

ORDINANCE NO. 26

Series 1998

AN ORDINANCE APPROVING AN AGREEMENT FOR DEED IN LIEU OF
FORECLOSURE AND LEASE AGREEMENT WITH SUMMIT HISTORICAL SOCIETY
(CARTER MUSEUM)

WHEREAS, the Summit Historical Society ("Historical Society") and the Town are the co-owners of certain real property located within the Town of Breckenridge commonly known as the "Carter Museum"; and

WHEREAS, the Town is the holder of a Promissory Note dated December 31, 1992 and executed by the Historical Society in the original principal amount of Three Hundred Thirty Two Thousand Five Hundred Dollars (\$332,500.00) ("Note"), which Note is secured by a Deed of Trust encumbering the Historical Society's undivided one-half interest in the Carter Museum property ("Deed of Trust"); and

WHEREAS, although Historical Society is not currently in default under the Note and Deed of Trust (by virtue of an oral agreement with the Town not to declare a default under the Note notwithstanding the non-payment of the Note installment which was due December 31, 1997), Historical Society has determined that its anticipated revenues from all sources will not be sufficient to pay the Note in the future as and when it becomes due; and

WHEREAS, if the Note and Deed of Trust were to go into default the Town would have the right to accelerate the Note and immediately commence foreclosure proceedings against the Historical Society's undivided one-half interest in the Carter Museum property; and

WHEREAS, in consideration of Historical Society agreeing to provide a deed in lieu of foreclosure by which the Town will immediately acquire the Historical Society's undivided one-half interest in the Carter Museum property, the Town has agreed to execute an agreement covenanting not to sue Historical Society on the Note; and

WHEREAS, a proposed agreement setting forth the respective agreements between the Town and the Historical Society concerning the Carter Museum deed in lieu of foreclosure has been prepared and reviewed by the Town Council; and

WHEREAS, the Town Council finds and determines that it would be in the best interest of the Town to execute such Agreement; and

WHEREAS, the Town has determined that following its acquisition of the Historical Society's undivided one-half interest in the Carter Museum property it should immediately enter into a Lease Agreement with the Historical Society under the terms of which the Carter Museum property will continue to be operated by the Historical Society as a museum open to the general public; and

WHEREAS, Section 1-11-4 of the Breckenridge Town Code requires that any lease of Town-owned real property for a term of one year or longer must be approved by the Town Council by ordinance.

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

Section 1. The proposed Agreement with the Summit Historical Society, a Colorado non-profit corporation, a copy of which is marked Exhibit "A", attached hereto and incorporated herein by reference ("Agreement"), is approved; and the Town Manager is hereby authorized, empowered and directed to execute such Agreement for and on behalf of the Town of Breckenridge.

Section 2. The Town Manager is hereby further authorized, empowered and directed to take all necessary and appropriate action to close the purchase and acquisition of the real property contemplated by the Agreement. In connection therewith, the Town Manager shall have full power and authority to do and perform all matters and things necessary to the purchase and acquisition of the property described in the Agreement, including but not limited to the following:

1. The making, execution and acknowledgment of settlement statements, closing agreements and other usual and customary closing documents;
2. The acceptance of delivery of the Deed to subject real property;
3. The recording of the Deed to the subject property with the Summit County Clerk and Recorder; and
4. The performance of all other things necessary to the acquisition of the subject property by the Town.

Section 3. The proposed Carter Museum Lease Agreement between the Town and the Summit Historical Society, a Colorado non-profit corporation, a copy of which is marked Exhibit "B", attached hereto and incorporated herein by reference, is hereby approved; and at the time of the closing of the transaction described in the Agreement, the Town Manager is hereby authorized, empowered and directed to execute such Agreement for and on behalf of the Town of Breckenridge.

Section 4. 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 5. 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.

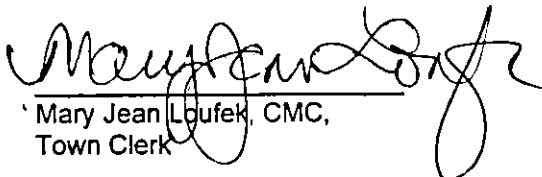
Section 6. This Ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Charter.

INTRODUCED, READ ON THE FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this 14th day of July, 1998. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the 28th day of July, 1998, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

TOWN OF BRECKENRIDGE,
a Colorado Municipal corporation

By 
Stephen C. West, Mayor

ATTEST:


Mary Jean Loufek, CMC,
Town Clerk

This Ordinance was published in full in The Summit County Journal, a newspaper of general circulation within the Town of Breckenridge, on July 23, 1998.

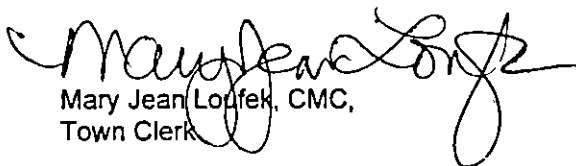
READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED BY TITLE this 22nd day of September, 1998.

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


TOWN OF BRECKENRIDGE,
a Colorado Municipal corporation

By 
Stephen C. West, Mayor

ATTEST:


Mary Jean Loufek, CMC,
Town Clerk

APPROVED IN FORM

 9/22/98
Town Attorney date

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

Exhibit "A" To Ordinance

AGREEMENT

THIS AGREEMENT ("Agreement") is made this ____ day of _____, 1998, by and between TOWN OF BRECKENRIDGE, a Colorado municipal corporation ("Lender") and SUMMIT HISTORICAL SOCIETY, a Colorado non-profit corporation ("Borrower").

RECITALS:

A. Lender is the holder of a Promissory Note dated December 31, 1992 in the original principal amount of Three Hundred Thirty Two Thousand Five Hundred Dollars (\$332,500.00)("Note"), executed by Borrower, which Note is secured by a Deed of Trust of even date therewith. The Deed of Trust is dated December 31, 1992 and was recorded December 31, 1992 under Reception No. 435686 of the records of the Clerk and Recorder of Summit County, Colorado ("Deed of Trust"). The Note and Deed of Trust are collectively referred to in this Agreement as the "Loan Documents."

B. The Deed of Trust creates in the favor of Lender a valid and subsisting first lien on the following described real property:

An undivided one half (1/2) interest in the following described real property situate in the Town of Breckenridge, County of Summit and State of Colorado, to wit:

Parcel "A"

A parcel of land lying wholly within the Abbett Addition to the Town of Breckenridge, known also as the Abbett Placer, U.S. Mineral Survey No. 843 and more particularly described as follows:

Beginning at Corner No. 8 of U.S. Survey No. 843, Abbett Placer; then North 7° East, 123.32 feet along the West line of said Abbett Placer;
thence East 158.2 feet to the West line of Ridge Street;
thence South 123.16 feet to line 7-8 of Survey No. 843;
thence North 89° 45' West 173.25 feet to the Point of Beginning, sometimes known as the Carter Museum property.

Parcel "B"

A parcel of land lying wholly within the Abbett Addition to the Town of Breckenridge, known also as the Abbett Placer, U.S. Mineral Survey No. 843 and more particularly described as follows:

Beginning at a point whence Corner No. 8 of U.S. Survey No. 843, Abbett Placer, bears South 7° West, 123.32 feet;
thence North 7° East, 75.76 feet to the South line of Carter Avenue;
thence East 149 feet to Corner of Carter Avenue and Ridge Street;
thence South 75 feet;
thence West 158.2 feet to the Point of Beginning.

C. Borrower is the owner in possession of the real property described in Recital B, free and clear of all liens and encumbrances.

D. Although Borrower is not currently in default under the Loan Documents (by virtue of an oral agreement with Lender not to declare a default under the Note notwithstanding the non-payment of the Note installment which was due December 31, 1997), Borrower has determined that its anticipated revenues from all sources will not be sufficient to pay the Note in the future as and when it becomes due.

E. If the Note and Deed of Trust go into default Lender would have the right to accelerate the Note and immediately commence foreclosure proceedings.

F. In consideration of Borrower agreeing to provide a deed in lieu of foreclosure, Lender has agreed, subject to the terms hereof, to execute an agreement covenanting not to sue Borrower on the Note.

NOW, THEREFORE, the parties agree as follows:

1. Representations and Warranties Of Borrower. Borrower represents and warrants to Lender as follows:

A. The amount of the principal indebtedness due under the Loan Documents as of the date hereof is approximately Two Hundred Twenty Nine Thousand Nine Hundred Thirty Seven and 78/100 Dollars (\$229,937.78), plus accrued interest ("the Indebtedness").

B. The Loan Documents are not now in default, but Borrower will be unable to pay the Note in the future as and when it becomes due, and a default under the Loan Documents is therefore probable in the immediate future. Borrower waives any future notice or rights to notice of such default and acknowledges that any conditions precedent to the declaration of a default under the Loan Documents have either been waived by it or satisfied by Lender.

C. The Indebtedness is due and owing by Borrower to Lender, in Lender's capacity as a lender [and not as a joint venturer] without (i) any right of setoff, counterclaim or deduction therefrom, or (ii) any obligation of Lender to give further notice or demand.

D. Upon a declaration of a default by Lender resulting from the non-payment of the December 31, 1997 Note installment, Lender would be entitled to pursue its remedies under the Loan Documents, including, without limitation, foreclosure of the Deed of Trust, and the Borrower has no knowledge of any facts or circumstances which would be the basis for a defense to such action by Lender or the basis for a counterclaim against Lender.

E. Borrower acknowledges and agrees that upon payment of the additional consideration referenced below in Paragraph 6, the fair market value of the real property encumbered by the Deed of Trust is not greater than the amount of the Indebtedness and that Borrower has no "equity" in such real property in excess of the Indebtedness.

F. Borrower is the owner in possession of the real property described in Recital B, above, free and clear of all liens and encumbrances.

G. To the best of its knowledge Borrower is the owner of the personal property described on the attached Exhibit "A" free and clear of all liens and encumbrances, because this personal property was on the Property at the time of purchase by Borrower or was purchased by Borrower.

H. The Deed of Trust constitutes a valid, binding, and enforceable first lien upon the real property described therein.

I. The recitals contained herein are true, accurate and complete statement regarding the Loan Documents and the Indebtedness.

J. This Agreement is entered into without force or duress and of Borrower's own free will, and Borrower acknowledges that the commitment of the Lender not to sue the Borrower under the Note constitutes good, valid and sufficient consideration for this Agreement.

K. Borrower has had the opportunity to review this Agreement with its attorney prior to executing it and has further had an opportunity to ask questions and to seek the advice and counsel of its attorney with respect to its decision to enter into this Agreement.

L. Borrower is not subject to any bankruptcy proceeding, assignment for benefit of creditors or similar proceeding; is not insolvent; and has not committed any act of bankruptcy.

M. Borrower is a duly organized and validly existing non-profit corporation organized pursuant to Colorado law; this Agreement and all instruments to be executed by it pursuant hereto have been and are properly authorized and executed by it; Borrower is not aware of any defenses available to it with respect to this Agreement or any of the documents executed pursuant hereto; the herein contemplated transaction has been properly authorized by the Borrower and is not a violation of any federal, state or local law, rule or regulation; this Agreement and each document delivered pursuant hereto has been or will be duly executed and delivered by Borrower and constitute valid and binding obligations of Borrower, enforceable in accordance with their terms; and no authorization or consent of any court, governmental agency, authority or other entity or person is required for the execution, delivery and performance by Borrower of this Agreement, or the other documents to be executed and delivered in connection therewith.

2. Closing and Execution of Deed In Lieu of Foreclosure. Subject to the terms and conditions hereof, expressly including the satisfaction or waiver of the Lender's contingencies set forth in Paragraph 3, below, on October 6, 1998 ("Closing") Borrower shall execute and deliver to Lender (i) a general warranty deed conveying to Lender the real property described in the Deed of Trust, free and clear of all liens and encumbrances and (ii) a Bill of Sale conveying to Lender the personal property described on the attached Exhibit "A" free and clear of all liens and encumbrances. Such deed shall be in lieu of the foreclosure by Lender of its Deed of Trust. The form of the deed shall be as set forth on the attached Exhibit "B", which is incorporated herein by reference. Closing shall occur at 1:30 o'clock P.M. at the office of Ten Mile Title, 520 South French Street, Breckenridge, Colorado, or at such earlier date and time or other location as the parties may agree upon. At Closing, Borrower shall further execute and deliver to Lender an Estoppel Affidavit in the form marked Exhibit "C", attached hereto and incorporated herein by reference. The Lender and Borrower shall further execute such other usual and customary closing documents as may be required. Lender shall pay the cost of recording the above described deed, as well as the cost of the hereafter described owner's title insurance policy.

3. Lender's Contingencies. Notwithstanding anything in this Agreement to the contrary, the obligations of Lender to consummate the transaction contemplated by this Agreement are subject to the satisfaction prior to Closing of the following conditions precedent, any of which may be waived in writing by Lender:

A. Lender shall have confirmed, in Lender's sole and absolute discretion, that as of the date of Closing each and every representation and warranty of Borrower set forth in Paragraph 1 of this Agreement is true, correct and complete.

B. Lender shall have confirmed, in Lender's sole and absolute discretion, that Lender can obtain a policy of owner's title insurance insuring Lender's ownership of the real property described in the Deed of Trust containing only those title exceptions acceptable to Lender.

C. Prior to Closing Borrower shall not have committed an act of bankruptcy. As used herein, the term "act of bankruptcy" shall mean (i) the adjudication of Borrower as a bankrupt or insolvent or (ii) the filing by or against Borrower of a petition under the United States Bankruptcy Code.

4. Title Insurance. Within five (5) days following the execution of this Agreement Lender shall obtain a current commitment for an owner's title insurance policy in an amount equal to the balance of the Indebtedness as set forth in Subparagraph 1(A), above ("Commitment"). If the Commitment discloses a state of title materially different in any respect from the state of title as represented in Paragraph 1, above, Lender may terminate this Agreement by giving written notice of termination to Borrower, in which case each party shall be relieved from any further obligation hereunder.

5. Foreclosure of Loan Documents By Lender. In Lender's sole and absolute discretion (such as if necessary to remove any liens which were unknown at the time of the execution of this Agreement or Closing or to protect Lender's interest in the event of a subsequent bankruptcy action filed by or against the Borrower) at any time after Closing Lender may commence foreclosure proceedings of the Deed of Trust by filing a Notice of Election and Demand with the Public Trustee for the County of Summit, or by filing a judicial foreclosure action, at Lender's election. Borrower shall take no action to impair or impede such foreclosure action, and Borrower waives any and all redemptive and cure rights provided by law. If the Lender acts to foreclose the Deed of Trust it shall not report such foreclosure to a credit reporting agency; nor shall Lender take any action that could lead to such foreclosure being reported on Borrower's credit history.

6. Additional Consideration. As additional consideration to be paid by Lender to Borrower for the conveyance of the real property described in the Deed of Trust, Lender agrees to pay to Borrower, as an endowment to be used as hereafter provided, the sum of Thirty Eight Thousand One Hundred Forty Two Dollars (\$38,142.00) (the "Endowed Funds"). Upon receipt, Borrower shall promptly invest the Endowed Funds in one or more federally insured investments, and Borrower shall maintain the Endowed Funds in federally insured investments thereafter. The interest earned on the Endowed Funds may be used from time to time by Borrower to pay for Borrower's general operating expenses or acquisition or restoration of one or more parcels or items of property of historical significance, real or personal. The principal amount of the Endowed Funds may be combined with any other endowed funds given to Borrower, but the principal amount of the Endowed Funds shall not be expended by Borrower for any purpose without the prior consent of Lender. The provisions of this Paragraph shall survive the closing, execution and delivery of the documents contemplated by this Agreement; and both parties shall continue to be bound by the terms, conditions and limitations of this Paragraph until all of their respective obligations hereunder have been performed or satisfied, or until January 1, 2025, whichever shall first occur.

7. No Bankruptcy. As part of the consideration to be received by Lender hereunder, without the consent of Lender, Borrower agrees not to file a petition for bankruptcy under the applicable federal laws for a period of one (1) year from and after the Closing. The obligations of this Paragraph 5 shall survive the Closing and delivery of the described above, and shall continue to be enforceable thereafter.

8. Agreement Not to Sue Borrower or Guarantors. At Closing Lender shall execute an agreement, in form and substance reasonably acceptable to counsel for both Borrower and Lender, providing that Lender shall not bring any action to obtain or enforce a personal judgment against Borrower based upon the Loan Documents.

9. Default: Remedies. If any obligation is not performed as herein provided, there shall be the following remedies:

A. IF BORROWER IS IN DEFAULT, then Lender shall have the right to an action for specific performance or damages, or both.

B. IF LENDER IS IN DEFAULT, then Borrower shall have the right to an action for damages. Borrower expressly waive the remedy of specific performance.

C. Anything to the contrary herein notwithstanding, in the event of any litigation arising out of this Agreement, the court may award to the prevailing party all reasonable costs and expenses, including attorneys' fees.

10. Governing Law. This Agreement and any and all documents executed in connection therewith shall be governed and construed according to the laws of the State of Colorado.

11. Notices. All notices, requests, consents, and other communications hereunder shall be in writing and shall be deemed to have been given when personally delivered, delivered by fax transmission or if mailed three (3) days after posting by first class, registered or certified mail, return receipt requested, postage prepaid, as follows:

(i) If To The Borrower:

Summit Historical Society
P.O. Box 745
Breckenridge, CO 80424

With A Copy to:

Mark Richmond, Esq.
RICHMOND & NEILEY, L.L.C.
P. O. Box 280
Frisco, CO 80443
Fax Number: (970)668-3757

(ii) If To The Lender:

Gary Martinez, Town Manager
Town of Breckenridge
P.O. Box 168
Breckenridge, CO 80424
Fax Number: (970)547-3104

With A Copy to:

Timothy H. Berry, Esq.
TIMOTHY H. BERRY, P.C.
P. O. Box 2
Leadville, CO 80461
Fax Number: (719)486-3039

or to such other address or fax number as shall be given in writing by any party to the other party hereto.

12. Severability. Should any provision of this Agreement be adjudged to be unenforceable, it shall be deemed to be automatically reformed to the extent possible to render it enforceable and, in any event, the invalidity or unenforceability of one provision of this Agreement shall not affect or impair the validity or enforceability of any of the remaining provisions of this Agreement.

13. Paragraph Headings. Paragraph headings are for convenience only and do not bear on the construction or interpretation of the content of this Agreement so long as the remaining provisions leave intact the intent of the parties. The singular number shall include the plural, the singular and the use of any gender shall be applicable to all genders.

14. Entire Agreement. This Agreement and the exhibits and documents referred to herein constitute the entire agreement of the parties hereto, and supersede all prior understandings with respect to the subject matter hereof.

15. Successors And Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

16. Fax Copy Sufficient. A facsimile copy of this Agreement, including facsimile copies including the parties' signatures, shall be valid for all purposes.

DATED at Breckenridge, Colorado the date first written above.

LENDER:

TOWN OF BRECKENRIDGE,
a Colorado municipal corporation

By _____
Gary Martinez, Town Manager

ATTEST:

Mary Jean Loufek, CMC, Town Clerk

BORROWER:

SUMMIT HISTORICAL SOCIETY,
a Colorado non-profit corporation

By _____
President

[AFFIX CORPORATE
SEAL HERE]

ATTEST:

Its Secretary

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this ____ day of _____, 1998, by _____, as President, and _____, as Secretary, of Summit Historical Society, a Colorado non-profit corporation.

WITNESS my hand and official seal.

My commission expires: _____.

Notary Public

EXHIBIT "A"
TO AGREEMENT BETWEEN TOWN OF BRECKENRIDGE ("Lender") AND SUMMIT HISTORICAL SOCIETY
("Borrower")

LIST OF PERSONAL PROPERTY

1. Small display case 16" x 19" x 14"
2. Curtains
3. Canvas bag with leather strap
4. Wooden spindle-back chair and cushion
5. Wooden cane
6. Glass Case approx. 12" x 12" x 18" inches
7. Natural history book (on Darwin) with brown cover
8. Vol. 1-6 Library of Woodworking and Craft by Seton
9. Light fixtures
10. Life-size photo enlargement of Edwin Carter with cigar next to a wolf biting a stick
11. Enlarged photo of Carter in chair
12. Enlarged photo of animals inside Carter Museum
13. Wall mural of bird collections

EXHIBIT "B"
TO AGREEMENT BETWEEN TOWN OF BRECKENRIDGE ("Lender") AND SUMMIT HISTORICAL SOCIETY
("Borrower")

FORM OF DEED IN LIEU OF FORECLOSURE

DEED IN LIEU OF FORECLOSURE

SUMMIT HISTORICAL SOCIETY, a Colorado non-profit corporation, whose address is P.O. Box 745, Breckenridge, Colorado 80424, in lieu of foreclosure of the Deed of Trust described below, hereby sell(s) and convey(s) to TOWN OF BRECKENRIDGE, a Colorado municipal corporation, whose address is P.O. Box 168, Breckenridge, Colorado 80424, the following real property in the County of Summit and State of Colorado, to wit:

All of Grantor's right, title and interest in and to the following described real property:

Parcel "A"

A parcel of land lying wholly within the Abbett Addition to the Town of Breckenridge, known also as the Abbett Placer, U.S. Mineral Survey No. 843 and more particularly described as follows:

Beginning at Corner No. 8 of U.S. Survey No. 843, Abbett Placer; then North 7° East, 123.32 feet along the West line of said Abbett Placer;
thence East 158.2 feet to the West line of Ridge Street;
thence South 123.16 feet to line 7-8 of Survey No. 843;
thence North 89° 45' West 173.25 feet to the Point of Beginning, sometimes known as the Carter Museum property.

Parcel "B"

A parcel of land lying wholly within the Abbett Addition to the Town of Breckenridge, known also as the Abbett Placer, U.S. Mineral Survey No. 843 and more particularly described as follows:

Beginning at a point whence Corner No. 8 of U.S. Survey No. 843, Abbett Placer, bears South 7° West, 123.32 feet;
thence North 7° East, 75.76 feet to the South line of Carter Avenue;
thence East 149 feet to Corner of Carter Avenue and Ridge Street;
thence South 75 feet;
thence West 158.2 feet to the Point of Beginning.

with all its appurtenances, and warrants the title to the same.
.....

This deed is an absolute conveyance, the Grantor having sold the above real property to the Grantee for a fair and adequate consideration, such consideration being payment by Grantor of an endowment fund of Thirty Eight Thousand One Hundred Forty Two Dollars (\$38,142.00) and full satisfaction of all obligations secured by that certain Deed of Trust from Grantor to the Public Trustee of Summit County, Colorado dated December 31, 1992 and recorded December 31, 1992 under Reception No. 435686 of the records of the Clerk and Recorder of Summit County, Colorado. Said Deed of Trust secures to Grantee the original principal sum of \$332,500.00 as evidenced by Grantor's Promissory Note to Grantee dated December 31, 1992. Grantor further declares that this conveyance is freely and fairly made and that there are no agreements, oral or written, other than this deed between the Grantor and the Grantee with respect to the transfer of title to the above real property. Grantor further acknowledges fair and adequate consideration given for its waiver of all redemptive rights permitted by law. No merger of title is intended.

SIGNED this ____ day of _____, 1998.

SUMMIT HISTORICAL SOCIETY,
a Colorado non-profit corporation

By _____
President

[AFFIX CORPORATE
SEAL HERE]

ATTEST:

Its Secretary

STATE OF COLORADO)

) ss.

COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this ____ day of _____, 1998 by _____, as President, and _____, as Secretary, of Summit Historical Society, a Colorado non-profit corporation.

WITNESS my hand and official seal.

My commission expires: _____.

Notary Public

EXHIBIT "C"
**TO AGREEMENT IN DEED OF LIEU BETWEEN TOWN OF BRECKENRIDGE ("Lender") AND SUMMIT
HISTORICAL SOCIETY ("Borrower")**

FORM OF ESTOPPEL AFFIDAVIT

ESTOPPEL AFFIDAVIT

_____ being first duly sworn, deposes and says:

1. That he/she is the President of Summit Historical Society, a Colorado non-profit corporation ("Corporation"); that he/she has been authorized to execute this Affidavit on behalf of the Corporation; and that he/she is the identical person who made, executed, and delivered that certain deed ("Deed") to Town of Breckenridge, a Colorado municipal corporation ("Grantee") of even date herewith, conveying to Grantee the following described property, to wit:

An undivided one half (½) interest in the following described real property situate in the Town of Breckenridge, County of Summit and State of Colorado, to wit:

Parcel "A"

A parcel of land lying wholly within the Abbett Addition to the Town of Breckenridge, known also as the Abbett Placer, U.S. Mineral Survey No. 843 and more particularly described as follows:

Beginning at Corner No. 8 of U.S. Survey No. 843, Abbett Placer; then North 7° East, 123.32 feet along the West line of said Abbett Placer;
thence East 158.2 feet to the West line of Ridge Street;
thence South 123.16 feet to line 7-8 of Survey No. 843;
thence North 89° 45' West 173.25 feet to the Point of Beginning, sometimes known as the Carter Museum property.

Parcel "B"

A parcel of land lying wholly within the Abbett Addition to the Town of Breckenridge, known also as the Abbett Placer, U.S. Mineral Survey No. 843 and more particularly described as follows:

Beginning at a point whence Corner No. 8 of U.S. Survey No. 843, Abbett Placer, bears South 7° West, 123.32 feet;
thence North 7° East, 75.76 feet to the South line of Carter Avenue;
thence East 149 feet to Corner of Carter Avenue and Ridge Street;
thence South 75 feet;
thence West 158.2 feet to the Point of Beginning.

2. That Deed is intended to be and is an absolute conveyance of the title to said premises to Grantee, and was not and is not now intended as a mortgage or trust conveyance, or security of any kind; that it was the intention of Corporation as grantor in the Deed to convey, and by the Deed the Corporation did convey to the Grantee absolutely, all of the Corporation's right, title, and interest in and to said premises; that possession of said premises has been surrendered to the Grantee; and the Corporation freely and voluntarily waives its statutory rights to cure and redeem from foreclosure the Deed of Trust described below.

3. That in the execution and delivery of said deed to Grantee the Corporation had the benefit of consulting with its own attorney; was not acting under any misapprehension as to the effect of such deed; and acted freely and voluntarily and was not acting under coercion or duress.

4. That the consideration for said deed was and is the agreement by the Grantee not to sue the Corporation on the Promissory Note dated December 31 1992 which is secured by that certain Deed of Trust heretofore existing on said property executed by the Corporation, as Grantor, to the Public Trustee in and for the County of Summit and State of Colorado, in trust for the benefit of Grantee, dated December 31, 1992 and recorded December 31, 1992 under Reception No. 435686 of the records of the Clerk and Recorder of Summit County, Colorado ("Deed of Trust"); and that at the time of making said deed affiant believed and now believes that the aforesaid consideration therefor represents fair value of the property so deeded.

5. This affidavit is made for the protection and benefit of the Grantee in said deed, their successors and assigns, and all other parties hereafter dealing with or who may acquire an interest in the property herein described, and particularly for the benefit of Ten Mile Title Company of Breckenridge, Colorado, which is about to insure the title to said property in reliance thereon, and any other title company which may hereafter insure the title to said property.

6. Affiant will testify, declare, depose, or certify before any competent tribunal, officer, or person, in any case now pending or which may hereafter be instituted, to the truth of the particular facts hereinabove set forth.

DATED this _____ day of _____, 1998.

[name to be inserted]

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this _____ day of _____, 1998 by _____, as President of Summit Historical Society, a Colorado corporation.

WITNESS my hand and official seal.

My commission expires:

Notary Public

Exhibit "B" To Ordinance

CARTER MUSEUM LEASE AGREEMENT

THIS CARTER MUSEUM LEASE AGREEMENT ("Agreement") is made and entered into at Breckenridge, Colorado, the ___ day of _____, 1998, by and between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation ("Town"), and the SUMMIT HISTORICAL SOCIETY, a Colorado non-profit corporation ("Society").

1. **Recitals.** The parties stipulate and agree that each of the following statements is true, correct and a material part of this Agreement:

A. The Town owns the real property in the Town of Breckenridge, County of Summit and State of Colorado, which is described in the attached Exhibit "A", (the "Property").

B. The Town desires to see that the Property is used as a public museum in accordance with and subject to the terms, conditions and covenant of this Agreement.

C. Pursuant to the terms of the deed whereby the Town acquired the Property, the Property is subject to the following deed restriction:

The Property shall be owned and operated exclusively for the charitable, literary, or educational purposes, including the historic preservation of the land and improvements thereon, or any uses incidental thereto.

D. The parties acknowledge that the personal property listed on Exhibit "B", which is currently located on the Property, is and will remain the exclusive property of the Society, subject, however, to the provisions of Paragraph 13 of this Agreement.

2. **Lease.** Town hereby leases the Property, together with the improvements thereon, to Society, subject to the terms, conditions and covenants contained in this Agreement.

3. **Term.** The initial term of the lease herein granted to the Society shall commence at noon on October 6, 1998 and end at 11:59 a.m. on October 6, 2003, subject, however, to earlier termination as hereafter provided.

4. **Museum.** During the term of this Agreement, Society shall operate the Property only as a museum to be known as the "1875 Edwin Carter Museum" ("Museum"). Society shall at all times maintain adequate reasonable signage indicating the name of the Museum. Society shall establish reasonable rules and regulations governing the operation of the Museum. The rules and regulations shall provide for hours and dates when the Museum is to be open, use restrictions, admission fees (if any), and such other areas of concern as may be appropriate. The Society's initial rules and regulations (together with any proposed amendment thereto) shall be submitted to the Town for its review and approval before becoming effective. The Town shall review the Society's proposed rules and regulations (together with any proposed amendment thereto) within forty five (45) days after submission by the Society. Failure of the Town to object to the Society's rules and regulations (or proposed amendment) before the expiration of such forty five (45) day period shall be deemed to be approval of such rules and regulations (or amendment). During the term of this Agreement, Society shall have exclusive scheduling authority over all activities occurring at the Museum; provided, however, that Town shall have the right to use the Museum for its own special events, at no cost, with the consent of the Society, which consent shall not be unreasonably withheld.

5. **Rent.** Society shall pay rent for the use of the Property for the entire term of this Agreement in the amount of ten dollars (\$10.00), the receipt of which is hereby acknowledged. Town agrees that no security deposit shall be required of the Society.

6. **Utilities.** Society shall pay for utility services, except water, used or consumed at the Property. Town shall pay for all water service used at the Property. Society shall contract for all utility services except water in Society's name.

7. **Limitation on Use of Property.** The Property shall be used by Society in strict compliance with all deed restrictions.

8. **Inspection Of Property.** Society acknowledges that it has inspected the Property and is aware of its geological and topographical condition. Society accepts the Property and improvements in "as is" condition without recourse to Town for any dangerous conditions, known or unknown.

9. **Assignment and Sublease.** Society shall not sublet the Property, or any part thereof, or assign this Agreement, or any portion hereof, without the prior written consent of the Town. Any unauthorized assignment will be void.

10. **Care of Property.** Society shall keep the Property in a neat and clean condition and shall promptly notify the Town as to any known maintenance and repair needs. Upon termination of this Agreement, Society shall redeliver possession of the Property to the Town in its current condition and in good repair, normal wear and tear excepted.

A. Town is responsible for the maintenance and repair of the Property, including all structures. Town is responsible for grounds maintenance and snow removal from driveway and sidewalks.

B. Town shall notify Society of all maintenance and repair projects. Town shall attempt to schedule nonemergency maintenance and repair with the Society so as not to cause undue interruption to the operation of the Museum.

11. **Town Access.** The Town, and the Town's officers, employees, contractors and agents, shall have the right to enter improvements on the Property during reasonable hours to perform required maintenance and repairs and to inspect the Property, if advance notification is given. In addition, if, at any time it reasonably appears to the Town that the Property or the improvements thereon may be significantly damaged or destroyed as a result of a bona fide emergency, the Town shall have the right to enter upon the Property without prior notice to Society and perform such repairs and take such other action as may be reasonably required in the Town's judgment to protect and preserve the Property and the improvements thereon. To facilitate such emergency access, Town shall be provided with keys to the improvements on the Property, as well as access codes (if needed) and other information that will allow Town to exercise its emergency access right herein reserved.

12. **Removal of Personal Property.** Subject to the provisions of Paragraph 13 of this Agreement, following the termination or expiration of this Agreement and after notification by Town, Society shall promptly remove all of Society's personal property from the Property. Any such property not removed within sixty (60) days following such notification shall conclusively be deemed to have been abandoned by Society, and Town shall have the right to dispose of such property as it sees fit without compensation to Society.

13. **Personal Property to Remain With Museum.** It is agreed that upon the termination or expiration of this Agreement and the cessation of the Society's right to possession of the Property, the Society's personal property described on the attached Exhibit "B" shall be leased by the Society to the Town without cost and shall remain on the Property and shall not be removed therefrom so long as the Property is operated by Town or another governmental or public agency as public museum known as the "1875 Edwin Carter Museum." At such time, the Society and Town will enter into a written lease for such personal property substantially in accordance with Paragraphs 7, 8, 9, 10, 15, 16, 17, 18 and 19 of this Agreement. This obligation shall be specifically enforceable against Society by Town, and shall survive the termination or expiration of this Agreement.

14. **Independent Contractor.** In connection with its use of the Property, Society, and Society's employees, shall, at all times, be independent contractors and not employees of the Town.

15. **Hold Harmless.** Society will indemnify and hold Town harmless from and against any and all claims, judgments, and/or demands arising from the conduct of Society on the Property, all claims arising from any breach or default on the part of Society under this Agreement and against any act or negligence of Society or its employees.

16. **Insurance.** Society shall procure, pay for, and maintain, comprehensive public liability insurance, indemnifying Town from any loss or damage occasioned by an accident or casualty in or about the Property, which policy shall be written on an "occurrence" basis, with limits of liability of not less than the limits of liability for Colorado municipalities established from time to time by the Colorado Governmental Immunity Act, Article 10 of Title 24, C.R.S. ("Act"), which limits at the time of the commencement of this Agreement are \$150,000 for injury to or death of any one person in any one single occurrence and for injury to or death of more than one person in any one single occurrence the limit of \$600,000. If, for any reason, the Act is no longer in effect during the term of this Lease Society shall provide liability insurance in an amount equal to the limits of liability which existed under the Act immediately prior to its repeal. A certificate of such insurance naming the Town as an additional insured shall be furnished to Town and shall provide that said coverage shall not be changed, modified, reduced or canceled without thirty (30) days' prior written notice thereof being given to the Town. The Town will obtain insurance for property damage to the Property in an amount and upon terms satisfactory to the Town.

17. **Waiver of Liability.** Society shall not be responsible for any injury done or loss occasioned by an Act of God or the wind, or that resulting from any defect of plumbing, electrical insulation or wiring installation, gas lines, or water lines, or by reason of defective or broken railings, porches, stairways, or walks, or by reason of any breaking, bursting or running of any water receptacle, tank, tub, waste pipe, toilet, or the like or for any damage or injury resulting from water or snow being on or coming through the roof, walks, or any other part or portion of the Property, or the buildings located on the Property.

18. **Default by Society.** Society shall be in default under this Agreement if any of the following shall occur:

A. Society shall fail to comply with any of the terms, provisions or covenants of this Agreement.

B. Society shall be dissolved or cease operations, or shall abandon the Property or Society's interest in the Property.

C. Society shall do or permit to be done anything which creates a lien on the Property, or Society's interest in the Property, which lien is not released within sixty (60) days after demand therefor by Town.

D. The Property, and all improvements thereon, shall not be open to the public as a museum for a period of thirty (30) consecutive days in violation of the approved operating schedule contained in the Society's rules and regulations; provided, however, that such period may be extended by Town upon request from Society in the event of catastrophic damage to the Property or improvements thereon, or for other cause as agreed upon by Town and Society. Except with respect to Society's failure to provide insurance as required by Paragraph 16 hereof, a party claiming default hereunder shall provide written notice to the other party at least ten (10) days before formally serving a notice of noncompliance as required by Colorado law. Such notice shall reasonably identify the nature of the wrongful act or the omission giving rise to the claim of default. The party alleged to be in default shall be entitled

to cure the default within such ten (10) day period; and, in the case of a default not capable of being cured within such ten (10) day period, the party alleged to be in default shall not be in default if it commences curing the default within such ten (10) day period and thereafter corrects the default with due diligence. No notice shall be required prior to termination for Society's failure to provide insurance as required by Paragraph 16 of this Agreement.

19. **Remedies Upon Default.** If either party is in default under this Agreement the non-default party shall have all of the rights and remedies provided by Colorado law.

20. **Option(s) to Extend; Election by Town Not to Extend.** Town grants to Society the right and option to extend the term of this Agreement for three (3) additional terms of 5 years each, in accordance with, and subject to the provisions of Paragraph 3. To exercise the first option herein granted, Society shall give Town written notice of the exercise of the first option not later than one (1) year prior to the expiration of the initial term of this Agreement as set forth in Paragraph 3 hereof. Such option may not be exercised if Society is in default under this Agreement. Not later than six (6) months prior to the expiration of the initial term of this Agreement, the Town shall have the right, in its sole discretion, and without liability to Society, to elect to terminate this Agreement, in which such event the options herein granted to Society shall be of no further force and effect, and this Agreement shall terminate as of the expiration of the initial term of this Agreement. If Town fails to notify Society in accordance with Paragraph 23 hereof of its decisions to terminate this Agreement, this Agreement shall automatically be extended for 5 additional years upon all of the terms and conditions of this Agreement. The foregoing provisions shall likewise apply to the exercise of the second and third options herein granted to Society, and in connection therewith Town may elect to terminate this Agreement in the manner set forth above.

21. **Time of Essence.** Time is of the essence of this Agreement.

22. **Attorney's Fees.** It is agreed that if any action is brought in a court of law by either party to this Agreement concerning the enforcement, interpretation or construction of this Agreement, the prevailing party, either at trial or upon appeal, shall be entitled to reasonable attorney's fees as well as costs, including expert witness's fees, incurred in the prosecution or defense of such action.

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

If to the Town:	Town Manager Town of Breckenridge P. O. Box 168 Breckenridge, CO 80424
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If to the Society:	Summit Historical Society P. O. Box 745 Breckenridge, CO 80424
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Notices mailed in accordance with the provisions of this Paragraph 23 shall be deemed to have been given upon mailing. Notices personally delivered shall be deemed to have been given upon delivery. Nothing herein shall prohibit the giving of notice in the manner provided for in the Colorado Rules of Civil Procedure for service of civil process.

24. **Entire Agreement.** This Agreement constitutes the entire Agreement and understanding between the parties and supersedes any prior Agreement or understanding relating to the subject matter of this Agreement.

25. **Modification.** This Agreement may be modified or amended only by a duly authorized written instrument executed by the parties hereto.

26. **Counterparts.** This Agreement may be executed simultaneously in two or more copies, each of which shall be considered an original for all purposes and all of which together shall constitute but one and the same document.

27. **Paragraph Headings.** Paragraph headings are inserted for convenience only and in no way limit or define the interpretation to be placed up this Agreement.

28. **No Partnership.** Notwithstanding anything contained in this Agreement to the contrary, it is expressly understood and agreed that the Town shall not be construed or held to be a partner, associate or joint venturer of Society in the conduct of its business at the Property.

29. **Waiver.** The failure of either party to exercise any of its rights under this Agreement shall not be a waiver of those rights. A party waives only those rights specified in writing and signed by the party waiving its rights.

30. **No Recording.** This Lease shall **NOT** be recorded in the real property records of the Clerk and Recorder of Summit County, Colorado.

31. **Binding Effect.** This Agreement shall be binding upon, and shall inure to the benefit of the parties and their respective successors and assigns.

TOWN OF BRECKENRIDGE

SUMMIT HISTORICAL SOCIETY

By _____
Gary Martinez

Title: Town Manager

ATTEST:

By _____
Mary Jean Loufek, CMC

Title: Town Clerk

Title:

Exhibit "A"
To Carter Museum Lease Agreement Between the Town of Breckenridge and Summit Historical Society

Legal Description

Parcel "A"

A parcel of land lying wholly within the Abbett Addition to the Town of Breckenridge, known also as the Abbett Placer, U.S. Mineral Survey No. 843 and more particularly described as follows:

Beginning at Corner No. 8 of U.S. Survey No. 843, Abbett Placer; then North 7° East, 123.32 feet along the West line of said Abbett Placer;
thence East 158.2 feet to the West line of Ridge Street;
thence South 123.16 feet to line 7-8 of Survey No. 843;
thence North 89° 45' West 173.25 feet to the Point of Beginning, sometimes known as the Carter Museum property.

Parcel "B"

A parcel of land lying wholly within the Abbett Addition to the Town of Breckenridge, known also as the Abbett Placer, U.S. Mineral Survey No. 843 and more particularly described as follows:

Beginning at a point whence Corner No. 8 of U.S. Survey No. 843, Abbett Placer, bears South 7° West, 123.32 feet;
thence North 7° East, 75.76 feet to the South line of Carter Avenue;
thence East 149 feet to Corner of Carter Avenue and Ridge Street;
thence South 75 feet;
thence West 158.2 feet to the Point of Beginning.

1. Edwin Carter's framed invoices: "Denver & Rio Grande Express," "Montgomery Ward"
2. Framed letter from Edwin Carter concerning a "Daisy" of a specimen
3. Agreement between Edwin Carter and William Wilkinson
4. Photo: Carter Museum with rock and antler pile on side
5. Postcard of Carter Museum, City Park, Denver, CO
6. Political cartoon of Carter and his animals going to Denver
7. 3 Page letter from Theo Carter to Mr. G. Engle
8. 2 Page note from William S. Carter
9. Letter and pass from Union Pacific for Prof. Edwin Carter
10. Photo: Prof. Edwin Carter, June 1828-Feb 1900, late in life
11. Photo: Carter's funeral in Breckenridge Masonic Hall - Feb. 1900
12. Photo: Naturalist Martha Maxwell exhibited Carter specimens at Philadelphia Exhibition 1876.
13. Photo: west side of Main St., Carter in doorway, Carter's Specimens, Clerk & Recorder's Office
14. Photo: Carter's bird specimens
15. Photo: Carter home, workshop, museum - (more trees, no window right of door) looking west
16. Photos: 2 horizontal photos of Carter Museum interior
17. Photos: 2 Vertical photos: woman & child at Carter Museum, wintertime at Carter Museum
18. 1875 Edwin Carter Museum Campaign list of supporters, donors, etc.