



**TOWN OF
BRECKENRIDGE**

Town Council Regular Meeting
Tuesday, September 26, 2023, 7:00 PM
Town Hall Council Chambers
150 Ski Hill Road
Breckenridge, Colorado

THE TOWN OF BRECKENRIDGE IS HOLDING HYBRID MEETINGS. This meeting will be held in person at Breckenridge Town Hall and will also be broadcast live over Zoom. Login information is available in the calendar section of our website: www.townofbreckenridge.com. If you will need special assistance in order to attend any of the Town's public meetings, please notify the Town Clerk's Office at (970) 547-3127, at least 72 hours in advance of the meeting.

I. CALL TO ORDER, ROLL CALL

II. APPROVAL OF MINUTES

A. TOWN COUNCIL MINUTES - SEPTEMBER 12, 2023

III. APPROVAL OF AGENDA

IV. COMMUNICATIONS TO COUNCIL

- A. PUBLIC COMMENT (NON-AGENDA ITEMS ONLY; 3-MINUTE TIME LIMIT PLEASE)
- B. BRECKENRIDGE SKI RESORT UPDATE
- C. BRECKENRIDGE TOURISM OFFICE UPDATE

V. CONTINUED BUSINESS

- A. SECOND READING OF COUNCIL BILLS, SERIES 2023
 - 1. *COUNCIL BILL NO. 32, SERIES 2023 - A BILL FOR AN ORDINANCE AMENDING POLICY 3A PERTAINING TO DENSITY CALCULATIONS FOR NET ZERO ENERGY BUILDINGS*

VI. NEW BUSINESS

- A. FIRST READING OF COUNCIL BILLS, SERIES 2023
 - 1. *COUNCIL BILL NO. 33, SERIES 2023 - A BILL FOR AN ORDINANCE APPROVING THE F&D PLACER LEASE BETWEEN THE TOWN OF BRECKENRIDGE AND THE BRECKENRIDGE OUTDOOR EDUCATION CENTER*
 - 2. *COUNCIL BILL NO. 34, SERIES 2023 - A BILL FOR AN ORDINANCE APPROVING THE WELLINGTON LEASE BETWEEN THE TOWN OF BRECKENRIDGE AND THE BRECKENRIDGE OUTDOOR EDUCATION CENTER*
 - 3. *COUNCIL BILL NO. 35, SERIES 2023 - A BILL FOR AN ORDINANCE TO CREATE NEW EXEMPTIONS FROM TAXATION IN THE SALES TAX CODE*

4. *COUNCIL BILL NO. 36, SERIES 2023 - A BILL FOR AN ORDINANCE CONVEYING TOWN PROPERTY FOR FIRST PHASE OF STABLES WORKFORCE HOUSING PROJECT*
5. *COUNCIL BILL NO. 37, SERIES 2023 - A BILL FOR AN ORDINANCE APPROPRIATING \$20,000.000 IN LOCAL FUNDS IN SUPPORT OF GRANT APPLICATION TO THE COLORADO DEPARTMENT OF LOCAL AFFAIRS (DOLA) FOR STRONG COMMUNITIES PLANNING GRANT*
- B. RESOLUTIONS, SERIES 2023
 1. *RESOLUTION NO. 17, SERIES 2023 - A RESOLUTION APPROVING A CONTRACT WITH THE TOWN ATTORNEY ESTABLISHING THE TERMS OF REAPPOINTMENT*
- C. OTHER
 1. *TOWN MANAGER APPOINTMENT*

VII. PLANNING MATTERS

- A. PLANNING COMMISSION DECISIONS

VIII. REPORT OF TOWN MANAGER AND STAFF

IX. REPORT OF MAYOR AND COUNCIL MEMBERS

- A. CAST/MMC (Mayor/Town Manager)
- B. BRECKENRIDGE OPEN SPACE ADVISORY COMMITTEE (Bergeron)
- C. BRECKENRIDGE TOURISM OFFICE (Carleton)
- D. BRECKENRIDGE HISTORY (Saade)
- E. BRECKENRIDGE CREATIVE ARTS (Rankin)
- F. CML ADVISORY BOARD UPDATE (Saade)
- G. CHILD CARE ADVISORY COMMITTEE (Beckerman)
- H. SOCIAL EQUITY ADVISORY COMMISSION (Saade)

X. OTHER MATTERS

XI. SCHEDULED MEETINGS

- A. SCHEDULED MEETINGS FOR SEPTEMBER, OCTOBER AND NOVEMBER

XII. ADJOURNMENT

I) CALL TO ORDER, ROLL CALL

Mayor Mamula called the meeting of September 12, 2023, to order at 7:00pm. The following members answered roll call: Todd Rankin, Carol Saade, Jeffrey Bergeron, Dick Carleton, Jay Beckerman, Kelly Owens and Mayor Eric Mamula.

II) APPROVAL OF MINUTES

- A) TOWN COUNCIL MINUTES – August 22 and September 1, 2023
With no changes or corrections to the meeting minutes of August 22 and September 1, 2023, Mayor Mamula declared they would stand approved as presented.

III) APPROVAL OF AGENDA

Town Manager Rick Holman stated there were no changes to the agenda. Mayor Mamula declared the agenda approved as presented.

IV) COMMUNICATIONS TO COUNCIL

- A) PUBLIC COMMENT (NON-AGENDA ITEMS ONLY; 3-MINUTE TIME LIMIT PLEASE)

Mayor Mamula opened Public Comment.

Mike Lumina, a Breckenridge resident and president of the HOA at Breckenridge Mountain Village, stated he was present to voice disappointment about the elimination of the blue route, which was a direct route to the Gondola. He further stated he believes the ridership is underestimated and the other options to walk into Town are not ideal with unmaintained trails and not good crosswalks. He stated that, assuming the Blue Route is eliminated, he would like the Town to consider running the Brown route or an express route on French Street.

Ken Karger, speaking for Timber Trail residents, stated the Town is only hearing some of the correct information from BGV and while traffic isn't the main issue, we are objecting to ongoing construction traffic coming up the route. He also stated the tract BGV is referring to isn't intended for development, and he would suggest that the road go around the maintenance shed instead of through Timber Trail.

Chris Vance, a local resident, stated he currently houses three locals on French Street. He further stated he would like to restore his garage to house 2 more people, and would like to house BOEC staff there, but ADUs need to be deed restricted and that restricts volunteers and those who don't work, like entrepreneurs. He stated he would like not to be restricted in who can use his property. Mr. Holman stated staff will follow up and Council would need to consider the Town's ADU deed restriction if they intend to change the current rules.

There were no additional comments and Mayor Mamula closed Public Comment.

V) HISPANIC HERITAGE MONTH PROCLAMATION

Mayor Mamula read the proclamation into record.

VI) CONTINUED BUSINESS

- A) SECOND READING OF COUNCIL BILLS, SERIES 2023 - PUBLIC HEARINGS
B) COUNCIL BILL NO. 30, SERIES 2023 - A BILL FOR AN ORDINANCE TO LOCALLY LANDMARK A HISTORIC PROPERTY AT 106 SOUTH FRENCH STREET

Mayor Mamula read the title into the minutes. Mark Truckey, Community Development Director, stated this ordinance would landmark a historic property located at 106 South French Street. He also stated there were no changes from first reading.

Mayor Mamula opened the public hearing.

There were no public comments, and the hearing was closed.

Council Member Bergeron moved to approve COUNCIL BILL NO. 30, SERIES 2023 - A BILL FOR AN ORDINANCE TO LOCALLY LANDMARK A HISTORIC PROPERTY AT 106 SOUTH FRENCH STREET. Council Member Rankin seconded the motion.

The motion passed 7-0.

- C) COUNCIL BILL NO. 31, SERIES 2023 - A BILL FOR AN ORDINANCE TO LOCALLY LANDMARK A HISTORIC PROPERTY AT 112 NORTH FRENCH STREET

Mayor Mamula read the title into the minutes. Mark Truckey, Community Development Director, stated this ordinance would landmark a historic property located at 112 North French Street. He also stated there were no changes from first reading.

Mayor Mamula opened the public hearing.

There were no public comments, and the hearing was closed.

Council Member Bergeron moved to approve COUNCIL BILL NO. 31, SERIES 2023 - A BILL FOR AN ORDINANCE TO LOCALLY LANDMARK A HISTORIC PROPERTY AT 112 NORTH FRENCH STREET. Council Member Beckerman seconded the motion.

The motion passed 7-0.

VII) NEW BUSINESS

- A) FIRST READING OF COUNCIL BILLS, SERIES 2023

- 1) COUNCIL BILL NO. 32, SERIES 2023 - A BILL FOR AN ORDINANCE AMENDING POLICY 3A PERTAINING TO DENSITY CALCULATIONS FOR NET ZERO ENERGY BUILDINGS

Mayor Mamula read the title into the minutes. Sarah Crump, Planner III, stated this ordinance would amend Policy 3A pertaining to density calculations for net zero energy buildings.

Mayor Mamula opened the public hearing.

There were no public comments, and the hearing was closed.

Council Member Bergeron moved to approve COUNCIL BILL NO. 32, SERIES 2023 - A BILL FOR AN ORDINANCE AMENDING POLICY 3A PERTAINING TO DENSITY CALCULATIONS FOR NET ZERO ENERGY BUILDINGS. Council Member Saade seconded the motion.

The motion passed 7-0.

- B) RESOLUTIONS, SERIES 2023

- C) OTHER

VIII) PLANNING MATTERS

- A) PLANNING COMMISSION DECISIONS

Mayor Mamula declared the Planning Commission Decisions would stand approved as presented.

Council Member Beckerman stated he would like to make a motion to call up 114 S. Main Street Redevelopment, PL-2023-0077.

Mark Truckey stated that if called up, Council would need to set a date and time for this hearing.

Council Member Beckerman made a motion to call up 114 S. Main Street Redevelopment, PL-2023-0077, and set the hearing date for October 24, 2023, if that is agreeable with the applicant. Council Member Rankin seconded the motion. The motion passed 7-0.

IX) REPORT OF TOWN MANAGER AND STAFF

Town Manager Holman stated Mike Dudick has requested a special meeting the first week in October to discuss the BGV Development Proposal. Council agreed to a Special Meeting on October 6, 2023 at 8:30am for this purpose.

Town Manager Holman asked Council if they would like to attend the FIRC wine dinner at the Hearthstone. He also stated Deputy Town Manager Shannon Haynes will be acting Town Manager this weekend.

X) REPORT OF MAYOR AND COUNCIL MEMBERS

A. CAST/MMC

Mayor Mamula stated they had an MMC meeting, and the School District spoke. He stated there was discussion about post-high school options, and there are lot of options for kids who don't want to go to traditional college.

B. BRECKENRIDGE OPEN SPACE ADVISORY COMMITTEE

Council Member Bergeron stated there was a site visit to the Laurium Trailhead. He stated the committee is discussing beginner biking and hiking loops, parking strategy and trailhead assessments. He also stated the group discussed downhill trails with features and how they may make the trails not as inviting for other users.

C. BRECKENRIDGE TOURISM OFFICE

Council Member Carleton stated this is Oktoberfest weekend, and they will be receiving food donations for FIRC. He stated the Riverwalk is the stein sales location, and Lucy Kay thanked the BCA for its use. He stated the BTO is focused on achieving revenue goals and being a leader in stewardship. Council Member Carleton stated the brand study found we were average for "friendliness", but high in other categories.

D. BRECKENRIDGE HISTORY

No update.

E. BRECKENRIDGE CREATIVE ARTS

No update.

F. CML ADVISORY BOARD UPDATE

Council Member Saade stated CML is opposing Proposition HH as it restricts municipal decision making, among other things. She also stated the CML Board initiative this year is "civility" and CML is working on producing more materials for candidates. She stated they are also looking for bill sponsors to eliminate any mandate on land use based on last session's bill.

G. CHILD CARE ADVISORY COMMITTEE

No update.

H. SOCIAL EQUITY ADVISORY COMMISSION

No update.

XI) OTHER MATTERS

Council Member Bergeron stated he believes we need to increase our "friendliness" rating, and he would like to see us work on the Blue Route for the group of people who are concerned about that.

Council Member Carleton stated he'd like to see a work session on redevelopment and anticipated ordinances to recognize and prevent unintended consequences of redevelopment.

Council Member Beckerman stated regarding the Fairview Roundabout the crosswalks are dangerous and maybe we can look at flashing signs or something to make that area safer.

Mayor Mamula stated he would like to add to future projects lining the river between Maggie Pond and the Dredge.

XII) SCHEDULED MEETINGS

- A) SCHEDULED MEETINGS FOR OCTOBER, NOVEMBER AND DECEMBER.

XIII) ADJOURNMENT

With no further business to discuss, the meeting adjourned at 7:45pm. Submitted by Helen Cospolich, Municipal Services Director and Town Clerk.

ATTEST:

Helen Cospolich, CMC, Town Clerk

Eric S. Mamula, Mayor

DRAFT

Memo



To: Town Council
From: Sarah Crump, AICP, Planner III
Date: September 18, 2023 (for meeting of September 26, 2023)
Subject: Policy 3R Amendments- Net Zero Density Calculations Second Reading

Staff recommends adopting the attached amendment to the Development Code, Policy 3 (Absolute) Density/Intensity, 9-1-19-3A Section C. regarding density calculations for projects which achieve net zero.

The proposed amendment would add a new definition to the Development Code for “net zero energy building” and change the calculation of density for all projects, commercial and residential, which achieve net zero energy by allowing the floor area to be measured from a midpoint between the exterior and interior wall system. This calculation method will only be applied to projects which achieve net zero and utilize double wall construction techniques. This amendment would exempt a portion of the exterior wall from counting as density; however, it prevents the sacrifice of livable square footage in exchange for added energy efficiency and therefore doesn’t penalize net zero projects. Staff does not anticipate this density calculation change will result in larger projects with noticeably greater massing. Projects would continue to be limited in size by disturbance envelopes or setbacks, height, and overall density constraints.

There have been no changes to this amendment since the first reading, held September 12, 2023. Staff is available to answer any questions.

2
3 Series 2023

4 **A BILL FOR AN ORDINANCE AMENDING POLICY 3A PERTAINING TO**
5 **DENSITY CALCULATIONS FOR NET ZERO ENERGY BUILDINGS.**

6 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF
7 BRECKENRIDGE, COLORADO:

8 **Section 1.** That a new definition be added to section 9-1-5, entitled "Definitions", and
9 placed in alphabetical order with the language underlined, to read as follows:

10 9-1-5: DEFINITIONS:

11 NET ZERO ENERGY BUILDING: A building that produces at least as much energy as it
12 consumes on an annual basis.

13 **Section 2.** That a new subsection 7. be added to section C. of 9-1-19-3A: POLICY 3
14 (ABSOLUTE) DENSITY/INTENSITY, with the language underlined to read as follows:

15 **9-1-19-3A: POLICY 3 (ABSOLUTE) DENSITY/INTENSITY:**

16 C. General Provisions:

17 7. For any building which achieves net zero energy use, a net zero energy building, and
18 which uses a double exterior wall system, the computation of density shall be based on a fully
19 enclosed space that is measured from the midpoint of the wall system, measuring from the area
20 of the midpoint line between the interior wall and surrounding exterior wall that extends to a roof
21 of a building or portion thereof including dwelling areas of the building, closets, bathrooms, living
22 room, garage space of single-family, duplexes, and townhomes, interior hallways, interior
23 common spaces, commercial storage and basement areas, and all areas of the building that are
24 unfinished but have a floor to ceiling height of 5 feet or greater. Building areas that are not fully
25 enclosed and feature portions of open or mesh wall that exceed 12 inches vertically and are
26 entirely permeable across at least one façade such as trash dumpster enclosures, parking
27 garages, porches and similar areas shall not be counted as density. An energy analysis
28 prepared by a registered design professional, using an approved simulation tool, will be required

1 at the time of Development Permit application submittal demonstrating that the proposed design
2 will achieve a net zero energy outcome.

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

5 INTRODUCED, READ ON SECOND READING, APPROVED AND ORDERED
6 PUBLISHED IN FULL this 26th day of September 2023. A Public Hearing shall be held at the
7 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the 26th day of
8 September 2023, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the
9 Town.

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11 TOWN OF BRECKENRIDGE, a Colorado

12 municipal corporation

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16 By: _____

17 Eric S. Mamula, Mayor

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19 ATTEST:

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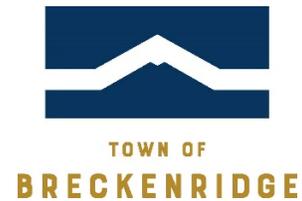
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23 _____

24 Helen Cospolich, CMC,

25 Town Clerk

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Memo

To: Town Council
From: Scott Reid, Deputy Town Manager
Kirsten Crawford, Town Attorney
Date: 9/20/2023 (for 9/26/23 Town Council meeting)
Subject: BOEC F&D Placer Lease Renewal (First Reading)

Summary

The Breckenridge Outdoor Education Center (BOEC) has requested a lease renewal for portions of the F&D Placer property on which the Griffith Lodge sits and many of BOEC's programs are run. As part of the renewal, the BOEC has asked to extend the lease for a 75-year period and adjust the boundaries of the "Exclusive Use" area within which the BOEC can safely operate its programs without public interference. With this request, there is a corresponding decrease in the "Non-Exclusive Use" area where BOEC programs can also run but public recreational access remains. Staff supports passage of the revised BOEC lease for the F&D Placer on first reading.

Background

The Town has long supported the BOEC in its mission to "expand the potential of people with disabilities and special needs through meaningful, educational and inspiring outdoor experiences." A portion of the Town's support has been provided in the form of a long-term lease (25 years) for portions of the Town-owned F&D Placer, where the Sawmill Reservoir is located. Under the existing agreement with BOEC, the Griffith Lodge was constructed and is maintained and managed by the BOEC.

At the November 22, 2022 Town Council work session, the BOEC presented its request to extend the term of the F&D Placer lease to include a 75-year term. Town Council supported BOEC's request and directed staff to prepare revisions to the lease and emphasized the following:

- The Town should retain the authority to terminate the lease within the 75-year term if the BOEC ceases to operate as a mission-based organization, and
- The BOEC is granted an opportunity to cure any default related to the mission-based use.
- The Town has authority to review the use of the Leased Premises at any time and at least every 10 years.
- The Town retains access for the public to the existing trail access.

The F&D Placer lease agreement divides the Town-owned parcel into "Exclusive Use" and "Non-Exclusive Use" areas (mapped in the attached exhibits). The Exclusive Use areas are areas of the F&D Placer where public access is prohibited so that the BOEC can safely operate its programs without public interference. Examples of the Exclusive Use areas include the Griffith Lodge, the staff lodging, intern cabin and "old" cabin, and the ropes courses. The Non-Exclusive Use areas are those portions of the property where the BOEC programs run, and the public is also allowed continued access. Examples of these Non-Exclusive Use areas include the trail network the surrounds the lake, the lake surface itself, and the trailhead at the top of Snowy Ridge Road.

Town open space staff and BOEC staff members have worked collaboratively over the years to improve management of both areas to allow public access where appropriate and safe and prevent public access to the Exclusive Use areas. This revised agreement (and accompanying exhibits) slightly expand the Exclusive Use area to include two additional areas for BOEC to improve and replace its two ropes courses on the northwest corner of the F&D Placer parcel. Public access to the Sawmill and Four O'clock trails has been preserved.

Staff have worked closely with the BOEC to revise the lease agreement to merge the BOEC's requests and Council direction. Attached is the resulting lease for Council's review as well as an attached ordinance approval at first reading. Staff support Council's approval of the revised lease at first reading and will be available at the work session to address any questions.

1 COUNCIL BILL NO. ____

2
3 Series 2023

4
5 **A BILL FOR AN ORDINANCE APPROVING THE F&D PLACER LEASE**
6 **BETWEEN THE TOWN OF BRECKENRIDGE AND THE BRECKENRIDGE**
7 **OUTDOOR EDUCATION CENTER.**

8
9 **(Approximately 38 acres of land generally described as the F & D Placer,**
10 **U.S.M.S. No. 16786)**

11
12 WHEREAS, the Town of Breckenridge owns approximately 38 acres of land located in
13 Summit County, Colorado and generally described as the F&D Placer, U.S.M.S. 16786; and

14 WHEREAS, the Town Council has agreed to renew its long-term lease for the Town’s
15 F&D Placer property with the Breckenridge Outdoor Education Center, a Colorado non-profit
16 corporation (“BOEC”); and

17 WHEREAS, a proposed Lease has been prepared by the Town Attorney and reviewed
18 by the Town Council; and

19 WHEREAS, Section 15.4 of the Breckenridge Town Charter provides:

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21 The council may lease, for such time as council shall determine, any real or
22 personal property to or from any person, firm, corporation, public and private,
23 governmental or otherwise.

24
25 and;

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27 WHEREAS, the term of the proposed Lease with the BOEC exceeds one year in length;

28 and

29
30 WHEREAS, Section 1-11-4 of the Breckenridge Town Code requires that any real estate
31 lease entered into by the Town that exceeds one year in length must be approved by ordinance.

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

34 **Section 1.** The F&D Placer Lease attached hereto as **Ex. A-1**, entitled “A Lease
35 between the Town of Breckenridge and the Breckenridge Outdoor Education Center” is hereby

1 approved, and the Town Manager is authorized, empowered, and directed to execute such
2 agreement for and on behalf of the Town of Breckenridge.

3 **Section 2.** Minor changes to or amendments of the approved agreement may be made
4 by the Town Attorney if the proposed changes or amendments do not substantially affect the
5 consideration to be received or paid by the Town pursuant to the approved agreement, or the
6 essential elements of the approved agreement.

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

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10 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
11 PUBLISHED IN FULL this ____ day of _____, 2023. A Public Hearing shall be held at the
12 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
13 _____, 2023, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the
14 Town.

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16 TOWN OF BRECKENRIDGE, a Colorado
17 municipal corporation

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21 By: _____

22 Eric S. Mamula, Mayor

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24 ATTEST:

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29 Helen Cospolich, CMC,

30 Town Clerk

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32 APPROVED IN FORM

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Town Attorney

AMENDED AND RESTATED LEASE

BETWEEN

TOWN OF BRECKENRIDGE,
a Colorado municipal corporation
("the Landlord")

and

BRECKENRIDGE OUTDOOR EDUCATION CENTER,
a Colorado non-profit corporation
("the Tenant")

F&D PLACER LEASE

THIS F&D PLACER LEASE ("Lease") is dated _____, 2023, and is between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation ("Landlord") and BRECKENRIDGE OUTDOOR EDUCATION CENTER, a Colorado non-profit corporation ("Tenant"). The Landlord and the Tenant are sometimes individually referred to in this Lease as a "Party", and are collectively referred to in this Lease as the "Parties."

ARTICLE 1- BASIC LEASE PROVISIONS

1.1 Leased Premises. In consideration of the Tenant's payment of rent and the keeping of the promises, covenants, and conditions required of the Tenant by this Lease, the Landlord leases to the Tenant, and the Tenant leases from the Landlord, for the term and upon the conditions of this Lease, approximately 38 acres of land generally described as the F&D Placer, U.S.M.S. No. 16786 ("Leased Premises"). The Leased Premises are more particularly described in the attached **Exhibit "A"**. The Leased Premises includes all buildings and improvements currently on the Leased Premises owned by the Tenant, including but not limited to the buildings commonly known as the "Griffith Lodge", "Old Cabin", and the "Intern Cabin", and improvements such as the high ropes course and other elements used for Tenant's programming. The Griffith Lodge, Old Cabin, and the Intern Cabin are referred to in this Lease as the "Buildings."

1.2 Exclusive and Non-Exclusive Portions of the Leased Premises. The Leased Premises are divided into two areas. The first area, described in this Lease as the "Exclusive Use Area", is leased to the Tenant for the Tenant's exclusive use as provided in Section 1.4. The second area, described in this Lease as the "Non-Exclusive Use Area", is also leased to the Tenant, but the Tenant's use of such area will be non-exclusive as provided in Section 1.4. The Exclusive Use Area and the Non-Exclusive Use Area are both depicted on the attached **Exhibit "B"**. Unless otherwise clearly indicated to the contrary, the term "Leased Premises" in this Lease includes both the Exclusive Use Area and the Non-Exclusive Use Area.

1.3 Term. The term of this Lease ("Term") shall be for a period of 75 years, commencing November 15, 2023 and terminating November 14, 2098. Nothing in this Lease permits the Tenant to use or occupy the Leased Premises after the expiration of the Term or any earlier termination of this Lease. If the Tenant continues to occupy the Leased Premises after such expiration or termination, such occupancy will (unless the Parties otherwise agree in writing) be an extension of this Lease on a year-to-year basis only, and such occupancy will be subject to all of the terms and conditions of this Lease.

1.4 Use of the Leased Premises.

(a) The Tenant will have exclusive use and possession of the Exclusive Use Area. The Tenant's use and possession of the Non-Exclusive Use Area will be non-exclusive and subject to such other uses and users as may be determined by the Landlord.

(b) Except as provided below, the Tenant's use of the Exclusive Use Area will be

exclusive and limited to:

(i) providing outdoor educational and recreational experiences for youth, persons with disabilities, and others, consistent with the Tenant's "Mission", as from time to time amended (the Tenant's Mission as of the date of this Lease is attached hereto as **Exhibit "C"**);

(ii) all functions (including parking and storage) and ancillary activities necessary to support and carry out Tenant's Mission;

(iii) maintaining, restoring, repairing, or removing all existing buildings and improvements currently located within the Exclusive Use Area; and

(iv) constructing and erecting such new buildings and improvements reasonably necessary to carry out Tenant's Mission, subject to the procedures set forth in Section 5.1(c) below.

(c) During the Term, Tenant's Mission will neither be modified in any substantive manner pertaining to the use of the Leased Premises nor repealed without the prior written consent of the Landlord, which consent will not be withheld unless the Landlord, in its judgment, determines that the proposed action would result in a substantial deviation from the Tenant's purpose as reflected in the Mission in effect at the commencement of this Lease. Tenant's failure to comply with section 1.4(c) shall constitute a default under Article 10.

(d) Notwithstanding anything contained in this Lease to the contrary, the Tenant may use the Exclusive Use Area for other uses, including, without limitation, special events, corporate retreats, private retreats, and weddings, so long as such uses do not become the Tenant's predominate use of the Exclusive Use Area. Notwithstanding the prohibitions set forth in Section 5.5 below, Tenant expressly has the right to lease, license, or sublet the Buildings for such uses within its discretion.

(e) The Tenant may take all reasonable steps to ensure the exclusivity of its use of the Exclusive Use Area, including, without limitation, the erection of signage, barricades, fences, and the restriction of vehicular and pedestrian traffic. No such action will be taken, however, without Landlord's prior written approval and compliance with any applicable law, regulations and ordinances.

(f) Tenant may use the Non-Exclusive Use Area for all uses that the Landlord allows to be undertaken within such area by the general public.

(g) The Landlord, acting in its governmental capacity, requires a special event permit for any outdoor special event with an expected attendance of 50 or more people. A special event is defined as a planned occurrence which includes an expected gathering of 50 or more people: (i) the primary purpose of which is entertainment; and (ii) to which the public or a substantial portion thereof is invited to attend, either by express invitation or by implication. Tenant will

comply with the special event permitting requirement when using the Leased Premises.

(h) Overnight camping in connection with Tenant's outdoor educational and recreational programs is permitted (subject to Tenant's compliance with Landlord's ordinances related to camping), but no permanent overnight lodging facilities or activities will be conducted by Tenant within the Non-Exclusive Use Area. Except as limited by this subsection (c) Landlord retains the right to use and control the Non-Exclusive Use Area.

(i) During the Term the Landlord and the Tenant may designate a portion or portions of the Non-Exclusive Use Area as being intended for Tenant's exclusive use. Such designation will be accomplished by written amendment to this Lease in accordance with the provision of Section 16.15. In the event of such subsequent designation, such portion(s) of the Non-Exclusive Use Area will thereafter be treated as being part of the Exclusive Use Area, and will be subject to all of the terms, conditions, provisions and limitations of this Lease that are applicable to the Exclusive Use Area.

(j) The Landlord covenants and agrees with the Tenant that it will not use or permit the use of the Non-Exclusive Use Area in a way that will substantially interfere with the Tenant's use of the Exclusive Use Area for the purposes stated in this Lease. Without limiting the generality of the foregoing:

(i) the Landlord will not permit the use of motorized vehicles by the general public in the Non-Exclusive Use Area, but the Landlord may use motorized vehicles to provide maintenance and administrative access with respect to its improvements and facilities constructed in the Non-Exclusive Use Area, as well as to deliver goods, supplies and equipment to be used in connection therewith; and

(ii) the Landlord may construct within the Non-Exclusive Use Area such improvements, including trails, picnic tables, picnic areas, horseshoe pits, fishing piers, public restrooms, and other similar uses as the Landlord may determine, but the Landlord will consult with Tenant with respect to the construction of its improvements within the Non-Exclusive Use Area in order to achieve maximum compatibility of such improvements with Tenant's use of the Non-Exclusive Use Area.

(k) The Tenant will not use the Leased Premises for any other purpose or in a manner that is not authorized by this Section 1.4 without the Landlord's prior written consent.

1.5 Surrender of Leased Premises.

(a) Upon the expiration or earlier termination of this Lease the Tenant will surrender the Leased Premises to the Landlord in good condition, ordinary wear and tear excepted. Not later than the last day of the Term, the Tenant will remove its personal property and fixtures (including, but not limited to, trade fixtures) from the Leased Premises. The cost of such removal will be borne by the Tenant, and the Tenant will repair all injury or damage done to the Leased Premises in connection with the installation or removal of the Tenant's personal property and trade fixtures. All of the Tenant's fixtures (including, but not limited to trade fixtures) that are so

attached to the Leased Premises that they cannot be removed without material injury to the Leased Premises will, at the Landlord's option, become the property of the Landlord upon installation and remain with the Leased Premises upon surrender.

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

1.6 Obligation To Meet and Confer. Throughout the Term the Parties will meet and confer at Landlord's request and at least every ten (10) years for the purpose of determining whether changed circumstances require an amendment to this Lease. The Parties will act reasonably and in good faith to determine if changed circumstances require an amendment to this Lease and, if so, will execute appropriate documentation amending this Lease.

1.7 Governmental Powers of the Landlord. The Tenant acknowledges that throughout the Term the Landlord has, and will continue to have, those governmental rights, powers, and authority provided by applicable law, including, but not limited to, the Breckenridge Town Charter and the ordinances of the Town of Breckenridge, all as amended from time to time. The Tenant further acknowledges that the provisions of this Lease do not limit or restrict such rights, powers, and authority of the Landlord with respect to the Leased Premises when the Landlord is acting in its governmental capacity as a home-rule municipality under Colorado law.

ARTICLE 2 - RENT

2.1 Rent. The total rent to be paid by the Tenant for the full Term is Ten Dollars (\$10.00), the receipt and sufficiency of which is acknowledged by the Landlord.

2.2 "Additional Rent" Defined. Any amount due to the Landlord from the Tenant under this Lease that is not specifically identified as "Rent" is additional rent.

2.3 Interest On Past Due Amounts. The Tenant will pay interest to the Landlord on any sum due to the Landlord under this Lease that is 30 days or more past due at the rate of 12% per annum from the date due until the date such payment is fully paid.

2.4 Place And Manner Of Payments. All payments due to the Landlord under this Lease will be made to:

Town of Breckenridge Clerk & Finance Division
Attn: Accounts Receivable

P.O. Box 168
Breckenridge, CO 80424

or at such other place as the Town Manager of the Town of Breckenridge ("Town Manager") may hereafter designate by written notice provided to the Tenant in accordance with Section 16.2 of this Lease. All sums will be made in legal tender of the United States. Any check given to the Landlord will be received subject to collection, and the Tenant agrees to pay any charges, fees or costs incurred by the Landlord for the collection, including reasonable attorney's fees.

2.5 Landlord's Lien and Security Interest. The Landlord has a first security interest and a lien for all rent and other sums of money becoming due hereunder from the Tenant upon all goods, wares, equipment, fixtures, furniture, inventory and other personal property of the Tenant situated in or located upon the Leased Premises, and such property may not be removed from the Leased Premises without the express written consent of the Landlord until all arrearages in rent and other sums of money then due to the Landlord hereunder have first been paid. Upon the occurrence of any event of default by the Tenant, the Landlord may foreclose the security interest and lien in the manner provided by law. The Landlord may file a financing statement (and necessary extensions, renewals or replacements thereof throughout the Term) in a form legally sufficient to perfect its security interest and lien granted pursuant to this Section. The Tenant will execute such documents as may be required during the Term to maintain the validity and priority of the security interest and lien provided for in this Section.

ARTICLE 3 - LANDLORD'S DISCLAIMERS AND EXCULPATORY PROVISIONS

3.1 "As Is" Condition of Leased Premises. The Tenant acknowledges the Leased Premises are leased "AS IS," "WHERE IS" and "WITH ALL FAULTS", and the Landlord does not warrant or make any representation, express or implied, relating to the MERCHANTABILITY, quantity, quality, condition, suitability or FITNESS FOR ANY PURPOSE WHATSOEVER of the Leased Premises or any portion thereof. Except as expressly provided in this Lease, the Landlord 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 Leased Premises, or any portion thereof.

3.2 Landlord's Non-liability. As a material part of the consideration to be received by the Landlord under this Lease, the Tenant assumes all risk of damage to property or injury to persons in or upon the Exclusive Use Area from any cause other than the Landlord's gross negligence or intentional act, and the Tenant waives all claims in respect thereof against the Landlord.

3.3 Limitation of Remedies. The Landlord is not liable for any indirect, special, or consequential damages, including, but not limited to, loss of anticipated profits, revenue or savings, business interruption, or any similar claim arising from the Landlord's breach of this Lease, even if the Landlord has been advised of the possibility of such damages. This limitation applies notwithstanding the failure of an essential purpose of any limited remedy.

ARTICLE 4 - TENANT'S AFFIRMATIVE OBLIGATIONS

4.1 Tenant Liable For Costs to Prepare Leased Premises For Use By the Tenant. The Tenant is solely responsible for all work required to be done, and costs incurred in connection with, the preparation of the Leased Premises for the Tenant's use.

4.2 Taxes.

(a) As used in this Section, the term "Taxes" means all personal property and real property taxes levied, assessed or imposed by any taxing authority arising out of the Tenant's occupancy and use of the Leased Premises pursuant to this Lease.

(b) Pursuant to Section 39-3-105, C.R.S., all real or personal property owned by the Landlord is exempt from taxation. However, the Parties acknowledge that the Tenant's occupancy and use of the Leased Premises pursuant to this Lease may be deemed to be a "taxable possessory interest" pursuant to Section 39-1-103(17)(a), C.R.S.

(c) The Tenant will pay all Taxes lawfully assessed arising from its occupancy and use of the Leased Premises pursuant to this Lease, and will indemnify and defend the Landlord from any such Taxes. The Tenant will pay all Taxes in a timely manner. Upon the Landlord's written request the Tenant will provide to the Landlord a photostatic copy of the receipt(s) or cancelled check(s) showing payment of the Taxes. The Tenant may pay any Taxes in installments if permitted by law.

(d) If the Tenant is liable for the payment of any Taxes arising from the Tenant's occupancy and use of the Leased Premises pursuant to this Lease, the Tenant may, at its sole expense, contest such Taxes by the commencement and prosecution, in good faith and with due diligence, of appropriate legal proceedings. The Tenant will make timely payment of such Taxes if the Tenant loses the contest. The Tenant will advise the Landlord prior to instituting any such contest and will as a condition of exercising such right provide the Landlord such reasonable assurance as it may request that such contest will be in compliance with the provisions of this Section. The Landlord, at the Tenant's sole cost and expense, will reasonably cooperate with the Tenant in any such contest; may join in the contest; and will execute and deliver such documents and instruments as may be necessary or appropriate for prosecuting an effective contest.

4.3 Compliance With Laws. The Tenant, at its sole cost and expense, will comply with all laws, ordinances, orders, and regulations of all governmental authorities with respect to the use of the Leased Premises, as amended from time to time throughout the Term. A judgment of any court or the admission of the Tenant in any action or proceeding against the Tenant, whether the Landlord is a party thereto or not, that the Tenant has violated any law, ordinance, requirement or order in the use of the Leased Premises will be conclusive of the fact as between the Landlord and the Tenant.

4.4 Non-Discrimination. The Tenant:

(a) will not discriminate against any employee or applicant for employment to work

at the Leased Premises because of race, color, creed, sex, sexual orientation, religion, national origin, or disability;

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

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

(d) will comply with all applicable federal, state, and local laws, rules and regulations. Without limiting the generality of the foregoing, the Tenant will comply with the applicable provisions of the Americans With Disabilities Act, 42 U.S.C. §12101, et seq. (Public Law 101-336), and all applicable regulations and rules promulgated thereunder by any regulatory agency.

(e) The indemnification and termination provisions of this Lease apply to the Tenant's failure to comply with all applicable laws or regulations.

4.5 Tenant To Pay Certain Charges. In addition to the payment of Taxes as required by Section 4.2, the Tenant covenants and agrees to pay, or cause to be paid, before any fine, penalty, interest or cost may be added thereto, all governmental charges that are levied, assessed, imposed, or that could become a lien upon the Leased Premises.

ARTICLE 5 - TENANT'S NEGATIVE OBLIGATIONS

5.1 Improvements.

(a) As used in this Article 5, "Improvement" means any physical improvement made, or proposed to be made, to the Leased Premises (including, without limitation, the Buildings).

(b) Landlord and Tenant acknowledge that Tenant, acting under a prior lease with the Landlord, has caused certain Improvements to be located upon the Exclusive Use Area. Tenant may continue to maintain and repair such Improvements throughout the Term without further approval from Landlord, unless such Improvements are proposed to be enlarged or otherwise modified, in which event the approval process set forth in subsection (c) will apply.

(c) No additional Improvement may be made by the Tenant except under the following conditions:

(i) No Improvement may be undertaken until the Tenant has obtained approval of plans and specifications for such Improvement from the Landlord, acting in its capacity as owner of the Leased Premises (and not in its governmental capacity). In connection therewith, the Landlord has the right to review and approve a proposed

Improvement in its sole and absolute discretion.

(ii) The Tenant must also obtain a "Development Permit" from the Landlord, acting in the Landlord's governmental capacity.

(iii) An Improvement must be constructed under the supervision of an architect or engineer licensed in the State of Colorado, selected and paid by the Tenant.

(iv) All work done in connection with the construction of an Improvement must be done in a good and workmanlike manner and in material conformity with the plans and specifications that are approved by the Landlord.

(v) The construction of an approved Improvement must be prosecuted with reasonable dispatch, subject to delays caused by Force Majeure Events (see Section 16.12), before any work begins. The Tenant must procure or cause the contractor for the work to procure insurance in accordance with Article 7 of this Lease, including worker's compensation insurance covering all persons employed in connection with the work.

5.2 Title to Improvements/Reversion. Upon completion, Tenant shall be the owner of all Tenant Improvements (which includes any Improvements and Buildings subsequently approved and erected within the Exclusive Use Area during the Term). On the expiration or earlier termination of this Lease, the Tenant Improvements (together with any alterations made to same from time to time), all fixtures incorporated in the Leased Premises owned by Tenant, and Tenant's property located in, on, or at the Leased Premises or otherwise constituting part of the Leased Premises shall be quit claimed to Landlord, in such form and delivery as reasonably requested by Landlord, subject to the Voluntary Termination provision set forth in Section 10.2 below. Notwithstanding the provisions of this paragraph, the machinery and equipment of Tenant, other than that which is affixed to the Leased Premises so that it cannot be removed without damage to the Leased Premises, shall remain the property of Tenant and may be removed within thirty (30) days after the expiration or sooner termination of this Lease, unless otherwise agreed to by the Parties in accordance with Section 7.4 below or under terms established by mutual agreement in writing by the Parties.

5.3 Tenant's Improvements In Exclusive Use Area Not To Be Removed Without Landlord's Consent. The Tenant's Improvements located within the Exclusive Use Area may not be removed during the Term without the prior written consent of the Landlord. Any unauthorized removal of such Improvements will constitute a default under this Lease.

5.4 Landscaping. No landscaping may be installed by the Tenant at the Leased Premises without the Landlord's prior written consent. Once installed, all landscaping will be maintained by the Tenant in accordance with the approved landscaping plan for the Leased Premises.

5.5 Subletting and Assignment. The Tenant may not sublet, assign, or transfer any of its rights under this Lease without the prior written consent of the Landlord (but such provision does not prohibit the Tenant's use of the Leased Premises for those allowed uses described in Section 1.4). If the Tenant attempts to make any assignment or subletting without the requisite consent

of the Landlord, or attempts to grant a license to use the Leased Premises, such assignment, subletting, or license will be void and a default of this Lease. Any consent by the Landlord to any assignment of this Lease or any consent by the Landlord to any sublease or license of the Leased Premises will not be a waiver by the Landlord of the provisions of this Section as to subsequent transactions of the same or similar nature. In the event of any permitted assignment, sublease, or license, the Landlord may, but is not required to, release the Tenant from its obligations hereunder for the remainder of the Term. If the Landlord consents to an assignment, sublease, or license the Tenant may be required, as a condition of granting consent, to pay the Landlord's reasonable costs incurred in considering the proposed assignment, sublease, or license including, but not limited to, legal fees and credit checks.

5.6 Assignment By Operation of Law. Neither this Lease nor any interest in this Lease is assignable or transferable by operation of law including if any of the following events occur:

- (a) any proceeding under the Bankruptcy Code, or any amendment thereto, is commenced by or against the Tenant;
- (b) the Tenant is adjudged insolvent;
- (c) the Tenant makes an assignment for the benefit of creditors;
- (d) a post-judgment writ of attachment or execution is levied on the leasehold estate created by this Lease and not released or satisfied within 30 days thereafter; or
- (e) a receiver is appointed for the Tenant with authority to take possession or control of the Leased Premises or the business conducted therein by the Tenant, then this Lease, at the option of the Landlord, will immediately terminate and will not be treated as an asset of the Tenant.

5.7 Waste or Nuisance. The Tenant will not commit or permit to be committed on the Leased Premises any waste, any public or private nuisance, or any other act or thing prohibited by law.

5.8 Mechanic's Liens.

(a) In connection with the construction of any Improvements, the Tenant will cause the payment of all proper and valid invoices and charges of all contractors, subcontractors, suppliers, materialmen and similar parties who furnish services or materials in connection with the construction process. In the event any person ever records a mechanic's lien to enforce any claim for services or materials alleged to have been provided in connection with the Leased Premises, the Tenant will cause the same to be released of record within 60 days after the recordation thereof, and the Tenant will be liable to satisfy and cause a discharge of any such mechanic's lien claim. Notwithstanding the foregoing, the Tenant may contest any such mechanic's lien claim, provided that the Tenant conducts such contest in a timely manner and with due diligence, and that the Tenant provides the Landlord with such security in connection therewith as the Landlord may reasonably require. In connection with any such contest, the Landlord may join and participate in any such contest, at the Tenant's expense (with

participation to include, without limitation, the execution and filing of pleadings and the provision and gathering of testimony and other evidence). In the event the Tenant loses any such contest, with all further rights of appeal having expired, the Tenant must satisfy the mechanic's lien claim in full prior to any foreclosure sale or other disposition of the Leased Premises which is made for the purpose of satisfying the claim.

(b) Prior to commencement of construction of any Improvements, the Tenant will deliver notices to all contractors and subcontractors and post notices in accordance with Section 38-22-105, C.R.S. (as it may be amended or in accordance with similar statutes that may be substituted therefor in the future), in locations that will be visible by parties performing any work, which notices will state that the Landlord is not responsible for the payment of such work and setting forth such other information as may be reasonably required pursuant to such statutory provisions.

ARTICLE 6 - UTILITIES, TRASH REMOVAL AND MAINTENANCE

6.1 Utilities. The Tenant will pay or cause to be paid, before any notice of delinquency, at its sole cost and expense, all charges for water, gas, heat, electricity, power, telephone, internet, or any other communications services, sewer service, trash removal, and any other utilities charged or attributable to Tenant's use of the Exclusive Use Area, and all other charges for services or utilities of any kind or nature used in, upon, or about the Exclusive Use Area by the Tenant, including the cost of installing or moving meters for such utility charges. Notwithstanding the foregoing, the Tenant may contest any such charges so long as the Tenant diligently prosecutes the same pursuant to appropriate legal proceedings. If any such charge leads to a mechanic's or other lien claim against the Leased Premises, such contest will also be conducted in conformity with the standards hereof for contesting mechanic's lien claims. The Tenant will contract for all required utility services in its sole name.

6.2 Maintenance.

(a) Throughout the Term the Tenant will, at its expense, keep, operate, and maintain those Improvements constructed by Tenant (including, without limitation, all buildings, trails, fences, and exercise, training or programming apparatus) located on the Leased Premises in good order, condition and repair.

(b) Tenant will, at its expense, provide all required maintenance for all of the Buildings located on the Leased Premises, including, but not limited to, the Griffith Lodge.

(c) The Landlord will provide whatever maintenance it determines (in its sole and absolute discretion) to be required with respect to the public roads or trails located on the Leased Premises.

(d) Any improvements constructed on the Leased Premises by both the Landlord and the Tenant will be jointly maintained by the Parties in the absence of any agreement to the contrary.

(e) The Landlord will maintain the reservoir, the water located therein, and the dam located in the Non-Exclusive Use Area.

6.3 Snow Removal; Access. Tenant.

(a) Snow removal within the Exclusive Use Area is the sole responsibility of the Tenant.

(b) Snow removal on the public access road (identified on **Exhibit B**) is the sole responsibility of the Tenant.

6.4 Painting/Staining. The Tenant is responsible for any desired or required painting or staining of the Buildings. Painting or staining is an "Improvement", and the procedures and requirements of Section 5.1 will apply to the painting of the Building; provided, however, that subsection Section 5.1 (c)(iii) (requiring all Improvements to be constructed under the supervision of an architect or engineer) does not apply to the painting or staining of the Buildings.

6.5 Inspection And Entry. The Landlord and the Landlord's authorized representatives may enter the Leased Premises at all times during reasonable hours to inspect the Leased Premises. The Tenant further agrees that the Landlord may go upon the Leased Premises at all times and:

a) make any necessary repairs to the Leased Premises and perform any work therein that may be necessary to comply with any laws, ordinances, rules or regulations of any public authority or that the Landlord may deem necessary to prevent waste or deterioration of the Leased Premises;

b) post any notice provided for by law; or

c) otherwise protect any and all rights of the Landlord, all without any liability to the Tenant for damages or any abatement of rent.

Nothing in this Section implies or creates any duty on the part of the Landlord to do any work that under any provision of this Lease the Tenant may be or is required to do, nor will it constitute a waiver of the Tenant's default in failing to do such work. No reasonable exercise by the Landlord of any rights herein reserved will entitle the Tenant to any damage or compensation of any kind from the Landlord for any injury, loss, damage, or inconvenience occasioned thereby, or to any abatement of rent.

6.6 Parking. Tenant may utilize the existing parking areas in the Exclusive Use Area. Any additions or improvements to the parking areas will be the Tenant's responsibility and must be approved in advance by the Landlord.

ARTICLE 7 - INSURANCE

7.1 Tenant's Liability Insurance. Throughout the Term the Tenant will, at its expense,

continuously maintain commercial general liability insurance covering Tenant's use of both the Exclusive Use Area and the Non-Exclusive Use Area with minimum combined single limits of not less than \$1,000,000. The Tenant's liability insurance policy will be endorsed to include the Landlord as an additional insured.

7.2 Worker's Compensation Insurance. Throughout the Term the Tenant will, at its expense, continuously maintain worker's compensation insurance as required by Colorado law insuring the payment of compensation to all its employees engaged in the performance of work at the Leased Premises.

7.3 Additional Insurance Provisions. Every insurance policy required by this Article 7 to be provided by the Tenant will be primary insurance, and any insurance carried by the Landlord, its officers, or its employees, or carried by or provided through any insurance pool of which the Landlord is a member, will be excess and not contributory insurance to that provided by the Tenant. The Tenant is solely responsible for any deductible losses under its required insurance policies.

7.4 Insurance Criteria. Insurance policies required by this Lease will:

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

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

7.5 Evidence of Insurance. Prior to the commencement of this Lease, and on each subsequent renewal or replacement of the required insurance policies, the Tenant must provide to the Landlord a certificate of insurance and additional insured endorsement evidencing compliance with the requirements of this Section. All required insurance policies will be renewed or replaced and maintained by the Tenant throughout the Term to assure continuous coverage. If the Tenant fails to give the required insurance certificate within thirty (30) days after notice or demand for it, such action will constitute a default under this Lease, and the Landlord may then proceed as provided in Article 10 of this Lease, and/or the Landlord may obtain and pay for that insurance and receive reimbursement from the Tenant, together with interest thereon at the rate of 12% per annum.

7.6 Building Insurance. Throughout the Term the Tenant will, at its expense, keep the Buildings insured against damage and destruction by fire, earthquake, vandalism, and other perils in the amount to be determined from time to time. Landlord has no interest in the proceeds of Tenant's Building insurance.

ARTICLE 8 - INDEMNIFICATION

8.1 Indemnification By Tenant. The Tenant will indemnify and defend the Landlord, its

officers, employees, insurers, and self-insurance pool from all liability, claims, and demands, on account of injury, loss, or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, arising out of or in any manner connected with: (i) the Tenant's use or possession of the Exclusive Use Area; (ii) the use of the Non-Exclusive Use Area by the Tenant, its agents, employees, guests, or invitees (including, without limitation, those persons participating in Tenant's organized activities); or (iii) Tenant's breach of this Lease, except to the extent that such liability, claim, or demand arises through the gross negligence or intentional wrongful act of the Landlord, its officers, employees, or agents, or the Landlord's breach of this Lease. If indemnification is required under this Section, the Tenant will investigate, handle, respond to, provide defense for and defend against, any such liability, claims, or demands at its expense, and bear all other costs and expenses related thereto, including court costs and attorney fees.

8.2 Survival. All indemnity obligations provided for in this Lease will survive the expiration or termination of this Lease, and will be fully enforceable thereafter.

ARTICLE 9 - EMINENT DOMAIN

9.1 Eminent Domain.

(a) The terms "eminent domain," "condemnation", and "taken" and related terms as used in this Section include any taking for public or quasi-public use and private purchases in lieu of condemnation by any authority authorized by applicable law to exercise the power of eminent domain.

(b) If the entire Leased Premises are taken by eminent domain, this Lease will automatically end on the earlier of:

- (i) the date title vests; or
- (ii) the date the Tenant is dispossessed by the condemning authority.

(c) If the taking of a part of the Leased Premises materially interferes with the Tenant's ability to continue its business operations in substantially the same manner then the Tenant may terminate this Lease on the earlier of:

- (i) the date when title vests;
- (ii) the date the Tenant is dispossessed by the condemning authority; or
- (iii) 60 days following notice to the Tenant of the date when vesting or dispossession is to occur.

(d) Any compensation or damages paid by a condemning authority will be divided between the Landlord and the Tenant as follows:

- (i) the Tenant is entitled to that portion of the compensation or damages that represents the amount of the Tenant's moving expenses, business dislocation damages, the Tenant's personal property and fixtures, costs associated with securing commensurate replacement employee housing, administrative offices, programming areas, garage space and gear storage, and the fair market value of Tenant Improvements paid for by the Tenant; and
- (ii) the balance of such compensation or damages belongs to the Landlord.

ARTICLE 10 – DEFAULT/TERMINATION AND OTHER REMEDIES

10.1 Default By Tenant. The occurrence of any one or more of the following events will constitute a default and breach of the Lease by the Tenant:

- (a) The vacating or abandonment of the Leased Premises by the Tenant.
- (b) The failure by the Tenant to make any payment of rent, additional rent, or any other payment required to be made by the Tenant hereunder, as and when due, when such failure continues for a period of ten (10) days after service of written notice thereof by the Landlord to the Tenant.
- (c) The failure by the Tenant to observe or perform any of the other covenants, conditions, or provisions of this Lease to be observed or performed by the Tenant, or to obey rules promulgated by the Landlord, within thirty (30) days after service of written notice thereof by the Landlord to the Tenant. In the event of a non-monetary default that is not capable of being corrected within thirty (30) days, the Tenant will not be default if it commences correcting the default within thirty (30) days of service of a demand for compliance notice and thereafter corrects the default with due diligence.
- (d) The failure by the Tenant to substantially satisfy its Mission, subject to the following:
 - (i) In the event Landlord reasonably determines Tenant is not substantially satisfying its Mission, or if Landlord determines Tenant's operations and programming have substantially deviated from the Mission set forth above, Landlord shall provide Tenant with written notice providing a written description of such deviation and Tenant shall have 90 days to provide landlord with a plan outlining the efforts Tenant will pursue in order to satisfy its Mission or otherwise amend its operations and programming.
 - (ii) Upon receiving Tenant's plan, Landlord shall not unreasonably withhold its approval.
 - (iii) The Tenant will not be in default if it commences correcting such default within ninety (90) days of service of Landlord's written notice, subject to input and cooperation from Landlord.

(e) The making by the Tenant of any general assignment or general arrangement for the benefit of creditors; the filing by or against the Tenant of a petition to have the Tenant adjudged bankrupt, or a petition or reorganization or arrangement under any law relating to bankruptcy; the appointment of a trustee or a receiver to take possession of substantially all of the Tenant's assets located at the Leased Premises or of the Tenant's interest in this Lease; or the attachment, execution or other judicial seizure of substantially all of the Tenant's interest in this Lease.

10.2 Voluntary Termination. If Tenant voluntarily terminates this Lease during the initial fifty (50) years of the Lease Term, the Parties agree that Landlord shall pay fair market value, established at the time of termination under this Section 10.2, or the amount that was paid for the initial construction of the Tenant Improvements, whichever amount is lesser. If Tenant voluntarily terminates this Lease any time during year 51 through 60 of the Lease Term, the Parties agree that Landlord shall pay fair market value, established at the time of termination under this Section 10.2, or the amount that was paid for the initial construction of the Tenant Improvements, whichever amount is the lesser (the "Established Amount"); provided, however, that the Established Amount shall be reduced by 10% for each year from year 51 through year 60. In the event Tenant voluntarily terminates the Lease in any years after year 60 of the Lease Term, the Parties agree that Landlord shall not pay any amount for the Tenant Improvements.

10.3 Landlord's Remedies Upon Default. If the Tenant is in default under this Lease, the Landlord has all of the remedies provided for in such circumstances by Colorado law.

10.4 Default By Landlord. The Landlord will be in default under this Lease if the Landlord fails to comply with any of the terms, provisions, or covenants of this Lease within ten (10) days following service of written notice thereof by the Tenant. In the event of a non-monetary default that is not capable of being corrected within ten (10) days, the Landlord will not be default if the Landlord commences correcting the default within ten (10) days of receipt of notification thereof and thereafter corrects the default with due diligence.

10.5 Tenant's Remedies Upon Default. If the Landlord is in default under this Lease, the Tenant has all of the remedies provided for in such circumstances by Colorado law.

ARTICLE 11 -NONDISTURBANCE

11.1 Quiet Enjoyment. Subject to the terms and conditions of this Lease, the Landlord covenants that so long as there is no default in any of the covenants, conditions, or provisions of this Lease to be performed, observed, or kept by the Tenant, the Tenant will peaceably and quietly hold and enjoy the Leased Premises for the entire Term.

ARTICLE 12 -LANDLORD'S RULES

12.1 Rules. The Tenant will faithfully observe and comply with any rules and regulations promulgated by the Landlord with respect to the Leased Premises. The Landlord's rules and regulations must be reasonable, and may not unilaterally change or significantly alter the material terms and conditions of this Lease, nor shall they impede Tenant's ability to carry out its

Mission. The rules and regulations, and any amendments thereto, will be binding upon the Tenant upon delivery to the Tenant.

ARTICLE 13 - HAZARDOUS MATERIALS

13.1 Hazardous Materials - Defined. As used in this Section, the term "Hazardous Materials" means any chemical, material, substance or waste:

- (i) exposure to which is prohibited, limited, or regulated by any federal, state, county, regional or local authority, or other governmental authority of any nature; or
- (ii) that, even if not so regulated, may or could pose a hazard to the health or safety of the occupants of the Leased Premises including, without limitation, any petroleum, crude oil (any fraction thereof), natural gas, natural gas liquids, and those substances defined as "hazardous substances", "hazardous materials", "hazardous wastes" or other similar designations in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 6901 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq., and any other governmental statutes, laws, ordinances, rules, regulations, and precautions.

13.2 Hazardous Materials - Prohibited. The Tenant will full comply with all statutes, laws, ordinances, rules, regulations, and precautions now or hereafter mandated or advised by any federal, state, local, or other governmental agency with respect to the use, generation, storage, or disposal of Hazardous Materials. The Tenant will not cause, or allow anyone else to cause, any Hazardous Materials to be used, generated, stored, or disposed of on or about the Leased Premises without the prior written consent of the Landlord, which consent may be revoked at any time. The Tenant's indemnification of the Landlord pursuant to this Lease extends to all liability, including all foreseeable and unforeseeable consequential damages, directly or indirectly arising out of the use, generation, storage, or disposal of Hazardous Materials at the Leased Premises by the Tenant, or any person claiming under the Tenant, including, without limitation, the cost of any required or necessary repair, cleanup, or detoxification and the preparation of any closure or other required plans, whether such action is required or necessary prior to or following the termination of this Lease, to the full extent that such action is attributable, directly or indirectly, to the use, generation, storage, or disposal of Hazardous Materials by the Tenant or any person claiming under the Tenant; provided, however, the written consent by the Landlord to the use, generation, storage, or disposal of Hazardous Materials will excuse the Tenant from the Tenant's obligation of indemnification. In the event the Tenant is in breach of the covenants herein, after notice to the Tenant and the expiration of the earlier of:

- (a) the cure period provided in Section 10.1(c);
- (b) the cure period permitted under applicable law, regulation, or order, then the Landlord may, in its sole discretion, declare a default under this Lease and/or cause the Leased Premises to be freed from the Hazardous Material and the cost thereof will be deemed additional rent hereunder and will immediately be due and payable from the Tenant. The obligations of the Tenant under this Section 13.2 will survive the expiration or termination of this Lease.

ARTICLE 14 - RIGHT OF FIRST REFUSAL

14.1 Right of First Refusal. If, at any time during the Term, the Landlord receives an offer for the purchase of the Leased Premises the Landlord agrees not to accept such offer or make any contract of sale with respect to the Leased Premises without first giving the Tenant the right to acquire the Leased Premises upon the same terms and conditions contained in such offer of purchase. The Landlord agrees to give to the Tenant written notice of the terms and conditions of such offer in the manner provided in Section 16.2. If the Tenant fails to enter into a bona fide contract upon the same terms and conditions as those proposed to the Landlord by the prospective purchaser within ninety (90) days after the giving of such notice, then the Landlord has the right, and will be at liberty, to sell the Leased Premises to the party making the offer. If, for any reason, the Leased Premises are not sold to such party, notice of any subsequent bona fide offer, acceptable to the Landlord, will be given to the Tenant upon the same terms and conditions for acceptance or rejection as described above. If the Tenant does not exercise its right of first refusal pursuant to this Section 14.1 and the Leased Premises are sold by the Landlord, the option to purchase set forth in this Section 14.1 will automatically terminate and be of no further force and effect.

ARTICLE 15 - DAMAGE OR DESTRUCTION OF TENANT'S IMPROVEMENTS

15.1 Damage or Destruction of Buildings.

- (a) If any of the Buildings are damaged in whole or in part from any cause, and:
 - (i) the Buildings can be substantially repaired and restored within one year from the date of the damage using standard working methods and procedures, and
 - (ii) the damage is covered by Tenant's building insurance as described in Section 7.6, then Tenant shall, at its expense, promptly and diligently repair and restore the Buildings to substantially the same condition as existed before the damage. The repair and restoration shall be made within one year from the date of the damage unless the delay is due to causes beyond the Tenant's reasonable control.
- (b) If the Buildings cannot be repaired and restored within one year from the date of the damage, if the damage is not covered by Tenant's Building insurance as described in Section 7.6, if Tenant determines restoring the Buildings to their previous condition does not serve Tenant's Mission, or if Tenant has an alternative proposal to repair or restore the Buildings that better serves Tenant's Mission, then the Parties shall work together in good faith to determine a more appropriate approach to repairing or restoring such damaged Buildings.

ARTICLE 16 - MISCELLANEOUS

16.1 Attorney's Fees/Costs. If any action is brought in a court of law by either Party to this Lease concerning the enforcement, interpretation, or construction of this Lease, the prevailing Party, either at trial or upon appeal, will be entitled to reasonable attorney's fees, as well as costs,

including expert witness' fees, incurred in the prosecution or defense of such action.

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

If intended for the Landlord to:

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

If intended for the Tenant, to:

Breckenridge Outdoor Education Center
P.O. Box 697
Attn: Executive Director
Breckenridge, CO 80424
Telephone number: (970) 453-6422

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

16.3 Incorporation of Exhibits. All exhibits referenced in this Lease are incorporated into this Lease by reference.

16.4 Additional Instruments. The Parties will deliver or caused to be delivered upon request such additional documents and instruments as may be required to accomplish the intent of this Lease.

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

16.6 Time of the Essence. Time is of the essence under this Lease for the performance and observance of all obligations of the Landlord and the Tenant hereunder, and all provisions of this Lease are to be strictly construed.

16.7 Severability. If any provision of this Lease is held invalid or unenforceable, the remainder of this Lease will not be affected thereby, it being the intent of the Parties that the provisions of this Lease will be enforceable to the fullest extent permitted by law. There will be substituted for any invalid or unenforceable provision a valid and enforceable provision as similar as possible to the invalid provision.

16.8 Brokerage Commission. The Landlord and the Tenant mutually warrant and represent to one another that neither of them has incurred any liability arising by, through, or under that Party for the payment of any brokerage fee or commission in connection with the transaction contemplated herein. If either of the Parties breaches the foregoing warranty and representation, it will be liable to the other Party for any damage, liability, loss, claim or expense, including attorneys' fees, suffered by the other Party as a result of such breach. The liable Party will pay to the other Party such sums as are due and owing pursuant to the foregoing within 30 days after demand by the other Party.

16.9 Authority. The person signing this Lease for the Landlord represents and warrants to the Tenant that the Landlord has all inherent legal power and authority requisite to entering into this Lease; has taken all action necessary to authorize the execution of this Lease and to perform and satisfy the transactions and obligations contained herein; and has duly authorized the signatory to execute and deliver this Lease on behalf of the Landlord. The person signing this Lease for the Tenant represents and warrants to the Landlord that the Tenant has all inherent legal power and authority requisite to entering into this Lease; has taken all actions necessary to authorize the execution and delivery of this Lease and to perform and satisfy the transactions and obligations contained herein; and has duly authorized the signatory to execute and deliver this Lease on behalf of the Tenant.

16.10 Force Majeure Events. Except to the extent otherwise expressly provided by this Lease, if either the Landlord or the Tenant is delayed in the performance of any act required under this Lease by reason of strikes, boycotts, labor dispute, embargoes, shortages of materials, acts of God, acts of the public enemy, pandemic, acts of superior governmental authority, weather conditions, floods, riots, rebellion, terrorism, sabotage, or any other circumstance for which such Party is not responsible or that is not in its power to control, the time for the performance of any such act will be extended for a period equivalent to the period of such delay. Notwithstanding any indications to the contrary contained in the foregoing, Force Majeure Events do not include: (a) any financial incapacities or burdens suffered by either Party; (b) the effect of laws and regulations or the application and enforcement of the same by any governmental entity, or (c) a failure of timely performance by an agent or contractor of either Party. The application of Force Majeure Events is subject to the express limitations thereon contained in the other provisions of this Lease.

16.11 Recording. A fully signed copy of this Lease shall be recorded in the real property records of the Clerk and Recorder of Summit County, Colorado.

16.12 "Day" Defined. Unless otherwise indicated, the term "day" means a calendar day (and not a business day).

16.13 "Will" or "Will Not" Defined. "Will" or "will not" indicates a mandatory obligation to act or to refrain from acting as specifically indicated in the context of the sentence in which such word is used.

16.14 Amendment. This Lease may not be modified except by a written amendment signed by both the Landlord and the Tenant. Oral modifications of this Lease are not permitted.

16.15 Captions. The headings of the sections and paragraphs contained in this Lease are for convenience only and do not define, limit, or construe the contents of the articles, sections and paragraphs.

16.16 Advances By the Landlord For the Tenant. If the Tenant fails to do anything required to be done by it under the terms of this Lease (other than a failure to make the payments to the Landlord herein required) the Landlord may, at its sole option, but without any obligation to do so, do or perform such act or thing on behalf of the Tenant, and in doing so the Landlord will not be deemed to be a volunteer; provided, however, that before exercising its rights under this Section the Landlord must give notice to the Tenant as provided in Section 16.2, and afford the Tenant not less than ten (10) days from the giving of such notice within which to do or perform the act required by the Tenant. Upon notification to the Tenant of the costs incurred by the Landlord the Tenant will promptly pay to the Landlord the full amount of costs and/or expenses incurred by the Landlord pursuant to this Section, together with interest thereon at the rate of 12% per annum.

16.17 Governmental Immunity. In entering into this Lease the Landlord is relying on, and does not waive or intend to waive by any provision of this Lease, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act (Part I of Article 10 of Title 24, C.R.S.), as from time to time amended, or any other limitation, right, immunity or protection otherwise available to the Landlord, its officers, or its employees.

16.18 No Adverse Construction Based On Authorship. Each of the Parties stipulate and agree that it had the opportunity to participate in the drafting of this Lease. This Lease is not to be construed against either Party by virtue of such Party having drafted this Lease.

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

16.20 Third Parties. There are no third-party beneficiaries of this Lease.

16.21 Governing Laws; Venue; Waiver of Jury Trial. The laws of the State of Colorado will govern the interpretation, validity, performance, and enforcement of this Lease. Any litigation brought to interpret or enforce this Lease will be commenced in Summit County, Colorado. BOTH PARTIES WAIVE THE RIGHT TO A JURY TRIAL IN ACTION TO ENFORCE, INTERPRET, OR CONSTRUE THIS AGREEMENT.

16.22 No Partnership. The Landlord is not a partner, associate, or joint venturer of the Tenant

in the conduct of the Tenant's business at the Leased Premises. The Tenant is an independent contractor without the right or authority to impose tort or contractual liability upon the Landlord.

16.23 Annual Appropriation. Notwithstanding anything herein contained to the contrary, the Landlord's financial obligations under this Lease are subject to an annual appropriation being made by the Town Council of the Town of Breckenridge, Colorado in an amount sufficient to allow the Landlord to perform its obligations hereunder. If sufficient funds are not appropriated, this Lease may be terminated by either Party without penalty; provided, however, such appropriation shall not be unreasonably withheld by Landlord and it shall be a condition precedent to such termination that Tenant shall be afforded ninety (90) days to procure such an appropriation on Landlord's behalf. The Landlord's obligations under this Lease do not constitute a general obligation indebtedness or multiple year direct or indirect debt or other financial obligation whatsoever within the meaning of the Constitution or laws of the State of Colorado.

16.24. ADA Compliance and Responsibilities.

Both the Landlord (representing the Title II entity, Town of Breckenridge) and the Tenant (a Title III entity) affirmatively acknowledge and comprehend their distinct obligations under the Americans with Disabilities Act (ADA).

The Landlord, as a public entity under Title II, provides the Premises under the fundamental principles of accessibility and nondiscrimination. The Tenant, as a Title III entity, understands that their occupation and use of the Premises entail specific responsibilities to ensure public accommodations are in full compliance with the ADA.

The Tenant acknowledges that adapting or modifying the leased space might be necessary to ensure full ADA compliance suitable for their specific operations. The Tenant will be solely responsible for ensuring their use of the Premises adheres to all relevant ADA provisions associated with Title III mandates. This may include but is not limited to, accessible entrances, paths of travel, restroom accessibility, and other necessary modifications in alignment with their commercial or public service operations.

If modifications or improvements to the Premises are required for comprehensive ADA compliance, the Tenant commits to act promptly and bear all associated costs. The Landlord disclaims any representation or warranty as to the Premises' existing condition concerning specific Title III ADA compliance but assures baseline accessibility as per Title II mandates.

Furthermore, the Tenant shall indemnify, defend, and hold the Landlord harmless against any liabilities, claims, damages, penalties, or associated costs that arise from the Tenant's failure to uphold ADA Title III compliance during the lease term.

Both parties underscore the significance of fostering an inclusive and accessible environment and pledge a cooperative effort to ensure the principles and requirements of the ADA are upheld in their entirety.

16.25. Binding Effect. This Lease extends to and is binding upon the successors and permitted

assigns of the respective Parties. The terms, covenants, agreements, and conditions in this Lease will be construed as covenants running with the Leased Premises.

16.26. Approval By Ordinance. The execution of this Lease was authorized by Ordinance No. ____, Series 2023, adopted by the Town Council of the Town of Breckenridge on _____, 2023.

[INSERT SIGNATURE BLOCKS HERE]

EXHIBIT "A"

LEGAL DESCRIPTION OF LEASED PREMISES

A parcel of land located in Section 1 T.7S., Range 73W., situated in the County of Summit, State of Colorado known as the F & D Placer M.S. 16786 and more particularly described as follows:

Beginning at corner number 1 of said F & D Placer to which the N. W. corner of section 6 T.7S., R77W., bears N 60° 18' 00" E, 2129 ft., said corner number 1 being in fact the True Point of Beginning:

Thence S, 20° 28' E a distance of 1227 feet to corner No. 2 of said F & D Placer;

Thence S 69° 32' W a distance of 1356.4 feet to corner No. 3 of said F & D Placer;

Thence N 20° 26' W a distance of 1241.5 feet to corner No. 4 of said F & D Placer;

Thence N 70° 09' E a distance of 1355.8 ft. to corner No. 1 of said F & D Placer being the True Point of Beginning.

The above-described parcel of land contains 38.425 acres more or less.

EXHIBIT "B"

DEPICTION OF EXCLUSIVE USE AREA AND NON-EXCLUSIVE USE AREA

EXHIBIT "C"

TENANT'S "MISSION"

The mission of the Breckenridge Outdoor Education Center is to expand the potential of people with disabilities and special needs through meaningful, educational and inspiring outdoor experiences.



Exhibit B-1
Exclusive Use Area

- Exclusive Use Area
- Future Public Trail- Approximate Alignment

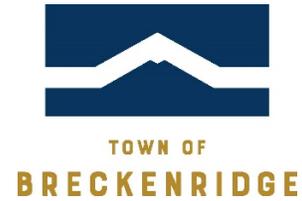
9/14/23



Exhibit B-2
Non-Exclusive Use Area

- Non-Exclusive Use Area
- Future Public Trail- Approximate Alignment

9/14/23



Memo

To: Town Council
From: Scott Reid, Deputy Town Manager
Kirsten Crawford, Town Attorney
Date: 9/20/2023 (for 9/26/23 Town Council meeting)
Subject: BOEC Wellington Road Lease Renewal (First Reading)

Summary

The Breckenridge Outdoor Education Center (BOEC) has requested a lease renewal for the use of the Town-owned property and buildings at 524 Wellington Road, also known as the BOEC Administrative offices and associated buildings. As part of the renewal, the BOEC has asked to extend the lease for a 75-year period. Staff supports passage of the revised BOEC lease for the Wellington Road property on first reading.

Background

The Town has long supported the BOEC in its mission to “expand the potential of people with disabilities and special needs through meaningful, educational and inspiring outdoor experiences.” A portion of the Town’s support has been provided in the form of a long-term lease (25 years) for the Wellington Road property which includes the BOEC Administrative offices, employee housing, garage, and gear storage, as well as parking areas and a small storage shed. Expressly excluded from the leased premises are the Head-End Property, IT Building, and a portion of the Wellington Trail.

At the November 22, 2022 Town Council work session, the BOEC presented its request to extend the term of the Wellington Road lease to include a 75-year term. Town Council supported BOEC’s request and directed staff to prepare revisions to the lease and emphasized the following:

- The Town should retain the authority to terminate the lease within the 75-year term if the BOEC ceases to operate as a mission-based organization, and
- The BOEC is granted an opportunity to cure any default related to the mission-based use.
- The Town has authority to review the use of the Leased Premises at any time and at least every 10 years.
- The Town retains access for the public to the existing trail access.

Staff have worked closely with the BOEC to revise the Wellington lease agreement to merge the BOEC’s requests and Council direction. Attached is the resulting lease for Council’s review as well as an attached ordinance approval at first reading. Staff support Council’s approval of the revised Wellington Road property lease at first reading and will be available at the work session to address any questions.

1 COUNCIL BILL NO. ____

2
3 Series 2023

4
5 **A BILL FOR AN ORDINANCE APPROVING THE WELLINGTON LEASE**
6 **BETWEEN THE TOWN OF BRECKENRIDGE AND THE BRECKENRIDGE**
7 **OUTDOOR EDUCATION CENTER.**
8

9 **(A portion of the real property located at 524 Wellington Road,**
10 **Breckenridge, Colorado and a building)**

11
12 WHEREAS, the Town of Breckenridge owns the real property at 524 Wellington Road in
13 Breckenridge, Colorado; and

14 WHEREAS, the Town Council has agreed to renew its long-term lease for the property
15 at 524 Wellington Road with the Breckenridge Outdoor Education Center, a Colorado non-profit
16 corporation (“BOEC”); and

17 WHEREAS, a proposed Lease has been prepared by the Town Attorney and reviewed
18 by the Town Council; and

19 WHEREAS, Section 15.4 of the Breckenridge Town Charter provides:

20
21 The council may lease, for such time as council shall determine, any real or
22 personal property to or from any person, firm, corporation, public and private,
23 governmental or otherwise.

24
25 and;

26
27 WHEREAS, the term of the proposed Lease with the BOEC exceeds one year in length;

28 and

29
30 WHEREAS, Section 1-11-4 of the Breckenridge Town Code requires that any real estate
31 lease entered into by the Town that exceeds one year in length must be approved by ordinance.

32
33 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF
34 BRECKENRIDGE, COLORADO:

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Town Attorney

AMENDED AND RESTATED LEASE

BETWEEN

TOWN OF BRECKENRIDGE,
a Colorado municipal corporation
("the Landlord")

and

BRECKENRIDGE OUTDOOR EDUCATION CENTER,
a Colorado non-profit corporation
("the Tenant")

WELLINGTON LEASE

THIS WELLINGTON LEASE ("Lease") is dated _____, 2023, and is between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation ("the **Landlord**") and BRECKENRIDGE OUTDOOR EDUCATION CENTER, a Colorado non-profit corporation ("the **Tenant**" or "**BOEC**"). The Landlord and the Tenant are sometimes individually referred to in this Lease as a "**Party**", and are collectively referred to in this Lease as the "**Parties**."

ARTICLE 1 - BASIC LEASE PROVISIONS

1.1 Leased Premises. In consideration of the Tenant's payment of rent and the keeping of the promises, covenants, and conditions required of the Tenant by this Lease, the Landlord leases to the Tenant, and the Tenant leases from the Landlord, for the term and upon the conditions of this Lease, a portion of the real property located at 524 Wellington Road, Breckenridge, Colorado ("Property"), the leased portion of which is further described on the attached **Exhibit "A"** ("**Leased Premises**"). The Leased Premises includes a building that houses the administrative offices of the BOEC, employee housing, garage, and gear storage areas, which is referred to in this Lease as the "Building", as well as parking areas and a small storage shed. Expressly excluded from the Leased Premises are the Head-End Property and the IT Building, which remain the Landlord's obligations, and are described and depicted on the attached **Exhibit "B"**, as well as a public trail presently referred to as the "Wellington Trail" located on the easternmost portion of the Leased Premises, which shall also remain the Landlord's obligation.

1.2 Use Of Leased Premises. The Tenant will use the Leased Premises only for:

- (a) the operation of its administrative and program offices;
- (b) maintenance, restoration, or repair of the Building and all other improvements currently located within the Leased Premises;
- (c) storage and maintenance of the Tenant's equipment and vehicles;
- (d) "outfitting" associated with the Tenant's programs;
- (e) ancillary administrative functions, such as staff meetings and training, Board of Director meetings, instructional classes, social functions, and other administrative activities related to the carrying out of the Tenant's Mission;
- (f) overnight lodging associated with the residences located on the top floor of the Building; and
- (g) subletting to other non-profit organizations serving, at least in part, the Breckenridge or greater Summit County community.

The Tenant will not use the Leased Premises for any other purpose without the Landlord's prior

written consent. Tenant's failure to comply with section 1.2 shall constitute a default under Article 10.

1.3 Term. Subject to earlier termination as hereafter provided, the term of this Lease ("**Term**") will be for a period of seventy-five (75) years, commencing November 15, 2023 and terminating November 14, 2098. Nothing in this Lease permits the Tenant to use or occupy the Leased Premises after the expiration of the Term or any earlier termination of this Lease. If the Tenant continues to occupy the Leased Premises after such expiration or termination, such occupancy will (unless the Parties otherwise agree in writing) be an extension of this Lease on a month-to-month basis only, and such occupancy will be subject to all of the terms and conditions of this Lease.

1.4 Surrender of Leased Premises.

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

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

1.5 Obligation To Meet and Confer. Throughout the Term the Parties will meet and confer upon request of Town and at least every ten (10) years for the purpose of determining whether changed circumstances require an amendment to this Lease and, if so, will execute appropriate documentation amending this Lease.

1.6 Governmental Powers of the Landlord. The Tenant acknowledges that throughout the Term the Landlord has, and will continue to have, those governmental rights, powers, and authority provided by applicable law, including, but not limited to, the Breckenridge Town Charter and the ordinances of the Town of Breckenridge, all as amended from time to time. The Tenant further acknowledges that the provisions of this Lease do not limit or restrict such rights,

powers, and authority of the Landlord with respect to the Leased Premises when the Landlord is acting in its governmental capacity as a home-rule municipality under Colorado law.

ARTICLE 2 - RENT

2.1 Rent. The total rent to be paid by the Tenant for the full Term is Ten Dollars (\$10.00) ("Rent"), the receipt and sufficiency of which is acknowledged by the Landlord.

2.2 "Additional Rent" Defined. Any amount due to the Landlord from the Tenant under this Lease that is not specifically identified as Rent is additional rent.

2.3 Interest On Past Due Amounts. The Tenant will pay interest to the Landlord on any sum due to the Landlord under this Lease that is thirty (30) days or more past due at the rate of 12% per annum from the date due until the date such payment is fully paid.

2.4 Place And Manner Of Payments. All payments due to the Landlord under this Lease will be made to:

Town of Breckenridge Clerk & Finance Division
Attn: Accounts Receivable
P.O. Box 168
Breckenridge, CO 80424

or at such other place as the Town Manager of the Town of Breckenridge ("**Town Manager**") may hereafter designate by written notice provided to the Tenant in accordance with Section 15.2 of this Lease. All sums will be made in legal tender of the United States. Any check given to the Landlord will be received subject to collection, and the Tenant agrees to pay any charges, fees or costs incurred by the Landlord for the collection, including reasonable attorney's fees.

2.5 Landlord's Lien and Security Interest. The Landlord has a first security interest and a lien for all rent and other sums of money becoming due hereunder from the Tenant upon all goods, wares, equipment, fixtures, furniture, inventory and other personal property of the Tenant situated in or located upon the Leased Premises, and such property may not be removed from the Leased Premises without the express written consent of the Landlord until all arrearages in rent and other sums of money then due to the Landlord hereunder have first been paid. Upon the occurrence of any event of default by the Tenant, the Landlord may foreclose the security interest and lien in the manner provided by law. The Landlord may file a financing statement (and necessary extensions, renewals or replacements thereof throughout the Term) in a form legally sufficient to perfect its security interest and lien granted pursuant to this Section. The Tenant will execute such documents as may be required during the Term to maintain the validity and priority of the security interest and lien provided for in this Section.

ARTICLE 3 - LANDLORD'S DISCLAIMERS AND EXCULPATORY PROVISIONS

3.1 "As Is" Condition of Leased Premises. The Tenant acknowledges the Leased Premises are leased "**AS IS**," "**WHERE IS**" and "**WITH ALL FAULTS**", and the Landlord does not

warrant or make any representation, express or implied, relating to the **MERCHANTABILITY**, quantity, quality, condition, suitability or **FITNESS FOR ANY PURPOSE WHATSOEVER** of the Leased Premises or any portion thereof. Except as expressly provided in this Lease, the Landlord 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 Leased Premises, or any portion thereof.

3.2 Landlord's Non-liability. As a material part of the consideration to be received by the Landlord under this Lease, the Tenant assumes all risk of damage to property or injury to persons in or upon the Leased Premises from any cause other than the Landlord's gross negligence or intentional act, and the Tenant waives all claims in respect thereof against the Landlord.

3.3 Limitation of Remedies. The Landlord is not liable for any indirect, special, or consequential damages, including, but not limited to, loss of anticipated profits, revenue or savings, business interruption, or any similar claim arising from the Landlord's breach of this Lease, even if the Landlord has been advised of the possibility of such damages. This limitation applies notwithstanding the failure of an essential purpose of any limited remedy.

ARTICLE 4 - TENANT'S AFFIRMATIVE OBLIGATIONS

4.1 Tenant Liable For Costs to Prepare Leased Premises For Use By the Tenant. The Tenant is solely responsible for all work required to be done, and costs incurred in connection with, the preparation of the Leased Premises for the Tenant's use.

4.2 Taxes.

(a) As used in this Section, the term "**Taxes**" means all personal property and real property taxes levied, assessed or imposed by any taxing authority arising out of the Tenant's occupancy and use of the Leased Premises pursuant to this Lease.

(b) Pursuant to Section 39-3-105, C.R.S., all real or personal property owned by the Landlord is exempt from taxation. However, the Parties acknowledge that the Tenant's occupancy and use of the Leased Premises pursuant to this Lease may be deemed to be a "taxable possessory interest" pursuant to Section 39-1-103(17)(a), C.R.S.

(c) The Tenant will pay all Taxes lawfully assessed arising from its occupancy and use of the Leased Premises pursuant to this Lease, and will indemnify and defend the Landlord from any such Taxes. The Tenant will pay all Taxes in a timely manner. Upon the Landlord's written request the Tenant will provide to the Landlord a photostatic copy of the receipt(s) or cancelled check(s) showing payment of the Taxes. The Tenant may pay any Taxes in installments if permitted by law.

(d) If the Tenant is liable for the payment of any Taxes arising from the Tenant's occupancy and use of the Leased Premises pursuant to this Lease, the Tenant may, at its sole expense, contest such Taxes by the commencement and prosecution, in good faith and with due diligence, of appropriate legal proceedings. The Tenant will make timely payment of such Taxes

if the Tenant loses the contest. The Tenant will advise the Landlord prior to instituting any such contest and will as a condition of exercising such right provide the Landlord such reasonable assurance as it may request that such contest will be in compliance with the provisions of this Section. The Landlord, at the Tenant's sole cost and expense, will reasonably cooperate with the Tenant in any such contest; may join in the contest; and will execute and deliver such documents and instruments as may be necessary or appropriate for prosecuting an effective contest.

4.3 Compliance With Laws. The Tenant, at its sole cost and expense, will comply with all laws, ordinances, orders, and regulations of all governmental authorities with respect to the use of the Leased Premises, as amended from time to time throughout the Term. A judgment of any court or the admission of the Tenant in any action or proceeding against the Tenant, whether the Landlord is a party thereto or not, that the Tenant has violated any law, ordinance, requirement or order in the use of the Leased Premises will be conclusive of the fact as between the Landlord and the Tenant.

4.4 Non-Discrimination. The Tenant:

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

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

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

(d) will comply with all applicable federal, state, and local laws, rules and regulations. Without limiting the generality of the foregoing, the Tenant will comply with the applicable provisions of the Americans With Disabilities Act, 42 U.S.C. §12101, et seq. (Public Law 101-336), and all applicable regulations and rules promulgated thereunder by any regulatory agency.

(e) The indemnification and termination provisions of this Lease apply to the Tenant's failure to comply with all applicable laws or regulations.

4.5 Tenant To Pay Certain Charges. In addition to the payment of Taxes as required by Section 4.2, the Tenant covenants and agrees to pay, or cause to be paid, before any fine, penalty, interest or cost may be added thereto, all governmental charges that are levied, assessed, imposed, or that could become a lien upon the Leased Premises.

ARTICLE 5 - TENANT'S NEGATIVE OBLIGATIONS

5.1 Improvements.

(a) As used in this Article 5, "**Improvement**" means any physical improvement made, or proposed to be made, to either the Leased Premises or the Building.

(b) No Improvement may be made to the Leased Premises by the Tenant except under the following conditions:

(i) No Improvement may be undertaken until the Tenant has obtained approval of plans and specifications for such Improvement from the Landlord, acting in its capacity as owner of the Leased Premises (and not in its governmental capacity). In connection therewith, the Landlord has the right to review and approve a proposed Improvement in its sole and absolute discretion, which approval shall not be unreasonably withheld provided the proposed Improvement is consistent with Tenant's Mission.

(ii) The Tenant must also obtain a "Development Permit" from the Landlord, acting in the Landlord's governmental capacity.

(iii) An Improvement must be constructed under the supervision of an architect or engineer licensed in the State of Colorado, selected and paid by the Tenant.

(iv) All work done in connection with the construction of an Improvement must be done in a good and workmanlike manner and in material conformity with the plans and specifications that are approved by the Landlord.

(v) The construction of an approved Improvement must be prosecuted with reasonable dispatch, subject to delays caused by Force Majeure Events (see Section 15.12). before any work begins. The Tenant must procure or cause the contractor for the work to procure insurance in accordance with Article 7 of this Lease, including worker's compensation insurance covering all persons employed in connection with the work.

5.2 Landscaping. No landscaping may be installed by the Tenant at the Leased Premises without the Landlord's prior written consent, which shall not be unreasonably withheld. Once installed, all landscaping will be maintained by the Tenant in accordance with the approved landscaping plan for the Leased Premises.

5.3 Subletting. The Leased Premises has been leased to the Tenant with the expectation and hope that during the Term the Tenant may sublet a portion of the Building to other non-profit entities acceptable to the Landlord. Throughout the Term, the Tenant may use its best efforts to identify other non-profit entities whose anticipated space needs and use of the Building would be compatible with those of the Tenant. The Tenant may propose to the Landlord who may consent in writing to the following:

(a) the portion(s) of the Building that will be sublet;

- (b) the identity of the subtenants; and
- (c) the terms and conditions under which the Leased Premises or the Building will be sublet.

5.4 Assignment. The Tenant may not assign or transfer any of its rights under this Lease without the prior written consent of the Landlord. If the Tenant attempts to make any assignment or subletting without the requisite consent of the Landlord, or attempts to grant a license to use the Leased Premises, such assignment, subletting, or license will be void and, at the option of the Landlord, will terminate this Lease. Any consent by the Landlord to any assignment of this Lease or any consent by the Landlord to any sublease or license of the Leased Premises will not be a waiver by the Landlord of the provisions of this Section as to subsequent transactions of the same or similar nature. In the event of any permitted assignment, sublease, or license, the Landlord may, but is not required to, release the Tenant from its obligations hereunder for the remainder of the Term. If the Landlord consents to an assignment, sublease, or license the Tenant may be required, as a condition of granting consent, to pay the Landlord's reasonable costs incurred in considering the proposed assignment, sublease, or license including, but not limited to, legal fees and credit checks.

5.5 Assignment By Operation of Law. Neither this Lease nor any interest in this Lease is assignable or transferable by operation of law including if any of the following events occur:

- (a) any proceeding under the Bankruptcy Code, or any amendment thereto, is commenced by or against the Tenant;
- (b) the Tenant is adjudged insolvent;
- (c) the Tenant makes an assignment for the benefit of creditors;
- (d) a post-judgment writ of attachment or execution is levied on the leasehold estate created by this Lease and not released or satisfied within 30 days thereafter; or
- (e) a receiver is appointed for the Tenant with authority to take possession or control of the Leased Premises or the business conducted therein by the Tenant, then this Lease, at the option of the Landlord, will immediately terminate and will not be treated as an asset of the Tenant.

5.6 Waste or Nuisance. The Tenant will not commit or permit to be committed on the Leased Premises any waste, any public or private nuisance, or any other act or thing prohibited by law.

5.7 Mechanic's Liens.

- (a) In connection with the construction of any Improvements, the Tenant will cause the payment of all proper and valid invoices and charges of all contractors, subcontractors, suppliers, materialmen and similar parties who furnish services or materials in connection with

the construction process. In the event any person ever records a mechanic's lien to enforce any claim for services or materials alleged to have been provided in connection with the Leased Premises, the Tenant will cause the same to be released of record within sixty (60) days after the recordation thereof, and the Tenant will be liable to satisfy and cause a discharge of any such mechanic's lien claim. Notwithstanding the foregoing, the Tenant may contest any such mechanic's lien claim, provided that the Tenant conducts such contest in a timely manner and with due diligence, and that the Tenant provides the Landlord with such security in connection therewith as the Landlord may reasonably require. In connection with any such contest, the Landlord may join and participate in any such contest, at the Tenant's expense (with participation to include, without limitation, the execution and filing of pleadings and the provision and gathering of testimony and other evidence). In the event the Tenant loses any such contest, with all further rights of appeal having expired, the Tenant must satisfy the mechanic's lien claim in full prior to any foreclosure sale or other disposition of the Leased Premises which is made for the purpose of satisfying the claim.

(b) Prior to commencement of construction of any Improvements, the Tenant will deliver notices to all contractors and subcontractors and post notices in accordance with Section 38-22-105, C.R.S. (as it may be amended or in accordance with similar statutes that may be substituted therefor in the future), in locations that will be visible by parties performing any work, which notices will state that the Landlord is not responsible for the payment of such work and setting forth such other information as may be reasonably required pursuant to such statutory provisions.

ARTICLE 6 - UTILITIES, TRASH REMOVAL AND MAINTENANCE

6.1 Utilities. The Tenant will pay or cause to be paid, before any notice of delinquency, at its sole cost and expense, all charges for water, gas, heat, electricity, power, telephone, internet, or any other communications services, sewer service charges, and any other utilities charged or attributable to Tenant's use of the Leased Premises, and all other charges for services or utilities of any kind or nature used in, upon, or about the Leased Premises by the Tenant, including the cost of installing or moving meters for such utility charges. Notwithstanding the foregoing, the Tenant may contest any such charges so long as the Tenant diligently prosecutes the same pursuant to appropriate legal proceedings. If any such charge leads to a mechanic's or other lien claim against the Leased Premises, such contest will also be conducted in conformity with the standards hereof for contesting mechanic's lien claims. The Tenant will contract in its sole name for such utility charges.

6.2 Trash Removal. The Landlord will arrange for a trash dumpster to be provided for the use of the Tenant and any subtenants at the Leased Premises or, at the Tenant's option, the Tenant and all subtenants may use "roll away" trash containers so long as such containers are stored inside and are not used or maintained in such a manner as to cause a nuisance or a health threat. The Tenant will pay the cost of the periodic trash removal.

6.3 All Maintenance Is Tenant's Responsibility. The Tenant will at all times during the Term keep, operate, and maintain all portions of the Building and Leased Premises in good order, condition and repair. Without limiting the generality of the preceding sentence, it is the Tenant's

sole responsibility to provide any required maintenance, upkeep, repair, or replacement of the following portions of the Building and the Leased Premises:

- (a) the structural portions of the Building, including, without limitation, the roofs and the exterior walls;
- (b) all non-structural portions of the Building including, without limitation, the entrances, windows, partitions, doors, lighting, and plumbing fixtures, and heating and ventilation systems;
- (c) the grounds of the Leased Premises;
- (d) all landscaping, the paving, if any, and other hardscape surfaces; and
- (e) all fixtures, equipment and appurtenances relating to the Leased Premises and/or the Building.

This Section 6.3 is to be interpreted so as to absolve the Landlord from any obligation to provide any required maintenance, upkeep, repair, or replacement whatsoever of any portions of the Building and the Leased Premises excepting only the Head-End Property, the IT Building, and the Wellington Trail. Notwithstanding anything contained in this Section 6.3 to the contrary, Landlord shall be solely responsible for the maintenance, upkeep, repair and replacement of all improvements on the Head-End Property, the IT Building, and the Wellington Trail.

6.4 Snow Removal; Access. The Tenant will provide all snow plowing and snow removal necessary to keep the access driveway from Champion Trail to the Building free of snow and ice.

6.5 Painting. The Tenant is responsible for any desired or required painting of the Building. Painting is an "Improvement", and the procedures and requirements of Section 5.1 will apply to the painting of the Building; provided, however, that Section 5.1(b)(iii) (requiring all Improvements to be constructed under the supervision of an architect or engineer) does not apply to the painting of the Building.

6.6 Inspection And Entry. The Landlord and the Landlord's authorized representatives may enter the Leased Premises at all times during reasonable hours to inspect the Leased Premises. The Tenant further agrees that the Landlord may go upon the Leased Premises at all times and:

- (a) make any necessary repairs to the Leased Premises and perform any work therein that may be necessary to comply with any laws, ordinances, rules or regulations of any public authority or that the Landlord may deem necessary to prevent waste or deterioration of the Leased Premises;
- (b) post any notice provided for by law; or
- (c) otherwise protect any and all rights of the Landlord, all without any liability to the Tenant for damages or any abatement of rent.

Nothing in this Section implies or creates any duty on the part of the Landlord to do any work that under any provision of this Lease the Tenant may be or is required to do, nor will it constitute a waiver of the Tenant's default in failing to do such work. No reasonable exercise by the Landlord of any rights herein reserved will entitle the Tenant to any damage or compensation of any kind from the Landlord for any injury, loss, damage, or inconvenience occasioned thereby, or to any abatement of rent.

ARTICLE 7 - INSURANCE

7.1 Tenant's Liability Insurance. Throughout the Term the Tenant will, at its expense, continuously maintain commercial general liability insurance covering the Tenant's operations on the Leased Premises with minimum combined single limits of not less than \$1,000,000. The Tenant's liability insurance policy will be endorsed to include the Landlord as an additional insured. Tenant's liability insurance will not apply to any incident occurring on either the Head-End Property, the IT Building, or the Wellington Trail.

7.2 Worker's Compensation Insurance. Throughout the Term the Tenant will, at its expense, continuously maintain worker's compensation insurance as required by Colorado law insuring the payment of compensation to all its employees engaged in the performance of work at the Leased Premises.

7.3 Additional Insurance Provisions. Every insurance policy required to be carried by the Tenant by this Article 7 will be primary insurance, and any insurance carried by the Landlord, its officers, or its employees, or carried by or provided through any insurance pool of which the Landlord is a member, will be excess and not contributory insurance to that provided by the Tenant. The Tenant is solely responsible for any deductible losses under its required insurance policies.

7.4 Insurance Criteria. Insurance policies required by this Lease will:

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

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

7.5 Evidence of Insurance. Prior to the commencement of this Lease, and on each subsequent renewal or replacement of the required insurance policies, the Tenant must provide to the Landlord a certificate of insurance evidencing compliance with the requirements of this Section. All required insurance policies will be renewed or replaced and maintained by the Tenant throughout the Term to assure continuous coverage. If the Tenant fails to give the required insurance certificate within thirty (30) days after notice or demand for it, such action will constitute a default under this Lease, and the Landlord may then proceed as provided in Article 10 of this Lease, and/or the Landlord may obtain and pay for that insurance and receive

reimbursement from the Tenant, together with interest thereon at the rate of 12% per annum.

7.6 Landlord's Building Insurance. Throughout the Term the Landlord will, at its expense, keep the Building insured against damage and destruction by fire, earthquake, vandalism, and other perils in the amount of the full replacement value of the Building, as the value may exist from time to time. The Tenant will reimburse the Landlord, as Additional Rent, for any deductible loss paid by the Landlord arising from any loss to the Building caused by the negligence or intentional act of the Tenant, or its agents, employees, contractors, subcontractors invitees, or subtenants.

ARTICLE 8 - INDEMNIFICATION

8.1 Indemnification By Tenant. The Tenant will indemnify and defend the Landlord, its officers, employees, insurers, and self-insurance pool from all liability, claims, and demands, on account of injury, loss, or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, arising out of or in any manner connected with this Lease or the Tenant's use or possession of the Leased Premises pursuant to this Lease, except to the extent that such liability, claim, or demand arises through the gross negligence or intentional wrongful act of the Landlord, its officers, employees, or agents, or the Landlord's breach of this Lease. If indemnification is required under this Section, the Tenant will investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims, or demands at its expense, and bear all other costs and expenses related thereto, including court costs and attorney fees. Tenant's indemnity obligation under this Section 8.1 does not apply to any incident occurring on either the Head-End Property or the IT Building, or elsewhere on the Leased Property if caused by any users of the Head-End Property or the IT Building or the guests or invitees of such users.

8.2 Survival. All of Tenant's indemnity obligations under this Lease will survive the expiration or termination of this Lease, and will be fully enforceable by the Landlord thereafter.

ARTICLE 9 - EMINENT DOMAIN

9.1 Eminent Domain.

(a) The terms "**eminent domain**," "**condemnation**", and "**taken**" and related terms as used in this Section include any taking for public or quasi-public use and private purchases in lieu of condemnation by any authority authorized by applicable law to exercise the power of eminent domain.

(b) If the entire Leased Premises are taken by eminent domain, this Lease will automatically end on the earlier of:

- (i) the date title vests; or
- (ii) the date the Tenant is dispossessed by the condemning authority.

(c) If the taking of a part of the Leased Premises materially interferes with the Tenant's ability to continue its business operations in substantially the same manner, then the Tenant may terminate this Lease on the earlier of:

- (i) the date when title vests;
- (ii) the date the Tenant is dispossessed by the condemning authority; or
- (iii) 60 days following notice to the Tenant of the date when vesting or dispossession is to occur.

(d) Any compensation or damages paid by a condemning authority will be divided between the Landlord and the Tenant as follows:

- (i) the Tenant is entitled to that portion of the compensation or damages that represents the amount of the Tenant's moving expenses, business dislocation damages, the Tenant's personal property and fixtures, costs associated with securing commensurate replacement employee housing, administrative offices, garage space and gear storage, and the unamortized fair market value of the Building and leasehold improvements paid for by the Tenant; and
- (ii) the balance of such compensation or damages belongs to the Landlord.

ARTICLE 10 - DEFAULT

10.1 Default By Tenant. The occurrence of any one or more of the following events will constitute a default and breach of the Lease by the Tenant:

- (a) The vacating or abandonment of the Leased Premises by the Tenant.
- (b) The failure by the Tenant to make any payment of rent, additional rent, or any other payment required to be made by the Tenant hereunder, as and when due, when such failure continues for a period of ten (10) days after service of written notice thereof by the Landlord to the Tenant.
- (c) The failure by the Tenant to observe or perform any of the other covenants, conditions, or provisions of this Lease to be observed or performed by the Tenant, or to obey rules promulgated by the Landlord, within thirty (30) days after service of written notice thereof by the Landlord to the Tenant. In the event of a non-monetary default that is not capable of being corrected within thirty (30) days, the Tenant will not be default if it commences correcting the default within thirty (30) days of service of a demand for compliance notice and thereafter corrects the default with due diligence.
- (d) The failure by the Tenant to substantially satisfy its Mission, which as of the Effective Date of this Lease is as follows:

To expand the potential of people with disabilities and special needs through meaningful, educational and inspiring outdoor experiences (“Mission”).

(i) In the event Landlord reasonably determines Tenant is not substantially satisfying its Mission, or if Landlord determines Tenant’s operations and programming have substantially deviated from the Mission set forth above, Landlord shall provide Tenant with written notice providing a written description of such deviation and Tenant shall have ninety (90) days to provide Landlord with a plan outlining the efforts Tenant will pursue in order to satisfy its Mission or otherwise amend its operations and programming.

(ii) Upon receiving Tenant’s plan, Landlord shall not unreasonably withhold its approval.

(iii) The Tenant will not be in default if it commences correcting such default within 90 days of service of Landlord’s written notice, subject to input and cooperation from Landlord.

(e) The making by the Tenant of any general assignment or general arrangement for the benefit of creditors; the filing by or against the Tenant of a petition to have the Tenant adjudged bankrupt, or a petition or reorganization or arrangement under any law relating to bankruptcy; the appointment of a trustee or a receiver to take possession of substantially all of the Tenant's assets located at the Leased Premises or of the Tenant's interest in this Lease; or the attachment, execution or other judicial seizure of substantially all of the Tenant's interest in this Lease.

10.2 Voluntary Termination. If Tenant voluntarily terminates this Lease during the initial fifty (50) years of the Lease Term, the Parties agree that Landlord shall pay fair market value, established at the time of termination under this Section 10.2, or the amount that was paid for the initial construction of the Building and other Tenant Improvements, whichever amount is lesser. If Tenant voluntarily terminates this Lease any time during year 51 through 60 of the Lease Term, the Parties agree that Landlord shall pay fair market value, established at the time of termination under this Section 10.2, or the amount that was paid for the initial construction of the Building and other Tenant Improvements, whichever amount is the lesser (the “Established Amount”); provided, however, that the Established Amount shall be reduced by 10% for each year from year 51 through year 60. In the event Tenant voluntarily terminates the Lease in any years after year 60 of the Lease Term, the Parties agree that Landlord shall not pay any amount for the Building and other Tenant Improvements.

10.3 Landlord's Remedies Upon Default. If the Tenant is in default under this Lease, the Landlord has all of the remedies provided for in such circumstances by Colorado law.

10.4 Default By Landlord. The Landlord will be in default under this Lease if the Landlord fails to comply with any of the terms, provisions, or covenants of this Lease within thirty (30) days following service of written notice thereof by the Tenant. In the event of a non-monetary default that is not capable of being corrected within thirty (30) days, the Landlord will not be default if the Landlord commences correcting the default within thirty (30) days of receipt of

notification thereof and thereafter corrects the default with due diligence.

10.5 Tenant's Remedies Upon Default. If the Landlord is in default under this Lease, the Tenant has all of the remedies provided for in such circumstances by Colorado law.

ARTICLE 11 - NONDISTURBANCE

11.1 Quiet Enjoyment. Subject to the terms and conditions of this Lease, the Landlord covenants that so long as there is no default in any of the covenants, conditions, or provisions of this Lease to be performed, observed, or kept by the Tenant, the Tenant will peaceably and quietly hold and enjoy the Leased Premises for the entire Term.

ARTICLE 12 - LANDLORD'S RULES

12.1 Rules. The Tenant will faithfully observe and comply with any rules and regulations promulgated by the Landlord with respect to the Leased Premises. The Landlord's rules and regulations must be reasonable, and may not unilaterally change or significantly alter the material terms and conditions of this Lease, nor shall they impede Tenant's ability to carry out its Mission. The rules and regulations, and any amendments thereto, will be binding upon the Tenant upon delivery to the Tenant.

ARTICLE 13 - HAZARDOUS MATERIALS

13.1 Hazardous Materials - Defined. As used in this Section, the term "**Hazardous Materials**" means any chemical, material, substance or waste:

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

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

13.2 Hazardous Materials - Prohibited. The Tenant will full comply with all statutes, laws, ordinances, rules, regulations, and precautions now or hereafter mandated or advised by any federal, state, local, or other governmental agency with respect to the use, generation, storage, or disposal of Hazardous Materials. The Tenant will not cause, or allow anyone else to cause, any Hazardous Materials to be used, generated, stored, or disposed of on or about the Leased Premises without the prior written consent of the Landlord, which consent may be revoked at any time. The Tenant's indemnification of the Landlord pursuant to this Lease extends to all liability, including all foreseeable and unforeseeable consequential damages, directly or indirectly arising

out of the use, generation, storage, or disposal of Hazardous Materials at the Leased Premises by the Tenant, or any person claiming under the Tenant, including, without limitation, the cost of any required or necessary repair, cleanup, or detoxification and the preparation of any closure or other required plans, whether such action is required or necessary prior to or following the termination of this Lease, to the full extent that such action is attributable, directly or indirectly, to the use, generation, storage, or disposal of Hazardous Materials by the Tenant or any person claiming under the Tenant; provided, however, the written consent by the Landlord to the use, generation, storage, or disposal of Hazardous Materials will excuse the Tenant from the Tenant's obligation of indemnification. In the event the Tenant is in breach of the covenants herein, after notice to the Tenant and the expiration of the earlier of:

- (a) the cure period provided in Section 10.1 (c);
- (b) the cure period permitted under applicable law, regulation, or order,

then the Landlord may, in its sole discretion, declare a default under this Lease and/or cause the Leased Premises to be freed from the Hazardous Material and the cost thereof will be deemed additional rent hereunder and will immediately be due and payable from the Tenant. The obligations of the Tenant under this Section 13.2 will survive the expiration or termination of this Lease.

ARTICLE 14 - RIGHT OF FIRST REFUSAL

14.1 Right of First Refusal. If, at any time during the Term, the Landlord receives an offer for the purchase of the Leased Premises the Landlord agrees not to accept such offer or make any contract of sale with respect to the Leased Premises without first giving the Tenant the right to acquire the Leased Premises upon the same terms and conditions contained in such offer of purchase. The Landlord agrees to give to the Tenant written notice of the terms and conditions of such offer in the manner provided in Section 16.2. If the Tenant fails to enter into a bona fide contract upon the same terms and conditions as those proposed to the Landlord by the prospective purchaser within ninety (90) days after the giving of such notice, then the Landlord has the right, and will be at liberty, to sell the Leased Premises to the party making the offer. If, for any reason, the Leased Premises are not sold to such party, notice of any subsequent bona fide offer, acceptable to the Landlord, will be given to the Tenant upon the same terms and conditions for acceptance or rejection as described above. If the Tenant does not exercise its right of first refusal pursuant to this Section 14.1 and the Leased Premises are sold by the Landlord, the option to purchase set forth in this Section 14.1 will automatically terminate and be of no further force and effect.

ARTICLE 15 - MISCELLANEOUS

15.1 Attorneys Fees/Costs. If any action is brought in a court of law by either Party to this Lease concerning the enforcement, interpretation, or construction of this Lease, the prevailing Party, either at trial or upon appeal, will be entitled to reasonable attorney's fees, as well as costs, including expert witness' fees, incurred in the prosecution or defense of such action.

15.2 Notices. All notices required or permitted under this Lease must be given by registered or certified mail, return receipt requested, postage prepaid, or by hand or commercial carrier delivery, or by electronic mail directed as follows:

If intended for the Landlord to:

Town of Breckenridge
Attn: Town Attorney
P.O. Box 168
150 Ski Hill Road Breckenridge, Colorado 80424 Attn: Town Manager
Telephone number: (970) 453-2251
Email: clerk@townofbreckenridge.com

If intended for the Tenant, to:

Breckenridge Outdoor Education Center
Attn: Executive Director
P.O. Box 697 Breckenridge, CO 80424
Telephone number: (970) 453-6422
Email: sonya@boec.com

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

15.3 Incorporation of Exhibits. The attached **Exhibit “A”** and **Exhibit “B”** are incorporated into this Lease by reference.

15.4 Warning Concerning Special Taxing Districts. SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. LEASED PREMISES OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND EXCESSIVE TAX BURDENS TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. THE BUYER SHOULD INVESTIGATE THE DEBT FINANCING REQUIREMENTS OF THE AUTHORIZED GENERAL OBLIGATION INDEBTEDNESS OF SUCH DISTRICTS, EXISTING MILL LEVIES OF SUCH DISTRICT SERVICING SUCH INDEBTEDNESS, AND THE POTENTIAL FOR AN INCREASE IN SUCH MILL LEVIES.

15.5 Additional Instruments. The Parties will deliver or caused to be delivered upon request such additional documents and instruments as may be required to accomplish the intent of this Lease.

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

15.7 Time of the Essence. Time is of the essence under this Lease for the performance and observance of all obligations of the Landlord and the Tenant hereunder, and all provisions of this Lease are to be strictly construed.

15.8 Severability. If any provisions of this Lease are held invalid or unenforceable, the remainder of this Lease will not be affected thereby, it being the intent of the Parties that the provisions of this Lease will be enforceable to the fullest extent permitted by law. There will be substituted for any invalid or unenforceable provision a valid and enforceable provision as similar as possible to the invalid provision.

15.9 Brokerage Commission. The Landlord and the Tenant mutually warrant and represent to one another that neither of them has incurred any liability arising by, through, or under that Party for the payment of any brokerage fee or commission in connection with the transaction contemplated herein. If either of the Parties breach the foregoing warranty and representation, it will be liable to the other Party for any damage, liability, loss, claim or expense, including attorneys' fees, suffered by the other Party as a result of such breach. The liable Party will pay to the other Party such sums as are due and owing pursuant to the foregoing within 30 days after demand by the other Party.

15.10 Authority. The person signing this Lease for the Landlord represents and warrants to the Tenant that the Landlord has all inherent legal power and authority requisite to entering into this Lease; has taken all action necessary to authorize the execution of this Lease and to perform and satisfy the transactions and obligations contained herein; and has duly authorized the signatory to execute and deliver this Lease on behalf of the Landlord. The person signing this Lease for the Tenant represents and warrants to the Landlord that the Tenant has all inherent legal power and authority requisite to entering into this Lease; has taken all actions necessary to authorize the execution and delivery of this Lease and to perform and satisfy the transactions and obligations contained herein; and has duly authorized the signatory to execute and deliver this Lease on behalf of the Tenant.

15.11 Force Majeure Events. Except to the extent otherwise expressly provided by this Lease, if either the Landlord or the Tenant is delayed in the performance of any act required under this Lease by reason of strikes, boycotts, labor dispute, embargoes, shortages of materials, acts of God, acts of the public enemy, pandemic, acts of superior governmental authority, weather conditions, floods, riots, rebellion, terrorism, sabotage, or any other circumstance for which such Party is not responsible or that is not in its power to control, the time for the performance of any such act will be extended for a period equivalent to the period of such delay. Notwithstanding any indications to the contrary contained in the foregoing, Force Majeure Events do not include:

(a) any financial incapacities or burdens suffered by either Party; (b) the effect of laws and regulations or the application and enforcement of the same by any governmental entity, or (c) a failure of timely performance by an agent or contractor of either Party. The application of Force Majeure Events is subject to the express limitations thereon contained in the other provisions of this Lease.

15.12 Recording. A fully signed copy of this Lease shall be recorded in the real property records of the Clerk and Recorder of Summit County, Colorado.

15.13 "Day" Defined. Unless otherwise indicated, the term "day" means a calendar day (and not a business day).

15.14 "Will" or "Will Not" Defined. "Will" or "will not" indicates a mandatory obligation to act or to refrain from acting as specifically indicated in the context of the sentence in which such word is used.

15.15 Amendment. This Lease may not be modified except by a written Lease signed by both the Landlord and the Tenant. Oral modifications of this Lease are not permitted.

15.16 Captions. The headings of the sections and paragraphs contained in this Lease are for convenience only and do not define, limit, or construe the contents of the articles, sections and paragraphs.

15.17 Advances By the Landlord For the Tenant. If the Tenant fails to do anything required to be done by it under the terms of this Lease (other than a failure to make the payments to the Landlord herein required) the Landlord may, at its sole option, but without any obligation to do so, do or perform such act or thing on behalf of the Tenant, and in doing so the Landlord will not be deemed to be a volunteer; provided, however, that before exercising its rights under this Section the Landlord must give notice to the Tenant as provided in Section 15.2, and afford the Tenant not less than 5 days from the giving of such notice within which to do or perform the act required by the Tenant. Upon notification to the Tenant of the costs incurred by the Landlord the Tenant will promptly pay to the Landlord the full amount of costs and/or expenses incurred by the Landlord pursuant to this Section, together with interest thereon at the rate of 12% per annum.

15.18 Governmental Immunity. In entering into this Lease the Landlord is relying on, and does not waive or intend to waive by any provision of this Lease, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, as from time to time amended, or any other limitation, right, immunity or protection otherwise available to the Landlord, its officers, or its employees.

15.19 No Adverse Construction Based On Authorship. Each of the Parties stipulate and agree that it had the opportunity to participate in the drafting of this Lease. This Lease is not to be construed against either Party by virtue of such Party having drafted this Lease.

15.20 Landlord's Consent. Except as otherwise expressly provided to the contrary in this Lease,

wherever in this Lease it is provided that some act requires the Landlord's prior consent, such consent will not be unreasonably withheld by the Landlord.

15.21 Third Parties. There are no third-party beneficiaries of this Lease.

15.22 Governing Laws; Venue; Waiver of Jury Trial. The laws of the State of Colorado will govern the interpretation, validity, performance, and enforcement of this Lease. Any litigation brought to interpret or enforce this Lease will be commenced in Summit County, Colorado. BOTH PARTIES WAIVE THE RIGHT TO A JURY TRIAL IN ACTION TO ENFORCE, INTERPRET, OR CONSTRUE THIS AGREEMENT.

15.23 No Partnership. The Landlord is not a partner, associate, or joint venturer of the Tenant in the conduct of the Tenant's business at the Leased Premises. The Tenant is an independent contractor without the right or authority to impose tort or contractual liability upon the Landlord.

15.24 Annual Appropriation. Notwithstanding anything herein contained to the contrary, the Landlord's financial obligations under this Lease are subject to an annual appropriation being made by the Town Council of the Town of Breckenridge, Colorado in an amount sufficient to allow the Landlord to perform its obligations hereunder. If sufficient funds are not appropriated, this Lease may be terminated by either Party without penalty; provided, however, such appropriation shall not be unreasonably withheld by Landlord and it shall be a condition precedent to such termination that Tenant shall be afforded ninety (90) days to procure such an appropriation on Landlord's behalf. The Landlord's obligations under this Lease do not constitute a general obligation indebtedness or multiple year direct or indirect debt or other financial obligation whatsoever within the meaning of the Constitution or laws of the State of Colorado.

15.25 ADA Compliance and Responsibilities.

Both the Landlord (representing the Title II entity, Town of Breckenridge) and the Tenant (a Title III entity) affirmatively acknowledge and comprehend their distinct obligations under the Americans with Disabilities Act (ADA).

The Landlord, as a public entity under Title II, provides the Premises under the fundamental principles of accessibility and nondiscrimination. The Tenant, as a Title III entity, understands that their occupation and use of the Premises entail specific responsibilities to ensure public accommodations are in full compliance with the ADA.

The Tenant acknowledges that adapting or modifying the leased space might be necessary to ensure full ADA compliance suitable for their specific operations. The Tenant will be solely responsible for ensuring their use of the Premises adheres to all relevant ADA provisions associated with Title III mandates. This may include but is not limited to, accessible entrances, paths of travel, restroom accessibility, and other necessary modifications in alignment with their commercial or public service operations.

If modifications or improvements to the Premises are required for comprehensive ADA compliance, the Tenant commits to act promptly and bear all associated costs. The Landlord

disclaims any representation or warranty as to the Premises' existing condition concerning specific Title III ADA compliance but assures baseline accessibility as per Title II mandates.

Furthermore, the Tenant shall indemnify, defend, and hold the Landlord harmless against any liabilities, claims, damages, penalties, or associated costs that arise from the Tenant's failure to uphold ADA Title III compliance during the lease term.

Both parties underscore the significance of fostering an inclusive and accessible environment and pledge a cooperative effort to ensure the principles and requirements of the ADA are upheld in their entirety.

15.26 Binding Effect. This Lease extends to and is binding upon the successors and permitted assigns of the respective Parties. The terms, covenants, agreements, and conditions in this Lease will be construed as covenants running with the Leased Premises.

15.27 Approval By Ordinance. The execution of this Lease was authorized by Ordinance No. ____, Series 2023, adopted by the Town Council of the Town of Breckenridge on _____, 2023.

[INSERT SIGNATURE BLOCKS HERE]

Exhibit "A"

LEGAL DESCRIPTION OF LEASED PREMISES

Tract B, Revett's Landing Subdivision, according to the plat thereof recorded August 13, 2001 under Reception No. 659673 of the records of the Clerk and Recorder of Summit County, Colorado, except the Head End Property, the IT Building, and the Wellington Trail.

Exhibit “B”

Description of the Head-End Property and IT Building

Head-End Property. The Parties acknowledge that as of the date of this Lease a portion of the Leased Premises (consisting of approximately 0.02 acres, more or less, and consisting of a shed approximately 24 feet by 32 feet in size) (the “Head-End Property”) is subject to that Lease between the Landlord and Universal Cable Communications Inc. d/b/a “Comcast” dated May 12, 2015.

IT Building. The Parties also acknowledge a separate building on the Leased Premises, in which Landlord maintains information technology equipment and certain telephone company equipment (“IT Building”).

The Head-End Property and the IT Building shall be excluded from the Leased Premises.

Depiction of the Head-End Property and IT Building

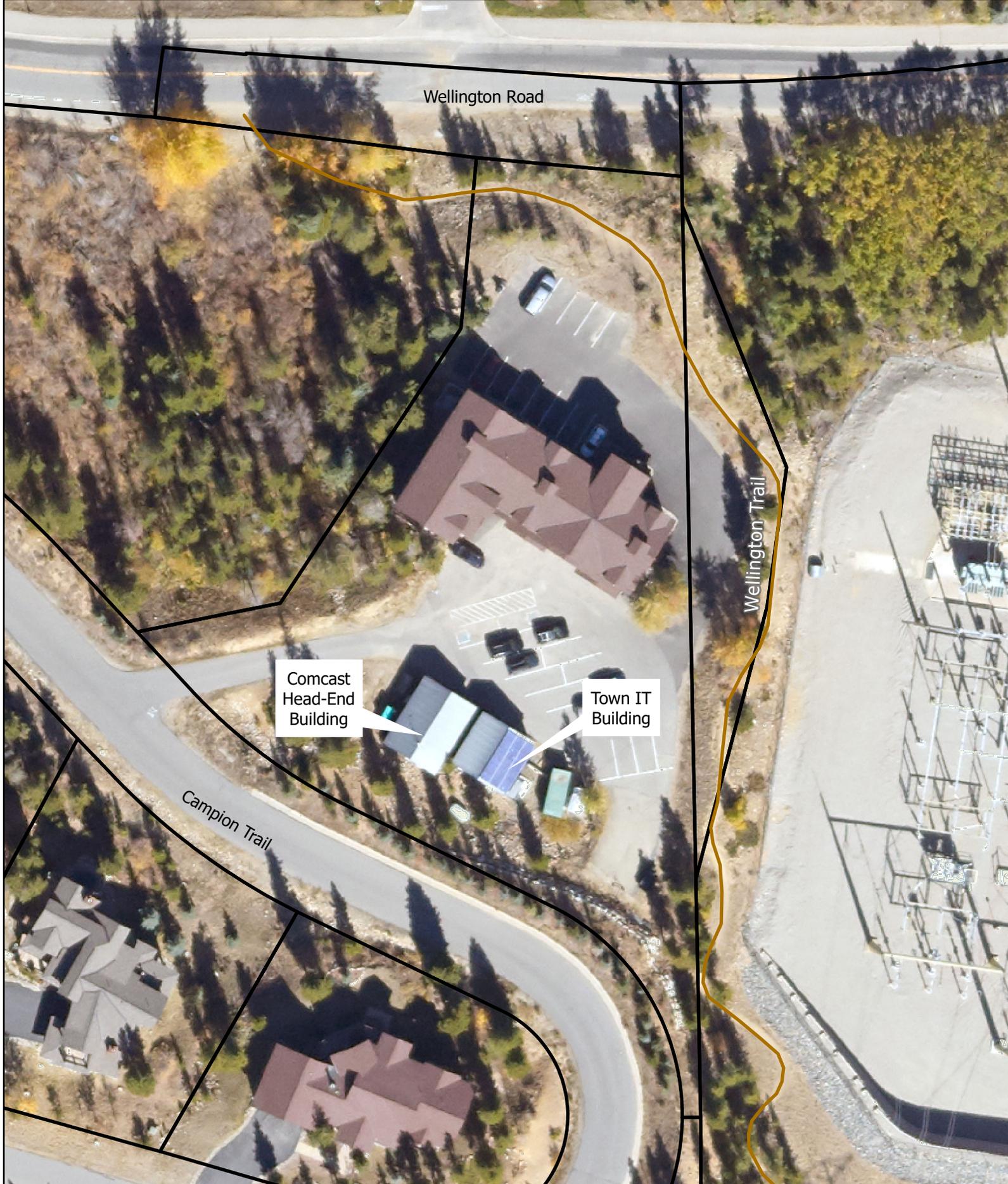


Exhibit B
Depiction of the Head-End Property
and IT Building

-  Trails
-  Property Lines





Memo

To: Breckenridge Town Council
From: Pamela Ness, Revenue Manager
Date: 09.26.2023
Subject: Town Tax Code revisions

Background

This memo details changes proposed to the Town of Breckenridge Sales Tax code that follows this memo. Staff is proposing revisions to two sales tax exemption categories in the Town Code regarding Colorado's retail delivery fee, incontinence products and diapers, and menstrual care products. The cost of diapers and incontinence products can be burdensome for many individuals and families. These essential products are expensive and are not covered by SNAP (food stamps) or WIC (Women, Infants & Children – supplemental nutrition program). Adult incontinence products are covered by Medicaid, but not Medicare, and children's diapers are only covered by Medicaid in certain situations.

Often called "Pink Taxes", taxes on essential menstrual care products for women creates an unfair burden and impacts low-income individuals. The State of Colorado and many municipalities have exempted these products from taxation. It is Staff's recommendation that we move forward with a sales tax exemption for these products.

Recommended Action:

We ask that Council review the proposed revisions in the attached ordinance. Staff will be present during the Work Session to respond to any questions that Council may have.

COUNCIL BILL NO. 35

Series 2023

A BILL FOR AN ORDINANCE TO CREATE NEW EXEMPTIONS FROM TAXATION IN THE SALES TAX CODE.

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

Section 1. That section 3-2-2, entitled “DEFINITIONS” be amended by adding new definitions and placing them in alphabetical order underlined as follows:

INCONTINENCE PRODUCTS AND DIAPERS: Absorbent cloth or disposable products worn by humans who are incapable of or have difficulty controlling their bladder or bowel movements.

MENSTRUAL CARE PRODUCTS: Tampons, panty liners, menstrual cups, sanitary napkins, and other similar tangible personal property designed for feminine hygiene in connection with the human menstrual cycle but does not include grooming and hygiene products.

Section 2. That new sales tax exemptions be created in section 3-1-4 entitled “ITEMS EXEMPT FROM TAX” as subsections FF through HH and underlined to read as follows:

FF. All sales of feminine hygiene menstrual products.

GG. All sales of incontinence products and diapers.

HH. Any government fees imposed directly on the purchaser and required to be held in trust by the imposing government and separately stated on the invoice provided to the purchaser at the time of sale.

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

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

1 INTRODUCTION, READ ON FIRST READING, APPROVED AND ORDERED
2 PUBLISHED IN FULL this 26th day of September, 2023. A Public Hearing shall be held at the
3 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ___ day of
4 _____, 2023, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the
5 Town.

6 TOWN OF BRECKENRIDGE, a Colorado municipal corporation

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10 By: _____

11 Eric S. Mamula, Mayor

12

13 ATTEST:

14

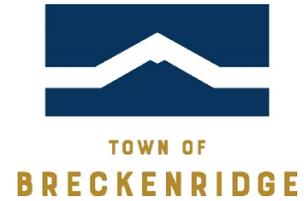
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18 Helen Cospolich, CMC,

19 Town Clerk



Memo

To: Breckenridge Town Council Members
From: Melanie Leas, Housing Project Manager & Laurie Best, Housing Manager
Date: 9/20/2023 (For September 26th—TC Work Session)
Subject: Ordinance Conveying Town Property for Phase 1 Stables Village Workforce Housing

On April 11, 2023, the Town Council approved an agreement between the Town of Breckenridge and Stables Village, LLC to develop and construct workforce housing at the Stillson Lot. The project agreement committed the Town to transferring the 8-acre parcel in two phases by special warranty deed. This ordinance conveys the first phase of real property, Tracts A, B, C and G, for the development of 31 deed restricted homes for the local workforce.

Staff will be available at the September 26th work session to answer questions.

COUNCIL BILL NO. ____

Series 2023

A BILL FOR AN ORDINANCE CONVEYING TOWN PROPERTY FOR FIRST PHASE OF STABLES WORKFORCE HOUSING PROJECT.

WHEREAS, on April 11, 2023, Council approved by ordinance No. 2023-13 an Agreement between with Stables Village, LLC, to develop and construct workforce housing (hereinafter "Project Agreement");

WHEREAS, per that Project Agreement, the Town committed to transferring in two phases by special warranty deed certain real property owned by the Town to the Developer for the Project;

WHEREAS, Section 15.3 of the municipal charter requires that Council may not sell, exchange or dispose of real property except by ordinance or a majority vote of the electors at the option of the council.

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

Section 1. That the Town Council of the Town of Breckenridge hereby approves and ratifies the transfer by special warranty deed to Stables Village LLC the real property described below and further ratifies all actions of the Town Manager necessary to close on the transfer of the real property for phase one of the Stables Project.

TRACTS A, B, C, AND G, STABLES VILLAGE SUBDIVISION AS SHOWN ON PLAT RECORDED JULY 10, 2023 UNDER RECEPTION NO. 1313563, COUNTY OF SUMMIT, STATE OF COLORADO.

Section 2. This ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Charter.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this ____ day of _____, 2023. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of _____, 2023, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

TOWN OF BRECKENRIDGE, a Colorado municipal corporation

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By: _____
Eric S. Mamula, Mayor

ATTEST:

Helen Cospolich, CMC,
Town Clerk



Memo

To: Breckenridge Town Council Members

From: Aubrey Ciol, Grants Administrator

Date: 9/19/2023 (For September 26th—TC Work Session)

Subject: Department of Local Affairs Strong Communities Planning Grant

The Town of Breckenridge Housing Department intends to submit an application with the Colorado Department of Local Affairs for the Strong Communities Planning Grant Program for preliminary testing— to include a geotech survey, environmental site assessment, and pit tests for future geothermal heating systems— and preliminary design of the Block 11 for-sale workforce housing development.

As required by the application process, the attached ordinance will authorize the submittal of the Strong Communities Grant application to the Department of Local Affairs requesting funding in the amount of \$200,000.00. Approval of this ordinance will also demonstrate the Town’s capability to provide the matching funds through an appropriation in the amount of \$20,000.

Staff will be available at the September 26th work session to answer questions.

COUNCIL BILL NO. ____

Series 2023

A BILL FOR AN ORDINANCE APPROPRIATING \$20,000.00 IN LOCAL FUNDS IN SUPPORT OF GRANT APPLICATION TO THE COLORADO DEPARTMENT OF LOCAL AFFAIRS (DOLA) FOR STRONG COMMUNITIES PLANNING GRANT.

WHEREAS, the Strong Communities Planning Grant provides grants to local governments to promote the development of affordable housing that is driven by community benefits and that focuses on critical housing needs as identified by the local government;

WHEREAS, qualifying communities that have adopted qualifying housing strategies such as the Town of Breckenridge, are eligible to apply for funds to support an affordable housing development project directly; and

WHEREAS, the Town will use these grant funds to cover a portion of the costs associated with the overall master planning of the parcel currently known as Block 11 for master planning, soils testing and environmental site assessment purposes for the development future workforce housing.

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

Section 1. Town Council hereby approves the submission of an application to the Department of Local Affairs for the Strong Communities Grant requesting a grant in the amount of \$200,000.

Section 2. Town Council further approves the appropriation of \$20,000.00 to satisfy the requirement that the Town contribute 20% of the total project cost (the "Local Match").

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

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this ____ day of _____, 2023. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of _____, 2023, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

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TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By: _____
Eric S. Mamula, Mayor

ATTEST:

Helen Cospolich, CMC,
Town Clerk



Memo

To: Town Council
From: Town Manager and Town Attorney
Date: September 26, 2023
Subject: Appointment of Town Attorney and Approval of Agreement

Per the Town of Breckenridge Charter, Article VIII, Town Council shall appoint a Town Attorney to serve as the legal representative of the Town. After successfully serving as the Town Attorney for an initial two-year period, the Town Council is being asked to approve the proposed Resolution to reappoint the Town Attorney and approve the associated terms and conditions in the attached Flat Fee Agreement.

The Agreement specifies the monthly flat monthly fee to be paid to the Town Attorney not only for the existing scope of services, but also for the anticipated additional scope of services due to growth in the housing division and for succession of the Breckenridge water portfolio. Per the Agreement, the Town Attorney will devote such time to the representation as is necessary to serve the Town and not increase the proposed fee for the proposed scope of work. The Town Attorney intends to hold standing office hours which will be on Tuesdays.

1 RESOLUTION NO. ____

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3 SERIES 2023

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6 **A RESOLUTION APPROVING A CONTRACT WITH THE TOWN ATTORNEY**
7 **ESTABLISHING THE TERMS OF REAPPOINTMENT.**
8

9
10 WHEREAS, the Town Charter, Article VIII, entitled Legal and Judiciary, Section 8.1,
11 provides, among other things, that the Town Attorney shall serve as the legal representative of
12 the Town;

13
14 WHEREAS, the Town Charter further states that the Town Council shall appoint and
15 establish the compensation of the Town Attorney;

16
17 NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF
18 BRECKENRIDGE, COLORADO:

19
20 **Section 1.** The Town Council hereby approves a Resolution reappointing the
21 Town Attorney upon the terms and conditions set forth in the attached Flat Fee Agreement.
22

23
24 RESOLUTION ADOPTED AND APPROVED this 26th day of September 2023.
25

26
27 ATTEST:

TOWN OF BRECKENRIDGE

28
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30 _____
31 Helen J. Cospolich, CMC, Town Clerk

Eric S. Mamula, Mayor

32
33
34 APPROVED IN FORM
35
36

37 _____
38 Town Attorney

Date

1 **AGREEMENT FOR PROFESSIONAL LEGAL SERVICES**

2 This Agreement for Professional Services is effective 4th day of October 2023, between
3 the Town of Breckenridge, a Colorado home-rule municipality (the "Town") and Kirsten Crawford
4 ("Town Attorney"), to perform legal services for the Town of Breckenridge for a flat fee as
5 described below.

6 **I. Scope of services.**

7 a. Existing scope: The Town attorney shall continue to provide legal services in the
8 following areas:

9 i. Provide day-to-day legal advice as needed by Town departments and divisions
10 including, but not limited to, community development, housing division, finance, human
11 resources, public works, town manager's office, and police.

12 ii. Attend council meetings, liquor and marijuana authority meetings, and meetings
13 of Town boards and commissions as requested by Town Council or Town Managers; and
14 provide annual trainings for newly elected and/or appointed members of boards and
15 commissions.

16 iii. Perform all transactional work for all Town departments and divisions, including,
17 but not limited to, drafting real estate transactions, development agreements, consulting and
18 professional services agreements, easements, licenses, etc.

19 iv. Oversee municipal prosecution with an emphasis on new regulations that may be
20 identified to support code enforcement.

21 v. Provide legal assistance and advice to departments and divisions in new policy
22 development, including drafting any proposed new regulations or amendments to existing
23 regulations, with emphasis on support and legal advice to community development staff to
24 manage development.

25 vi. Provide support and attend Town legislative policy committee meetings, review
26 all state bills that have an operational impact on the Town, provide resources and support to
27 advocacy organizations as requested by the Town.

28 vii. Hold weekly office hours which will generally be each Tuesday unless in the
29 professional judgment of the Town Manager and Town Attorney the time should be adjusted
30 due to business need.

31 b. Anticipated expansion in scope: The Town attorney further agrees to provide
32 legal services to support an identified expansion in need for legal services as follows: to
33 support the housing division including, amendments to all legal instruments that address the
34 relationship between landlord-tenant, including tenant leases, property management
35 agreements, and support to the housing division for anticipated staff training; to support the
36 anticipated cross-training and succession plan work between Town attorney and the Town's
37 water lawyer for Breckenridge municipal water, water infrastructure, snowmaking.

38 c. Exemptions; Exclusions.
39

1 i. This Agreement and the scope of services provided by the Town Attorney shall
2 not be interpreted to include litigation, special counsel work (other than the oversight of outside
3 counsel), municipal court prosecution of cases, or matters covered by the Colorado
4 Intergovernmental Risk Sharing Pool.

5 ii. If, during the term of this Agreement, there is an unanticipated significant
6 expansion of Town work or should an extraordinary matter arise, the Parties agree to enter
7 good faith negotiations to identify the new scope and any reasonable increase in the monthly
8 fee or hourly rate to be paid for the same.

9 **II. Flat Fee.**

10 The Town agrees to compensate the Town Attorney at a base amount of \$ \$21,916.00
11 per month ("Flat Fee"). The Town understands that it is not entering into an hourly fee
12 arrangement. This means that the Town Attorney will devote such time to the representation as
13 is necessary, but the Town Attorney's fee shall not be increased or decreased based upon the
14 number of hours spent except as otherwise provided in Section I c above. The Flat Fee
15 furthermore contemplates the Town's maximum contribution to professional development,
16 travel, and training.

17 **III. Costs and Services.** In addition to the Flat Fee above, the Parties agree as
18 follows:

19 a. The Town Attorney shall obtain and maintain professional liability insurance at no
20 cost to the Town.

21 b. The Town shall not pay for vacation, health benefits, sick leave or any other
22 benefit paid, given or provided to Town employee with the exception of any allowance granted
23 to other similarly situated independent contractors.

24 c. The Town shall not pay or withhold any sum for income tax, unemployment
25 insurance, social security or any other withholding pursuant to any law or requirement of any
26 governmental body, federal and state tax on any moneys earned pursuant to this Agreement,
27 workers' compensation benefits, or unemployment insurance benefits.

28 d. The Town shall continue paying the cost of Thompson Reuters publications and
29 online materials; provided, however, the Town Manager and Town Attorney will review the
30 existing contracts to determine whether there are cost-savings opportunities and will renegotiate
31 those existing contracts accordingly.

32 e. The Town shall provide a portable laptop computer and remote access to
33 software.

34 f. The Town shall pay for the cost of printing publications, recording fees, and costs
35 associated with printing work product developed for the Town.

36 g. The Town shall provide up to 8 hours/week of administrative support to include
37 updating, creating, and converting documents, printing, researching and locating documents,
38 and other similar work. If due to business and staffing needs, the Town determines it cannot
39 provide ongoing administrative support, the Town will then authorize the Town Attorney to

1 contract for up to 8 hours of administrative work and bill the Town at a rate of no more than
2 80.00 per hour.

3 **IV. Invoices.** The Town shall pay Town Attorney the monthly flat fee by the 15th of
4 the month following the month of services performed. Any additional services outside, as
5 described in c ii, the scope of the Flat Fee shall be paid within thirty (30) days of receiving an
6 itemized invoice from Town Attorney for such services. The Town Attorney reserves the right
7 to charge interest of one percent per month on any outstanding invoice.

8 **V. Conflicts Evaluation.** Before accepting any additional clients, the Town
9 Attorney shall evaluate whether there are any ethical constraints that would conflict with the role
10 of Town Attorney for the Town. The Town agrees that the Town Attorney may represent new
11 and existing clients in any matter that is not substantially related its work for the Town if it is not
12 directly adverse to the Town. In the event there is a directly adverse interest to the Town, the
13 Town Attorney shall not accept the client unless or until it consults with the Town and the Town
14 waives any conflict.

15 **VI. Term; Termination.** The term of this Agreement is one year from the effective date.
16 The Town Attorney understands and acknowledges that this Agreement may be terminated at
17 any time by the Town, without liability for breach, except liability for compensation due the Town
18 Attorney for services performed prior to the termination, and without the need for cause for the
19 termination.

20 **VII. Notices.** For purposes of administering this Agreement, any notices required to
21 be given shall be delivered as follows:

22

23 Town: Shannon Haynes, Manager
24 P.O. Box 168
25 150 Ski Hill Road
26 Breckenridge CO 80424

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28 Contractor: Kirsten J. Crawford
29 671 Fairview Blvd.
30 Breckenridge CO 80424

31 Dated: _____

32 TOWN:

TOWN ATTORNEY:

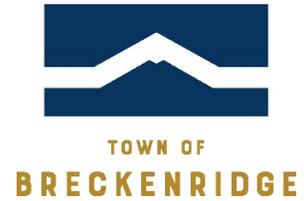
33 _____
34 Signature

Signature

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Memo

To: Breckenridge Town Council Members
From: Mark Truckey, Director of Community Development
Date: September 20, 2023
Subject: Planning Commission Decisions of the September 19, 2023 Meeting

DECISIONS FROM THE PLANNING COMMISSION MEETING, September 19, 2023:

CLASS A APPLICATIONS: None.

CLASS B APPLICATIONS:

1. Main Street Station Crepe Trolley Renewal, 505 S. Main Street, PL-2023-0379
A proposal to renew the permit to utilize the custom Crepe Trolley food vendor cart in the common area plaza of Main Street Station. *Approved, see second memo.*

CLASS C APPLICATIONS: None.

TOWN PROJECT HEARINGS: None.

OTHER: None.

Memo

To: Breckenridge Town Council Members
From: Clif Cross, Planner II
Date: 9/20/2023
Subject: Main Street Station Crepe Trolley Renewal, 505 S Main Street; PL-2023-0379

A Combined Hearing for the Main Street Station Crepe Trolley located at 505 S Main Street (Main Street Station) was held by the Planning Commission on September 19, 2023. The application proposes to renew the development permit to operate a custom food vendor cart in the common area plaza. The vendor cart was originally approved in 2017 and no changes are proposed to the operation with this renewal.

The Commission added one condition of approval regarding the holiday/bistro lights, specifying the Crepe Trolley must comply with Absolute Policy 46: Exterior Lighting of the Development Code and all Town Lighting and Sign requirements. The Commission found the proposal complied with all other Priority Design Standards and Absolute Policies, and assigned a total cumulative score of zero (0) points under the Relative Policies. The three-year development permit was approved by a 7-0 vote of the Commission.

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





Main Street Station
 Crepe Trolley, 505 S.
 Main Street



NOT TO SCALE

Breckenridge South



PLANNING COMMISSION MEETING

The meeting was called to order at 5:30 pm by Vice Chair Leas.

ROLL CALL

| | | | |
|--------------|--------------|-------------------------|---------------|
| Mike Giller | Mark Leas | Allen Frechter - remote | Susan Propper |
| Ethan Guerra | Steve Gerard | Elaine Gort | |

APPROVAL OF MINUTES

With no changes, the September 5, 2023, Planning Commission Minutes were approved.

APPROVAL OF AGENDA

With no changes, the September 19, 2023, Planning Commission Agenda was approved.

PUBLIC COMMENT ON HISTORIC PRESERVATION ISSUES:

- No comments.

COMBINED HEARINGS:

1. Main Street Station Crepe Trolley Renewal (CC), 505 S. Main Street, PL-2023-0379

Mr. Cross presented a proposal to renew the permit to utilize custom “Crepe Trolley” food vendor cart in the common area plaza of Main Street Station.

Commissioner Questions / Comments:

Mr. Gerard: Food trucks are such a huge part of food offerings and delivery in other communities, would it make sense for the Commission to consider a work session on food trucks? (Mr. Cross: That is something staff could work on if the Commission requests such a work session.) (Mr. Kulick: One reason why this truck is allowed here is because of the more relaxed design standards in Main Street Station. In the historic downtown, the guidelines dictate appearance to a degree that would not allow a food truck and much of the rest of Town is made up of large single-family lots that would prohibit commercial operations.)

Mr. Giller: The report states that the cart will not have exterior lighting, but you can see that there are bistro lights on the trolley. (Mr. Cross: I think those are decorative holiday lights.) I think we should add a condition that any bistro or holiday lights be removed.

Ms. Gort: What are the hours of the trolley? It seems reasonable that they be allowed to have a light for their sign. (Ms. Puester: The definition of decorative lighting only allows decorative lighting to outline a structure so they would not be allowed on a vehicle such as this trolley.)

Joe Diaz, Trolley Crepes, Manager: I am not sure what lighting is placed on the trolley in winter. I am a representative for the owner but have only seen the cart in summer.

Mr. Kulick: Decorative lighting would not be allowed on a vehicle under Policy 46. But they would be allowed to have sign lighting under the code which would be reviewed at the staff level.

Mr. Cross: The signage has already been approved.

Mr. Kulick: Their sign permit could be modified to allow for lighting if none exists currently.

Mr. Giller: I would be willing to amend the requested condition regarding holiday lights to allow for a sign light. I do think Breckenridge has too many holiday lights strung up and down Main Street. I think the string lights are clearly non-compliant lighting which should still be removed. I would be agreeable to an additional condition that all non-

compliant lighting shall be removed from the exterior of the trolley and under staff review the applicant may update the lighting of the sign. (Mr. Kulick: It is the typical downcast lighting that is allowed with signage.)

Mr. Frechter: If I understand correctly, this permit has expired, and they are reapplying? (Mr. Cross: That is correct, this permit expired during the pandemic and the new owner did not know they needed to reapply to keep their development permit. Mr. Kulick: The onus is on the permit holder or operator of the cart or trolley to renew the permit. In this case the new owner just was not aware that they needed to do so.)

The hearing was opened for public comment. There were no comments, and the public comment period was closed.

Mr. Giller: I would state that no holiday lights are permitted on the trolley and we should add my previously stated condition regarding holiday lights and sign lights.

Mr. Gerard made a motion to approve the Main Street Station Crepe Trolley Renewal, with the following additional condition 14, the Crepe Trolley must comply with absolute Policy 46 of the development code including all lighting and sign requirements, seconded by Mr. Giller. The motion passed 7 to 0.

WORK SESSIONS:

1. Exterior Lighting Code Changes

Ms. Puester and Ms. Muncy presented proposed changes to the Exterior Lighting Code as they relate to Dark Sky community certification requirements. Required changes must be approved prior to the Town's application. The following specific questions were asked of the Commission:

1. Does the Commission believe that colored holiday lights should be allowed in residential areas in Lighting Zone 3?
2. Should Lighting Zone 2 be expanded to Airport Road as shown on the map in orange?
3. Does the Commission have any other comments or questions?

Commissioner Questions / Comments:

Ms. Propper: On page 5 of the changes, in paragraph C, it states legal non-conforming bistro lights must come into conformance in 2012 which is past. I would suggest that we just make them not allowed since that date is past. In Section 9-12-7, the definition of outline lighting, this definition is being deleted, correct? (Ms. Muncy: Correct, it was redundant with holiday and architectural lighting and is being removed.) Will semi-opaque lighting fixtures still be permitted? (Ms. Muncy: Yes, as long as the semi-opaque part is below the horizontal section of the fixture. The dark-sky board has reviewed this language and did not recommend to change or remove that allowance.) How will the public be educated about lighting? (Ms. Puester: We would like to tie the educational events required by certification into more fun events in town-maybe with BCA as an idea and lighting night walks with staff.) The dark-sky certification and the code changes are separate actions? (Ms. Puester: Yes, code would follow the regular ordinance process which includes 2 readings. This is required to be completed prior to application for dark sky certification. Municipalities have five years after certification to allow for changes and conformance and private property has ten however, we did not change the private property lighting conformance date of 2025 which has been on the books for 15 years. The only new light conformance date is 2033 for a required commercial signage lighting curfew.) How will colored holiday lights fit under the dark sky requirements? Will that affect our certification? (Ms. Puester: In 2012 the holiday lighting regulations were changed to allow only warm and soft white lighting. We

believe that could be loosened in the residential areas as the concern of Council at that time was primarily that the downtown looked haphazard with adjacent buildings next to each other with different colored lighting. The color does not impact dark sky certification. We could change the holiday light section to allow colored lights outside of the commercial Lighting Zones 1 and 2.)

Ms. Gort: Is there consideration for having colored lights limited to a certain season? (Ms. Puester: Our code has a date limitation which would apply.)

Mr. Giller: I am concerned about too many decorative lights in the downtown area. Could we put a further limitation on decorative lights? Something similar to the 70,000 lumens per acre limit suggested for commercial? (Ms. Puester: Decorative lighting is very important to Town Council. There was concern that if the certification did not allow for decorative lighting, we would not attempt certification. However, this is not the case per DSI and decorative lighting is allowed and a limit is not required for that but we could look into a way to go beyond and suggest a limitation as a Planning Commission recommendation.) We do work for the Council. I would like to see some kind of metric that manages or limits the overall decorative lighting. I am concerned about intensity and overall amount of lighting. I would consider a limit on the lighting that would end in April instead of the end of ski season timeframe since they stay open so late now. Less would be more here.

Mr. Frechter: Do we address motion activated lights? (Ms. Muncy: Motion activated lights are not allowed to trespass across the property line.) It should state, "the light controlled by the sensor must comply with other sections of the lighting code." Light bleeding from unincorporated areas cannot be controlled through this ordinance? (Ms. Puester: We cannot but the County is also considering becoming certified however I'm not sure where they are in the process.) Is there a curfew for decorative lights? (Ms. Puester: No, not as written currently.) Like Mike, I would like to have the Town consider a curfew on decorative lights such as when the bars close downtown.

Mr. Gerard: I think we have an opportunity to make some significant changes. I agree with Mr. Giller that the town has too many lights and should cut back on decorative lighting. A curfew for turning off signage lighting would not become effective for 10 years as written. We should be aggressive and require this sooner. In my opinion we made a mistake extending the residential compliance date to 2025. Why are we allowing the semi-opaque fixtures? My understanding of dark sky, a semi-opaque fixture is not allowed. (Mr. Kulick: To be compliant, the lighting source must be fully up inside the metal fixture, fully shielded. The semi-opaque hangs below the solid part of the fixture which has the light in it. This allows a greater variety of lighting styles.)

Mr. Leas: Every egress must have a light per building code. Having a fixture that doesn't spill any light onto hazards or steps doesn't meet the safety requirements of having a light.

Mr. Gerard: A neighbor's property has glowing fixtures where the bulb is visible through opaque glass. Is this compliant? (Mr. Kulick: No that would not be compliant because the bulb is visible.) Staff should look at the semi-opaque language. I don't see why we can't have a curfew for residential night-time lighting. This is easy to accomplish. We have exterior lighting at homes that cast light onto wetlands areas in the Highlands. One of the goals we're trying to achieve is to protect the Town's wildlife populations. If the Town has rules, HOAs could help enforce the rules. (Ms. Puester: One concern with lighting curfews is that it is difficult for staff to enforce. It would be in the Town code and enforced by staff. We have a small staff and these violations would also be late at night which would also be an issue. It is not required by certification with the exception of the sign light curfew so we did not put one in the draft.)

Ms. Gort: Park City requires holiday lights for residential to be off at 11 p.m.

- Mr. Gerard: A curfew for lighting, all lighting, in Zone 3 is what I would like to see. (Ms. Puester asked the rest of the Commission on lighting curfews for Zone 3-both on buildings and decorative lighting. All Commissioners expressed support for the curfew.)
- Ms. Gort: Maybe we have a curfew for lights but also allow for motion sensors.
- Mr. Leas: We could say that motion sensor lighting is exempt from the curfew.
- Mr. Leas: To begin with we should start with Zone 3.
- Mr. Gerard: Why can't all commercial lighting go off when the sign lights go off and do it before 10 years from now?
- Ms. Puester: There are safety concerns having lights go off when people are leaving work after the bars and restaurants close and walking in the dark through the commercial core.
- Ms. Truckey: I'd suggest focusing the curfew recommendation to the residential Zone 3 lighting and then recommend studying the commercial lighting zones in the future.
- Mr. Giller: There is no maximum for lumens of decorative holiday lights. (Ms. Muncy: Residents putting up decorative lights may not know how to determine holiday light foot candles.) That may be the case for residential but I am hearing that the commercial core is over lit. String decorative lighting is not limited and I think it should be limited.
- Ms. Gort: There are no size limits for bulbs of decorative lighting either which we could add so they are not the large bistro style unshielded.
- Mr. Gerard: I applaud this initiative and think this would be a good thing for the Town to implement and further enforce.
- Mr. Giller: I am very supportive of this and think this is on the right path.
- Mr. Guerra: I echo the sentiment that the downtown core is over-lit with decorative holiday lighting. I understand everyone's attraction to have holiday lights and that is part of our brand. I would be interested in the potential for timers or curfews on those lights. Obviously, safety lighting must be in place. In Zone 3, I am sensitive to light. I have clients who want to light up their homes for security reasons and for aesthetics. We are also over-lighting these residential homes. We can look at limiting the number of exterior sconces. Another consideration is landscape lighting, we should not allow that. We should also limit the number of small pathway lights, solar lights. There is also no control for bistro lighting in Zone 3. In the commercial section, Green Mile is in Zone 2, those green string lights are non-compliant? (Ms. Puester: Correct, they are not compliant.)
- Ms. Gort: Fresh snow reflects 80 percent of light. I think we should consider being more aggressive than the standards because of this factor. Suffolk, NY doesn't allow above 2200 Kelvin.
- Mr. Leas: It would be difficult to find a bulb that is only 2200 Kelvin.
- Ms. Gort: Curfews could be important. We should consider limiting. I do like the idea of colored lights limited for a specific timeframe. Residential bistro lights are being eliminated but it is nice to have dinner at the patio with them. Maybe we could allow them with timers. (Ms. Muncy: The Town will have to have light meters.) I would like the meters available at the library.
- Mr. Frechter: Ok with allowing colored lights for a certain period in Zone 3 as Ms. Gort suggests.
- Mr. Leas: Section 9-12-4: I would encourage staff to revise these paragraphs, which would be better if the Council made an affirmative statement despite the costs to owners and businesses. (Ms. Puester: I did not want to change this section specifically because we wanted to point out this conformance section was put in place in 2007 and that the 2025 compliance date is not a new deadline for residential lighting with this code update.)
- Ms. Propper: These sections are important if someone were to litigate in showing why the regulations are important to the Town. I wouldn't change it.

- Mr. Guerra: Right now, colored lights are not allowed anywhere in Town? Why are we re-addressing this? (Ms. Puester: Colored lights such as red for example can actually be better for animals and human as opposed to white.)
- Ms. Propper: For colored lights, those could be allowed in the residential area only, especially if limited during the holiday period. I am okay with expanding Zone 2 if the main change is to allow for bistro lighting at restaurant patios.
- Mr. Giller: Okay for colored lights in Zone 3. Yes, expand Zone 2 to commercial part of Airport Road.
- Mr. Frechter: Yes, colored holiday lights are okay with a timeframe. Yes, expand Zone 2 to Airport Road.
- Mr. Gerard: Yes, the holiday lights could be allowed in Zone 3 with curfews and with a timeframe that is shorter than what is allowed now, which is until the end of ski season. Yes, Zone 2 should be expanded to Airport Road.
- Mr. Guerra: No, on colored lights. I am in favor of more restrictions on lighting not fewer. I agree the Airport Road area is more commercialized now and should be in lighting Zone 2.
- Ms. Gort: Yes, colored holiday lights if they are turned off at 11 pm and with a timeframe in Zone 3. And yes, for expanding Zone 2 to Airport Road.
- Mr. Leas: I am in favor of allowing colored lights in Zone 3 and yes, Zone 2 should be expanded to Airport Road.

OTHER MATTERS

1. Town Council Summary

ADJOURNMENT:

The meeting was adjourned at 7:35 pm.

Mark Leas, Vice Chair



Scheduled Meetings

Shading indicates Council required attendance – others are optional

The Council has been invited to the following meetings and events. A quorum may be in attendance at any or all of them.

September 2023

| | | | |
|----------------------------------|-------------------------|------------------------------------|--------------------------|
| Tuesday, Sept. 26th, 2023 | Council Chambers | Second Meeting of the Month | 3:00 pm / 7:00 pm |
| September 30th, 2023 | Riverwalk Center | TEDx Breckenridge | 1:00pm - 5:00pm |

October 2023

| | | | |
|---------------------------------|-------------------------|------------------------------------|--------------------------|
| October 4th, 2023 | Keystone Policy Center | Recycling Policy Forum | 9:30am - Noon |
| Tuesday, Oct. 10th, 2023 | Council Chambers | Budget Retreat | 1:00pm - 3:00pm |
| Tuesday, Oct. 10th, 2023 | Council Chambers | First Meeting of the Month | 3:00 pm / 7:00 pm |
| October 11th, 2023 | Hearthstone Restaurant | FIRC Wine Dinner | 5:00pm - 9:00pm |
| October 13th, 2023 | Beaver Run Resort | COO Summit by Summit Chamber | 8:00am - 11:00am |
| Oct. 13th - 14th, 2023 | | Día de Muertos | All Day |
| Oct. 18th - 19th, 2023 | Vail | MT2030 Summit | All Day |
| October 19th, 2023 | Council Chambers | BTO Winter Preview | 9:00am - 11:00am |
| Oct. 19th - 20th, 2023 | Vail | CAST Meeting | All Day |
| Tuesday, Oct. 24th, 2023 | Council Chambers | Second Meeting of the Month | 3:00 pm / 7:00 pm |

Other Meetings

| | | |
|----------------------|---|-----------------|
| September 25th, 2023 | Open Space & Trails Meeting | 5:30pm |
| September 26th, 2023 | Board of County Commissioners Meeting | 9:00am / 1:30pm |
| September 28th, 2023 | Summit Stage Transit Board Meeting | 8:15am |
| | Breckenridge Tourism Office Board Meeting | 8:30am |
| | RW&B Board Meeting | 3:00pm |
| September 29th, 2023 | Breck Create | 11:00am |
| October 3rd, 2023 | Board of County Commissioners Meeting | 9:00am |
| | Planning Commission Meeting | 5:30pm |
| October 4th, 2023 | Breckenridge Events Committee | 9:00am |
| | Childcare Advisory Committee | 3:00pm |
| October 10th, 2023 | Board of County Commissioners Meeting | 9:00am / 1:30pm |
| | Workforce Housing Committee | 10:30am |
| October 11th, 2023 | Breckenridge Heritage Alliance | Noon |
| October 12th, 2023 | I-70 Coalition | 1:00pm |
| | Upper Blue Sanitation District | 5:30pm |
| October 16th, 2023 | Social Equity Advisory Commission | 7:30am |
| | Summit Combined Housing Authority | 9:00am |
| October 17th, 2023 | Board of County Commissioners Meeting | 9:00am |
| | Liquor & Marijuana Licensing Authority | 9:00am |
| | Planning Commission Meeting | 5:30pm |



Scheduled Meetings

Shading indicates Council required attendance – others are optional

The Council has been invited to the following meetings and events. A quorum may be in attendance at any or all of them.

| | | |
|---------------------|---|-----------------|
| October 23rd, 2023 | Open Space & Trails Meeting | 5:30pm |
| October 24th, 2023 | Board of County Commissioners Meeting | 9:00am / 1:30pm |
| October 26th, 2023 | Summit Stage Transit Board Meeting | 8:15am |
| | Breckenridge Tourism Office Board Meeting | 8:30am |
| | RW&B Board Meeting | 3:00pm |
| November 1st, 2023 | Police Advisory Committee | 7:30am |
| | Breckenridge Events Committee | 9:00am |
| | Childcare Advisory Committee | 10:00am |
| November 2nd, 2023 | QQ - Quality and Quantity - Water District | 10:00am |
| November 7th, 2023 | Board of County Commissioners Meeting | 9:00am |
| | Planning Commission Meeting | 5:30pm |
| November 8th, 2023 | Breckenridge Heritage Alliance | Noon |
| November 9th, 2023 | Upper Blue Sanitation District | 5:30pm |
| November 14th, 2023 | Board of County Commissioners Meeting | 9:00am / 1:30pm |
| | Workforce Housing Committee | 10:30am |
| November 20th, 2023 | Social Equity Advisory Commission | 7:30am |
| | Summit Combined Housing Authority | 9:00am |
| November 21st, 2023 | Board of County Commissioners Meeting | 9:00am |
| | Liquor & Marijuana Licensing Authority | 9:00am |
| | Planning Commission Meeting | 5:30pm |
| TBD | Tourism Overlay District Advisory Committee Meeting | 10:30am |
| | Transit Advisory Council Meeting | 8:00am |
| | Water Task Force Meeting | 9:30am |