



BRECKENRIDGE TOWN COUNCIL WORK SESSION

Tuesday, June 23, 2015; 1:30 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.*

1:30pm	I	<u>FINANCING AND CONSTRUCTION GROUND BREAKING - PINEWOOD 2 (1:30 PM)</u>	
3:00-3:15pm	II	<u>PLANNING COMMISSION DECISIONS</u>	2
3:15-4:00pm	III	<u>LEGISLATIVE REVIEW*</u>	
		Lomax Mine Local Landmarking	10
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4:00-4:15pm	IV	<u>MANAGERS REPORT</u>	
		Public Projects Update	95
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4:15-5:00pm	V	<u>OTHER</u>	
		Town Annual Grant Program	117
	VI	<u>PLANNING MATTERS</u>	
5:00-7:00pm	VII	<u>EXECUTIVE SESSION</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 17, 2015

Re: Planning Commission Decisions of the June 16, 2015, Meeting.

DECISIONS FROM THE PLANNING COMMISSION AGENDA OF June 16, 2015:

CLASS C APPLICATIONS:

1) Cottage #7, The Cottages at Shock Hill (MM) PL-2015-0166, 51 Regent Drive
Construct a new, single family residence with 5 bedrooms, 5.5 bathrooms, 3,451 sq. ft. of density and 4,032 sq. ft. of mass. *Approved 7-0.*

CLASS B APPLICATIONS: None.

CLASS A APPLICATIONS: None.

TOWN PROJECT HEARINGS: None.

OTHER:

1) Barney Ford Museum Landmarking (Stiles, Block 2, Lots 1, 2 & 3) (MM) PL-2015-0201, 200 South Main Street

Locally landmark the Barney Ford Museum per Section 9-11-3, Designation of Landmarks, Landmark Sites, Historic Districts and Cultural Landscape Districts, of the Town Code. *Recommendation the Town Council adopt an ordinance to Landmark the property based on the fulfillment of criteria for Architectural and Physical Integrity significance as stated in Section 9-11-4 of the Landmarking Ordinance. Approved 7-0.*

PLANNING COMMISSION MEETING

The meeting was called to order at 7:00 pm

ROLL CALL

Kate Christopher Gretchen Dudney Jim Lamb
Dan Schroder Ron Schuman Eric Mamula
Dave Pringle arrived at 7:07 pm
Wendy Wolfe, Town Council Liaison, was absent.

APPROVAL OF MINUTES

With no changes, the June 2, 2015, Planning Commission Minutes were approved as presented.

APPROVAL OF AGENDA

With no changes, the June 16, 2015, Planning Commission Agenda was approved as presented.

CONSENT CALENDAR:

1) Cottage #7, The Cottages at Shock Hill (MM) PL-2015-0166, 51 Regent Drive

With no requests for call up, the consent calendar was approved as presented.

WORKSESSIONS:

1) Temporary Structures (Tents) (JP)

Ms. Puester presented. The last update to the Temporary Structures ordinance was approved by the Town Council on April 8, 2014.

Primary changes to the Policy April 8, 2014 included:

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

Issues have arisen since the last update to the policy regarding temporary tents for events. Recently, staff saw a request for a private function with a tent for thirty (30) days in duration which was not approved under the current policy. There is a lack of detail in the Temporary Structures Policy with tents not being addressed except for those that qualify as special events. The Town Code Special Events Chapter (Chapter 13, Title 4) however, applies only to public events, not private. The proposed policy modification attempts to rectify this and make further clarifications regarding tents. As proposed, staff is not recommending temporary tents be allowed for more than a five (5) day duration.

Primary issues addressed in this ordinance include:

- Temporary Event: A 5 day limit for tents with a Class D minor permit, 30 days in between permit issuance, not to exceed 3 permits per year.
- Grandfather clause: The Beaver Run summer seasonal tent has been approved by the Town Planning Commission process (via a Class C) for over 15 years. As there have been no issues with this permitted tent during this time, staff is suggesting a grandfather clause in this case.

A few issues that have come up since writing this memo include the not for profit Barney Ford lot which is

privately owned, not Town property, temporary tent sales which could be addressed with being permitted with approved sidewalk sale days and as mentioned before, the 30 day private function tent at Grand Lodge Peak 7.

Commissioner Questions / Comments:

Mr. Lamb: Where do greenhouses fit in? (Ms. Puester: It is in temporary structures policy, but we aren't proposing any changes to that part of the policy, just adding in a section on tents.)

Ms. Dudney: I need a few more examples. Beaver Run would come under this policy? (Ms. Puester: That would fall under the grandfather exemption clause proposed since it has had more than 15 consecutive permits, section G.) Arts Festival is a special event not a temporary structure? (Ms. Puester: Yes, is a special event. A temporary structure per code is when you are knocking down a building and using a temp structure in the meantime. A temporary tent would be a new addition to the code, proposed at a limit of 5 day durations. Another example is a restaurant having a band on their deck with a tent and these have gone through special events because it is open to the public. If it is a private event, like a wedding, then the potential is for that to fall under the 5 day temporary permit.)

Mr. Mamula: I'd like to separate the conservation district out for the discussion. Let's talk about conservation district. One of the issues Julia touched on is the issue of density, parking, PIFs. I would love to be able to put up a tent in March and have additional seating for people. It is just increasing year-round seating without all the other things like density, PIFs and so on. Burke and Reilly's tent for St. Patrick's Day month is a special event right now. (Mr. Grosshuesch: The duration of what they did this year would not be allowed under the proposed changes. It was allowed under SEPA because of an interpretation of that ordinance. We are trying to make the two ordinances more compatible with each other by addressing requests that neither one squarely addresses. But for tonight's meeting, we are not discussing the Special Event ordinance here. We don't want to see temporary tents going on longer than 5 days.) (Ms. Puester: If they are in conservation district they need to be a part of a special event or be on Town Property is how this is proposed.) But the non-profit gets special advantage to have a wedding tent; I think the ordinance should also allow them for a for profit business too then. It isn't fair to private enterprise to exempt the Arts District or Barney Ford.

Ms. Dudney: I'm not quite sure I understand the harm for a restaurant to put up a tent but other non-profits are. There is no way for the restaurants to have one in the conservation district?

Mr. Lamb: As proposed, you are allowed 3 permits of 5 days a year, so you can do it 15 days total (outside of the Conservation District).

Ms. Dudney: But a private restaurant can't do it at all unless they go through SEPA if they are in the conservation district?

Mr. Mamula: But that (SEPA) is not under the Planning Commission authority.

Ms. Dudney: A restaurant has to go through SEPA? (Ms. Puester: Yes if it's a special event "open to the public".)

Mr. Mamula: Unless you have a SEPA permit in the conservation district you can't get a tent. I think it is patently unfair that a public property can do this but private property can't. (Mr. Grosshuesch: If private bars and restaurants were allowed the 5 days rule as the private entities outside of the Conservation District are allowed by these changes, would that be good for you?) The issue is, is it ok to limit the number of days that tents are up? Most of the time these tents are up in the summer, except for Burke and Reilly's that does New Year's and St. Patty's Day. It would allow 3, 5-day events for the year. (Mr. Grosshuesch: We got to the 5 days because we seem to tolerate events that only last a weekend but then you have holiday weekends like the 4th of July that sometimes start on Wednesday, so that's where we drew the line.)

Mr. Pringle: Would the draft ordinance somehow separate it so it can't be 15 days in a row? (Ms. Puester:

- As proposed, it has to be a month apart.)
- Mr. Schroder: I think tents make the town lively. They draw your attention. Town, Arts District, doesn't have to adhere to the code right? (Ms. Puester: We do try to live by our own rules. They often use the SEPA process. I would like to set it up so that we aren't limiting the Arts District or Town's activities.) I agree with Ms. Puester and I don't want to limit the Arts District.
- Mr. Mamula: I think there is a big difference when it's a band or public event but I don't think that weddings should be allowed to get tents on town property or for nonprofits. (Mr. Grosshuesch: The Council didn't want temporary structures in the conservation district in general last year. They are accepting of the Arts District having tents, outdoor activities. When they drew the parking lot they discussed permanent anchors for tents. We programmed Masonic Hall to be able to hold receptions and want it to integrate with Barney Ford because they have tents and events. We saw it as a revenue generating area for the nonprofits. There was a lot of support for these are sites to host events and receptions. So we are drawing this ordinance so that we can continue to allow that programming be fulfilled.) I totally get that, but the Town can't just hold events in order to get funding but at the detriment of private entities. I don't think this is fair. I think there is a balance that says that public events are appropriate but when they go into private functions and weddings then it is direct competition and same rules apply.
- Mr. Pringle: The Town hasn't been in the wedding business until now? (Ms. Puester: The Riverwalk Center has been a venue for a long time.) There are a lot of weddings at Father Dyer all the time and I'm thinking that if people know they can have a wedding in the Arts District they will love it and a tent will be up every weekend. (Mr. Grosshuesch: Weddings are a piece of the summer economy. The wedding and event planners understand that the Council is ok with this. The Heritage Alliance has allowed weddings in the Barney Ford lawn for the last 5 years.) It sounds to me like this is going to be a significant piece of late summer / fall business in the Arts District.
- Mr. Mamula: Which is fine as long as private entities can do it to.
- Ms. Christopher: I agree that it should be fair.
- Mr. Mamula: I'm ok with the Arts District as long as private enterprise can do the same thing. Like have a tent on your deck. (Mr. Grosshuesch: I think that is a fair comment.)
- Mr. Pringle: I think it is one thing to have a BBQ for 4th of July open walled tent on museum lawn as opposed to a big event tent with walls on it as opposed to a big tent in the Arts District. I'd be wanting to make sure we aren't walling off in the Arts District. (Mr. Grosshuesch: We are the landlord for the Arts District and I think we will be able to deal with concerns. There will be a lot of public input if these events get out of hand.)
- Mr. Mamula: We want a level playing field in the conservation district.
- Mr. Pringle: It really bothers me to see the 5 Hour Energy tent in the public plaza there all summer but it is allowed because of SEPA. It looks terrible. Don't understand why that is allowed through SEPA. (Mr. Grosshuesch: SEPA's rules are more fluid; it is a marketing thing not a land use thing. They meet on a regular basis and manage it from an impacts perspective; it is a lot more fluid with a lot of people influencing it. We need to focus on what we oversee. The (SEPA) events are reviewed at the end of each event and feedback is given on how to improve them.) (Ms. Puester: Does the 5 day rule sound reasonable? Does the 30 days in between?) If the event is only one day, could we say that the tent only goes up the day before and comes down after the event and be up no more than 5 days. Please put this in the ordinance. (Ms. Puester: The exempt tent with Beaver Run who has had permits for 15 consecutive years; support for it to be grandfathered?)
- Mr. Mamula: What if we make it something like anyplace that has more than 75 rooms, make something broader for the larger properties? (Mr. Grosshuesch: Breck Grand Vacations has an event for their owners that goes on 5 weekends. We didn't know about it until recently but it is

currently against the code. Beaver Run has been doing theirs for a long time. So we wrote in a grandfather clause for Beaver Run because it has been approved by Planning Commission and Town Council for so long. Beaver Run lends itself to a grandfather clause. The Breck Grand Vacations is more recent but with similar impacts. We could make them take the tent down in between Saturdays, but that's very expensive to do. We aren't quite sure how to do this one. It is one of the unresolved issues with the ordinance draft.)

Mr. Pringle: The Beaver Run tent was put up before the convention center went up. Then the convention center goes up and we still have the tent. We don't want to get into the same situation with Breck Grand Vacations. I think we need to have a permitting process with a definite beginning and end that can be renewed. We don't want to see these permit processes stay because we have Sprung structures go up and don't go away.

Mr. Lamb: It sounds like Grand Timber has been doing it for at least a few years? (Ms. Puester: Possibly but we didn't know about it or permit it, trying to work that out right now.)

Mr. Schuman: How big are they? Maybe they allow a size limitation. (Ms. Katie LeStrange, Breck Grand Vacations: I wanted to sit in on this and we ended up with a SEPA permit since it wasn't allowed but it isn't open to the public. We have been stuck in the middle. It is an event we've had for 5 years and it is in the off season that brings in people to the Town. It is a happy hour, music event for our owners. It is on the Sevens patio. It is for 2 hours for every Saturday, last weekend of April goes through the end of May but not during Memorial Day.)

Ms. Dudney: The Grand Vacations and Beaver Run, they should be allowed. The question is what about others? Have we had other requests?

Mr. Pringle: We have a good temporary structure ordinance; we don't get a lot of permit applications. When does this become a big problem, when other large entities want longer time periods? I'm leery about making wholesale changes. I think Breck Grand Vacations should get a permit. (Ms. Puester: The problem is that there isn't the ability in the current codes for Breck Grand Vacations to get a permit; they don't really meet SEPA since it is a private event and they don't meet our temporary structures permit requirements either. We can't just turn our heads because then we have no parameters for other businesses. Should we allow this or not? If so, we need to craft some direct language so people know what they can or cannot do and where. Needs to be universal.) (Mr. Truckey: Is it fair to give it just to Beaver Run and Breck Grand Vacations and not other big lodges?)

Ms. Dudney: Let's open it up and err on the side of fairness.

Mr. Lamb: I'm fine with Beaver Run and also Peak 7. I would like to give this back to staff to see what they come up with that is fair to everyone. I think it could be worded in a way that we could keep it under control. (Ms. Puester: I'm hearing support of the 30 day separation.) Yes, the historic district should be 5 days, 30 days apart.

Ms. Christopher: I'm not ok with grandfathering for a company who has been doing this for 15 years and only allowing them to have a seasonal tent. Either everyone can do it or not, or have parameters where there can only be 3 or 4 tents and let first come first serve.

Mr. Schroder: Temporary is the word I have a problem with, because if they are doing it every summer it isn't temporary. I think Beaver Run should be vacated and new policy written so everyone has a chance.

Mr. Schuman: I think there is a way to get rid of grandfather and open it up to size and quantity. I have a question: we are allowing a temporary structure to be there 3 years not 2 years? (Ms. Puester: That was approved last year with the modification to this policy. No change proposed to that.)

Mr. Pringle: I agree with Mr. Schroder; we don't want to see Beaver Run continue, it is not for the purpose for which it was raised. The Breck Grand vacations tent was not allowed but we didn't have a code provision for that. I don't think it is fair that these continue. I don't think the code is broken because we've prohibited it in the code, but the problem is that we've looked the other way.

- Mr. Schuman: I feel comfortable that staff can write a policy to get rid of the grandfather and make it fair.
- Mr. Mamula: I would like to keep it to the “larger” lodges who have enough property to allow this to happen. I don’t want to see a small lodge tent their deck. (Mr. Grosshuesch: Fair equity way is to let everyone have 5 days 3 times a year.) I think there is scale issue, especially when they are bringing people in the off season. (Mr. Grosshuesch: Would you entertain seasonal restrictions?) Yes.
- Ms. Dudney: Shouldn’t it be a legitimate special event instead of just increasing their density all summer long?
- Mr. Mamula: I don’t think that is fair.
- Ms. Christopher: If we don’t allow anyone else why would we continue?
- Ms. Dudney: Because maybe they didn’t have a code back when it started, now it’s part of their business plan. Can’t change the rules on them now.

TOWN COUNCIL REPORT:

Ms. Wolfe was absent but sent an e-mail with a summary:

- Moved through the sign code, going to second reading next week.
- Limited Wetland TDR’s.
- Continuing to work on the parking and transit plan.
- There was a meeting today with the Lodging Association. We are working on a series of meetings with the community which will begin soon.

OTHER MATTERS:

1) Barney Ford Museum Landmarking (Stiles, Block 2, Lots 1, 2 & 3) (MM) PL-2015-0201, 200 South Main Street

Mr. Mosher presented a proposal to locally landmark the Barney Ford Museum at 200 S. Main St. (111 E. Washington) per Section 9-11-3, Designation of Landmarks, Landmark Sites, Historic Districts and Cultural Landscape Districts, of the Town Code. The property is at least 50 years old, having been constructed around 1880.

The property exemplifies Victorian-era architecture, including some elements of the Italianate style, and is one of Breckenridge’s best preserved and most notable historic structures. The Barney Ford House is most significant for its association with its original owner, Barney Ford, a former slave that became a successful businessman and statesman.

The property shows character, interest or value as part of the development, heritage or cultural characteristics of the community, region, state or nation. The building displays the fine craftsmanship of a bygone era and historic materials, and has been particularly well preserved, thus satisfying the criteria of having the property retaining original design features, materials and / or character. Finally, the structure is on its original location or in the same historic context after having been moved.

The Planning Department suggested the Planning Commission recommend that the Town Council adopt an ordinance to Landmark the Barney Ford Museum at 200 South Main St. (111 East Washington), PL-2015-0201, based on past restoration efforts and the fulfillment of criteria for Architectural and Physical Integrity Significance as stated in Section 9-11-4 of the Landmarking Ordinance.

Commissioner Questions / Comments:

Mr. Lamb: I just want to point out that from the aerial shot you can see a tent in the front yard.

Mr. Schroder made a motion to recommend the Town Council adopt an ordinance to Landmark the Barney

Ford Museum at 200 South Main St. (111 East Washington), PL-2015-0201, based on past restoration efforts and the fulfillment of criteria for Architectural and Physical Integrity Significance as stated in Section 9-11-4 of the Landmarking Ordinance. Mr. Schuman seconded, and the motion was carried unanimously (7-0).

2) Joint Town Council Work Session Topics

Ms. Puester presented. Suggested topics for the joint meeting with the Town Council on July 28 are:

- 1) Development Agreement provisions relationship with point generating Development Code policies.
- 2) Temporary Tents.
- 3) Policy 7/R regarding retaining wall heights and site disturbance.
- 4) Sign Code Amendments update.

The 2015 Planning Commission Top Ten List with Status Updates:

1. Wireless Communication Towers/Antennas (*Currently in process.*)
2. Amenity Bonus Square footage/positive points (Policy 24/R Social Community).
3. Shuttles/positive point reallocation (Policy 25/R Transit) (TOOK TO PC; NO CHANGE NEEDED.)
4. Wood Shake Shingles. (NO ACTION REQUIRED AT THIS TIME.)
5. Local Landmarking: Klack Placer Cabin; County Courthouse; Tin Shop; Mikolitis Barn; Barney Ford House; Sawmill Wakefield Site; Lomax Placer; Dipping Station. (Lomax Placer complete.)
6. Policy 7R regarding retaining wall heights and site disturbance.
7. Parking: Residential parking in garages (positive points).
8. Public Art (off -site improvements). (TOOK TO PC; NO CHANGE NEEDED.)
9. Mass Policy: Airlock Entries and other mass consuming energy conservation features.
10. Employee housing annexation positive point allocations.
11. Sandwich board signs/Outdoor display of merchandise. (TOOK TO PC; IN PROCESS WITH TC.)
12. Development Agreement provisions relationship with point generating Development Code policies.

Commissioner Questions / Comments:

- Mr. Mamula: Sign codes are pretty much done as they are going for second reading next week. I would like to have a planning commission work session on retaining walls. The first two are very important.
- Mr. Lamb: I also like the first two.
- Mr. Mamula: We could reiterate that the sign code is important and that we are glad that they are taking our recommendations and enforcing it. It looks terrible out there, sign after sign as you walk down the street. (Mr. Truckey: We won't be enforcing sign code until September, but we will be educating until then.) Anything else on the top ten list if we get through the first two. (Mr. Grosshuesch: We struggle where to go on a field trip, maybe parking structures and shopping centers?) I think parking structures would be good field trip one with F Lot.
- Mr. Pringle: We talk about development agreements with every Council.
- Ms. Dudney: Just so you know, the International Council on Shopping Centers, which is part of CML, has a big seminar here tomorrow night at Beaver Run.

ADJOURNMENT:

The meeting was adjourned at 8:12 pm.

Eric Mamula, Chair

MEMO

TO: Town Council
FROM: Town Attorney
RE: Council Bill No. 17 (Lomax Gulch Historic Site Landmarking Ordinance)
DATE: June 16, 2015 (for June 23rd meeting)

The second reading of the ordinance landmarking the Town's Lomax Gulch Historic Site is scheduled for your meeting on June 23rd. There are no changes proposed to ordinance from first reading.

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

1 ***FOR WORKSESSION/SECOND READING – JUNE 23***

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

4
5 COUNCIL BILL NO. 17

6
7 Series 2015

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34
35 TOWN OF BRECKENRIDGE, a Colorado
36 municipal corporation

37
38
39 By: _____
40 John G. Warner, Mayor

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ATTEST:

Helen Cospolich
Town Clerk

MEMORANDUM

TO: Town Council

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

DATE: June 16, 2015 for June 23 Council Meeting

SUBJECT: Sign Code Amendments Ordinance Second Reading

The Council held a first reading on the proposed Sign Code amendments on June 9. The Council indicated they were supportive of all the proposed amendments, but wanted to consider one additional revision. Regarding directory signs, the Council indicated they would be supportive of allowing directory signs to be located at each entrance to a development, in cases (e.g., Main Street Station, La Cima Mall) where there are multiple entrances.

Staff has made some revisions to the directory sign language, as listed below, that address the multiple entrance issue. The new language allows for businesses to have their names on directory signs at each entrance to a development. However, the cumulative square footage any one business can use of directory signs is limited to three square feet. Staff feels this allows the flexibility to locate signs at each entrance, while limiting the overall size and impact of the signs.

D. Directory Signs: Directory signs may be wall mounted or freestanding. The aggregate area of directory signs does not count towards each business's allowable sign area. The individual signs of a directory sign shall be of a coordinated design, with each of the individual signs sharing at least two (2) of the following as design elements in common: size, shape, materials, letter style and colors. Each individual business sign in a directory sign shall not exceed three (3) square feet in size. In no case may the aggregate area of a directory sign exceed twenty (20) square feet in size. Where the number of businesses ~~served~~ to be listed on a directory sign would not fit onto the maximum size allowed for ~~a~~ such directory sign, then additional directory signs may be allowed. Additional directory signs must be located at least twenty five (25) feet from other directory signs to avoid creating a cluttered appearance. Additional directory signs may also be allowed where a development containing more than one (1) business has multiple entrances. However, the maximum directory sign square footage allocated per business, regardless of the number of entrances, shall not cumulatively exceed three (3) square feet.

Council Recommendation

Council input on the above change is requested. Attached is the ordinance adopting the proposed amendments to the Sign Code. Staff is available for any questions Council may have.

1 ***FOR WORKSESSION/SECOND READING – JUNE 23***

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

5
6 COUNCIL BILL NO. 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
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, 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.

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

Q. Seasonal Decorations: Seasonal decorations provided, that such decorations are maintained in an attractive condition, do not constitute a fire hazard, and are removed after the season associated with the celebration has ended. Temporary winter holiday decorations must be removed by the day after the third Monday in February (when President's Day is celebrated). Temporary winter holiday lighting is allowed in accordance with subsection 9-12-8B of this code.

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

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



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

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

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

10
11 D. Directory Signs: Directory signs may be wall mounted or freestanding. The
12 aggregate area of directory signs does not count towards each business's
13 allowable sign area. The individual signs of a directory sign shall be of a
14 coordinated design, with each of the individual signs sharing at least two (2) of
15 the following as design elements in common: size, shape, materials, letter style
16 and colors. Each individual business sign in a directory sign shall not exceed three
17 (3) square feet in size. In no case may the aggregate area of a directory sign
18 exceed twenty (20) square feet in size. Where the number of businesses served to
19 be listed on a directory sign would not fit onto the maximum size allowed for a
20 such directory sign, then additional directory signs may be allowed. Additional
21 directory signs must be located at least twenty five (25) feet from other directory
22 signs to avoid creating a cluttered appearance. Additional directory signs may
23 also be allowed where a development containing more than one (1) business
24 has multiple entrances. However, the maximum directory sign square
25 footage allocated per business, regardless of the number of entrances, shall
26 not cumulatively exceed three (3) square feet.
27

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

30
31 K. Permanent Window Signs: Subject to the area limitations of subsection 8-2-6S
32 of this chapter, each window may contain no more than two (2) permanent
33 window signs, except as provided in 8-2-6S1Y.
34

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

37
38 B. Internally Lit Signs placed on the exterior of a building or on the interior
39 of the building within five feet of a window.
40

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

43
44 E. Neon signs placed on the exterior of a building or on the interior of the
45 building within five feet of a window.
46

MEMO

TO: Town Council
FROM: Town Attorney
RE: Council Bill No. 19 (Concerning the Transfer of Density From Wetland Lots)
DATE: June 16, 2015 (for June 23rd meeting)

The second reading of the ordinance limiting the number of TDRs that can be transferred from a wetlands lot is scheduled for your meeting on June 23rd. There are no changes proposed to ordinance from first reading.

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

1 **FOR WORKSESSION/SECOND READING – JUNE 23**

2
3 **NO CHANGE FROM FIRST READING**

4
5 COUNCIL BILL NO. 19

6
7 Series 2015

8
9 AN ORDINANCE AMENDING SECTION 9-1-17-12 OF THE BRECKENRIDGE TOWN
10 CODE, KNOWN AS THE “BRECKENRIDGE DEVELOPMENT CODE,” CONCERNING
11 THE TRANSFER OF DENSITY FROM WETLANDS

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

15
16 Section 1. Section 9-1-17-12(B) of the Breckenridge Town Code is amended to read as
17 follows:

18
19 B. Other Transfers: A transfer of density to a lot or parcel within the town from
20 either one lot or parcel located outside of the town, but within the Upper Blue
21 River Basin, or pursuant to a certificate of development rights issued pursuant to
22 that certain “Intergovernmental Agreement Concerning Transferred Development
23 Rights between the Town and Summit County, Colorado”, as amended from time
24 to time, may be approved by the town only in compliance with this chapter. In no
25 case may a density transfer be allowed into the Historic District or Land Use
26 District 1. A density transfer pursuant to the referenced intergovernmental
27 agreement that includes a Transfer of Development Rights Sending Area wetland
28 lot shall be limited so that no more than 25% of any density approved for transfer
29 (not to exceed two development rights) may originate from a qualifying wetland
30 lot of “high importance” or “concern” as defined in the intergovernmental
31 agreement; only whole development rights are eligible for transfer from wetlands
32 lots. If a density transfer is approved, the transfer shall be evidenced by a written
33 covenant which shall be in a form and substance acceptable to the town attorney.
34 Such covenant shall provide: 1) the amount of density transferred; 2) the new total
35 amount of density on the receiving parcel; 3) the total new amount of density on
36 the sending parcel; and 4) an acknowledgment by the owner of the receiving
37 parcel that the density which has been transferred may be used on the receiving
38 parcel only in accordance with this chapter. The covenant shall be recorded with
39 the clerk and recorder of Summit County, and shall conclusively establish the
40 amount of density on the receiving parcel as of the date of such covenant. Upon
41 the execution of the density transfer covenant described above, the owner of the
42 receiving parcel shall execute such documents as may be required by the director
43 in order to assure that the records of the town correctly reflect the current amount
44 of allowed density on the receiving parcel. Development approval shall include a
45 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 shall
9 not apply to any wetlands lot located in either the Town or unincorporated Summit County,
10 Colorado when it is demonstrated, to the reasonable satisfaction of the Town Council, that the
11 owner of the wetlands lot had entered into a legally binding contract to sell such lot for purposes
12 of use in the TDR program prior to the approval of this ordinance on first reading on June 9,
13 2015.
14

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

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ATTEST:

Helen Cospolich
Town Clerk

MEMO

TO: Town Council

FROM: Town Attorney

RE: Council Bill No. 20 (Approving Sale of Lot 4, Block 5, Airport Subdivision)

DATE: June 16, 2015 (for June 23rd meeting)

The second reading of the ordinance approving the sale of the Town's Lot 4, Block 5, Airport Subdivision property to Kim Resort, LLC is scheduled for your meeting on June 23rd.

Council is aware that the Town has received a back up offer for the lot, and has indicated a willingness to accept the back up offer. At the time of the writing of this memo, however, we have not received a revised back up contract containing all of the provisions that are required in order for the contract to be accepted. As a result, I have simply added a new Section 3 to Council Bill No. 20 authorizing the Town Manager to enter into a back up contract on terms that are no less favorable to the Town than those contained in Kim Resort, LLC offer that is the subject of Council Bill No. 20. Adding this language will avoid the need for a separate ordinance to approve the back up contract once it has been received and reviewed by the Town Manager and me.

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

1 **FOR WORKSESSION/SECOND READING –JUNE 23**

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

5
6 COUNCIL BILL NO. 20

7
8 Series 2015

9
10 AN ORDINANCE APPROVING THE SALE OF TOWN-OWNED
11 REAL PROPERTY

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

13
14 WHEREAS, the Town of Breckenridge is the owner of the following described real
15 property:

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

25
26 BEGINNING AT THE SOUTHWEST CORNER OF LOT 4 BLOCK 5;

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

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

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

43
44 THENCE N 89°36’23” W, 260.33 FEET ALONG THE SOUTHERLY LINE OF
45 LOT 4, BLOCK 5, COMMON WITH THE NORTHERLY LINE OF LOT 5,
46 BLOCK 5, BRECKENRIDGE AIRPORT SUBDIVISION ACCORDING TO

1 THE PLAT OF “A RESUBDIVISION OF LOT 3 BLOCK 5 AND LOT 3
2 BLOCK 4, AN AMENDED REPLAT OF BRECKENRIDGE AIRPORT
3 SUBDIVISION” RECORDED NOVEMBER 22, 1995 AT RECEPTION
4 NUMBER 503766, SUMMIT COUNTY COLORADO TO THE POINT OF
5 BEGINNING.

6
7 (“Property”)

8 ; and
9

10 WHEREAS, the Town desires to sell the Property to Kim Resort, LLC, a Colorado limited
11 liability company; and
12

13 WHEREAS, a proposed Contract to Buy and Sell Real Estate (Land) between the Town and
14 Kim Resort, LLC, a Colorado limited liability company, has been prepared, a copy of which is
15 marked Exhibit “A.” attached hereto, and incorporated herein by reference (“Agreement”); and
16

17 WHEREAS, the Town Council has reviewed the Agreement, and finds and determines that
18 it would be in the best interest of the Town and its residents for the Town to sell the Property to Kim
19 Resort, LLC, a Colorado limited liability company, pursuant to the Agreement; and
20

21 WHEREAS, Section 15.3 of the BreckenridgeTownCharter provides that the Town Council
22 may lawfully authorize the sale of Town-owned real property by ordinance; and
23

24 WHEREAS, the Agreement has previously been executed by the Town Manager on
25 behalf of the Town, and it necessary and appropriate for the Town Council to ratify the previous
26 execution of the Agreement by the Town Manager.
27

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

31 Section 1. The Agreement between the Town and Kim Resort, LLC, a Colorado limited
32 liability company (Exhibit “A” hereto), is approved, and the Town Manager’s previous execution
33 of such Agreement for and on behalf of the Town of Breckenridge is ratified, confirmed, and
34 approved.
35

36 Section 2. The Town Manager is authorized, empowered, and directed to take all necessary
37 and appropriate action to close the sale of the Property contemplated by the Agreement. In
38 connection therewith, the Town Manager shall have full power and authority to do and perform all
39 matters and things necessary to the sale of the Property pursuant to the Agreement, including, but
40 not limited to, the following:
41

- 42 1. The making, execution, and acknowledgement of settlement
43 statements, closing agreements, and other usual and customary
44 closing documents;
45



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).

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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		
168	19	§ 6.2	Appraisal Deadline	7/27/2015	Monday
169	20	§ 6.2	Appraisal Objection Deadline	7/31/2015	Friday
170			Survey		
171	21	§ 9.1	Current Survey Deadline		
172	22	§ 9.2	Current Survey Objection Deadline		
173	23	§ 9.2	Current Survey Resolution Deadline		
174			Inspection and Due Diligence		
175	24	§ 10.2	Inspection Objection Deadline	7/27/2015	Monday
176	25	§ 10.3	Inspection Resolution Deadline	7/31/2015	Friday
177	26	§ 10.5	Property Insurance Objection Deadline	7/31/2015	Friday
178	27	§ 10.6	Due Diligence Documents Delivery Deadline		
179	28	§ 10.6	Due Diligence Documents Objection Deadline		
180	29	§ 10.6	Due Diligence Documents Resolution Deadline		
181	30	§ 10.6	Environmental Inspection Objection Deadline		
182	31	§ 10.6	ADA Evaluation Objection Deadline		
183	32	§ 10.7	Conditional Sale Deadline		
184	33	§ 11.1	Tenant Estoppel Statements Deadline		
185	34	§ 11.2	Tenant Estoppel Statements Objection Deadline		
186			Closing and Possession		
187	35	§ 12.3	Closing Date	8/14/2015	Friday
188	36	§ 17	Possession Date		
189	37	§ 17	Possession Time		
190	38	§ 28	Acceptance Deadline Date	6/2/2015	Tuesday
191	39	§ 28	Acceptance Deadline Time	5 PM MST	
192	40	n/a			
193	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.

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

288 **4.5.3. Loan Limitations.** Buyer may purchase the Property using any of the following types of
 289 loans: Conventional Other

291 **4.6. Assumption.** (Omitted as inapplicable)

294 **4.7. Seller or Private Financing.** (Omitted as inapplicable)

**TRANSACTION
PROVISIONS**

301 **5. FINANCING CONDITIONS AND OBLIGATIONS.**

302 **5.1. Loan Application.** If Buyer is to pay all or part of the Purchase Price by obtaining one or more new
 303 loans (New Loan), or if an existing loan is not to be released at Closing, Buyer, if required by such lender, must
 304 make an application verifiable by such lender, on or before **Loan Application Deadline** (§ 3) and exercise
 305 reasonable efforts to obtain such loan or approval.

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

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

410 8.1. Evidence of Record Title.

411 **8.1.1. Seller Selects Title Insurance Company.** If this box is checked, Seller will
 412 select the title insurance company to furnish the owner's title insurance policy at Seller's expense. On or before
 413 **Record Title Deadline** (§ 3), Seller must furnish to Buyer, a current commitment for owner's title insurance policy
 414 (Title Commitment), in an amount equal to the Purchase Price, or if this box is checked, an **Abstract of Title**
 415 certified to a current date. Seller will cause the title insurance policy to be issued and delivered to Buyer as soon
 416 as practicable at or after Closing.
 417

418 **8.1.2. Buyer Selects Title Insurance Company.** If this box is checked, Buyer will select the title
 419 insurance company to furnish the owner's title insurance policy at Buyer's expense. On or before **Record Title**
 420 **Deadline** (§ 3), Buyer must furnish to Seller, a current commitment for owner's title insurance policy (Title
 421 Commitment), in an amount equal to the Purchase Price.
 422 If neither box in § 8.1.1 or § 8.1.2 is checked, § 8.1.1 applies.
 423

424 **8.1.3. Owner's Extended Coverage (OEC).** The Title Commitment **Will** **Will Not** commit to
 425 delete or insure over the standard exceptions which relate to: (1) parties in possession, (2) unrecorded easements,
 426 (3) survey matters, (4) unrecorded mechanics' liens, (5) gap period (effective date of commitment to date deed is
 427 recorded), and (6) unpaid taxes, assessments and unredeemed tax sales prior to the year of Closing (OEC). If the
 428 title insurance company agrees to provide an endorsement for OEC, any additional premium expense to obtain an
 429 endorsement for OEC will be paid by **Buyer** **Seller** **One-Half by Buyer and One-Half by Seller**

430 **Other n/a.**

431 **Note:** The title insurance company may not agree to delete or insure over any or all of the standard exceptions.
 432

433 **8.1.4. Title Documents.** Title Documents consist of the following: (1) copies of any plats,
 434 declarations, covenants, conditions and restrictions burdening the Property, and (2) copies of any other documents
 435 (or, if illegible, summaries of such documents) listed in the schedule of exceptions (Exceptions) in the Title
 436 Commitment furnished to Buyer (collectively, Title Documents).
 437

438 **8.1.5. Copies of Title Documents.** Buyer must receive, on or before **Record Title Deadline** (§
 439 3), copies of all Title Documents. This requirement pertains only to documents as shown of record in the office of
 440 the clerk and recorder in the county where the Property is located. The cost of furnishing copies of the documents
 441 required in this Section will be at the expense of the party or parties obligated to pay for the owner's title insurance
 442 policy.
 443

444 **8.1.6. Existing Abstracts of Title.** Seller must deliver to Buyer copies of any abstracts of title
 445 covering all or any portion of the Property (Abstract of Title) in Seller's possession on or before **Record Title**
 446 **Deadline** (§ 3).
 447

448 **8.2. Record Title.** Buyer has the right to review and object to the Abstract of Title or Title Commitment
 449 and any of the Title Documents, as set forth in § 8.4 (Right to Object to Title, Resolution) on or before **Record Title**
 450 **Objection Deadline** (§ 3). Buyer's objection may be based on any unsatisfactory form or content of Title
 451 Commitment or Abstract of Title, notwithstanding § 13, or any other unsatisfactory title condition, in Buyer's sole
 452 subjective discretion. If the Abstract of Title, Title Commitment or Title Documents are not received by Buyer, on or
 453 before the **Record Title Deadline** (§ 3), or if there is an endorsement to the Title Commitment that adds a new
 454 Exception to title, a copy of the new Exception to title and the modified Title Commitment will be delivered to
 455 Buyer. Buyer has until the earlier of Closing or ten days after receipt of such documents by Buyer to review and
 456 object to: (1) any required Title Document not timely received by Buyer, (2) any change to the Abstract of Title,
 457 Title Commitment or Title Documents, or (3) any endorsement to the Title Commitment. If Seller receives Buyer's
 458 Notice to Terminate or Notice of Title Objection, pursuant to this § 8.2 (Record Title), any title objection by Buyer is
 459 governed by the provisions set forth in § 8.4 (Right to Object to Title, Resolution). If Seller has fulfilled all Seller's
 460 obligations, if any, to deliver to Buyer all documents required by § 8.1 (Evidence of Record Title) and Seller does
 461 not receive Buyer's Notice to Terminate or Notice of Title Objection by the applicable deadline specified above,
 462
 463
 464
 465
 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.
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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.
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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
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 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.
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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.
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 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.
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 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.
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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

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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.
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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:

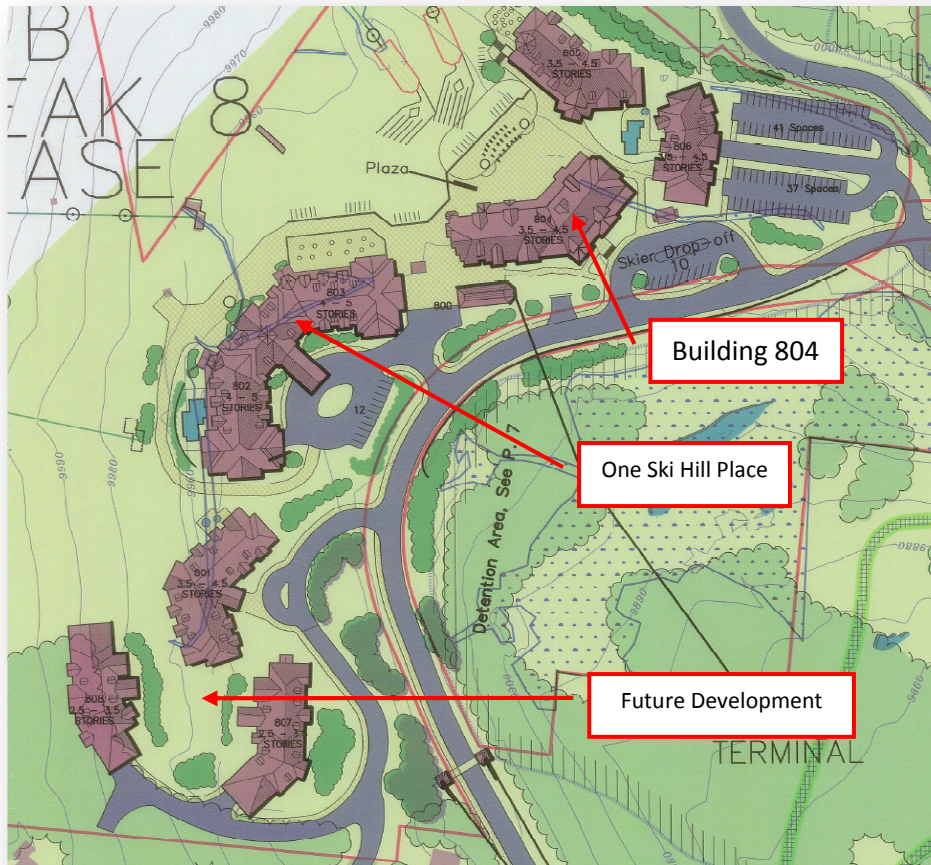
CBS4-8-13. CONTRACT TO BUY AND SELL REAL ESTATE (LAND)

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Memorandum

To: Town Council
From: Michael Mosher, Planner III - Community Development
Date: June 16, 2015
Re: Development Agreement proposal for Grand Colorado at Peak 8 East Building

Community Development has received a submittal for the development of Grand Colorado at Peak 8 East Building. This building would be built per the approved Master Plan in the “Building 804” location, northwest of One Ski Hill Place.



With this Development Agreement, the applicant is requesting the following (additional detail is provided in the attached memo from the Applicant; Rob Millisor, Mike Millisor, and Mike Dudick, Owners, Breckenridge Grand Vacations).

1. Transfer up to 18 SFEs of Residential (1,200/SFE) and 1.3 SFEs of Commercial (1,000/SFE).
2. Allow commencement of infrastructure work to begin in 2016, prior to the issuance of a building permit in 2017.
3. Reduce the Master Plan Parking Requirement of 1.0-parking space per unit to 0.85-spaces per unit.
4. Add a level of parking with a deck above the existing Stables lot without incurring negative points.
5. Public Benefit - \$30,000 as Public Benefit to a defined area of need in Cucumber Gulch.
6. Temporary structures will be needed for use by the Ski Area that would replace the existing two Sprung Structures. The Sprung structures will be in the way of construction and related staging for the subject 804 building.
 - a. Sprung Structure #1 (Ski/Bike Shop next to gondola)) is to be relocated at the base area, with Town approval, until the proposed Guest Services and Commercial spaces in the Grand Colorado at Peak 8 East Building obtain a Certificate of Occupancy. Temporary permits will be granted by the Town to accommodate this transition.
 - b. Sprung Structure #2 (on slope at Kids Kastle facilities area) has a development permit set to expire on April 12, 2017 will also need to be extended until the proposed Guest Services and Commercial spaces in the Grand Colorado at Peak 8 East Building obtain a Certificate of Occupancy.

Working with the Applicants and their architect, Matt Stais, an analysis of the impacts of adding density to the Master Plan was provided related to the remaining building sites (Future Development on the illustration above) at the base of Peak 8. The analysis was based on the size and heights of the three buildings shown on the Fit-Test sheet of the Master Plan.

The Fit Test shows roughly 99 SFEs for the three buildings. After the development of The Grand Colorado at Peak 8 East Building, the remaining total SFEs available for Vail Summit Resorts, Inc. would be roughly 77.8 SFEs, or 22.1 fewer SFEs. Staff has no concerns.

The Applicants, Architect and Staff will be available to answer any questions.

LAW OFFICES
WEST BROWN HUNTLEY PC
100 SOUTH RIDGE STREET, SUITE 204
POST OFFICE BOX 588
BRECKENRIDGE, COLORADO 80424
TELEPHONE (970) 453-2901
FAX (970) 453-0192
WWW.WESTBROWN.COM

STEPHEN C. WEST
FELICE F. HUNTLEY
ROBERT N. GREGORY

PETER F. MICHAELSON
OF COUNSEL

D. WAYNE BROWN
RETIRED

JILL D. BLOCK
Paralegal

June 16, 2015

VIA EMAIL (mosh@townofbreckenridge.com)

Michael Mosher
Department of Community Development
Town of Breckenridge
P.O. Box 168
Breckenridge, CO 80424

Re: Development Agreement Authorizing Approvals of Master Plan Amendment &
Development Permit

Dear Mosh:

In connection with Application No. PL-2015-0215 (“Application”) for a development permit for both the area between Lot 1, Peak 8 Subdivision where One Ski Hill Place is located and Lot 2, Peak 8 Subdivision where Grand Colorado on Peak 8 is under construction (“Property”) and Tract E, Peak 7 Subdivision where the Stables parking lot is located (“Tract E”), Vail Summit Resorts, Inc. (“VSRI”) and Peak 8 Properties, LLC (“BGV”) are requesting that the Town Council approve the attached Development Agreement (“Agreement”). The Agreement would authorize amendments to the Amendment to Amended Peaks 7 & 8 Master Plan (“Master Plan”) and a development permit for BGV’s proposed project for the Property and proposed parking deck for Tract E that could not be approved if various provisions the Town Code are applied to the applications for the proposed amendments and the development permit.

A Memorandum from the BGV representatives provided in connection with this application letter sets forth the reasons the Agreement is needed and descriptions of the encouraged commitments provided for in Section 9-9-4 of the Town Code in connection with an application for a development agreement. The purpose of this letter is to serve as the required application and address the submittal requirements for a development agreement.

Based on the foregoing, VSRI and BGV respectfully request that this letter be considered as the formal application for consideration of the proposed Agreement. Because the proposed Agreement is filed in connection with the pending Application, and also in connection with an

application to amend the Master Plan that will be filed if the Agreement is approved by Council, a separate application fee has not been included with this letter. The remainder of the submittal requirements set forth in Section 9-9-9 of the Town Code are complied with as follows: Subsection A is satisfied by the simultaneous delivery to the Town Attorney and you of a commitment for title insurance showing ownership of the Property to be in the name of VSRI and an owner and encumbrance report showing title to Tract E also to be in the name of VSRI; Subsections B and C are not applicable because VSRI, as the owner of the Property and Tract E, is one of the applicants; Subsections D and E are satisfied by this letter and the attached Agreement; and Subsection F is satisfied with the submittal of the proposed Agreement itself. If any additional information or documentation is needed, please do not hesitate to let me know.

VSRI, BGV and I look forward to working with the Town Council, Tim Berry, and you on approval of this Agreement.

Respectfully,



Stephen C. West
Attorney and Agent

c: Timothy H. Berry, Esq. (via email w/enc.)
Graham Frank (via email w/ enc.)
Robert A. Millisor (via email w/ enc.)
Kevin E. Holst (via email w/ enc.)
John L. Palmquist (via email w/ enc.)

MEMO

DATE: June 15, 2015

TO: Town of Breckenridge Town Council

FROM: Rob Millisor, Mike Millisor, and Mike Dudick,
Owners, Breckenridge Grand Vacations

RE: Development Agreement for 804 Site at Peak 8 base

Breckenridge Grand Vacations (BGV) is pursuing the purchase from Vail Summit Resorts, Inc. (VSRI) of the development site between One Ski Hill Place (OSHP) and Grand Colorado on Peak 8 (GC8) noted as Building 804 (804 Site) on the Peaks 7 & 8 Master Plan (Master Plan). When BGV purchased the land for GC8 in early 2013, VSRI still was considering development of the 804 Site itself because it is the location for significant Guest Services and Commercial space, consisting of child care, ski school, ticket sales and ski rental/sales facilities. More recently, VSRI determined that it was open to a potential sale of the 804 Site to BGV for an expansion of GC8 and to include the Guest Services and Commercial space needed by VSRI.

GC8 is currently under construction with 75 two-bedroom units with one bedroom a lock-off (150 keys) to be delivered in three phases. Anticipated occupancy of phase 1 is fall of 2016 with phase 2 following in the spring of 2017 and phase 3 in spring of 2018. BGV's plan for the 804 Site is for it to be an addition to GC8 – a fourth and fifth phase if you will.

BGV's preliminary plan for the 804 Site is to construct 54 two bedroom units (108 keys). BGV intends to connect the new building on the 804 Site to the lobby of the under construction GC8. This will allow for easy guest traffic flow throughout the interior of GC8.

BGV has learned during its 30 plus years of timeshare sales in Breckenridge that the amount of square feet allocated to amenities is critically important. BGV's plan with the addition of 804 to GC8 is to construct additional amenities such as pools, a media lab, locker rooms, owners lounge and theatres in a manner that is proportionate with the increase in total unit count while remaining focused on an exceptional guest experience.

In order to move forward with the construction of 54 additional two-bedroom units, BGV looks forward to working with the Town of Breckenridge on several key areas to determine the feasibility of the development of the 804 Site.

1. Density Level:

- **Transfer up to 18 residential SFEs and 1.3 commercial SFE via TDRs from the open space bank to the 804 Site, a receiving site in the Upper Blue Master Plan.** There are 122.77 SFEs (per TOB Staff) remaining at Peak 8 after accounting for One Ski Hill Place (OSHP) and the completion of GC8. BGV's current negotiations with VSRI provide for BGV to receive 45 SFEs with the 804 Site. 45 SFEs would yield enough residential density to build approximately 40 two bedroom units of the same 1,350 square foot size as the GC8 units. The additional requested maximum of 18 residential SFEs will yield an additional 14 two-bedroom units,

plus just over 2 SFEs for increased mass, if needed. Based on development costs, the additional units are necessary to ensure financial viability of the project. The 1.3 commercial SFEs are for a limited-service coffee shop which will be available to all visitors of Peak 8.

- **Preservation of an option to construct a hotel on the site of the administration building and parking area directly east of OSHP.** One of VSRI's long-term options to complete the Peak 8 base area development that includes the site of the administration building and parking lot (Admin Site) is to sell the land to a developer to construct a higher-end hotel and, as market conditions dictate, additional condominiums or townhomes to improve the viability of the project. The hotel project would also necessitate commercial facilities to serve hotel and resort guests. The 77.77 SFEs and remaining commercial density of the Master Plan currently are deemed necessary to construct an appropriately sized hotel, the associated condominiums/townhomes and commercial facilities. Of course, VSRI or the eventual purchaser of the Admin Site will have to satisfy the Town relative to the Master Plan and Development Code fit tests.
- **Planning Commission and 804 Site.** BGV understands it is our burden to work with the Planning Commission to ensure that, whatever SFE count is ultimately proposed for the 804 Site, the building must fit appropriately on the site and conform to the Master Plan and applicable Development Code provisions. As a point of reference, in 2012, the Town Council agreed, via a development agreement with VSRI and BGV, to allow enough density transfer for GC8 (then known as the Bergie site) to construct 80 two-bedroom equivalents. After completion of the planning process with the Town, 75 units were ultimately approved. BGV's request of Town Council in a new development agreement to make BGV's proposed development of the 804 Site feasible would be to add 18 residential and 1.3 commercial SFEs to the 45 SFEs BGV is purchasing from VSRI for a total of 64.3 SFEs on the 804 site. The burden of demonstrating the feasibility of 64.3 SFEs to the Planning Commission remains exclusively BGV's.
- **Open space funds.** The maximum of 19.3 TDRs transferred would generate \$1,002,635 of funds to the Town and Summit County for open space acquisition, improvement and maintenance.
- **Intensity of use.** BGV's plan is to construct 54 two-bedroom equivalent units which will average approximately 1,350 square feet each on the 804 Site versus approximately 1,200 square feet at Grand Lodge on Peak 7. A portion of our request for increased density via TDR transfer is to meet consumers' expectations in 2015 and beyond, which require larger living space for the comfort of the guests and owners. The units increase in size but the number of people using the facility remains the same.

2. Infrastructure Issues:

- **Commencement of infrastructure improvements, including removal of the Breck Sports Sprung structure and demolition of the current lift ticket office and ski patrol hut, relocation of deep utilities, construction of storm water management systems, and mass excavation during the spring and summer of 2016 prior to the issuance of a building permit.** This is necessary for the commencement of vertical construction in spring of 2017 which is critical to meeting our Certificate of Occupancy date in the spring of 2019 for the fourth phase (on the 804 site) of GC8. Town Council approved a similar request from BGV for site work in advance of a building permit in the 2012 development agreement for GC8 and this proposal has the added benefit of removal of the sprung structure on Ski Hill Road and completion of the improvements to Ski Hill Road.

3. Required Parking.

- **Decrease the parking requirement for our two bedroom lock-off units from 2 indoor spaces to 1.7 spaces per 2 bedroom lock-off or .85 spaces per key.** Town Council granted this request in the 2012 development agreement for GC8 based on an independent parking study. BGV will provide an updated parking study for the 804 site confirming our numbers from 2012, if requested.

4. Additional Parking.

- **BGV proposes to pursue a parking deck above the existing Stables lot and, if feasible, build the parking deck as part of the development of the 804 Site.** The Stables lot currently sits 8 to 15 feet below the grade of Ski Hill Road just prior to the bridge that provides access to the buildings on Peak 7. BGV's plan would yield two access points to the Stables lot (South entrance to lower level and a North entrance to the upper deck) and use the changing grade to eliminate the need for ramping. BGV's initial analysis demonstrates this plan would provide an additional 65 spaces for the guests of both VSRI and BGV (excluding owners and renters staying in units in GC8 and the building proposed for the 804 Site). BGV would work with the Town to create regulations with time restrictions for use of the parking deck for uphill skier access before the lifts open. Further, the plan would be to snow melt the deck, if feasible, and provide any additional drainage facilities to insure no negative impacts to Cucumber Gulch.

We understand the importance to our community of preserving our natural surroundings while continuing smart growth. In 2012, BGV contributed \$25,000 to Cucumber Gulch as Public Benefit in our Development Agreement while transferring 11 residential and 5 commercial TDRs onto the Bergie Site. As the TDR request is slightly larger for 804 vs Bergie (19.3 vs. 16), BGV would increase its contribution to \$30,000 as Public Benefit to a defined area of need in Cucumber Gulch, which Scott Reid has suggested as being entry improvements and public education in the upper reaches of the Gulch where people enter from the area of the Peaks Trailhead.

In summary, we are asking for the following in a development agreement with the Town:

1. Transfer up to 19.3 SFEs to the 804 Site – 18 residential and 1.3 commercial.
2. Allow commencement of infrastructure work to begin in 2016, prior to the issuance of a building permit in 2017.
3. Change the on-site parking requirement from one space per key to .85 per key.
4. Authorize the addition of a parking deck to the existing Stables lot.

In return for granting these requests via a development agreement, the Town will realize the following benefits:

1. Completion of the 804 Site – including demolition of older buildings and removal of the sprung structure on Ski Hill Road in 2016 and housing of Guest Services and Commercial space inside the 804 Site component of the new GC8.
2. Completion of improvements to Ski Hill Road.
3. As much as \$1 million in open space funds depending on actual TDRs required.
4. Nearly \$2 million in RETT because of the liquidation of inventory via timeshare sales.
5. Increase in parking spaces at Peak 8 base.
6. Alternative drainage facilities via snow melt vs. snow stacking from Stables lot for the benefit of Cucumber Gulch.
7. Job preservation of 150 plus sales and marketing professionals.
8. \$30,000 contribution for the benefit of Cucumber Gulch.
9. Dedicated early morning uphill skier parking.

We are looking forward to working with the Town to develop the 804 site that will help maintain the economic sustainability of Breckenridge.

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

2
3 COUNCIL BILL NO. _____

4
5 Series 2015

6
7 AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH
8 VAIL SUMMIT RESORTS, INC., A COLORADO CORPORATION, AND PEAK 8
9 PROPERTIES, LLC, A COLORADO LIMITED LIABILITY COMPANY

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. Vail Summit Resorts, Inc., a Colorado corporation (“VSR”) is the owner of the
18 Remainder of Tract C, Peak 8 Subdivision Filing No. 1 according to A Resubdivision Plat
19 thereof recorded May 15, 2013 at Reception No. 1026374, Summit County, Colorado (the
20 “Property”).

21 B. The Property is subject to the Amendment to Amended Peaks 7 & 8 Master Plan
22 approved by Development Permit 2013006 on February 26, 2013, notice of which approval was
23 recorded May 10, 2013 at Reception No. 1026194 of the Summit County, Colorado records (the
24 “Master Plan”).

25 C. VSR and Peak 8 Properties, LLC, a Colorado limited liability company (“Peak 8”) are
26 in discussions related to a potential sale of the portion of the Property located between Lots 1 and
27 2, Peak 8 Subdivision identified in the illustrative site plan of the Master Plan as the location for
28 Building 804 (the “Sale Parcel”) for Peak 8 to develop as an additional phase or additional
29 phases of Peak 8’s project known as Grand Colorado on Peak 8 currently under construction on
30 Lot 2, Peak 8 Subdivision.

31 D. As owner of the Property, VSR has the right to propose an amendment to the Master
32 Plan, to request density transfers to the Property, to request Town approval for the gross density
33 recommended by the Town’s Land Use Guidelines (“Guidelines”) to be exceed as provided for
34 in Subsection 9-1-19-39A:I.(2) of the Breckenridge Town Code, and to enter into agreements
35 with the Town concerning such amendment to the Master Plan, such a density transfer, such
36 density in excess of that recommended by the Guidelines and such other matters as the Town and
37 the VSR may agree is appropriate.

38 E. Pursuant to Chapter 9 of the Breckenridge Town Code the Town Council has the
39 authority to enter into a development agreement. Further, in connection with a master plan
40 amendment, there is no process in the Town’s Development Code for approval of density in
41 excess of that recommended by the Guidelines and the transfer of density pursuant to a
42 certificate of development rights (“TDRs”) issued pursuant to the Intergovernmental Agreement

1 concerning transfer of development rights between the Town and Summit County, Colorado
2 (“IGA”), and, therefore, a development agreement provides a means for such an approval and
3 transfer.

4 F. In order for Peak 8 to develop the Sale Parcel in a manner that will enhance the sale of
5 Peak 8’s timeshare product up to an additional 18 SFEs of residential density and 1.3 SFE of
6 commercial density will be required and an amendment to the Master Plan and authorization to
7 use TDRs to accommodate such density will be required.

8 G. In connection with the completion of the first phase of Peak 8’s Grand Colorado on
9 Peak 8 project and the plan to provide additional improved Guest Services facilities to service
10 VSR’s guests in Peak 8’s development of the Sale Parcel, a clarification of the definition of
11 Guest Services in the Master Plan is requested to provide that the existing and future non-income
12 producing space not to be treated as density or mass would include patrol and first aid facilities,
13 in addition to the employee lockers, public restrooms, storage areas, and lift and lift personnel
14 facilities provided for in the Master Plan with the 2013 amendment.

15 H. In connection with the review of the amendment of the Master Plan to allow for the
16 approval of a mixed use development containing not less than one hundred thousand (100,000)
17 square feet to have the off-street parking requirements of Section 9-3-8 of the Breckenridge
18 Town Code decreased, as provided for in Subsection 9-3-8:D of the Breckenridge Town Code,
19 the Breckenridge Planning Commission is authorized to approve a reduction in the requirement
20 for 2 off-street parking spaces for each 2 bedroom unit with a lock-off or divisible room, based
21 on a written analysis to be paid for by the Peak 8 and prepared by a qualified parking consultant.

22 I. Based on parking data provided by Peak 8 verifying that, at its 2 other timeshare resorts
23 in Breckenridge (Grand Timber Lodge and Grand Lodge on Peak 7), the average number of cars
24 parked per 2 bedroom unit with a lock-off or divisible room was 1.55 over the 12 months from
25 April, 2011 through March, 2012, a variance or exception of the requirement under Subsection
26 9-3-8:B of the Breckenridge Town Code for 2 off-street parking spaces for each such 2 bedroom
27 unit with a divisible room should be provided to reduce the required parking to 1.7 spaces for
28 each such 2 bedroom unit with a divisible room.

29 J. Because there is no provision in the Breckenridge Town Code allowing site work to
30 begin prior to issuance of a building permit, in order to facilitate the beginning of vertical
31 construction of Peak 8’s proposed project in the spring of 2017, the Town is prepared to
32 authorize its Department of Community Development (“Department”) to grant permission for
33 the commencement of infrastructure improvements, including, but not limited to, removal of the
34 Breck Sports Sprung structure located on the Sale Parcel (“Sprung Structure #1”), demolition of
35 the Ullr building located on the Sale Parcel, construction of improvements to Ski Hill Road,
36 construction of storm water management facilities, and relocation of utilities prior to issuance of
37 a building permit, and site excavation subject to receipt of assurances of completion deemed
38 satisfactory by the Department.

39 K. In order to accommodate the rental and sales of winter recreational equipment and
40 ticket sales functions of VSR, which currently occur in Sprung Structure #1 and the Ullr building
41 to be removed and demolished, the Town acknowledges and understands that temporary

1 structures will need to be placed in acceptable locations at the base of Peak 8 and maintained in
2 such locations until the proposed Guest Services and Commercial spaces in Peak 8's proposed
3 development on the Sale Parcel (the "Guest Services/Commercial Spaces") are completed and
4 ready for occupancy by VSR and temporary permits similar to Development Permit No. 2013103
5 that permits the Sprung structure to be maintained in its current location will need to be issued.
6 Further, the Town acknowledges and understands that Development Permit No. 2013103 will
7 need to be extended to allow the Sprung structure that accommodates the Kids Kastle facilities
8 ("Sprung Structure #2") to remain in place until the proposed Guest Services/Commercial Spaces
9 are completed and ready for occupancy by VSR.

10 L. Pursuant to Section 9-1-5:Development:C of the Town's Development Code, the
11 Town is authorized by development agreement to exclude from the definition of "development"
12 any proposed activity that does not involve the construction of new density and mass. Pursuant to
13 the Development Code, the construction of the parking deck to accommodate up to 65 additional
14 parking spaces for use by non-resident owners at Grand Colorado on Peak 8 (as expanded by the
15 development on the Sale Parcel) when such owners are using the winter and summer recreational
16 facilities of VSR and the amenities of Grand Colorado on Peak 8, ("Parking Deck") proposed by
17 Peak 8 to be constructed over VSR's existing parking lot on Tract E, Peak 7 Subdivision
18 according to the plat thereof recorded December 15, 2006 under Reception No. 841906, Summit
19 County, Colorado ("Tract E") would be defined as development and require compliance with
20 policies of the Development Code that could not be met with the construction of the Parking
21 Deck on Tract E.

22 M. As the commitments encouraged to be made in connection with an application for a
23 development agreement in accordance with Section 9-9-4 of the Breckenridge Town Code, Peak
24 8 has proposed: (1) a payment to the Town of \$30,000 to be applied toward the Town's proposed
25 improvement to the Cucumber Gulch entry from the Peaks Trail trailhead area and public
26 education activities, to include improved fencing, information signage and landscaping in the
27 upper reaches of the Town's cucumber Gulch property; and (2) a long term agreement for the use
28 of the Parking Deck by uphill skiers prior to the opening of VSR's lifts for public use at the base
29 of Peak 8 with such restrictions on the time of such parking as the Town, Peak 8 and VSR agree.

30 N. The Town Council has received a completed application and all required submittals
31 for a development agreement, had a preliminary discussion of the application and this
32 Agreement, determined that it should commence proceedings for the approval of this Agreement
33 and, in accordance with the procedures set forth in Subsection 9-9-10:C of the Breckenridge
34 Town Code, has approved this Agreement by non-emergency ordinance.

35 O. A proposed development agreement between the Town, VSR and Peak 8 addressing
36 the topics described above has been prepared, a copy of which is marked **Exhibit "A"**, attached
37 hereto and incorporated herein by reference ("Development Agreement").

38 P. The Town Council had a preliminary discussion of the development agreement
39 application, and the proposed Development Agreement, as required by Section 9-9-10(A) of the
40 Breckenridge Town Code.

1 Q. The Town Council determined that request for a development agreement need not be
2 referred to the Breckenridge Planning Commission for its review and recommendation.

3 R. The Town Council has reviewed the Development Agreement.

4 S. The approval of the Development Agreement is warranted in light of all relevant
5 circumstances.

6 T. The procedures to be used to review and approve a development agreement are
7 provided in Chapter 9 of Title 9 of the Breckenridge Town Code. The requirements of such
8 Chapter have substantially been met or waived in connection with the approval of the
9 Development Agreement and the adoption of this ordinance.

10 Section 2. Approval of Development Agreement. The Development Agreement between
11 the Town, Vail Summit Resorts, Inc., a Colorado corporation, and Peak 8 Properties, LLC, a
12 Colorado limited liability company, (Exhibit “A” hereto) is approved, and the Town Manager is
13 authorized, empowered, and directed to execute such agreement for and on behalf of the Town of
14 Breckenridge.

15
16 Section 3. Notice of Approval. The Development Agreement must contain a notice in the
17 form provided in Section 9-9-13 of the Breckenridge Town Code. In addition, a notice in
18 compliance with the requirements of Section 9-9-13 of the Breckenridge Town Code must be
19 published by the Town Clerk one time in a newspaper of general circulation in the Town within
20 fourteen days after the adoption of this ordinance. Such notice shall satisfy the requirement of
21 Section 24-68-103, C.R.S.

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

27
28 Section 5. Authority. The Town Council finds, determines, and declares that it has the
29 power to adopt this ordinance pursuant to the authority granted to home rule municipalities by
30 Article XX of the Colorado Constitution and the powers contained in the Breckenridge Town
31 Charter.

32
33 Section 6. Effective Date. This ordinance shall be published and become effective as
34 provided by 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.

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42 TOWN OF BRECKENRIDGE
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By _____
John G. Warner, Mayor

ATTEST:

Helen Cospolich
Town Clerk

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APPROVAL OF THIS DEVELOPMENT AGREEMENT CONSTITUTES A VESTED
PROPERTY RIGHT PURSUANT TO ARTICLE 68 OF TITLE 24, COLORADO REVISED
STATUTES, AS AMENDED

DEVELOPMENT AGREEMENT

This Development Agreement (“Agreement”) is made as of the ____ day of _____, 2015 (the “Effective Date, which shall be the date when the ordinance approving this Agreement becomes effective) among the TOWN OF BRECKENRIDGE, a municipal corporation of the State of Colorado (the “Town”), VAIL SUMMIT RESORTS, INC., a Colorado corporation (the “Owner”), and PEAK 8 PROPERTIES, LLC, a Colorado limited liability company (the “Buyer”).

Recitals

A. Owner is the owner of the Remainder of Tract C, Peak 8 Subdivision Filing No. 1 according to A Resubdivision Plat thereof recorded May 15, 2013 at Reception No. 1026374, Summit County, Colorado (the “Property”).

B. The Property is subject to the Amendment to Amended Peaks 7 & 8 Master Plan approved by Development Permit 2013006 on February 26, 2013, notice of which approval was recorded May 10, 2013 at Reception No. 1026194 of the Summit County, Colorado records (the “Master Plan”).

C. Owner and Buyer are in discussions related to a potential sale of the portion of the Property located between Lots 1 and 2, Peak 8 Subdivision identified in the illustrative site plan of the Master Plan as the location for Building 804 (the “Sale Parcel”) for Buyer to develop as an additional phase or additional phases of Buyer’s project known as Grand Colorado on Peak 8 currently under construction on Lot 2, Peak 8 Subdivision.

D. As owner of the Property, Owner has the right to propose an amendment to the Master Plan, to request density transfers to the Property, to request Town approval for the gross density recommended by the Town’s Land Use Guidelines (“Guidelines”) to be exceed as provided for in Subsection 9-1-19-39A:I.(2) of the Breckenridge Town Code, and to enter into agreements with the Town concerning such amendment to the Master Plan, such a density transfer, such density in excess of that recommended by the Guidelines and such other matters as the Town and the Owner may agree is appropriate.

E. Pursuant to Chapter 9 of the Breckenridge Town Code the Town Council has the authority to enter into a development agreement. Further, in connection with a master plan dev ag 804 site for 1st TC review 06-15-15

amendment, there is no process in the Town's Development Code for approval of density in excess of that recommended by the Guidelines and the transfer of density pursuant to a certificate of development rights ("TDRs") issued pursuant to the Intergovernmental Agreement concerning transfer of development rights between the Town and Summit County, Colorado ("IGA"), and, therefore, a development agreement provides a means for such an approval and transfer.

F. In order for Buyer to develop the Sale Parcel in a manner that will enhance the sale of Buyer's timeshare product up to an additional 18 SFEs of residential density and 1.3 SFE of commercial density will be required and an amendment to the Master Plan and authorization to use TDRs to accommodate such density will be required.

G. In connection with the completion of the first phase of Buyer's Grand Colorado on Peak 8 project and the plan to provide additional improved Guest Services facilities to service Owner's guests in Buyer's development of the Sale Parcel, a clarification of the definition of Guest Services in the Master Plan is requested to provide that the existing and future non-income producing space not to be treated as density or mass would include patrol and first aid facilities, in addition to the employee lockers, public restrooms, storage areas, and lift and lift personnel facilities provided for in the Master Plan with the 2013 amendment.

H. In connection with the review of the amendment of the Master Plan to allow for the approval of a mixed use development containing not less than one hundred thousand (100,000) square feet to have the off-street parking requirements of Section 9-3-8 of the Breckenridge Town Code decreased, as provided for in Subsection 9-3-8:D of the Breckenridge Town Code, the Breckenridge Planning Commission is authorized to approve a reduction in the requirement for 2 off-street parking spaces for each 2 bedroom unit with a lock-off or divisible room, based on a written analysis to be paid for by the Buyer and prepared by a qualified parking consultant.

I. Based on parking data provided by Buyer verifying that, at its 2 other timeshare resorts in Breckenridge (Grand Timber Lodge and Grand Lodge on Peak 7), the average number of cars parked per 2 bedroom unit with a lock-off or divisible room was 1.55 over the 12 months from April, 2011 through March, 2012, a variance or exception of the requirement under Subsection 9-3-8:B of the Breckenridge Town Code for 2 off-street parking spaces for each such 2 bedroom unit with a divisible room should be provided to reduce the required parking to 1.7 spaces for each such 2 bedroom unit with a divisible room.

J. Because there is no provision in the Breckenridge Town Code allowing site work to begin prior to issuance of a building permit, in order to facilitate the beginning of vertical construction of Buyer's proposed project in the spring of 2017, the Town is prepared to authorize its Department of Community Development ("Department") to grant permission for the commencement of infrastructure improvements, including, but not limited to, removal of the Breck Sports Sprung structure located on the Sale Parcel ("Sprung Structure #1"), demolition of the Ullr building located on the Sale Parcel, construction of improvements to Ski Hill Road, construction of storm water management facilities, and relocation of utilities prior to issuance of

a building permit, and site excavation subject to receipt of assurances of completion deemed satisfactory by the Department.

K. In order to accommodate the rental and sales of winter recreational equipment and ticket sales functions of Owner, which currently occur in Sprung Structure #1 and the Ullr building to be removed and demolished, the Town acknowledges and understands that temporary structures will need to be placed in acceptable locations at the base of Peak 8 and maintained in such locations until the proposed Guest Services and Commercial spaces in Buyer's proposed development on the Sale Parcel (the "Guest Services/Commercial Spaces") are completed and ready for occupancy by Owner and temporary permits similar to Development Permit No. 2013103 that permits the Sprung structure to be maintained in its current location will need to be issued. Further, the Town acknowledges and understands that Development Permit No. 2013103 will need to be extended to allow the Sprung structure that accommodates the Kids Kastle facilities ("Sprung Structure #2") to remain in place until the proposed Guest Services/Commercial Spaces are completed and ready for occupancy by Owner.

L. Pursuant to Section 9-1-5:Development:C of the Town's Development Code, the Town is authorized by development agreement to exclude from the definition of "development" any proposed activity that does not involve the construction of new density and mass. Pursuant to the Development Code, the construction of the parking deck to accommodate up to 65 additional parking spaces for use by non-resident owners at Grand Colorado on Peak 8 (as expanded by the development on the Sale Parcel) when such owners are using the winter and summer recreational facilities of Owner and the amenities of Grand Colorado on Peak 8, ("Parking Deck") proposed by Buyer to be constructed over Owner's existing parking lot on Tract E, Peak 7 Subdivision according to the plat thereof recorded December 15, 2006 under Reception No. 841906, Summit County, Colorado ("Tract E") would be defined as development and require compliance with policies of the Development Code that could not be met with the construction of the Parking Deck on Tract E.

M. As the commitments encouraged to be made in connection with an application for a development agreement in accordance with Section 9-9-4 of the Breckenridge Town Code, Buyer has proposed: (1) a payment to the Town of \$30,000 to be applied toward the Town's proposed improvement to the Cucumber Gulch entry from the Peaks Trail trailhead area and public education activities, to include improved fencing, information signage and landscaping in the upper reaches of the Town's cucumber Gulch property; and (2) a long term agreement for the use of the Parking Deck by uphill skiers prior to the opening of Owner's lifts for public use at the base of Peak 8 with such restrictions on the time of such parking as the Town, Buyer and Owner agree.

N. The Town Council has received a completed application and all required submittals for a development agreement, had a preliminary discussion of the application and this Agreement, determined that it should commence proceedings for the approval of this Agreement and, in accordance with the procedures set forth in Subsection 9-9-10:C of the Breckenridge Town Code, has approved this Agreement by non-emergency ordinance.

Agreement

1. Upon: (a) final approval of (i) the transfer of TDRs consisting of up to 19.3 SFEs (18 for residential use and 1.3 for commercial use) to the Sale Parcel, (ii) a Class A development permit amending the Master Plan to allow for such additional density and clarification of the definition of Guest Services (the “Master Plan Amendment”), (iii) a Class A development permit acceptable to Buyer and Owner allowing for the development of the Sale Parcel utilizing up to 63 SFEs for a condominium (as provided for in the Town Code) at 1,200 square feet of density per SFE and up to 1 SFE for commercial use at 1,000 square feet of density per SFE and allowing for the construction of the Parking Deck on Tract E (the “Permit”), (iv) a Class C development permit extending Development Permit No. 2013103 to allow Sprung Structure #2 to remain in place until the proposed Guest Services/Commercial Spaces are completed and ready for occupancy by Owner, (v) such permit as may be required to allow temporary structures for both the rental and sales of winter recreational equipment and ticket sales to be placed in acceptable locations at the base of Peak 8 and maintained in such locations until the proposed Guest Services/Commercial Spaces are completed and ready for occupancy by Owner, and (vi) a Class B subdivision permit approving the subdivision of the Property to create the Sale Parcel; and (b) the passage of any time periods within which any referendums, appeals or other challenges to such approvals must be brought, without any such referendums, appeals or other challenges having been filed, commenced or asserted, Buyer shall: (A) pay \$30,000 to the Town to be applied to the Town’s proposed Cucumber Gulch entry and educational improvements, and (B) pursuant to the terms of the IGA, pay the then-current price per TDR for each TDR required to support the total residential and commercial density authorized by the Permit minus the total residential density of 45 SFEs to be assigned to the Sale Parcel by Seller under the Master Plan.

2. Pursuant to Subsection 9-1-19:39.I.(2) of the Development Code, the Town’s Planning Commission is hereby authorized to review and approve, within 1 year of the Effective Date and subject to compliance with all other applicable development policies of the Town, an application for the Master Plan Amendment providing for density in excess of the current Guidelines by the addition of up to 19.3 SFEs (18 residential and 1.3 commercial) to the allowable density of 45 SFEs for the Sale Parcel and an application for the Permit accommodating such additional density.

3. Upon approval of the Master Plan Amendment and the Permit, the Owner is hereby authorized to process the transfer to the Sale Parcel of up to 19.3 TDRs providing for up to 18 residential SFEs and 1.3 commercial SFE, pursuant to the terms of the IGA.

4. Pursuant to Subsection 9-1-19:39.I.(2) of the Development Code, the Town’s Planning Commission is hereby authorized to review and approve, within 1 year of the Effective Date and subject to compliance with all other applicable development policies of the Town, an application for the Master Plan Amendment providing for the following amended definition of Guest Services Facilities (Note: only changes from existing provision are that “patrol and first aid facilities are deleted from the 1st paragraph and added to the 2nd paragraph):

Guest Services Facilities include space for the following primary activities or facilities:
ticket sales, administration, nursery or childcare facilities, lockers for guests, cafeterias,

lounges, storage areas for recreational equipment for sale or rental, and instruction related activities. Guest Services Facilities constructed using the 57 SFEs, which were excluded from total density for purposes of a separate density reduction calculation, may not be used as a private club or other restricted access facility requiring membership. Cafeterias constructed using Guest Services Facilities density may be used from time to time outside of the winter recreation season, but may not be used as full service restaurants open to the public on a regular basis outside of the winter recreation season.

Guest Services Facilities will not include patrol and first aid facilities, locker areas for employees, public restrooms, storage areas (not including storage areas for recreational equipment for sale or rental), and lift and lift personnel facilities (“Support Facilities”) already constructed at the time of approval of this Amendment or to be constructed. Support Facilities will not apply against the 57 SFEs authorized under this Master Plan for Guest Services Facilities and shall not be assessed against the density and mass of any building within which they are located or are to be located provided that the Support Facilities are legally guaranteed to be used only for the foregoing described purposes and do not exceed a total of 17,594 square feet.

5. The requirements of Section 9-3-8 of the Breckenridge Town Code for 2 off-street parking spaces to be provided for each 2 bedroom unit with a lock-off or divisible room may be decreased for Buyer’s development for each 2 bedroom unit with a lock-off or divisible room if the Planning Commission finds that the written analysis paid for by Buyer and prepared by a qualified parking consultant supports such decrease. Further, the Planning Commission is hereby authorized to review and approve, within 1 year from the Effective Date, an amendment to the Master Plan providing for parking in accordance with the foregoing, which will be less than required by the Breckenridge Town Code.

6. The Planning Commission is authorized to review and approve, within 1 year of the Effective Date, the application for the Permit without the Parking Deck component of such application complying with Sections 9-1-19-21R: Open Space; 9-1-19-22A: Landscaping; and _____ **[Note: additional sections may be included after further consultation with Community Development staff and before 2nd reading]** of the Development Code , which sections of the Development Code could not be met in connection with the Town’s approval of the Parking Deck on Tract E, provided that, except as otherwise provided in this Agreement, the application complies with all other applicable development policies of the Town. Further, the Town Council, by adopting the ordinance approving this Agreement, acknowledges that certain requirements of the Town’s Off Street Parking Regulations, including, without limitation, Sections 9-3-9:E and I, could not be met in connection the Town’s approval of Parking Deck on Tract E and, therefore, variances, exceptions or waivers from such Regulations may be required to be granted by the Planning Commission.

7. Subject to the Department’s receipt of adequate assurances of or security for completion of the authorized infrastructure improvements or return of the Sale Parcel generally to the condition it was in before the commencement of any work, the Department, after final approval of the Master Plan Amendment and the Permit, is hereby authorized to permit the removal of Sprung Structure #1 and the excavation for and construction of infrastructure

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improvements, including, but not limited to, demolition of the Ullr building located on the Sale Parcel (subject to obtaining a demolition permit from the Town), construction of improvements to Ski Hill Road, construction of storm water management facilities, relocation of utilities, and site excavation, after issuance of the Permit but before issuance of a building permit.

8. Except as provided in Section 24-68-105, C.R.S. and except as specifically provided for herein, the execution of this Agreement shall not preclude the current or future application of municipal, state or federal ordinances, laws, rules or regulations to the Property (collectively, “laws”), including, but not limited to, building, fire, plumbing, engineering, electrical and mechanical codes, and the Town’s Development Code, Subdivision Standards and other land use laws, as the same may be in effect from time to time throughout the term of this Agreement. Except to the extent the Town otherwise specifically agrees, any development of the Property which is the subject of this Agreement, the Master Plan Amendment and the Permit shall be done in compliance with the then-current laws of the Town.

9. Nothing in this Agreement shall preclude or otherwise limit the lawful authority of the Town to adopt or amend any Town law, including, but not limited to the Town’s: (i) Development Code, (ii) Master Plan, (iii) Land Use Guidelines and (iv) Subdivision Standards.

10. This Agreement shall run with title to the Property and be binding upon and inure to the benefit of Town, Owner and Buyer, their successors and assigns.

11. Prior to any action against the Town for breach of this Agreement, Owner or Buyer shall give the Town a sixty (60) day written notice of any claim by the Owner or Buyer of a breach or default by the Town, and the Town shall have the opportunity to cure such alleged default within such time period.

12. The Town shall not be responsible for and VSRI and BGV shall have no remedy against the Town if the development of the Property is prevented or delayed for reasons beyond the control of the Town.

13. Actual development of the Property and Tract E shall require the issuance of such other and further permits and approvals by the Town as may be required from time to time by applicable Town ordinances.

14. No official or employee of the Town shall be personally responsible for any actual or alleged breach of this Agreement by the Town.

15. Buyer with respect to its interests or benefits provided for in paragraphs 1, 2, 3, 5, 6, and 7 agrees to indemnify and hold the Town, its officers, employees, insurers, and self-insurance pool, harmless 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, which arise out of or are in any manner connected with such benefits under this Agreement, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the negligence or wrongful intentional act or omission of Buyer;

any subcontractor of Buyer, or any officer, employee, representative, or agent of Buyer or of any subcontractor of Buyer, or which arise out of any worker's compensation claim of any employee of Buyer, or of any employee of any subcontractor of Buyer; except to the extent such liability, claim or demand arises through the negligence or intentional act or omission of Town, its officers, employees, or agents. Buyer agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims, or demands at the sole expense of the Buyer. Buyer also agrees to bear all other costs and expenses related thereto, including court costs and attorney's fees.

16. Owner with respect to its interests or benefits provided for in paragraph 5 agrees to indemnify and hold the Town, its officers, employees, insurers, and self-insurance pool, harmless 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, which arise out of or are in any manner connected with such benefits under this Agreement, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the negligence or wrongful intentional act or omission of Owner; any subcontractor of Owner, or any officer, employee, representative, or agent of Owner or of any subcontractor of Owner, or which arise out of any worker's compensation claim of any employee of Owner, or of any employee of any subcontractor of Owner; except to the extent such liability, claim or demand arises through the negligence or intentional act or omission of Town, its officers, employees, or agents. Owner agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims, or demands at the sole expense of the Owner. Owner also agrees to bear all other costs and expenses related thereto, including court costs and attorney's fees.

17. If any provision of this Agreement shall be invalid, illegal or unenforceable, it shall not affect or impair the validity, legality or enforceability of the remaining provisions of the Agreement.

18. This Agreement constitutes a vested property right pursuant to Article 68 of Title 24, Colorado Revised Statutes, as amended.

19. No waiver of any provision of this Agreement shall be deemed or constitute a waiver of any other provision, nor shall it be deemed to constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both Town and Owner; nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The Town's failure to exercise any right under this Agreement shall not constitute the approval of any wrongful act by the Owner or Buyer or the acceptance of any improvements.

20. This Agreement shall be recorded in the office of the Clerk and Recorder of Summit County, Colorado.

21. Nothing contained in this Agreement shall constitute a waiver of the Town's sovereign immunity under any applicable state or federal law.

22. Personal jurisdiction and venue for any civil action commenced by either party to this Agreement shall be deemed to be proper only if such action is commenced in District Court of Summit County, Colorado. The Owner and Buyer expressly waive their right to bring such action in or to remove such action to any other court, whether state or federal.

23. Any notice required or permitted hereunder shall be in writing and shall be sufficient if personally delivered or mailed by certified mail, return receipt requested, addressed as follows:

If to the Town: Timothy J. Gagen, Town Manager
Town of Breckenridge
P.O. Box 168
Breckenridge, CO 80424

With a copy (which shall not constitute notice to the Town) to: Timothy H. Berry, Esq.
Town Attorney
P.O. Box 2
Leadville, CO 80461

If to the Owner: Graham Frank
Vail Summit Resorts, Inc.
137 Benchmark Road
P.O. Box 959
Avon, CO 81620

With a copy (which shall not constitute notice) to: Stephen C. West, Esq.
West Brown Huntley PC
P.O. Box 588
Breckenridge, CO 80424

With a copy (which shall not constitute notice) to: Vail Resorts Management Company
390 Interlocken Crescent
Broomfield, CO 80021
Attn: Legal Department

If to the Buyer: Nick Doran
Peak 7, LLC
100 S. Main Street
P.O. Box 6879
Breckenridge, CO 80424

With a copy (which shall not constitute notice) to:

John L. Palmquist, Esq.
GC Legal Strategies
2520 S. St. Paul Street
Denver, CO 80210

Notices mailed in accordance with the provisions of this paragraph shall be deemed to have been given upon delivery. Notices personally delivered shall be deemed to have been given upon delivery. Nothing herein shall prohibit the giving of notice in the manner provided for in the Colorado Rules of Civil Procedure for service of civil process.

24. As between Owner and Buyer, nothing contained within this Agreement shall be deemed to modify that certain letter of intent related to the Sale Parcel dated as of June 10, 2015 between Owner and Buyer (the "LOI") or to create any binding obligations of a part of Owner to Buyer or Buyer to Owner which are not expressly set forth in the LOI. The foregoing sentence shall not affect Owner's or Buyer's obligations to the Town as provided for in this Agreement.

25. This Agreement constitutes the entire agreement and understanding between the parties relating to the subject matter of this Agreement and supersedes any prior agreement or understanding relating to such subject matter.

26. This Agreement shall be interpreted in accordance with the laws of the State of Colorado.

IN WITNESS WHEREOF, the Town, the Owner, and the Buyer have executed this Agreement as of the date first above set forth.

[SEPARATE SIGNATURE PAGES TO FOLLOW]

TOWN OF BRECKENRIDGE

Attest:

Helen Cospolich, Town Clerk

By: _____
Timothy J. Gagen, Manager

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing was acknowledged before me this _____ day of _____, 2015
by Timothy J. Gagen as Town Manager and Helen Cospolich as Town Clerk of the Town of
Breckenridge.

Witness my hand and official seal.
My commission expires: _____

Notary Public

VAIL SUMMIT RESORTS, INC.
a Colorado corporation

By: _____
James O'Donnell, Senior Vice President
Hospitality and Real Estate

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing was acknowledged before me this _____ day of _____, 2015
by James O'Donnell as Senior Vice President Hospitality and Real Estate of Vail Summit
Resorts, Inc., a Colorado corporation.

Witness my hand and official seal.
My commission expires: _____

Notary Public

PEAK 8 PROPERTIES, LLC
a Colorado limited liability company

By: _____
_____, Member

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing was acknowledged before me this _____ day of _____, 2015
by _____ as a Member of Peak 8 Properties, LLC, a Colorado limited liability
company.

Witness my hand and official seal.
My commission expires: _____

Notary Public



MEMORANDUM

To: Mayor and Town Council
From: Tim Gagen, Town Manager
Date: June 16, 2015
Subject: *Proposed Intergovernmental Agreement between Summit County and the Town of Breckenridge*

Background:

Over the last year or so the Town has been working on the water rights necessary to operate the new water treatment plant for the Town and the Upper Blue Basin. The County has been participating in our planning for the plant but also has existing water rights in the Upper Blue Basin and Blue River. As a part of its water rights case, the Town has been working with the County and the Upper Blue Sanitation District to ensure no negative effect to its water rights. As a show of good faith and cooperation, we have developed the attached intergovernmental agreement to document the commitment by the Town and County to communicate and cooperate to ensure that if any future changes by the CWCB to the point of measurement on the Blue are taken, we will work to ensure that no negative impacts are caused to the Town, County and Upper Blue Sanitation District water rights.

Our Water Attorney Glenn Porzak has reviewed the intergovernmental agreement and approved its form and content and it is now ready for Council consideration.

Staff recommends approval of the intergovernmental agreement.

1 A RESOLUTION

2
3 SERIES 2015

4
5 A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH
6 SUMMIT COUNTY, COLORADO CONCERNING
7 INSTREAM FLOW ADMINISTRATION
8

9 WHEREAS, the Town of Breckenridge (“Town”) filed an application in Case No.
10 13CW3094, Water Division No. 5, seeking (i) a new conditional water right known as the
11 Breckenridge Pipeline Enlargement; (ii) alternate points of diversion for 5.6 of the 20 cfs decreed
12 to the Breckenridge Pipeline; and (iii) approval of a plan for augmentation to allow Breckenridge
13 to divert the Breckenridge Pipeline Enlargement and 5.6 cfs of the Breckenridge Pipeline water
14 rights out-of-priority on a year-round basis at the points of diversion described in the application,
15 up to a maximum of 680.53 consumptive acre-feet per year, for use in connection with the
16 Breckenridge service area, as said area may from time to time be expanded; and
17

18 WHEREAS, Summit County, Colorado, acting by and through the Board of County
19 Commissioners of Summit County, Colorado (“County”), the Upper Blue Sanitation District
20 (“District”), and the Colorado Water Conservation Board (“CWCB”) filed statements of
21 opposition to the Town’s water court application in Case No. 13CW3094; and
22

23 WHEREAS, the point of diversion of the Breckenridge Pipeline Enlargement is
24 downstream of the USGS Blue River near Dillon gage that is used as the point of measurement
25 of a minimum streamflow water right held by the CWCB decreed in Case No. 86CW217, Water
26 Division No. 5 (the “ISF”); and
27

28 WHEREAS, the Town and the CWCB have agreed that any decree entered in Case No.
29 13CW3094 shall provide that the location of the foregoing point of measurement of the ISF shall
30 not change absent a subsequent agreement of the CWCB and the Town; and
31

32 WHEREAS, the County owns water rights in the Blue River and its tributaries above
33 Dillon Reservoir, including a plan for augmentation and exchanges from Dillon Reservoir
34 upstream to points within and above the reach of the River that is subject to the ISF, and intends
35 to appropriate and operate additional water rights, plans for augmentation, and exchanges in the
36 Blue River above Dillon Reservoir; and
37

38 WHEREAS, the District is the owner and operator of the Breckenridge Flow Splitting
39 Channel water right decreed on June 19, 1997 in Case No. 92CW300, District Court, Water
40 Division 5 (the “District Decree”). The decreed location of the Flow Splitting Channel is
41 downstream of the USGS Blue River near Dillon gage and
42

43 WHEREAS, the District Decree contains provisions that allow the Town and the County
44 to reopen and fully litigate the District’s claim for water rights for the Flow Splitting Channel in
45 Case No.92CW300 in the event the Division Engineer or the CWCB measure the ISF at a
46 location downstream of the District’s point of diversion (the “Reopener Provisions”) and

1
2 WHEREAS, a change in the location of the point of measurement of the ISF to a location
3 below the USGS Blue River near Dillon gage may be detrimental to the exercise of water rights,
4 plans for augmentation, and rights of exchange of both the County and the Town; and
5

6 WHEREAS, the District has requested the Town and the County to agree, in exchange
7 for a credit toward Inclusion Fees and Plant Investment Fees assessed by the District, that
8 notwithstanding the Reopener Provisions, neither the Town nor the County will ever reopen the
9 District Decree under any circumstances and
10

11 WHEREAS, the Town and the County wish to agree on terms and conditions that will
12 facilitate the entry of a decree in Case No. 13CW3094 and the conclusion of negotiations with
13 the District on the exercise of the Reopener Provisions; and
14

15 WHEREAS, a proposed Intergovernmental Agreement between the Town and Summit
16 County, Colorado, acting by and through the Board of County Commissioners of Summit
17 County, Colorado has been prepared, a copy of which is marked **Exhibit "A"**, attached hereto,
18 and incorporated herein by reference; and
19

20 WHEREAS, the Town Council has reviewed the proposed Intergovernmental
21 Agreement, and finds and determines that it would be in the best interest of the Town to enter
22 into such Agreement.
23

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

27 Section 1. The Intergovernmental Agreement between the Town of Breckenridge and
28 Summit County, Colorado, acting by and through the Board of County Commissioners of
29 Summit County, Colorado concerning instream flow administration ("**Exhibit "A"**" hereto) is
30 approved, and the Mayor is authorized, empowered, and directed to execute such agreement for
31 and on behalf of the Town of Breckenridge.
32

33 Section 2. This resolution is effective upon its adoption.
34

35 RESOLUTION APPROVED AND ADOPTED THIS ____ DAY OF _____, 2015.
36

37 TOWN OF BRECKENRIDGE
38
39

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

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ATTEST:

Town Clerk

APPROVED IN FORM

Town Attorney date

1
2 INTERGOVERNMENTAL AGREEMENT
3 (Instream Flow Administration)
4

5 This Intergovernmental Agreement (this “**Agreement**”) is dated _____,
6 2015 (the “**Effective Date**”) and is between the TOWN OF BRECKENRIDGE, a Colorado
7 municipal corporation (the “**Town**”) and SUMMIT COUNTY, COLORADO, acting by and
8 through the BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY, COLORADO
9 (the “**County**”). The Town and the County are sometimes referred to individually as a “**Party**”,
10 and together as the “**Parties**.”
11

12 **Recitals**
13

14 A. The Town filed an application in Case No. 13CW3094, Water Division No. 5, seeking (i) a
15 new conditional water right known as the Breckenridge Pipeline Enlargement; (ii) alternate points
16 of diversion for 5.6 of the 20 cfs decreed to the Breckenridge Pipeline; and (iii) approval of a plan
17 for augmentation to allow Breckenridge to divert the Breckenridge Pipeline Enlargement and 5.6
18 cfs of the Breckenridge Pipeline water rights out-of-priority on a year-round basis at the points of
19 diversion described in the application, up to a maximum of 680.53 consumptive acre-feet per year,
20 for use in connection with the Breckenridge service area, as said area may from time to time be
21 expanded.
22

23 B. The County, the Upper Blue Sanitation District (“**District**”), and the Colorado Water
24 Conservation Board (“**CWCB**”) filed statements of opposition to the Town’s water court
25 application in Case No. 13CW3094.
26

27 C. The point of diversion of the Breckenridge Pipeline Enlargement is downstream of the
28 USGS Blue River near Dillon gage that is used as the point of measurement of a minimum
29 streamflow water right held by the CWCB decreed in Case No. 86CW217, Water Division No. 5
30 (the “**ISF**”).
31

32 D. The Town and the CWCB have agreed that any decree entered in Case No. 13CW3094
33 shall provide that the location of the foregoing point of measurement of the ISF shall not change
34 absent a subsequent agreement of the CWCB and the Town.
35

36 E. The County owns water rights in the Blue River and its tributaries above Dillon Reservoir,
37 including a plan for augmentation and exchanges from Dillon Reservoir upstream to points within
38 and above the reach of the River that is subject to the ISF, and intends to appropriate and operate
39 additional water rights, plans for augmentation, and exchanges in the Blue River above Dillon
40 Reservoir.
41

42 F. The District is the owner and operator of the Breckenridge Flow Splitting Channel water
43 right decreed on June 19, 1997 in Case No. 92CW300, District Court, Water Division 5 (the
44 “**District Decree**”). The decreed location of the Flow Splitting Channel is downstream of the
45 USGS Blue River near Dillon gage.
46

1 G. The District Decree contains provisions that allow the Town and the County to reopen and
2 fully litigate the District’s claim for water rights for the Flow Splitting Channel in Case No.
3 92CW300 in the event the Division Engineer or the CWCB measure the ISF at a location
4 downstream of the District’s point of diversion (the “Reopener Provisions”).
5

6 H. A change in the location of the point of measurement of the ISF to a location below the
7 USGS Blue River near Dillon gage may be detrimental to the exercise of water rights, plans for
8 augmentation, and rights of exchange of both the County and the Town.
9

10 I. The District has requested the Town and the County to agree, in exchange for a credit
11 toward Inclusion Fees and Plant Investment Fees assessed by the District, that notwithstanding the
12 Reopener Provisions, neither the Town nor the County will ever reopen the District Decree under
13 any circumstances.
14

15 J. The Town and the County wish to agree on terms and conditions that will facilitate the
16 entry of a decree in Case No. 13CW3094 and the conclusion of negotiations with the District on
17 the exercise of the Reopener Provisions.
18

19 **Agreement**
20

21 For and in consideration of the mutual promises and covenants contained herein, and intending to
22 be legally bound, the Parties agree as follows:
23

- 24 1. Authority. This Agreement is entered into pursuant to the authority granted by Article
25 XIV, Section 18(2)(a) of the Colorado Constitution and Part 2 of Article 1 of Title 29,
26 C.R.S.
- 27 2. Relocation of Point of Measurement of ISF.
28
29 A. Prior to its consideration of any agreement with the CWCB providing for a change
30 in the location of the point of measurement of the ISF, the Town will notify and
31 consult with the Summit County Commissioners regarding such agreement.
32
33 B. In determining whether to agree to a change in the location of the point of
34 measurement of the ISF under the stipulated decree in Case No. 13CW3094, the
35 Town will consider whether such change would adversely affect the water rights of
36 the Town, the County or the District in the Blue River and its tributaries upstream
from Dillon Reservoir.
- 37 3. Settlement of Case No. 13CW3094. The County and the Town have executed the
38 stipulation in Case No. 13CW3094 attached hereto as Exhibit A.
- 39 4. Agreement with District. The County will enter into an agreement with the District not to
40 exercise the Reopener Provisions of the District Decree, provided that:

1 A. The other terms of an agreement with the District regarding the credit toward
2 Inclusion Fees and Plant Investment Fees assessed by the District are acceptable to
3 the County; and

4 B. The water court enters a decree in Case No 13CW3094 that is consistent with the
5 decree attached as Exhibit A to the County's stipulation in that case.

6 5. Default; Resolution of Disputes.

7 A. Default. A default exists under this Agreement if any Party violates any covenant,
8 condition, or obligation required to be performed under this Agreement.

9 B. Judicial Action. Any dispute arising out of or relating to this Agreement or the
10 breach, termination, or validity hereof may be finally resolved by appropriate
11 judicial action commenced in a court of competent jurisdiction. The Parties agree to
12 venue in the courts of Summit County, Colorado with respect to any dispute arising
13 out of or relating to this Agreement; provided, that if such dispute involves a water
14 matter within the exclusive jurisdiction of the water judge under C.R.S.
15 §39-92-203(1), the Parties agree to venue in the District Court, Water Division No.
16 5.

17 C. Provisional Remedies. A Party may seek a preliminary injunction or other
18 provisional judicial relief if, in its judgment, such action is necessary to avoid
19 irreparable damage or to preserve the status quo.

20 D. Performance to Continue. Each Party is required to continue to perform its
21 obligations under this Agreement pending final resolution of any dispute arising
22 out of or relating to this Agreement.

23 E. Costs. The prevailing Party in any judicial action is entitled to reimbursement from
24 the other Party for all reasonable costs and expenses, including attorney fees in
25 connection with such judicial action.

26 6. Notices. All notices required or permitted under this Agreement must be given by
27 registered or certified mail, return receipt requested, postage prepaid, or by hand or
28 commercial carrier delivery, or by telecopies directed as follows:

29 If intended for the Town to:

30
31 Town of Breckenridge
32 P.O. Box 168
33 150 Ski Hill Road
34 Breckenridge, Colorado 80424
35 Attn: Timothy J. Gagen, Town Manager
36 Telecopier number: (970)547-3104
37 Telephone number: (970)453-2251
38

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

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

10
11 If intended for the County, to:

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

19
20 with a copy in each case (which will not constitute notice) to:

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

28
29 Any notice delivered by mail in accordance with this Section is effective on the third
30 business day after being deposited in any post office or postal box regularly maintained by
31 the United States postal service. Any notice delivered by telecopier in accordance with this
32 Section is effective upon receipt if concurrently with sending by telecopier receipt is
33 confirmed orally by telephone and a copy of said notice is sent by certified mail, return
34 receipt requested, on the same day to that intended recipient. Any notice delivered by hand
35 or commercial carrier is effective upon actual receipt. Either Party, by notice given as
36 above, may change the address to which future notices may be sent. E-mail is not a valid
37 method for the giving of notice under this Agreement.

- 38
39 7. Governmental Authority. Nothing in this agreement waives, restricts, alters, or amends
40 any governmental authority of Summit County regarding the permitting of any activity or
41 facility associated with the water rights, plan for augmentation, or exchanges to be decreed
42 in Case No. 13CW3094.

- 1 8. Governmental Immunity. The Parties are each relying on, and do not waive or intend to
2 waive by any provision of this Agreement, the monetary limitations of the Colorado
3 Governmental Immunity Act, Part 1 of Article 10 of Title 24, C.R.S., as amended from
4 time to time, or any other limitation, right, immunity, defense or protection otherwise
5 available to the Town and the County, and their respective officers, representatives, agents
6 and employees.
- 7 9. Third Parties. This Agreement does not confer upon or grant to any third party any right to
8 claim damages or to bring suit, action, or other proceeding against either the Town or the
9 County because of any breach of this Agreement, or because of any of the terms,
10 covenants, agreements, and conditions contained in this Agreement.
- 11 10. Waiver. Except as specifically provided in the foregoing paragraph 4 with respect to the
12 exercise of the Reopener Provisions of the District Decree, no claims or defenses of any
13 Party are waived by this Agreement. The failure of either Party to exercise any of its rights
14 under this Agreement is not a waiver of those rights. A Party waives only those rights
15 specified in writing and signed by either Party waiving its rights.
- 16 11. Independent Contractor. In connection with this Agreement each of the Parties acts as an
17 independent contractor (and not an agent or employee of the other Party), without the right
18 or authority to impose tort or contractual liability upon the other Party.
- 19 12. Applicable Law. This Agreement is to be interpreted in all respects in accordance with the
20 laws of the State of Colorado.
- 21 13. Entire Agreement. This Agreement constitutes the entire agreement and understanding
22 between the Parties as to the subject matter of this Agreement, and supersedes any prior
23 agreement or understanding relating thereto.
- 24 14. Amendment. This Agreement may be modified or amended only by a duly authorized
25 written instrument executed by the Parties. No oral amendment or modification of this
26 Agreement is allowed.
- 27 15. Severability. If any of the provisions of this Agreement are declared by a final
28 non-appealable judgment court of competent jurisdiction to be invalid, illegal or
29 unenforceable in any respect, the validity, legality and enforceability of the remaining
30 provisions of this Agreement will not in any way be affected or impaired thereby.
- 31 16. Section Headings. Section and subsection headings are inserted for convenience only and
32 in no way limit or define the interpretation to be placed upon this Agreement.
- 33 17. Authority. The individuals executing this Agreement on behalf of each of the Parties
34 represent to the other Party that they have all requisite powers and authority to cause the
35 Party for whom they have signed to enter into this Agreement, and to bind such Party to
36 fully perform its obligations as set forth in this Agreement.

- 1 18. No Adverse Construction. Both Parties acknowledge having had the opportunity to
2 participate in the drafting of this Agreement. This Agreement is not to be construed against
3 either Party based upon authorship.
- 4 19. Will and Will Not Defined. The terms “will” and “will not” as used in this Agreement
5 indicate a mandatory obligation to act or to refrain from acting, respectively, as described in
6 this Agreement.
- 7 20. Incorporation of Exhibits. All exhibits referred to in this Agreement are attached to and
8 incorporated by reference into this Agreement.
- 9 21. Binding Effect. This Agreement is binding upon, and inures to the benefit of, the Parties
10 and their respective successor governing boards.
- 11 22. Approval By Governing Boards or Other Authority. In accordance with Section
12 29-1-203(1), C.R.S., this Agreement will not become effective unless and until it has been
13 approved by the governing bodies of both the Town and the County, or by such persons as
14 has the power to approve this Agreement on behalf of the Town and the County.

15
16 TOWN OF BRECKENRIDGE, a Colorado
17 municipal corporation

18
19
20 By: _____
21 John G. Warner, Mayor
22

23 ATTEST:

24
25
26 _____
27 Town Clerk
28

29 BOARD OF COUNTY COMMISSIONERS OF
30 SUMMIT COUNTY, COLORADO

31
32 By:

33
34 _____
35 Chair
36

37 ATTEST:

38
39
40 _____
41 Clerk and Recorder, and ex-officio
42 clerk to the Board of the County Commissioners

EXHIBIT "A"
TO
INTERGOVERNMENTAL AGREEMENT

Stipulation in Case No. 13CW3094

<p>DISTRICT COURT, WATER DIVISION 5, COLORADO GARFIELD COUNTY COMBINED COURTS 109 8TH STREET, SUITE 104 GLENWOOD SPRINGS, CO 81601-3303</p>	
<p>CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE TOWN OF BRECKENRIDGE</p> <p>IN SUMMIT COUNTY, COLORADO</p>	<p style="text-align: center;">Δ COURT USE ONLY Δ</p>
<p>CHARLES B. WHITE, No. 9241 PETROS & WHITE, LLC 1999 BROADWAY, SUITE 3200 DENVER, CO 80202 PHONE: (303) 825-1980 FAX: (303) 825-1983 E-MAIL: CWHITE@PETROS-WHITE.COM</p> <p>ATTORNEYS FOR BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF SUMMIT</p> <p>PORZAK BROWNING & BUSHONG LLP GLENN E. PORZAK, No. 2793 KAREN L. HENDERSON, No. 39137 2120 13TH STREET BOULDER, CO 80302 TELEPHONE: (303) 443-6800 FAX: (303) 443-6864 E-MAIL: GPORZAK@PPBLAW.COM; KHENDERSON@PPBLAW.COM</p> <p>ATTORNEYS FOR THE TOWN OF BRECKENRIDGE</p>	<p>CASE No.: 13CW3094</p>
<p>STIPULATION</p>	

Applicant, the Town of Breckenridge (“Breckenridge”), and Objector, the Board of County Commissioners of Summit County (“Summit County”), hereby stipulate and agree as follows:

1. The above-captioned Application was filed on December 27, 2013.
2. Summit County filed a timely Statement of Opposition.

3. Breckenridge and Summit County agree to the entry of Findings of Fact, Conclusions of Law, Ruling of the Water Referee, and Decree of the Water Court (the "Proposed Ruling") containing terms and conditions no less restrictive upon Breckenridge and no less protective of Summit County's water rights than those set forth in the Proposed Ruling attached hereto as Exhibit A (draft of April 3, 2015).

4. Summit County shall remain on the mailing list in this case. Breckenridge agrees that it will provide Summit County with a copy of any proposed ruling submitted to the Water Referee in this action. Summit County shall have a reasonable opportunity to object to any provisions that are inconsistent with or that might impair the effectiveness of this Stipulation, and shall have the opportunity to protest any ruling and/or appeal any decree that is less restrictive upon Breckenridge or less protective of Summit County's water rights than those set forth in the Proposed Ruling attached hereto as Exhibit A.

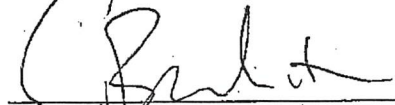
5. Summit County will remain in this case for the limited purposes of ensuring that any decree which is ultimately entered in this case herein is in conformity with the provisions of this stipulation.

6. All parties will bear its own attorneys' fees and costs incurred in this proceeding.

7. This stipulation is submitted to the Court with the request of the parties that it be approved by Order of the Court.

Dated this 6th day of May, 2015

PETROS & WHITE, LLC



Charles B. White, No. 9241
ATTORNEYS FOR THE BOARD OF COUNTY
COMMISSIONERS OF SUMMIT COUNTY

PORZAK BROWNING & BUSHONG LLP



Glenn E. Porzak, No. 2793
Karen L. Henderson, No. 39137
ATTORNEYS FOR THE TOWN OF
BRECKENRIDGE



DISTRICT COURT, WATER DIVISION 5, COLORADO 109 Eighth Street, Suite 104 Glenwood Springs, Colorado 81601 (970) 945-5075	Draft dated 4/3/2015
CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE TOWN OF BRECKENRIDGE IN SUMMIT COUNTY, COLORADO	▲ COURT USE ONLY ▲ Case Number: 13CW3094 Division No. 5
FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE, AND DECREE OF THE WATER COURT	

The Application in this case was filed on December 27, 2013 (“Application”) and was referred to the Water Referee for Water Division 5, State of Colorado, by the Water Judge of this Court in accordance with C.R.S. 37-92-101, *et seq.*, known as the Water Right Determination and Administration Act of 1969.

The undersigned Referee having made such investigations as are necessary to determine whether or not the statements in the Application are true, and having been fully advised of the subject matter of the Application, does hereby make the following determination and Ruling as the Referee in this matter:

FINDINGS OF FACT

1. Names and Address of the Applicant:

 Town of Breckenridge (“Breckenridge”)
 c/o Town Manager
 P.O. Box 168
 Breckenridge, CO 80424

2. Opposition. Statements of Opposition were filed by the City and County of Denver acting by and through its Board of Water Commissioners (“Denver Water”), Ute Water Conservancy District, Grand Valley Water Users Association, Orchard Mesa Irrigation District, Colorado Water Conservation Board, the City of Colorado Springs, acting by and through its enterprise Colorado Springs Utilities, Board of County Commissioners of Summit County, and Upper Blue Sanitation District. The time for filing Statements of Opposition has expired.

3. Report of the Division Engineer. The Water Referee and the Water Court have given due consideration to the Division Engineer’s Summary of Consultation dated March 7, 2014, and the report dated April 14, 2014, prepared by Helton & Williamsen, P.C., submitted by Breckenridge.

4. Overview. By this Application, Breckenridge seeks (i) a new conditional water right known as the Breckenridge Pipeline Enlargement; (ii) alternate points of diversion for 5.6 of the 20 cfs decreed to the Breckenridge Pipeline; and (iii) approval of a plan for augmentation to allow Breckenridge to divert the Breckenridge Pipeline Enlargement and 5.6 cfs of the Breckenridge Pipeline water rights out-of-priority on a year-round basis at the points of diversion described in paragraph 5 below, up to a maximum of 680.53 consumptive acre-feet per year, for use in connection with the Breckenridge service area, as said area may from time to time be expanded.

5. Description of conditional water right to be decreed and augmented: The Breckenridge Pipeline Enlargement claimed for 5.6 cfs conditional with an appropriation date of November 26, 2013, claimed for municipal, domestic, commercial, industrial, irrigation, fire fighting, and snowmaking purposes, the source of which is the Blue River. This appropriation was initiated by the Town Council's approval of the filing of the Application. The point of diversion for the Breckenridge Pipeline Enlargement is located on the west bank of the Blue River in the SW 1/4 SE 1/4 of Section 31, T. 5 S., R. 77 W., of the 6th P.M. at a point 705 feet from the South Section line and 1,625 feet from the East Section line of said Section 31. An alternate point of diversion will be located on the east bank of the Blue River in the SW 1/4 SE 1/4 of Section 31, T. 5 S., R. 77 W., of the 6th P.M., at a point 705 feet from the South Section line and 1,605 feet from the East Section line of said Section 31. A map of the Breckenridge Pipeline Enlargement point of diversion and alternate point of diversion is attached as **Figure 1**.

6. Description of water right to be changed and further augmented: 5.6 cfs, conditional, of the Breckenridge Pipeline, decreed by the District Court in and for Water Division No. 5, State of Colorado (the "Water Court"), in Consolidated Case Nos. 80CW444, 81CW107, 81CW487, and 81CW488 (the "Consolidated Cases") for 20 cfs, of which 2.9 cfs was made absolute in Case No. 88CW122, and an additional 3 cfs was decreed in Case No. 83CW51, for a total of 23 cfs, as modified in Case No. 84CW289, for municipal, domestic, industrial, commercial, fire fighting, and sewage treatment, with an appropriation date of January 2, 1980, for irrigation with an appropriation date of September 1, 1980, and for snowmaking purposes with an appropriation date of January 15, 1979, the source of which is the Blue River, as augmented by decrees in the Consolidated Cases, 83CW51, and 92CW299. The Breckenridge Pipeline is located at a point whence the SW Corner of Section 5, T. 7 S., R. 77 W. of the 6th P.M. lies N. 02°41'39" E. a distance of 3,026.64 feet. An alternate point of diversion is located on the west bank of the Blue River at Maggie Pond in the NW 1/4 NW 1/4 of Section 6, T. 7 S., R. 77 W. of the 6th P.M. near the confluence of Illinois Gulch and the main stem of the Blue River.

7. Sources of augmentation water: (a) 133.93 acre-feet out of the 158.93 acre-feet to which Breckenridge is entitled each year in Clinton Gulch Reservoir, decreed by the Water Court in Case Nos. 92CW65 and 06CW252 for 4,460 acre-feet for industrial, domestic, municipal, irrigation, recreation, fish and wildlife propagation, snowmaking, and augmentation uses, together with the refill right decreed in Case No. 92CW65, as operated pursuant to and entitled to the benefits of the Clinton Reservoir-Fraser River Water Agreement dated July 21, 1992, as amended, between Denver Water and, among other parties, Breckenridge. The source of Clinton Gulch Reservoir is Clinton Creek, tributary to the Ten Mile Creek, a tributary of the Blue River,

and the dam is located at a point in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 25, T. 7 S., R. 79 R., 6th P.M., at a point whence the North quarter corner of said Section 25 bears N. 33°51'50" E. 2840.44 feet. Nothing contained herein shall modify the terms of the decree in Water Court Case Nos. 92CW65, 92CW299 and 06CW252.

(b) 88.60 acre-feet out of the 3,000 acre-feet of water per year produced from the Windy Gap Project and stored in Granby Reservoir pursuant to paragraph 17 of the April 30, 1980 agreement between the Municipal Subdistrict of the Northern Colorado Water Conservancy District and among other parties, the Middle Park Water Conservancy District ("Middle Park"), as assigned in part by water allotment contract dated January 9, 1986 and quitclaim deed dated January 9, 1987, between Middle Park and Breckenridge, and as stored by exchange in Goose Pasture Tarn by decree of the Water Court in Case No. 87CW243. Goose Pasture Tarn is located in Sections 7 and 8, T. 7 S., R. 77 W., 6th P.M. The initial point of survey is at a point whence the Northwest corner of Section 8, T. 7 S., R. 77 W., 6th P.M., bears N. 25°22' W. a distance of 3,413.1 feet. The Windy Gap Project diverts at a point on the North bank of the Colorado River whence the NW corner of Section 25, T. 2 N., R. 77 W., 6th P.M. bears 17°30' West a distance of 2380 feet. Granby Reservoir is located on the Colorado River upstream of its confluence with the Fraser River in all or parts of Sections 25, 26, 27, 34, 35 and 36, T. 3 N., R. 76 W.; Sections 29, 30 and 32, T. 3 N., R. 75 W.; Sections 1, 2, 3, 10, 11, 12, 13 and 15, T. 2 N., R. 76 W.; and Sections 5, 6, 7, 8, 9, 14, 15, 16, 17, 18, 21, 22 and 23, T. 2 N., R. 75 W., 6th P.M., Grand County, Colorado. The foregoing exchange water is hereinafter referred to as the "Windy Gap Water."

(c) 108 acre-feet of water per year from Dillon Reservoir which is located on the Blue River in Sections 7, 8, 17, 18, 19, 20, 21, 30 and 31, all in T. 5 S., R. 77 W. of the 6th P.M., and in Sections 13, 23, 24, 25, 26, 35 and 36, all in T. 5 S., R. 78 W. of the 6th P.M., pursuant to the terms of Article III.B.14 of the Colorado River Cooperative Agreement with Denver Water. The replacement water to Denver Water for the 108 acre-feet of Dillon Reservoir water will be furnished from 151 acre-feet of the historic consumptive use credits from the water rights described in the attached **Exhibit A** which are stored in Green Mountain Reservoir pursuant to the decrees in the Consolidated Cases and Case No. 83CW51, or another source acceptable to Denver Water.

(d) Up to 50 acre-feet of water per year stored in the West Slope account in the Upper Blue Reservoir pursuant to the May 15, 2013, Memorandum of Agreement Regarding Colorado Springs Substitution Operations among the Colorado River Water Conservation District, the City of Colorado Springs acting by and through its Utilities Enterprise, the City and County of Denver acting by and through its Board of Water Commissioners, the Northern Colorado Water Conservancy District, the County of Summit, acting by its Board of County Commissioners, Vail Summit Resorts, Inc., and the Town of Breckenridge and the decree entered in Case No. 03CW320. The dam for the Upper Blue Reservoir is located across the channel of the Blue River whence the Northeast corner of Section 3, T. 8 S., R. 78 W. of the 6th P.M. bears North 66°30' East 3728 feet.

(e) 300 acre-feet of water from the Goose Pasture Tarn, 1st Enlargement decreed by the Summit County District Court in Civil Action No. 2371 for 2,500 acre-feet for municipal and

domestic uses, with an appropriation date of August 31, 1961, the source of which is Indiana Creek, Pennsylvania Creek, Spruce Creek and the Blue River, the application for which is pending in Water Court Case No. 13CW45 to change the location to 124.5 acres located in the W1/2 SW1/4 of Section 18 and W1/2 NW1/4 of Section 19, T. 6 S., R. 77 W., 6th P.M., and SE1/4 SE1/4 of Section 13 and E1/2 NE1/4 of Section 24, T. 6 S., R. 78 W., 6th P.M. A point near the center of the dam embankment is located in the NW1/4 SW1/4 of Section 18, T. 6 S., R. 77 W. of the 6th P.M., at a point 830 feet from the west line and 1,970 feet from the south line of said Section 18.

8. Description of Application for Water Rights. By this Application, Breckenridge seeks a conditional water right for the Breckenridge Pipeline Enlargement described in paragraph 5 above.

9. Description of Change of Water Rights. By this Application, Breckenridge seeks the right to alternately divert the Breckenridge Pipeline as augmented and described in paragraph 6 above at the point of diversion and alternate point of diversion of the Breckenridge Pipeline Enlargement described in paragraph 5 above.

10. Description of Plan for Augmentation and Exchange. By this Application, Breckenridge seeks the right to divert water out-of-priority on a year round basis from the Breckenridge Pipeline Enlargement and the Breckenridge Pipeline at the requested additional alternate diversion points, up to a maximum of 680.53 consumptive acre-feet per year (including transit losses from storage releases from Goose Pasture Tarn, Goose Pasture Reservoir, 1st Enlargement (aka McCain Reservoir), and the Upper Blue Reservoir assessed by the Division Engineer), for use in connection with the Breckenridge service area, as said area may from time to time be expanded.

(a) Augmentation Plan. To permit such out-of-priority diversions, Breckenridge will cause releases of or dedicate to the Blue River the storage water and/or Windy Gap Water described in paragraph 7 to replace out-of-priority depletions as said depletions are calculated in accordance with the decrees in the Consolidated Cases, and Case Nos. 83CW51 and 92CW299 and detailed in paragraph 11 below. Depletions resulting from the diversion and use of the Breckenridge Pipeline under this plan for augmentation shall be in addition to the consumptive acre-feet of water per year in the Breckenridge augmentation plans decreed in the Consolidated Cases, and Case Nos. 83CW51, 87CW243 and 92CW299 for the existing diversion points of the Breckenridge Pipeline.

(b) Exchange Plan Reach and Rate: Breckenridge seeks approval of a plan to augment by exchange out-of-priority diversions by the Breckenridge Pipeline Enlargement and the requested additional Breckenridge Pipeline alternate diversion point. The downstream terminus of the exchanges involving Clinton Gulch Reservoir and Dillon Reservoir is the Blue River inlet to Dillon Reservoir, in the NW1/4 of the SE1/4 of Section 31, T. 5 S., R. 77 W. of the 6th P.M., at a point approximately 1,640 feet from the east section line and 1,410 feet from the south section line of said Section 31, which is the location of the high water line of Dillon Reservoir and not necessarily the downstream terminus when the reservoir is not full. The upstream terminus is the point of diversion of the Breckenridge Pipeline Enlargement and the

requested alternate diversion point of the Breckenridge Pipeline, as described in paragraph 5 above. The exchange reach from the high water line of Dillon Reservoir is a distance of approximately 400 feet, but the actual distance will depend on the existing water line of Dillon Reservoir at the time of the exchange. The rate of the exchange is 2.8 cfs. The exchange will operate only when Breckenridge uses augmentation water from Clinton Gulch Reservoir and/or Dillon Reservoir, as described in paragraphs 7(a) and 7(c) above.

(c) Priority Date. Breckenridge seeks a November 26, 2013 priority date in connection with the subject plan for exchange. This appropriation was initiated by the Town Council's approval of the filing of the Application.

(d) In-priority diversions. The sources of augmentation water described in paragraph 7 need only be utilized when the Breckenridge Pipeline Enlargement and the Breckenridge Pipeline described in paragraphs 5 and 6 at the alternate diversion points described in paragraph 9 are out-of-priority. Moreover, the Breckenridge Pipeline Enlargement shall only be utilized when the Breckenridge Pipeline cannot be diverted at the alternate points of diversion due to the provisions of paragraph 12(b) below.

11. Depletion Assumptions. To ensure the replacement of all out-of-priority depletions covered by the subject plan for augmentation, out-of-priority depletions caused by diversions at the alternate points of diversion will be quantified by multiplying the diversion amount by the following factors:

November – April	5.0%
May	8.0%
June	31.9%
July	38.2%
August	28.3%
September	8.9%
October	8.9%

The above-factors will be reevaluated every five years using the procedures demonstrated in the attached **Table 1**.

12. Terms and conditions. The requested conditional water right for the Breckenridge Pipeline Enlargement, change of water rights for the Breckenridge Pipeline, and plan for augmentation and exchange shall be subject to the following terms and conditions:

(a) Pursuant to C.R.S. § 37-92-305(8), the State Engineer shall curtail all out-of-priority diversions, the depletions from which are not so replaced as to prevent injury to vested water rights

(b) Diversions of the Breckenridge Pipeline at the alternate points of diversion shall be limited to the lesser of 5.6 cfs or the amount physically and legally available and measured at the originally decreed point of diversion.

(c) The Breckenridge Pipeline may not place a call at the alternate points of diversion on water rights located downstream of the original decreed point of diversion; provided, however, that intervening water rights between the original and alternate diversion points may not divert the Windy Gap Water or Clinton Gulch Reservoir water released from Goose Pasture Tarn, Upper Blue Reservoir water, or Goose Pasture Reservoir, 1st Enlargement water released to the Blue River to augment out-of-priority diversions of the Breckenridge Pipeline, or the amount of water available to the Breckenridge Pipeline under paragraph 12(b) above, absent a subsequent decree, or plan approved by the Division Engineer, providing a replacement supply of like quantity and quality.

(d) To ensure the proper operation and administration of this Decree, Breckenridge will install and maintain such water measuring devices, implement such accounting procedures, and provide such measurements and calculations as may be required by the Division Engineer to verify that all out-of-priority depletions are replaced in time, location, and amount.

(e) Breckenridge will provide adequate notice to the Water Commissioner of the amounts and timing of the exchange from Dillon Reservoir to the alternate points of diversion. For purposes of this Decree, adequate notice will either be 24 hours, or less than 24 hours if the shorter time is acceptable to the Division Engineer. Breckenridge also will notify the Water Commissioner of the timing and amount of storage releases of water from Goose Pasture Tarn, Goose Pasture Tarn Reservoir, 1st Enlargement, and from Upper Blue Reservoir that are used to augment diversions at the alternate points of diversion.

(f) The 50 acre-feet of water per year stored in the West Slope account in the Upper Blue Reservoir, described in paragraph 7(d) above, will be stored and released for augmentation in accordance with the terms and conditions of the decree entered in Case No. 03CW320.

(g) The augmentation by exchange described in paragraph 10(b) using the Clinton Gulch Reservoir and Dillon Reservoir water described in paragraphs 7(a) and 7(c) above shall only operate during the period of November 1 through April 30 when there is 16 cfs or more at the USGS Blue River near Dillon gage, and during the period of May 1 through October 31 when there is 32 cfs or more at the USGS Blue River near Dillon gage. Given the extensive stream restoration work undertaken by Breckenridge in the Upper Blue River and the fact that Breckenridge is leaving more water in the Blue River from the existing diversion of the Breckenridge Pipeline to the alternate points of diversion described herein, the location of this point of measurement shall not change absent a subsequent agreement of the CWCB and Breckenridge.

(h) Subject to existing obligations and operating constraints, Breckenridge shall use its best efforts during the period January 1 – March 31 to first rely on the sources of augmentation water described in paragraphs 7(b), (d) and (e) to the extent water from such sources are available.

13. Finding of No Injury. The Referee finds that no water rights will be injured by the requested alternate point of diversion for the Breckenridge Pipeline and the operation of the

proposed plan for augmentation and exchange, provided that Breckenridge complies with the terms and conditions of this Decree.

CONCLUSIONS OF LAW

14. To the extent they constitute legal conclusions, the foregoing Findings of Fact are incorporated herein.

15. All notices required by law have been properly made, including as required under C.R.S. § 37-92-302(3). The Court has jurisdiction over the Application and over all entities or persons who had standing to appear, even though they did not do so.

16. The Application is complete, covering all applicable matters required pursuant to the Water Right Determination and Administration Act of 1969. C.R.S. §§ 37-92-101–602.

17. Breckenridge has fulfilled all legal requirements for a decree for the requested water right, change of water rights, and approval of plan for augmentation and exchange.

RULING OF THE REFEREE

18. The Findings of Fact and Conclusions of Law as set forth above are incorporated herein by reference and are hereby modified as necessary to constitute part of the Ruling and Final Judgment and Decree.

19. The Water Court grants Breckenridge the right to the Breckenridge Pipeline Enlargement described in paragraph 5 above, the alternate point of diversion for the Breckenridge Pipeline described in paragraph 6, and the right to augment out-of-priority depletions from the structures listed in paragraphs 5 and 6 above in the manner described in paragraphs 10, 11 and 12, by providing replacement water directly or by exchange from the water rights described in paragraph 7. The Court further approves the exchange plan set forth in paragraph 10(b) with a November 26, 2013 priority date.

20. The Water Court grants Breckenridge the right to operate the conditional exchange described in paragraph 10 above.

21. **Retained Jurisdiction:** Pursuant to C.R.S. § 37-92-304(6), the Water Court retains jurisdiction to reconsider the question of injury to the vested rights of others from the change of water rights and plan for augmentation. The Water Court's retained jurisdiction will commence upon entry of the decree herein, and will continue until 180 days after Breckenridge provides written notice to the parties that the augmentation plan decreed herein has operated in whole or in part in five separate calendar years. If operated in part, the plan must replace the depletions caused by 1,000 acre-feet of diversions in at least one of the five years in order to trigger the running of the 180 day period following written notice. Any person desiring to invoke the Water Court's retained jurisdiction must file a verified petition with the Water Court, setting forth the facts that cause such injury or are alleged to likely cause such injury, and the claimed injury.

The party lodging the petition shall have the initial burden of proof to establish the facts and injury alleged in the petition.

22. If Breckenridge desires to maintain the conditional water rights decreed herein, an application for finding of reasonable diligence shall be made during or before six years from the month and year set forth by the Water Judge below or a showing made on or before such date that the conditional water rights have become absolute water rights by reason of completion of the appropriation, or otherwise disposed of.

23. Pursuant to Rule 9 of the Uniform Local Rules for All State Water Court Divisions, upon the sale or other transfer of the conditional water rights decreed herein, the transferee shall file with the Division 5 Water Court a notice of transfer which shall state: (a) the title and case number of this Case No. 13CW3094; (b) the description of the conditional water right transferred; (c) the name of the transferor; (d) the name and mailing address of the transferee; and (e) a copy of the recorded deed. The owner of said conditional water rights shall also notify the Clerk of the Water Court of any change in mailing address. The Clerk shall place any notice of transfer or change of address in the case file of this case and in the case file (if any) in which the Water Court first made a finding of reasonable diligence.

A copy of this Decree of the Water Court shall be filed with the State Engineer and the Division Engineer for Water Division No. 5.

It is further ORDERED that this Ruling shall be filed with the Water Clerk, subject to judicial review.

Dated this ____ day of _____, 2015.

BY THE REFEREE:

Holly Kirsner Strablizky, Water Referee

DECREE OF THE WATER COURT

No protest was filed in this matter. The foregoing Ruling is confirmed and approved and is made the judgment and decree of this Court.

Dated this ____ day of _____, 2015.

BY THE COURT:

Hon. James Boyd, Water Judge

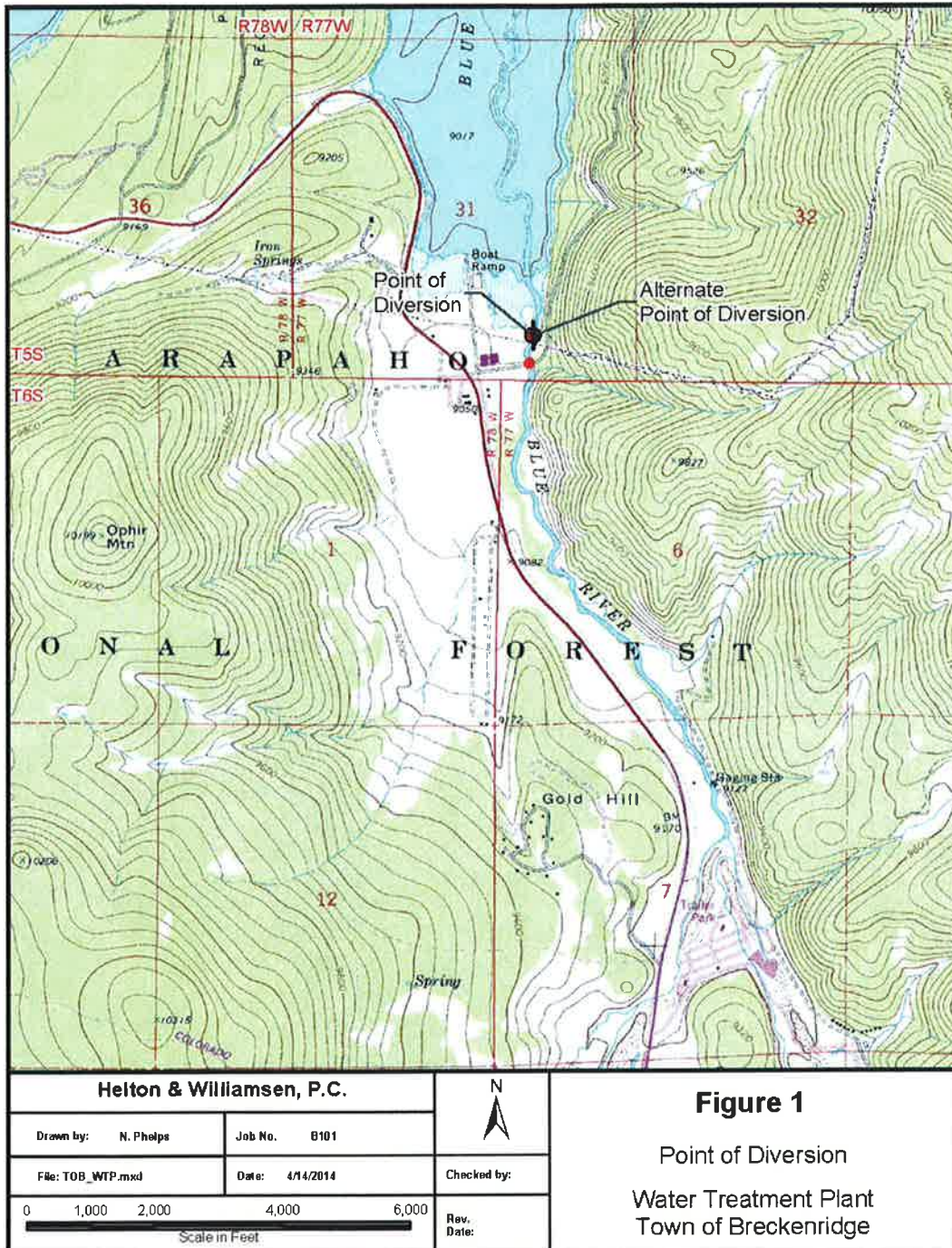


Figure 1
 Point of Diversion
 Water Treatment Plant
 Town of Breckenridge

EXHIBIT A

Independent Blue Ditch. Water District 36, Priority No. 339, Appropriation Date May 1, 1935, for 8.3 cfs, adjudicated March 10, 1952, by Decree of the Summit County District Court in Case No. 1805. The Independent Blue ditch headgate is located in the Northeast 1/4 Northwest 1/4, Section 4, Township 4 South, Range 78 West of the 6th P.M., Summit County, Colorado.

Plunger Ditch. Water District 36, Priority No. 149-1/2, Appropriation Date September 1, 1903, for 1.1 cfs, adjudicated March 2, 1910, by Decree of the Summit County District Court, Civil Action No. 1277. The headgate of the Plunger Ditch is located in the Northwest 1/4 Southwest 1/4, Section 28, Township 3 South, Range 78 West of the 6th P.M., Summit County, Colorado.

Plunger Ditch First Enlargement. Water District 36, Priority No. 244, Appropriation Date June 6, 1932, for 3.4 cfs, adjudicated October 26, 1937, by Decree of the Summit County District Court in Case No. 1709. The headgate of the Plunger Ditch First Enlargement is located in the Northwest 1/4 Southwest 1/4, Section 28, Township 3 South, Range 78 West of the 6th P.M., Summit County, Colorado.

Green Mountain Canal. Water District 36, Priority No. 160, Appropriation Date July 5, 1904, for 6.35 cfs, adjudicated March 2, 1910, by Decree of the Summit County District court in Case No. 1277. The headgate of the Green Mountain Canal is located in the Southeast 1/4 Northeast 1/4, Section 19, Township 3 South, Range 78 West of the 6th^h P.M., Summit County, Colorado.

Blue River Irrigation Ditch. Water District 36, Priority No. 40, Appropriation Date October 1, 1885, for 1.55 cfs adjudicated March 2, 1910, by Decree of the Summit County District Court, in Case No. 1277. The headgate of the Blue River Irrigation Ditch is located in the Northeast 1/4 Northwest 1/4, Section 29, Township 3 South, Range 78 West of the 6th P.M., Summit County, Colorado.

Benson Ditch. Water District 36, Priority No. 103, Appropriation Date July 14, 1896, for 2.47 cfs, adjudicated March 2, 1910 by Decree of the Summit County District Court in Case No. 1277. The headgate is located on the North Bank of Boulder Creek in the Northeast 1/4 Northeast 1/4, Section 5, Township 4 South, Range 78 West of the 6th P.M., Summit County, Colorado.

Table 1
Water Production and Estimated Mix of Water Uses - Town of Breckenridge Water Year 2013
 (values in acre-feet)

Row	Water Yr. 2013	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Total
1	Production	116.0	164.0	190.0	176.0	207.0	144.0	133.0	258.0	307.0	248.0	170.0	114.0	2,227.0
2	Irrigation Accounts	0	0	0	0	0	0	5.3	10.4	25.8	20.8	8.8	5.9	77.0
3	Snowmaking	1.0	0.3	0	0	0	0	0	0	0	0	0	0	1.3
4	Residential & Commercial Use	115.0	163.7	190.0	176.0	207.0	144.0	127.7	247.6	281.2	227.2	161.2	108.1	2,148.7
5	Res & Comm Use (gpd/sfe)	117	161	187	192	204	146	126	252	277	224	164	106	----
6	In-bldg Use (gpd/sfe)	117	161	187	192	204	146	126	168	168	168	164	108	----
7	In-building Use	115.0	163.7	190.0	176.0	207.0	144.0	127.7	165.2	170.7	170.7	161.2	108.1	1,899.3
8	Irrigation Use	0	0	0	0	0	0	5.3	92.8	136.3	77.3	8.8	5.9	326.4
9	Consumptive Use	5.8	8.2	9.5	8.8	10.4	7.2	10.6	82.5	117.6	70.4	15.1	10.1	356.2
10	Consumptive Use % of Production	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	8.0%	32.0%	38.3%	28.4%	8.9%	8.9%	16.0%

Row explanation:

1. Records from Breckenridge Water Accounting sheets. Includes diversions for former Blue River Water District customers.
2. Breckenridge delivers potable water through 75 customer meters used for irrigation of parks and common area surrounding multi-family and commercial lodging facilities. Customer meters are read and billed bi-monthly. Monthly values shown here are prorated from the total production in the two months.
3. Potable water is used for limited snowmaking at the Nordic Ski Center. The water is delivered through a fire hydrant, measured, and recorded. Considered 100% consumptive but is not included in the calculation of consumptive use in Row 9.
4. The net water delivered to residential and commercial customers = Row 1 - Row 2 - Row 3.
5. The average daily delivery per single-family equivalent for residential and commercial customers = Row 4 ÷ No. of days ÷ 10680 sfe x 325851 gal/ac-ft
6. In-building use (gpd/sfe) = Nov - Apr: Row 5 May - Oct: Minimum of Row 5 or the average daily use for Nov - Apr.
7. In-building residential and commercial use (ac-ft) = Nov - Apr: Row 4 May - Oct: Minimum of Row 4 or Row 6 x No. of days x 10680 sfe ÷ 325851 gal/ac-ft.
8. Residential and commercial irrigation = Row 4 - Row 7 + Row 2
9. Consumptive use = Row 7 x 5% + Row 8 x 80%.
10. Consumptive use as % of production for in-building and irrigation uses = Row 9 ÷ (Row 1 - Row 3).

Memorandum

TO: TOWN COUNCIL
FROM: Dale Stein P.E., Assistant Town Engineer
DATE: June 17, 2015
RE: Public Projects Update

SH 9 Median and Roundabout (Section B)

Construction of Section B of the SH 9 Median Beautification project is nearing completion. All of the concrete for the project will be poured out this week. Next week, the concrete will be sealed, delineators will be re-installed, and the banner poles will be installed. The project is on schedule to be completed by June 26th.

SH 9 Median and Roundabout (Sections C)

Construction is nearing completion on Section C of the SH 9 Median Beautification project. Trees, annuals, and shrubs are being planted this week in the medians and roundabout. Next week, the retaining walls will be completed, hanging flower baskets will be installed, and wood mulch will be added to the planting beds. The project is on schedule to be completed by June 26th.

Four O'clock Roundabout

Right of way acquisition is ongoing for the Four O'clock roundabout project. Xcel is still on schedule for utility relocation at the end of August.

Breckenridge Grand Vacations Community Center (Landscaping)

Crews have completed the remaining exterior painting, landscaping, and final clean up at the Community Center. The glass walls for the exterior reading deck will be installed the week of June 22nd.

Old Masonic Hall

The Old Masonic Hall project is substantially complete and the contractor is working on final punch-list items. BCA has begun occupying the building and programming started on June 16th. Staff will bring Council a project "close-out" update in August once final invoices are received and budget reconciliation is completed.

Breckenridge Theater

The Breckenridge Theater expansion project is scheduled to begin with contractor mobilization the week of June 22nd and excavation beginning the week of June 29th. Construction fencing with privacy fabric will be installed to establish project boundaries for both public safety and screening. Staff will also place a project banner on the fencing to highlight the project scope.

Blue River Restoration

Our design team is working on completing the design of the river restoration project and the required permitting with FEMA and Army Corps of Engineers. Preliminary grading work is anticipated to begin this fall once the Federal permits are approved.

Airport Road Pedestrian Lighting

Staff is working on plans to install the pedestrian lighting and a new bus pull-out on the north end of Airport Rd as directed by Council. Construction is anticipated to begin in the fall.

MEMO

TO: Mayor & Town Council
FROM: Tim Gagen, Town Manager
DATE: June 18, 2015
SUBJECT: Committee Reports for 6-23-2015 Council Packet

No committee reports were submitted at this time.

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	No Meeting/Report
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	No Meeting/Report
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.*



MEMO

TO: Town Council
FROM: Director of Communications
DATE: June 17 (*for June 23, 2015 retreat*)
RE: The Blue Trees environmental art installation
CC: Breckenridge Events Committee members, Robb Woulfe, BCA

At the most recent Breckenridge Events Committee meeting on June 11, The Blue Trees environmental art installation (as part of the inaugural BIFA) was discussed. The committee had differing views and felt it was necessary to bring to the Council. Following this memo are the Facts + FAQs, the outline of the Community outreach and general information.

The BEC had the following input:

Pros:

- Makes a strong statement about our commitment to environmental issues
- Supports the goal of the BCA, as provided by the TC, to elevate the cultural offerings and bring to fruition the vision of Breckenridge being recognized as a leading creative destination as this is an international-renowned installation
- Creates a visual connection between Riverwalk Center and Arts District campus

Cons:

- Has the potential for confusion during USAPC from both TV announcers and attendees
- Could negatively impact other events, such as Oktoberfest, with attendees as they might not understand the message and could have the potential of communicating a un-environmental message in photographs and videos
- Uncertainty on how long the colorant would last; if decision is made to not wash off the colorant the level of precipitation will affect how long the trees will remain blue

Since the BEC meeting, USAPC organizers and the Breckenridge LOC relayed that:

- This is a positive element for Breckenridge, and would provide positive public relations; they feel very positive that they can provide the TV announcers the proper information so as to explain the message of The Blue Trees
- Media can be reached through the Press Room to provide the correct messaging
- Attendees/Spectators can be reached through a variety of opportunities through a ‘Ask me about #BreckBlueTrees’ campaign

BEC members, including Council member Wendy, BCA’s CEO Robb Woulfe, and I will be available at the work session for your discussion. Thank you.



THE BLUE TREES | FACTS + FAQs

What is this project?

The Blue Trees, produced by Breckenridge Creative Arts, is a socially-driven art action. Created and conceived by Australian artist Konstantin Dimopoulos, the project will temporarily and dramatically transform trees in downtown Breckenridge near the Riverwalk Center and Blue River Plaza during the Breckenridge International Festival of Arts (BIFA) August 14, 2015.

Using water-based, environmentally safe pigment, Dimopoulos and a team of community volunteers will color the trees a striking ultramarine blue, inspiring awareness and discussion about global deforestation. An ephemeral work, the trees gradually revert back to their natural state over four weeks. *The Blue Trees* is ultimately a world-wide effort. This installation extends and reinterprets the original project launched in 2011 at the Vancouver Biennale.

Who is Konstantin Dimopoulos?

Konstantin Dimopoulos was born in Egypt and currently resides in Melbourne, Australia. He graduated from university in New Zealand with a degree in sociology and psychology, and later studied art in London. Dimopoulos describes himself as a humanist, using his art practice - from studio works to site-specific installations - to address social and environmental issues.

<http://www.kondimopoulos.com/blue-trees/>

Why Blue Trees?

Every year the planet loses some 32 million acres of old growth forests, trees which by transforming carbon dioxide into oxygen, literally help sustain life. Deforestation contributes to climate change. Trees breathe for the planet and without them, appropriate conditions for human, animal and plant life may not be sustained.

"Through my work I am striving to address global issues and provide a visual platform to effect change. So many universal concerns seem larger than an individual's power of influence and I want to evoke in people the idea that we can all contribute to change in a positive way."

- Konstantin Dimopoulos

Color is a powerful stimulant, a means of altering perception and defining space and time. Blue is a color that is not naturally identified with trees and suggests that something unusual, something out of the ordinary is happening. In nature, color is used both as a means of protection and as a mechanism to attract. *The Blue Trees* is an attempt to elicit a similar response from viewers and inspire conversation and action around deforestation issues.

Is the color safe for the trees?

The ultramarine blue color is biologically and environmentally safe. It is a water-based colorant, *not* paint, and as such, has a different composition. The product was specifically developed for this project and has been utilized in multiple installations without causing damage to the trees or their surrounding environment.

How long will the color last?

The longevity of the color will depend on the weather. The more rainfall we get, the shorter the lifecycle of the colorant. Trees in Vancouver, BC remained blue for 6 to 9 months. Given the traditional high concentration of rain in Breckenridge during late summer, it is expected that our colorant will last up to four (4) weeks.

How does this project benefit the public?

Over the course of five days (start on 8/12 and finish on 8/16), Dimopoulos will engage volunteers to help transform 9 groups of trees that are predominantly Aspen and Cottonwood from the Riverwalk Center parking lot, across the Blue River to the Blue River Plaza.

The Blue Trees seeks to raise awareness and encourage discussion about the benefits of trees and forests for people and the planet. Forests provide many ecological, social and economic benefits, including retaining and filtering storm water, replenishing groundwater for streams and lakes, providing fish and wildlife habitat, sequestering carbon and releasing oxygen that we breathe and beautification of our communities and local landscape. Every year, we lose an estimated 32 million acres of forests – an area nearly the size of England.

How can I get involved?

Volunteers interested in participating in the installation in Breckenridge should contact Lauren Dittle, by email at lauren@breckcreate.org or by phone at 970-453-3364.

How was this project funded?

This project is funded through the Breckenridge Creative Arts budget that is generously supported by the Town of Breckenridge. Breckenridge Creative Arts was developed by the Town to manage the Town's cultural assets and to promote Breckenridge as a creative destination.

Other Local Programs

The Town of Breckenridge is vested in offering a comprehensive Forest Health Program to address the impacts of the Mountain Pine Beetle infestation and to ensure the viability and future of the forest. The Town has developed various ordinances and treatment plans which can be found on the Town's website at www.townofbreckenridge.com.

The Town of Breckenridge also developed the Breckenridge Open Space program to preserve lands that define and enhance the unique mountain character of the Town of Breckenridge, with the goal of maintaining our community's quality of life for present and future generations. Through property acquisition and management, the program protects public open space lands that contain trails, sensitive natural resources, historical sites, view corridors or other open space and community conservation values. Since the creation of the Open Space Program 4,425 acres of land have been acquired and protected as public open space. Over 47 miles of trails have been built and maintained to provide public recreational access. Preserving and providing access to backcountry trails from most neighborhoods in Town has been a priority of the program.

What can I do to combat deforestation?

1. Plant a tree. Volunteer on this project or on others in your community!
2. Go paperless.
3. Recycle and buy recycled products.
4. Look for [Forest Stewardship Council](#) (FSC) certification on your wood and wood products.
5. Eat vegetarian meals more often. (Forests are destroyed in other parts of the world to provide land to graze livestock).
6. Educate yourself and others:
<http://www.nature.org/ourinitiatives/urgentissues/climatechange/howwework/reducingemissions-from-deforestation.xml>
<http://environment.nationalgeographic.com/environment/global-warming/deforestationoverview/>
http://www.rainforestconcern.org/education_resources/what_can_we_do_to_stop_deforestation/
<http://www.childrenoftheearth.org/deforestation-information-for-kids.html>

More Information on Breckenridge Creative Arts at: breckcreate.org

More information on the Breckenridge International Festival of Arts (BIFA) at: breckcreate.org/BIFA



The Blue Trees | Community Meetings Summary

The Blue Trees is an environmentally-safe, temporary public art installation to be featured as a signature attraction in the inaugural Breckenridge International Festival of Arts (BIFA) from August 14-23, 2015. Presented by Breckenridge Creative Arts, we believe this project will be visually stunning as well as socially relevant to our community in light of recent issues we've encountered with the mountain pine beetle epidemic, forest health and water conservation.

Created and conceived by Australian artist Konstantin Dimopoulos, The Blue Trees is a temporary art installation that uses a powerful color transformation to provoke discussion about global deforestation. Using water-based, environmentally safe pigment, Dimopoulos and a team of community volunteers will color the trees in the Tiger Dredge Lot up through the Blue River Plaza in a striking ultramarine blue, inspiring awareness and discussion about forest health. An ephemeral work, the trees will gradually revert back to their natural state.

Over the past six months, BCA staff has engaged in one-on-one conversations with various community stakeholders (civic leaders, local environmentalists, conservationists, etc.) on the idea of BCA bringing this project to Breckenridge as part of BIFA, with the intent to vet the general concept and to answer questions and concerns. Unanimously, everyone that we have spoken has been supportive of bringing The Blue Trees to Breckenridge. The list of individuals with whom we've discussed the project includes:

- Mayor John Warner, Breckenridge Town Council
- Ben Brewer, Breckenridge Town Council
- Mark Burke, Breckenridge Town Council & BCA Board
- Erin Gigliello, Breckenridge Town Council
- Gary Gallagher, Breckenridge Town Council
- Elisabeth Lawrence, Breckenridge Town Council
- Wendy Wolfe, Breckenridge Town Council
- Marsha Cooper, Breckenridge Creative Arts Board & Co-Chair, Public Art Advisory Committee
- Amy Evans, Breckenridge Creative Arts Board & Co-Chair, Public Art Advisory Committee
- Lucy Kay, President & CEO, Breckenridge Tourism Office
- Mark Truckey, Assistant Director of Community Development, Town of Breckenridge
- Mark Johnston, Manager Streets and Parks Divisions, Town of Breckenridge
- Jennifer Schenk, Executive Director, High Country Conservation Center
- Dan Schroder, Summit County Director, Colorado State University Extension
- Scott Reid, Open Space Planner III, Town of Breckenridge
- Leigh Girvin, Former Executive Director, Continental Divide Land Trust
- Carl Scofield, Local Artist & Breckenridge resident

- Patty & Robin Theobald, Saddle Rock Society & Breckenridge residents
- Cindy Hintgen, Breckenridge Heritage Alliance
- Jeffrey Bergeron, Breckenridge Open Space Advisory Commission & Breckenridge resident
- Ellen Hollinshead, Breckenridge Resident

Summary of comments and feedback:

Everyone thought the project was visually interesting and would definitely assist with putting Breckenridge on the map as a creative destination, although it would likely be met with some controversy.

Everyone agreed that many people would find the project intriguing and it would engage the community and visitors in asking questions. All agreed that some will love it and others might wonder why we are doing it.

Everyone agreed that public education and developing a process for people to engage with the project was important. Signage for the project will be helpful in addition to education.

All agreed that this is a great opportunity to educate the public about forest health through art.

Everyone was curious about the chemical makeup of the colorant and wanted to make sure that it would not be harmful to our groundwater/ environment. Konstantin has provided requested information about the chemical makeup and the answer is no, it is not harmful to the environment. The colorant is totally biodegradable.

Additional questions were asked about whether or not the colorant would stain, how long it will last, etc. The colorant will not stain; it will last for a few weeks/months depending on rain. It can be rinsed with water as needed.

Previous Cities Hosting The Blue Trees

- City of London Festival, England
- Vancouver Biennale, Canada
- Brick Bay Sculpture Trail, New Zealand
- Houston, Texas, USA
- Albuquerque, New Mexico, USA
- Norcross, Georgia, USA
- Galveston, Texas, USA
- Gainesville, Florida, USA
- Sacramento, California, USA
- Seattle, Washington, USA
- Kenmore, Washington, USA

Supporting Reference Documents (attached):

Governor of New Mexico Proclamation of Support for The Blue Trees/Konstantin Dimopoulos
 Reference letter from Sacramento Tree Foundation
 Reference letter from the Galveston Island Tree Conservancy
 Reference letter from the Houston Arts Alliance



BLUE TREES IS AN ENVIRONMENTAL ART INSTALLATION

- Blue Trees is an artist's response to the issue of global deforestation and the importance of trees to the environment.
- The blue colorant is water-based, and biologically safe. It will not harm trees, waterways, insects, wildlife...or humans.
- Blue Trees is part of a program of installations called 'Can Art Change The World?' about global issues.
- Blue Trees has been listed in the Top 60 Ideas that can Change the World.
- Blue Trees will bring a huge amount of public attention to Breckenridge, locally, nationally and globally.
- Blue Trees has been in the City of London Festival, Vancouver Biennale, Houston, Albuquerque, Sacramento, Seattle, Norcross Georgia, and Galveston Texas.
- Blue Trees is an excellent opportunity for us to continue to educate our local community about the impact of the Mountain Pine Beetle, the continued importance of the future health of our forests, wildfire mitigation and water quality issues.
- Blue trees can and will engage the local community, young and old, in a meaningful creative project.

Konstantin Dimopoulos is a conceptual artist who creates social and environmental public artworks, as well as permanent sculptures and temporary installations. Through his thinking of using art to inspire change, he was invited to speak at TEDx Sacramento 2012 with his talk Can Art Change The World. His environmental art installation, The Blue Trees about global deforestation has gained him international recognition. In 2013 it was nominated by the Danish Index Awards as one of 60 ideas that changed the world; and was named by TrendHunter as one of the top 100 activism trends of 2012. The Blue Trees is an ongoing global artwork that launched at the Vancouver Biennale in 2011 and since then Dimopoulos has created the work in more than 12 global locations including London, Houston, Seattle and Albuquerque.

The Blue Trees by Konstantin Dimopoulos Breckenridge, Colorado | Aug 2015

*To be presented as part of the inaugural Breckenridge
International Festival of Arts (BIFA) from August 14-23, 2015



• RIVERWALK CENTER
• MAIN STREET • ARTS DISTRICT





May 31, 2015 Financial Report

Finance & Municipal Services Division



The Pinewood 2 Project - In progress

Executive Summary

May 31, 2015

This report covers the first five months of 2015. We are currently at 116% of budgeted revenue in the Excise fund (\$1.6M over budget). April sales taxes (received in May) were up from 2014 in most categories. RETT ended May at 116% of the YTD budget and exceeded the prior year's YTD RETT revenue by \$40k.

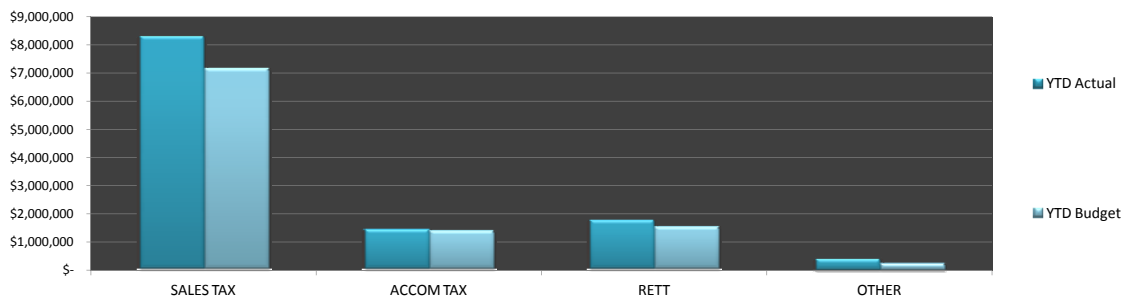
The General Fund 2015 YTD revenues are at 104% of budget and YTD expenses are under budget at 92%.

Other funds are performing according to budget with exceptions noted in the All Funds report narrative.

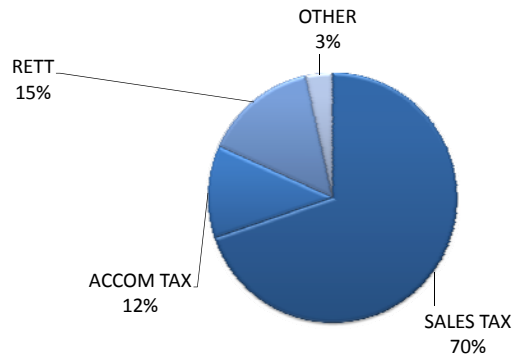
Sales Tax and Real Estate Transfer Tax are ahead of budget (see table below). For more information on tax revenues (by month and business sector), please see the Tax Basics section of the Financials.

Staff will be available at the June 23 work session to answer any questions you may have.

Excise YTD Actual vs. Budget - by Source



YTD Actual Revenues - Excise



	YTD Actual	YTD Budget	% of Budget	Annual Budget	Prior YTD Actual	Prior Annual Actual
SALES TAX	\$ 8,327,389	\$ 7,171,214	116%	\$ 16,991,999	\$ 6,873,212	\$ 16,233,023
ACCOMMODATIONS TAX	1,429,394	1,385,162	103%	2,457,799	1,276,253	2,294,537
REAL ESTATE TRANSFER	1,767,575	1,525,358	116%	4,000,000	1,726,899	4,604,914
OTHER*	413,617	243,946	170%	755,336	286,605	611,701
TOTAL	\$ 11,937,975	\$ 10,325,680	116%	\$ 24,205,134	\$ 10,162,968	\$ 23,744,174

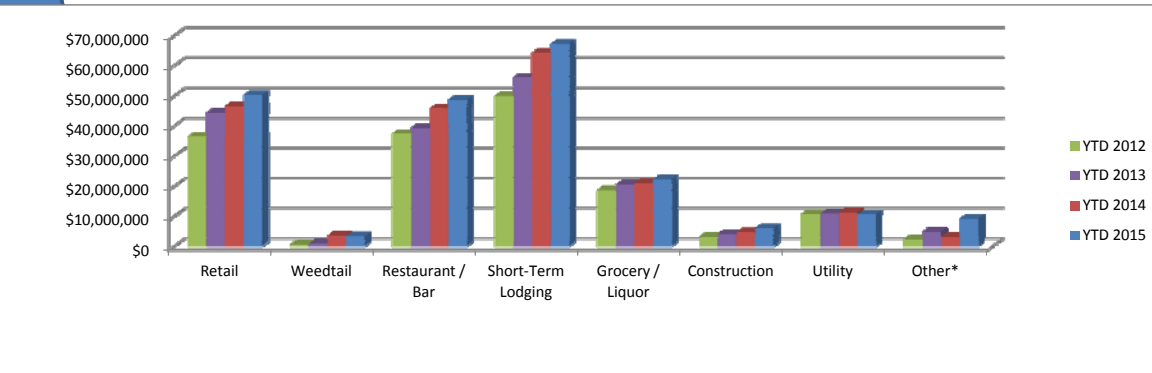
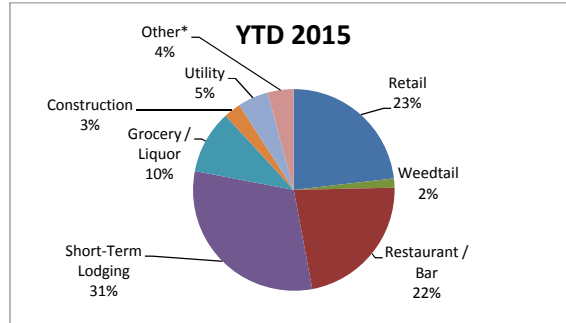
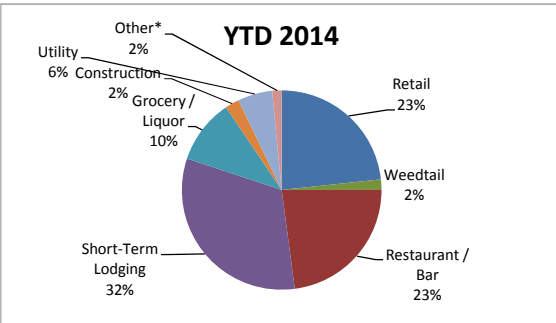
* Other includes Franchise Fees (Telephone, Public Service and Cable), Cigarette Tax, and Investment Income

The Tax Basics

Net Taxable Sales by Industry-YTD

Description	YTD 2012	YTD 2013	YTD 2014	2014		2014/2015		2015
				% of Total	YTD 2015	\$ Change	% Change	% of Total
Retail	\$36,324,344	\$44,296,269	\$46,450,938	23.29%	\$50,213,122	\$3,762,184	8.10%	23.16%
Weedtail	\$515,414	\$839,510	\$3,405,116	1.71%	\$3,269,623	(\$135,493)	-3.98%	1.51%
Restaurant / Bar	\$37,325,730	\$39,256,040	\$45,701,802	22.91%	\$48,582,371	\$2,880,570	6.30%	22.40%
Short-Term Lodging	\$49,890,946	\$56,012,003	\$64,193,244	32.18%	\$67,075,986	\$2,882,742	4.49%	30.93%
Grocery / Liquor	\$18,509,098	\$20,414,950	\$20,892,374	10.47%	\$22,029,163	\$1,136,789	5.44%	10.16%
Construction	\$3,116,789	\$4,101,494	\$4,562,512	2.29%	\$6,017,060	\$1,454,549	31.88%	2.77%
Utility	\$10,686,310	\$10,798,367	\$11,216,361	5.62%	\$10,544,937	(\$671,424)	-5.99%	4.86%
Other*	\$2,249,001	\$4,780,334	\$3,029,946	1.52%	\$9,118,052	\$6,088,106	200.93%	4.20%
Total	\$158,617,633	\$180,498,968	\$199,452,292	100.00%	\$216,850,315	\$17,398,023	8.72%	100.00%

* Other includes activities in Automobiles and Undefined Sales.



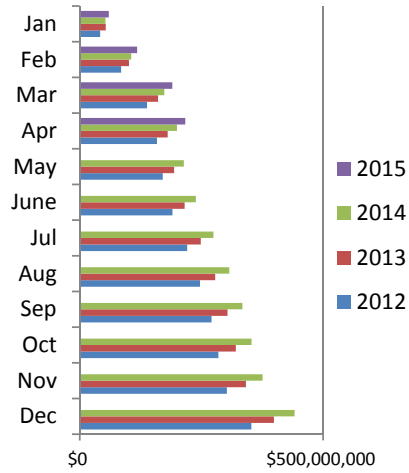
New Items of Note:

- April net taxable sales are currently ahead of 2014 by 3.43%.
- Retail, Lodging, Grocery/Liquor, and Construction fared better than the aggregate of all sectors.
- Construction was ahead of prior year by 10.29% for April, yet remained behind 2005-2009 #s that ranged from \$1,304,929 - \$2,112,239.
- Weedtail experienced a significant decline (of 30.66%) , over prior year.
- Restaurant/Bar also experienced a decline (of 6.67%), over prior year.
- Undefined sales remain high due to returns that have yet to be classified. Staff is still awaiting clarification from the vendor.
- Distribution of disposable bags experienced a slight increase over prior year.

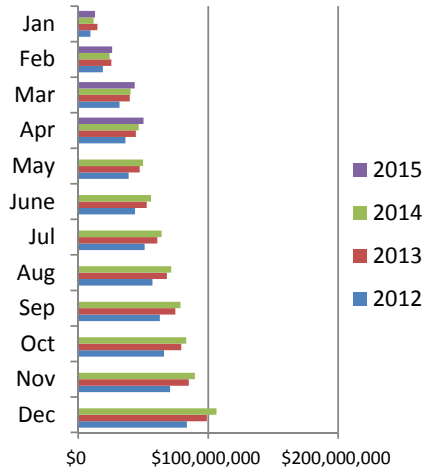
Continuing Items of Note:

- In 2014, a new category was added to the Sales by Sector pages for the Weedtail sector. The category encompasses all legal marijuana sales, regardless of medical or recreational designation. The Retail sector has been adjusted to remove the sales previously reported in this category. The jump in sales from 2013 to 2014 can be attributed to the legalization of sales of recreational marijuana.
- A section on Disposable Bag Fees was added in 2014.
- Taxes collected from the customer by the vendor are remitted to the Town on the 20th of the following month.
- Quarterly taxes are reported in the last month of the period. For example, taxes collected in the first quarter of the year (January – March), are include on the report for the period of March.
- Net Taxable Sales are continually updated as late tax returns are submitted to the Town of Breckenridge. Therefore, you may notice slight changes in prior months, in addition to the reporting for the current month.

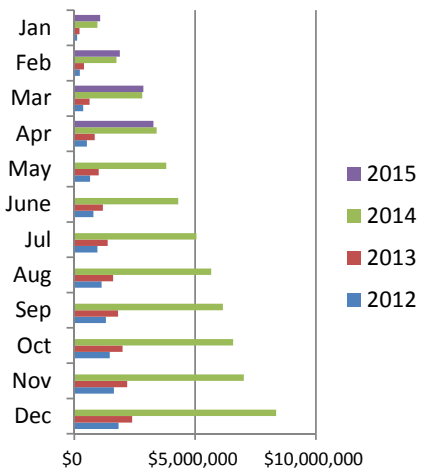
Net Taxable Sales by Sector - Town of Breckenridge Tax Base



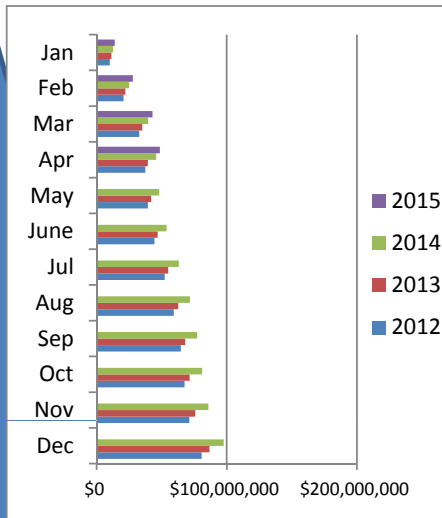
Total Net Taxable Sales					
	2012	2013	2014	2015	% change
					from PY
Jan	\$41,718,482	\$53,336,557	\$52,724,657	\$59,402,049	12.66%
Feb	\$43,279,998	\$47,661,413	\$52,939,129	\$58,443,590	10.40%
Mar	\$53,068,463	\$59,665,211	\$67,946,666	\$72,276,938	6.37%
Apr	\$20,550,689	\$19,835,788	\$25,841,840	\$26,727,738	3.43%
May	\$11,552,549	\$13,043,792	\$14,121,009	\$0	n/a
Jun	\$20,161,932	\$21,824,324	\$24,926,036	\$0	n/a
Jul	\$30,306,091	\$33,233,133	\$36,007,304	\$0	n/a
Aug	\$26,378,253	\$29,614,066	\$32,751,065	\$0	n/a
Sep	\$23,534,713	\$25,136,536	\$26,789,040	\$0	n/a
Oct	\$14,052,583	\$17,154,744	\$18,848,441	\$0	n/a
Nov	\$17,500,298	\$20,680,131	\$22,692,963	\$0	n/a
Dec	\$50,233,000	\$57,510,396	\$65,614,116	\$0	n/a
Total	\$352,337,052	\$398,696,089	\$441,202,266	\$216,850,315	



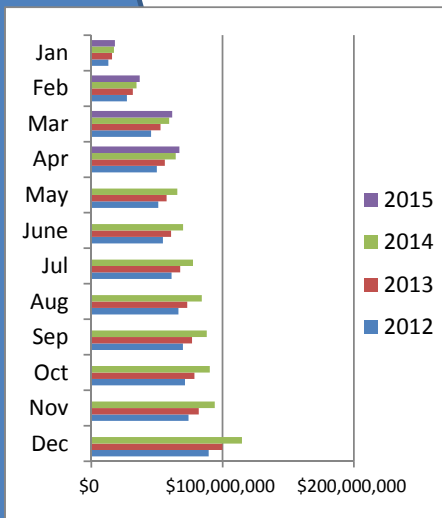
Retail					
	2012	2013	2014	2015	% change
					from PY
Jan	\$9,332,951	\$14,740,883	\$11,850,499	\$12,907,473	8.92%
Feb	\$9,561,486	\$10,714,990	\$12,310,424	\$13,227,269	7.45%
Mar	\$12,894,030	\$14,200,123	\$16,101,048	\$17,340,503	7.70%
Apr	\$4,535,877	\$4,640,272	\$6,188,967	\$6,737,878	8.87%
May	\$2,460,868	\$2,945,458	\$3,424,705	\$0	n/a
Jun	\$4,935,052	\$5,421,774	\$6,132,569	\$0	n/a
Jul	\$7,291,230	\$8,155,359	\$8,098,518	\$0	n/a
Aug	\$6,103,157	\$7,322,388	\$7,367,221	\$0	n/a
Sep	\$5,600,950	\$6,540,887	\$7,118,054	\$0	n/a
Oct	\$3,253,812	\$4,563,566	\$4,476,941	\$0	n/a
Nov	\$4,647,092	\$5,843,691	\$6,609,157	\$0	n/a
Dec	\$12,981,465	\$13,828,152	\$16,658,333	\$0	n/a
Total	\$83,597,969	\$98,917,546	\$106,336,436	\$50,213,122	



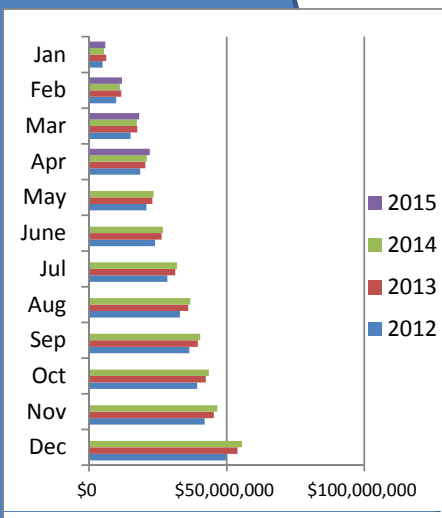
Weedtail					
	2012	2013	2014	2015	% change
					from PY
Jan	\$112,836	\$213,016	\$951,609	\$1,069,983	12.44%
Feb	\$112,024	\$182,322	\$787,796	\$809,146	2.71%
Mar	\$138,857	\$236,589	\$1,068,198	\$976,179	-8.61%
Apr	\$151,697	\$207,583	\$597,513	\$414,316	-30.66%
May	\$130,681	\$165,344	\$397,864	\$0	n/a
Jun	\$143,525	\$173,564	\$493,672	\$0	n/a
Jul	\$166,596	\$198,017	\$755,747	\$0	n/a
Aug	\$167,634	\$226,347	\$612,329	\$0	n/a
Sep	\$180,635	\$203,715	\$482,512	\$0	n/a
Oct	\$160,677	\$189,368	\$425,385	\$0	n/a
Nov	\$171,386	\$192,819	\$443,172	\$0	n/a
Dec	\$189,064	\$205,254	\$1,336,055	\$0	n/a
Total	\$1,825,612	\$2,393,937	\$8,351,852	\$3,269,623	



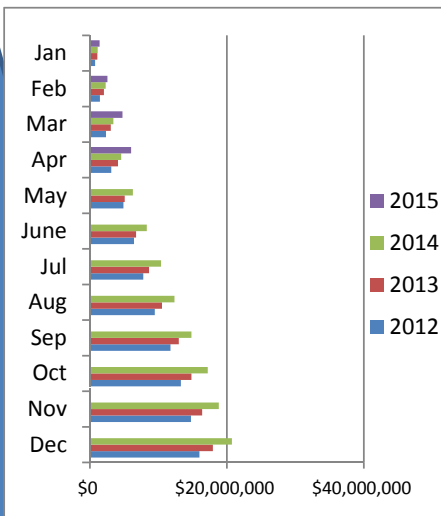
Restaurant / Bar					
	2012	2013	2014	2015	% change from PY
Jan	\$10,000,475	\$11,273,850	\$12,478,726	\$13,853,798	11.02%
Feb	\$10,576,852	\$10,704,428	\$12,289,846	\$13,859,390	12.77%
Mar	\$12,086,391	\$12,967,189	\$14,799,479	\$15,144,539	2.33%
Apr	\$4,662,012	\$4,310,574	\$6,133,751	\$5,724,644	-6.67%
May	\$1,975,658	\$2,552,517	\$2,367,636	\$0	n/a
Jun	\$5,006,301	\$5,004,564	\$5,648,526	\$0	n/a
Jul	\$7,964,540	\$8,164,898	\$9,276,963	\$0	n/a
Aug	\$6,905,724	\$7,690,278	\$8,714,972	\$0	n/a
Sep	\$5,423,426	\$5,254,681	\$5,471,492	\$0	n/a
Oct	\$2,924,663	\$3,457,580	\$3,772,601	\$0	n/a
Nov	\$3,613,665	\$4,385,744	\$4,899,826	\$0	n/a
Dec	\$9,534,760	\$10,871,039	\$11,728,928	\$0	n/a
Total	\$80,674,467	\$86,637,342	\$97,582,746	\$48,582,371	



Short-Term Lodging					
	2012	2013	2014	2015	% change from PY
Jan	\$12,980,188	\$15,698,448	\$17,232,658	\$17,942,704	4.12%
Feb	\$14,098,863	\$15,860,278	\$17,188,560	\$18,830,147	9.55%
Mar	\$18,334,344	\$21,150,210	\$24,818,356	\$24,813,929	-0.02%
Apr	\$4,477,551	\$3,303,068	\$4,953,670	\$5,489,206	10.81%
May	\$1,088,308	\$1,263,021	\$1,277,400	\$0	n/a
June	\$3,498,126	\$3,489,236	\$4,331,326	\$0	n/a
Jul	\$6,619,464	\$6,874,194	\$7,651,167	\$0	n/a
Aug	\$5,172,991	\$5,384,872	\$6,665,890	\$0	n/a
Sep	\$3,501,612	\$3,680,342	\$3,780,769	\$0	n/a
Oct	\$1,495,331	\$1,780,132	\$2,321,567	\$0	n/a
Nov	\$2,764,095	\$3,266,469	\$3,791,735	\$0	n/a
Dec	\$15,265,907	\$18,079,402	\$20,711,882	\$0	n/a
Total	\$89,296,780	\$99,829,670	\$114,724,982	\$67,075,986	



Grocery / Liquor					
	2012	2013	2014	2015	% change from PY
Jan	\$4,857,276	\$6,202,934	\$5,396,830	\$5,825,774	7.95%
Feb	\$4,962,402	\$5,467,845	\$5,757,737	\$6,069,625	5.42%
Mar	\$5,219,990	\$5,782,332	\$6,142,330	\$6,296,852	2.52%
Apr	\$3,469,430	\$2,961,839	\$3,595,478	\$3,836,912	6.71%
May	\$2,309,947	\$2,527,526	\$2,494,945	\$0	n/a
June	\$3,097,820	\$3,378,083	\$3,390,191	\$0	n/a
Jul	\$4,489,506	\$4,954,547	\$5,095,848	\$0	n/a
Aug	\$4,540,829	\$4,724,946	\$4,876,297	\$0	n/a
Sep	\$3,404,220	\$3,465,662	\$3,605,574	\$0	n/a
Oct	\$2,855,324	\$2,930,066	\$3,098,294	\$0	n/a
Nov	\$2,778,270	\$2,869,441	\$3,093,792	\$0	n/a
Dec	\$7,705,640	\$8,615,254	\$8,968,840	\$0	n/a
Total	\$49,690,652	\$53,880,474	\$55,516,155	\$22,029,163	

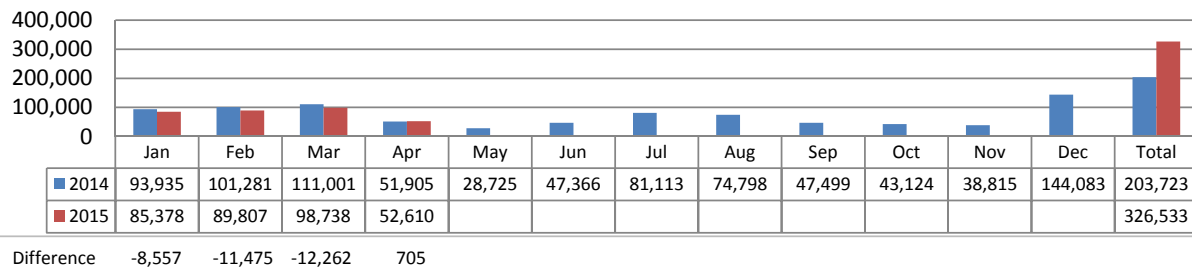


Construction					
	2012	2013	2014	2015	% change from PY
Jan	\$752,255	\$1,072,239	\$1,129,003	\$1,414,518	25.29%
Feb	\$703,811	\$964,673	\$1,171,370	\$1,137,268	-2.91%
Mar	\$881,518	\$1,008,645	\$1,121,396	\$2,207,094	96.82%
Apr	\$779,206	\$1,055,938	\$1,140,743	\$1,258,181	10.29%
May	\$1,761,256	\$978,334	\$1,699,762	\$0	n/a
Jun	\$1,540,822	\$1,653,588	\$2,027,078	\$0	n/a
Jul	\$1,366,520	\$1,903,161	\$2,084,178	\$0	n/a
Aug	\$1,670,785	\$1,870,078	\$1,969,423	\$0	n/a
Sep	\$2,297,356	\$2,454,362	\$2,474,159	\$0	n/a
Oct	\$1,521,388	\$1,858,158	\$2,372,139	\$0	n/a
Nov	\$1,482,393	\$1,555,679	\$1,623,898	\$0	n/a
Dec	\$1,226,412	\$1,568,060	\$1,905,449	\$0	n/a
Total	\$15,983,720	\$17,942,915	\$20,718,596	\$6,017,060	

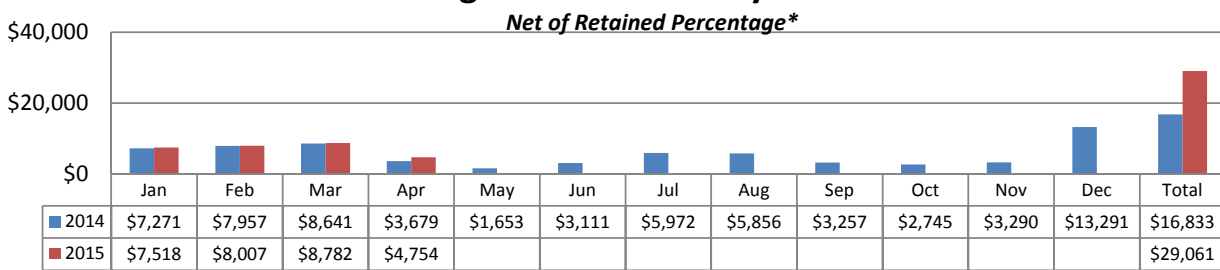
Disposable Bag Fees

The Town adopted an ordinance April 9, 2013 (effective October 15, 2013) to discourage the use of disposable bags and achieve a goal of the SustainableBreck Plan. The ten cent fee applies to most plastic and paper bags given out at retail and grocery stores in Breckenridge. The program is intended to encourage the use of reusable bags and discourage the use of disposable bags, thereby furthering the Town's sustainability efforts. Revenues from the fee are used to provide public information about the program and promote the use of reusable bags. Retailers are permitted to retain 50% of the fee (up to \$1000/month through October 31, 2014; \$100/month beginning November 1, 2014) in order to offset expenses incurred related to the program.

of Disposable Bags Reported by Month



Bag Fees Remitted by Month



*Retailers are permitted to retain 50% of the fee (up to \$1000/month through October 31, 2014; \$100/month beginning November 1, 2014) in order to offset expenses incurred related to the program. The retained percent may be used by the retail store to provide educational information to customers; provide required signage; train staff; alter infrastructure; fee administration; develop/display informational signage; encourage the use of reusable bags or promote recycling of disposable bags; and improve infrastructure to increase disposable bag recycling.

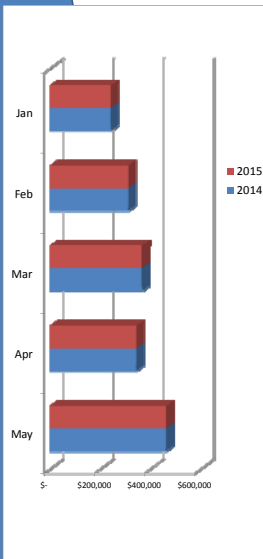
Real Estate Transfer Tax

New Items of Note:

- Revenue for the month of May was ahead of prior year by 0.82%, and surpassed the monthly budget by \$65,034.
- Year to date, revenue is ahead of prior year by 10.85%, and has surpassed budget by \$242,439 (as of 5/31/15).
- Single Family Home sales currently account for the majority of the sales (33.30%), with Condominiums representing the next highest sales (28.67%) subject to the tax.

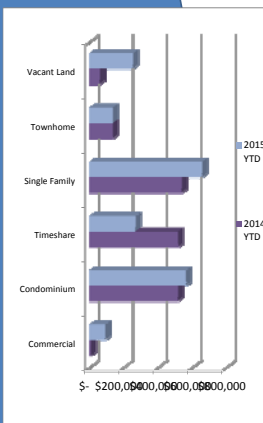
Continuing Items of Note:

- 2015 Real Estate Transfer Tax budget is based upon the monthly distribution for 2013.

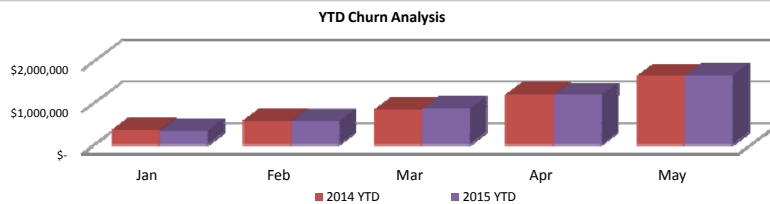


Total RETT						
	2013	2014	2015	% change	2015 Budget	+/- Budget
Jan	\$358,948	\$242,770	\$390,189	60.72%	\$321,765	\$68,424
Feb	\$234,357	\$311,353	\$239,023	-23.23%	\$210,080	\$28,943
Mar	\$281,202	\$367,107	\$320,123	-12.80%	\$252,073	\$68,050
Apr	\$380,279	\$343,886	\$352,876	2.61%	\$340,887	\$11,989
May	\$446,840	\$461,783	\$465,587	0.82%	\$400,553	\$65,034
Jun	\$259,659	\$246,452	\$206,205	-16.33%	\$232,761	-\$26,556
Jul	\$373,510	\$409,671	\$0	n/a	\$334,819	n/a
Aug	\$504,694	\$436,174	\$0	n/a	\$452,414	n/a
Sep	\$509,838	\$463,305	\$0	n/a	\$457,025	n/a
Oct	\$381,475	\$495,973	\$0	n/a	\$341,959	n/a
Nov	\$403,015	\$387,739	\$0	n/a	\$361,268	n/a
Dec	\$328,416	\$438,700	\$0	n/a	\$294,396	n/a
Total	\$4,462,232	\$4,604,914	\$1,974,002		\$4,000,000	\$215,883

*June #'s are as of 06/16/2015



by Category					
Description	2014 YTD	2015 YTD	\$ change	% change	% of Total
Commercial	\$ 9,775	\$ 91,675	81,900	837.85%	4.64%
Condominium	515,468	565,805	50,337	9.77%	28.67%
Timeshare	520,136	269,780	(250,356)	-48.13%	13.67%
Single Family	539,549	657,261	117,712	21.82%	33.30%
Townhome	135,611	136,167	555	0.41%	6.90%
Vacant Land	59,988	253,089	193,102	321.90%	12.82%
Total	\$ 1,780,527	\$ 1,973,777	193,250	10.85%	100.00%

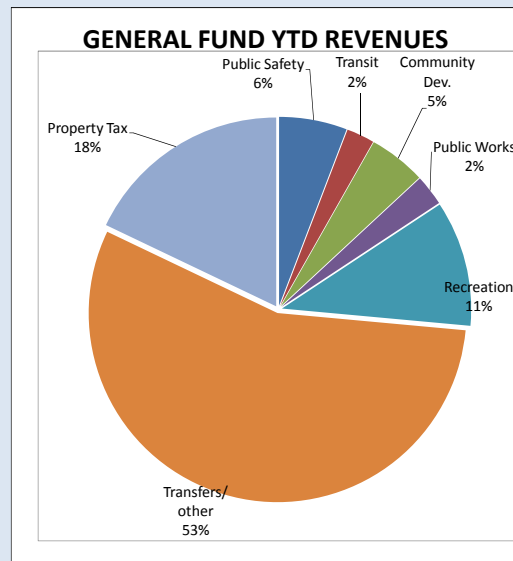


General Fund Revenues Summary

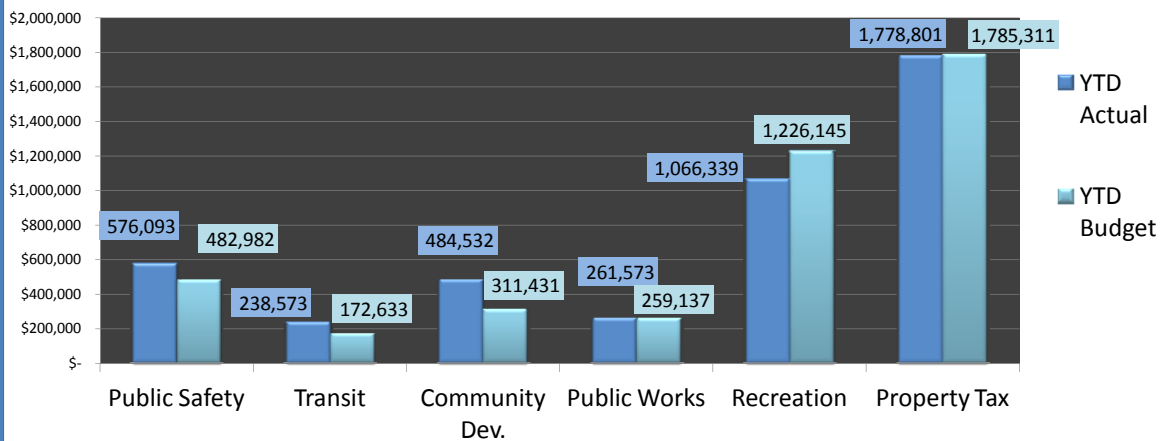
May 31, 2015

These next two pages report on 2015 year to date financials for the General Fund. This area contains most "Government Services," such as public works, police, planning, recreation facilities, and administrative function.

General Fund Revenue: At the end of May, the Town's General Fund was at 104% of YTD budget (\$10.2M actual vs. \$9.8M budgeted). The variance is primarily due to the Community Development department which continues to be ahead of budget due to building permit and plan check fee revenues. Parking revenues also ended the season ahead of budget.



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



General Fund Expenditures Summary

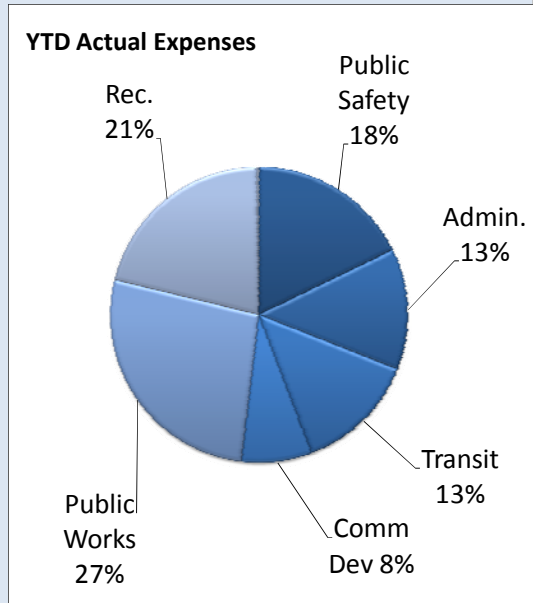
May 31, 2015

The General Fund at May 31, 2015 is at 92% of budgeted expense (\$8.14M actual vs. \$8.83M budgeted). The below graphs represent the cost of providing the services contained in this fund (Public Safety, Transit, Recreation, Public Works, Community Development, and Administration).

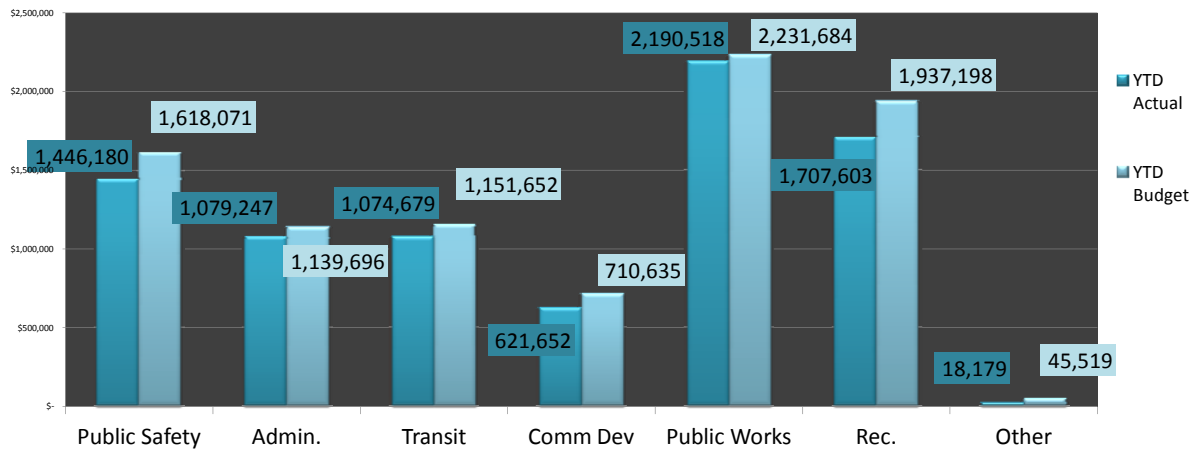
Variance Explanations:

Public Safety under budget primarily due to wages.

Recreation under budget due to wages and contracted services (janitorial, etc.)



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



Combined Statement of Revenues and Expenditures

All Funds May 31, 2015

REVENUE	YTD Actual	YTD Budget	% of YTD Bud.	Annual Bud.
General Governmental				
1 Gen/Excise/MMJ/Child Cr/Spec Prj	\$ 16,993,823	\$ 14,933,683	114%	\$ 33,443,183
2 Special Revenue	3,132,435	4,187,453	75%	9,702,958
3 Internal Service	1,511,911	1,477,681	102%	3,553,915
4 Subtotal General Governmental	\$ 21,638,168	\$ 20,598,817	105%	\$ 46,700,056
5 Capital Projects	3,273,323	126,787	2582%	927,754
Enterprise Funds				
6 Utility Fund	1,289,267	1,412,182	91%	4,404,429
7 Golf	180,177	190,391	95%	2,205,624
8 Cemetery	1,300	10,465	12%	25,116
9 Subtotal Enterprise Funds	\$ 1,470,744	\$ 1,613,038	91%	\$ 6,635,169
10 TOTAL REVENUE	26,382,234	22,338,642	118%	54,262,979
11 Internal Transfers	13,891,269	13,857,222	100%	25,491,161
12 TOTAL REVENUE incl. x-fers	\$ 40,273,504	\$ 36,195,864	111%	\$ 79,754,140
EXPENDITURES				
	YTD Actual	YTD Budget	% of Bud.	Annual Bud.
General Governmental				
1 Gen/Excise/MMJ/Child Cr/Spec Prj	\$ 10,405,843	\$ 11,072,830	94%	\$ 25,888,707
2 Special Revenue	6,103,189	7,732,354	79%	17,763,339
3 Internal Service	1,380,390	1,570,713	88%	3,929,105
4 Subtotal General Governmental	\$ 17,889,423	\$ 20,375,897	88%	\$ 47,581,151
5 Capital Projects	1,599,954	5,253,452	30%	5,253,452
Enterprise Funds				
6 Utility Fund	861,348	1,791,101	48%	4,694,279
7 Golf	567,348	523,254	108%	1,845,490
8 Cemetery	0	5,655	0%	13,572
9 Subtotal Enterprise Funds	\$ 1,428,695	\$ 2,320,010	62%	\$ 6,553,341
10 TOTAL EXPENDITURES	20,918,072	27,949,359	75%	59,387,944
11 Internal Transfers	13,868,238	13,857,522	100%	25,491,461
12 TOTAL EXPENDITURES incl. x-fers	\$ 34,786,309	\$ 41,806,881	83%	\$ 84,879,405
13 TOTAL REVENUE less EXPEND.	\$ 5,487,194	\$ (5,611,017)	N/A	\$ (5,125,265)

General Governmental Funds - General, Excise, Child Care, Marijuana and Special Projects

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

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

ALL FUNDS REPORT

May 31, 2015

The YTD breakdown of the revenue/expenses variances is as follows:

Governmental Funds:

General Fund:

- Revenue:
 - Ahead of budget by \$407k-see General Fund Revenue page for more detail.
- Expense:
 - Under budget by \$696k. See General Fund Expense page of this report for more details.

Excise Fund:

- Revenue:
 - Ahead of budget by \$1.6M-see Executive Summary or Tax Basics for more information.

Capital Fund:

- Revenue:
 - Ahead of budget due to timing.
- Expense:
 - Under budget due to timing: expenditures budgeted at 100% but spending varies over the duration of the project.

Special Revenue Funds:

- Revenue:
 - Marketing Fund ahead of budget due to business licenses.
 - Affordable Housing under budget due to timing: Pinewood 2 tax credit rebates budgeted but not yet received
- Expense:
 - Affordable Housing and Open Space under budget due to capital expenditures which have not yet taken place.

Enterprise Funds:

Utility:

- Revenue:
 - Under budget due to PIF's.
- Expense:
 - Under budget due to capital expenditures which have not yet taken place.

Golf:

- Revenue/Expense-variations due to timing

Internal Service Funds:

- Revenue:
 - Ahead of budget due to insurance recoveries
- Expense:

Fund Descriptions:

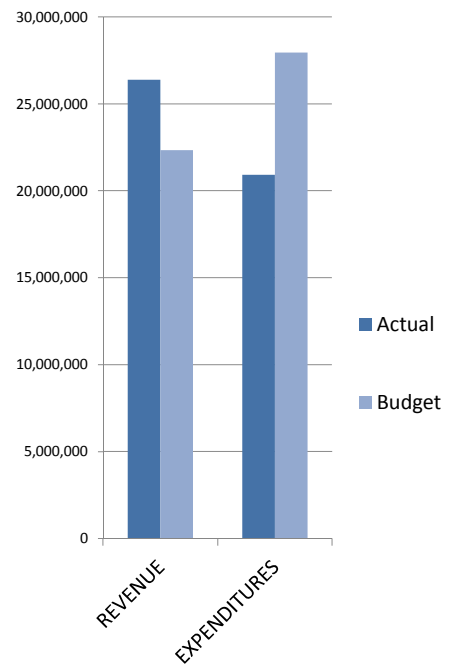
General Governmental - General, Excise, Capital, Special Projects, Child Care, Marijuana

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

Enterprise Funds: Golf, Utility, Cemetery

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

YTD Actual Revenues and Expenditures vs. Budget





MEMO

TO: Town Council
FROM: Director of Communications
DATE: June 17 (*for June 23, 2015 retreat*)
RE: Town Grants Program
CC: Robb Woulfe, BCA

The Town's Grants Program has been discussed by Council beginning with the March 24th joint meeting between Town Council and the Breckenridge Creative Arts (BCA) Board of Directors, and subsequently at the April 28 and May 12 Council work sessions.

At the May 12th meeting, the Council made it clear that in regards to the Town's cultural facilities, they want to provide the 'specialized equipment' that the Town has invested in to be provided at no charge to local nonprofits, and that there needs to be a process for the local nonprofits to receive waived rental fees.

This process provided the opportunity to 'formalize' the Town's Grants Program including an Overview, Guidelines, Policies, etc. for both the Cash and the In-kind Cultural Facilities programs. The draft of this document follows this memo.

Robb and I will be available at the work session for questions and to receive further direction. Thank you.

TOWN OF BRECKENRIDGE GRANT PROGRAM

Overview:

The Town of Breckenridge has multiple partners including citizens, taxpayers, businesses, guests, employees and other governmental agencies. It is important that the Town strengthen relationships with our partners by adopting clear and comprehensive policies. The Town's grant process was created as a means to fairly, equitably and consistently provide funding and in-kind services to the community.

We support charitable organizations that enhance and serve the Breckenridge/Upper Blue area through a Grant Application Program. Grants are awarded once a year to agencies providing programs, services and/or events in the areas of health and human service, art and culture, education, environment and sports.

The Town announces its grant process in late June/early July through the Summit Daily News and via electronic media, including our website, www.townofbreckenridge.com. The guidelines and grant applications are generally available at least eight weeks prior to the grant deadline and can be located on the Town's website under "I Want To Apply". Notices are not sent to past funding recipients; it is the responsibility of the organization to monitor when the guidelines and applications are available.

Types of Grants:

1. Cash
2. In-Kind

Priority Investments:

The Town invests in local non-profit organizations with programs, initiatives and events that are aligned with our strategies and that demonstrate how they can make an impact for our community.

Strategic Alignment:

Financial and Programmatic Capacity - Successful applicants will show evidence that they are stable, have a solid financial and management team, a strong balance sheet and programming plans that illustrates the grant will be sustained beyond the Town's investment.

Leadership - Successful applicants will have strong leadership that is collaborative and knowledgeable about the community and the field in which they operate.

Measurable Results - We place priority on organizations that are able to clearly articulate organizational goals, present a clear plan for achieving results, and track outcomes and impact on the people served.

Eligibility:

To be eligible for support, organizations must

- Have a 501(c)(3) public charity status or operate under the fiscal sponsorship of a tax-exempt nonprofit.
- Have principal place of business AND primarily serve the people of Breckenridge and/or the Upper Blue River area (from Hoosier Pass to Farmers Korner).
- Be registered as a Colorado nonprofit organization with the Colorado Secretary of State and be organized in the State of Colorado.
- Have been in operation for a minimum of three (3) years

Process:

Submit – Cash and/or In-kind Grant Application(s) will be adhere to the Funding & Submissions Guidelines and will be submitted electronically by the deadline set annually (typically mid August); no applications will be accepted after the deadline. Grants are for the following year; requests for programs/projects already completed will not be considered. The Town considers grant applications once per year; requests received outside of the designated time will not be considered. The application is the sole source for requesting funding; presentations are not part of this process.

Review & Evaluation – Staff will screen applications for completeness. Accepted applications for Cash grants will be forwarded to the Grants/Scholarship Committee (2 Town Council members) for review and recommendation. Accepted applications for In-Kind will be forwarded to affected departments or entity for review and recommendation, and then by Grants/Scholarship Committee.

Criteria - After considering how strongly the application fits the Town Council’s strategies and aligns with the Town’s core values, grant requests will be evaluated according to the following criteria:

- To what degree does the organization’s history and mission, as well as the purpose of the program or event, align with the Town’s priority investments and strategies.
- Does the organization demonstrate sound fiscal management practices?
- Does the organization demonstrate impact or past success?
- To what degree does the application benefit our community?
- Does the organization avoid duplicating existing programs or services?
- Does the board of directors work to advance the organization’s mission through fundraising and other areas? Do board members make a financial contribution?

Decisions - Recommendations from the Grants/Scholarship Committee are submitted to the Breckenridge Town Council for final approval as part of the annual budget process. The Town cannot approve all requests; however, applications that meet the funding guidelines are given consideration. All decisions will be considered final.

Awarding & Notification - All applicants will be notified of funding decisions in early December and awards will be presented at a public Grant Awards Ceremony in January. If the program or event changes significantly from the original application, the Town must be notified. Funding, even if already distributed to the organization, may be re-evaluated at that time.

Reporting - Organizations receiving a grant need to provide a Final Grant Report either prior to submitting, OR as part of, the following years grant application. The report will include: a) statistics on Upper Blue/Breckenridge population served by the organization, b) description of what was accomplished with the grant, how the grant was used, how it was done, c) evidence as to the extent the goal(s) were reached, and d) if anything changed from the original application, specifics on what changed.

CASH GRANT PROGRAM:

1. Cash funding is available to non-profit organizations that are human services agencies, that present events or arts programming, and/or that benefit the citizens of Breckenridge / Upper Blue Basin. Sports non-profits may be considered for cash funding only if the request is for a marketing related event, and there is no guarantee that funding will be granted.
2. Organizations may apply under the following categories:
 - i. Marketing Support - applicable if the event/organization attracts visitors to Breckenridge

- ii. General Operating Support - applicable if the organization is a health & human services, education or environment organization
- iii. Development Funding - applicable for either category and is considered a one-time grant for capital improvements or “seed” money for a new project

IN-KIND GRANT PROGRAM:

All In-kind (free or discounted) services and products (Town facility, programs, gift certificates, products and miscellaneous services, etc.) must be requested through the separate Town of Breckenridge In-kind Grant Application. To submit an application, organizations shall complete the on-line application accessible at www.townofbreckenridge.com, and submit electronically.

Cultural Assets -

The Town of Breckenridge owns a variety of cultural assets that are managed and operated by Breckenridge Creative Arts (BCA).

1. In-kind grants are available to non-profit organizations that bring quality and mission-aligned events to these facilities that complement already-planned programming. The intent is to increase the diversity and amount of quality cultural experiences to Breckenridge’s residents and guests.
2. In-kind grants are in the form of waived rental fees for the facility and for in-house specialized equipment.
3. Regardless of waived rental fees, all users are required to pay the direct incremental costs associated with the event(s). These personnel and service expenses include: front of house supervisor, venue technical representative, specialized production labor (e.g. sound engineers, lighting operators, video system operators, etc.), ticket office labor, and all costs related to required chair moves, security needs, and venue cleaning and restore. Users understand that these direct incremental costs, along with any other event-specific expenses that may be incurred, will be documented and billed back to the user by BCA.
4. All applicants are required to meet with designated BCA staff prior to submitting an In-kind grant application to determine if the proposed event a) fits with the strategic alignment of the BCA and the specific facility, b) the date requested can be accommodated, and c) to determine the estimated costs. Given the number of events and activities happening within these cultural facilities, it is recommended that applicants have multiple date options.
5. The BCA staff will consult the applicant on the best use of available equipment, as well as required pre-production, setup, show/event, and strike labor and will provide a detailed estimate of all potential charges. Users understand that BCA can provide basic guidance regarding the production requirements of your show or event, but that applicant is solely responsible for meeting technical, hospitality, and venue requirements for contracted performing artists, which may include additional rental equipment, delivery and labor charges from the outside vendor. Use of installed equipment at the Town’s cultural facilities may require skilled operators, technicians, and lighting/audio designers and engineers. These requirements will be disclosed and discussed as the technical and labor requirements of the event are analyzed. BCA will determine if additional labor is required for your event or, if appropriate, whether you may provide operators who can fill your technical labor needs.
6. A complete packet of cultural facility policies and procedures, including an inventory of in-house equipment and technical specifications, is available for download at breckcreate.org.
7. Out of cycle requests will only be considered in limited situations; applications will be reviewed by and must be approved by the Town Manager and BCA Board.

Grantees responsibilities:

- Adhere to the BCA Facility Policies & Procedures, including damage liability, and insurance requirements
- Provide recognition, such as ‘Generously hosted by the Town of Breckenridge’ in advertising, invitations, and media efforts.
- Submit to the Town a report outlining attendance, revenues and expenses, media coverage and promotional materials no later than two months after the event takes place, as part of the Final Grant Report.

If the organization is NOT awarded a waived rental fee, 501(c)3 organizations are eligible to receive the Nonprofit Rental fee, based on availability. These rates are set annually by the BCA Board, which includes a Town Council member.

(NOTE to Town Council: when this draft is approved, guidelines for Recreation In-kind Grants will be added.)

DRAFT

The Riverwalk Center Schedule of rental fees and expenses
Effective June 2015 for events after 9/1/15

Venue Rental Fee and Ticket Office Services	For-Profit Groups	Non-Profit Groups
Full Day Venue Rental (performance day)	\$1500.00	\$800.00
Rehearsal/Setup/Strike Day	\$750.00	\$400.00
Ticket Office Event Setup and Ticketing Fee	\$500.00	\$0.00

Available Equipment and Daily Rental Rates	For-Profit Groups	Non-Profit Groups
Concert Sound System (Includes PA, Fills, Monitors, Console)	\$1000.00	\$0.00
Monitor Console	\$200.00	\$0.00
Individual Microphones	\$100.00/mic	\$0.00
Clearcom Headset Package	\$200.00	\$0.00
Event Radios	\$25.00/radio	\$0.00
Portable Sound Setup (speakers, 1 mic, ipod input)	\$300.00	\$0.00
Digital Projector/ Screen	\$800.00	\$0.00
90" Side Stage Screens	\$200.00	\$0.00

Direct Event Costs-Required Event Staffing and Fees	For-Profit Groups	Non-Profit Groups
Venue Technical Representative	\$70.00/hr	\$35.00/hr
House Manager	\$45.00/hr	\$25.00/hr
Venue Cleaning (per person)	\$50.00/hr	\$28.00/hr
Credit Card Processing Fee	3%	3%
Applicable Online/Call-in Ticket Service Fee \$0-\$7.99	\$1.00 Ticket	\$1.00/Ticket
\$8.00-\$44.99 Ticket	\$2.00/Ticket	\$2.00/Ticket
\$45.00-\$74.99 Ticket	\$3.00/Ticket	\$3.00/Ticket
\$75.00 and Up Ticket	\$4.00/Ticket	\$4.00/Ticket

Other Labor Costs-- Determined by facility and equipment usage per event

Pre-Production Coordination/Technical Consultation	\$55.00/hr	\$35.00/hr
FOH Sound Engineer	\$85.00/hr	\$55.00/hr
Monitor Sound Engineer	\$85.00/hr	\$55.00/hr
Lighting Programmer/Operator	\$55.00/hr	\$35.00/hr
Video Operator (in-house equipment)	\$50.00/hr	\$30.00/hr
Stage Technicians/ Load-in Labor	\$50.00/hr	\$30.00/hr
Chair Move Labor (per person)	\$17.00/hr	\$17.00/hr
Ticket Office Staffing (per person)	\$15.00/hr	\$15.00/hr
Usher (1 Usher/ 100 guests)	\$10.00/hr	\$10.00/hr
Unarmed Security Personnel	\$35.00/hr	\$35.00/hr
Armed Security Personnel (police/sheriff)	\$60.00/hr	\$60.00/hr

Note: All labor rates are based on a 4 Hour Minimum.

Overtime is calculated at 1.5 times the base rate after 8 hours.

Please Note:

Daily venue rental includes use of house technical systems but will require labor to setup, operate, and tear-down specific equipment for your event. BCA will discuss your technical, audio, lighting, and video needs during the planning stage of your event. Additional personnel requirements will be determined and your event cost **ESTIMATE** will include likely charges based on the rates published here.