

ORDINANCE NO. 3

Series 1999

AN ORDINANCE AMENDING TITLE 9 OF THE BRECKENRIDGE TOWN CODE CONCERNING DEVELOPMENT AGREEMENTS

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

Section 1. There is hereby added to the definitions set forth in Section 9-1-5 of the Breckenridge Town Code a new definition of "Development Agreement", which shall read in its entirety as follows:

DEVELOPMENT AGREEMENT: An agreement entered into between the Town and an Applicant pursuant to Chapter 9 of Title 9 of this Code.

Section 2. Subparagraph K of Section 9-1-17-11 of the Breckenridge Town Code is hereby amended so as to read in its entirety as follows:

K. Development Agreements: The Town Council may, by Development Agreement, provide that a property right shall be vested for a period exceeding three (3) years when warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of the development, economic cycles and market conditions. In such agreement the Town Council may also designate an approval other than that described in this Section as a site specific development for a specific project.

Section 3. Section 9-1-17-12 of the Breckenridge Town Code is hereby amended so as to read in its entirety as follows:

9-1-17-12: **TRANSFER OF DENSITY:** A transfer of density from one lot or parcel to another may be approved by the Town Council only in connection with the approval of a Development Agreement, or an approved original or amended Master Plan. If a density transfer is approved, the transfer shall be evidenced by a written covenant which shall be in a form and substance acceptable to the Town Attorney. Such covenant shall provide: 1) the amount of density transferred; 2) the total amount of density remaining on the sending parcel; 3) the new total amount of density on the receiving parcel; and 4) an acknowledgment by the owner of the receiving parcel that the density which has been transferred may be used on the receiving parcel only in accordance with a separate development permit obtained in accordance with the requirements of this Chapter. The Applicant shall reimburse the Town for its reasonable attorney fees incurred in connection with the preparation of the covenant. The covenant shall be recorded with the Clerk and Recorder of Summit County, and shall conclusively establish the amount of density on both the sending and receiving parcels as of the date of such covenant. Upon the execution of the density transfer covenant described above, the owners of both the sending and receiving parcels shall execute such documents as may be required by the Director in order to assure that the records of the Town correctly reflect the current amount of allowed density for both parcels. Density may be transferred only in accordance with the provisions of this Section. Any attempt to transfer density except in compliance with the provisions of this Section shall be null, void and of no effect whatsoever. The Town shall not recognize any density transfer except pursuant to this Section.

Section 4. Paragraph L of Policy 39 (Absolute) of Section 9-1-19 of the Breckenridge Town Code, entitled "Master Plans", is hereby amended by the addition of the following additional subparagraph (5) which shall read in its entirety as follows:

(5) Notwithstanding the requirements of subparagraph (3) of this Paragraph L, if the Town Council finds that: (i) the current master plan was first adopted prior to October 17, 1994; (ii) the current master plan contains provisions which are materially inconsistent with the then-current Land Use Guidelines; (iii) a legal and factual basis exists for the assertion by the Applicant that it has vested property rights under the existing master plan; and (iv) there are significant public benefits which will result from the approval of the amendment to the master plan without requiring compliance with the then-current Land Use District Guidelines, the Town Council may, by Development Agreement, authorize the Planning Commission to review and approve (subject to compliance with all other applicable development policies of the Town) an amendment to an approved master plan which is not in compliance with the then-current Land Use District Guidelines.

Section 5. The definition of "Development Agreement" set forth in Section 9-2-2 of the Breckenridge Town Code is hereby amended so as to read in its entirety as follows:

Development Agreement: An agreement entered into by the Town and the subdivider pursuant to Chapter 9 of this Code prior to or concurrently with the approval of a subdivision. The agreement specifies development requirements including the responsibility for, and the timing of, infrastructure improvements and public facilities, dedications, fees

and remedies in the event obligations are not met, in exchange for the Town foregoing the right to change the rules of development, thereby vesting the development for a period exceeding the standard three (3) year period specified elsewhere in the Code.

Section 6. Subparagraph (B) (11) of Section 9-2-1-13 of the Breckenridge Town Code is hereby amended so as to read in its entirety as follows:

11. **Development Agreements:** The Town Council may, by Development Agreement, provide that a property right shall be vested for a period exceeding three (3) years when warranted in light of all relevant circumstances, including but not limited to the size and phasing of the development, economic cycles and market conditions. In such Development Agreement the Town Council may also designate an approval other than that described in this Section as a site-specific development for a specific subdivision.

Section 7. Paragraph D of Section 9-3-8 of the Breckenridge Town Code is hereby amended so as to read in its entirety as follows:

D. **Mixed Use Developments:** The requirements of this Section may be increased or decreased for a mixed use development containing not less than one hundred thousand (100,000) square feet. Such change shall be accomplished by a Development Agreement in connection with the approval or amendment of Master Plan. Any request to vary the requirements of this Section shall be supported by a written analysis paid for by the Applicant and prepared by a qualified parking consultant. Once approved, the development Agreement and master plan shall establish the off-street parking requirement in lieu of that set forth in this Section and shall served as one of the controlling development policies for a site-plan level development of the property which is the subject of the Master Plan as provided in Paragraph H of Policy 39 (Absolute) of Section 9-1-19 of this Title.

Section 8. There is hereby added to the Breckenridge Town Code a new Chapter 9 of Title 9, to be entitled "Development Agreements", which shall read in its entirety as follows:

CHAPTER 9

DEVELOPMENT AGREEMENTS

SECTION:

- 9-9-1: Legislative Intent
- 9-9-2: Definitions
- 9-9-4: Commitments
- 9-9-5: Development Agreements--General
- 9-9-6: Memorandum of Understanding
- 9-9-7 Application
- 9-9-8: Fee
- 9-9-9: Submittal Requirements
- 9-9-10: Procedure
- 9-9-11: Relationship to Pending Development Permit Application
- 9-9-12: Mandatory Development Agreement Provisions
- 9-9-13: Notice of Approval
- 9-9-14: Recording of Development Agreement

9-9-1: **LEGISLATIVE INTENT:** It is the intent and purpose of this Chapter to establish a procedure for the adoption by the Town Council of Development Agreements as authorized elsewhere in this Code. This Chapter establishes criteria, standards and procedures for the approval of a Development Agreement which (i) enables the Town to obtain supplemental facilities or benefits which cannot lawfully be obtained by the Town through existing regulations, standards or policies; (ii) are intended to assure quality development within the Town and (iii) protects the general health, safety and welfare of current and future Town residents.

9-9-2: **DEFINITIONS:** For the purpose of this Chapter, the words and phrases used herein, unless the context otherwise indicates, shall have the meanings provided in the Breckenridge Development Code.

9-9-3: **CRITERIA--GENERAL:** A Development Agreement may be approved by the Town Council without regard to the size of the Development or the amount of density associated with such Development.

9-9-4: **COMMITMENTS:** Applicants for Development Agreements are encouraged to make commitments to the Town which enable the Town to obtain supplemental facilities or benefits which cannot lawfully be obtained by the Town through existing regulations, standards or policies. The Town Council may consider commitments which may include, but shall not be limited to, the following:

D. The reduction of density.

9-9-5: DEVELOPMENT AGREEMENTS--GENERAL: A Development Agreement may be approved by the Town Council either in connection with the approval of a development permit or as a separate approval at the election of the Applicant. The decision by the Town Council to enter into a Development Agreement with an Applicant is always discretionary; nothing in this Code shall be interpreted or construed as requiring the Town Council to approve a Development Agreement under any circumstances. If a request for approval of a Development Agreement is combined with an application for a development permit, the application for the Development Permit shall be reviewed under the applicable policies, standards and criteria of this Code, including the point analysis provisions of this Code if applicable, but the approval or conditional approval of the application for Development Permit shall not require the approval of the accompanying request for a Development Agreement. There is never an entitlement on the part of the Applicant to the approval of a Development Agreement.

9-9-6: MEMORANDUM OF UNDERSTANDING: The Town Council shall have the authority to enter into a non-binding Memorandum of Understanding with any Applicant to study, review and analyze a development concept or development issues which may culminate in the approval of a Development Agreement. Any such Memorandum of Understanding shall be approved by Resolution of the Council.

9-9-7: APPLICATION: If an application for approval of a Development Agreement is not included as a part of a Development Permit application, a separate application for approval of a Development Agreement shall be submitted to the Director. Within ten (10) days following receipt of an application the Director shall determine if the application is complete. If it is not, it shall be returned by the Director to the Applicant along with an explanation of the deficiencies in the application, and the Applicant shall have ten (10) days within which to correct the deficiencies in the application and resubmit a completed application to the Director. If an application is determined to be complete, the Director shall proceed to schedule the application as set forth in Section 9-9-10.

9-9-8: FEE: If an application for approval of a Development Agreement is not included as a part of a Development Permit application, an application for approval of a Development Agreement shall be accompanied by a separate, non-refundable fee in an amount equal to the fee for a Class "A" Development Permit application. Such fee is determined by the Town Council to reasonably reimburse the Town for the direct and indirect costs incurred by the Town in processing such an application. No extra fee shall be required if an application for approval of a Development Agreement is included as part of a Development Permit application.

9-9-9: SUBMITTAL REQUIREMENTS: A completed application for approval of a Development Agreement, whether included as part of a Development Permit application or submitted as a separate application, shall include the following information and documentation:

A. Proof of ownership of the land to be included within the Development Agreement, which includes an updated or current title insurance policy or title commitment issued no more than thirty (30) days before submission of the application.

B. A properly acknowledged letter of authorization from the owner of the land to be included within the Development Agreement permitting a designated representative to process the application.

C. A properly acknowledged statement of consent to proceed with the proposed Development Agreement, executed by all owners of fee title to the land to be included within the Development Agreement.

D. A narrative description describing the nature of the application's compliance with the applicable threshold criteria under the Code section authorizing the execution of the Development Agreement.

E. A description of the Commitments proposed by the Applicant as described in Section 9-9-4.

F. A draft agreement in compliance with the Mandatory Development Agreement Provisions set forth in Section 9-9-12.

G. Such other reasonable information as the Director may require.

9-9-10: PROCEDURE: Except as provided in Paragraph E of this Section with respect to a request to approve a Development Agreement under Subparagraph (L) (5) of Policy 39 (Absolute) of Section 9-1-19 of this Code, upon receipt of a completed application for approval of a Development Agreement, the following procedures shall be followed:

A. Within sixty (60) days following receipt of a completed application the Director shall cause the application to be scheduled for preliminary discussion at a Town Council worksession held as part of a regular or special Town Council meeting. The worksession discussion may be continued if necessary to complete the Council's preliminary discussion of the proposed Development Agreement. The Director shall provide an analysis of the anticipated planning impacts of the proposed Development Agreement, and such other information and analysis as the Town Council shall require. Upon the conclusion of the Town Council's preliminary discussion of the proposed Development Agreement, the Council shall determine whether to (i) terminate further discussions concerning the proposed Development Agreement, in which case all proceedings

concerning the proposed Development Agreement shall terminate, or (ii) refer the matter to the Planning Commission for its review and comment as provided in Paragraph B of this Section.

B. If so directed by the Town Council, the Director shall next cause the matter of the proposed Agreement to be scheduled for initial review by the Planning Commission at a Planning Commission worksession held at a regular or special Planning Commission meeting. The Planning Commission review may be continued to one or more subsequent worksessions if necessary in order to permit the Commission to complete its review. Review of the application for approval of the Development Agreement shall be commenced within thirty (30) days following the Town Council's referral as described in Paragraph A of this Section, and completed by the Planning Commission within sixty (60) days after the first worksession review. Upon completion of its review, the Planning Commission shall make a recommendation of approval, conditional approval, further study or denial of the application to the Town Council.

C. Within thirty (30) days after receipt of the recommendation of the Planning Commission a non-emergency ordinance approving the proposed Development Agreement shall be introduced and considered by the Town Council in accordance with the procedures set forth in Section 5.10 of the Town Charter. If such Ordinance is rejected by the Town Council at first reading, the procedures for approval of the Development Agreement shall terminate. If the Ordinance is approved on first reading, a public hearing shall be scheduled on the Ordinance as required by Section 5.10(d) of the Town Charter. The adoption of an Ordinance approving a Development Agreement is a legislative matter subject to referendum as provided in Section 24-68-104(2), C.R.S., but is quasi-judicial for the purpose of prohibited ex parte contacts with Town Council members.

D. In addition to the newspaper notice required by Section 5.10(d) of the Town Charter, notice of the required public hearing shall be given in the same manner as is required for a final hearing on a Class A Development Permit application pursuant to Chapter 1 of Title 9 of this Code.

E. Due to its unique nature, an application to authorize the approval of a Development Agreement under Subparagraph (L)(5) of Policy 39 (Absolute) of Section 9-1-19 of this Code shall be processed as follows:

(i) Within thirty (30) days following receipt of a completed application the Director shall cause the matter of the proposed approval of a Development Agreement to be scheduled for preliminary discussion at a Town Council worksession held as part of a regular or special Town Council meeting. The worksession discussion may be continued if necessary to complete the Council's preliminary discussion of the proposed Development Agreement. The Director shall provide an analysis of the anticipated planning impacts of the proposed Development Agreement, and such other information and analysis as the Town Council shall require. Upon the conclusion of the Town Council's preliminary discussion of the proposed Development Agreement, the Council shall determine whether to (i) terminate further discussions concerning the proposed Development Agreement, in which case all proceedings concerning the proposed Development Agreement shall terminate, or (ii) commence proceedings for the approval of the requested Development Agreement. Such Development Agreement may be approved only if the Council specifically finds that all of the conditions set forth in Subparagraph (L)(5) of Policy 39 exist. Upon the approval of such Development Agreement, the Planning Commission shall process the application to amend the Master Plan using the standards contained in the approved Development Agreement.

(ii) A Development Agreement proposed under Subparagraph (L)(5) of Policy 39 shall be approved by a non-emergency Ordinance adopted by the Town Council in accordance with the procedures set forth in Paragraphs C and D of this Section.

(iii) As part of its preliminary discussion concerning a proposed Development Agreement under Subparagraph (L) (5) of Policy 39 the Town Council may, in its discretion, refer the matter to the Planning Commission for its review and comment. If so referred, the proposed Development Agreement shall be reviewed by the Planning Commission within the time period established by the Council at the time of the referral.

9-9-11: RELATIONSHIP TO PENDING DEVELOPMENT PERMIT APPLICATION: If, at the time of the submission of an application for approval of a Development Agreement there is pending before the Planning Commission an application for a Development Permit involving the same real property, the Director shall attempt to coordinate the application for approval of the Development Agreement with the Development Permit application process such that both processes can be concluded at approximately the same time.

9-9-12: MANDATORY DEVELOPMENT AGREEMENT PROVISIONS: The following provisions shall be included within all Development Agreements approved pursuant to this Chapter:

A. Except for a Development Agreement to extend vested property rights pursuant to Section 9-1-17-11 of this Code, and except as provided in Section 24-68-105, C.R.S., the execution of the Development Agreement shall not preclude the current or future application of municipal, state or federal ordinances, laws, rules or regulations to the real property which is the subject of the Development Agreement (collectively, "laws"), including, but not limited to, building, fire, plumbing, engineering, electrical and mechanical codes, and the Town's Development Code, Subdivision Ordinance and other land use laws, as the same may be in effect from time to time throughout the term of the Development Agreement. Any development of the real property

which is the subject of the Development Agreement shall be done in compliance with the then-current laws of the Town.

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

C. The Development Agreement shall run with the title to the land and be binding upon the owners, heirs, successors and assigns.

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

E. The Town shall not be responsible for and the Applicant shall have no remedy against the Town if development of the real property which is the subject of the Development Agreement is prevented or delayed for reasons beyond the control of the Town.

F. Actual development of the real property which is the subject of the Development Agreement shall require the issuance of such other and further permits and approvals by the Town as may be required from time to time by applicable Town ordinances.

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

I. The Applicant shall agree to indemnify and hold the Town, its officers, employees, insurers, and self-insurance pool, harmless from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with the Development Agreement, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the negligence or intentional act or omission of Applicant, any subcontractor of the Applicant, or any officer, employee, representative, or agent of the Applicant or of any subcontractor of the Applicant, or which arise out of any worker's compensation claim of any employee of the Applicant, or of any employee of any subcontractor of the Applicant; except to the extent such liability, claim or demand arises through the negligence or intentional act or omission of Town, its officers, employees, or agents. Applicant agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims, or demands at the sole expense of the Applicant. Applicant also agrees to bear all other costs and expenses related thereto, including court costs and attorney's fees.

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

9-9-13: NOTICE OF APPROVAL: Any Development Agreement approved pursuant to this Chapter shall contain the following language: "This Development Agreement constitutes a vested property right pursuant to Article 68 of Title 24, Colorado Revised Statutes, as amended." In addition, within fourteen (14) days following final adoption of the Ordinance approving a Development Agreement, the Town Clerk shall cause to be published one time in a newspaper of general circulation within the Town the following notice:

NOTICE

Notice is hereby given that on (date) the Breckenridge Town Council approved a Development Agreement for the property and purpose described below and created a vested property right pursuant to Colorado law. Such approval is subject to all rights of referendum and judicial review as provided by law.

Legal Description:

Project Name and General Description:

Purpose of Agreement:

Published in (name of legal newspaper) on: (date)

The Applicant shall reimburse the Town for the cost of the publication of said Notice.

9-9-14: RECORDING OF DEVELOPMENT AGREEMENT: Within thirty (30) days of final adoption of the approving and authorizing Ordinance, the Applicant shall submit a copy of the approved Development Agreement to the Director for execution by the Town and subsequent recording, together with the required recordation fees, or the approval of the Development Agreement shall be void and of no further effect. The Development Agreement shall become effective upon recordation.

Section 9. Except as specifically amended hereby, the Breckenridge Town Code, and the various secondary codes adopted by reference therein, shall continue in full force and effect.

Section 10. 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 11. 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.

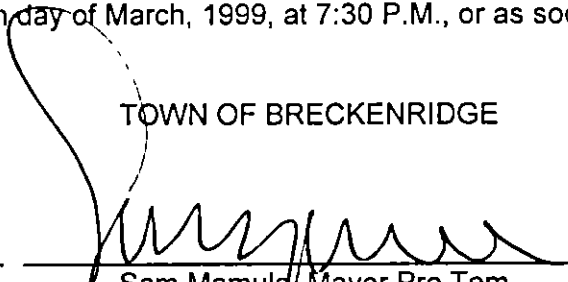
Section 12. This Ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Charter.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this 23rd day of February, 1999. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the 9th day of March, 1999, 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

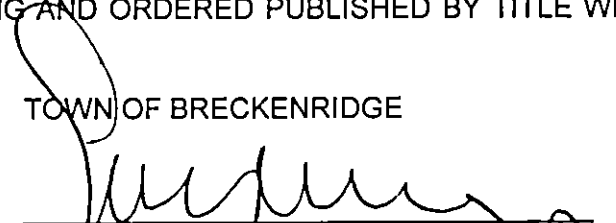

Sam Mamula, Mayor Pro Tem

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED BY TITLE WITH AMENDMENTS, this 9TH day of March, 1999.


ATTEST:

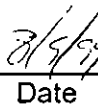
TOWN OF BRECKENRIDGE


Mary Jean Loufek, CMC, Town Clerk


Sam Mamula, Mayor Pro Tem

APPROVED IN FORM


Town Attorney


Date

This Ordinance was published by title with amendments in the Summit County Journal, a newspaper of general circulation within the Town of Breckenridge, on March 19, 1999.

ORDINANCE NO. 3

Series 1999

AN ORDINANCE AMENDING TITLE 9 OF THE BRECKENRIDGE TOWN CODE
CONCERNING DEVELOPMENT AGREEMENTS

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rights under the existing master plan; and (iv) there are significant public benefits which will result from the approval of the amendment to the master plan without requiring compliance with the then-current Land Use District Guidelines, the Town Council may, by Development Agreement, authorize the Planning Commission to review and approve (subject to compliance with all other applicable development policies of the Town) an amendment to an approved master plan which is not in compliance with the then-current Land Use District Guidelines.

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9-9-1: **LEGISLATIVE INTENT:** It is the intent and purpose of this Chapter to establish a procedure for the adoption by the Town Council of Development Agreements as authorized elsewhere in this Code. This Chapter establishes criteria, standards and procedures for the approval of a Development Agreement which (i) enables the Town to obtain supplemental facilities or benefits which cannot lawfully be obtained by the Town through existing regulations, standards or policies; (ii) are intended to assure quality development within the Town and (iii) protects the general health, safety and welfare of current and future Town residents.

9-9-2: **DEFINITIONS:** For the purpose of this Chapter, the words and phrases used herein, unless the context otherwise indicates, shall have the meanings provided in the Breckenridge Development Code.

9-9-3: **CRITERIA--GENERAL:** A Development Agreement may be approved by the Town Council without regard to the size of the Development or the amount of density associated with such Development.

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- A. The provision of open space, trails and environmentally sensitive lands through dedication or other means.
- B. The establishment and implementation of site-design or other standards above and beyond established Town requirements or existing development entitlements.
- C. The provision of employee housing.
- D. The reduction of density.

9-9-5: **DEVELOPMENT AGREEMENTS--GENERAL:** A Development Agreement may be approved by the Town Council either in connection with the approval of a development permit or as a separate approval at the election of the Applicant. The decision by the Town Council to enter into a Development Agreement with an Applicant is always discretionary; nothing in this Code shall be interpreted or construed as requiring the Town Council to approve a Development Agreement under any circumstances. If a request for approval of a Development Agreement is combined with an application for a development permit, the application for the Development Permit shall be reviewed under the applicable policies, standards and criteria of this Code, including the point analysis provisions of this Code if applicable, but the approval or conditional approval of the application for Development Permit shall not require the approval of the accompanying request for a Development Agreement. There is never an entitlement on the part of the Applicant to the approval of a Development Agreement.

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9-9-7: **APPLICATION:** If an application for approval of a Development Agreement is not included as a part of a Development Permit application, a separate application for approval of a Development Agreement shall be submitted to the Director. Within ten (10) days following receipt of an application the Director shall determine if the application is complete. If it is not, it shall be returned by the Director to the Applicant along with an explanation of the deficiencies in the application, and the Applicant shall have ten (10) days within which to correct the deficiencies in the application and resubmit a completed application to the Director. If an

application is determined to be complete, the Director shall proceed to schedule the application as set forth in Section 9-9-10.

9-9-8: FEE: If an application for approval of a Development Agreement is not included as a part of a Development Permit application, an application for approval of a Development Agreement shall be accompanied by a separate, non-refundable fee in an amount equal to the fee for a Class "A" Development Permit application. Such fee is determined by the Town Council to reasonably reimburse the Town for the direct and indirect costs incurred by the Town in processing such an application. No extra fee shall be required if an application for approval of a Development Agreement is included as part of a Development Permit application.

9-9-9: SUBMITTAL REQUIREMENTS: A completed application for approval of a Development Agreement, whether included as part of a Development Permit application or submitted as a separate application, shall include the following information and documentation:

A. Proof of ownership of the land to be included within the Development Agreement, which includes an updated or current title insurance policy or title commitment issued no more than thirty (30) days before submission of the application.

B. A properly acknowledged letter of authorization from the owner of the land to be included within the Development Agreement permitting a designated representative to process the application.

C. A properly acknowledged statement of consent to proceed with the proposed Development Agreement, executed by all owners of fee title to the land to be included within the Development Agreement.

D. A narrative description describing the nature of the application's compliance with the applicable threshold criteria under the Code section authorizing the execution of the Development Agreement.

E. A description of the Commitments proposed by the Applicant as described in Section 9-9-4.

F. A draft agreement in compliance with the Mandatory Development Agreement Provisions set forth in Section 9-9-12.

G. Such other reasonable information as the Director may require.

9-9-10: PROCEDURE: Except as provided in Paragraph E of this Section with respect to a request to approve a Development Agreement under Subparagraph (L) (5) of Policy 39 (Absolute) of Section 9-1-19 of this Code, upon receipt of a completed application for approval of a Development Agreement, the following procedures shall be followed:

A. Within sixty (60) days following receipt of a completed application the Director shall cause the application to be scheduled for preliminary discussion at a Town Council work session held as part of a regular or special Town Council meeting. The work session discussion may be continued if necessary to complete the Council's preliminary discussion of the proposed Development Agreement. The Director shall provide an analysis of the anticipated planning impacts of the proposed Development Agreement, and such other information and analysis as the Town Council shall require. Upon the conclusion of the Town Council's preliminary discussion of the proposed Development Agreement, the Council shall determine whether to (i) terminate further discussions concerning the proposed Development Agreement, in which case all proceedings concerning the proposed Development Agreement shall terminate, or (ii) refer the matter to the Planning Commission for its review and comment as provided in Paragraph B of this Section.

B. If so directed by the Town Council, the Director shall next cause the matter of the proposed Agreement to be scheduled for initial review by the Planning Commission at a Planning Commission work session held at a regular or special Planning Commission meeting. The Planning Commission review may be continued to one or more subsequent work sessions if necessary in order to permit the Commission to complete its review. Review of the application for approval of the Development Agreement shall be commenced within thirty (30) days following the Town Council's referral as described in Paragraph A of this Section, and completed by the Planning Commission within sixty (60) days after the first work session

review. Upon completion of its review, the Planning Commission shall make a recommendation of approval, conditional approval, further study or denial of the application to the Town Council.

C. Within thirty (30) days after receipt of the recommendation of the Planning Commission a non-emergency ordinance approving the proposed Development Agreement shall be introduced and considered by the Town Council in accordance with the procedures set forth in Section 5.10 of the Town Charter. If such Ordinance is rejected by the Town Council at first reading, the procedures for approval of the Development Agreement shall terminate. If the Ordinance is approved on first reading, a public hearing shall be scheduled on the Ordinance as required by Section 5.10(d) of the Town Charter. The adoption of an Ordinance approving a Development Agreement is a legislative matter subject to referendum as provided in Section 24-68-104(2), C.R.S., but is quasi-judicial for the purpose of prohibited ex parte contacts with Town Council members.

D. In addition to the newspaper notice required by Section 5.10(d) of the Town Charter, notice of the required public hearing shall be given in the same manner as is required for a final hearing on a Class A Development Permit application pursuant to Chapter 1 of Title 9 of this Code.

E. Due to its unique nature, an application to authorize the approval of a Development Agreement under Subparagraph (L)(5) of Policy 39 (Absolute) of Section 9-1-19 of this Code shall be processed as follows:

(i) Within thirty (30) days following receipt of a completed application the Director shall cause the matter of the proposed approval of a Development Agreement to be scheduled for preliminary discussion at a Town Council work session held as part of a regular or special Town Council meeting. The work session discussion may be continued if necessary to complete the Council's preliminary discussion of the proposed Development Agreement. The Director shall provide an analysis of the anticipated planning impacts of the proposed Development Agreement, and such other information and analysis as the Town Council shall require. Upon the conclusion of the Town Council's preliminary discussion of the proposed Development Agreement, the Council shall determine whether to (i) terminate further discussions concerning the proposed Development Agreement, in which case all proceedings concerning the proposed Development Agreement shall terminate, or (ii) commence proceedings for the approval the requested Development Agreement. Such Development Agreement may be approved only if the Council specifically finds that all of the conditions set forth in Subparagraph (L)(5) of Policy 39 exist. Upon the approval of such Development Agreement, the Planning Commission shall process the application to amend the Master Plan using the standards contained in the approved Development Agreement.

(ii) A Development Agreement proposed under Subparagraph (L)(5) of Policy 39 shall be approved by a non-emergency Ordinance adopted by the Town Council in accordance with the procedures set forth in Paragraphs C and D of this Section.

(iii) As part of its preliminary discussion concerning a proposed Development Agreement under Subparagraph (L) (5) of Policy 39 the Town Council may, in its discretion, refer the matter to the Planning Commission for its review and comment. If so referred, the proposed Development Agreement shall be reviewed by the Planning Commission within the time period established by the Council at the time of the referral.

9-9-11: RELATIONSHIP TO PENDING DEVELOPMENT PERMIT APPLICATION: If, at the time of the submission of an application for approval of a Development Agreement there is pending before the Planning Commission an application for a Development Permit involving the same real property, the Director shall attempt to coordinate the application for approval of the Development Agreement with the Development Permit application process such that both processes can be concluded at approximately the same time.

9-9-12: MANDATORY DEVELOPMENT AGREEMENT PROVISIONS: The following provisions shall be included within all Development Agreements approved pursuant to this Chapter:

A. Except for a Development Agreement to extend vested property rights pursuant to Section 9-1-17-11 of this Code, and except as provided in Section 24-68-105, C.R.S., the execution of the Development Agreement shall not preclude the current or future application of municipal, state or federal ordinances, laws, rules or regulations to the real property which is the subject of the Development Agreement (collectively, "laws"), including, but not limited to, building, fire, plumbing, engineering, electrical and mechanical codes, and the Town's Development Code, Subdivision Ordinance and other land use laws, as the same may be in effect from time to time throughout the term of the Development Agreement. Any development of the real property which is the subject of the Development Agreement shall be done in compliance with the then-current laws of the Town.

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

C. The Development Agreement shall run with the title to the land and be binding upon the owners, heirs, successors and assigns.

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

E. The Town shall not be responsible for and the Applicant shall have no remedy against the Town if development of the real property which is the subject of the Development Agreement is prevented or delayed for reasons beyond the control of the Town.

F. Actual development of the real property which is the subject of the Development Agreement shall require the issuance of such other and further permits and approvals by the Town as may be required from time to time by applicable Town ordinances.

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

I. The Applicant shall agree to indemnify and hold the Town, its officers, employees, insurers, and self-insurance pool, harmless from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with the Development Agreement, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the negligence or intentional act or omission of Applicant, any subcontractor of the Applicant, or any officer, employee, representative, or agent of the Applicant or of any subcontractor of the Applicant, or which arise out of any worker's compensation claim of any employee of the Applicant, or of any employee of any subcontractor of the Applicant; except to the extent such liability, claim or demand arises through the negligence or intentional act or omission of Town, its officers, employees, or agents. Applicant agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims, or demands at the sole expense of the Applicant. Applicant also agrees to bear all other costs and expenses related thereto, including court costs and attorney's fees.

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

9-9-13: NOTICE OF APPROVAL: Any Development Agreement approved pursuant to this Chapter shall contain the following language: "This Development Agreement constitutes a vested property right pursuant to Article 68 of Title 24, Colorado Revised Statutes, as amended." In addition, within fourteen (14) days following final adoption of the Ordinance approving a Development Agreement, the Town Clerk shall cause to be published one time in a newspaper of general circulation within the Town the following notice:

NOTICE

Notice is hereby given that on (date) the Breckenridge Town Council approved a Development Agreement for the property and purpose described below and

created a vested property right pursuant to Colorado law. Such approval is subject to all rights of referendum and judicial review as provided by law.

Legal Description:

Project Name and General Description:

Purpose of Agreement:

Published in (name of legal newspaper) on: (date)

The Applicant shall reimburse the Town for the cost of the publication of said Notice.

9-9-14: RECORDING OF DEVELOPMENT AGREEMENT: Within thirty (30) days of final adoption of the approving and authorizing Ordinance, the Applicant shall submit a copy of the approved Development Agreement to the Director for execution by the Town and subsequent recording, together with the required recordation fees, or the approval of the Development Agreement shall be void and of no further effect. The Development Agreement shall become effective upon recordation.

Section 9. Except as specifically amended hereby, the Breckenridge Town Code, and the various secondary codes adopted by reference therein, shall continue in full force and effect.

Section 10. 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.

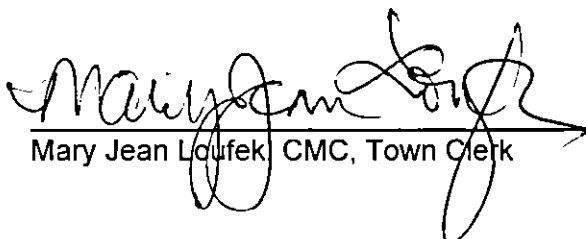
Section 11. The Town Council hereby finds, determines and declares that it has the power to adopt this Ordinance pursuant to the authority granted to home rule municipalities by Article XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.

Section 12. 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 23rd day of February, 1999. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the 9th day of March, 1999, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

ATTEST:

TOWN OF BRECKENRIDGE

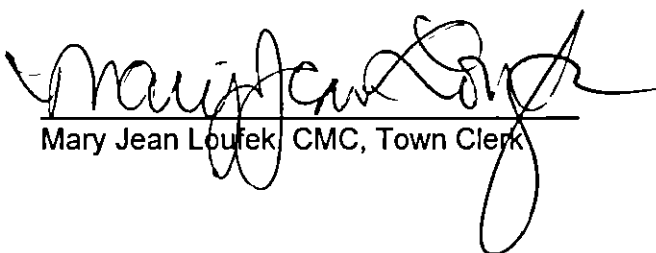

Mary Jean Loufek, CMC, Town Clerk

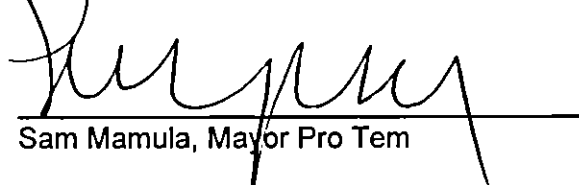

Sam Mamula, Mayor Pro Tem

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED BY TITLE WITH AMENDMENTS, this 9TH day of March, 1999.

ATTEST:

TOWN OF BRECKENRIDGE


Mary Jean Loufek, CMC, Town Clerk


Sam Mamula, Mayor Pro Tem

APPROVED IN FORM

 3/9/99
Town Attorney Date

This Ordinance was published by title with amendments in the Summit County Journal, a newspaper of general circulation within the Town of Breckenridge, on March 19, 1999.