



Town Council Regular Meeting
Tuesday, April 8, 2025, 7:00 PM
Town Hall Council Chambers
150 Ski Hill Road
Breckenridge, Colorado

THE TOWN OF BRECKENRIDGE CONDUCTS HYBRID MEETINGS. This meeting will be held in person at Breckenridge Town Hall and will also be broadcast live over Zoom. Join the live broadcast available by computer or phone: <https://us02web.zoom.us/j/82918442465> (Telephone: 1-719-359-4580; Webinar ID: 829 1844 2465).

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 - MARCH 25, 2025

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 2025
 - 1. COUNCIL BILL NO. 5, SERIES 2025 - AN ORDINANCE REPEALING AND REPLACING ORDINANCE 12, SERIES 2023 TO REDUCE SINGLE USE PLASTICS AND IN CONNECTION THEREWITH ESTABLISHING FINES AND PENALTIES

VI. NEW BUSINESS

- A. FIRST READING OF COUNCIL BILLS, SERIES 2025
 - 1. COUNCIL BILL NO. 6, SERIES 2025 - AN ORDINANCE AMENDING AND REPLACING TITLE 4, CHAPTER 5, OF THE BRECKENRIDGE TOWN CODE REGARDING RETAIL TOBACCO BUSINESS LICENSING
 - 2. COUNCIL BILL NO. 7, SERIES 2025 - AN ORDINANCE APPROVING THE RUNWAY NEIGHBORHOOD PROJECT DEVELOPMENT AGREEMENT
- B. RESOLUTIONS, SERIES 2025
 - 1. RESOLUTION NO. 5, SERIES 2025 - A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT FOR THE TOWN OF BRECKENRIDGE TO PARTICIPATE IN THE INTERMOUNTAIN REGIONAL PLANNING COMMISSION

2. RESOLUTION NO. 6, SERIES 2025 - A RESOLUTION ADOPTING THE TOWN OF BRECKENRIDGE COMPREHENSIVE PLAN AND LAND USE GUIDELINES AS THE TOWN'S ANNEXATION PLAN PURSUANT TO SECTION 31-12-105(1)(E), C.R.S.

C. OTHER

VII. PLANNING MATTERS

- A. PLANNING COMMISSION DECISIONS

VIII. REPORT OF TOWN MANAGER AND STAFF

IX. REPORT OF MAYOR AND COUNCIL MEMBERS

- A. CAST/MMC
- B. BRECKENRIDGE OPEN SPACE ADVISORY COMMITTEE
- C. BRECKENRIDGE TOURISM OFFICE
- D. BRECKENRIDGE HISTORY
- E. BRECKENRIDGE CREATIVE ARTS
- F. CML ADVISORY BOARD UPDATE
- G. SOCIAL EQUITY ADVISORY COMMISSION
- H. ARTS & CULTURE MASTER PLAN STEERING COMMITTEE

X. OTHER MATTERS

XI. SCHEDULED MEETINGS

- A. SCHEDULED MEETINGS FOR APRIL, MAY AND JUNE

XII. ADJOURNMENT

I) CALL TO ORDER, ROLL CALL

Mayor Owens called the meeting of March 25, 2025, to order at 7:00pm. The following members answered roll call: Marika Page, Jay Beckerman, Todd Rankin, Steve Gerard, Carol Saade and Mayor Kelly Owens. Dick Carleton was absent.

II) APPROVAL OF MINUTES

A) TOWN COUNCIL MINUTES – March 11, 2025

With no changes or corrections to the meeting minutes of March 11, 2025, Mayor Owens declared they would stand approved as presented.

III) APPROVAL OF AGENDA

Town Manager Shannon Haynes stated there was one change to the agenda, which was to remove the Breckenridge Tourism Office Update since they would not be present at tonight's meeting. With that change, the agenda was approved as amended.

IV) COMMUNICATIONS TO COUNCIL

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

Mayor Owens opened Public Comment.

Tom Owens, a Breckenridge resident, stated he recently purchased a home in the Stables Neighborhood and is frustrated with the solar panels on his unit. He further stated he would also like a street sign on his street. Mayor Owens stated staff would reach out to him regarding his concerns.

Paul Camillo, representing the Summit County Builders Association, stated he would like to thank Council for their support of the Careers in Construction program at the high school. He further stated the students have been building tiny homes and learning a lot about construction. He stated they are fortunate to have one of the best teachers in the state leading the program, and it has been featured in regional media. He stated the program is well known in the county with many volunteers. Mayor Owens stated Council absolutely supports that program and it's great to hear about the community support of it as well.

With no additional comments, Mayor Owens closed Public Comment.

B) BRECKENRIDGE TOURISM OFFICE

The Breckenridge Tourism Office was not present for an update.

V) CONTINUED BUSINESS

A) SECOND READING OF COUNCIL BILLS, SERIES 2025

1) COUNCIL BILL NO. 4, SERIES 2025 - AN ORDINANCE APPROVING A LEASE OF THE LITTLE DAISY LODGE TO JUSTIN THIEDE AND KATE KERNS

Mayor Owens read the title into the minutes. Duke Barlow, Open Space and Trails Manager, stated this ordinance would extend a residential lease of Little Daisy Lodge to its existing tenants for a 5-year term.

Mayor Owens opened the public hearing.

There were no public comments and the hearing was closed.

Council Member Rankin moved to approve COUNCIL BILL NO. 4, SERIES 2025 - AN ORDINANCE APPROVING A LEASE OF THE LITTLE DAISY LODGE TO JUSTIN THIEDE AND KATE KERNS. Council Member Beckerman seconded the motion.

The motion passed 6-0. Council Member Carleton was absent.

VI) NEW BUSINESS

A) FIRST READING OF COUNCIL BILLS, SERIES 2025

1) COUNCIL BILL NO. 5, SERIES 2025 - AN ORDINANCE REPEALING AND REPLACING ORDINANCE 12, SERIES 2023 TO REDUCE SINGLE USE PLASTICS AND IN CONNECTION THEREWITH ESTABLISHING FINES AND PENALTIES

Mayor Owens read the title into the minutes. Keely Ambrose, Town Attorney, stated this ordinance is considered a housekeeping ordinance that will reorganize that section to make it easier to use for staff, and to ensure that the enforcement mechanism is clear.

Mayor Owens opened the public hearing.
There were no public comments and the hearing was closed.

Council Member Rankin moved to approve COUNCIL BILL NO. 5, SERIES 2025 - AN ORDINANCE REPEALING AND REPLACING ORDINANCE 12, SERIES 2023 TO REDUCE SINGLE USE PLASTICS AND IN CONNECTION THEREWITH ESTABLISHING FINES AND PENALTIES. Council Member Gerard seconded the motion.

The motion passed 6-0. Council Member Carleton was absent.

- B) RESOLUTIONS, SERIES 2025
1) RESOLUTION NO. 4, SERIES 2025 - A RESOLUTION DESIGNATING REPRESENTATIVES AUTHORIZED TO COORDINATE WITH COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT AND THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY REGARDING FINANCIAL ASSISTANCE MATTERS
Mayor Owens read the title into the minutes. Public Works Director, James Phelps, stated this resolution would authorize the Town's Finance Director as a signatory for an existing State of Colorado loan that will be used for a water utility capital project.

Mayor Owens opened the public hearing.
There were no public comments and the hearing was closed.

Council Member Rankin moved to approve RESOLUTION NO. 4, SERIES 2025 - A RESOLUTION DESIGNATING REPRESENTATIVES AUTHORIZED TO COORDINATE WITH COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT AND THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY REGARDING FINANCIAL ASSISTANCE MATTERS. Council Member Beckerman seconded the motion.

The motion passed 6-0. Council Member Carleton was absent.

- C) OTHER
1) DRIVING RANGE NETTING TOWN PROJECT HEARING
Mayor Owens introduced the Driving Range Netting Town Project. Chris Kulick, Assistant Community Development Director, stated this Town Project would install a 30-foot tall section of netting approximately 450 to 600 feet in length on the western side of the driving range, and a 50 foot tall section at the end of the driving range. He further stated this project would enhance safety and prevent damage, and code allows for this type of fencing along recreational areas. Kulick stated Planning Commission recommends approval of this project.

Council Member Gerard thanked the Recreation Department and Community Development Department for their work on this project. Mayor Owens stated that since the plan has changed since it was originally presented, she wanted to make sure there were no comments related to the current design. Kulick confirmed there were no comments on this version.

Council Member Rankin moved to approve the Driving Range Netting Town Project. Council Member Gerard seconded the motion.

The motion passed 6-0. Council Member Carleton was absent.

VII) PLANNING MATTERS

- A) PLANNING COMMISSION DECISIONS
Mayor Owens declared the Planning Commission Decisions would stand approved as presented.

VIII) REPORT OF TOWN MANAGER AND STAFF

Reports of Town Manager and Staff were covered during the afternoon work session.

Town Manager Haynes stated she and Public Works Director James Phelps have been working on the conveyance of the Vail Resorts property to turn it over to the Town. She stated that the Town discovered there is a covenant on the property related to transportation services, and if we make any changes to the property we will need to have the approval of Vail Resorts. Town Attorney Keely Ambrose stated the original agreement set forth the terms under which this property would be transferred to the Town, and Vail Resorts has been a good partner in working with us on this. Mayor Owens stated this doesn't really change anything, and we would want to work with them on any changes to the property anyway.

IX) REPORT OF MAYOR AND COUNCIL MEMBERS

Reports of Mayor and Council were covered during the afternoon work session.

A. CAST/MMC

B. BRECKENRIDGE OPEN SPACE ADVISORY COMMISSION

C. BRECKENRIDGE TOURISM OFFICE

D. BRECKENRIDGE HISTORY

E. BRECKENRIDGE CREATIVE ARTS

F. CML ADVISORY BOARD UPDATE

G. SOCIAL EQUITY ADVISORY COMMISSION

H. ARTS AND CULTURAL MASTER PLAN STEERING COMMITTEE

X) OTHER MATTERS

Most other matters were covered during the afternoon work session.

Council Member Gerard stated he has asked Town Manager Haynes and James Phelps to take a look at the chemicals used for weed mitigation this summer and to allow homeowners to opt out.

XI) SCHEDULED MEETINGS

A) SCHEDULED MEETINGS FOR MARCH, APRIL AND MAY

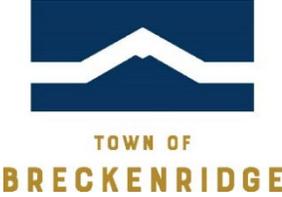
XII) ADJOURNMENT

With no further business to discuss, the meeting adjourned at 7:21pm. Submitted by Helen Cospolich, CMC, Town Clerk.

ATTEST:

Helen Cospolich, CMC, Town Clerk

Kelly Owens, Mayor



Memo

To: Town Council
From: Keely Ambrose, Town Attorney
 Jessie Burley, Sustainability and Parking Manager
Date: 3/31/25 (for 4/8/25)
Subject: Amended and Restated Ordinance to Reduce Single-Use Plastics and Recycled Paper Carryout Bag Fee – Second Reading

Town Council Goals (Check all that apply)

- | | | | |
|-------------------------------------|---------------------------------------|-------------------------------------|-------------------------------------|
| <input type="checkbox"/> | More Boots & Bikes, Less Cars | <input checked="" type="checkbox"/> | Leading Environmental Stewardship |
| <input type="checkbox"/> | Deliver a Balanced Year-Round Economy | <input type="checkbox"/> | Hometown Feel & Authentic Character |
| <input checked="" type="checkbox"/> | Organizational Need | | |

Summary

Council is requested to hold a public hearing and approve on second reading an Amended and Restated Ordinance to Reduce Single-Use Plastics and Recycled Paper Carryout Bag Fee.

Background

In 2023, Council approved amendments to the existing Recycled Paper Carryout Bag Fee Ordinance to include prohibitions on local businesses providing single-use plastics for take-out in the form of plastic silverware and Styrofoam food containers. In order to improve the effectiveness of the 2023 ordinance, staff is recommending the changes as reflected in the proposed amended and restated ordinance, which include:

- Clarification on enforcement options;
- Reorganized sections clearly delineating which provisions apply to the Bag Fee and which provisions apply to the prohibition on single-use plastics;
- Revisions to certain references and definitions within the ordinance for clarity and easy of interpretation.

Public outreach/engagement

The content of the ordinance is not changing; therefore public outreach wasn't needed or conducted.

Financial Implications

There are no increased financial burdens on the Town as a result of the proposed changes.

Equity Lens

The changes to the ordinance will not increase the cost of compliance to any business in town, and therefore should not increase the cost of take-out food within town.

Staff Recommendation

Staff recommends that Town Council hold a public hearing and approve the ordinance on second reading.

AN ORDINANCE REPEALING AND REPLACING ORDINANCE 12, SERIES 2023 TO REDUCE SINGLE USE PLASTICS AND IN CONNECTION THEREWITH ESTABLISHING FINES AND PENALTIES.

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

Section 1. That title 5, chapter 12, entitled “REDUCTION OF SINGLE USE PLASTICS AND RECYCLED PAPER CARRYOUT BAG FEE” is hereby repealed and replaced in its entirety with the following language to read as follows:

**CHAPTER 12
REDUCTION OF SINGLE USE PLASTICS AND
RECYCLED PAPER CARRYOUT BAG FEE**

5-12-1:DEFINITIONS

As used in this Chapter, the following words shall have the following meanings. Where terms are not defined, they shall have their ordinarily accepted meanings within the context that they are used.

BUSINESS: means any commercial enterprise or establishment, including sole proprietorships, joint ventures, partnerships, corporations or any other legal entity whether for profit or not for profit. The definition of business is specifically intended to include both minor festival events and major festival events.

COMPOSTABLE PLASTIC BAG: means any bag made of a thin, flexible plastic material, including but not limited to plant based, cellulosic, polylactic (PLA), or bioplastic and may contain labeling such as compostable, degradable, biodegradable, or oxo-biodegradable.

CONDIMENT: means packaged, single-serving condiments, such as relishes, spices, sauces, confections, or seasonings, that requires no additional preparation and that is used on a food item. This includes, but is not limited to, ketchup, mustard, mayonnaise, soy sauce, salsa, syrup, jam, jelly, salt, sweeteners, pepper, or chile pepper.

CONTAINER: means a receptacle upon which or inside which ready-to-eat food may be placed for consumption, whether or not the receptacle can be fully closed, including but not limited to hinged food containers, plates, bowls, cups, and trays.

CUSTOMER: means any person who makes a retail purchase from store.

EXPANDED POLYSTYRENE: means blown polystyrene, commonly known as Styrofoam, and any other expanded or extruded foam consisting of thermoplastic petrochemical materials utilizing a styrene monomer and processed by techniques that may include:

- (a) for expandable bead polystyrene, fusion of polymer spheres;
- (b) injection molding;
- (c) foam molding; and
- (d) for extruded foam polystyrene, extrusion blow molding.

FARMERS' AND ARTISANS' MARKET: means a market at which farmers and artisans sell their products and crafts directly to consumers.

FOOD: means any raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale, in whole or in part, for human consumption.

FOOD SERVICEWARE means all types of single-use items provided by a retail food establishment or third-party delivery platform, including, but not limited to, utensils, chopsticks, napkins, straws, stirrers, splash sticks, and cocktail sticks, designed for a single-use. Single-use food service ware does not include lids for to-go cups.

PLASTIC: means a synthetic material made from linking monomers through a chemical reaction to create a polymer chain that can be molded or extruded at high heat into various solid forms that retain their defined shapes during their life cycle and after disposal. This includes biopolymer plastics containing PLA (polylactic acid) and PHAs (polyhydroxyalkanoates).

POINT OF SALE: means a check-out stand, cash register, or other point at which a sales transaction occurs in a store or retail food establishment or, for products that are ordered remotely from a store or retail food establishment and delivered, the location where the products are delivered.

POSTCONSUMER RECYCLED CONTENT: means any material that would otherwise be destined for solid waste disposal, having completed its intended end use and product life cycle. Postconsumer recycled material does not include materials and byproducts generated from original manufacturing and fabrication process.

READY-TO-EAT FOOD: means food that is cooked or otherwise prepared in advance for immediate consumption.

RECYCLED PAPER CARRYOUT BAG: means a bag that is one hundred percent recycled material or other post-consumer content furnished to a customer at a store or retail food establishment at the point of sale for use by the customer to transport or carry purchased items. Recycled carryout bag does not include:

- (i) a bag made of paper when the paper has a basis weight of thirty pounds or less;
- (ii) a bag that a pharmacy provides to a customer purchasing prescription medication;
- (iii) a bag that a customer uses inside a store to:
 - (a) package loose or bulk items, such as fruits, vegetables, nuts, grains, candy, or greeting cards; nails, bolts, screws, or other small hardware items; live insects, fish, crustaceans, mollusks, or other small species; and bulk seed, bulk livestock feed, or bulk pet feed;
 - (b) contain or wrap frozen foods, meat, seafood, fish, flowers, potted plants, or other items that, if they were to come in contact with other items, could dampen or contaminate the other items;or
- (c) contain unwrapped prepared foods or bakery goods; or
- (iv) a laundry, dry cleaning, or garment bag.

RETAIL FOOD ESTABLISHMENT: means a retail operation that stores, prepares, or packages food for human consumption or serves or otherwise provides food for human consumption to consumers directly or indirectly through a delivery service, whether such food is consumed on

or off the premises or whether there is a charge for such food. "Retail Food Establishment" includes temporary or mobile commercial operations like food trucks and event booths. "Retail Food Establishment" does not mean:

- (a) Any private home;
- (b) Private boarding houses;
- (c) Hospital and health facility patient feeding operations licensed by the Colorado department of public health and environment;
- (d) Child care centers and other child care facilities licensed by the department of human services;
- (e) Hunting camps and other outdoor recreation locations where food is prepared in the field rather than at a fixed base of operation;
- (f) Food or beverage wholesale manufacturing, processing, or packaging plants, or portions thereof, that are subject to regulatory controls under state or federal laws or regulations;
- (g) Motor vehicles used only for the transport of food;
- (h) Establishments preparing and serving only hot coffee, hot tea, instant hot beverages, and nonpotentially hazardous doughnuts or pastries obtained from sources complying with all laws related to food and food labeling;
- (i) Establishments that handle only nonpotentially hazardous prepackaged food and operations serving only commercially prepared, prepackaged foods requiring no preparation other than the heating of food within its original container or package;
- (j) Farmers markets and roadside markets that offer only uncut fresh fruit and vegetables for sale;
- (k) Automated food merchandising enterprises that supply only prepackaged nonpotentially hazardous food or drink or food or drink in bottles, cans, or cartons only, and operations that dispense only chewing gum or salted nuts in their natural protective covering;
- (l) The donation, preparation, sale, or service of food by a nonprofit or charitable organization in conjunction with an event or celebration if such donation, preparation, sale, or service of food:
 - i. Does not exceed the duration of the event or celebration or a maximum of fifty-two days within a calendar year; and
 - ii. Takes place in the county in which such nonprofit or charitable organization resides or is principally located.
- (m) A home, commercial, private, or public kitchen in which a person produces food products sold directly to consumers pursuant to the "Colorado Cottage Foods Act", section 25-4-1614.

REUSABLE CARRYOUT BAG: means a carryout bag that is designed and manufactured for at least one hundred twenty-five uses, can carry at least twenty-two pounds over a distance of one hundred seventy-five feet, has stitched handles, and is made of cloth, fiber, or other fabric or a recycled material such as polyethylene terephthalate (PET). "Reusable carryout bag" does not include bags made of biologically based polymers such as corn or other plant sources; except that a carryout bag made of hemp is a reusable carryout bag if it is designed and manufactured in accordance with the above specifications.

SINGLE USE: means a product designed to be used once and then discarded, and not designed for repeated use or sanitizing.

STORE: means a grocery store, supermarket, convenience store, liquor store, dry cleaner, pharmacy, drug store, clothing store, or other type of retail establishment, a farmers' market, roadside market or stand, festival, or other temporary vendor or event that includes temporary vendors at which carryout bags are traditionally provided to customers. STORE includes a small store that operates solely in Colorado, has three or fewer locations in the state, and is not part of a franchise, corporation, or partnership that has physical locations outside of Colorado.

THIRD-PARTY DELIVERY PLATFORM means any person, website, mobile application, or other internet service that offers or arranges for the sale of ready-to-eat food and beverages prepared by, and the same-day delivery or same-day pickup of ready-to-eat food and beverages from retail food establishments.

WATER BOTTLE means a single-use plastic container of less than one (l) gallon containing drinking water, mineral water, spring water, purified water, still water or distilled water Does not include carbonated water, vitamin water, flavored water, sparkling water, or electrolyte water.

5-12-2: RESTRICTIONS ON THE USE OF SINGLE-USE PLASTIC BAGS

Stores are prohibited from providing customers single-use plastic carryout bags.

5-12-3: RECYCLED PAPER CARRYOUT BAG FEE

A. A store shall collect twenty-five (\$.25) cents for each recycled paper carryout bag provided to a customer at the point of sale.

B. A store shall provide an itemized receipt with the number of recycled paper carryout bags provided to a customer per transaction.

C. If a store has paper carryout bags containing at least forty (40) percent postconsumer recycled content remaining in their inventory on the effective date of this ordinance, a store may provide the remaining inventory to customers until the inventory is gone; provided, however, the store shall charge twenty-five (\$.25) cents per bag provided.

5-12-4: SIGNAGE

Stores shall conspicuously display a sign in a location inside or outside the store that alerts customers about the recycled paper carry out bag fee.

5-12-5: STORE COLLECTION, REMITTANCE, USES OF THE RECYCLED PAPER CARRY OUT BAG FEE

A. Unless the fees collected in any quarter total less than twenty (20) dollars, a store shall remit sixty (60) percent of the first twenty-five (\$.25) cents of the fee to the Town of Breckenridge and the store shall retain forty (40) percent of the remaining portion of the twenty-five (\$.25) cents.

B. A store shall only use the retained portion of the bag fee for the following purposes:

1. To provide educational information to customers about the fee;
2. To provide the signage required;
3. To train staff in the implementation and administration of the fee;

4. To improve or alter infrastructure or computer programs to allow for the implementation, collection, administration of the fee;

5. To encourage the use of reusable bags, and/or promote the recycling of paper bags; and/or,

6. To improve infrastructure to increase recycling.

C. A store shall not refund to the customer any portion of the carryout bag fee, either directly or indirectly, or advertise or otherwise convey to customers that any portion of the carryout bag fee will be refunded.

5-12-6: TOWN RECYCLED PAPER CARRY OUT BAG FEE FUND AND USES

A. Administration of the fund.

1. The fee shall be administered by the finance director and in a manner that separately tracks the collection and expenditure of such fees.

2. The fees collected in accordance with this section shall not be used for general municipal or governmental purposes or spending, nor shall the fund ever be transferred to or become part of the Town's general fund.

B. All sums of money collected by the Town per this section are intended to be used exclusively for the following purposes:

1. Staffing, administration and enforcement of the program;

2. Developing recycling, composting, or other waste diversion programs;

3. Educating and developing outreach for the entire community, including residents, business, and visitors to the Town; and/or,

4. Purchasing and installing equipment, reusable bags, and other materials designed to minimize bag pollution, including but not limited to, recycling containers, and waste receptacles.

5-12-9: BAN ON SINGLE USE PLASTICS AND POLYSTYRENE

A. The sale or provision of single use plastic water bottles and/or single use plastic food serviceware is prohibited in any building or portion of a building that the Town owns or leases, any building or portion of the building leased to the Town, any Town park, and/or at any special event of the Town or under a permit issued by the Town.

B. Beginning January 1, 2024, a retail food establishment in the Town of Breckenridge shall be prohibited from selling or offering for sale any product in any container for ready-to-eat food and beverages that is made of polystyrene products, also known by the trademarked name of Styrofoam®.

C. Beginning July 1, 2024, any business in the Town of Breckenridge shall be prohibited from selling, distributing, or offering for sale any single use plastic water bottles.

D. Beginning July 1, 2024, any retail food establishment shall be prohibited from selling, distributing, or offering for sale single use plastic containers for ready-to eat food and beverages and further shall be prohibited from providing single-use plastic food serviceware.

E. If a retail food establishment purchased plastic or polystyrene products before January 1, 2024, the retail food establishment may distribute any remaining inventory until the inventory is depleted.

5-12-10: EXEMPTIONS

This chapter 12 does not apply to:

- A. A bag brought into a store by a customer and used to transport goods from the store.
- B. A bag that was previously used and made available to customers at a store.
- C. A bag provided to a customer at no charge if the customer presents, at the time of purchase, a benefit card or similar documentation reflecting participation in a federal, state, county or Town income-qualified aid program, including but not limited to benefits delivered via Electronic Benefits Transfer (EBT) such as the federal Supplemental Nutrition Assistant Program (SNAP) or Supplemental Nutrition Program for Women, Infants and Children (WIC).
- D. A clean plastic container brought into a retail food establishment by a customer and used to transport ready-to-eat food.
- E. A plastic lined ready-to-eat food container that is primarily made from non-plastic material typically used for hot beverages and soups.
- F. A plastic container and/or lid used for condiments, provided it is by customer request.
- G. A plastic lid used to contain liquids on an otherwise non-plastic container.

5-12-11: OPT-IN FOR FOOD SERVICWARE AND CONDIMENTS PROVIDED BY RETAIL FOOD ESTABLISHMENTS OR THIRD-PARTY DELIVERY PLATFORMS

- A. Retail food establishments shall not provide single-use condiments and/or single-use food serviceware unless a customer requests them at the point of ordering whether online, by phone, or in-person. The penalties established in section 5-12-11 below shall be applicable only to retail food establishments but not individual employees.
- B. Third-party delivery platforms shall not provide single-use condiments and/or single-use food serviceware unless a customer requests them.
- C. This section shall not apply to:
 - 1. Self-service stations inside retail food establishments or special events providing for single-use condiments and/or single-use food serviceware.
 - 2. Prepackaged items that include single-use condiments and/or single-use food serviceware.
 - 3. Meals provided as part of a social service to vulnerable populations, including without limitation, meals provided by school systems, homeless shelters and programs that deliver meals to the elderly.
 - 4. Specific accessories used by third-party delivery platforms, including cup lids, spill plugs, and trays, in order to prevent spills and deliver food and beverages safely.

5-12-12: FINES AND PENALTIES FOR SINGLE USE PLASTICS AND POLYSTYRENE

A. Upon the first violation, a one (1) time only written warning notice that a violation has occurred shall be issued by the Town to store, business, and/or retail food establishment, as the case may be. No monetary penalty shall be imposed for the first violation.

B. Upon a subsequent violation and conviction, the Town shall impose a penalty that shall not exceed:

1. Fifty dollars (\$50.00) for the first violation after the written warning;

2. One hundred dollars (\$100.00) for the second violation in the same calendar year of the first violation; and

3. Three hundred dollars (\$300.00) for the third and each subsequent violation in the same calendar year of the earlier violations.

C. No more than one (1) penalty shall be imposed within a seven (7) day period.

D. It shall be unlawful to violate any provision of this chapter. Violations shall be punishable as infractions as set forth in Title 1, Chapter 4 of the Town Code.

5-12-13: AUTHORITY TO ADOPT RULES AND REGULATIONS

The Town Council hereby grants authority to the Division of Public Works to oversee and administer the requirements of this chapter and additional authority to adopt rules and regulations to implement and enforce the requirements of the program.

Section 2. 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 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 25th day of March, 2025. A second reading and public hearing is set for April 8, 2025.

A copy of this Ordinance is available for inspection in the office of the Town Clerk.

ATTEST:

TOWN OF BRECKENRIDGE

Helen Cospolich, CMC, Town Clerk

Kelly Owens, Mayor



TOWN OF
BRECKENRIDGE

Memo

To: Town Council
From: Shannon Haynes, Town Manager
Date: 3/31/2025 (for 4/8/2025 work session and first reading)
Subject: Amended and Restated Retail Tobacco Product Licensing Ordinance (First Reading)

Town Council Goals (Check all that apply)

- | | | | |
|-------------------------------------|---------------------------------------|--------------------------|-------------------------------------|
| <input type="checkbox"/> | More Boots & Bikes, Less Cars | <input type="checkbox"/> | Leading Environmental Stewardship |
| <input type="checkbox"/> | Deliver a Balanced Year-Round Economy | <input type="checkbox"/> | Hometown Feel & Authentic Character |
| <input checked="" type="checkbox"/> | Organizational Need | | |

Summary

Staff is presenting a revised Retail Tobacco Business Licensing ordinance for Council’s review and approval on first reading. As discussed at the work session on this item on 3/25/2025, the revisions include a prohibition on the sale of flavored nicotine/tobacco products as well as a prohibition on discounts on the sale of tobacco products, but does not include any distance requirements, caps on the number of licenses, or a prohibition on the sale of tobacco products by pharmacies, which would include businesses with a pharmacy.

Background

The Town of Breckenridge began regulating nicotine products via retailer licenses in 2019 after Colorado House Bill 19-1033 provided authority to counties and municipalities to license nicotine sellers and impose local taxes on tobacco and nicotine products. In 2019, Summit County voters approved a tax on nicotine products, resulting in an initial tax of \$4 per pack of cigarettes and a 40% tax on all other nicotine products, effective January 1, 2020. In addition, the tax was allowed to increase by 10% per year for four years beginning on January 1, 2021. In 2019, the Town entered into an Intergovernmental Agreement with Summit County and the other municipalities in Summit County with commercial tobacco sales to cooperatively administer the tobacco sales tax. The Town of Breckenridge uses revenues from the tobacco sales tax to fund public health tobacco prevention and cessation efforts and non-profits that work on social determinants of health.

At the October 22, 2024 Town Council meeting, a group of local high school students came before Town Council to request that the Town adopt a ban on “flavored” nicotine products. These products have been shown to obscure the flavor of the tobacco, appeal to younger demographics, and serve as a gateway product leading to early addiction and lifelong nicotine use.

Town staff, working with Summit County’s Health Promotion and Prevention Specialist, as well as with a state of Colorado sponsored group from CU-Anschutz, prepared a draft ordinance for Council’s review and discussion at its March 25, 2025 meeting. This draft ordinance language is consistent with the ordinances being considered by other municipalities in Summit County.

Public outreach/engagement

This topic has been discussed several times among the managers for the other jurisdictions in Summit County including the Towns of Frisco, Silverthorne, Keystone and Dillon, who are all in various stages of adopting a revised version of the ordinance. The Town of Dillon has already passed their version of this ordinance on second reading which will take effect on January 1, 2026. The Towns of Silverthorne, Frisco, and Keystone are also in the process of considering these ordinance changes, with an overall goal of having generally consistent

Mission: The Town of Breckenridge protects, maintains, and enhances our sense of community, historical heritage, and alpine environment. We provide leadership and encourage community involvement.

tobacco and nicotine regulations. Summit County cannot adopt these revised regulations because they do not have the statutory authority to do so.

The Town Manager also met with representatives for 7-11 and discussed the potential impact the proposed changes would have on retailers who carry tobacco products and 7-11 in particular. The 7-11 representatives urged the Town to focus on enforcing current regulations and consider an ordinance that adopts current Federal prohibitions on flavored nicotine/tobacco. Currently, local jurisdictions do not have authority to enforce Federal laws. Representatives from 7-11 asked for this consideration, which would allow them to continue to sell some flavors.

The Town's Liquor and Marijuana Licensing Authority (LMLA), which is also the tobacco business licensing authority for the Town, was consulted on the proposed changes. The LMLA supported the prohibition on flavored nicotine and tobacco products and provided some helpful feedback about ensuring there is sufficient outreach to local businesses prior to the effective date. The Town currently has nine (9) active tobacco business licenses, which is a reduction of six (6) from the number of businesses selling tobacco and nicotine products that existed at the time licensing was adopted in 2019. The LMLA did not have a strong stance on whether to implement caps on the number of tobacco business licenses available within the Town but expressed overall comfort with the number of existing licensed businesses.

Financial Implications

If passed, the Town will see a reduction in sales of nicotine products, and therefore a reduction in sales tax generation. The cost of enforcing the ordinance is covered by the license fees paid by retailers.

Equity Lens

In a presentation by Tracy Doyle at the Colorado School of Public Health, prohibiting the sale of flavored tobacco and nicotine products was identified as a key strategy for reducing tobacco use and tobacco related health disparities, which disproportionately impact certain communities. Prohibiting the sale of flavored tobacco products will positively impact local youth by making tobacco products less attractive and harder to access. Regarding health disparities, Ms. Doyle noted that smoking-related health issues disproportionately impact communities of color, LGBTQ, and other marginalized groups.

While intending to reduce the youth use, these policy changes will have a notable impact on individuals already addicted to tobacco products. To mitigate that impact, it will be important for the Town to continue to support local cessation efforts.

Staff Recommendation

Staff recommends that the Council review and approve the proposed ordinance, with an effective date of January 1, 2026, on first reading, and order it published and scheduled for a public hearing on May 13, 2025.

AN ORDINANCE AMENDING AND REPLACING TITLE 4, CHAPTER 5, OF THE BRECKENRIDGE TOWN CODE REGARDING RETAIL TOBACCO BUSINESS LICENSING.

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

Section 1. That the entirety of Title 4, Chapter 5, Entitled "Retail License," of the Breckenridge Town Code shall be amended and replaced as follows:

RETAIL TOBACCO BUSINESS LICENSING

SECTION:

- 4-5-1: Short title**
- 4-5-2: Authority**
- 4-5-3: Legislative intent**
- 4-5-4: Definitions**
- 4-5-5: License required**
- 4-5-6: Limits on license eligibility**
- 4-5-7: Prohibited licensees**
- 4-5-8: License authority powers and duties**
- 4-5-9: Application for license**
- 4-5-10: Town clerk's review of Application**
- 4-5-11: Decision by licensing authority**
- 4-5-12: Standard conditions of license**
- 4-5-13: Authority to impose additional conditions on license**
- 4-5-14: Contents of license**
- 4-5-15: License not transferable or assignable**
- 4-5-16: Duration of license**
- 4-5-17: Renewal of license**
- 4-5-18: License fees**
- 4-5-19: Licensee's specific duties and obligations**
- 4-5-20: License denials and hearings**
- 4-5-21: Prohibited acts**
- 4-5-22: Compliance checks, coordination with state**
- 4-5-23: Fines, suspension, revocations**
- 4-5-24: Injunctive relief, abatement as nuisance, other remedies**
- 4-5-25: No town liability**
- 4-5-26: Designated use of license fees**
- 4-5-27: Rules and regulations**

1 **4-5-1: SHORT TITLE: RETAIL TOBACCO BUSINESS LICENSING**

2 This chapter shall be known and may be cited as the "Town of Breckenridge Retail Tobacco
3 Business Licensing Ordinance."

4 **4-5-2: AUTHORITY**

5 The town council finds, determines, and declares that it has the power to adopt this chapter
6 pursuant to:

7 A. Section [31-17-501](#), Colorado Revised Statutes (concerning municipal regulation of
8 businesses);

9 B. Section [31-15-401\(1\)\(c\)](#), Colorado Revised Statutes (concerning the power to declare and
10 abate nuisances);

11 C. The Local Government Land Use Control Enabling Act, Article 20 of Title 29, C.R.S.;

12 D. Article 7 of Title 44, C.R.S. (concerning the regulation of tobacco sales);

13 E. Section 18-13-121, C.R.S. (concerning furnishing cigarettes, tobacco products and nicotine
14 products to persons under twenty-one years of age);

15 F. Section 25-14-207, C.R.S. (concerning the regulation of smoking);

16 G. The authority granted to home rule municipalities by Article [XX](#) of the Colorado Constitution;
17 and

18 H. The powers contained in the Breckenridge Town Charter.

19 **4-5-3: LEGISLATIVE INTENT**

20 The intent and purpose of this chapter is to regulate the occupation or privilege of selling retail
21 tobacco products within the town so as to protect the public health and safety.

22 **4-5-4: DEFINITIONS**

23 As used in this chapter the following words have the following meanings:

24 ADULT-ONLY FACILITY: A physical location where each person attempting to enter the
25 premises is required to present the person's photographic government-issued identification
26 verifying that the person is at least the minimum legal sales age to purchase tobacco products
27 prior to entry.

28 ANNUAL LICENSE FEE: The amount of the annual license renewal fee shall be fixed by the
29 town council as part of the annual budget process. Once paid the annual license renewal fee is
30 non-refundable except as may be required by law. The purpose of the fee is to cover the town's
31 cost of administration of this chapter, license education, inspections of the licensed premises,
32 regular compliance checks, documentation of violations, and prosecutions of license violations.

33 APPLICANT: A person who has submitted an Application for license pursuant to this chapter.

34 APPLICATION: An Application for license submitted pursuant to this chapter.

1 ARM'S LENGTH TRANSACTION: A sale in good faith and for valuable consideration that
2 reflects the fair market value between two informed and willing parties, neither of which is under
3 any compulsion to participate in the transaction.

4 CHILD-RESISTANT PACKAGING: Packaging that meets the definition set forth in the Code of
5 Federal Regulations, title 16, section 1700.15(b) as in effect January 1, 2015, and was tested in
6 accordance with the method described in the Code of Federal Regulations, title 16, section
7 1700.20, as in effect on January 1, 2015.

8
9 CIGAR: Any roll of tobacco other than a cigarette that is wrapped in tobacco leaf or any other
10 substance containing tobacco, with or without a mouthpiece.

11
12 CIGARETTE: means:

13
14 1. Any roll of tobacco wrapped in paper or in any substance not containing
15 tobacco;

16
17 2. Any roll of tobacco wrapped in any substance containing tobacco which,
18 because of its appearance, the type of tobacco used in the filler, or its
19 packaging or labeling is likely to offered to, or purchased by consumers as a
20 cigarette described in this section.

21
22 COMPLIANCE CHECKS : The systems the Licensing Authority uses to investigate and
23 ensure that tobacco product retailers are compliant with the requirements of this
24 chapter. Compliance Checks may involve the use of persons under twenty-one (21)
25 years of age who attempt to purchase or purchase tobacco products; however, persons
26 under the legal age to purchase tobacco products participating in Compliance Checks
27 shall not be in violation of tobacco and nicotine possession and purchase laws.
28 Compliance Checks may also be conducted by other units of government or designees
29 of the Licensing Authority for educational or training purposes.

30
31 COMMERCIAL TOBACCO: Tobacco that is manufactured and sold for profit for use in
32 cigarettes, smokeless tobacco, pipe tobacco, cigars, hookah and other products.
33 Commercial tobacco is regulated by the Food and Drug Administration (FDA) under the
34 Family Smoking and Prevention Act which gives the FDA the authority to regulate the
35 manufacture, distribution and advertising of commercial tobacco. The word "tobacco"
36 when referenced in this chapter, unless otherwise indicated refers to commercial
37 tobacco.

38
39 COUPON: Any voucher, rebate, card, paper, note, form, statement, ticket, image or any
40 other form or issue, used for commercial purposes to obtain a product, service or
41 accommodation without charge or at a discounted price.

42
43 DAY: A calendar day, unless otherwise indicated.

44 DELIVERY SALE: The sale of any tobacco or nicotine product to any person for
45 personal consumption and not for resale when the sale is conducted by any means
46 other than an in-person, over the counter sales transaction in a tobacco product retail
47 establishment. Delivery sale includes delivery by licensees or third parties by any
48 means including curbside pickup.

49

1 DISTRIBUTOR: A person who sells or distributes cigarettes, tobacco products, or nicotine
2 products to licensed retailers in this state. "Distributor" includes a "distributor" or "distributing
3 subcontractor" as those terms are defined in section [39-28.5-101](#), Colorado Revised Statutes.

4 ELECTRONIC DELIVERY DEVICE: Any device that may be used to deliver any aerosolized or
5 vaporized substance, whether natural or synthetic to the person inhaling from the device,
6 including, but not limited to devices marketed, manufactured, marketed or sold as an electronic
7 smoking device, e-cigarette, e-cigar, e-pipe, vape pen or e-hookah. Electronic delivery device
8 includes any component, part or accessory of the device, and also includes any substance that
9 may be aerosolized or vaporized by such device whether or not the substance contains nicotine.
10 Electronic delivery device does not include medical marijuana as defined in 44-10-103(34),
11 C.R.S. of section 14 of article XVIII of the state constitution or retail marijuana as defined in 44-
12 10-103(57), C.R.S. or section 16(2)(f) of article XVIII of the state constitution, drugs, devices or
13 combination products authorized for sale by the U.S. Food and Drug Administration as those
14 terms are defined in the Federal Food, Drug and Cosmetic Act.

15
16 FLAVORED TOBACCO PRODUCT:
17

18 A. FLAVORED TOBACCO PRODUCT
19

20 1. Any tobacco product that contains a taste or smell, other than the taste or smell of
21 tobacco, that is distinguishable by an ordinary consumer either prior to or during the
22 consumption of the product, including, but not limited to, any taste or smell relating to
23 chocolate, cocoa, menthol, mint, wintergreen, vanilla, honey, fruit or any candy, dessert,
24 alcoholic beverage, herb or spice;
25

26 2. Any tobacco product that imparts a cooling or numbing sensation distinguishable by
27 an ordinary consumer either prior to or during the consumption of such tobacco product;
28

29 B. Any public statement or claim, whether express or implied, made or disseminated by
30 the manufacturer or retailer of a licensed product, or by a person authorized or permitted
31 by the manufacturer to make or disseminate public statements concerning such products
32 that a product has or produces a taste or smell other than a taste or smell of tobacco or
33 a cooling or numbing sensation will constitute preemptive evidence that the product is a
34 flavored product. Presumptive evidence may include, but is not limited to the use of
35 terms such as, "cool," "chill," "ice," "fresh," "artic or "frost," to describe the product.
36

37 FULL RETAIL PRICE: The price listed for a tobacco product on its packaging or on any related
38 shelving, advertising or display where the tobacco product is sold or offered for sale, plus all
39 applicable taxes and fees if such taxes and fees are not included in the listed price.
40

41 GOOD CAUSE (for the purpose of refusing or denying a license renewal under this chapter):

42 1. The licensee has violated, does not meet, or has failed to comply with: (a) any of the
43 terms, conditions, or provisions of this chapter; or (b) any rule and regulation promulgated
44 by the town clerk pursuant to this chapter; or

45 2. The licensee has failed to comply with: (a) any of the terms and conditions of its license
46 including, but not limited to, any special terms or conditions that were placed on its license

1 at the time the license was issued or were subsequently modified by the town clerk
2 pursuant to section [4-5-11\(B\)](#) of this chapter, or (b) any special condition that was placed on
3 its license in prior disciplinary proceedings or that arose in the context of potential
4 disciplinary proceedings.

5 LICENSED PREMISES: The physical location for which a license is issued pursuant to this
6 chapter.

7 LICENSED PRODUCTS: Collectively refers to any tobacco product tobacco related device,
8 electronic smoking device, nicotine or synthetic nicotine product.
9

10 LICENSEE: The person to whom a license has been issued pursuant to this chapter.

11 LITTLE CIGAR: Any roll of tobacco other than a cigarette wrapped entirely or in part in
12 tobacco or any substance containing tobacco weighing no more than 4.5 pounds per
13 thousand. Little cigar includes, but is not limited to, tobacco products known or labeled
14 as small cigar, little cigar or cigarillo.
15

16 LOCAL LICENSING AUTHORITY: The liquor and marijuana licensing authority referred to
17 interchangeably in this chapter as the "LMLA" or licensing authority.

18 LOOSIES: The common term used to refer to single cigarettes, cigars and any other
19 licensed tobacco products that have been removed from their original retail packaging
20 and offered for sale. The term loosies does not include premium cigars as defined in
21 this section.
22

23 MANUFACTURER: Any person, including a repacker or relabeler, who manufacturers,
24 fabricates, assembles, processes or labels a tobacco product or imports a finished tobacco
25 product for sale or distribution into the United States.
26

27 MINOR: A person under twenty-one (21) years of age.

28 MOVEABLE PLACE OF BUSINESS: Any form of business operation, event or occurrence
29 related to tobacco products that is operated out of a kiosk, truck, van, automobile or any other
30 type of vehicle or any transportable shelter or other transitory or temporary location and
31 including, but not limited to, any event or festival intended to occur at any location that is not a
32 fixed storefront authorized as a tobacco product retailer in an approved tobacco product retail
33 license by the Town.
34

35 NICOTINE OR NICOTINE DELIVERY PRODUCT: Any product containing or delivering nicotine,
36 including any salt or complex of nicotine whether natural or synthetic, intended for human
37 consumption, or any part of such product, that is not tobacco, or an electronic delivery device as
38 defined in this section. Nicotine or nicotine delivery product does not include any nicotine
39 cessation product that has been authorized by the U.S. Food and Drug Administration to be
40 marketed and for sale as "drugs," "devices," or "combination products," as defined in the Federal
41 Food, Drug and Cosmetic Act.
42

43 PERSON: Has the meaning provided in section [1-3-2](#) of this Code.

44 POLICE CHIEF: The police chief of the town, or the police chief designee authorized to act
45 pursuant to section [1-7-2](#) of this Code.

1 PREMIUM CIGAR: A cigar that meets all of the following characteristics:
2

- 3 1. is handmade or hand rolled;
- 4
- 5 2. is not mass produced through the use of mechanization;
- 6
- 7 3. has a wrapper that is made entirely from whole tobacco leaf;
- 8
- 9 4. has a filler composed of at least fifty (50) percent natural, long-leaf filler
10 tobacco;
- 11
- 12 5. does not have a filter, tip or non-tobacco mouthpiece;
- 13
- 14 6. is capped by hand;
- 15
- 16 7. weighs more than six (6) pounds per thousand units; and
- 17
- 18 8. has a wholesale price per cigar of:
 - 19 a. for the calendar year ending December 31, 2024, twelve dollars (\$12)
20 dollars; and
 - 21 b. for each calendar year thereafter, twelve dollars (\$12) reflecting any
22 percentage increase for all items and all urban consumers or its
23 successor index.
- 24

25 PROPRIETOR: A person with an ownership or managerial interest in a business. An ownership
26 interest shall be deemed to exist when a person has a ten (10) percent or greater interest in the
27 stock, assets or income of a business other than the sole interest of security for debt. A
28 managerial interest shall be deemed to exist when a person has or shares ultimate control over
29 the day-to-day operations of a business.
30

31 RETAILER: The owner or operator of a business of any kind at a specific location that sells
32 tobacco products as defined in this chapter.

33 SALE OR SELL: Any transfer, exchange, barter, gift, offer for sale or distribution for a
34 commercial purpose in any manner or by any means.

35 SCHOOL : A public, parochial, or nonpublic school that provides a basic academic education in
36 compliance with school attendance laws for students in grades one (1) through twelve (12).

37 SELF-SERVICE DISPLAY: The open display or storage of tobacco products in a manner that is
38 physically accessible in any way to the general public without the assistance of the licensee or
39 employee of the licensee and a direct face-to-face transfer between the purchaser and the
40 licensee or employee of the licensee. A vending machine is a form of self-service display.
41

42 SMOKING: Inhaling, exhaling, burning, carrying any lighted or heated cigar, cigarette, pipe or
43 other lighted or heated product containing, made or derived from nicotine, tobacco, marijuana or
44 other plant, whether natural or synthetic that is intended for inhalation. "Smoking" includes
45 carrying or using an electronic smoking device or an electronic delivery device.
46

47 STATE LICENSE means a license issued by the division in accordance with section [44-7-104.5](#),
48 Colorado Revised Statutes.

1 TOBACCO FESTIVAL: An age-restricted off-site tobacco event pursuant to 44-7-105.5, C.R.S.

2

3 TOBACCO PRODUCT:

4

5 A. TOBACCO PRODUCT

6

7 1. Any product containing, made of or derived from Commercial Tobacco, nicotine or
8 synthetic nicotine, that is intended for human consumption or is likely to be consumed,
9 whether inhaled, absorbed or ingested by other means, including, but not limited to,
10 products commonly known as a cigarette, a cigar, pipe tobacco, chewing tobacco,
11 electronic smoking device, nicotine delivery product, snuff, snus, and pouch;

12

13 2. Any electronic delivery device as defined in this section;

14

15 3. Any component, part or accessory of subsection 1 or 2 of this definition whether or not
16 any of these contain tobacco or nicotine, including but not limited to filters, rolling papers,
17 blunt or hemp wraps, hookahs, mouthpieces or pipes.

18

19 B. Tobacco Product does not mean:

20

21 1. Any products specifically approved by the United States Food and Drug
22 Administration for use in reducing, treating or eliminating nicotine or tobacco
23 dependence or for other medical purposes when the products are being marketed and
24 sold solely for such approved purposes. Any drugs, devices or combination products
25 authorized for sale by the U.S. Food and Drug Administration as those terms are defined
26 in the Federal Food, Drug and Cosmetic Act.

27

28 2. Medical marijuana as defined in 44-10-103(34), C.R.S. or section 16(2)(f) of
29 article XVIII of the State constitution or retail marijuana as defined in 44-10-103(57),
30 C.R.S. or section 16(2)(f) of article XVIII of the State constitution, drugs, devices or
31 combination products authorized for sale by the U.S. Food and Drug Administration, as
32 those terms are defined in the Federal Food, Drug and Cosmetic Act unless such is
33 made of or contains or is derived from tobacco or nicotine, natural or synthetic.

34

35 TOBACCO RELATED DEVICE: Any rolling papers, wraps, pipes, or other device
36 intentionally designed or intended to be used with tobacco products. Tobacco related
37 device includes components of tobacco-related devices or tobacco products which may
38 be marketed or sold separately. Tobacco related devices may or may not contain
39 tobacco.

40

41 TOBACCO PRODUCT RETAILER: Any person who sells, offers for sale or exchange or
42 offers to exchange for any form of consideration Commercial Tobacco and/or Tobacco
43 Products. This definition is without regard to the quantity of Tobacco Products sold,
44 offered for sale, exchanged or offered for exchange.

45

46 TOBACCO PRODUCT RETAILING: Engaging in the activities of a Tobacco Product
47 Retailer.

48

1 TOBACCO PRODUCT RETAIL ESTABLISHMENT: The physical location at which a Tobacco
2 Product Retailer sells, offers for sale or exchange, or offers to exchange for any form of
3 consideration Commercial Tobacco and/or Tobacco Products.

4
5 TOWN: Has the meaning provided in section [1-3-2](#) of this Code.

6 TOWN CLERK: The town clerk of the town, or the town clerk's designee authorized to act
7 pursuant to section [1-7-2](#) of this Code.

8 TOWN MANAGER: The town manager of the town, or the town manager's designee authorized
9 to act pursuant to section [1-7-2](#) of this Code.

10 VENDING MACHINE: Any mechanical, electric, electronic or other type of device that
11 dispenses tobacco products upon payment by any form by the person seeking to
12 purchase tobacco products.

13
14 WHOLESALER: A person engaged in the wholesale distribution of cigarettes, tobacco
15 products, or nicotine products and includes a "wholesaler" and "wholesale subcontractor" as
16 those terms are defined in section [39-28-101](#), Colorado Revised Statutes. (Ord. 12, Series
17 2022)

18 **4-5-5: LICENSE REQUIRED**

19 A. No person shall conduct or engage in the activities of a Tobacco Product Retailer business
20 within the town without a valid license issued by the licensing authority pursuant to this chapter.

21 B. A separate license is required for each Tobacco Product Retail Establishment in the town
22 where any Tobacco Product is sold at retail.

23 C. In the course of engaging in the activities of a Tobacco Product Retailer or in the operation of
24 a business or maintenance of the location for which a license has been issued, it shall be a
25 violation of this chapter for a licensee or any of the licensee's employees or agents to violate
26 any local, state or federal law applicable to Tobacco Products, Tobacco Paraphernalia or
27 Tobacco Product Retailing.

28 D. Except as expressly modified herein, any requirements set forth in this chapter shall be in
29 addition to, and not in lieu of, any other requirements imposed by federal, state or local law.

30 E. No person shall be deemed to have any entitlement or vested right to a license or permit from
31 the town, including but not limited to any zoning permit or any sales tax license.

32 **4-5-6: LIMITS ON LICENSE ELIGIBILITY**

33 A. Location restrictions imposed.

34 1. Prior to approving a Tobacco Product retail license, the Licensing Authority shall
35 determine whether the proposed location of the Tobacco Product Retail Establishment
36 complies with the requirements of this section of this chapter. Failure to comply with the
37 requirements of this section shall preclude approval and issuance of a license.

1 2. Each Tobacco Product Retail Establishment shall be operated from a permanent
2 location. No Tobacco Product Retail Establishment shall be permitted to operate from a
3 moveable, mobile, or transitory location.

4 3. A Tobacco Product Retail Establishment may be located only on property as allowed
5 in the table of uses as defined by the Town.

6 4. No tobacco festivals are permitted in the town.

7 **4-5-7 PROHIBITED LICENSEES**

8 A. It shall be unlawful for any of the following persons to have an ownership or a financial
9 interest in a Tobacco Product Retail Establishment, and no license provided by this chapter
10 shall be issued to, or held by:

11 1. Any person until all applicable fees for the license have been paid;

12 2. Any natural person who is under twenty-one (21) years of age;

13 3. Any person in the immediately preceding twenty-four (24) months with a tobacco
14 product retail license revoked or suspended by the state, or by another licensing
15 authority in any other jurisdiction;

16 4. Any person convicted of a felony that is deemed a crime of violence or has completed
17 any portion of a felony sentence within the preceding five (5) years;

18 5. A person licensed pursuant to this chapter who, during a period of licensure, or who,
19 at the time of Application, has failed to remedy an outstanding delinquency for taxes
20 owed, or an outstanding delinquency for judgments owed to a government;

21 6. Any law enforcement officer, officer or employee of the state licensing authority,
22 officer or employee of the LMLA, or officer or employee of the Town.

1 **4-5-8: LICENSING AUTHORITY POWERS AND DUTIES**

2
3 The local licensing authority shall have the following powers and duties, and any other
4 responsibilities as deemed appropriate by the town:

5
6 A. To require an Applicant or licensee to furnish any relevant information required
7 by the authority; and

8
9 B. To administer oaths and issue subpoenas to require the presence of persons
10 and the production of papers, books and records at any hearing that the authority is
11 authorized to conduct. The authority may adopt public hearing procedures by
12 resolution; and

13
14 C. The authority in its discretion, upon Application in the prescribed form, may
15 approve, conditionally approve, or deny an Applicant a Tobacco Product Retail
16 license subject to the provisions and restrictions provided in this chapter; and

17
18 D. Retailer education. The Authority or its designees shall provide education to
19 retailers as the authority deems appropriate about the Tobacco Product Retail license,
20 license administration, renewal and responsibilities associated with a Tobacco Product
21 Retail license.

22
23 E. The licensing authority may adopt administrative rules and regulations as
24 may be necessary for the proper administration of this chapter. The licensing authority
25 may, from time to time and in consultation with the town clerk and town manager
26 adopt, amend, alter and repeal administrative rules and regulations as may be
27 necessary for the proper administration of this chapter.

28
29 **4-5-9: APPLICATION FOR LICENSE**

30 A. A person seeking to obtain a license pursuant to this chapter shall file an Application with
31 the town clerk. The form of the Application shall be provided by the town clerk.

32 B. A license issued pursuant to this chapter does not eliminate the need for the licensee to
33 obtain other required town licenses related to the operation of the licensee's business, including,
34 without limitation:

- 35 1. A town sales tax license; and
36 2. A town business and occupational tax license.

37 C. The licensing authority shall not accept an Application for a Tobacco Product Retail
38 license unless and until the authority receives a copy of the Applicant's state retailer
39 tobacco product license pursuant to 44-7-104.5, C.R.S.

40 **4-5-10: TOWN CLERK'S REVIEW OF APPLICATION**

41 A. Upon receipt of a properly completed Application, together with all information required in
42 connection therewith and the payment of the Application fee, the town clerk shall transmit
43 copies of the Application to:

- 44 1. The police chief; and

1 2. Any other person or agency that the town clerk determines should properly investigate
2 and comment upon the Application.

3 B. Within twenty (20) days of receipt of a completed Application the police chief and those
4 referral agencies described in subsection [A](#) of this section shall provide the town clerk with
5 comments concerning the Application.

6 C. If the town clerk requests the Applicant to provide additional information that the town clerk
7 reasonably determines to be necessary in connection with the investigation and review of the
8 Application, the Applicant shall provide such information within five (5) days of the town clerk's
9 request, unless the town clerk agrees to a longer time period.

10 **4-5-11: DECISION BY LICENSING AUTHORITY**

11 A. The licensing authority shall conditionally approve or deny an Application within thirty (30)
12 days of the receipt of a completed Application unless, by written notice to the Applicant.

13 B. The licensing authority shall issue a license under this chapter when, from consideration of
14 the Application, and such other relevant information as may otherwise be obtained, the licensing
15 authority determines that:

16 1. The Application (including any required attachments and submissions) is complete and
17 signed by the Applicant;

18 2. The Application does not contain a material falsehood or misrepresentation; and

19 3. The granting of the Application will not endanger public health or safety.

20 C. The licensing authority shall deny an Application for a license under this chapter if the
21 licensing authority determines that:

22 1. Information contained in the Application, or supplemental information provided by the
23 Applicant, is found to be false in any material respect;

24 2. The Applicant has had a license issued under this chapter revoked within the two (2)
25 years immediately preceding the filing of the Application, or the Applicant owned a fifty
26 percent (50%) or greater interest in any business entity that has had a license issued under
27 this chapter revoked within the two (2) years immediately preceding the filing of the
28 Application;

29 3. The Applicant is currently indebted to the town for any lawfully assessed tax or fee; or

30 4. The granting of the Application will endanger public health or safety.

31 D. If the Application is denied, the licensing authority shall clearly set forth in writing the
32 grounds for denial.

33 E. If the Application is conditionally approved, the licensing authority shall clearly set forth in
34 writing the conditions of approval.

35 **4-5-12: STANDARD CONDITIONS OF LICENSE**

36 A. A retailer shall not sell or permit the sale of tobacco products to a person under twenty one
37 (21) years of age; except that it is not a violation if the retailer establishes that the person selling

- 1 the cigarette, tobacco product, or nicotine product was presented with and reasonably relied
 2 upon a valid government-issued photographic identification, that identified the person
 3 purchasing the cigarette, tobacco product, or nicotine product as being twenty one (21) years of
 4 age or older.
- 5 B. A retailer shall not permit a person under twenty-one (21) years of age to sell or participate
 6 in the sale of tobacco products, or nicotine products that are offered for sale at the retailer's
 7 business.
- 8 C. No retailer shall sell or offer to sell individual cigarettes or "loosies", or any pack or container
 9 of cigarettes containing fewer than twenty (20) cigarettes, or roll-your-own tobacco in any
 10 package containing less than 0.60 ounces of tobacco.
- 11 D. A retailer shall not advertise an electronic smoking device product in a manner that is visible
 12 from outside the retail location at which the product is offered for sale.
- 13 E. A retailer shall not sell or offer to sell any tobacco products by use of a vending machine or
 14 other coin-operated machine.
- 15 F. Flavored tobacco products shall not be sold or offered for sale at any location in the town.
- 16 G. A retailer shall not engage in the delivery of tobacco products.
- 17 H. A retailer shall require an individual who seeks to purchase tobacco products and who
 18 appears to be under fifty (50) years of age to present to the retailer a valid government-issued
 19 photographic identification at the time of purchase.
- 20 I. Any person who sells or offers to sell tobacco products shall display the license and the
 21 below warning sign in a prominent place in the building at all times. Such sign must have a
 22 minimum height of 3 inches and a width of 6 inches, and must read as follows:

23 **WARNING**

24 IT IS ILLEGAL TO SELL TOBACCO PRODUCTS TO ANY PERSON UNDER
 25 TWENTY-ONE YEARS OF AGE. STATE LAW REQUIRES THAT, TO PURCHASE ,
 26 TOBACCO PRODUCTS, OR NICOTINE PRODUCTS AT THIS RETAIL LOCATION, A
 27 PERSON MUST PRESENT A VALID GOVERNMENT-ISSUED PHOTOGRAPHIC
 28 IDENTIFICATION AT THE TIME OF PURCHASE IF THE PERSON APPEARS TO BE
 29 UNDER FIFTY YEARS OF AGE. THE SALE OF FLAVORED TOBACCO PRODUCTS
 30 IS PROHIBITED IN BRECKENRIDGE, CO.

31 **4-5-13: AUTHORITY TO IMPOSE ADDITIONAL CONDITIONS ON LICENSE**

- 32 A. In addition to the standards, terms and conditions set forth in section 4-5-13 of this chapter,
 33 the licensing authority shall have the authority to impose such additional reasonable terms and
 34 conditions on a license as may be necessary to protect the public health, safety, and welfare,
 35 and to obtain compliance with the requirements of this chapter and other applicable law.
- 36 B. For good cause shown, the licensing authority may administratively modify or eliminate or
 37 add any license condition during the term of the license.

1 **4-5-14: CONTENTS OF LICENSE**

2 A. A license shall contain the following information:

- 3 1. The name of the licensee;
- 4 2. The date of the issuance of the license;
- 5 3. The address at which the licensee is authorized to operate the business; and
- 6 4. The date of the expiration of the license.

7 B. A license must be signed by both the licensee and the town clerk to be valid.

8 **4-5-15: LICENSE NOT TRANSFERABLE OR ASSIGNABLE**

9 A license is nontransferable and nonassignable. Any attempt to transfer or assign a license shall
10 void the license.

11 **4-5-16: DURATION OF LICENSE**

12 Each license issued pursuant to this chapter shall be valid for one (1) year from the date of
13 issuance.

14 **4-5-17: RENEWAL OF LICENSE**

15 A. A licensee does not have a vested right or a property right in the renewal of a license issued
16 pursuant to this chapter.

17 B. Each license issued pursuant to this chapter may be renewed as provided in this section; a
18 local license and state license shall have the same renewal date.

19 C. An Application for the renewal of an existing license shall be made to the town clerk not less
20 than forty five (45) days prior to the date of expiration. No Application for renewal shall be
21 accepted by the town clerk after the date of expiration. The town clerk may waive the forty five
22 (45) days' time requirement set forth in this subsection if the Applicant demonstrates an
23 adequate reason.

24 D. At the time of the filing of an Application for the renewal of an existing license the Applicant
25 shall pay to the town a renewal fee in an amount fixed by the town council as part of its annual
26 budget process.

27 E. The timely filing of a renewal Application shall extend the current license until a final
28 decision is made on the renewal Application by the licensing authority.

29 F. A license may be renewed or not renewed by the licensing authority for the same reasons
30 and in the same manner as provided for in the initial Application.

31 **4-5-18: FEES**

32 License Fee. The Annual License Fee is \$600.00. The town council shall review the license fee
33 annually during the annual budget process. Once paid the license fee is nonrefundable except
34 as may be required by law.

1 **4-5-19: LICENSEE'S SPECIFIC DUTIES AND OBLIGATIONS**

2 In addition to the other requirements of this chapter, it is the duty and obligation of each licensee
3 to comply with the following:

4 A. All of the terms and conditions of the license, including, without limitation, the standard
5 license conditions described in section 4-5-13 of this chapter and any special condition imposed
6 by the licensing authority under of this chapter;

7 B. All of the requirements of this chapter; and

8 C. All laws, including federal, state and local town ordinances pertaining to tobacco products
9 that are applicable to the licensee's business

10 **4-5-21: LICENSE DENIALS AND HEARINGS**

11 A. Applicant bears the burden of proving it meets the requirements of state and local laws for
12 licensure.

13 B. An Application may be denied where the Applicant made misstatements, omissions,
14 misrepresentations, or untruths in the Application. Providing misstatements, misrepresentations,
15 omissions, or untruths may be the basis for administrative action.

16 C. The licensing authority may deny an Application, including an initial or renewal Application,
17 only for good cause. Good cause shall include the following:

18 1. During any period in which an Applicant is ineligible to apply, or prohibited from
19 applying, for a license pursuant to a penalty imposed under this Code or section 44-7-106,
20 Colorado Revised Statutes, and any rules or regulations.

21 2. When an Applicant failed to provide all required information or documents, provided
22 inaccurate, incomplete, or untruthful information or documents, or failed to cooperate with
23 requests for additional information.

24 3. The Applicant has violated, does not meet, or has failed to comply with any of the terms,
25 conditions, or provisions of this Code, article [7](#) of title [44](#), Colorado Revised Statutes, or any
26 rules promulgated thereunder.

27 D. If the licensing authority denies an Application, the licensing authority shall inform the
28 Applicant in writing of the reasons for the denial in a notice of denial, personally delivered to the
29 retailer at the actual retail location or mailed to the retailer at the last-known address as shown
30 by the records.

31 E. A denied Applicant that timely requests a hearing following issuance of a notice of denial
32 shall be served with a notice of grounds for denial, and shall be entitled to a hearing regarding
33 the matters addressed therein.

34 F. The licensing authority's decision shall constitute a final agency. Any appeal of the licensing
35 authority's decision shall be filed with a district court of competent jurisdiction and venue for
36 purposes of an appeal of a decision is proper in the district court for Summit County.

37 **4-5-22: PROHIBITED ACTS**

1 A. Self-Service Product Displays Prohibited. Tobacco product retailing by means of a
2 self-service display in which tobacco products are accessible to consumers without the
3 assistance of the licensee or an employee or agent of the licensee are prohibited. A
4 vending machine is a form of a self-service display.

5
6 B. Distribution of Tobacco Product Samples or Tobacco Product Promotional Items
7 Prohibited. It is unlawful for any person to distribute free or nominally priced tobacco
8 products.

9
10 C. Prohibition of Tobacco Product Coupons and Discounts. No tobacco product
11 retailer shall:

12
13 1. Honor or redeem, or offer to honor or redeem, a coupon to allow a consumer
14 to purchase a tobacco product for less than the full retail price; or

15
16 2. Sell any tobacco product to a consumer through a multiple-package discount
17 or otherwise provide any such product to a consumer for less than the full retail price
18 in consideration for the purchase of any tobacco product or any other item; or

19
20 3. Provide any free or discounted item to a consumer in consideration for the
21 purchase of any tobacco product.

22
23 D. Sale of Flavored Tobacco Products Prohibited. The sale or offer for sale of flavored tobacco
24 products in town is prohibited.

25
26 E. Onsite Delivery of Tobacco Products Prohibited. The delivery of tobacco products from a
27 licensed tobacco product retailer to a person who is not another licensed tobacco product
28 retailer is prohibited.

29
30 1. This section does not apply to the direct shipment of cigars or pipe tobacco that is
31 not restricted pursuant to 44-7-104.7, C.R.S.

32
33 F. False/Misleading Advertising Prohibited. A tobacco product retailer without a valid
34 tobacco product retailer license or a proprietor without a valid tobacco product retailer
35 license, including, for example, a person whose license has been suspended or
36 revoked:

37
38 1. Shall keep all tobacco products and tobacco paraphernalia out of public view. The
39 public display of tobacco products or tobacco paraphernalia in violation of this provision
40 shall constitute tobacco product retailing without a license under this chapter; and

41
42 2. Shall not display any advertisement relating to tobacco products or tobacco
43 paraphernalia that promotes the sale or distribution of such products from the tobacco
44 product retailer's location or that could lead a reasonable consumer to believe that such
45 products can be obtained at that location.

46
47 **4-5-23: COMPLIANCE CHECKS; COORDINATION WITH STATE LAW**

48 A. Retail Compliance Checks. All Licensed premises must be open to inspection
49 by law enforcement or other authorized official during regular business hours. From time

1 to time, but at least two (2) times per year, the Town will conduct compliance checks by
2 engaging with persons under the age of twenty-one (21) at each licensed retail location
3 where tobacco products are sold.

4
5 1. The Town shall perform a Compliance Check by engaging a person who is
6 under twenty-one (21) years of age to enter a retail location to purchase tobacco
7 products.

8
9 2. Prior written consent is required for any minor who participates in a
10 Compliance Check. Under-aged individuals participating in Compliance Checks will be
11 supervised by law enforcement or other designated personnel and will not be guilty of
12 illegal possession or illegal procurement when those items are obtained as a part of the
13 Compliance Check. The Town shall not enforce any law establishing a minimum age for
14 tobacco product purchases or possession against an individual who otherwise might be
15 in violation of such law because of the individual's age (hereinafter "underage operative")
16 if the potential violation occurs when:

17
18 a. the underage operative is participating in an inspection supervised by
19 a peace officer, code enforcement official, or the Licensing Authority designated
20 to monitor compliance with this chapter;

21
22 b. the underage operative is acting as an agent of the Town, the
23 Licensing Authority or an entity designated by the Town to monitor
24 compliance with this chapter; or

25
26 c. the underage operative is participating in an inspection funded in part,
27 either directly or indirectly through subcontracting, by the Summit County
28 Public Health Department, the Colorado Department of Public Health and
29 Environment or the Colorado Department of Revenue.

30
31 3. If the Compliance Check results in a violation pursuant to this chapter the
32 authority will conduct an additional Compliance Check of the retail location where the
33 violation occurred within forty-five (45) days.

34
35 4. Any decision made by the authority to approve, conditionally approve, or deny
36 a license Application, to revoke or suspend a license, or to renew or not renew a license
37 shall be a final decision which may be appealed to the District Court pursuant to
38 Rule 106(a)(4) of the Colorado Rules of Civil Procedure. No defense or objection may be
39 presented for judicial review unless it is first presented to the authority prior to the
40 effective date of the authority's decision.

41
42 C. When a Compliance Check is completed by the police department, the police department
43 will notify the State of Colorado Liquor/Tobacco Enforcement Division of any outcome, or action
44 taken on the licensee as a result of the compliance check.

45
46 D. A database of Compliance Check results and hearing outcomes shall be maintained by
47 police department.

1 **4-5-24: FINES, SUSPENSION OR REVOCATION OF LICENSE**

2 A. After investigation and a public hearing before the licensing authority at which a retailer
3 must be afforded an opportunity to be heard, the licensing authority may impose fines, or
4 impose suspension or revocation for reasons set forth below. Fines imposed shall be
5 commensurate with the severity of the violation and calculated based on the amount reasonably
6 necessary to deter similar future violations.

7 B. A license issued by the licensing authority may be suspended or revoked by the licensing
8 authority for any of the following reasons:

- 9 1. Violation of the Colorado Retail Tobacco Code;
- 10 2. Violation of any applicable administrative regulation;
- 11 3. Violation of this chapter;
- 12 4. Violation of the terms and conditions of a license;
- 13 5. Misrepresentation or omission of any material fact, or false or misleading information,
14 on the license Application or any amendment thereto, or any other information provided by
15 the licensee to the licensing authority related to the licensee's business;
- 16 6. Violation of any law which, if it occurred prior to the submittal of the license Application,
17 could have been cause for denial of the license Application;
- 18 7. Failure to maintain or to provide to licensing authority upon request any books,
19 recordings, reports, or other records as required by applicable law;
- 20 8. Temporary or permanent closure or other sanction of the licensee by the local licensing
21 authority, the Colorado Department of Public Health and Environment, or other
22 governmental entity with jurisdiction, for failure of the licensee to comply with applicable
23 provisions of the Colorado Retail Tobacco Code;
- 24 9. Revocation or suspension of the state license; or
- 25 10. The failure of a licensee to timely correct any violation of state or local laws, any
26 applicable administrative regulation, this chapter, or the terms and conditions of the
27 license's license within the time stated in a notice or order issued by licensing authority.

28 C. The procedure to suspend or revoke a local license shall be as set forth in this chapter.

29 D. In connection with the suspension of a license, the licensing authority may impose
30 reasonable conditions.

31 E. In deciding whether a license should be suspended or revoked, and in deciding what
32 conditions to impose in the event of a suspension, if any, the licensing authority shall consider
33 mitigating and aggravating factors when considering the imposition of a penalty. These factors
34 may include, but are not limited to:

- 35 1. Any prior violations that the licensee has admitted to or was found to have engaged in.
- 36 2. Action taken by the licensee to prevent the violation (e.g., training provided to
37 employees).

- 1 3. Licensee's past history of success or failure with compliance checks.
- 2 4. Corrective action(s) taken by the licensee related to the current violation or prior
- 3 violations.
- 4 5. Willfulness and deliberateness of the violation.
- 5 6. Likelihood of reoccurrence of the violation.
- 6 7. The owner or a manager is the violator or has directed an employee or other individual
- 7 to violate the law.

- 8 F. A license issued by the local licensing authority may be revoked if the local licensing
- 9 authority determines that the licensed premises have been inactive, without good cause, for at
- 10 least one (1) year.

- 11 G. If the licensing authority suspends or revokes a license the licensee may appeal the
- 12 suspension or revocation to the district court pursuant to Rule 106(a)(4) of the Colorado Rules
- 13 of Civil Procedure. The licensee's failure to timely appeal the decision is a waiver of the
- 14 licensee's right to contest the denial or conditional approval of the Application.

- 15 H. No fee previously paid by a licensee in connection with the Application shall be refunded if
- 16 the licensee's license is suspended or revoked.

17 **4-5-25: INJUNCTIVE RELIEF; ABATEMENT AS NUISANCE; OTHER REMEDIES**

- 18 A. If a person is required to have a valid license issued pursuant to this chapter the operation
- 19 of such person's business without such license may be enjoined by the town in an action
- 20 brought in the municipal court pursuant to section [1-8-10](#) of this Code, or in any other court of
- 21 competent jurisdiction.

- 22 B. The operation of a retail tobacco product retail business within the town without a valid
- 23 license issued pursuant to this chapter is declared to be a public nuisance, and is subject to
- 24 abatement as provided by law.

- 25 C. It is unlawful and a civil infraction for any person to violate any provision of this chapter.
- 26 Any person found to be in violation of this chapter, or against whom a default judgment has
- 27 been entered for a violation of this chapter, shall be punished as provided in Section 1-4-1-1 of
- 28 this Code.

- 29 C. The remedies provided in this section are in addition to any other remedy provided by
- 30 applicable law.

- 31 D. In any case in which the town prevails in a civil action initiated pursuant to this section, the
- 32 town may recover its reasonable attorney fees plus costs of the proceeding.

33 **4-5-26:NO TOWN LIABILITY**

34 The adoption of this chapter and the issuance of licenses pursuant to this chapter shall not

35 create any duty to any person. No person shall have any civil liability remedy against the town,

36 or its officers, employees or agents, for any damage or loss of any kind arising out of or in any

37 way connected with the issuance of any license pursuant to this chapter. Nothing in this chapter

1 shall be construed to create any liability or to waive any of the immunities, limitations on liability,
2 or other provisions of the Colorado Governmental Immunity Act, section [24-10-101](#), et seq.,
3 Colorado Revised Statutes, or to waive any immunities or limitations on liability otherwise
4 available to the town, or its officers, employees or agents.

5 **4-5-27: DESIGNATED USE OF LICENSE FEES**

6 Immediately upon receipt or collection thereof, all license fees collected by the town pursuant to
7 this chapter shall be deposited into a separate fund. Licensee fees shall be used only for the
8 purposes described in this chapter. Monies credited to such fund shall not be available to be
9 pledged or expended, by interfund transfer or otherwise, for any general purposes of the town.

10 **4-5-28: RULES AND REGULATIONS**

11 The town clerk shall have the authority from time to time to adopt, amend, alter, and repeal
12 administrative rules and regulations as may be necessary for the proper administration of this
13 chapter. Such regulations shall be adopted in accordance with the procedures established by
14 title [1](#), chapter [18](#) of this Code. A violation of such regulations may be enforced in the town's
15 municipal court.

16
17 **Section 2.** This ordinance shall be published and become effective as provided by
18 Section 5.9 of the Breckenridge Town Charter.

19
20 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
21 PUBLISHED IN FULL this 8th day of April, 2025. A Public Hearing shall be held at the regular
22 meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of _____,
23 2025, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the Town.
24 TOWN OF BRECKENRIDGE, a Colorado municipal corporation.

25
26
27
28 By: _____
29 Kelly Owens, Mayor

30
31 ATTEST:
32
33
34
35 _____
36 Helen Cospolich, CMC,
37 Town Clerk



Memo

To: Town Council

From: Laurie Best, *Housing Director*; Melanie Leas, *Project Manager*; and Keely Ambrose, *Town Attorney*

Date: 4/2/2025 (for 4/8/2025)

Subject: An Ordinance Approving the Runway Neighborhood Project Development Agreement (First Reading)

Town Council Goals (Check all that apply)

- | | |
|---|---|
| <input checked="" type="checkbox"/> More Boots & Bikes, Less Cars | <input checked="" type="checkbox"/> Leading Environmental Stewardship |
| <input checked="" type="checkbox"/> Deliver a Balanced Year-Round Economy | <input checked="" type="checkbox"/> Hometown Feel & Authentic Character |
| <input type="checkbox"/> Organizational Need | |

Summary:

Staff will present the Runway Neighborhood Project Development Agreement that establishes the roles and obligations of the Town and of The Runway Neighborhood LLC relative to the Runway Neighborhood project. An Ordinance approving the Agreement is attached and staff recommends approval of the Ordinance on first reading. This memo includes a summary of the major deal points as discussed on March 11th and March 25th as well as additional follow up on specific questions/ issues raised by Council.

Background:

Staff, along with Town Council, has determined that a plan for 148 units (45 townhomes, 42 duplexes and 61 single-family homes, with the possibility of accessory dwelling units-ADUs) is the best use of the site as this plan represents a variety of housing types with a reasonable density; i.e. not overly dense, but still very efficient use of the land. The development cost is estimated at approximately \$150 million with a subsidy of approximately \$50 million from the Town to achieve sale prices starting at \$351,000 for townhomes, \$575,000 for duplexes, and \$620,000 for single family homes (Option 2 as presented at the March 11th work session). The subsidy to the project includes the civil and infrastructure work to be paid by the Town as well as gap funding of about \$150,000 per unit. The neighborhood will be constructed in phases with the infrastructure/civil ground break this summer, vertical construction starting in end of 2026, and first units delivered winter 2027/2028.

Staff has proposed two phases with approximately 81 units in the first phase of development. The ground break for the first phase is contingent on the Council reviewing and approving the budget/GMP which will be presented to Council on May 13th, when the second reading of this Ordinance will also be presented. Staff is estimating that the first phase will require approximately \$31 million of the \$50 million total Town subsidy, the exact number will be available at the May 13th meeting.

Before the developer launches any work on the second phase (including civil/infrastructure) the Council will have the opportunity to review the status of the first phase including costs, unit absorption, market conditions or preferences, and any proposed updates or changes to the budget or to the plan for completion of the full neighborhood. At that time, the Council may choose to pause between phases, to push the second phase indefinitely, or to authorize the developer to roll immediately from the first phase into the second/final phase.

Deal Points:

On March 25th, the Council reviewed deal points and asked for some follow up and additional discussion on the following items.

1

Mission: The Town of Breckenridge protects, maintains, and enhances our sense of community, historical heritage, and alpine environment. We provide leadership and encourage community involvement.

Developer Fee/Financing – The Developer is assuming an estimated \$100 million in project costs and financial risk to be financed, with the balance of the project costs (approximately \$50 million) to be contributed by the Town. Within the project cost the Developer is proposing a fee not to exceed 7% of the total project cost. The Developer has agreed that certain costs will be excluded from the developer fee, effectively lowering the actual percentage below 7%, closer to 6.5% net. These excluded costs include water and sewer connection fees, third-party construction oversight, and labor costs for in-house employees of the development company. The fee will cover expenses necessary to manage the project including employee salaries and wages, office rent, utilities, professional services, business insurance, software and project management tools, administrative costs, office supplies, communication expenses (internet, phone services), general overhead required for project execution. It is estimated that the actual profit to the Developer after paying expenses is about 25% of the total fee. The Developer is happy to share more detailed information confidentially with the Council.

In return for a 7% max fee that is considerably less than the fee customarily charged on comparable projects, the Developer is requesting that two units be excluded from the lottery process in Phase 1. These units would be single family homes sold directly to contractors or subcontractors who are actively working on the project, with the goal of attracting and retaining skilled local workers who meet the deed restriction requirements. The future sale of these units will follow the housing rules in place at the time and they will not be retained by the developer.

Warranty – The Developer has agreed to a comprehensive two-year warranty on all units. The standard builder warranty is typically one year, but the Developer agreed to extend it to two years during the Stables Village contract negotiations in response to the Council's feedback and will match that timeframe for the Runway project. There are warranties on the following items beyond the two-year builder warranty on all units including a 10-year manufacturer warranty on water heaters, a 12-year on HVAC, and a 25-year on solar panels and components. Additionally, homeowners will have the option to purchase third-party extended warranties if they choose.

Mediation Clause – In response to the Council's request, a general dispute resolution clause including mediation has been added to the Development Agreement (see Paragraph I).

Restrictive Covenant:

Staff recommends the deed restriction for this neighborhood be consistent with the deed restriction recorded for Stables Village. It has been a goal of the Town to create consistency and avoid one-off restrictions that are difficult to track, enforce, or modify over time. The Stables Village deed restriction points to the Town's workforce housing regulations which can be amended from time to time as conditions change. These regulations address the employment requirement, retirement, income testing, owner occupancy, ownership of other units etc. A draft of the Runway Neighborhood Restrictive Covenant (based on the Stables Village restriction) is attached for review and comment. Also attached is a summary of the terms of the Runway deed restriction. If the Council is interested in specific or different requirements for the Runway Neighborhood, staff recommends that those be fully vetted with the housing workgroup and included in an update to the regulations. This review can be done at any time and does not need to be completed until we are much closer to selling and marketing the homes. This extended timeframe gives us time to review details with the workgroup. See below for staff's initial recommendations related to items discussed at the last Council meeting.

Retirement – As noted above, staff recommends the retirement provisions for this neighborhood align with the existing workforce housing regulations. Specifically, owners who have occupied a deed restricted unit and met the employment requirement for at least seven years are permitted to fully retire at age 65. Even though some of the older deed restrictions had specific language allowing semi-retirement at age 55 and full retirement at 62, hypothetically resulting in more units being occupied by retirees, in practice, we do not believe many of those older units have been lost to retirement. This issue is always something to consider carefully as the nature of work has changed significantly over time. Staff is currently sorting through our data to determine how many of our workforce units are currently occupied by retirees and that data can be used to inform the discussion on whether a change to the rules and regulations would be prudent. Staff will present the available retiree data as soon as it is available.

Income Caps/Testing – Staff and Council have always been concerned about income testing units because the process 1) narrows the market of buyers, 2) complicates and extends the buying process, 3) leads to available market units that

do not always match the needs of workforce families with an appropriate unit. Income testing and caps can be challenging for many service workers or seasonal employees as well as the self-employed. Income levels can vary significantly year-to-year and income testing is generally an onerous and time-consuming process. However, given the subsidy required to provide these affordable price points, it is desirable to ensure the households that need the lowest priced units have the best opportunity to purchase the lowest priced units. In the past, only the lowest-priced units (townhomes) were subject to income testing. As noted above, our recommendation is to review this topic more thoroughly with the housing workgroup, evaluate best practices, and then determine if a change to the regulations is needed. Staff fully support income testing for the townhomes as we have done in the past but have some concern about extending the requirement to the duplexes. It would be difficult to income test some (but not all) of the duplexes, because the units are identical. So, from a practical perspective, the Town would need to choose to test incomes for all of the duplexes or none of the duplexes. We would be interested in Council's initial thoughts that we could share with the workgroup regarding potential change to the regulations, but as noted above, this decision does not need to be finalized now.

Ownership of Other Units – Staff recommends that buyers for both townhomes and duplex units are not able to own other properties in Summit County due to the lower price points. This provision would be incorporated into the regulations if Council agrees.

Owner Occupancy – All units will require owner occupancy as their primary residence per the regulations.

Staff Recommendation

We look forward to your feedback and discussion and recommend approval of the Ordinance for the Development Contract. Second reading will be scheduled for May 13th at which time the restrictive covenant will be further refined, the budget/GMP will be available for review, and the subsidy request and Town budget implications will be available.

COUNCIL BILL NO. ____

Series 2025

AN ORDINANCE APPROVING THE RUNWAY NEIGHBORHOOD PROJECT DEVELOPMENT AGREEMENT.

WHEREAS, the Town owns the real property described in Exhibit A attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, on May 23, 2024, the Town issued a request for proposals ("RFP"), seeking developers interested in developing the Property; and

WHEREAS, Runway Neighborhood, LLC ("Developer") responded to the RFP, and desires to construct a deed-restricted workforce housing neighborhood (hereinafter referred to as the "Town Project") on a portion of the Property; and

WHEREAS, the Town is willing to contribute the Property to Developer for the Town Project, subject to the terms of the Agreement; and

WHEREAS, the Town is also willing to contribute financially to the Town Project provided the deed restricted housing is sold at agreed-upon affordable prices; and

WHEREAS, on August 13, 2024, Runway Neighborhood Infrastructure, LCC, which is owned by the same parent company as Developer, and Town entered into a Pre-Development Agreement for Services to perform preliminary planning tasks including site analysis, schematic design, and a master plan; and

WHEREAS, the Parties have negotiated a project Development Agreement, Exhibit B attached hereto, to develop the Town Project; and

WHEREAS, as part of the approval of the project Development Agreement, Council wishes to authorize the Town Manager to execute all additional documents required or necessary to effectuate the Town Project and the Development Agreement.

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

Runway Housing Project Development Agreement

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into as of the effective date below in Section 27 (the "Effective Date"), by and between the Town of Breckenridge, Colorado, a Colorado home rule municipality with an address of P.O. Box 168 Breckenridge Colorado 80424 (the "Town"), and Runway Neighborhood, LLC, a Colorado limited liability company with an address of P.O. Box 5540 Frisco, Colorado 80443 ("Developer") (each individually a "Party" and collectively, the "Parties").

WHEREAS, the Town owns the real property described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, on May 23, 2024, the Town issued a request for proposals ("RFP"), seeking developers interested in developing the Property; and

WHEREAS, Developer responded to the RFP, and wishes to construct deed-restricted workforce housing on a portion of the Property; and

WHEREAS, the Town is willing to contribute the Property to Developer for the Project, subject to the terms of this Agreement; and

WHEREAS, the Town is also willing to contribute financially (hereinafter "Town financial contribution") to the project provided the deed restricted housing is sold at affordable prices; and

WHEREAS, on August 13, 2024, Runway Neighborhood Infrastructure, LLC (the "Infrastructure Developer"), which is owned by the same parent company as Developer, and the Town entered into a Pre-Development Agreement for Services ("PDA") to perform preliminary planning tasks including site analysis, schematic design, and a master plan; and

WHEREAS, the Town and the Infrastructure Developer are concurrently negotiating a Guaranteed Maximum Price ("GMP") Agreement for the construction of horizontal infrastructure improvements on the Property; and

WHEREAS, the Parties desire to set forth the framework for the potential development of workforce housing on a portion of the Property in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Purpose. The purpose of this Agreement is to establish roles and responsibilities regarding the development of workforce housing on the Town-owned property described in Exhibit A.
2. Definitions.

a. "Planning Documents" means the approved plans for development of the Property including the Master Plan, Class A Development Permits, and plats creating the lots for the Property, and any approved site plans for the Property.

b. "Restricted Units" means the residential dwelling units in the Development subject to the Restrictive Housing Covenant, which shall be in substantially the form attached hereto as **Exhibit B** and incorporated herein by this reference.

c. "Development" means a deed-restricted workforce housing project to be developed on a portion of the Property as described in the Planning Documents.

d. "Budget" means the financial budget approved by Town Council for the construction of both horizontal and vertical improvements on the Property, which shall include the Town's financial contribution, Developer's warranty obligations, and the agreed upon sale prices for the Development phase being constructed as set forth more fully in Section 9 below.

3. Master Plan. The Parties agree that it is most efficient and in the best interests to the success of the Project to use a master plan for the Development (the "Master Plan"). As set forth in the PDA, Developer and the Infrastructure Developer shall be responsible for obtaining all required approvals for the Master Plan for this project through the Town of Breckenridge Development Review Process. The Master Plan is already in the development review process and it is anticipated that the Master Plan will be approved concurrently with the GMP Agreement, the Budget, and this Agreement.

4. Phased Development. The Parties recognize that the Development will be developed in phases, and such phasing shall be reflected in the Planning Documents. At this time, it is anticipated that the Development will have two construction phases, Phase I and Phase II. It is an essential element of this Agreement that Town affirmatively authorize the commencement of Phase II. Developer will be responsible for the construction of Phase I as set forth in the Planning Documents, but shall not be authorized to commence Phase II until the Town so directs. Authorization to commence Phase II shall occur at a public meeting of the Town Council. The parties will mutually agree on sale phases for each build Phase.

5. Number of Units. The total number of units allowed in Phase I and Phase II of the Development shall not exceed one hundred and forty-eight (148) deed-restricted workforce single family, duplex, and multi-family units.

6. Affordable Housing. The Developer shall develop 100% of the units as for-sale single family, duplex, or multi-family Deed Restricted Units that target lower and middle income families in accordance with the pricing set forth in the approved Budget. The Developer and the Town will agree to the final number of units at each AMI and that number will be reflected in the Budget.

7. Town Obligation/Investments. In addition to the Property, the Town agrees to contribute funding for the Development. The amount of the funding must be mutually acceptable to the Town and the Developer and will be set forth in the Budget. The Budget

will include all costs associated with the Development including infrastructure (on and offsite), site work (on and offsite), architecture, vertical construction, marketing, sales, outreach, etc. The Budget must also include all projected sales revenue based on specified target sales prices. In the event the Town and the Developer do not agree on the Budget or the Town and the Infrastructure Developer do not agree on the GMP Agreement, either Party may terminate this Agreement. If either Party or the Parties terminate this Agreement under this Section 7, the Town will provide payment for services and costs to date pursuant to the PDA and neither party shall have any further obligation to each other. Upon approval of the Budget and GMP Agreement, it is anticipated that the Town will provide funding for the on and off-site work and infrastructure performed by the Developer and the Infrastructure Developer by monthly draw based on percentage completion, including draw(s) in advance of the start of construction for deposits and reimbursable costs such as engineering, architecture surveying and other incidental expenses as required by Developer and Infrastructure Developer. Vertical development subsidies identified in the Budget shall be paid for each phase (based on number of units per phase) at the time the first building permits are issued for each phase; provided, however, the Parties may mutually agree in writing to an alternative schedule or process for the Town's financial contribution.

8. Schedule. Developer shall complete construction of the Project substantially in compliance with the schedule attached hereto as **Exhibit C** and incorporated herein by reference. Said schedule is a good faith target schedule and may be subject to adjustment for delays in approvals, pre-sales, financing, force majeure, and delays due to shortage of materials, weather, or other similar reasons beyond the reasonable control of Developer, or other such reasonable factors mutually agreed upon in writing by the Parties. As noted in Section 4 above, Phase II of the Development shall not commence until approved by the Town.

9. Transfer of Property. After execution of this Agreement, and after the Town has reviewed and approved the Budget and GMP Agreement, the Town shall transfer ownership of the portion of the Property described in **Exhibit A** associated with Phase I to Developer in accordance with the Phase I and Phase II Planning Documents, by special warranty deed to facilitate the timely financing, development, and sale of Phase I of the Project. The Phase II portion of the Property shall be transferred to Developer promptly upon the Town approving Phase II pursuant to Section 4 above. Closing agent for transfer of title shall be Land Title Guarantee Company. The Town shall pay for owner's extended title insurance coverage and any costs associated with the closing agent. Developer shall pay for any endorsements required by it or Developer's lender. Developer shall pay the deed recording fees. The Town shall pay any other closing costs. The special warranty deeds shall only be subject to the exceptions of title listed on the title commitment approved by Developer, which approval shall not be unreasonably withheld.

10. Default. Prior to any action against Developer for breach of this Agreement, or default in the Development, the Town shall give Developer a written notice of any claim by the Town of a breach or default by Developer, and Developer shall have the opportunity to cure such alleged default within thirty (30) days, unless such cure cannot be accomplished within such time period, and in such case for a reasonable period to

accomplish the same, not to exceed ninety (90) days. The Town shall have discretion to approve a longer period in the event of extraordinary circumstances.

In the case of any such uncured default, the Town reserves the right to proceed with assumption of all rights and responsibilities of the Developer for the Phase of the Development that is subject to such default. In addition, any such case of uncured default may result in the Town proceeding to terminate this Agreement for cause as set forth in Section 26(a).

11. Reverter Clause. In the case of a default, and after any and all cure periods during which Developer fails to cure, any and all Property interests, including the Property described in **Exhibit A**, that have been conveyed to the Developer, which remain in the Developer's ownership and control, and that have not been conveyed to individual homeowners, homeowner's associations, the Town of Breckenridge, special districts or other governmental or quasi-governmental entities, shall be conveyed back to the Town in the same manner and upon the same or similar terms as conveyed to Developer under Section 9.

12. Developer Employee Unit. The Parties shall agree upon two (2) units that will be reserved for sale to Developer's and the Infrastructure Developer's contractors, subcontractors, employees of contractors and subcontractors ("Developer Employee"). Two (2) units in Phase I shall be reserved for purchase by a Developer Employee. Developer Employee Units will be single family units and not duplex or townhome units. Developer Employees seeking to purchase one of the Developer Employee Units shall meet the applicable income requirements and all other qualifying criteria as set forth in the Restrictive Housing Covenant and/or the Town's Housing Rules and Regulations.

13. Restrictive Housing Covenant. The Town shall, prior to any transfer of the Property to Developer, record a Restrictive Housing Covenant against the Property mutually acceptable to the parties. The Town will allow the Restrictive Housing Covenant to be subordinate to any financing associated with the Development.

14. Financing. Developer shall be solely responsible to procure financing for the Project. Any instrument of encumbrance to be recorded by the lender, such as a deed of trust or a lien ("Encumbrance"), must adhere to two preconditions, as follows: (i) reasonably related to the development of the parcel or phase so encumbered as contemplated herein; and (ii) be approved in writing by the Town prior to execution by Developer (which approval will not be unreasonably withheld), and prior to any recordation of any such Encumbrance. Any Encumbrance that does not satisfy these preconditions shall be deemed a violation of this Agreement, and subject to timely correction or cure, and if not so corrected or cured in accordance with Section 26(b) herein, shall be deemed a default and subject to termination for cause. In addition to the foregoing remedy, the parties hereto agree that any such improper Encumbrance not timely corrected or cured shall be deemed null and void and of no force or effect, and Developer shall assume all responsibility for the ramifications of such nullification.

15. Inspection of Developer Books and Records. Except for the Developer's financing documents, the Developer shall maintain all books and records related to the Project and make them available for inspection upon the Town's request. Notwithstanding the foregoing, if the Town has reasonable cause to believe that Developer cannot complete the Project, the Town may request to review the financing documents of the Developer at which time the Developer may assert that such financing documents are confidential records under Colo.Rev.Stat. § 24-72-204. For purposes of this section "financing documents" includes all records documenting the obligations of Developer regarding the loan(s), excluding the Encumbrance which is subject to disclosure under Section 14.

16. Developer Fee. Developer shall receive a minimum fee for the horizontal and vertical construction and the infrastructure. Developer shall receive a minimum fee for construction of the infrastructure in the amount of 7.0% on all costs and expenses for the Development, said profit to exclude any percentage return for costs paid for or directly reimbursed by the Town. The final Developer Fee shall be as set forth in the Budget.

17. Authority; Independent Contractor Status. Developer shall have no right, authority or power to bind the Town for any claim for labor or for material or for any other charge or expense incurred in delivering the Development or performing any alteration, renovation, repair, refurbishment or other work. The Parties shall be treated as independent contractors to this Agreement and Developer shall not be considered the agent of the Town in the construction, erection or operation of the Development.

18. Fees and Taxes. The Parties agree that each unit subject to a Restrictive Covenant within the Development shall not be required to pay building permitting, plan review, and inspection fees, use taxes, impact fees, excise taxes or water PIFs. These taxes and fees will be waived by the Town.

19. Marketing Units. The Developer intends to contract for marketing and sales services. The Town and Developer agree to establish a mutually acceptable marketing plan with criteria and processes to ensure broad marketing throughout the community. The Developer will utilize the Summit Combined Housing Authority (SCHA) for qualification and lottery purposes.

20. Sales. In the event transfer of title to a unit subject to a Restrictive Covenant is not completed within three (3) months from the date of certificate of occupancy, the Parties agree that the following events shall occur in the order set forth below:

a. The Developer shall send a written notice ("Developer Notice") to the Town of the Town's option to purchase a unit, which may be exercised within ten (10) days of such notice being given by the Town to the Developer ("Town Notice"). If the Town exercises its option within such 10-day period, the Town shall close on such purchase and sale within thirty (30) business days of receipt of the Developer Notice.

b. If the Town does not elect to purchase the unit under subsection a, Developer may exercise its option to rent a unit at a rate mutually agreed to in writing by the Parties that is no less than the Developer costs for the unit for the loan, taxes,

insurance, and HOA dues. In the event the Developer exercises its option to lease under subsection b, the Town has the discretion to either: i) permit Developer to lease the unit exempt from the established affordability requirements or ii) provide additional funding to offset the difference between the then established affordable rental rate and the mutually agreed to rental rate.

21. Compliance with Law. Developer shall comply with all applicable laws, including without limitation all current and future federal, state and local statutes, regulations, ordinances and rules relating to: the emission, discharge, release or threatened release of a Hazardous Material into the air, surface water, groundwater or land; the manufacturing, processing, use, generation, treatment, storage, disposal, transportation, handling, removal, remediation or investigation of a Hazardous Material; and the protection of human health, safety or the indoor or outdoor environment, including (without limitation) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.* (“CERCLA”); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.* (“RCRA”); the Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.*; the Clean Water Act, 33 U.S.C. § 1251, *et seq.*; the Clean Air Act; the Federal Water Pollution Control Act; the Occupational Safety and Health Act; all applicable Colorado environmental laws; and all other federal, state or local laws and regulations relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, now or at any time hereafter in effect.

22. Public Improvements.

a. Guaranteed Maximum Price Proposal. Developer agrees to complete both on-site and off-site public improvements (the “Public Improvements”), subject to a Guaranteed Maximum Price (“GMP”) proposal. At the conclusion of the design development phase the Developer shall prepare and submit a GMP proposal to the Town based on the design development documents. The GMP shall be delivered to the Town within three (3) weeks of the approval of the Public Improvement permits. The Parties agree to negotiate in good faith to enter into a construction agreement based on a Guaranteed Maximum Price.

b. Final Acceptance and Dedication. Upon completion of the Public Improvements and upon final acceptance by the Town, Developer shall convey title to the Public Improvements to the Town at which time the Town shall become responsible for the operation and maintenance of the same.

c. Warranty. Developer warrants and guarantees that, for two (2) years from the date of acceptance, each Public Improvement: is not defective; will not fail; has been constructed and installed in a workmanlike manner suitable for its intended uses; has been constructed in compliance with applicable federal, state, municipal, and special district statutes, ordinances, regulations, rules, and codes.

23. Developer’s Obligations.

a. Workforce Housing. To ensure affordability over time, the entire Development shall be for-sale single family, duplex, or multi-family Restricted Units subject to the Restrictive Covenant, as outlined in Exhibit B, and Notice of Lien. The total number of Restricted Units in Phase I of the Project shall not exceed eighty-one (81) single-family, duplex and multi-family units. The total number of restricted units in both Phase I and Phase II of the Project shall not exceed one hundred and forty-eight units. The units will be sold at the sale prices approved by the Town and as reflected in the Budget. All units will be sold with a two-year warranty from date of certificate of occupancy.

b. Homeowners' Association. Developer shall create the Runway Homeowners' Association (the "HOA"), which shall be responsible for the enforcement of the Declarations and Covenants for the Runway and the Architectural Standards for the Development. Such Declarations and Covenants shall be approved by the Town prior to adoption. The HOA shall also be responsible for the repair and maintenance of: any unique lighting in the Development; any unique signage for the Development; all internal trails and open/green spaces not maintained by the Town; all dumpster enclosures and mailboxes; all private roads and alleys shown on the Planning Documents; and all other items not required by applicable Town standards. The HOA shall not be responsible for repair, maintenance, or operation of the recycling/composting facilities.

c. Architecture. Developer shall develop the Property consistent with the Planning Documents. Architectural Standards for the Development shall be included in the Declaration and Covenants, or separate document, for the Development and shall be enforced by the HOA.

d. Permitted Development, Construction of Planning Documents. The Developer shall develop the Development in accordance with this Agreement, Town ordinances and regulations, and applicable state and federal law and regulations. To the extent the Planning Documents are silent on a particular matter, the Breckenridge Town Code and associated Town Standards shall apply.

24. Insurance. Developer agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Developer pursuant to the Development Agreement and naming the Town as an additional insured.

25. Term. The Effective Date of this Agreement shall be in accordance with Section 5.9 of the Municipal Charter and remain effective until all obligations of each Party are completed or until terminated as permitted herein. If the Planning Documents are not approved by the Town as described in Section 9, then Developer shall be paid for services to date pursuant to Section 4 and this Agreement shall automatically terminate and be of no force and effect whatsoever.

26. Termination; Delay.

a. Termination by Town for cause. Town may terminate the services of the Developer, and take possession of the Project and all materials, and equipment deemed to be part of the Services, if terminated based on cause as contemplated herein. The termination shall be effective thirty (30) days after Town has delivered written notice detailing the cause for termination hereunder to the Developer if the Developer has failed to reasonably cure the cause for termination within that thirty (30) day period; unless such cure cannot be accomplished within such time period, and in such case after a reasonable period to accomplish the same, not to exceed ninety (90) days. The Town shall have discretion to approve a longer period in the event of extraordinary circumstances. The termination may be initiated for any of the following reasons and shall not prejudice any other right or remedy available to Town, all of which shall be subject to the notice and thirty (30) day period to cure provided herein:

- i. The Developer is adjudged bankrupt or insolvent.
- ii. The Developer makes a general assignment for the benefit of his creditors.
- iii. A trustee or receiver is appointed for the Developer or for any of his property.
- iv. The Developer files a petition to take advantage of any debtor's act or to reorganize under any bankruptcy law.
- v. The Developer repeatedly fails to supply sufficiently skilled workmen, or necessary materials or equipment to maintain the construction schedule or provide quality workmanship and/or product.
- vi. The Developer disregards laws, ordinances, rules, regulations, or orders of any public body having jurisdiction of the Development.
- vii. The Developer unreasonably and repeatedly disregards the authority of the Town as Property Owner or collaborator under this Agreement, after written notice of such concerns and failure to correct such actions.
- viii. The Developer violates any material provision of the Agreement and fails to cure the same within the proper time frame for cure allotted herein.
- ix. Notification by the lender of the Development of financial default by the Developer.

After termination is effectuated, Town may proceed to finish the Development by whatever method it deems most expedient. Developer will present all final invoicing to the Town within thirty (30) days of Termination for payment by the Town.

b. Termination by Town for Convenience. Town may also elect to suspend or abandon the Project and terminate the Agreement for convenience. The action shall be effective thirty (30) days after Town has delivered written notice to the Developer. This action may be initiated for any reason, without cause, and shall not prejudice any other right or remedy available to Town. The Developer shall be paid for all Development executed and any costs and expenses, including the Developer Fee, sustained due to the termination and Developer will present all final invoicing to the Town within thirty (30) days of Termination effective date.

c. Termination by Developer. Developer may terminate the Agreement for any of the following reasons. The termination shall be effective thirty (30) days after the

Developer has delivered written notice to Town, and provided a fourteen (14) day opportunity to cure:

- i. Town has suspended the Development for more than sixty (60) days.
- ii. Town has been issued a stop work order of sixty (60) days or more by court order or other competent public agency.
- iii. The Town fails to act on any request for payment within thirty (30) days after its submittal.
- iv. Town fails to pay the Developer within (30) thirty days the sum approved by the Town or awarded by arbitrators or court.
- v. The Town repeatedly fails to respond to requests for approvals and other information required in a timely manner to allow Developer to meet its obligations and operate within the construction periods permitted due to seasonal constraints.
- vi. Town fails to meet any other material obligations under this Agreement, the Planning Documents or the ancillary development agreement for public improvements.

d. Payment to Developer. The Developer shall be entitled to payment for all Development implemented and any expenses sustained due to the termination providing they have provided complete accounting within thirty (30) days of the termination date. In the event of termination, payments will be made to Developer for all work performed up to the date of termination. The Developer shall have the option of resuming work after such payment or proceeding with termination in the event of termination under Section 26.c.. If the Agreement is terminated pursuant to Sections 26.b. or 26.c., and in the event Developer does not elect to resume work as relates to termination under Section 26.c., the Developer shall also be entitled to payment for the remaining Developer Fee for the entirety of the Development.

If all phases of the Development are not completed by the Developer, the Agreement may be terminated by the Town in accordance with the provisions set forth in this Section 26.

e. Ownership of Planning and Construction Documents. The Planning Documents and all architectural, engineering, construction and similar plans are owned by Developer. In the event of termination of this Agreement pursuant to Section 26.b, the ownership of all Planning Documents shall transfer from Developer to the Town as the Town's sole remedy against Developer for termination for cause. For purposes of this Section, "Planning Documents" shall not include architectural, engineering and construction plans and documents for the vertical construction.

f. Town Assumption of Development. In the event the Town assumes completion of the Development under Section 10, or under any other provision of this Agreement, or the Agreement is terminated pursuant to Section 26, Developer is released from any and all further obligations under this Agreement excluding warranties for work completed prior to termination or assumption.

27. Miscellaneous.

a. Indemnification

i. To the fullest extent permitted by law, and in accordance with Section 13-50.5-102, C.R.S., Developer shall indemnify and hold Town, its officers, employees, and insurers, harmless from and against all liability, claims, and demands brought or asserted against Town by a third party (a party who is not a party to the Agreement) 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, whether alleged, adjudicated, or otherwise, related to or in any manner connected with the Agreement, to the extent that such injury, loss, or damage is caused by Developer's negligence or other fault, or the negligence or other fault of Developer's employees, agents, representatives, subcontractors, suppliers, or anyone else for whose acts Developer is liable under applicable law. Developer is not required to provide indemnification under this Section to the extent such liability, claim, or demand arises through the negligence or other fault of Owner, its officers, employees, or agents. As used in this Section, the term "fault" includes, but is not limited to, an intentional or willful wrongful act, or a breach of the Agreement.

ii. This indemnity provision is to be interpreted to require Developer indemnify and hold Town harmless only to the extent and for an amount represented by the degree or percentage of negligence or other fault attributable to Developer, or Developer's employees, agents, representatives, subcontractors, suppliers, or others for whose acts Developer is liable under applicable law.

iii. To the extent indemnification is required under this Section, Developer shall reimburse Town for all costs and expenses of litigation incurred by Developer related to the matter for which indemnification is required, including, but not limited to, court costs, expert witness fees, and reasonable attorney's fees.

iv. The extent of Developer's obligation to indemnify and hold Town harmless under this Section shall be determined only after Developer's liability or fault has been determined by adjudication, alternative dispute resolution (if permitted by the Agreement), or is otherwise resolved by mutual agreement between Developer and Town.

v. This indemnity provision applies only with respect to claims brought or asserted against Town by third parties, and not to claims only between Developer and Town.

vi. Town's officers, employees, and insurers are third party beneficiaries of this Section in accordance with its terms. However, any amendment, modification, or termination executed by Town and Developer is binding upon Town's officers, employees, and insurers.

vii. All indemnity obligations required by the Agreement shall survive the completion or termination of the Agreement, and shall be fully enforceable thereafter, subject to any applicable statute of limitation."

b. Integration. This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

c. Governmental Immunity. The Town and its officers, elected officials, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers, elected officials, attorneys or employees.

d. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, and venue for any legal action arising out of this Agreement shall be in Summit County, Colorado.

e. No Third Party Beneficiaries. No third party is intended to or shall be a beneficiary of this Agreement, nor shall any third party have any rights to enforce this Agreement in any respect.

f. No Joint Venture or Partnership. No form of joint venture or partnership exists between the Parties, and nothing contained in this Agreement shall be construed as making the Parties joint venturers or partners.

g. Severability. If any provision of this Agreement is determined to be void by a court of competent jurisdiction, such determination shall not affect any other provision hereof, and all of the other provisions shall remain in full force and effect.

h. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the Party at the address set forth on the first page of this Agreement.

i. Modification. This Agreement may only be modified upon written agreement of the Parties.

j. Assignment. Neither this Agreement nor any of the rights or obligations of the Parties shall be assigned by either Party without the written consent of the other.

k. Rights and Remedies. The rights and remedies of the Town under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the Town's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

l. Resolution Of Disputes.

i. The Parties will attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiations between persons who have authority to settle the controversy ("Executives"). Either Party may give the other Party written notice of any dispute not resolved in the normal course of business. Within five (5) days after receipt of said notice, Executives of the Parties to the dispute will meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the

matter has not been resolved within ten (10) days of the notice of dispute, or if the Parties fail to meet within five (5) days, either Party may initiate mediation of the controversy as provided below.

ii. If the dispute has not been resolved by negotiation as provided above, the Parties will endeavor to settle the dispute by mediation with a neutral third Party. If the Parties encounter difficulty in agreeing on a neutral third Party, they may each appoint a neutral third Party, such third Parties to appoint a neutral third Party to mediate. Each Party will pay their own attorneys' fees incurred in connection with negotiation and mediation.

iii. Any dispute arising out of or relating to this Agreement, or the breach, termination, or validity of this Agreement, which has not been resolved by the methods set forth above within thirty (30) days of the initiation of mediation, may be finally resolved by appropriate judicial action commenced in a court of competent jurisdiction. The Parties agree to venue in the courts of Summit County, Colorado with respect to any dispute arising out of or relating to this Agreement. **BOTH PARTIES WAIVE THE RIGHT TO A JURY TRIAL WITH RESPECT TO ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT.**

iv. This Agreement is to be interpreted in all respects in accordance with the laws of the State of Colorado, without regard to principles of conflicts of laws that might require this Agreement to be governed by the laws of any state other than the State of Colorado.

m. Subject to Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Town not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

n. Recording. This Agreement or a notice of memorandum of agreement may be recorded with the Clerk and Recorder for Summit County, Colorado and shall run with the land at the mutual consent of the Parties, which shall not be unreasonably withheld.

o. Authority to Execute Documents. Upon approval of the Ordinance authorizing the Town's participation in this Agreement, the Town Manager shall be authorized to execute any document reasonably required by or related to this Agreement and the Project, including the authorization of and subordination of Encumbrances as set forth Section 16 above.

p. Retained Authority. Nothing contained in this Agreement shall constitute or be interpreted as a repeal of existing codes or ordinances or as a waiver or abrogation of the Town's legislative, governmental, or police powers to promote and protect the health, safety, and general welfare of the Town or its inhabitants; nor shall this Agreement prohibit the enactment by the Town of any fee that is of uniform or general application.

EXHIBIT A
LEGAL DESCRIPTION

Runway Neighborhood

Tract A Fraction Subdivision
according to the plat recorded December 17, 2021 under reception number
1278464 in Summit County Colorado

AND

Tract C, Block 11 Subdivision
according to the plat recorded August 3, 2005 under reception number 797050 in
Summit County Colorado

EXHIBIT B
Restrictive Housing Covenant and Notice of Lien
For Runway Neighborhood,
Summit County, Colorado
(attached)

EXHIBIT B RESTRICTIVE COVENANT

**DRAFT-RESTRICTIVE HOUSING COVENANT AND NOTICE OF LIEN
FOR THE RUNWAY NEIGHBORHOOD,
SUMMIT COUNTY, COLORADO**

Commented [LB1]: To be vetted with Housing Workgroup prior to finalizing terms and executing the Restrictive Covenant (June)

THIS RESTRICTIVE HOUSING COVENANT AND NOTICE OF LIEN (the "Covenant") is made and entered into this _____ (the "Effective Date"), by and between the Town of Breckenridge, a Colorado municipal corporation, hereinafter referred to as the "Town" and _____, hereinafter referred to as the "Developer" (individually a "Party" and collectively the "Parties").

RECITALS

WHEREAS, the Town is the owner of certain real property more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (the "Property");

WHEREAS, the Property is subject to the terms of the Runway Neighborhood Project Development Agreement between the Developer and the Town, which is dated _____. Pursuant to that agreement the Town will convey the property via Special Warranty Deed to the Developer for development of the Runway Neighborhood and

WHEREAS, the Property is also subject to a Master Plan _____ approved by the Town on _____ which restricts the use of the Property to 148 workforce housing units; and

WHEREAS, the Parties agree to restrict the 148 units under the terms of this Restrictive Housing Covenant and Notice of Lien; and

WHEREAS, under this covenant the Developer intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use of the units described and provided for herein shall be and are hereby made covenants running with the land and are intended to be and shall be binding upon the Developer and all subsequent owners and occupiers of such units for the stated term of this covenant, unless and until this covenant is released and terminated in the manner hereafter described.

NOW, THEREFORE, in consideration of the promises and covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I
PURPOSE

The purpose of this covenant is to restrict ownership, occupancy, use and sale of the units in such a fashion as to provide, on a permanent basis, workforce housing and to help establish and preserve a supply of workforce housing to help meet the needs of the locally employed residents of Summit County. This restrictive covenant is governed by title 9, chapter 16 of the Town municipal code, and the Division of Housing Administrative Rules and Regulations (Workforce Housing Regulations), as amended from time to time, and officially promulgated by the housing division. The municipal code and the Workforce Housing Regulations have the force and effect of law. For the purpose of this covenant terms are defined in the Workforce Housing Regulations as amended from time to time and located at <https://breckenridge.town.codes/AdminRules>.

ARTICLE II
BINDING EFFECT

This restrictive housing covenant shall constitute covenants running with title to the property as a burden thereon, for benefit of, and enforceable by the Town. This covenant shall bind the Developer and all subsequent owners and occupants of a unit. Each owner and authorized lessee, upon acceptance of a deed or lease to a unit, shall be personally obligated hereunder for the full and complete performance and observance of all covenants, conditions and restrictions contained herein during the owner's period of ownership or authorized lessee's tenancy, as may be appropriate. Each and every transfer or lease of a unit, for all purposes, shall be deemed to include and incorporate by this reference the terms and conditions contained in this covenant, even without reference to this covenant in any document of conveyance.

ARTICLE III
OWNERSHIP, OCCUPANCY AND USE RESTRICTIONS

3.1 Ownership. Ownership of a unit is hereby limited exclusively to Developer, Town and qualified owners, which shall include the parties described and approved as set forth in the Workforce Housing Regulations. For the purposes of The Restrictive Covenant and Notice of Lien for Runway Neighborhood a local employer is not considered a qualified owner. In the event that a unit is owned without compliance with this covenant, the Town shall have the remedies set forth herein.

3.2 Occupancy. Except as otherwise provided in this covenant, each unit shall, at all times, be occupied as a primary residence by the owner (along with dependents), or as the case may be an authorized lessee, pursuant to the terms of rental in section 3.6 (along with dependents). Notwithstanding anything contained herein to the contrary, all occupants must meet and continue to meet the definition of qualified occupant for the entire period of their occupancy of the unit. The only exceptions to the occupancy criteria are those exceptions provided for in the Workforce Housing Regulations.

3.3 Ownership Interest in Other Residential Property. Additional ownership in other developed residential properties is deemed to include entities, partnerships, trusts and

the like in which the owner is either a party to the entity in any part or a trustee and/or beneficiary of a trust. In the event said other property has not been sold within ninety (90) days of its listing or offering for sale as required hereunder, then the owner shall immediately list his or her Runway Neighborhood unit for sale pursuant to the provisions of this covenant. It is understood and agreed between the parties hereto that, in the case of an owner whose business is the construction and sale of residential properties, the properties which constitute inventory in such owner's business shall not constitute "other developed residential property" as that term is used in this section.

- A. Triplex Units. If at any time an owner of a triplex owns any interest alone, or in conjunction with others in any other developed residential property within Summit County, Colorado, the owner shall immediately disclose such ownership to the Town, and promptly list or otherwise offer through sale by owner such other property interest for sale.
- B. Duplex and Single Family Units. If at any time an owner of a duplex or single family owns more than one additional interest alone, or in conjunction with others in any other developed residential property within Summit County, Colorado, the owner shall immediately disclose such ownership to the Town, and promptly list or otherwise offer through sale by owner such other property interest for sale.

Commented [LB2]: Work with workgroup to determine if duplexes can own other property AND if there are restrictions on the other property (ie-no STR)

3.4 Maintenance Responsibilities. The owner(s) is responsible for maintaining the unit in good working order and good repair throughout the length of the owner's ownership of the unit, and adhering to all homeowner's association requirements for maintenance, upkeep, and appearance during such tenure of ownership.

3.5 Vacancy. In the event that a qualified owner ceases to occupy a unit as his or her primary residence for a period of ninety (90) consecutive days (as reasonably determined by the Town), the Town may, in its sole discretion and in addition to any other remedies the Town may have hereunder, determine that the unit shall be offered for sale pursuant to the provisions of this covenant.

3.6 Rentals. Units shall not be rented for any period of time without the prior written approval of the Town. Owners are permitted one 12 month cumulative period of rental during their ownership of the unit. Any tenancy approved by the Town shall be to a natural person meeting the definition of authorized lessee. No tenancy period shall be less than six (6) months or longer than twelve (12) months. No unit or portion of a unit may be rented for periods of time of less than six (6) months. The maximum rental fee for such approved rentals shall be at a rental rate established by the Town. In the event that any unit, or any portion thereof, is leased or rented without compliance with this covenant, the Town shall have the remedies set forth by law, including but not limited to the rights set forth in this covenant.

3.7 Roommates. The requirements of this article shall not preclude a qualified owner from sharing occupancy of the unit with other natural persons on a rental basis provided the owner continues to meet the obligations, including primary residency, set forth in this

covenant. All roommates charged rent by the owner are required to have written approval by the Town, and shall meet the definition of qualified occupant. The maximum rental fee for such approved roommates shall be at a rental rate established by the Town.

3.8 Refinance Restriction. An owner shall not encumber a unit with debt, exclusive of interest, in any form which exceeds, at any time the maximum resale price as determined in accordance with this covenant.

3.9 Records and Inspection. An owner's records with respect to the owner's use and occupancy of a unit shall be subject to examination, inspection and copying by the Town upon reasonable advance notice. The Town shall also have the right to enter into or upon a unit for the purpose of determining compliance with the provisions of this covenant; provided, however, that the Town shall first attempt to secure the permission of any occupants of the unit no less than 48 hours in advance prior to making entry. An owner shall submit any information, documents or certificates requested from time to time by the Town with respect to the occupancy and use of the owner's unit which the Town reasonably deems necessary to substantiate the owner's continuing compliance with the provisions of this covenant. Documents may include, but are not limited to: Federal and State Income Tax Returns, W2s, 1099s, bank statements, and invoices for utility payments. Such information shall be submitted to the Town within such reasonable time period as the Town may establish. All lessees of a unit shall be bound by the terms of this section and shall cooperate with all requirements herein. The Town shall maintain confidentiality of financial information as provided by law.

ARTICLE IV **SALE OF A UNIT**

4.1 Notice of Sale and Lottery Requirement. In the event that an owner shall desire to transfer a unit, or in the event that an owner shall be required to transfer such unit pursuant to the terms of this covenant, the owner shall notify the Town in writing of the owner's intention to transfer such unit. All units shall be sold pursuant to a lottery as provided in the Workforce Housing Regulations. The unit shall not be transferred to: (i) any person, entity, or entities other than a qualified owner, and (ii) for consideration to be paid by such qualified owner that exceeds the maximum resale price as such is determined pursuant to the provisions of this article.

4.2 Income Testing (Townhome units only). A household's income for purposes of determining whether such household meets this definition of eligibility shall be determined at the time of purchase. Income testing shall be done only at the time a person purchases a unit. Additional income obtained by persons in an eligible household after purchasing the unit shall not have any effect on the household's qualifications or income classification under this covenant.

Commented [LB3]: Work with workgroup to discuss if Duplexes should also be income tested

4.3 Original Sale of a Unit. Upon completion of construction of each unit by the Developer the unit shall be sold to a qualified owner at a purchase price as set forth in **Exhibit C.**

4.4 Resale. No unit shall be transferred subsequent to the original purchase from the Developer, except upon full compliance with the procedures set forth in this article.

A. Maximum Resale Price. The maximum resale price may not exceed the sum of: (i) the purchase price paid by the owner of the unit, plus (ii) an increase of 3% of such purchase price per year (pro-rated at the rate of 1/12 for each whole month for any part of a year, but not compounded annually) from the date of the owner's purchase of the unit to the date of the owner's execution of the listing contract, plus (iii) permitted capital improvements subject to the limitations in sub-section B below, plus (iv) maintenance items subject to the Workforce Housing Regulations, plus (v) a maximum of one percent (1%) of the sum of items (i), (ii), and (iii) of this sub-section C below to provide the selling owner with assistance in paying any sales commissions to a licensed real estate broker, attorney's fees, and closing costs incurred by the owner in connection with the sale of the unit. Nothing herein shall be construed to constitute a representation or guarantee by the Town or the Developer that upon resale the owner shall obtain the maximum resale price.

B. Allowance for Permitted Capital Improvements. Subject to the limitations of this Section, for the purpose of determining the maximum resale price in accordance with this covenant, the owner may add to the amount specified in Section 4.4 A, the cost of approved and permitted capital improvements (PCI) as set forth in the PCI schedule contained in the Workforce Housing Regulations, as amended from time to time.

C. Real Estate Sales Commission. The owner of a unit may list the unit with any private real estate broker licensed according to the laws of the State of Colorado. The owner may add the amount paid in sales commission to a licensed real estate broker, up to 1%, to the maximum resale price, as described in Section 4.4 A. This covenant does not mandate what commissions and sales fees an owner may pay, it merely specifies the maximum amount that may be added to the resale price of the unit. All real estate commissions and other sale-related costs shall be paid by the owner of a unit, and shall not be transferred to the buyer by including these costs in the resale calculation, with the exception stated above for a maximum of 1% to be added to the maximum resale price. The ability to increase the maximum resale price by the allowable sales commission amount does not apply to units for sale by owner unless owner is a real estate broker licensed according to the laws of the State of Colorado.

D. Closing Costs, No Additional Consideration. Owner shall not permit any prospective buyer to assume any or all of the owner's customary closing costs, including but not limited to, title insurance, sales fee, prorated taxes attributed to the property prior to the date of sale, homeowner's dues, existing obligations for

special assessments, including any installments due and owing prior to the date of closing, etc.; nor shall owner accept any other consideration which would cause an increase in the purchase price above the bid price so as to induce the owner to sell to such prospective buyer.

4.5 Condition of Unit at Resale. Each owner shall be responsible for ensuring that the unit is in good condition at the time of resale, with reasonable wear and tear acceptable. This obligation includes all matters which are in the control and responsibility of an owner, and includes but is not limited to: cleaning the unit; making necessary improvements to repair and maintain plumbing and mechanical fixtures, appliances, carpets or other flooring; interior painting and other work, and ensuring that there are no health and safety violations regarding the unit. If the unit is not in good condition, the Town has the right to bring the unit into saleable condition and collect the costs of taking such efforts, by means of a lien upon the property, and the accordant right to collect upon such lien through appropriate means, including the right to deduct the cost of any expenses incurred from the owner's proceeds at closing for the sale of the unit.

4.6 Non-Qualified Transferees. In the event that title to a unit vests in a party that is not a qualified owner (a "non-qualified transferee") by descent, by foreclosure and/or redemption by any lien or mortgage holder (except any holder of a HUD-insured First Mortgage), or by operation of law or any other event, the Town will notify the non-qualified transferee that it must either attain qualified occupant status or sell the unit within a specific period of time. The non-qualified transferee(s) shall not: (i) occupy the unit; (ii) rent all or any part of the unit; (iii) engage in any business activity on or in the unit; (iv) sell or otherwise transfer the unit, except in accordance with this covenant; or (v) sell or otherwise transfer the unit for use in trade or business.

ARTICLE V **INSURANCE**

5.1 Owner Insurance Requirements. Each owner, shall in conjunction with the purchase or acquisition of a unit, keep the unit and its improvements now existing or hereafter erected, insured against loss or casualty by fire or hazards included within the term "extended coverage" in an amount equal to the replacement costs of returning the unit to its condition prior to loss (property insurance). The insurance carrier providing the insurance shall be qualified to write property insurance in Colorado and shall be chosen by owner subject to the Town's right to reject the chosen carrier for objectively reasonable cause. The Town shall have the right, but not the obligation, to request proof of insurance and/or continued coverage limits from owner by written request, at any such time(s) as the Town deems appropriate. In the event of loss, owner shall give prompt notice to the insurance carrier and the Town. Insurance proceeds shall be applied to the restoration or repair of the unit damaged, provided such restoration or repair is economically feasible and the security of any existing deed of trust or mortgage is not thereby impaired. If such restoration or repair is not economically feasible or if the security of an existing deed of trust would be impaired, the insurance proceeds shall be applied to the sums secured by

the deed of trust, with the excess, if any, paid to the owner. If the total unit insurance payment in such case exceeds the maximum resale price at the date of loss, the excess above the maximum resale price shall be paid by the owner to the Town, excluding all compensation for personal property, ancillary compensation for casualty such as rent stipends, and other such proceeds not related to the value of the unit itself.

ARTICLE VI
DOCUMENTATION REQUIRED FOR SALE OF A UNIT

6.1 Memorandum of Acceptance and Notice of Lien. Along with the recorded instrument of conveyance evidencing a transfer of a unit, any such transfer of a unit shall include a completed copy of the "Memorandum of Acceptance of Residential Housing Covenant and Notice of Lien for the Runway Neighborhood" attached hereto as **Exhibit B**, which copy is executed by the transferee and acknowledged by a notary public.

6.2 Appreciation Limiting Promissory Note and Deed of Trust.

- A. At the time of each sale of a unit, beginning with the first such sale by the Developer to a unit owner, the purchaser(s) of each unit shall execute an Appreciation Limiting Promissory Note in the form provided for in the regulations, together with a form of Appreciation Limiting Deed of Trust to a public trustee in the form provided for in the regulations; with said deed of trust intended to encumber the unit to secure strict compliance with the terms of the Note.
- B. The Appreciation Limiting Deed of Trust shall contain a strict due on sale provision, and shall be in form and substance acceptable to the attorney for the Town.
- C. At the time of closing of each transfer of title to a unit subsequent to the first transfer by Developer, the Town shall determine whether the transfer complies with the requirements of this covenant. If the transfer complies with the requirements of this covenant, the Town shall mark the selling unit owner's Appreciation Limiting Promissory Note as paid and execute a request for release of the Appreciation Limiting Deed of Trust upon verification to the Town, by the title company or other independent agent responsible for closing on the transfer of title to a unit, that the amount paid for the purchase of the unit does not exceed the maximum resale price or that, if the price exceeds the maximum resale price, the amount of such excess will be paid to the Town.
- D. At the time of each subsequent closing of the transfer of title to a unit, the standing Note and Deed of Trust shall be extinguished, and a new Appreciation Limiting Promissory Note shall be executed by the purchaser(s) and delivered to the Town, and a new Appreciation Limiting Deed of Trust shall be executed by the purchaser(s) and recorded at the Summit County Clerk and Recorder's office.

- E. If title to a unit is transferred without obtaining the release of an Appreciation Limiting Deed of Trust securing an Appreciation Limiting Promissory Note in favor of the Town, and/or a new such Note and Deed of Trust, the Town, among other rights available to it, shall have the right to foreclose said Appreciation Limiting Deed of Trust.

ARTICLE VII
TOWN'S LIEN

7.1. Town Lien Priority. Town shall have, and is hereby granted, a lien against the unit to secure payment of any amounts due and owing the Town pursuant to this covenant including without limitation all sales proceeds and/or amounts due to the Town in the event of a foreclosure of a first mortgage and to secure the obligations to the Town hereunder. The Town's lien on the respective unit shall be superior to all other liens and encumbrances, except the following:

- A. Liens and encumbrances recorded prior to the recording of this covenant;
- B. Real property ad valorem taxes and special assessment liens duly imposed by Colorado governmental or political subdivision or special taxing districts;
- C. Liens given superior priority by operation of law; and
- D. The lien of any first mortgage against such unit.

7.2. Rights of Town Lien. Recording of this covenant in Summit County constitutes record notice and perfection of the Town's lien. No further recordation of any claim of lien is required. By virtue of the Town's lien, the Town shall have all of the rights that a mortgage holder may have against a unit, including, but not limited to, the right to judicially foreclose upon a unit. The Town shall be entitled to file such notices and other information necessary to preserve its rights, as a lienor, and to cure and redeem in foreclosure of a unit, as provided by C.R.S. § 38-38-101, *et seq.*, and any other applicable law. In addition, unless otherwise instructed by the Town in writing, the owner shall sign, acknowledge, and cooperate in the Town's recording in the County Clerk and Recorder's Office immediately subsequent to the recording of the first mortgage, a notice of the Town's lien, substantially in the form attached hereto as **Exhibit B**, in order to assure that the Town receives notice in the event of the foreclosure of the first mortgage pursuant to this article. The notice shall not alter the priority date of the Town's lien as established herein.

7.3. Binding Effect of Lien. The sale or other transfer of a unit shall not affect the Town's lien. No sale or deed in lieu of foreclosure shall relieve the owner from continuing personal liability for payment of their obligations hereunder. The Town's lien does not prohibit actions or suits to recover sums due pursuant to this covenant, or to enforce the terms of this covenant, or to prohibit the Town from taking a deed in lieu of foreclosure.

7.4. Subordination of Town Lien. Upon request, the Town shall agree to subordinate the Town's lien to a bona fide mortgage or deed of trust provided that the total principal indebtedness secured by those mortgages or deeds of trust with priority over the Town's lien shall not exceed the current allowed maximum resale price under this covenant as of the date of subordination. To the extent that **Exhibit B** is inconsistent with this provision, the provisions of this section shall control.

ARTICLE VIII FORECLOSURE AND DEFAULT ON LOAN

8.1 Release. Notwithstanding anything herein to the contrary, this covenant shall be deemed released as to a unit in the event of the issuance of a public trustee's confirmation deed, sheriff's confirmation deed, or similar conveyance of the unit in connection with a foreclosure by the holder of a first mortgage. If the Town chooses to terminate this covenant with respect to a particular unit, the Town shall record a document referencing such termination in the real property records of the County. Any and all claims of the Town available hereunder against the owner personally shall survive any release or termination of this covenant.

8.2 Notice of Default to the Town. Within ten (10) days after owner's receipt of any notice of default from a mortgagee or any applicable governmental entity or homeowner's association, the owner shall give written notice of such default to the Town.

8.3 The Town's Option to Redeem.

A. Foreclosure/Town Option to Redeem. In the event of any foreclosure of a first mortgage or other lien, the Town or its authorized agent shall be entitled to receive notice of the foreclosure proceedings as is required by law to be given by the public trustee or the sheriff, as applicable, to lienors of a unit that are junior to the first mortgage (as provided in C.R.S. § 38-38-101, *et seq.*, as amended). The Town shall have a right of redemption, purchase, and such other rights as a lienor and holder of deed of trust in foreclosure, as its interest appears, in accordance with Colorado law governing foreclosure.

B. Upon Exercising Option. If the Town obtains title to a unit, the Town may sell such unit to a qualified owner, or rent such unit to an authorized lessee until such time that such unit can be sold to a qualified owner.

ARTICLE IX ENFORCEMENT

9.1 Notification of Breach. It shall be a breach of this covenant for any owner or qualified occupant to violate any provision of this covenant. Upon violation of this

covenant, the Town shall inform the owner or qualified occupant by written notice and provide reasonable period of time in which to correct such violation. If such violation is not corrected to the satisfaction of the Town within the time period, the Town may without further notice declare a breach of this covenant.

9.2 Violations Triggering Sale and Town Option to Buy

A. In the event a unit is occupied, transferred, or leased in violation of this covenant, the Town may, at its sole discretion, require the owner to immediately list the unit for sale. The highest bid from a qualified owner for not less than ninety-five percent (95%) of the maximum resale price shall be accepted by the owner; provided, however, if the unit is listed for a period of at least ninety (90) days and all bids are below ninety-five percent (95%) of the maximum resale price, the unit shall be sold to a qualified owner that has made the highest offer for at least the appraised market value of the Unit, as determined by the Town in its reasonable good faith judgment, after such ninety (90) day period.

B. In the case of such an uncured violation, if required by the Town, the owner shall: (i) consent to any sale, conveyance, or transfer of such unit to a qualified owner; (ii) execute any and all documents necessary to do so; and (iii) otherwise reasonably cooperate with the Town to take actions needed to accomplish such sale, conveyance, or transfer of such unit. For this purpose, each owner hereby constitutes and appoints the Town as its true and lawful attorney-in-fact with full power of substitution to complete or undertake any and all actions required under this section. It is further understood and agreed that this power of attorney, which shall be deemed to be a power coupled with an interest, cannot be revoked. Owner specifically agrees that all power granted to the Town under this covenant may be assigned by it to its successors or assigns.

C. Town shall also have and is hereby granted the right and option to purchase a unit, exercisable within a period of fifteen (15) calendar days after notice is sent by the Town to the owner that requires the owner to sell the unit pursuant to this section. Thereafter, the Town shall complete the purchase of such unit within thirty (30) calendar days after exercising its option hereunder for a price equal to the lesser of the appraised market value of the unit, as determined by the Town in its reasonable good faith judgment, or the maximum resale price. The Town may assign its option to purchase hereunder to an eligible purchaser that, for the purpose of this section, shall be a qualified owner.

D. In all situations in which the provisions of this section apply, the Town may alternatively require the owner to lease or rent a unit to an authorized lessee in accordance with the requirements of this covenant.

9.3 Right to Review and Compliance. The Developer and each owner hereby grants and assigns to the Town the right to review and enforce compliance with this covenant. Compliance may be enforced by the Town by any lawful means, including without limitation, seeking any equitable relief (including, without limitation, specific performance and other equitable relief as set forth in Section 9.6 below), as well as a suit for damages;

provided, however, in the event a unit is financed by a HUD-insured first mortgage and is sold in violation of Article IV hereof, such enforcement shall not include:

- A. Acceleration of a mortgage;
- B. Voiding a conveyance by an owner;
- C. Terminating an owner's interest in a unit; or
- D. Subjecting an owner to contractual liability

Notwithstanding the foregoing, in no event shall the Town have any equitable remedies (including, but not limited to, the right to sue for specific performance or seek other equitable relief as set forth herein) or the right to sue for damages if the owner of a unit that was financed with a HUD-insured first mortgage breaches or violates the terms, covenants and other provisions of Article IV hereof and if to do so would violate any existing or future requirement of HUD, it being understood, however, that in such event, the Town shall retain all other rights and remedies hereunder for enforcement of any other terms and provisions hereof, including, without limitation: (i) the right to sue for damages to reimburse the Town, or its agents, for its enforcement costs and to require an owner to repay with reasonable interest (not to exceed ten percent (10%) per annum) any assistance received in connection with the purchase of the property; (ii) the right to prohibit an owner from retaining sales or rental proceeds collected or received in violation of this covenant; and (iii) the option to purchase granted to the Town in section 9.2 hereof. Venue for a suit enforcing compliance shall be proper in Summit County, Colorado and service may be made or notice given by posting such service or notice in a conspicuous place on the applicable unit. As part of any enforcement action on the part of the Town, the applicable owner shall pay all court costs and reasonable legal fees incurred by the Town, or its agents, in connection with these claims, actions, liabilities or judgments, including an amount to pay for the time, if any, of Town or its agents, or attorney spent on such claims at the rates generally charged for similar services by private practitioners within the County.

9.4 Enforcement. Except as otherwise provided herein, the Town, the Developer, or any owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, and reservations imposed by the provisions of this covenant and shall be entitled to specific enforcement of the same. Failure by any party described in this paragraph to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right by such party or any other party to do so thereafter.

9.5 Expenses of Enforcement. In the event that any party entitled to enforce the terms of this covenant shall be required to bring any action as the result of any breach of the terms of this covenant by any owner, the party bringing such action shall be entitled to recover from and against the owner in breach of this covenant, in addition to any and all other remedies available at law or in equity, reasonable attorney's fees and costs incurred in the enforcement of this covenant and in the bringing of such action, and the party against whom such fees and costs are awarded shall be personally liable for the payment of such fees and costs, and such award and judgment shall constitute a lien against the

unit owned by the party in breach of this covenant which lien may be enforced by foreclosure of the defaulting owner's unit in the manner for foreclosing a mortgage on real property under the laws of the State of Colorado or elimination of owner's resale gain on the unit.

9.6 Injunctive and other Equitable Relief. Developer and each owner agree that in the event of Developer's or owner's default under or non-compliance with the terms of this covenant, the Town shall have the right to seek such equitable relief as it may deem necessary or proper, including, without limitation, the right to: (a) seek specific performance of this covenant; (b) obtain a judgment from any court of competent jurisdiction granting a temporary restraining order, preliminary injunction and/or permanent injunction; and (c) set aside or rescind any sale of a unit made in violation of this covenant. Any equitable relief provided for in this section may be sought singly or in combination with such legal remedies as the Town may be entitled to, either pursuant to this covenant, under the laws of the State of Colorado or otherwise.

9.7 Price Freeze. Any violation of this covenant shall cause the maximum resale price to freeze and remain fixed until the date such violation is fully cured.

ARTICLE X PERIODIC REVIEW AND AMENDMENT

10.1 Town's Right to Periodically Review and Amend Certain Provisions of this Restriction and Provisions of the Workforce Housing Regulations. In recognition of the changing nature of the housing market in the County, and the Town's desire to keep this covenant current for the benefit of all interested parties, this covenant is subject to periodic review by the Town, and may be amended from time to time in the Workforce Housing Regulations without invalidating or affecting the enforceability of this covenant. Amendments made to this Covenant by the Town pursuant to this Section shall be effective upon the effective date of the amendment to the Workforce Housing Regulations.

10.2 Amendment. This covenant may additionally be amended by an instrument recorded in the records of Summit County, Colorado executed by the Town and the then-owner of a unit.

ARTICLE XI GENERAL PROVISIONS

11.1 Equal Housing Opportunity. Pursuant to the Fair Housing Act, Developer, and the Town shall not discriminate on the basis of race, creed, color, sex, national origin, familial status or disability in the lease, sale, use or occupancy of the property.

11.2 Waiver of Exemptions. Every owner, by taking title to a unit, shall be deemed to have subordinated to this covenant any and all right of homestead and any other exemption in, or with respect to, such unit under state or federal law presently existing or hereafter enacted.

11.3 Perpetuities Savings Clause. If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations, or options created by this covenant are held to be unlawful or void for violation of: (i) the rule against perpetuities or some analogous statutory provision; (ii) the rule restricting restraints on alienation; or (iii) any other statutory or common law rules imposing like or similar time limits, then such provision shall continue only for the shorter of: (x) the term of this covenant, or (y) the period of the lives of the current duly elected and seated members of the Town Council of the Town of Breckenridge, Colorado, their now living descendants, if any, and the survivor of them, plus twenty-one (21) years.

11.4 Severability. Invalidation of any one of the covenants or restrictions contained herein by judgment or court order shall in no way affect any other provisions, it being the intent of the Developer, the Town, and its designee that such invalidated provision be severable.

11.5 Term. This covenant shall run with the land and bind the property and the units in perpetuity. The Parties agree that the Town's rights and interests under this covenant are vested immediately and that this covenant shall be binding and in full force and effect for the full term as set forth herein.

11.6 No Third Party Beneficiaries. There are no intended third-party beneficiaries to this Covenant.

11.7 Non-Liability and Governmental Immunity. The Town, its designee, and their respective employees, members, officers, elected officials, and agents shall not be liable to any owner or third party by virtue of the exercise of their rights or the performance of their obligations under this covenant. The Parties understand and agree that they are relying on, and do not waive or intend to waive by any provision of this covenant, the monetary limitations or any other rights, immunities or protections afforded by the Colorado Governmental Immunity Act, CRS § 24-10-101, et seq., as they may be amended, or any other limitation, right, immunity or protection otherwise available to the Parties.

11.8 Exhibits. All exhibits attached hereto are incorporated herein and by this reference made part hereof.

11.9 Personal Liability. Each owner shall be personally liable for any of the transactions contemplated herein, jointly and severally with his or her co-owners.

11.10 Further Actions. The owner and owner's successors and assigns agree to execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of this covenant or any agreement or document relating hereto or entered into in connection herewith.

11.11 Notices. Any notice under this covenant shall be in writing and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the Party at the Party's last known address.

11.12 No Joint Venture. Notwithstanding any provision hereof, the Town shall never be a joint venture in any private entity or activity which participates in this covenant, and the Town shall never be liable or responsible for any debt or obligation of any participant in this Covenant.

**EXHIBIT A
LEGAL DESCRIPTION**

Tract A Fraction Subdivision
according to the plat recorded December 17, 2021 under reception number 1278464 in
Summit County Colorado

AND

Tract C, Block 11 Subdivision
according to the plat recorded August 3, 2005 under reception number 797050 in
Summit County Colorado

EXHIBIT B

**MEMORANDUM OF ACCEPTANCE OF
RESIDENTIAL HOUSING COVENANT AND NOTICE OF LIEN
FOR THE RUNWAY NEIGHBORHOOD
SUMMIT COUNTY, COLORADO**

WHEREAS, _____ [Buyer Name] _____, the "Buyer" is purchasing from _____ [Seller Name] _____, the "Seller", at a price of \$ _____ [purchase price amount] _____, real property described as _____ [Legal Description] _____ according to the plat recorded under Reception No. _____, in the real property records of the County of Summit, Colorado (the "Unit"); and

WHEREAS, the Seller of the unit is requiring, as a prerequisite to the sale transaction, that the Buyer acknowledge and agree to the terms, conditions, and restrictions found in that certain instrument entitled "Residential Housing Covenant and Notice of Lien for the Runway Neighborhood, Summit County, Colorado," recorded on _____, 2025, under Reception No. _____, in the real property records of the County of Summit, Colorado (the "Covenant").

NOW, THEREFORE, as an inducement to the Seller to sell the unit, the Buyer:

1. Acknowledges that Buyer has carefully read the entire covenant; has had the opportunity to consult with legal and financial counsel concerning the covenant prior to signing it; and fully understands the terms, conditions, provisions, and restrictions contained in the covenant.
2. Agrees to be bound by and to comply with the terms, conditions, and requirements of the covenant.
4. States that the Notice to Buyer should be sent to:

5. Directs that this memorandum be placed of record in the real estate records of the County of Summit, Colorado, and a copy provided to the Town of Breckenridge.

IN WITNESS WHEREOF, the parties hereto have executed this instrument on the ___ day of _____, 20__.

BUYER(S):

By: _____

Printed Name:

STATE OF)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by _____.

Witness my hand and official seal.

Notary Public

My commission expires: _____

EXHIBIT C
Preliminary Projected Schedule

Summer 2025 – Phase One Ground break

Fall 2026 – Start of Phase 1 Vertical Construction

March 2027 – Town Council Decision / Pricing review of Phase 2

Summer 2027 – Phase 2 civil work continues or paused

Winter 2027/2028 – Closings of first units in Phase 1

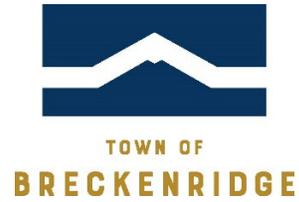
Winter 2029 – All phase 1 units closed

Winter 2030 – Closings of first units in Phase 2

Winter 2031 – Development Completion

Primary Town Expenditures will be 2025-2030

**this schedule is subject to change by market conditions and other weather conditions. TBD by developer and Town*



Memo

To: Town Council
From: Shannon Smith, Town Engineer
Date: 4/1/2025 (for the 04/08/2024 worksession)
Subject: Resolution to adopt Intergovernmental Agreement for the Intermountain Regional Planning Commission

Town Council Goals (Check all that apply)

- More Boots & Bikes, Less Cars
- Deliver a Balanced Year-Round Economy
- Organizational Need
- Leading Environmental Stewardship
- Hometown Feel & Authentic Character

Summary

The attached Intergovernmental Agreement (IGA) for the Intermountain Regional Planning Commission (IMRPC), which represents the Intermountain Regional Planning Region (IMTPR), establishes an agreement between the 30 governmental entities in the operation and decision making of the planning region.

Background

The IMTPR is a collaborative of local jurisdictions from Summit, Eagle, Garfield, Lake, and Pitkin counties that work in conjunction with CDOT to develop a regional transportation plan to be included as part of CDOT's state-wide transportation plan. The IMTPR works to identify regional plan recommendations and priority projects that include transportation services, facilities, multimodal alternatives, safety, and fiscal needs that best align with available funds from CDOT.

Public outreach/engagement

No public outreach or engagement is needed for the resolution.

Financial Implications

There are no additional costs, risks or burdens for the Town on this resolution.

Equity Lens

The Equity Lens does not apply to this housekeeping measure.

Staff Recommendation

Staff recommends Council adopt the attached resolution in agreement to the terms of the IGA

1 RESOLUTION NO. ____

2
3 Series 2024

4
5 **A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT**
6 **FOR THE TOWN OF BRECKENRIDGE TO PARTICIPATE IN THE**
7 **INTERMOUNTAIN REGIONAL PLANNING COMMISSION.**
8

9
10 WHEREAS, the Intermountain Regional Planning Region (“IMTPR”) is a collective of
11 local jurisdictions from Summit, Eagle, Garfield, Lake and Pitkin counties that work in
12 conjunction with the Colorado Department of Transportation (“CDOT”) to develop a regional
13 transportation plan to be included as part of CDOT’s state-wide transportation plan; and

14 WHEREAS, the jurisdictions included in the IMTPR have entered into an
15 intergovernmental agreement (“IGA”) to create the Intermountain Regional Planning
16 Commission (“IMRPC”) to enable planning and decision-making for the IMTPR; and

17 WHEREAS, the Town of Breckenridge desires to enter into the IGA for the purposes of
18 participating in the IMRPC.

19 NOW, THEREFORE, in consideration of the above premises and terms and conditions
20 contained herein, the Town Council hereby declares as follows:

21 **Section 1.** The Town Council hereby approves the Intergovernmental Agreement
22 attached hereto as **Exhibit A.**

23 **Section 2.** This resolution is effective upon adoption.
24

25 RESOLUTION APPROVED AND ADOPTED this ____ day of ____, 2025.

26 TOWN OF BRECKENRIDGE
27

28
29
30
31 By: _____
32 Kelly Owens, Mayor
33

34 ATTEST:

35
36
37
38 _____
39 Helen Cospolich, CMC,

1 Town Clerk

2

3 APPROVED IN FORM

4

5

6

7

8

Town Attorney Date

9

10

11

12

13

14

EXHIBIT A

INTERGOVERNMENTAL AGREEMENT FOR A
REGIONAL PLANNING COMMISSION FOR TRANSPORTATION PLANNING
Intermountain Regional Planning Commission (IMRPC), representing the Intermountain
Transportation Planning Region (IMTPR)

THIS AGREEMENT made this eighteenth day of April 2025 by and among the following local
governments in the Intermountain Transportation Planning Region:

Eagle County
Town of Avon
Town of Eagle
Town of Gypsum
Town of Minturn
Town of Red Cliff
Town of Vail

Garfield County
Town of Carbondale
City of Glenwood Springs
Town of New Castle
Town of Parachute
City of Rifle
Town of Silt

Lake County
City of Leadville

Pitkin County
City of Aspen
Town of Basalt
Town of Snowmass Village

Summit County
Town of Blue River
Town of Breckenridge
Town of Dillon
Town of Frisco
Town of Keystone
Town of Montezuma
Town of Silverthorne

CORE Transit
Roaring Fork Transportation Authority (RFTA)

Participation in this agreement by each aforementioned party is made only upon execution of a Certificate of Participation.

This Agreement is thereby executed in multiple Certificates of Participation, each of which shall constitute an original, but all of which, taken together, shall constitute the same document.

WHEREAS, the parties to this Agreement have the authority pursuant to Article XIV, Section 18 of the Colorado Constitution and Section 29-1-201, et seq., Colorado Revised Statutes, to enter into intergovernmental agreements for the purpose of providing any service or performing any function which they can perform individually, and;

WHEREAS, Section 43-1-1101 C.R.S. recognizes Regional Planning Commissions as the proper forum for transportation planning, and;

WHEREAS, Section 43-1-1102(5) C.R.S. requires that Regional Planning Commissions formed for the purpose of transportation planning must be formed pursuant to Section 30-28-105 C.R.S., and;

WHEREAS, the parties to this Agreement desire to cooperate in developing and maintaining a long range Regional Transportation Plan, the purpose of which is to identify the mobility needs of the Intermountain Transportation Planning Region, and prepare a plan for addressing the needs, and;

WHEREAS, Section 43-1-1103 C.R.S. requires that any Regional Planning Commission formed for the purpose of transportation planning is responsible for regional transportation planning for said region, and;

WHEREAS, the Intermountain Transportation Planning Region, consisting of the areas within the counties of Eagle, Garfield, Lake, Pitkin, and Summit was designated in the Rules Governing Statewide Transportation Planning Process and Transportation Planning Regions (2 CCR 601-22) as adopted by the Transportation Commission of Colorado and effective April 18, 2025, and;

WHEREAS, the parties to this Agreement are governing bodies or officials having charge of public improvements within their jurisdictions in the Intermountain Transportation Planning Region.

NOW, THEREFORE, the parties hereby mutually agree as follows:

1. Designation of Regional Planning Commission. The parties to this Agreement shall have one representative each on the Regional Planning Commission for the Intermountain Transportation Planning Region.

2. Responsibilities of Regional Planning Commission. The Regional Planning Commission shall be responsible, in cooperation with the state and other governmental agencies, for carrying out necessary continuing, cooperative, and comprehensive transportation planning for the Intermountain Transportation Planning Region; for creating, amending, and updating Regional Transportation Plans pursuant to all applicable federal and state laws and rules or regulations including public participation provisions; for recommending the priority for any transportation improvements planned for the region; for abiding by the Regional Planning Commission Bylaws and for participating in the State Transportation Improvement Program development process. The Regional Planning Commission shall keep records of its resolutions, transactions, contractual undertakings, findings, and determinations, which shall be public records.

3. Chairperson and Officers. The Regional Planning Commission shall elect its Chairperson and Vice Chairperson, whose terms shall be two years, with eligibility for reelection. The Chairperson, or the Vice Chairperson, shall be the representative of the Intermountain Transportation Planning Region on the State Transportation Advisory Committee (STAC).

4. Contracting. The Regional Planning Commission may, with the consent of the parties to this Agreement, contract the services of other eligible individuals or entities to carry out all or any portion of the responsibilities assumed by the Regional Planning Commission under this Agreement.

5. Distribution of state or federal funds. The Regional Planning Commission may, through contracts or Memoranda of Agreement, receive and expend state or federal funds designated for regional transportation planning.

6. Meetings must be held at least quarterly and shall be open to the public. Notice of the meeting shall be provided to its members and Contact List and posted on the TPR website no less than one week prior to the meeting. If the meeting provides a virtual option, the meeting link will be included in the public notice.

7. Quorum and Voting. Each member is entitled to one vote, either in person or via email. A quorum is required and shall be as determined by the Bylaws of the Commission.

8. Meeting Minutes and Agendas. The Commission is responsible for recording minutes of its meetings and posting them publicly on its website. The Commission's Administrator and Chairperson are responsible for creating the meeting agenda. The meeting agenda shall be posted on the Commission's website and distributed to members and interested parties on its TPR Contact List.

9. Terms of this Agreement. This Agreement shall remain in full force and effect for so long as the parties to this Agreement consider necessary to complete and maintain Regional Transportation Plans for the Intermountain Transportation Planning Region and for periodic updates or amendments as may be required. Any party to this Agreement may, however, terminate its participation in this Agreement 60 days after providing written notice of such termination to the other parties of this Agreement. This Agreement may be terminated at any time by agreement of all parties to this Agreement unless a grant contract is in effect with the State. In this case, the State must approve such termination and arrangements for completing the project.

10. Modification and Changes. The terms of this Agreement may be modified at any time by agreement of all parties to this Agreement.

CERTIFICATE OF PARTICIPATION
IN THE INTERGOVERNMENTAL AGREEMENT FOR
A REGIONAL PLANNING COMMISSION FOR TRANSPORTATION PLANNING

Intermountain Transportation Planning Region (IMTPR)

THIS is to certify that the Town of Breckenridge agreed to participate in this Intergovernmental Agreement for the Intermountain Regional Planning Commission.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first written above on page 1.

Shannon B. Haynes, Town Manager
Town of Breckenridge

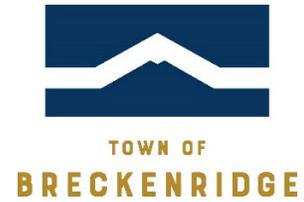
ATTEST:

Date:

Name, Title

Seal:

Date:



Memo

To: Town Council
From: Mark Truckey, Community Development Director
Date: March 27, 2025 (for April 8th Meeting)
Subject: Re-Adoption of the Town's Three Mile Annexation Plan

Attached is a resolution adopting the Town's Comprehensive Plan, along with the Town's Land Use Guidelines, as the Town's annexation plan. The Colorado Revised Statutes related to annexations require that all annexations be planned in a manner consistent with an annexation plan for the three-mile area surrounding the Town. The Town's Comprehensive Plan and Land Use Guidelines serve as the Town's annexation plan and must be current within one year of any annexation.

This is largely a housekeeping matter, as no changes to the Comprehensive Plan or Land Use Guidelines are proposed with this action.

RESOLUTION NO. _____

SERIES 2025

A RESOLUTION ADOPTING THE TOWN OF BRECKENRIDGE COMPREHENSIVE PLAN AND LAND USE GUIDELINES AS THE TOWN'S ANNEXATION PLAN PURSUANT TO SECTION 31-12-105(1)(e), C.R.S.

WHEREAS, Section 31-12-105(1)(e), C.R.S., requires that prior to completion of any annexation a municipality shall have in place a plan for the area proposed to be annexed describing certain matters described in such statute; and

WHEREAS, Section 31-12-105(1)(e), C.R.S., further requires that the annexation plan be updated at least once annually; and

WHEREAS, the Town Council finds and determines that the Town of Breckenridge Comprehensive Plan and the Town's Land Use Guidelines together satisfy the requirements of an annexation plan under Section 31-12-105(1)(e), C.R.S., and should serve as the Town's annexation plan required by such statute; and

WHEREAS, in *Town of Erie v. Town of Frederick*, 251 P.3d 500 (Colo. App. 2010) the Colorado Court of Appeals held that a municipality's comprehensive plan can serve as the municipality's annexation plan required by under Section 31-12-105(1)(e), C.R.S., so long as the comprehensive plan (and related documents) contain all of the information required of an annexation plan; and

WHEREAS, the Town Council finds and determines that the Town of Breckenridge Comprehensive Plan and the Town's Land Use Guidelines together contain all of the information required of an annexation plan.

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

Section 1. The Town of Breckenridge Comprehensive Plan, with the accompanying maps, plats, charts, and descriptive matter, as amended, together with the Town of Breckenridge Land Use Guidelines, are adopted as the Town's Annexation Plan pursuant to Section 31-12-105(1)(e), C.R.S.

Section 2. This resolution is effective upon adoption.

RESOLUTION APPROVED AND ADOPTED THIS 8TH DAY OF APRIL, 2025.

TOWN OF BRECKENRIDGE

By: _____
Kelly Owens, Mayor

ATTEST:

Helen Cospolich
Town Clerk

APPROVED IN FORM

Town Attorney date



Memo

To: Breckenridge Town Council Members
From: Mark Truckey, Director of Community Development
Date: April 2, 2025
Subject: Planning Commission Decisions of the April 1, 2025 Meeting

DECISIONS FROM THE PLANNING COMMISSION MEETING, April 1, 2025:

CLASS A APPLICATIONS:

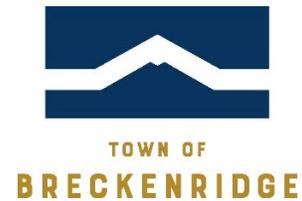
1. [BGV Parcel 2 Workforce Housing and Parking Lot Improvements, 415 N. Park Avenue, PL-2024-0422:](#)
A proposal to develop eight 6-bedroom employee housing apartment units on the North Gold Rush Lot, described as Parcel 2 in the approved development agreement between the Town and BGV.
Approved, see second memo.

CLASS B APPLICATIONS: None.

CLASS C APPLICATIONS: None.

TOWN PROJECT HEARINGS:

OTHER: None.



Memo

To: Town Council
From: Sarah Crump, AICP, Senior Planner
Date: April 2, 2025 (for meeting of April 8, 2025)
Subject: Breckenridge Grand Vacations (BGV) North Gold Rush Lot (Parcel 2)
Employee Housing - Class A Development Planning Commission Approval
Summary

This Class A application proposes construction of eight six-bedroom employee housing apartment units on the North Gold Rush Lot, described as Parcel 2 in the approved development agreement between the Town and BGV. The proposal includes a single building with parking underneath and improvements to the existing overflow skier parking lot. The apartment units consist of private suites connected to a central hallway and eight shared common and kitchen areas. Most suites will have a Juliet balcony and west-facing units will also have shared common area balconies. The development will feature storage rooms, shared laundry and amenity spaces for residents, an integrated trash enclosure, shared overflow skier parking, and detention pond. The project maintains the 400 required overflow skier parking spaces and includes a shuttle pick-up island. The Planning Commission found that the proposed landscaping design and buffer tree retention plan complies with the terms and conceptual landscape design exhibits of the development agreement.

The development will be 16.72 SFEs total or 20,064 sq. ft. of density. A mass bonus applies to this project as is stipulated in the Gondola Lot Master Plan. With the allowed mass bonus, the development will have a total floor area of 28,023 sq. ft.

A proposed roundabout at the intersection of Park Avenue and French Street will be reviewed as a separate application by Engineering and CDOT. This development application for Parcel 2 contemplates the existence of the future roundabout which is required to be constructed prior to any certificates of occupancy being issued for development on Parcels 2 and 3.

The Planning Commission reviewed this proposal at preliminary hearings on December 3, 2024, January 21, 2025, and at a final hearing on April 1, 2025. The project meets all absolute policies of the development code and is assigned a passing score of positive two (+2) points under the relative policies. The Commission approved the application with a vote of 7-0 with modified findings and conditions. These modified conditions are attached below for reference.

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

Planning Commission [packet and additional information here](#).

TOWN OF BRECKENRIDGE

**Breckenridge Grand Vacations
North Gold Rush Lot (Parcel 2) Employee Housing
Lot 1B Block 4 Parkway Center Sub Amended #1 Resub Parkway Center
415 North Park Avenue
PL-2024-0422**

STAFF RECOMMENDATION: Staff recommends the Planning Commission approve this application with the following findings and conditions.

FINDINGS

1. The proposed project is in accord with the Development Code, Town of Breckenridge and Gondola Properties, LLC April 9, 2024 Development Agreement, and North Gondola Lot & Gold Rush Lots Master Plan and does not propose any prohibited use.
2. The project will not have a significant adverse environmental impact or demonstrative negative aesthetic effect.
3. All feasible measures mitigating adverse environmental impacts have been included, and there are no economically feasible alternatives which would have less adverse environmental impact.
4. This approval is based on the staff report dated **March 26, 2025** and findings made by the Planning Commission with respect to the project. Your project was approved based on the proposed design of the project and your acceptance of these terms and conditions imposed.
5. The terms of approval include any representations made by you or your representatives in any writing or plans submitted to the Town of Breckenridge, and at the hearings on the project held on **December 3, 2024, January 21, 2025, and April 1, 2025** as to the nature of the project. In addition to Commission minutes, the audio of the meetings of the Commission are recorded.
6. **This Development Permit, PL-2024-0422, is consistent with the requirements of and pursuant to the approved Development Agreement between the Town of Breckenridge and Breckenridge Grand Vacations, approved by Town Council April 9, 2024, and entered into and recorded with the Summit County Clerk and Recorder on May 23, 2024, at Reception No. 1331127. This Development Permit is bound to the requirements and terms of the Development Agreement in addition to the terms of the permit conditions herein.**

CONDITIONS

1. This permit does not become effective, and the project may not be commenced, unless and until the Applicant accepts the preceding findings and following conditions in writing and transmits the acceptance to the Town of Breckenridge.
2. If the terms and conditions of the approval are violated, the Town, in addition to criminal and civil judicial proceedings, may, if appropriate, issue a stop order requiring the cessation of work, revoke this permit, require removal of any improvements made in reliance upon this permit with costs to constitute a lien on the property and/or restoration of the property.
3. This permit expires three years from date of issuance, on **April 8, 2028**, unless a building permit has been issued and substantial construction pursuant thereto has taken place. In addition, if this permit is not signed and returned to the Town within 30 days from the permit mailing date, the duration of the permit shall be three years, but without the benefit of any vested property right.

4. The terms and conditions of this permit are in compliance with the statements of the staff and Applicant made on the evidentiary forms and policy analysis forms.
5. Nothing in this permit shall constitute an agreement by the Town of Breckenridge to issue a certificate of occupancy for the project covered by this permit. The determination of whether a certificate of occupancy should be issued for such project shall be made by the Town in accordance with the applicable provisions of the Town Code, including, but not limited to the building code.
6. **No fences, signage, or gateway entry monuments are approved with this development permit. A separate Class D-minor permit is required for any fencing, gateway entrance monuments, or subdivision signage.**
7. **Applicant shall not place a temporary construction or sales trailer on site until a building permit or infrastructure permit for the project has been issued.**
8. All hazardous materials used in construction of the improvements authorized by this permit shall be disposed of properly off site.
9. Driveway culverts shall be 18 inch heavy duty corrugated polyethylene pipe with flared end sections and a minimum of 12 inches of cover over the pipe. Applicant shall be responsible for any grading necessary to allow the drainage ditch to flow unobstructed to and from the culvert.
10. Applicant shall field locate utility service lines to avoid existing trees.
11. Each structure which is authorized to be developed pursuant to this permit shall be deemed to be a separate phase of the development. In order for the vested property rights associated with this permit to be extended pursuant to Section 9-1-17-11(D) of the Breckenridge Development Code, substantial construction must be achieved for each structure within the vested right period of this permit.
12. **An improvement location certificate of the height of the top of the foundation podium, first residential story top of box height, and the height of the building's final ridge must be submitted and approved by the Town during the various phases of construction. The final building height shall not exceed 38' at any location.**

PRIOR TO ISSUANCE OF BUILDING PERMIT

13. Applicant shall submit proof of ownership of the project site.
14. **Applicant shall submit a letter to the Town Engineer detailing the specific Engineering Standards which the Applicant is requesting be waived, in accordance with the approved Development Agreement.**
15. **The Applicant ~~will~~has provided up to 7.8 SFEs of density for the project and the Town will provide up to 13.9 SFEs of density upon or before issuance of a building permit for the employee housing through a density transfer covenant.**
16. Applicant shall submit and obtain approval from the Town Engineer of final drainage, grading, utility, and erosion control plans.
17. Applicant shall provide plans stamped by a registered professional engineer licensed in Colorado, to the Town Engineer for all retaining walls over four feet in height.
18. Applicant shall identify all existing trees that are specified on the site plan to be retained by erecting temporary fence barriers around the trees to prevent unnecessary root compaction during construction. Construction disturbance shall not occur beyond the fence barriers, and dirt and construction materials or debris shall not be

placed on the fencing. The temporary fence barriers are to remain in place until issuance of the Certificate of Occupancy.

19. Existing trees designated on the site plan for preservation which die due to site disturbance and/or construction activities will be required to be replaced at staff discretion with equivalent new trees, i.e. loss of a 12 inch diameter tree flagged for retention will be offset with the addition of four 3-inch diameter new trees.
20. **Applicant shall submit and obtain approval from the Town of a construction staging plan indicating construction fencing, all construction material storage, fill and excavation material storage areas, portolet and dumpster locations, and employee vehicle parking areas. No construction staging is permitted within a public right-of-way without Town permission obtained through a right-of-way permit. If permission is obtained to allow parking within the public right-of-way, the following best practices must be observed: cars must first be parked in spaces available within the construction site, cars along the right-of-way must be consolidated to one side of the road, and cars parked along the right-of-way must be moved daily. Any dirt tracked upon the public road shall be the Applicant's responsibility to remove. A project contact person is to be selected and the name provided to the Public Works Department prior to issuance of the building permit. Parking violations noted in this condition may be given one warning, after which the Town will fully enforce Town Code 7-1-2 Section 1204 through the penalty of ticketing and fines to be issued by the Breckenridge Police Department as described in Traffic Code 7-1-7.**
21. Applicant shall submit a 24"x36" mylar copy of the final site plan, as approved by the Planning Commission at Final Hearing, and reflecting any changes required. The name of the architect, and signature block signed by the property owner of record or agent with power of attorney shall appear on the mylar.
22. **Applicant shall submit and obtain approval from Town staff of a cut sheet detail for all exterior lighting and a photometric plan depicting the foot candle levels on the site. All exterior lighting on the site or buildings shall be fully shielded to hide the light source and shall cast light downward. All exterior lighting shall be white in color not exceeding 3,000 kelvins. Exterior residential lighting shall not exceed 15' in height from finished grade or 7' above upper decks. Exterior residential lighting shall be limited to two light fixtures per entrance to a structure and a maximum of eight additional fixtures on and around the residence. LED bulbs are permitted at a maximum of 950 lumens, fluorescent bulbs are permitted at a maximum of 15 watts, and incandescent bulbs are permitted at a maximum of 60 watts. Emitted light may be a maximum of two-tenths (2/10) of a foot candle at the property line except areas where drive lanes are present.**

PRIOR TO ISSUANCE OF CERTIFICATE OF OCCUPANCY

23. Applicant shall record (in a format acceptable to the Town's Housing Director and Attorney) a deed restrictive workforce housing covenant applicable to all residential apartment units of the approved project. The terms of Article 6, of the April 9, 2024 development agreement shall be applied to the covenant.
24. Subject to CDOT approval, the Applicant shall complete a roundabout and associated improvements at the intersection of North French Street and Park Avenue prior to the issuance of a certificate of the final occupancy for any residential employee housing, or if for reasons beyond the applicant's control, a completion bond in an amount sufficient to guarantee the roundabouts completion shall be provided, according to the terms of See Article 6, subsection 6.1(d) of the April 9, 2024 development agreement~~for complete terms.~~
25. Applicant shall revegetate all disturbed areas where revegetation is called for, with a minimum of 2 inches topsoil, seed and mulch.

26. Applicant shall remove leaf clutter, dead standing and fallen trees and dead branches from the property. Dead branches on living trees shall be trimmed to a minimum height of six (6) feet and a maximum height of ten (10) feet above ground.
27. Any exposed foundation wall in excess of 12 inches shall be finished (i.e. textured or painted) in accordance with the Breckenridge Development Code Section 9-1-19-5R.
28. Applicant shall remove all vegetation and combustible material from under all eaves and decks.
29. Applicant shall create defensible space around all structures as required in Policy 22 (Absolute) Landscaping.
30. Applicant shall paint all flashing, vents, flues, rooftop mechanical equipment and utility boxes on the building a flat, dark color or to match the building color.
31. **Applicant shall submit and obtain approval from Town staff of a cut sheet detail for all exterior lighting and a photometric plan depicting the foot candle levels on the site. All exterior lighting on the site or buildings shall be fully shielded to hide the light source and shall cast light downward. All exterior lighting shall be white in color not exceeding 3,000 kelvins. Exterior residential lighting shall not exceed 15' in height from finished grade or 7' above upper decks. Exterior residential lighting shall be limited to two light fixtures per entrance to a structure and a maximum of eight additional fixtures on and around the residence. LED bulbs are permitted at a maximum of 950 lumens, fluorescent bulbs are permitted at a maximum of 15 watts, and incandescent bulbs are permitted at a maximum of 60 watts. Emitted light may be a maximum of two-tenths (2/10) of a foot candle at the property line except areas where drive lanes are present.**
32. At all times during the course of the work on the development authorized by this permit, the permittee shall refrain from depositing any dirt, mud, sand, gravel, rubbish, trash, wastepaper, garbage, construction material, or any other waste material of any kind upon the public street(s) adjacent to the construction site. Town shall provide oral notification to permittee if Town believes that permittee has violated this condition. If permittee fails to clean up any material deposited on the street(s) in violation of this condition within 24 hours of oral notice from Town, permittee agrees that the Town may clean up such material without further notice and permittee agrees to reimburse the Town for the costs incurred by the Town in cleaning the streets. Town shall be required to give notice to permittee of a violation of this condition only once during the term of this permit.
33. The development project approved by this Permit must be constructed in accordance with the plans and specifications, which were approved by the Town in connection with the Development Permit application. Any material deviation from the approved plans and specifications without Town approval as a modification may result in the Town not issuing a Certificate of Occupancy or Compliance for the project, and/or other appropriate legal action under the Town's development regulations.
34. No Certificate of Occupancy or Certificate of Compliance will be issued by the Town until: (i) all work done pursuant to this permit is determined by the Town to be in compliance with the approved plans and specifications for the project, and all applicable Town codes, ordinances and standards, and (ii) all conditions of approval set forth in the Development Permit for this project have been properly satisfied. If either of these requirements cannot be met due to prevailing weather conditions, the Town may issue a Certificate of Occupancy or Certificate of Compliance if the permittee enters into a Cash Deposit Agreement providing that the permittee will deposit with the Town a cash bond, or other acceptable surety, equal to at least 125% of the estimated cost of completing any required work or any applicable condition of approval, and establishing the deadline for the completion of such work or the satisfaction of the condition of approval. The form of the Cash Deposit Agreement shall be subject to approval of the Town Attorney. "Prevailing weather conditions" generally means that work cannot be done due to excessive snow and/or frozen ground. **As a general rule, a cash bond or other acceptable surety will only be accepted by the Town between November 1 and May 31 of the following year. The final decision to accept a bond as a guarantee will be made by the Town of Breckenridge.**

35. Applicant shall submit the written statement concerning contractors, subcontractors and material suppliers required in accordance with Ordinance No. 1, Series 2004.
36. **Applicant shall be held responsible for any deterioration or damages caused by development or construction activities to any Town infrastructure, public rights-of-way, or public property. This includes but is not limited to deterioration or damages to roadway surfaces, curbs, drainage systems, sidewalks, and signage. Applicant must rectify such deterioration or damages to the previous condition at their own expense. Town shall provide written notification to permittee if Town believes that permittee has caused deterioration or damages which would enact this condition. If permittee fails to rectify deterioration or damages in violation of this condition, permittee agrees that the Town may resolve such deterioration or damages and permittee agrees to reimburse the Town for the costs incurred by the Town. Town shall be required to give notice to permittee of a violation of this condition only once during the term of this permit. Any failure to rectify deterioration or damages or provide reimbursement without Town approval may also result in the Town issuing a Stop Work Order and/or not issuing a Certificate of Occupancy or Compliance for the project, and/or other appropriate legal action under the Town’s development regulations.**
37. The development authorized by this Development Permit may be subject to the development impact fee imposed by Resolution 2006-05 of the Summit County Housing Authority. Such resolution implements the impact fee approved by the electors at the general election held November 7, 2006. Pursuant to intergovernmental agreement among the members of the Summit Combined Housing Authority, the Town of Breckenridge is authorized to administer and collect any impact fee which is due in connection with development occurring within the Town. For this purpose, the Town has issued administrative rules and regulations which govern the Town’s administration and collection of the impact fee. *Applicant will pay any required impact fee for the development authorized by this Development Permit prior to the issuance of a Certificate of Occupancy.*

AFTER ISSUANCE OF CERTIFICATE OF OCCUPANCY

38. **Upon issuance of a final certificate of occupancy for the residential improvements, Applicant shall provide an electric shuttle connection from the Parcel 2 site parking area to the BreckConnect Gondola and/or Breckenridge Transit Center when the Parking Lot is open to winter recreational visitors. Subject to the terms of Article 6, of the April 9, 2024 development agreement.**
39. **Subject to CDOT review and approval, no later than two years after the Town’s and CDOT’s approval of the same, Applicant shall install pedestrian improvements such as at-grade crosswalk striping, push buttons, signage, pedestrian refuge islands, or barriers at French Street and Park Avenue. Subject to the terms of Article 6, of the April 9, 2024 development agreement.**

(Initial Here)



NOT TO SCALE



BGV Parcel 2 Workforce
Housing and Parking Lot
Improvements, 415 S. Park
Avenue

Breckenridge South



PLANNING COMMISSION MEETING

The regular meeting was called to order at 5:30 pm by Chair Guerra.

ROLL CALL

Mike Giller	Mark Leas	Allen Frechter	Matt Smith
Ethan Guerra	Elaine Gort	Susan Propper	

APPROVAL OF MINUTES

With the below changes, the March 18, 2025 Planning Commission Minutes were approved.

Mr. Giller requested to note that a tree screening plan was shown in the presentation materials for the Runway Master Plan and this should be carried forward in the future landscaping plans.

APPROVAL OF AGENDA

With no changes, the April 1, 2025 Planning Commission Agenda was approved.

PUBLIC COMMENT ON HISTORIC PRESERVATION ISSUES:

- None.

FINAL HEARINGS:

1. BGV Parcel 2 Workforce Housing and Parking Lot Improvements (SVC), 415 North Park Avenue, PL-2024-0422

Ms. Crump presented a proposal to develop eight 6-bedroom employee housing apartment units on the North Gold Rush Lot, described as Parcel 2 in the approved development agreement between the Town and BGV. The proposal includes a single building with parking underneath and improvements to the existing overflow skier parking lot. The apartment units consist of private suites connected to a central hallway and eight shared common and kitchen areas. The development will feature resident storage rooms, shared laundry and amenity spaces, an integrated trash enclosure, shared overflow skier parking, and detention pond. A proposed roundabout at the intersection of Park Avenue and French Street will be reviewed as a separate application by the Engineering Department and CDOT. This development application for Parcel 2 contemplates the existence of the future roundabout which is required to be constructed prior to any certificates of occupancy being issued for development on Parcels 2 and 3.

Commissioner Questions / Comments:

Mr. Leas: Isn't it a policy of CDOT to require bonding for any improvement like the roundabout? (Ms. Crump: The bond referenced in the conditions for the roundabout is not a construction bond but rather similar to how we allow bonding if the applicant has not completed a project exterior due to weather but is still working, for example landscaping. The CDOT permitting and bonding process is a separate application and I can't speak to their bonding requirements.) Under adjacent uses, it has the west area listed as private open space. Is that referring to the hill that's part of the Shock Hill HOA? (Ms. Crump: Yes.)

There were no additional Commissioner comments or questions.

Graham Frank, Breckenridge Grand Vacations, Applicant: I think this project ended at a much better spot with the feedback from you guys since we first started. We appreciate the feedback and the process.

Ms. Gort: There's one refrigerator shown in the kitchen for six units?

- Mr. Frank: There will be multiple refrigerators for adequate space. Those doors will also be full-lite glass which will make the space more useable for everyone. I think that was the best change to come out of this project for residents.
- Mr. Frechter: BGV, the applicant, and staff have done a great job given the complicated requirements. I think Town Council and Vail Resorts missed a great opportunity to have more housing and more density at this location. I think having individual bedrooms and bathrooms for each unit is unnecessary considering they will probably have to share those amenities when they find a different place during their second season.
- Ms. Gort: I appreciate the addition of the trees, picnic tables, and outdoor space.
- Mr. Smith: No comments, appreciate the hard work.
- Ms. Propper: Same, appreciate the responsiveness to our comments and concerns.
- Mr. Leas: I really don't like this project. I still feel strongly that this is a sub-standard housing and a very unattractive building to be built on a prominent and very visible site across from City Market. Aside from those observations, I have a problem with Vail Resorts being the beneficiary of this project. They retain ownership of the real estate, the site is expanded to allow them to continue to fulfill their obligations to provide parking spaces for their own customers, per the parking agreement. Furthermore, they will be the owners of the improvements to the property, enabling them to collect rental income during the remaining lifetime of these rental apartments while they fulfill their obligation as an employer in Breckenridge to house their employees. I am very disappointed in our Town Council for enabling this project, with its diminished regulations. I for one, as a Planning Commissioner, feel completely handcuffed to do the job that I should be doing, to properly review this project, directly due to the limitations in place as a result of the Town Council's concessions to the developer. I see very little town benefit in this project. As a tax paying resident, I can't understand why Breckenridge would expend any of the town's resources to assist a NYSE listed corporation, with a \$5.9 billion market cap and quarterly revenues of over \$260 million, in accomplishing their corporate responsibilities. From a business perspective, a business has several primary responsibilities. First, they must protect their capital. Second, they need to take care of their employees. Without employees, a business is nothing. This panel tried to make the point to the developer, that this was not good housing. That argument went nowhere because BGV is not the owner, and they were not in a position to spend their client's money. My hope is that in the future, the Town Council will stand strong and make Vail Resorts use their own resources and take care of their employees, like a good corporate steward.
- Mr. Giller: No comments.
- Mr. Guerra: Within the constraints you had to work with, I'm quite happy with the results, keeping in mind my previous comments. I appreciate the addition of the full-lite doors.

Mr. Giller made a motion to approve the BGV Parcel 2 Workforce Housing and Parking Lot Improvements, seconded by Mr. Frechter. The motion passed 7 to 0.

WORK SESSIONS:

1. Neighborhood Preservation Policy (CK)

Mr. Kulick presented a work session to discuss neighborhood preservation issues that have been identified as general concerns by the Town Council. Commissioners were asked to respond to the following questions:

1. Does the Commission support increasing setbacks to the Council recommended minimums (making the current relative policy an absolute policy)?

2. Does the Commission support limiting the percentage of ridgeline that can be within the maximum building height?
3. Does the Commission support restricting positive points for EV charging and landscaping?

Commissioner Questions / Comments:

- Mr. Frechter: Homes being built now don't seem much bigger than what was being built in the 1990s. Perhaps corner lots could have more restrictive setbacks? (Mr. Kulick: With corner lots, if they have a double street frontage, both sides are restricted to a front setback and the remaining two sides are restricted by side setbacks.) I liked the comment of using positive points to encourage homes to step down in height closer to the setbacks. There's nothing about getting positive points for building an ADU on the property or contributing to the Town's employee housing pool. Smaller density or footprint as a percentage of the lot, being below the level should get positive points. Lower building height could get more positive points. Encouraging a two-car garage instead of larger three or four-car garage or encouraging a short driveway. Not just discouraging a lot of hardscaping but actually encouraging less hardscaping with a driveway through positive points.
- Ms. Gort: I feel like there should be a balance because it can be harder for lots that are not very wide but very long, or other odd shapes. Maybe something like a percentage of the depth? It's unfortunate that the style right now is boxy, big windows, with a lot of glazing. Everyone wants their amazing view that they bought the lot for. I'm against increasing regulations to punish that.
- Mr. Smith: I'd be interested in what ideas staff has for positive points? (Mr. Kulick: We are still working on determining that. One interesting comment that we got is positive points for the percentage of material remaining on the site or potentially getting positive points for being under a certain percentage and maybe negative points for being over a certain percentage. Town Council had us look into it and it was determined that the Summit County Resource Allocation Park (SCRAP) isn't prepared to handle such a high level of diversion. The other part is how to verify how much material is actually leaving the site. We have seen many homes where brand new, nice installations have been ripped out because the new owner didn't have the same tastes, especially with more expensive homes. Maybe we can figure out something in the future, but this could potentially be hard to enforce and an additional burden on our building officials. If they move from a half decommissioning to a full, it would be tough for our building officials to handle.)
- Mr. Guerra: As an example, we tried to do wood recycling several years ago and ran into numerous issues. (Mr. Kulick: Long term, our sustainability team is working with the SCRAP to figure something out, so we haven't given up on it but we're still working on it.)
- Mr. Leas: There needs to be a benefit for the homeowner giving it up and the entity taking the resources. No one is going to salvage materials unless there's an economic benefit, you should look at what kind of materials salvage companies can use. A lot of decisions are made on the front end of the project and things found during construction can weigh into the amount of material that can actually be saved.
- Mr. Guerra: Potentially having some sort of system to incentivize owners and builders to look at recycling and reusing materials instead of throwing it away is important.
- Mr. Smith: For the roof height, would changing these regulations just be incentivizing a flat roof? (Mr. Kulick: That was the concern of Town Council. If there are taller ceilings on the first and second floor, then you may be forced into shed roofs for most of the roof forms. Mr. Giller had a suggestion of using bulk plane, so there are two different options of a bulk plane or a maximum ridge height percentage based on the slope of the lot that may be presented back to Town Council.)

- Ms. Propper: I like the idea of limiting the percentage of maximum ridge height, as long as it's controlled because I'm not a fan of flat roofs. I like the suggestion of potentially making materials from a scrape available to someone building an ADU. There is also the issue of some of the stuff being ripped out being new but some other stuff is old and may not be viable to save, which should be considered if we implement this. As far as positive points for landscaping, in the case of 114 N Gold Flake Terrace, there are no plantings in front of the house at all. We should make sure that people are still doing effective landscaping as part of the project, and maybe have some sort of a happy medium. (Mr. Kulick: 132 N Gold Flake Terrace is an example of one house that got positive points for landscaping, and they have significant plantings in the front yard. In the cases of new developments, when the trees are planted they will look sparse because they are so small and if they were planted closer together, the owner will come back in ten years to take one out because the trees are too close to each other.)
- Mr. Leas: During our joint meeting with Town Council, I made a point that they should identify the problems they are trying to solve before going into this. We're trying to legislate things that people feel about a property which is different than being able to codify what we're trying to achieve. Coming here and being exposed to the point system is a new thing for me. Where I did business there was absolute standards for setbacks, etc. If you felt you had a hardship based on your lot you would argue the case but there were no negative points that you could take to deal with it. I think the Town should prioritize being flexible about it because there will be mistakes that are made and hardships that are created and we need to be willing to go back and take a look at things again. We need to be willing to consider the needs of the property owner and the needs of the town and the neighborhood. (Mr. Kulick: The prominence and overall large mass appearance of homes is the concern of the Council. The Town Council is trying to be very deliberate in giving the public, and specifically the local architects and designers, a chance to speak up and weigh in on this project and these changes.) (Mr. Truckey: We are one of only a few places in the county that has a flexible code like this, most places have a code similar to what you were describing.) Yes, I can see good and bad with both code systems.
- Mr. Giller: I think this is somewhat basic, sound architectural practice. Christopher Wren describes, "a cascade of roofs," and also, "a cascade of massing," and bulk plane is a way to define that. In the architecture profession there's a lot of thought and different ways of doing things. I think in terms of bulk plane the only one that doesn't comply is 121 S Gold Flake Terrace. Even the contemporary house (52 Stillson Placer Terrace), though 9,200 sq ft, has a cascading of mass on the left side, complies.
- Mr. Guerra: People don't like what's happening along Wellington. In regards to Susan's comment earlier about not liking flat roofs, I personally really like flat roofs. It's the current style and will vary over time. I think a lot of the disagreement currently, comes from differences of opinions on roof and general design style. (Mr. Kulick: Flat roofs are just the current trend. Looking at 106 Stillson Placer Terrace is a great example because it's essentially a rectangle with a couple gables, so they're not so much losing space by having gabled roofs. In neighborhoods where there's not a strict HOA design style you get more variation.) How do we encourage a cascading roof style? Flat roof forms have less ice damming problems and require less heat tape than a more articulating roof style, which can get into our sustainability goals. Potentially limiting floor heights can limit overall roof height, and using positive points is a way to encourage that. I do like the setback rule, I think people can work with that. It's hard telling property owners that now they can't do what they thought they could do when they first bought the property.

- Mr. Giller: With the police powers regarding safety and welfare, that includes planning and zoning; we are allowed to change our code over time as the need comes up.
- Mr. Smith: I think the letter about lot clearing and trying to preserve mature trees is a good idea. Ideally trying not to scrape the whole lot, with construction and for ease of building. The preservation of mature trees where they already exist is important and could be a positive point opportunity, essentially legacy landscaping.
- Mr. Leas: It could be an absolute policy that you have to leave a certain number or certain caliper of trees. (Mr. Kulick: We actually do that already and some of it plays into defensible space. In the example of 114 N Gold Flake Terrace, the property previously had a half-moon driveway; the new construction reduced the hardscape and lot disturbance that was there previously. To some extent, if there's mature trees in the primary building zone of the lot, we do allow people to remove those, but we do not allow people to remove trees that are in their view corridor.)
- Ms. Gort: That could be another option for positive points, keeping trees in primary view corridors.
- Mr. Guerra: We pretty much already have regulations protecting trees that are not in the building footprint or defensible space area. What are staff's thoughts on the suggestions for positive points included in the comments? (Mr. Kulick: We do still need to discuss this as a group before we can voice an opinion, but we appreciate all the comments received from architects and builders on the options for positive points.) I like the comments about positive points for different floor heights, we should not have excessive 11-foot floor to floor heights when repeated on multiple levels.
- Mr. Frechter: The Upper Blue Planning Commission just approved a ranch-style home in the County where there was only one gable that was about 35 feet high. Potentially just going back to developments that are spread more across the land instead of going taller on multiple ridgelines so that they are less visible on the landscape.
- Mr. Kulick: I wanted to highlight that I think there's been a misconception from the public that this policy and Neighborhood Preservation is only about the Weissshorn neighborhood. To be clear, this is about 16 different neighborhoods across town and would apply to many lots, not just the Weissshorn.

The hearing was opened to public comment; there were no public comments and the comment period was closed.

Questions:

Mr. Giller:

1. Yes, Ms. Gort made some interesting comments about the nuance of setbacks.
2. I think you need to limit the overall amount of ridgeline that is at the maximum, bulk plane is one idea to achieve that goal.
3. Yes.

Mr. Leas: I agree with Mr. Giller on all.

1. Yes.
2. Yes.
3. Yes.

Ms. Propper:

1. Yes.
2. Yes.
3. Yes, without abandoning some kind of landscape requirement.

Mr. Smith:

1. Yes.
2. Yes.
3. Yes. I feel like the landscape would be market driven but I guess not since we do notice some homes with very few trees. There should be a minimum requirement.

Ms. Gort:

1. Yes, with my aforementioned comments.
2. Yes, but how would we prevent people from just going a couple inches or foot below the maximum? It sounds very easy to work around. A lot of what we're seeing is that people are shocked by the new style, so maybe we should give people some time before we start limiting that.
3. Yes, for limiting EV. Maybe just tighten up how many points we give for landscaping or a baseline requirement.

Mr. Frechter:

1. Yes.
2. Yes.
3. Yes, but potentially keeping positive points for landscaping if we raise the bar of mature trees, larger caliper, etc.

Mr. Guerra:

1. Yes.
2. Yes, with incorporation of Mr. Giller's statements on the percentage of ridgeline.
3. Yes, but also thinking about planting large caliper trees potentially gaining extra points. Focusing more on aspens, because there is a limit to the height you can plant at this elevation, notwithstanding issues sourcing them and keeping them alive.

OTHER MATTERS:

1. Town Council Summary

ADJOURNMENT:

The meeting was adjourned at 7:05 pm.

Ethan Guerra, Chair



TOWN OF BRECKENRIDGE
TOWN COUNCIL

Only 2 Council Members at each meeting, a third just means it needs to be posted.

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

Date	Meeting	Location	Time
------	---------	----------	------

April 2025

Tuesday, April 8th, 2025	First Meeting of the Month	Council Chambers	2:00 pm / 7:00 pm
April 9th, 2025	Broken Lance Improvements Open House	Rec Center	11:30am - 1:30pm
April 10th, 2025	BTO Summer Preview	Council Chambers	9:00am - 10:30am
April 11th, 2025	Breckenridge Clinic Open House	1705 Airport Road	10:00am - 2:00pm
April 14th, 2025	Broken Lance Improvements Open House	Rec Center	5:30pm - 6:30pm
April 15th, 2025	Dark Sky Drop In Event	Gold Run Nordic	Noon - 1:30pm
Tuesday, April 22nd, 2025	Second Meeting of the Month	Council Chambers	2:00 pm / 7:00 pm
April 29th, 2025	SHS Freshmen Pathways Community Project Presentations		

May 2025

May 1st, 2025	NWCCOG Economic Summit	Silverthorne Pavilion	8:30am - 3:00pm
Tuesday, May 13th, 2025	First Meeting of the Month	Council Chambers	2:00 pm / 7:00 pm
May 21st, 2025	Summit County High School Graduates Parade	Main Street	5:00pm
Tuesday, May 27th, 2025	Second Meeting of the Month	Council Chambers	2:00 pm / 7:00 pm
May 29th, 2025	CML Spring District Meeting	Keystone	TBD
May 31st, 2025	Town Clean Up	Riverwalk Center	8:00am - 2:00pm

Other Meetings

April 8th, 2025	Board of County Commissioners Meeting	County Courthouse	9:00am / 1:30pm
	Workforce Housing Committee	Town Hall	10:30am
April 10th, 2025	I-70 Coalition	Keystone Policy Center	1:00pm
	Upper Blue Sanitation District	Administrative Office	5:30pm
April 15th, 2025	Board of County Commissioners Meeting	County Courthouse	9:00am
	Liquor & Marijuana Licensing Authority	Town Hall	9:00am
	Planning Commission Meeting	Town Hall	5:30pm
April 16th, 2025	Social Equity Advisory Commission	Town Hall	5:30pm
April 21st, 2025	Summit Combined Housing Authority	Virtual	1:00pm
	Open Space & Trails Meeting	Town Hall	5:30pm
April 22nd, 2025	Board of County Commissioners Meeting	County Courthouse	9:00am / 1:30pm
April 24th, 2025	Summit Stage Transit Board Meeting	Senior Center	8:15am
	Breckenridge Tourism Office Board Meeting	BTO Office	8:30am
	RW&B Board Meeting	Main Street Station	3:00pm
May 6th, 2025	Board of County Commissioners Meeting	County Courthouse	9:00am
	Planning Commission Meeting	Town Hall	5:30pm
May 7th, 2025	Police Advisory Committee	PD Training Room	7:30am
	Breckenridge Events Committee	Town Hall	9:30am
	Childcare Advisory Committee	Town Hall	10:00am
	I-70 Coalition	Keystone Policy Center	10:00am



TOWN OF BRECKENRIDGE
TOWN COUNCIL

Only 2 Council Members at each meeting, a third just means it needs to be posted.

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

Date	Meeting	Location	Time
May 8th, 2025	Upper Blue Sanitation District	Administrative Office	5:30pm
May 13th, 2025	Board of County Commissioners Meeting	County Courthouse	9:00am / 1:30pm
	Workforce Housing Committee	Town Hall	10:30am
May 14th, 2025	Breckenridge History	Town Hall	Noon
May 19th, 2025	Summit Combined Housing Authority	Virtual	1:00pm
	Open Space & Trails Meeting	Town Hall	5:30pm
May 20th, 2025	Board of County Commissioners Meeting	County Courthouse	9:00am
	Liquor & Marijuana Licensing Authority	Town Hall	9:00am
	Planning Commission Meeting	Town Hall	5:30pm
May 21st, 2025	Social Equity Advisory Commission	Town Hall	5:30pm
May 22nd, 2025	Summit Stage Transit Board Meeting	Senior Center	8:15am
	Breckenridge Tourism Office Board Meeting	BTO Office	8:30am
	NWCCOG Board Meeting	Silverthorne Office	10:00am
	RW&B Board Meeting	Main Street Station	3:00pm
	Breck Create	South Branch Library	3:30pm
May 27th, 2025	Board of County Commissioners Meeting	County Courthouse	9:00am / 1:30pm
June 3rd, 2025	Board of County Commissioners Meeting	County Courthouse	9:00am
	Planning Commission Meeting	Town Hall	5:30pm
June 4th, 2025	Breckenridge Events Committee	Town Hall	9:00am
	I-70 Coalition	Keystone Policy Center	10:00am
	Childcare Advisory Committee	Town Hall	3:00pm
TBD	Tourism Overlay District Advisory Committee Mtg		10:30am
	Transit Advisory Council Meeting		8:00am
	Water Task Force Meeting		9:30am
	QQ - Quality and Quantity - Water District	Hybrid	10:00am