

ORDINANCE NO. 12

Series 1998

AN ORDINANCE AUTHORIZING THE GRANTING OF AN EASEMENT TO MOUNTAIN MARKETING ASSOCIATES, LTD.

WHEREAS, Mountain Marketing Associates, Ltd. has requested the granting of an access and landscaping easement over, across and through certain Town property; and

WHEREAS, the Town Council of the Town of Breckenridge has determined that it should grant the requested easement; and

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

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

Section 1. The Town Manager and the Town Clerk are authorized, empowered and directed to execute, acknowledge and deliver to Mountain Marketing Associates, Ltd. an access and landscaping easement, in substantially the form which is marked Exhibit "A", attached hereto and incorporated herein by reference.

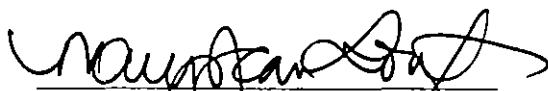
Section 2. The Town Council hereby finds, determines and declares that it has the power to adopt this Ordinance pursuant to the authority granted to home rule municipalities by Article XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.


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 10th day of March, 1998. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the 24th day of March, 1998, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

ATTEST:

TOWN OF BRECKENRIDGE


Mary Jean Loufek, CMC, Town Clerk


Kenneth M. Adams, Mayor Pro Tem

This Ordinance was published in full in The Summit County Journal, a newspaper of general circulation within the Town of Breckenridge, on March 19, 1998.

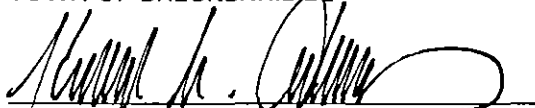
READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED BY TITLE this 24th day of March, 1998.

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

ATTEST:

TOWN OF BRECKENRIDGE


Mary Jean Loufek, CMC, Town Clerk


Kenneth M. Adams, Mayor Pro Tem

APPROVED IN FORM


Town Attorney

3/24/98
date

This Ordinance was published by title in The Summit County Journal, a newspaper of general circulation within the Town of Breckenridge, on April 2, 1998.

EXHIBIT "A" TO
ORDINANCE NO. 12, 1998

GRANT OF EASEMENT

THIS GRANT OF EASEMENT ("Grant") is made and entered into at Breckenridge, Colorado this 27TH day of MARCH, 1998, by and between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation, whose address is P. O. Box 168, Breckenridge, CO 80424 ("Grantor") and MOUNTAIN MARKETING ASSOCIATES, LTD., a Colorado corporation, whose address is P.O. Box 2340, Breckenridge, CO 80424 ("Grantee").

WITNESSETH THAT:

In consideration of Seven Thousand Five Hundred Dollars (\$7,500.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following grants, agreements, covenants and restrictions are made:

1. Grant Of Easement. The Grantor hereby grants to the Grantee, its successors and assigns, an easement for ingress and egress and landscaping over, under, upon, in, across and through the following real property situate in the County of Summit and State of Colorado, to wit:

See the attached Exhibit "A" which is incorporated herein by reference

("Easement Premises").

2. Easement Appurtenant. The easement herein granted is for the benefit of and shall be appurtenant to the following described real property situate in the County of Summit and State of Colorado, to wit:

See the attached Exhibit "B" which is incorporated herein by reference

("Benefitted Property").

3. Use Of Easement Premises. The easement herein granted is intended to be used: for the construction, installation and maintenance of improvements to provide ingress and egress for the Grantee, its successors, licensees, lessees, contractors and assigns, to and from the Benefitted Property, including such improvements as are necessary for ingress and egress required under the Americans With Disability Act (42 USC §12101 et seq.); and for the construction, installation and maintenance of landscaping, all as more fully provided for in Development Permit #96-3-1 issued by Grantor at the request of Grantee, as such Permit may be modified or amended. No other use of the Easement Premises shall be made or permitted by Grantee without Grantor's prior permission.

4. Warranties Of Title. Grantor warrants that it has good and indefeasible, fee simple, absolute title to the Easement Premises.

5. Title Insurance. Should Grantee so desire, it may apply forthwith for a title insurance policy insuring the easement hereby granted, and Grantor will make available for inspection by the title company any and all evidence of title in its possession.

6. Grantor's Use Of Easement Premises. Grantor shall have the right to use and occupy the Easement Premises for any purpose not inconsistent with Grantee's full and complete enjoyment of the rights hereby granted. Without limiting the generality of the foregoing, Grantor shall not construct or install any buildings, structures or other improvements on, under or over the Easement Premises above the elevation of nine thousand five hundred eighty-eight feet (9,588') above sea level; provided, however, that Grantee acknowledges and agrees that Grantor may construct a parking structure on some or all of Grantor's real property described in the attached Exhibit "C" incorporated herein by reference ("Lot 23"), including the Easement Premises, and that changes in the elevation of Lot 23 may result from such construction, provided that the maximum elevation above sea level of any improvements constituting such parking structure shall not exceed nine thousand five hundred eighty-eight feet (9,588'). In addition, Grantee acknowledges and agrees that Grantor may use the landscaped portions of the Easement Premises for the stacking or storage of snow pushed from Grantor's existing parking lot or future parking structure located on Lot 23.

7. Improvements. Grantee shall construct upon the Easement Premises, at its sole cost, any and all improvements necessary or desirable in order to make the Easement Premises useable for the stated purpose. Grantee shall indemnify and hold Grantor harmless from all costs (including Grantor's reasonable attorney's fees) arising out of the construction of improvements to the Easement Premises.

8. Maintenance Of Easement Premises. Grantee shall, at its sole cost, provide such maintenance or upkeep as shall be required with respect to any improvements made by it to the Easement Premises. In addition, Grantee, at its sole cost, shall provide any required snow removal from the ingress and egress areas of the Easement Premises.

9. Waiver and Acknowledgment. Grantor waives and releases any right it may have had pursuant to Development Permit #96-3-1 to have obtained an easement on the Benefitted Property sufficient to construct a trash compactor facility and acknowledges that this Grant of Easement shall satisfy the requirements of Condition 6 of such Development Permit and the requirement for the hold harmless agreement provided for in Condition 5 of said Development Permit.

10. Non-Waiver Of Governmental Immunity. The parties hereto understand and agree that Grantor is relying on, and does not waive or intend to waive by any provision of this Grant, the monetary limitations (presently \$150,000 per person and \$600,000 per

occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., as from time to time amended, or any other law or limitation otherwise available to Grantor, its officers, or its employees.

11. Grantee's Duty Of Care. Grantee shall exercise the rights herein granted to it with due care.

12. Indemnification and Insurance. Grantee shall indemnify, and hold Grantor harmless from all claims, demands, judgments and causes of action (including Grantor's reasonable attorney's fees) arising from the use of the Easement Premises by the Grantee, its successors, licensees, lessees, contractors and assigns, as well as the general public, provided, however, Grantee shall have no obligation under this Paragraph 12 with respect to claims, demands, judgments or causes of action caused, in whole or in part, by the fault of Grantor, its agents, employees, officers, contractors, licensees, lessees, successors or assigns. In furtherance of Grantee's indemnification of Grantor, Grantee shall maintain comprehensive general liability insurance, including both bodily injury and property damage coverage, with liability limits of at least One Hundred Fifty Thousand Dollars (\$150,000.00) for any injury to one person in any single occurrence and Six Hundred Thousand Dollars (\$600,000.00) for an injury to two or more persons in any single occurrence, or such higher amounts as may be required to provide Grantor with limitations equal to the monetary limitations provided for Grantor under the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S., as from time to time amended. Grantee shall provide Grantor with a certificate of such insurance upon the issuance of a building permit by Grantor for the construction of improvements on the Benefitted Property and the Easement Premises and at the time of renewal or replacement of such policy thereafter.

13. Hold Harmless. Notwithstanding the provisions of Paragraph 12 preceding, Grantee shall hold Grantor harmless and forever release and discharge Grantor from any and all liability for or damage to, or the loss of, any landscaping located within the Easement Premises as the result of Grantor's stacking or storage of snow pushed from its existing parking lot or future parking structure on Lot 23.

14. Non-Use Of Easement Premises. Non-use or limited use of the easement herein granted shall not prevent Grantee from thereafter making use of such easement to the full extent herein authorized.

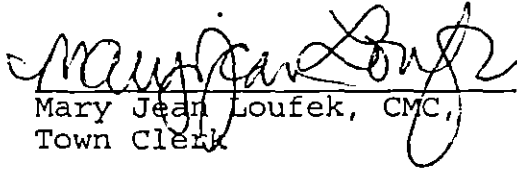
15. Construction. The rule of strict construction does not apply to this Grant. This Grant shall be given a reasonable construction so that the intention of the parties to confer to Grantee an easement for ingress, egress and landscaping is carried out.

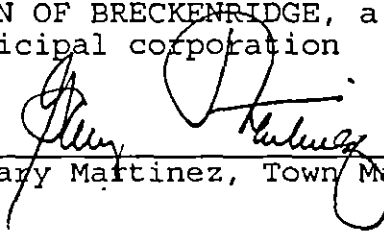
16. Binding Effect. The provisions of this Grant shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, personal representatives, successors and assigns of the parties hereto.

GRANTOR:

TOWN OF BRECKENRIDGE, a Colorado municipal corporation

ATTEST:


Mary Jean Loufek, CMC,
Town Clerk

By 
Gary Martinez, Town Manager

GRANTEE:

MOUNTAIN MARKETING ASSOCIATES, LTD.,
a Colorado corporation

By: _____
Patricia A. Casey, President

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this _____ day of _____, 1998, by Gary Martinez, Town Manager, and Mary Jean Loufek, CMC, Town Clerk, of the Town of Breckenridge, a Colorado municipal corporation.

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

Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledge before me this _____ day of _____, 1998, by Patricia A. Casey as President of Mountain Marketing Associates, Ltd., a Colorado corporation.

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

Notary Public

EXHIBIT "A"
TO
GRANT OF EASEMENT

Easement Premises

THE WESTERLY TEN FEET (10') OF THE NORTHERLY ONE HUNDRED FEET (100') OF LOT 23, A RESUBDIVISION AND LOT LINE VACATION OF LOT 23 & 24, BARTLETT AND SHOCK ADDITION AND LOTS 1 THRU 4, BLK 12 IN THE ABBETT ADDITION TO THE TOWN OF BRECKENRIDGE, SUMMIT COUNTY, COLORADO RECORDED FEBRUARY 8, 1989 UNDER RECEPTION NO. 366141 OF THE RECORDS OF THE SUMMIT COUNTY, COLORADO CLERK & RECORDER

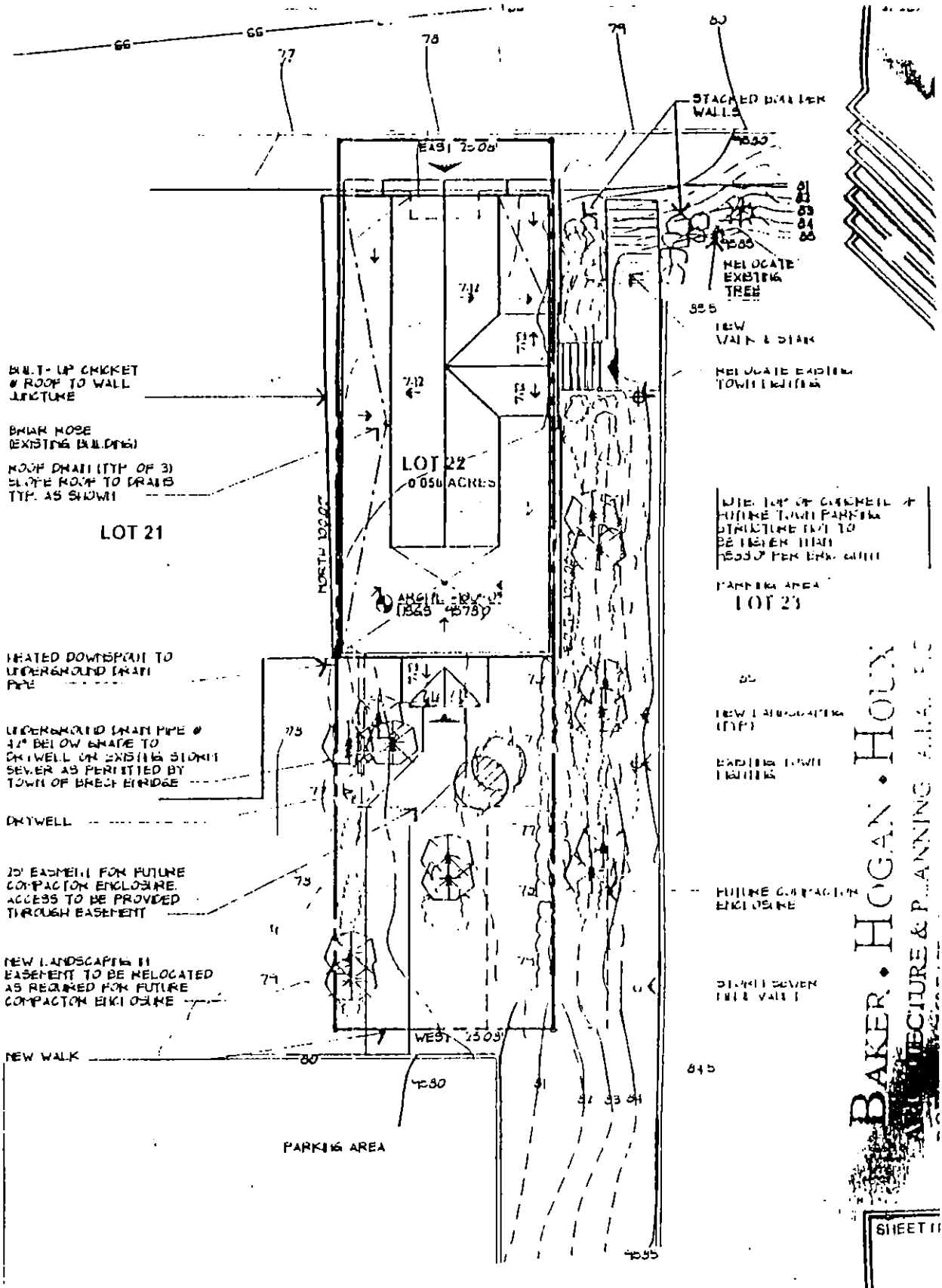
EXHIBIT "B"
TO
GRANT OF EASEMENT
Benefitted Property

LOT 22, BARTLETT AND SHOCK ADDITION
TO THE TOWN OF BRECKENRIDGE,
COUNTY OF SUMMIT, STATE OF COLORADO

EXHIBIT "C"
TO
GRANT OF EASEMENT

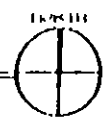
Grantor's Property

LOT 23, A RESUBDIVISION AND LOT LINE VACATION OF LOT 23
& 24, BARTLETT AND SHOCK ADDITION AND LOTS 1 THRU 4, BLK
12 IN THE ABBETT ADDITION TO THE TOWN OF BRECKENRIDGE,
SUMMIT COUNTY, COLORADO RECORDED FEBRUARY 8, 1989 UNDER
RECEPTION NO. 366141 OF THE RECORDS OF THE SUMMIT COUNTY,
COLORADO CLERK & RECORDER



PROPOSED SITE PLAN

SCALE - 1/8" = 1'-0"



BAKER • HOGAN • HOLY
 ARCHITECTURE & PLANNING

SHEET II