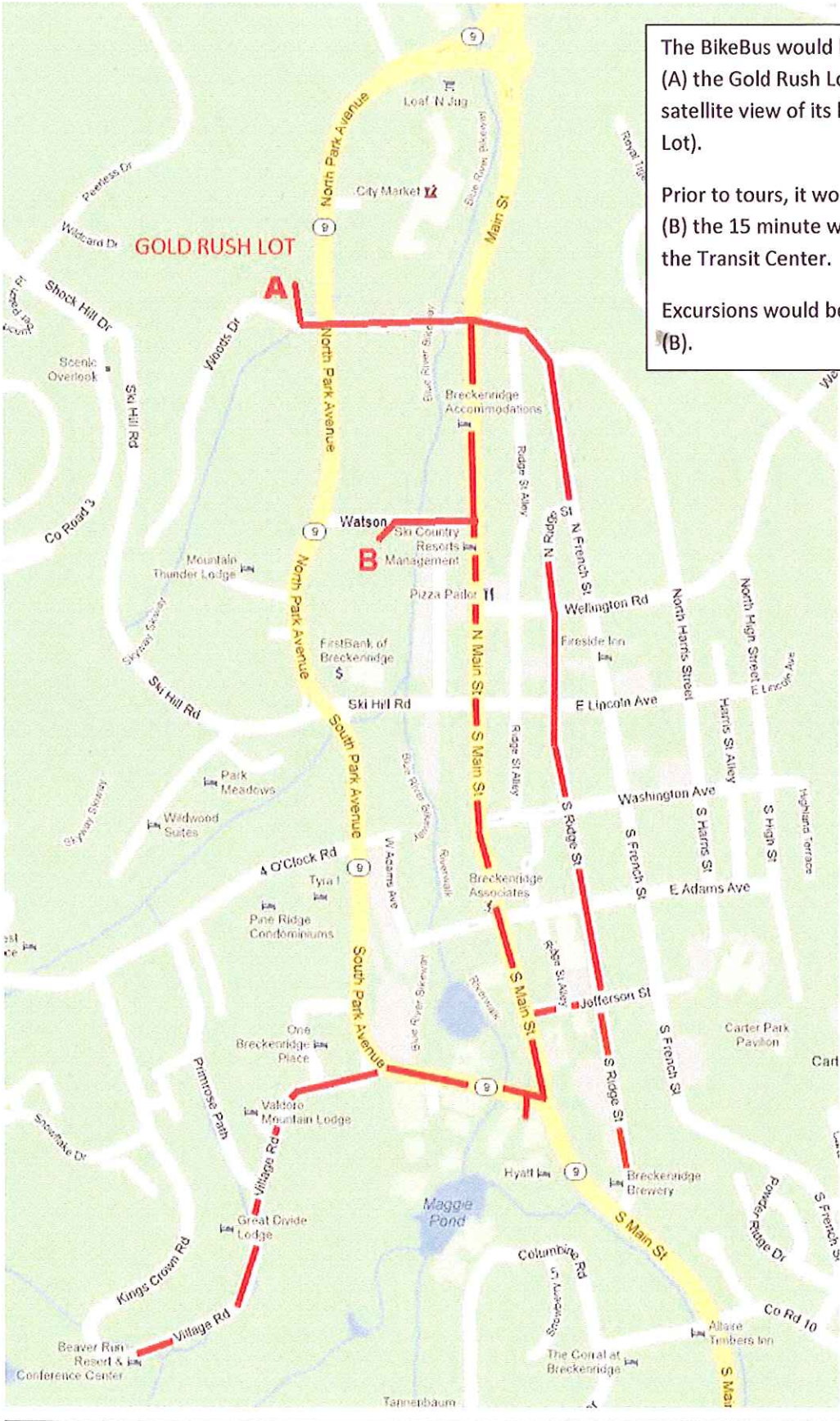
EXHIBIT A

Location where trailer would be staged in the Gold Rush Lot



EXHIBIT B

Routes/Streets used in RED.



The BikeBus would be staged in its trailer at (A) the Gold Rush Lot (see next page for a satellite view of its location in the Gold Rush Lot).

Prior to tours, it would be moved to location (B) the 15 minute waiting area across from the Transit Center.

Excursions would begin and end at location (B).