

ORDINANCE NO. 4

Series 1999

AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH EAST WEST PARTNERS, INC.  
(Lots 8, 9A-2, 9-B, 10A and 10B, The Village at Breckenridge Subdivision Filing No. 1)

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

Section 1. Findings. The Town Council of the Town of Breckenridge finds and determines as follows:

A. The Town and East West Partners, Inc., a Colorado corporation ("Developer") are the parties to an Amended Memorandum of Understanding dated as of December 8, 1998 concerning an amended or new land use plan for the phased development of the properties within The Village at Breckenridge Subdivision as described in the Memorandum of Understanding ("Properties").

B. Developer or an affiliated entity has the Properties under contract to purchase and has the right to propose an amended or new land use plan for the phased development of the Properties and to enter into agreements with the Town concerning such a plan.

C. Paragraph L of Policy 39 (Absolute) of Section 9-1-19 of the Breckenridge Town Code authorizes the Town Council to enter into a development agreement authorizing 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 ("Guidelines").

D. The Properties are subject to a Master Plan Agreement dated March 1, 1983; as amended by Amendment dated March 20, 1984, and Second Amendment dated April 10, 1986 ("Master Plan").

E. Pursuant to L of Policy 39 (Absolute) of Section 9-1-19 of the Breckenridge Town Code the Town Council finds:

1. The Master Plan was first adopted prior to October 7, 1994;
2. The Master Plan contains provisions which are materially inconsistent with the current Guidelines for the Land Use Districts within which the Properties are located;
3. A legal and factual basis exists for the assertion by the Developer that it has vested property rights under the Master Plan because a majority of the property originally covered by the Master Plan has been developed; and
4. There are significant public benefits which will result from the approval of an amendment to the Master Plan without requiring compliance with the current Guidelines because the Developer will be reducing the density from that allowed to be built on the Properties under the Master Plan, will be dedicating property for addition to a right-of-way needed by the Town and will be dedicating open space identified by the Breckenridge Open Space Advisory Commission as desirable for acquisition by the Town.

F. A public hearing to consider the adoption of this Ordinance and the approval of the proposed Development Agreement with the Developer was held on April 13, 1999 as required by Section 9-9-10 (C) of the Breckenridge Town Code. Notice of such public hearing was given as required by Section 9-9-10 (D) of the Breckenridge Town Code.

G. The procedures for the approval of a Development Agreement set forth in Chapter 9 of Title 9 of the Breckenridge Town Code have been satisfied.

Section 2. Approval of Development Agreement. The Development Agreement between the Town and East West Partners, Inc., a Colorado corporation, a copy of which is marked Exhibit "A", attached hereto and incorporated herein by reference, is approved, and the Town Manger is hereby authorized, empowered and directed to execute such Agreement for and on behalf of the Town of Breckenridge.

Section 3. Notice To Be Given. Within fourteen (14) days following the adoption of the Ordinance the Director of Community Development shall cause to be published one time in a newspaper of general circulation in the Town the notice required of Section 9-9-13 of the Breckenridge Town Code.

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.

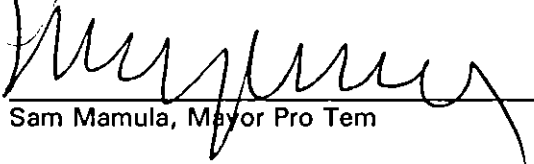
Section 6. This Ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Charter.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this 23<sup>rd</sup> day of March, 1999. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the 13<sup>th</sup> day of April, 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

This Ordinance was published in full in the the Summit County Journal, a newspaper of general circulation in the Town of Breckenridge, on April 2, 1999.

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED BY TITLE ONLY, this 13<sup>th</sup> day of April, 1999.

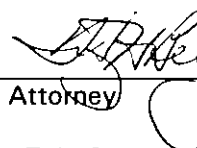
ATTEST:

TOWN OF BRECKENRIDGE

  
Mary Jean Loufek, CMC, Town Clerk

  
Sam Mamula, Mayor Pro Tem

APPROVED IN FORM

  
Town Attorney

4/13/99  
Date

This Ordinance was published by title in the the Summit County Journal, a newspaper of general circulation in the Town of Breckenridge, on April 23, 1999.

EXHIBIT "A"  
TO ORDINANCE NO. 4, SERIES 1999  
DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 1999 by and between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation ("Town") and EAST WEST PARTNERS, INC., a Colorado corporation ("Developer").

RECITALS

A. Developer and Town are the parties to an Amended Memorandum of Understanding dated as of December 8, 1998 concerning an amended or new land use plan for the phased development of the properties within The Village at Breckenridge Subdivision described in Exhibit A hereto ("Properties").

B. Developer or an affiliated entity has the Properties under contract to purchase and has the right to propose an amended or new land use plan for the phased development of the Properties and to enter into agreements with the Town concerning such a plan.

C. Town has adopted Council Bill No. 5, Series 1999, An Ordinance Amending Title IX of the Breckenridge Town Code Concerning Development Agreements ("Council Bill No. 5") and, pursuant to Section 4 thereof amending Paragraph L of Policy 39 (Absolute) of Section 9-1-19 of the Breckenridge Town Code entitled "Master Plans" and that portion of Section 6 thereof adding to the Breckenridge Town Code a new Section 9-9-10, the Town Council has the authority to enter into a development agreement authorizing 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 ("Guidelines").

D. The Properties are subject to a Master Plan Agreement dated March 1, 1983, as amended by Amendment dated March 20, 1984, and Second Amendment dated April 10, 1986 ("Master Plan").

E. The Town Council has found that:

(i) the Master Plan was first adopted prior to October 17, 1994;

(ii) the Master Plan contains provisions which are materially inconsistent with the current Guidelines for the Land Use Districts within which the Properties are located;

(iii) a legal and factual basis exists for the assertion by the Developer that it has vested property rights under the Master Plan because a majority of the property originally covered by the Master Plan has been developed; and

(iv) there are significant public benefits which will result from the approval of an amendment to the Master Plan without requiring compliance with the current Guidelines because the Developer will be reducing the density from that allowed to be built on the Properties under the Master Plan, will be lowering building heights from those allowed under the Master Plan, will be providing parking in excess of that required under the Master Plan and will be dedicating open space identified by the Breckenridge Open Space Advisory Commission as desirable for acquisition by the Town.

F. The Town Council has received a completed application and all required submittals, had a preliminary discussion of the application and this Agreement, determined that it should commence proceedings for the approval of this Agreement, referred the application and this Agreement to the Breckenridge Planning Commission and received recommendations from the Planning Commission and in accordance with Council Bill No. 5 has approved this Agreement by non-emergency Ordinance in accordance with the procedures set forth in said Council Bill No. 5.

G. Further, in connection with the preliminary review of the land use plan for the phased development of a mixed use development containing not less than one hundred thousand (100,000) square feet, the Breckenridge Planning Commission has reviewed the written analysis of proposed parking requirements prepared by Felsburg, Holt & Ullevig, a qualified parking consultant, dated February 3, 1999 and has made a recommendation of approval of proposed parking requirements.

#### AGREEMENT

1. The Town's Planning Commission is hereby authorized to review and approve (subject to compliance with all other applicable development policies of the Town) an amendment to the Master Plan, which is not in compliance with the current Land Use District Guidelines for the Land Use Districts within which the Properties are located in the following respects:

(a) Density not to exceed that allowed as set forth on Exhibit B hereto, which includes a total of 238 SFES on the

Properties, representing a reduction from the 321 single family equivalents allowed under the Master Plan and an increase from the 224.4 single family equivalents provided for in the Guidelines, and which includes a total of 14 SFEs for use off-site on a property requiring density for annexation in connection with the construction of employee housing units; and

(b) Heights of the buildings consistent with Exhibits C-1 and C-2 hereto and not to exceed the elevations set forth on Exhibit C-3 hereto, which elevations are lower than those allowed under the Master Plan and higher than the recommended heights under the Guidelines.

2. The requirements of Section 9-3-8 of the Breckenridge Town Code shall be decreased for the mixed use development in excess of 100,000 square feet proposed for the Properties, and replaced with the requirements set forth in Exhibit D hereto, and the Planning Commission is hereby authorized to review and approve an amendment to the Master Plan providing for parking in accordance with the requirements set forth in Exhibit D, which are greater than the parking required under the Master Plan and less than required by the Breckenridge Town Code.

3. Developer and Town agree that as a part of the amended Master Plan the existing provisions of the Master Plan concerning employee housing will be eliminated and the current provisions of the Town's Development Code with respect to employee housing will apply to development pursuant to the amended Master Plan.

4. Developer agrees to include in the amended Master Plan an agreement to dedicate as public open space a portion of the forested area at the intersection of Main Street and old Broken Lance Drive, which area is identified on Exhibit C-2 with the designation "existing trees and vegetation to be preserved", with any assignment of points under the Breckenridge Development Code for such dedication to be made at the time of dedication.

5. Except as provided in Section 24-68-105, C.R.S., the execution of this Agreement shall not preclude the current or future application of municipal, state or federal ordinances, laws, rules or regulations to the Properties (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 this Agreement. Any development of the Properties which is the

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

6. Nothing in this 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.

7. This Agreement shall run with the title to the Properties and be binding upon the owners, heirs, successors and assigns, including specifically, but not limited to, such entity or entities affiliated with Development as actually take title to the Properties.

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

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

10. Actual development of the properties 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.

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

12. The Developer agrees 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 this 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 Developer; any subcontractor of Developer, or any officer, employee, representative, or agent of Developer or of any subcontractor of Developer, or which arise out of any worker's compensation claim of

any employee of Developer, or of any employee of any subcontractor of Developer; 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. Developer 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 Developer. Developer also agrees to bear all other costs and expenses related thereto, including court costs and attorney's fees.

13. If any provision of this 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.

14. This Development Agreement constitutes a vested property right pursuant to Article 68 of Title 24, Colorado Revised Statutes, as amended, provided, however, that because the terms of this Agreement are preliminary in nature and provide authorization for an amended Master Plan consistent with the terms hereof and do not constitute a site specific development plan, the vested property right hereby created shall remain vested for a period of one(1) year.

15. No waiver of any provision of this Agreement shall be deemed or constitute a waiver of any other provision, nor shall it be deemed to constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both Town and Developer; nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The Town's failure to exercise any right under this Agreement shall not constitute the approval of any wrongful act by the Developer or the acceptance of any improvements.

16. This Agreement shall be recorded in the office of the Clerk and Recorder of Summit County, Colorado.

17. Nothing contained in this Agreement shall constitute a waiver of the Town's sovereign immunity under any applicable state or federal law.

18. Personal jurisdiction and venue for any civil action commenced by either party to this Agreement shall be deemed to be proper only if such action is commenced in District Court of Summit County, Colorado. The Developer expressly waives its right to bring such action in or to remove such action to any other court, whether state or federal.

19. 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, addressed as follows:

If To The Town: Mr. Gary Martinez, Town Manager  
Town of Breckenridge  
P.O. Box 168  
Breckenridge, CO 80424

With A Copy (which shall not constitute notice to the Town) to: Timothy H. Berry, Esq.  
Town Attorney  
P.O. Box 2  
Leadville, CO 80461

If To The Developer: Mr. Jack Wolfe  
East West Partners, Inc.  
P.O. Box 7700  
Breckenridge, CO 80424

With A Copy (which shall not constitute notice) to: Stephen C. West, Esq.  
French, West, Brown & Huntley, P.C.  
P.O. Box 588  
Breckenridge, CO 80424

Notices mailed in accordance with the provisions of this paragraph shall be deemed to have been given upon delivery. 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.

20. This Agreement constitutes the entire Agreement and understanding between the parties relating to the subject matter of this Agreement and supersedes any prior Agreement or understanding, relating to such subject matter.

21. This Agreement shall be interpreted in accordance with the laws of the State of Colorado.



IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above set forth.

EAST WEST PARTNERS, INC.

TOWN OF BRECKENRIDGE

By: \_\_\_\_\_  
Jack Wolfe, Vice President

By: \_\_\_\_\_  
Gary Martinez, Town Manager

ATTEST:

\_\_\_\_\_  
Mary Jean Loufek, CMC,  
Town Clerk

STATE OF COLORADO )  
                          ) ss: -  
COUNTY OF SUMMIT )

Thee foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 1999 by Gary Martinez as Town Manager and Mary Jean Loufek as Town Clerk of the Town of Breckenridge.

Witness my hand and official seal.  
My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

STATE OF COLORADO )  
                          ) ss:  
COUNTY OF SUMMIT )

Thee foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 1999 by Jack Wolfe as Vice President of East West Partners, Inc.

Witness my hand and official seal.  
My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

EXHIBIT A  
TO  
DEVELOPMENT AGREEMENT

LOTS 8, 9-B, 10A AND 10B, THE VILLAGE AT BRECKENRIDGE  
SUBDIVISION FILING NO. 1, AS SHOWN ON THE PLAT THEREOF  
FILED JUNE 9, 1983 UNDER RECEPTION NO. 257700, COUNTY OF  
SUMMIT, STATE OF COLORADO.

LOT 9A-2, A RESUBDIVISION OF LOT 9-A, THE VILLAGE AT  
BRECKENRIDGE SUBDIVISION, FILING NO. 1, ACCORDING TO THE  
PLAT THEREOF FILED JUNE 30, 1992 UNDER RECEPTION NO.  
424103, COUNTY OF SUMMIT, STATE OF COLORADO.

## MAIN STREET STATION

***EXHIBIT B: ALLOWED DENSITY***

|                                       | <i>TOTAL</i> |
|---------------------------------------|--------------|
| <i>RESIDENTIAL</i>                    | 194          |
| <i>COMMERCIAL</i>                     | 40           |
| <i>SUB-TOTAL</i>                      | 234          |
| <i>FUTURE RENOVATION</i>              | 4            |
| <i>TOTAL PROJECT SFES</i>             | 238          |
| <i>OFF-SITE EMPLOYEE HOUSING SFES</i> | 14           |

MAIN STREET STATION

***HEIGHT CONCEPT NARRATIVE: EXHIBIT C-1***

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The building heights on Exhibits C-2 and C-3 will designate the range of heights up to the maximum limitation for each building in the Main Street Station Master Plan, subject to the review of the Planning Commission to allow flexibility at the time of Development Permit Review.

Building heights for Main Street Station have been determined in response to four considerations: 1) the slope of the site (south to north and east to west), 2) the surrounding tall buildings, 3) sun considerations for the gathering places, and 4) the desire to complement the street level character of Main Street.

Building heights are intended to respond to the slope of the site. The Master Plan proposed maintains the elevation of Main Street and taking up the grade of the site with a one level step in buildings from east to west in the center of the site.

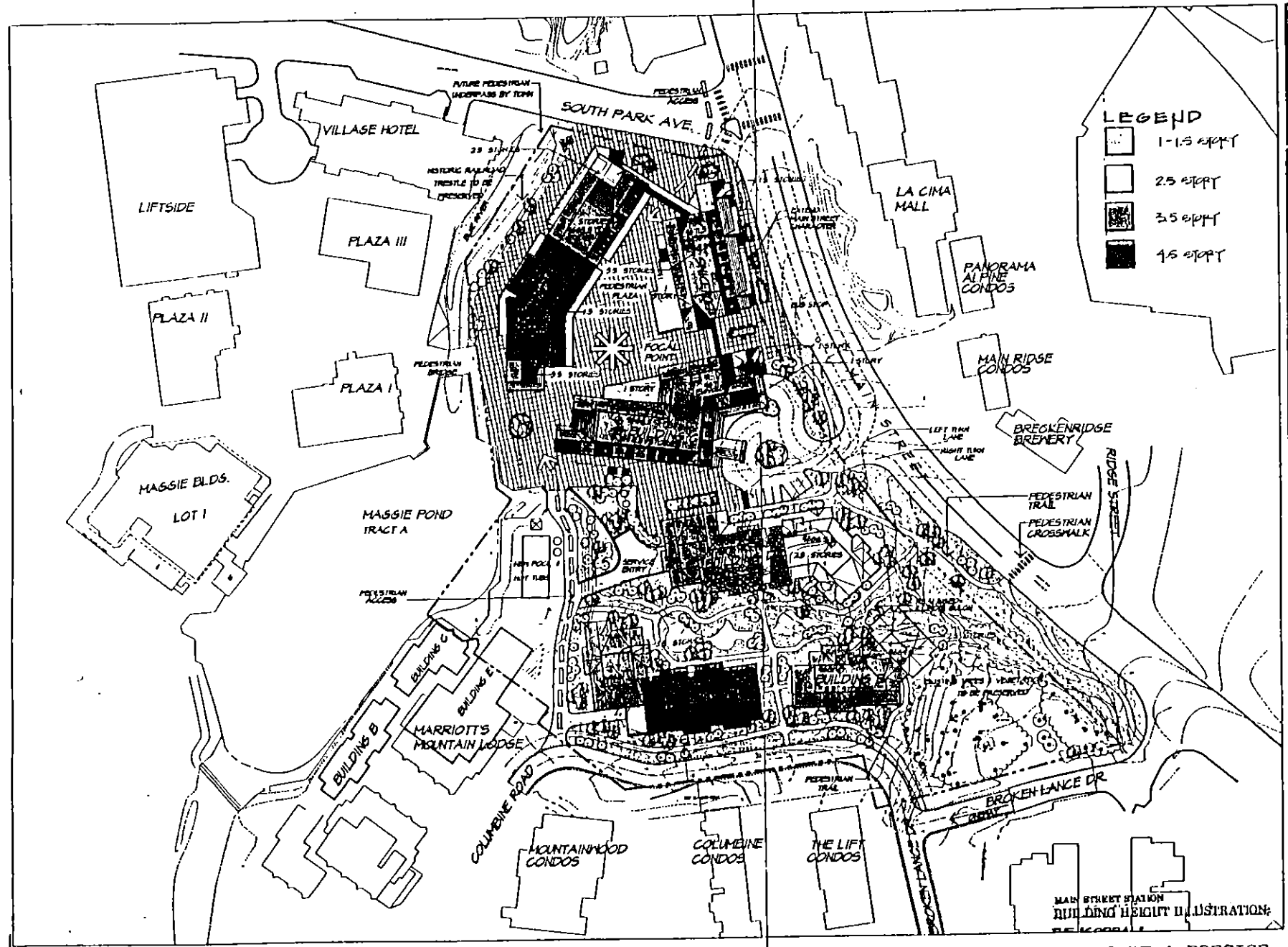
The heights of Main St. Station are also intended to screen the surrounding tall buildings. Building heights along Main Street and Park Avenue consist of lower (1 to 2-1/2 stories) before stepping up. It is intended that heights "ramp up" towards the existing eight story Plaza 1 Building.

Sun studies have been taken into consideration in determining heights with the goal of maintaining solar exposure in public plazas and streets.

A goal of Main Street Station is to complement the character of Main Street. Present day Main Street has constricted streetscape and primarily two story elements. Buildings should present a Main Street character to Public rights-of-ways (at the pedestrian level), with additional height to step back to the west and south.

Roofs may consist of steeped pitched roofs within which residential uses are located.

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**OZ**  
ARCHITECTURE  
2224 PEARL STREET  
BOULDER, CO 80502  
303 449-8908

**TERRASAN**  
CONSULTANTS  
1000 W. 10TH AVE. SUITE 100  
BOULDER, CO 80502  
303 440-1234

**Main Street Station**  
Amendment to  
The Village of Breckenridge  
Master Plan

PROJ. NO. 10453  
DESIGNED: [ ]  
DRAWN: [ ]  
CHECKED: [ ]  
DATE: 3/19/99  
REVISIONS:

OZ ARCHITECTURE 1999  
**MASTER PLAN**  
SHEET NO. [ ]  
REDEVELOPMENT PLAN  
SCALE: 1"=40'-0"  
BEST READER  
**L-1**

- 1) BUILDING LOCATIONS ON THIS EXHIBIT ARE FOR ILLUSTRATIVE PURPOSES ONLY AND ARE NOT INTENDED TO BE A PRECISE REPRESENTATION OF BUILDING LOCATIONS.
- 2) A REDUCTION IN THE HEIGHT OF BUILDINGS OR PORTIONS OF BUILDINGS MAY RESULT IN AN INCREASE IN HEIGHT LIMITATIONS OF OTHER BUILDINGS SUBJECT TO TOWN APPROVAL, IN A MASTER PLAN OR DEVELOPMENT PERMIT REVIEW.

MAIN STREET STATION

***EXHIBIT C-3: BUILDING HEIGHT LIMITATIONS***

| <b><i>BUILDING</i></b>                   | <b><i>USGS</i></b> |
|--|--------------------|
| <i>A</i><br><i>(up to 4 1/2 stories)</i> | 9682'              |
| <i>B</i><br><i>(up to 3 1/2 stories)</i> | 9671'              |
| <i>C</i><br><i>(up to 3 1/2 stories)</i> | 9671'              |
| <i>D</i><br><i>(up to 3 1/2 stories)</i> | 9683'              |
| <i>E</i><br><i>(up to 3 1/2 stories)</i> | 9683'              |
| <i>F</i><br><i>(up to 4 1/2 stories)</i> | 9695'              |

- 1) LIMITATIONS DO NOT INCLUDE ELEVATOR TOWERS OR MECHANICAL EQUIPMENT.
- 2) ALL OTHER AUXILIARY BUILDINGS NOT TO EXCEED 24' ABOVE GRADE.
- 3) BUILDING LOCATIONS ON EXHIBIT C-2 ARE FOR ILLUSTRATIVE PURPOSES ONLY AND ARE NOT INTENDED TO BE A PRECISE REPRESENTATION OF BUILDING LOCATIONS.
- 4) A REDUCTION IN THE HEIGHT OF BUILDINGS OR PORTIONS OF BUILDINGS MAY RESULT IN AN INCREASE IN HEIGHT LIMITATIONS OF OTHER BUILDINGS OR PORTIONS OF BUILDINGS SUBJECT TO TOWN APPROVAL IN THE CONTEXT OF A MASTER PLAN OR DEVELOPMENT PERMIT REVIEW.