TOWN OF
BRECKENRIDGE

Town Council Regular Meeting
Tuesday, May 28, 2019, 7:00 PM
Council Chambers
150 Ski Hill Road
Breckenridge, Colorado

I. CALL TO ORDER, ROLL CALL

II. APPROVAL OF MINUTES

A. TOWN COUNCIL MINUTES - MAY 14, 2019

III. APPROVAL OF AGENDA

IV. COMMUNICATIONS TO COUNCIL

A. CITIZEN'S COMMENT (NON-AGENDA ITEMS ONLY; 3-MINUTE TIME LIMIT PLEASE)

B. BRECKENRIDGE SKI RESORT UPDATE

V. CONTINUED BUSINESS

A. SECOND READING OF COUNCIL BILLS, SERIES 2019 - PUBLIC HEARINGS

1. *COUNCIL BILL NO. 10, SERIES 2019 - AN ORDINANCE ANNEXING CERTAIN REAL PROPERTY TO THE TOWN OF BRECKENRIDGE (KENINGTON TOWNHOMES)*
2. *COUNCIL BILL NO. 11, SERIES 2019 - AN ORDINANCE APPROVING A LONG-TERM LEASE WITH VAIL SUMMIT RESORTS, INC., A COLORADO CORPORATION (South Gondola Lot Parking Structure)*

VI. NEW BUSINESS

A. FIRST READING OF COUNCIL BILLS, SERIES 2019

1. *COUNCIL BILL NO. 12, SERIES 2019 - AN ORDINANCE APPROVING A FRANCHISE AGREEMENT BETWEEN THE TOWN OF BRECKENRIDGE AND ALLO COMMUNICATIONS, LLC, A NEBRASKA LIMITED LIABILITY COMPANY*
2. *COUNCIL BILL NO. 13, SERIES 2019 - AN ORDINANCE APPROVING AN AMENDED AND RESTATED DEVELOPMENT AGREEMENT WITH LH MOUNTAIN VENTURES, LLC, A COLORADO LIMITED LIABILITY COMPANY*

B. RESOLUTIONS, SERIES 2019

1. *RESOLUTION NO. 14, SERIES 2019 - A RESOLUTION MAKING SUPPLEMENTAL APPROPRIATIONS TO THE 2019 TOWN BUDGET*
2. *RESOLUTION NO. 15, SERIES 2019 - A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH SUMMIT SCHOOL DISTRICT RE-1 (McCain Property)*

C. OTHER

VII. PLANNING MATTERS

A. PLANNING COMMISSION DECISIONS

VIII. REPORT OF TOWN MANAGER AND STAFF

IX. REPORT OF MAYOR AND COUNCIL MEMBERS

A. CAST/MMC (MAYOR MAMULA)

B. BRECKENRIDGE OPEN SPACE ADVISORY COMMITTEE (MR. BERGERON)

C. BRECKENRIDGE TOURISM OFFICE (MS. WOLFE)

D. BRECKENRIDGE HERITAGE ALLIANCE (MS. OWENS)

E. BRECKENRIDGE CREATIVE ARTS (MR. GALLAGHER)

F. BRECKENRIDGE EVENTS COMMITTEE (MS. GIGLIELLO)

G. WATER TASK FORCE (MR. GALLAGHER)

X. OTHER MATTERS

XI. SCHEDULED MEETINGS

A. SCHEDULED MEETINGS FOR MAY, JUNE & JULY

XII. ADJOURNMENT

I) CALL TO ORDER, ROLL CALL

Mayor Mamula called the meeting of May 14, 2019 to order at 7:00pm. The following members answered roll call: Ms. Owens, Mr. Gallagher, Mr. Carleton, Ms. Wolfe, Ms. Gigliello and Mayor Mamula. Mr. Bergeron was absent.

II) APPROVAL OF MINUTES

A) TOWN COUNCIL MINUTES - APRIL 23, 2019

With no changes or corrections to the meeting minutes of April 23, 2019, Mayor Mamula declared they would stand approved as submitted.

III) APPROVAL OF AGENDA

Mr. Holman stated there were no changes to the agenda. Mayor Mamula declared the agenda approved as presented.

IV) COMMUNICATIONS TO COUNCIL

A) CITIZEN'S COMMENT (NON-AGENDA ITEMS ONLY; 3-MINUTE TIME LIMIT PLEASE)

Mayor Mamula opened Citizen's Comment.

Ms. Gillane Saviano, a Breckenridge resident, stated she is here on behalf of the dog park and is concerned there is no alternative place to exercise dogs while the dog park is closed. She recommended using the small dog park section temporarily while the other section is being fixed. Ms. Saviano also suggested enhanced signage at the park. Mr. Holman stated the Town is forming a committee to help with these issues and recommended she meet with staff to see if she can be involved.

Mr. Rob Prescott, a Breckenridge store owner and part of the Merchants Association, thanked the Council for approving June for sidewalk sales for the merchants. He then requested a second town banner over Main Street, or asked to split the space because it's not available for the summer. He also asked for a more “fair” process to reserve the banner.

There were no additional comments and Citizen's Comment was closed.

B) BRECKENRIDGE TOURISM OFFICE UPDATE

Ms. Lucy Kay, Director of the BTO, stated they are working specifically on the Destination Management Plan Sustainability Goal, and sustainability messaging for guests. Ms. Kay also stated the Weather Summit will take place on June 19th, and the BTO will be hosting international FAMs this summer. Ms. Kay stated the BTO annual meeting is June 12, and she expects a solid summer for tourism, despite a slowdown in growth. Ms. Kay added that travel growth seems to be slowing in many places right now.

V) CONTINUED BUSINESS

A) SECOND READING OF COUNCIL BILLS, SERIES 2019 - PUBLIC HEARINGS

1) COUNCIL BILL NO. 9, SERIES 2019 - AN ORDINANCE AUTHORIZING THE EXCHANGE OF TOWN-OWNED REAL PROPERTY (Summit School District Land Exchange)

Mayor Mamula read the title into the minutes. Mr. Berry stated there were no changes to this ordinance from the first reading, except for the legal description of the McCain Parcel and the reception number that will be needed after it is recorded.

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

Mr. Carleton moved to approve COUNCIL BILL NO. 9, SERIES 2019 - AN ORDINANCE AUTHORIZING THE EXCHANGE OF TOWN-OWNED REAL PROPERTY (Summit School District Land Exchange). Ms. Gigliello seconded the motion.

The motion passed 6-0. Mr. Bergeron was absent.

VI) NEW BUSINESS

A) FIRST READING OF COUNCIL BILLS, SERIES 2019

1) COUNCIL BILL NO. 10, SERIES 2019 - AN ORDINANCE ANNEXING CERTAIN REAL PROPERTY TO THE TOWN OF BRECKENRIDGE (KENINGTON TOWNHOMES)

Mayor Mamula read the title into the minutes. Mr. Berry stated this ordinance would annex the Kenington Townhomes. He further stated the property is eligible for annexation and it will take effect 35 days after the second reading, other than property taxes which will be effective on January 1.

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

Ms. Gigliello moved to approve COUNCIL BILL NO. 10, SERIES 2019 - AN ORDINANCE ANNEXING CERTAIN REAL PROPERTY TO THE TOWN OF BRECKENRIDGE (KENINGTON TOWNHOMES). Mr. Gallagher seconded the motion.

The motion passed 6-0. Mr. Bergeron was absent.

2) COUNCIL BILL NO. 11, SERIES 2019 - AN ORDINANCE APPROVING A LONG-TERM LEASE WITH VAIL SUMMIT RESORTS, INC., A COLORADO CORPORATION (South Gondola Lot Parking Structure)

Mayor Mamula read the title into the minutes. Mr. Holman stated this ordinance would allow the Town to enter into a long-term lease with VSRI for the purpose of constructing a parking garage on the South Gondola Lot. He further stated the agreement has many specifics and we are confident with its current state.

Mayor Mamula opened the public hearing. There were no comments and the public hearing was closed. Mayor Mamula then thanked staff for their hard work on this.

Mr. Gallagher moved to approve COUNCIL BILL NO. 11, SERIES 2019 - AN ORDINANCE APPROVING A LONG-TERM LEASE WITH VAIL SUMMIT RESORTS, INC., A COLORADO CORPORATION (South Gondola Lot Parking Structure). Ms. Wolfe seconded the motion.

The motion passed 6-0. Mr. Bergeron was absent.

B) RESOLUTIONS, SERIES 2019

1) RESOLUTION NO. 13, SERIES 2019 - A RESOLUTION ADOPTING THE BRECKENRIDGE DESTINATION MANAGEMENT PLAN FOR THE TOWN OF BRECKENRIDGE

Mayor Mamula read the title into the minutes. Mr. Holman stated this resolution would approve a community destination management plan with four primary goals, and we are asking that Council formally adopt it through resolution.

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

Ms. Wolfe moved to approve RESOLUTION NO. 13, SERIES 2019 - A RESOLUTION ADOPTING THE BRECKENRIDGE DESTINATION MANAGEMENT PLAN FOR THE TOWN OF BRECKENRIDGE. Mr. Gallagher seconded the motion.

The motion passed 6-0. Mr. Bergeron was absent.

C) OTHER

1) NATIONAL PUBLIC WORKS WEEK PROCLAMATION

Mayor Mamula read into record a National Public Works Week Proclamation. Mr. James Phelps, Director of Public Works, thanked Council for the support over many

years and invited Council to an appreciation lunch at Public Works. Council thanked staff for their hard work for the Town in the area of Public Works.

VII) PLANNING MATTERS

A) PLANNING COMMISSION DECISIONS

Mayor Mamula declared the Planning Commission Decisions would stand approved as presented.

VIII) REPORT OF TOWN MANAGER AND STAFF

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

IX) REPORT OF MAYOR AND COUNCIL MEMBERS

A. Cast/MMC
Mayor Mamula stated the group discussed the fieldhouse report, and none of the municipalities are interested in going any farther. He also stated the best location for a fieldhouse was determined to be on the Frisco Peninsula, and it would be a full recreation center that would be funded by all municipalities. Mayor Mamula stated the other towns did not want to pay for it, but perhaps a private company will want to take it on. Mr. Holman stated staff is putting together suggestions for other turf fields in Breckenridge for the future and Dillon is moving forward with fireworks but needs permits from several entities and a plan for traffic control, among other things.

B. Breckenridge Open Space Advisory Committee
Mr. Bergeron stated the Open House will take place next week.

C. Breckenridge Tourism Office
Ms. Wolfe stated there was no update.

D. Breckenridge Heritage Alliance
Ms. Owens stated there was no update.

E. Breckenridge Creative Arts
Mr. Gallagher stated there have been two meetings with the resident arts organizations after the last presentation. He stated each meeting was represented by an executive director and a board member, to form a kind of steering committee, and they plan to have task force come up with vision, mission and goals for arts in the Town and bring that back to the Council. He further stated the organizations must agree on respective roles and how to address shared services, which may result in some structural changes. Mr. Holman added that the AMS report set the stage for this, and there will be an interim director before hiring a new one when Robb Woulfe leaves in July. Mr. Gallagher also stated the BCA was asked to come back with three scenarios supported by the board that would detail how to move forward with the Arts District and visual arts, in particular. Also, BCA will be hosting a social gathering in June for all of the local arts organizations.

F. Breckenridge Events Committee
Ms. Owens stated upcoming events discussed at the last meeting included the roller ski races and Fourth of July events.

G. Water Task Force
Mr. Gallagher stated there was no report.

X) OTHER MATTERS

Ms. Gigliello stated someone commented about asbestos standards in older homes, and staff clarified if it's not disturbed, mitigation doesn't need to happen.

Mayor Mamula stated regarding development agreements this latest project addresses positive points, which allows the developers to get the project to pass, and suggested the Town do a code revision that won't allow that to happen in the future. Mr. Carleton stated maybe “net new” deed restricted units might be able to get more points than converting current units.

Mayor Mamula stated he had dinner and lunch with the Troll artist and it went well.

XI) SCHEDULED MEETINGS

A) SCHEDULED MEETINGS FOR MAY AND JUNE

XII) ADJOURNMENT

With no further business to discuss, the meeting adjourned at 7:59pm. Submitted by Helen Cospolich, CMC, Town Clerk.

ATTEST:

_____ _____

Helen Cospolich, CMC, Town Clerk Eric S. Mamula, Mayor

Memo

To: Breckenridge Town Council Members

From: Town Attorney

Date: 5/21/2019

Subject: Council Bill No. 10 (Kenington Annexation Ordinance)

The second reading of the Kenington Annexation Ordinance is scheduled for your meeting on May 24th. There are no changes proposed to ordinance from first reading.

I will be happy to discuss this matter with you on Tuesday.

FOR WORKSESSION/SECOND READING – MAY 28

NO CHANGE FROM FIRST READING

COUNCIL BILL NO. 10

Series 2019

AN ORDINANCE ANNEXING CERTAIN REAL PROPERTY TO
THE TOWN OF BRECKENRIDGE
(Kenington Townhomes – 2.80 acres, more or less)

WHEREAS, the Town Council of the Town of Breckenridge has found a Petition For Annexation of the hereinafter described parcel of land to be in substantial compliance with the requirements of Section 31-12-107(1), C.R.S.; and

WHEREAS, after notice as required by Section 31-12-108, C.R.S., the Town Council held a public hearing on the proposed annexation on April 23, 2019; and

WHEREAS, the Town Council has by resolution determined that the requirements of Sections 31-12-104 and 105, C.R.S., have been met; that an election is not required; and that no additional terms or conditions are to be imposed on the annexed area.

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

Section 1. The following described parcel of land, to wit:

Kenington Place Townhomes, including all buildings and units thereof, and all common areas, according to the plats thereof recorded in the real property records of the Clerk and Recorder of Summit County, Colorado.

The parcel is more particularly described as follows:

A tract of land being all of Kenington Place Townhomes (previously Lot 67, Huron Heights), located in summit County Colorado, and being more particularly described as follows:

Beginning at the Southeast corner of said Kenington Place Townhomes (Lot 67, Huron Heights); thence along the following 5 courses:

1.) N54˚12'03"W a distance of 579.76 feet;
2.) N10˚00'29"W a distance of 147.77 feet;
3.) N57˚15'00"E a distance of 150.00 feet;
4.) S44˚09'25"E a distance of 640.54 feet;

5.) S35˚44'24"W a distance of 130.91 feet;
6.)
To the Point of Beginning, containing 2.80 acres, more or less

is hereby annexed to and made a part of the Town of Breckenridge, Colorado.

Section 2. The annexation of the abovedescribed property shall be complete and effective on the effective date of this ordinance, except for the purpose of general property taxes, and shall be effective as to general property taxes on and after January 1, 2020.

Section 3. Within thirty (30) days after the effective date of this ordinance, the Town Clerk is authorized and directed to:

A. File one copy of the annexation map with the original of the annexation ordinance in the office of the Town Clerk of the Town of Breckenridge, Colorado; and

B. File for recording three certified copies of the annexation ordinance and map of the area annexed containing a legal description of such area with the Summit County Clerk and Recorder.

Section 4. This ordinance shall be published and become effective as provided by law.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this ____ day of _____, 2019. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of _____, 2019, 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:_____
Eric S. Mamula, Mayor

ATTEST:

_____
Helen Cospolich, CMC,
Town Clerk

1300-44\Annexation Ordinance (05-17-19)(Second Reading)

Memo

TOWN OF BRECKENRIDGE

To: Breckenridge Town Council Members

From: Town Attorney

Date: 5/23/2019

Subject: Council Bill No. 11 (South Gondola Ground Lease Ordinance)

The second reading of the ordinance approving the South Gondola Ground Lease is scheduled for your meeting on May 24th. There are no changes proposed to ordinance from first reading.

I will be happy to discuss this matter with you on Tuesday.

FOR WORKSESSION/SECOND READING – MAY 28

COUNCIL BILL NO. 11

Series 2019

AN ORDINANCE APPROVING A LONG-TERM LEASE WITH VAIL SUMMIT RESORTS, INC., A COLORADO CORPORATION
(South Gondola Lot Parking Structure)

WHEREAS, Vail Summit Resorts, Inc., a Colorado corporation, owns the following real property located in the Town of Breckenridge, Summit County, Colorado:

Lots 1-A, 3-A, 3-B and 4, Sawmill Station Square, Filing No. 3, Amendment No. 2, according to the Plat thereof filed with the Summit County, Colorado Clerk and Recorder on January 21, 1986 at Reception No. 311104; and

Lots 1-B and 1-C, A Replat of Lots 1-B & 1-C, Sawmill Station Square, Filing No. 3, Amendment No. 2 & Lot 1, Sawmill Station Square, Filing No. 1, Amendment No. 2 according to the Plat thereof filed with the Summit County, Colorado Clerk and Recorder on December 14,1990 at Reception No. 397221

(the "**Property**")

; and

WHEREAS, Vail Summit Resorts, Inc., a Colorado corporation, has agreed to lease the Property to the Town; and

WHEREAS, Section 15.4 of the Breckenridge Town Charter provides:

The council may lease, for such time as council shall determine, any real or personal property to or from any person, firm, corporation, public and private, governmental or otherwise.

and;

WHEREAS, a proposed Ground Lease between the Town and Vail Summit Resorts, Inc., a Colorado corporation, has been prepared, a copy of which is marked **Exhibit "A**", attached hereto, and incorporated herein by reference; and

WHEREAS, the Town Council has reviewed the proposed Ground Lease, and finds and determines that it should be approved; and

WHEREAS, the proposed Ground Lease has a term longer than one year; and

WHEREAS, Section 1-11-4 of the Breckenridge Town Code requires that any real estate lease entered into by the Town which exceeds one year in length must be approved by ordinance.

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

Section 1. The proposed Ground Lease between the Town and Vail Summit Resorts, Inc., a Colorado corporation **(Exhibit "A"**), is approved, and the Mayor is hereby authorized, empowered, and directed to execute such Lease for and on behalf of the Town of Breckenridge.

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

Section 3. This ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Charter.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this ____ day of _____, 2019. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of _____, 2019, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

TOWN OF BRECKENRIDGE, a Colorado municipal corporation

By:_____
Eric S. Mamula, Mayor

ATTEST:

_____
Helen Cospolich, CMC,
Town Clerk

1500-102\Lease Ordinance (05-17-19)(Second Reading)

GROUND LEASE

between

VAIL SUMMIT RESORTS, INC., a Colorado corporation

as Landlord

and

THE TOWN OF BRECKENRIDGE, a Colorado municipal corporation

as Tenant

dated as of June _____, 2019

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GROUND LEASE

This **GROUND LEASE** (this "**Lease**"), dated as of the ____ day of June, 2019, is made by VAIL SUMMIT RESORTS, INC., a Colorado corporation ("**Landlord**"), and the TOWN OF BRECKENRIDGE, a Colorado municipal corporation ("**Tenant**").

For and in consideration of the mutual covenants set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree to the following terms and conditions.

ARTICLE 1
DEFINITIONS

For all purposes under this Lease, the terms below are defined as indicated in this Section.

A. "Annual Rent" means the sum payable annually by Tenant throughout the Term, as more fully explained in Article 6.

B. "Assuming Tenant" means any trustee or other person acting on behalf of Tenant in any bankruptcy or similar proceeding affecting Tenant.

C. "Business Day" means any day other than a Saturday, Sunday or holiday observed by the State of Colorado.

D. "CDOT" means the Colorado Department of Transportation.

E. "CDOT Approval" is defined in Section 5.3.B.

F. "CDOT Permit" means the permit to be issued by CDOT and accepted by Tenant and Landlord in their respective sole and absolute discretion following approval by that agency of access to the Property from State Highway 9 (North Park Avenue).

G. "Commencement Date" means the date on which Tenant begins construction of the Tenant Improvements.

H. "Day" or "day" means a calendar day.

I. "Effective Date" means the date set forth in the first paragraph, marking the date by which both Parties have signed this Lease.

J. "Environmental Law" means (1) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C.A. §9601, *et seq.*; (2) the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C.A. §6901, *et seq.*; (3) the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, as amended, 33 U.S.C.A. §1251,

et seq.; (4) the Toxic Substances Control Act of 1976, as amended, 15 U.S.C.A. §2601, *et seq.*; (5) the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C.A. §11001, *et seq.*; (6) the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C.A. §7401, *et seq.*; (7) the National Environmental Policy Act of 1970, as amended, 42 U.S.C.A. §4321, *et seq.*; (8) the Rivers and Harbors Act of 1899, as amended, 33 U.S.C.A. §401, *et seq.*; (9) the Endangered Species Act of 1973, as amended, 16 U.S.C.A. §1531, *et seq.*; (10) the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C.A. §651, *et seq.*; (11) the Safe Drinking Water Act of 1974, as amended, 42 U.S.C.A. §300(f), *et seq.*; and (12) all applicable standards, rules, policies and other governmental requirements relating to the environmental condition of the Property and the health of persons entitled to use it.

K. "Excusable Delay" means any of the following events that prevents or delays a Party's performance of its obligations under this Lease: labor strikes; lockouts; failure of utilities; inclement weather of such severity as to prevent a Party from continuing its construction work or other work required of the Party under this Lease under prevailing industry standards; riots, insurrection or war; acts of terrorism; inability to procure materials; or any other reason of a like nature which is beyond the control of such Party and without its fault or negligence. Excusable Delays do not include any financial burdens suffered by a Party, the effect of laws or regulations in place at the time the performance in question is undertaken, or a mere failure of timely performance of an agent or contractor of either Party.

L. "Extension Term" is defined in Section 4.1.C.

M. "Final Plans" means the Working Drawings for the design and construction of the Project as finally approved by Landlord and Tenant in accordance with Section 5.3.A(3).

N. "First Extension Term" is defined in Section 4.1.C.

O. "Gross Receipts" is defined in Section 6.2.A.

P. "Ground Lease Expenses" is defined in Section 6.2.B.

Q. "Hazardous Materials" means any chemical, material, substance or waste (i) exposure to which is prohibited, limited or regulated by an Environmental Law or (ii) which, even if not so regulated, may or could pose a hazard to the health or safety of the occupants of the Property, including any petroleum, crude oil (any fraction thereof), natural gas, natural gas liquids, and those substances defined as "hazardous substances," "hazardous materials," "hazardous wastes" or other similar designations in Environmental Laws.

R. "Incremental Annual Expense" is defined in Section 5.3.D.

S. "Initial Term" means the 50-year period specifically described in Section 4.1.B.

T. "Land" means the real property described on **Schedule 1.T**, together with all of Landlord's right, title and interest in and to (a) all appurtenances relating to or used in connection with the Land, including all rights of ingress, egress, and use of adjoining alleys, easements, rights

of way, and streets, and all improvements, if any, currently located on the Land (but specifically excluding development rights and density associated with the Land which may be transferred by Landlord as provided in Section 5.3.E).

U. "Landlord" means Vail Summit Resorts, Inc., a Colorado corporation.

V. "Landlord's Share" is defined in Section 6.2.E.

W. "Lease Year" means, in the case of the first Lease Year, the period beginning upon the Project Opening and ending on the next occurring May 31, and in the case of each subsequent Lease Year, each 12-month period beginning on June 1 and ending on the following May 31.

X. "Maintenance Reserve" is defined in Section 6.2.C.

Y. "Memorandum of Lease" is defined in Section 21.1.

Z. "Mortgage" means a mortgage or a deed of trust.

AA. "Non-Ski Season" means any period outside the Ski Season.

BB. "Off-Record Matters" means any easements or other encumbrances (including liens for improvements serving the Property and approved by appropriate governmental authorities but not yet installed) or other matters not shown by the public records and actually known to Landlord as affecting title to the Land.

CC. "Parking Structure" means the garage structure to be constructed by Tenant as provided in this Lease.

DD. "Party" means Landlord or Tenant, as applicable. "Parties" means both Landlord and Tenant.

EE. "Permitted Exceptions" means (i) the exceptions to title disclosed by the Title Commitment, (ii) any matters which an accurate survey or physical inspection of the Land would disclose, and (iii) the Off-Record Matters (if any), in all cases described in the foregoing clauses (i) through (iii), as approved by Tenant before the end of the Planning Period or later in accordance with Section 7.7.A.

FF. "Permitted Uses" is defined in Section 3.2.

GG. "Planning Period" means the time period beginning on the Effective Date and ending on July 1, 2020.

HH. "Prime Rate" means the prime rate as published in *The Wall Street Journal* from time to time. If the prime rate published by *The Wall Street Journal* becomes unavailable, the Parties shall use the prime rate as announced or published by such other organization or

publication as reasonably determined by Landlord to be comparable to the prime rate published in *The Wall Street Journal* as of the Effective Date.

II. "Project" refers to the Parking Structure, Surface Area and related Tenant Improvements.

JJ. "Project Opening" means the date on which Tenant receives a certificate of occupancy from the governmental agencies having jurisdiction in such matter, permitting the Project to be utilized for its intended purpose.

KK. "Property" means the Land, any improvements on the Land existing on the Effective Date, and the Tenant Improvements.

LL. "Rent" means any amount payable by Tenant to Landlord as required under this Lease, whether Annual Rent or other sums due.

MM. "Resort" means the Breckenridge Ski Resort in Summit County, Colorado.

NN. "Second Extension Term" is defined in Section 4.1.C.

OO. "Ski Season" means the period determined by Landlord beginning on the day when the Resort opens to the public for alpine skiing and snowboarding, and ending on the day when the Resort is closed to the public for alpine skiing and snowboarding.

PP. "Ski Season Profitability" is defined in Section 6.2.D.

QQ. "Surface Area" means the surface parking lot area not occupied by the Parking Structure, as constructed in substantial accordance with the Final Plans.

RR. "Taxes" means all real and personal property taxes and special assessments of any kind which may be levied, assessed or imposed, or become liens upon or arise out of the use, occupancy, ownership or possession of the Property, and which accrue during or are allocable to the Initial Term and any Extension Term.

SS. "Tenant" means the Town of Breckenridge, a Colorado municipal corporation.

TT. "Tenant Improvements" means the Parking Structure, Surface Area and other improvements to be constructed by Tenant at Tenant's cost on or under the Property as provided in Section 5.3.A, including any replacements of the same, all in accordance with this Lease.

UU. "Term" means the period during which this Lease remains in force and effect and includes the Planning Period, the Initial Term and any Extension Term for which Tenant has exercised its option, all subject to the terms and conditions of this Lease.

VV. "Title Commitment" means the commitment for leasehold title insurance issued by the Title Company and identified as Order No. M20182426, as the same may be updated from time to time.

WW. "Title Company" means Land Title Guarantee Company in Breckenridge, Colorado.

ARTICLE 2
GRANT OF LEASE

2.1 Lease of Property. In consideration of the covenants and agreements contained in this Lease, and for other valuable consideration, Landlord leases the Property to Tenant and Tenant leases the Property from Landlord upon the terms and conditions of this Lease. Landlord represents and warrants to Tenant that, to Landlord's actual knowledge as of the Effective Date (after diligent inquiry by Landlord), Landlord is not a party to any Off-Record Matters that would materially and adversely affect Tenant's use and operations of the Property for the Permitted Uses.

2.2 Condition of Property; Tenant Release. Except as otherwise expressly provided in this Lease, (i) Landlord is leasing the Property **as is, where is and with all faults**, and Landlord does not warrant or make any representations, express or implied, relating to the merchantability, quantity, quality, condition, suitability or fitness for any purpose whatsoever of the Property; and (ii) Landlord has no liability whatsoever to undertake any repairs, alterations, removal, remedial actions or other work of any kind with respect to any portion of the Property.

2.3 Quiet Enjoyment. Upon the Commencement Date, Tenant shall have the peaceable and uninterrupted use and occupancy of the Property during the Term, subject to (i) Tenant's compliance with its obligations under this Lease, (ii) the rights reserved by Landlord for access to, and use of, the Property as provided in this Lease, and (iii) the Permitted Exceptions, but otherwise without hindrance or interruption by Landlord or any other person lawfully or equitably claiming by, through or under Landlord.

2.4 Title to Improvements. From and after the Commencement Date, Tenant shall be the owner of all improvements on the Land, including (i) those existing on the Commencement Date, which Tenant shall have the right to demolish as required to construct the Tenant Improvements in accordance with the Final Plans, and (ii) the Tenant Improvements. Upon the expiration or termination of this Lease, (x) all improvements then existing on the Property shall revert to and become the property of Landlord without compensation to, or any requirement for consent or other action on the part of, Tenant, (y) Tenant shall have no further rights to or interest in the improvements, and (z) at Landlord's request, Tenant shall execute, acknowledge and deliver to Landlord any instrument reasonably required to carry out the intent of this Section.

ARTICLE 3
USE OF THE PROPERTY

3.1 Tenant's Use for Parking Structure and Surface Parking.

A. Parking Use. Tenant shall use the Property for the planning, construction and operation of the Parking Structure and the Surface Area and for vehicular and pedestrian ingress and egress to the Parking Structure and Surface Area, as contemplated under the Final Plans, subject to Section 3.2.

B. Related Parking Agreements. Landlord and Tenant acknowledge and agree as follows:

(1) June 29, 2004 Parking Agreement. Landlord and Tenant are parties to that certain Parking Agreement recorded in the real property records of Summit County, Colorado (the "**County Records**") on June 29, 2004 at Reception No. 760358 (the "**6-29-04 Parking Agreement**"), and five hundred fifty (550) parking spaces on the Property shall continue to apply towards Landlord's obligations under the 6-29-04 Parking Agreement, notwithstanding Landlord's and Tenant's execution of this Lease, closure of the Property for construction of the Tenant Improvements, and/or Tenant's operation of the parking on the Property from and after the Project Opening.

(2) April 29, 2004 Parking Agreement. Landlord and Tenant are parties to that certain Parking Lot Agreement recorded in the County Records on April 29, 2004 at Reception No. 754445 (the "**4-29-04 Parking Agreement**"). In the event of any conflict between the terms and conditions of the 4-29-04 Parking Agreement and the terms and conditions of this Lease (or any other signed written agreements reached by the Parties related to the operation of the Project pursuant to this Lease), the terms and conditions of this Lease (or such related agreements) shall govern the matter.

(3) Intermodal Center Ground Lease. Landlord, as lessor, and Tenant, as lessee, are parties to the Intermodal Center Ground Lease recorded in the County Records on June 27, 2003 at Reception No. 721375 (the "**Intermodal Lease**"), which encumbers a portion of the Property. The execution of this Lease by Landlord represents written consent by Landlord, as required by Section 3.3 of the Intermodal Lease, to Tenant's use of the portion of the Land subject to the Intermodal Lease for income producing activities under this Lease, and to Tenant's use of the portion of the Land subject to the Intermodal Lease for those uses permitted by this Lease, even though such uses are not specifically authorized in Section 3.1 of the Intermodal Lease. Further, in the event of any conflict between the terms and conditions of the Intermodal Lease and the terms and conditions of this Lease (or any other signed written agreements reached by the Parties related to the operation of the Project pursuant to this Lease), the terms and conditions of this Lease (or such related agreements) shall govern the matter.

(4) June 14, 2004 Parking Lease. Landlord, as lessee, and Tenant, as lessor, are parties to the Parking Lease recorded in the County Records on June 14, 2004 at Reception No. 758998, as amended by the Amendment to Parking Lease recorded in the County Records on December 14, 2009 at Reception No. 928308 (collectively, the "**6-14-04 Parking Agreement**"), which provides that the parking area on land described in the 6-14-04 Parking Agreement as the "South Block 11 Property" may be substituted with other property under conditions set forth in the 6-14-04 Parking Agreement. Landlord and Tenant confirm that,

notwithstanding any provision in the 6-14-04 Parking Agreement, no part of the parking areas established under the 6-14-04 Parking Agreement shall be substituted with, or relocated to, the Property.

(5) May 1, 2007 Lease (Watson and Sawmill Lots). Landlord, as lessor, and Tenant, as lessee, are parties to a Lease dated May 1, 2007 pertaining to the Property and the North Gondola Lot (defined below) (the "**Watson and Sawmill Lease**"). Prior to commencement of construction of the Project, Landlord and Tenant shall execute a termination of the Watson and Sawmill Lease. Landlord and Tenant acknowledge and agree that upon execution of such termination (i) Tenant's rights to use the Property during the Non-Ski Season shall be governed solely by this Lease, and (ii) any rights granted to Tenant to use the North Gondola Lot under the Watson and Sawmill Lease or any other signed written agreements between the Parties shall be null and void and of no further force or effect.

3.2 Limitations on Tenant's Use.

A. Ski Season. During the Ski Season, Tenant shall not use the Property for any purpose other than public parking without Landlord's prior written consent, which Landlord may grant or deny in its sole and absolute discretion.

B. Non-Ski Season. During the Non-Ski Season, Tenant shall not use the Property for any purpose other than public parking, except that Tenant may permit the use of the Surface Area for special events of limited duration, sponsored or licensed by Tenant, with Landlord's prior written consent.

C. Continuous Operation. Tenant covenants and agrees to, and it is the essence of this Lease that, commencing with the Project Opening, Tenant shall, continuously operate the Property during the Term for the uses described in Sections 3.2.A and 3.2.B (the "**Permitted Uses**"), subject only to interruptions arising from: (i) an Excusable Delay, and (ii) required maintenance, repairs, and upkeep of the Project.

3.3 Compliance with Laws. Tenant, at its sole cost and expense, shall comply or cause the Property to comply promptly and fully with all laws, ordinances, notices, orders, rules, regulations and requirements of all federal, state, municipal and local governments and all departments, commissions, boards and officers thereof. Further, Tenant shall keep in force throughout the Term all licenses, consents and permits necessary for the Permitted Uses of the Property, and Tenant shall advise Landlord promptly if Tenant or its operations become subject to any material inquiry or investigation by any governmental entity.

ARTICLE 4
LEASE TERM

4.1 Term. The Term, unless terminated sooner in accordance with this Lease, shall continue in effect throughout the periods, as applicable, described below.

A. Pre-Commencement Date. For the avoidance of doubt, Landlord and Tenant acknowledge and agree that during the period beginning on the Effective Date and continuing until the Commencement Date, (i) the terms and conditions of this Lease binding Tenant (including indemnification and insurance requirements) will apply with respect to any entry onto the Property by Tenant or its agents, employees or contractors; and (ii) Landlord shall continue to operate the Property with rights and obligations as set forth in Section 5.1.B.

B. Initial Term. The Initial Term shall begin on the Commencement Date and end at 11:59 p.m. on 50th anniversary of the Commencement Date.

C. Extension Term or Terms. Tenant shall have an option to extend the Initial Term for an additional period of 10 years (the "**First Extension Term**"). If Tenant exercises its option for the First Extension Term, Tenant shall have the option to extend the Term for one additional consecutive term of 10 years (the "**Second Extension Term**"). The rights and obligations of the Parties during the First Extension Term and the Second Extension Term (each, an "**Extension Term**") shall be governed by the same terms and conditions as set forth in this Lease, except Tenant shall have no right to extend the Term beyond the Second Extension Term. To exercise the option for the First Extension Term, Tenant shall provide Landlord with written notice before the 48th anniversary of the Commencement Date; and to exercise the option for the Second Extension Term, Tenant shall provide Landlord with written notice to that effect before the 58th anniversary of the Commencement Date. As a condition of Tenant's right to exercise either option for an Extension Term, at the time of Tenant's notice and at the commencement of an Extension Term, there shall be no uncured default by Tenant and there shall have been no assignment, sublease or other transfer of this Lease by Tenant (excluding any Quasi-Governmental/Governmental Transfer).

4.2 Holding Over. Nothing in the provisions of this Lease shall be deemed in any way to permit Tenant to use or occupy the Property after termination of this Lease. If Tenant continues to occupy the Property after such termination, such occupancy shall (unless the Parties otherwise agree in writing) be deemed to be an extension of this Lease on a month-to-month basis, terminable by either Party upon 10 days' prior written notice to the other Party, and such occupancy shall be subject to all of the terms and conditions of this Lease.

ARTICLE 5
PLANNING PERIOD

5.1 Purpose and General Terms.

A. Contingencies. Throughout the Planning Period, the Parties shall use good faith efforts to address and satisfy their respective conditions to proceeding with the Lease beyond the Planning Period as set forth in Section 5.3.

B. Landlord's Operations and Right to Proceeds. Landlord shall remain responsible for maintaining and insuring the Property and administering all parking and other business operations conducted by Landlord on the Property, including paying all costs and

expenses of the ownership of the Property and such operations, and Landlord shall be entitled to all proceeds of those operations, during the Planning Period and continuing until the Commencement Date.

5.2 Tenant's Inspection.

A. Tenant's Access and Studies. Throughout the Planning Period and, unless this Lease is terminated as permitted in Section 5.4, continuing until the Commencement Date, upon at least two (2) Business Days' prior written notice to Landlord, Tenant and its agents, employees, contractors, subcontractors and other authorized representatives shall have the right to access the Property to test, inspect, and evaluate the Property as Tenant deems appropriate; provided, however, Tenant shall not conduct any environmental testing or other invasive testing on the Property without Landlord's prior written consent. Unless Landlord agrees otherwise in writing, Tenant shall promptly restore the Property to its condition existing before Tenant's entry, and in any case, Tenant shall pay for all work performed by Tenant or at Tenant's direction on the Property. In accessing and investigating the Property, Tenant shall abide by the covenants set forth in Section 7.4. Further, Tenant shall provide Landlord in a commercially reasonable timeframe with copies of tests and reports obtained by Tenant.

B. Title Review. As of the Effective Date, Tenant acknowledges receipt of the Title Commitment. If the Term extends beyond the Planning Period, Tenant shall be deemed to have approved title to the Property, including the Permitted Exceptions.

C. Title Policy. Tenant, at its option and sole cost and expense, may obtain a policy insuring the interest of Tenant as lessee under this Lease, subject only to the Permitted Exceptions.

5.3 Parties' Obligations. During the Planning Period, the Parties shall be obligated as follows:

A. Project Plans.

(1) Preliminary Plans. Tenant, at its cost, shall coordinate the preparation of preliminary plans for the design, location and orientation of the Tenant Improvements (collectively, the "**Preliminary Plans**"). The Preliminary Plans shall include paving and striping of the Surface Area, access to the Tenant Improvements from public or private rights-of-way pursuant to the CDOT Permit or otherwise, traffic circulation patterns, and directional signage. Tenant shall submit the Preliminary Plans to Landlord for its review and approval on or before March 31, 2020. Landlord shall have 10 days to review the Preliminary Plans and provide written notice to Tenant of any objection to the Preliminary Plans. If Landlord fails or declines to provide such written objection notice within such 10 day period, then Tenant may provide written notice to Landlord that Landlord has failed to respond to Tenant within such 10 day period ("**Response Reminder**") and, if Landlord fails to respond to Tenant within 5 days after its receipt of such Response Reminder, then Landlord will be deemed to have approved the Preliminary Plans.

(2) Working Drawings. Upon approval (or deemed approval) by Landlord of the Preliminary Plans, Tenant, at its sole cost, shall coordinate the preparation of complete construction and engineering plans and specifications for the construction of the Tenant Improvements (the "**Working Drawings**"). The Working Drawings shall be an evolution and incorporation of the approved Preliminary Plans. Tenant shall submit the Working Drawings to Landlord for its review and approval. Landlord shall have 10 days to review the Working Drawings and provide written notice to Tenant of any objection to the Working Drawings. If Landlord fails or declines to provide such written objection notice within such 10 day period, then Tenant may send Landlord a Response Reminder and, if Landlord fails to respond to Tenant within 5 days after its receipt of such Response Reminder, then Landlord will be deemed to have approved the Working Drawings.

(3) Agreement on Final Plans. Tenant and Landlord shall establish and observe a schedule for regular meetings to review the progress and drafts of the Preliminary Plans and the Working Drawings, as reasonably required to finalize the Preliminary Plans and the Working Drawings before the expiration of the Planning Period. In the event Landlord provides written notice of objection to the Preliminary Plans or the Working Drawings as provided above, Tenant shall coordinate the preparation of a revised draft of the Preliminary Plans or the Working Drawings, as the case may be, as soon as reasonably possible and submit a revised draft thereof to Landlord for review and approval. The same procedures for review and approval (or deemed approval) by Landlord, set forth in subparagraphs (1) and (2) above shall apply to the process of revised drafts, but with expedited deadlines as the Parties may determine appropriate, with the understanding that the Parties will work together in order to resolve any objections on a schedule prior to the expiration of the Planning Period that is consistent with the Commencement Date occurring no later than August 1, 2020. The Working Drawings, upon final approval by the Parties in accordance with this Section, shall serve as the Final Plans for all purposes under this Lease.

(4) Disclaimer by Landlord. Landlord's approval (or deemed approval) of the Preliminary Plans and the Final Plans shall not constitute any opinion or agreement by Landlord or impose any present or future liability or responsibility on Landlord with respect to the construction of the Tenant Improvements.

(5) Tenant's Construction According to Approved Drawings. Following the expiration of all rights held by either Party to terminate this Lease as provided in Section 5.4, Tenant shall construct the Tenant Improvements in accordance with the Final Plans, subject to the terms and conditions hereof. Tenant may order changes in the Tenant Improvements that are minor in nature and required based on field conditions, without the requirement for approval by Landlord. Tenant may request changes in the Tenant Improvements as set forth in the Final Plans that are not minor changes as described above, subject to Landlord's prior written approval thereof. Landlord shall have 10 days to review the requested change and provide written notice to Tenant of any objection to the change. If Landlord fails or declines to provide such written objection notice within such 10 day period, then Tenant may send Landlord a Response Reminder and, if Landlord fails to respond to Tenant within 5 days after its receipt of such Response Reminder, then Landlord will be deemed to have approved the requested change.

B. CDOT Permit. Tenant, at its cost, shall obtain written assurance from CDOT before the expiration of the Planning Period that the CDOT Permit will be issued under terms that are acceptable to Tenant and Landlord in their respective sole and absolute discretion and will allow the Project, upon completion of construction, to accommodate not less than 400 additional spaces for passenger vehicles, compared to the parking space capacity of the Property on the Effective Date (collectively, "**CDOT Approval**").

C. Construction Contract. Tenant, at its cost, shall finalize before the expiration of the Planning Period a guaranteed maximum price ("**GMP**") construction contract ("**GMP Contract**") on terms and conditions acceptable to Tenant, in its sole and absolute discretion, but providing in any event for a warranty for a period of not less than one (1) year against defects and workmanship, materials and supplies not inherent in the quality required or permitted under the Final Plans, the contractor's delivery of a performance bond in the amount of 100% of the GMP and a payment bond, all as required by Colorado law, and the payment of any Late Fees for which Tenant becomes liable to Landlord as provided in Section 7.1.C. Prior to Tenant entering into the GMP Contract with its general contractor, Landlord, Tenant and Tenant's general contractor shall meet to establish construction milestones including, without limitation, a milestone that, if not achieved, will require Tenant's general contractor to shift construction efforts to the Surface Area to ensure that approximately three hundred (300) parking spaces on the Surface Area (whether paved or unpaved) will be available for Landlord's use no later than December 1, 2021 (or, if the Commencement Extension (defined below) occurs, then December 1, 2022) ("**Construction Milestones**"). Tenant shall include the Construction Milestones in the GMP Contract.

D. Tenant's Financing. Tenant shall diligently pursue Project Financing (as defined below) and, in furtherance thereof, before the expiration of the Planning Period, Tenant shall: (a) retain public finance counsel; (b) retain an underwriter; (c) cause the preparation of the preliminary limited offering memorandum or similar document for the Project Financing; (d) cause the preparation of all required transaction documents for the Project Financing, such as trust indenture (collectively, "**Project Financing Documents**"); (e) cause delivery of the Project Financing Documents to Tenant's Town Council and the rating agency for the Project Financing; and (f) obtain approval and adoption by Tenant's Town Council of an Ordinance authorizing and approving the Project Financing, including the Project Financing Documents (the items described in subsections (a) through (f) above are collectively referred to as the "**Project Financing Approvals**"). For the avoidance of doubt, Tenant shall not have any right to terminate this Lease after the expiration of the Planning Period for failure to obtain Project Financing Approvals or for failure to close on the Project Financing. The "**Project Financing**" means financing through issuance of certificates of participation secured by the execution and delivery of a lease-purchase agreement between Tenant and the trustee for such financing pursuant to Section 11.10 of Breckenridge Town Charter, which shall have a financing term no longer than 25 years and shall otherwise be acceptable in all respects to Tenant in its sole and absolute discretion. Without limiting the generality of the foregoing, the Project Financing shall only be secured by assets, other than the Property or Tenant's leasehold interest in the Property, owned or operated by Tenant.

(1) Project Financing Not Tax-Exempt. If Tenant obtains Project Financing that is not tax-exempt, then Tenant shall determine the difference between (i) Tenant's annual interest expenses for the taxable financing and (ii) Tenant's annual interest expenses that Tenant would have incurred in connection with Project Financing based on tax-exempt financing (that difference being the "**Incremental Annual Expense**"). On the condition that the Incremental Annual Expense is $250,000.00 or less, then, as long as Tenant remains in compliance with its obligations under the Project Financing, Landlord shall pay 50% of the Incremental Annual Expense throughout the term of the Project Financing (i.e., Landlord shall pay up to $125,000.00 of the Incremental Annual Expense). From and after the date of the closing of the Project Financing, Landlord shall make such payment on or before July 31 of each Lease Year. Tenant shall be solely responsible for any and all of the Incremental Annual Expense that exceeds $250,000.00.

(2) Project Financing Tax Exempt. If Tenant obtains Project Financing that is tax-exempt, Landlord shall have no obligation for any payment contributing to Tenant's debt service payments or other costs associated with the Project Financing.

E. Density Transfer. Landlord and Tenant shall execute a density transfer covenant, or such other document as may be appropriate, to transfer all density remaining on the Property (or transferred back to the Property from other properties owned by Landlord or its affiliates) to the Gold Rush Lot, North Gondola Lot or other property owned by Landlord or its affiliates, as determined by Landlord in its sole and absolute discretion.

F. Easements. Landlord and Tenant shall agree on the terms of permanent easements to be granted by Landlord to Tenant (i) for a recreation path/pedestrian corridor access way along the eastern edge of the Property, outside the Surface Area or any other portion of the Property used for parking purposes, and (ii) if required under the CDOT Permit ("**CDOT Required Round-a-Bout**") or if otherwise agreed by the Parties ("**Other Round-a-Bout**"), for a round-a-bout on a portion of Landlord's adjacent property at the intersection of North Park Avenue and Watson Avenue as generally depicted on **Schedule 5.3.F.**, provided that such easement does not have a material impact on Landlord's ability to operate and/or develop such adjacent property. The location and size of such easements will be mutually agreed to by Landlord and Tenant as part of the approval process for the Preliminary Plans and Working Drawings provided above. Notwithstanding the foregoing, Tenant's construction of the anticipated pedestrian path and the round-a-bout within such easement area will not be required for purposes of completion of the Tenant Improvements under Section 7.1 and Project Opening; provided, however, Tenant shall complete construction of any CDOT Required Round-a-Bout as provided in the CDOT Permit and Tenant shall complete construction of any Other Round-a-Bout as mutually agreed to by the Parties.

5.4 Conditions Precedent to the Parties' Obligations.

A. The obligations of Landlord and Tenant under this Lease are contingent upon the fulfillment or waiver, to the satisfaction of each Party in its sole and absolute discretion, during the Planning Period, of the conditions described in Section 5.3. If any such conditions are

not satisfied or waived to the satisfaction of each Party in its sole and absolute discretion prior to the expiration of the Planning Period, then either Party shall have the right to terminate this Lease by providing written notice thereof to the other Party before August 1, 2020. If a Party does not deliver such written notice to the other Party before August 1, 2020, then that Party will be deemed to have been satisfied with, or to have waived, all such conditions, and this Lease shall remain in full force and effect, except as expressly provided in Section 5.4.B.

B. If the conditions described in Sections 5.3.A., C., D. E. and F. ("**Non-CDOT Conditions**") have been satisfied (including, without limitation, that the Project Financing Approvals remain fully satisfied) but Tenant has not obtained CDOT Approval on or before the expiration of the Planning Period, and neither Party terminates this Lease as provided in Section 5.4.A., then Tenant may provide written notice to Landlord ("**First CDOT Approval Extension Request**") on or before July 1, 2020, which First CDOT Approval Extension Request shall contain (i) a certification from Tenant that the Non-CDOT Conditions have been satisfied and will continue to remain satisfied following the Planning Period (including, without limitation, that the Project Financing Approvals remain fully satisfied), (ii) confirmation that Tenant will not be terminating this Lease under Section 5.4.A. and that Tenant is continuing to diligently and in good faith secure Project Financing, and (iii) a request for additional time to obtain CDOT Approval. If Tenant provides the First CDOT Approval Extension Request as herein provided, then Landlord shall either (a) grant its approval (not to be unreasonably withheld) of Tenant continuing to pursue CDOT Approval until November 1, 2020, or (b) terminate this Lease, in either case by providing written notice thereof to Tenant on or before August 1, 2020. If Landlord fails or declines to provide such written notice by August 1, 2020, then Landlord will be deemed to have approved the First CDOT Approval Extension Request. If Landlord does not terminate this Lease as herein provided, then Tenant shall continue to use diligent good faith efforts to obtain CDOT Approval and the following provisions shall be applicable:

(1) Tenant shall deliver to Landlord a bi-weekly status report in writing (which may be by email only), and otherwise upon Landlord's written request (which may be by email only) from time to time, regarding CDOT Approval. In addition, Tenant shall provide Landlord with simultaneous copies of all notices, agreements and other correspondence between Tenant and CDOT (the scope of such other correspondence to be mutually agreed to by the Parties).

(2) If Tenant has not obtained CDOT Approval on or before October 15, 2020, then Tenant shall provide written notice to Landlord ("**Second CDOT Approval Extension Request**") on or before October 15, 2020, which Second CDOT Approval Extension Request shall contain (i) a certification from Tenant that the Non-CDOT Conditions have been satisfied and continue to remain satisfied as of the date of the Second CDOT Approval Extension Request (including, without limitation, that the Project Financing Approvals remain fully satisfied), (ii) confirmation that Tenant is continuing to diligently and in good faith secure Project Financing and that Tenant's Town Council has approved and adopted an appropriation of funds specifically to allow Tenant to perform its obligations under this Lease during the 2021 calendar year, and (iii) a request for additional time to obtain CDOT Approval. Then, Landlord shall either (a) grant its approval (not to be unreasonably withheld) of Tenant continuing to pursue CDOT Approval

until February 1, 2021, or (b) terminate this Lease, in either case by providing written notice thereof to Tenant on or before November 1, 2020. If Landlord fails or declines to provide such written notice by November 1, 2020, then Landlord will be deemed to have approved the Second CDOT Approval Extension Request. If Landlord does not terminate this Lease as herein provided, Tenant shall continue to use diligent good faith efforts to obtain CDOT Approval and provide Landlord with the bi-weekly status reports and other information as provided for in subsection (1) above.

(3) If Tenant has not obtained CDOT Approval on or before January 15, 2021, then Tenant shall provide written notice to Landlord ("**Third CDOT Approval Extension Request**") on or before January 15, 2021, which Third CDOT Approval Extension Request shall contain (i) a certification from Tenant that the Non-CDOT Conditions have been satisfied and continue to remain satisfied as of the date of the Third CDOT Approval Extension Request (including, without limitation, that the Project Financing Approvals), (ii) confirmation that Tenant is continuing to diligently and in good faith secure Project Financing, and (iii) a request for additional time to obtain CDOT Approval. Then, Landlord shall either (a) grant its approval (not to be unreasonably withheld) of Tenant continuing to pursue CDOT Approval until May 1, 2021, or (b) terminate this Lease, in either case by providing written notice thereof to Tenant on or before February 1, 2021. If Landlord fails or declines to provide such written notice by February 1, 2021, then Landlord will be deemed to have approved the Third CDOT Approval Extension Request. If Landlord does not terminate this Lease as herein provided, Tenant shall continue to use diligent good faith efforts to obtain CDOT Approval and provide Landlord with the bi-weekly status reports and other information as provided for in subsection (1) above.

(4) If Tenant has not obtained CDOT Approval, or if Tenant's Town Council has not approved and adopted an appropriation of funds specifically to allow Tenant to perform its obligations under this Lease during the 2022 calendar year, on or before May 1, 2021, then Landlord shall have the right to terminate this Lease by providing written notice thereof to Tenant.

ARTICLE 6
RENT

6.1 Annual Rent Payment Schedule. Beginning on the date of the Project Opening, Tenant shall be responsible for the payment of Annual Rent, calculated as set forth in this Article 6. Tenant shall pay an annual payment of Annual Rent to Landlord for the previous Lease Year within forty-five (45) days after the end of each Lease Year, which payment shall be accompanied by a statement setting forth in reasonable detail the Gross Receipts and Ground Lease Expenses for such Lease Year and calculation of Annual Rent based thereon. At Landlord's request, Tenant shall provide Landlord with a written estimate of Gross Receipts for the previous quarterly period of the then-current Lease Year. Landlord shall have the right to audit, inspect, and copy the books and records of Tenant with respect to Annual Rent (including the amounts included in Gross Receipts and any costs included in Ground Lease Expenses) upon at least ten (10) days' prior written notice to Tenant. In such event, Tenant shall cooperate with Landlord in providing

Landlord reasonable access to its books and records during normal business hours for this purpose. Within thirty (30) days of concluding any such audit, Landlord may send written notice to Tenant that Landlord disagrees with the Annual Rent calculation subject to such audit, specifying in reasonable detail the basis for Landlord's disagreement and the additional amount of Annual Rent that Landlord claims is due for the applicable Lease Year. Landlord and Tenant must thereafter meet and attempt in good faith to resolve such disagreement. If the Parties fail to resolve such disagreement within thirty (30) days after the date when Landlord gives such written notice to Tenant ("**Negotiation Period**"), then the disagreement shall be determined in accordance with the audit dispute procedures set forth on **Schedule 6.1**.

6.2 Definitions and Provisions Relating to Annual Rent.

A. Gross Receipts. "**Gross Receipts**" means (i) all funds from all sources, whether for cash, credit, or other consideration, and whether received by Tenant or other persons as may from time to time conduct business on or from the Property, paid by persons parking in the Parking Structure or other areas of the Property or otherwise utilizing the Project in accordance with the Permitted Uses, and (ii) all fees for seasonal parking passes to the Project distributed by Landlord and Tenant to their respective guests and patrons as permitted under Section 7.6.C. Landlord and Tenant shall mutually determine if Landlord or Tenant or both Parties sell seasonal parking passes for the Ski Season. If Landlord or Tenant sells seasonal parking passes for the Ski Season, then within 15 days after the end of each quarter in each Lease Year, Landlord and Tenant shall each report for the records maintained by Tenant in operating the Project, the number of parking passes issued by Landlord or Tenant, as applicable, during the previous quarter, and the total receipts collected for such passes. In such event, concurrently with filing the report, the reporting Party shall pay to Tenant (in the case of Landlord's obligation) or account for (in the case of Tenant's obligation) the total of the seasonal parking pass receipts for the quarter in question, for deposit in the account(s) maintained by Tenant for the operation of the Project.

B. Ground Lease Expenses. "**Ground Lease Expenses**" means all operating expenses which are reasonably necessary, ordinary, or customarily incurred in connection with the operation and maintenance of the Project, including the items set forth on **Schedule 6.2.B**. "Ground Lease Expenses" shall not include any of the items listed as "Exclusions" on **Schedule 6.2.B**.

C. Maintenance Reserve. "**Maintenance Reserve**" means the reserve established and maintained by Tenant from Gross Receipts in accordance with this Section for the purpose of paying the cost of periodic maintenance and repairs required to preserve the condition of the Project following completion of the Tenant Improvements throughout the Term. No component of the Maintenance Reserve shall be duplicated by other items included in Ground Lease Expenses.

(1) Initial Maintenance Reserve Costs and Funding. As of the Effective Date, Tenant and Landlord have agreed that the Maintenance Reserve shall cover the items and costs set forth on **Schedule 6.2.C** ("**Maintenance Reserve Items**") and such items will not be part

of Ground Lease Expenses. Beginning with the Project Opening, Tenant shall initially fund the Maintenance Reserve over a period of five years with Gross Receipts collected from and after the Project Opening, at the rate of $70,000.00 per Lease Year.

(2) Periodic Reassessment. After the Project Opening, at intervals of every five years, or more frequently if requested by either Party, the Parties shall reassess the Maintenance Reserve and make any adjustments to the amount or rate (or both) of funding as reasonably required to fulfill its function. At the end of the Term, any funds in the Maintenance Reserve shall be refunded to Landlord.

D. Ski Season Profitability. "**Ski Season Profitability**" means, in any given Lease Year, the difference between (i) the Gross Receipts generated during or for the Ski Season, and (ii) the sum of the Ground Lease Expenses and annual contribution to the Maintenance Reserve allocable to the Ski Season as provided in this Section. For the purposes of calculating Ski Season Profitability, Ground Lease Expenses and the annual Maintenance Reserve contribution shall be charged in equal amounts throughout each Lease Year, except that components of Ground Lease Expenses incurred during a Ski Season for the removal of snow and ice from the Property, including, but not limited to, the cost of operating any separately metered snow melting system in the Parking Structure, shall not be expensed in equal monthly installments over the course of the Lease Year, but instead, shall be charged to the Ski Season months when those expenses were incurred, in the full amount paid by Tenant during that Ski Season at the actual expense incurred by Tenant but in no event at a price higher than the prevailing market rate for snow removal services for properties comparable to the Project.

E. Landlord's Share. "**Landlord's Share**" means a share calculated as a fraction, the numerator of which is 550 (which is the number of passenger car parking spaces on the Land as of the Effective Date), and the denominator of which is the number of passenger car parking spaces in the Project after completion of construction of the Tenant Improvements.

6.3 Calculation of Annual Rent. The Annual Rent payments due and payable by Tenant for each Lease Year shall be calculated as Landlord's Share of Ski Season Profitability. For the avoidance of doubt, Tenant shall be entitled to retain the remaining share of Ski Season Profitability for each Lease Year and in addition, all profits from the operation of the Project during each Non-Ski Season.

The following is a sample Annual Rent calculation for example purposes only:

- If the total number of parking spaces in the Project after completion of the Tenant Improvements is 950 parking spaces, then Landlord's Share would equal 57.89%.
- The Ski Season for the Lease Year in question contains 180 days.
- Gross Receipts for such Ski Season equal $1,000,000.00.

- Ground Lease Expenses and Maintenance Reserves for such Lease Year are $500,000.00 (including $25,000.00 for snow and ice removal). The Ground Lease Expenses (other than snow and ice removal) are spread out evenly over the entire Lease Year, so $475,000.00 divided by 365 days equals a daily allocation of Ground Lease Expenses of $1,301.37 per day. Therefore, the Ground Lease Expenses attributable to such Ski Season are $259,246.58 ([180 days multiplied by $1,301.37] plus $25,000.00).

- Based on the Gross Receipts and Ground Lease Expenses attributable to such Ski Season described above, Ski Season Profitability would equal $740,753.42 (which is $1,000,000.00 minus $259,246.58).

- Therefore, the Annual Rent payment due to Landlord for such Lease Year would equal $428,822.15 (which is Landlord's Share of 57.89% multiplied by $740,753.42).

6.4 Payment Address. Tenant shall make all payments of Rent to Landlord at the address given for notices to Landlord in Section 21.5, as such address may be changed in accordance with that Section.

6.5 Annual Appropriation. Notwithstanding any provision in this Lease to the contrary, Tenant's obligations under this Lease are expressly subject to an annual appropriation being made by Tenant's Town Council in an amount sufficient to allow Tenant to perform those obligations. If sufficient funds are not appropriated for that purpose, either Party may terminate this Lease without penalty. Tenant's obligations under this Lease shall not constitute a general obligation indebtedness or multiple year direct or indirect debt or other financial obligation whatsoever within the meaning of the Constitution or the laws of the State of Colorado. Notwithstanding the foregoing, Tenant acknowledges and agrees that (i) the Late Fees (defined below) and the Termination Fee (defined below) are not subject to an annual appropriation, (ii) Tenant shall have no right to claim a lack of appropriation of funds with respect to its obligation under this Lease to pay Late Fees or the Termination Fee (if Tenant is required to do so as provided below), and (iii) Tenant shall have no right to terminate this Lease under this Section 6.5 on the basis of the Late Fees or the Termination Fee.

ARTICLE 7
CONSTRUCTION AND OPERATION OF THE PROJECT

7.1 Construction of the Tenant Improvements.

A. Landlord's Inspection. Landlord and its agents, employees and contractors shall be entitled to enter the Property from time to time, to inspect the construction of the Tenant Improvements. Landlord's review of the Tenant Improvements shall be limited to a determination of Tenant's compliance with its obligations under this Lease and shall not constitute a review of the quality, completeness, safety or legal compliance of the Tenant Improvements. In accessing the Property as permitted in this Section, Landlord shall comply with such reasonable rules requiring notice to and cooperation with Tenant's general contractor as may be set forth in the contract for construction of the Tenant Improvements. Tenant

acknowledges and agrees that Landlord shall not be responsible for any on-site or off-site improvements triggered by the construction of the Tenant Improvements.

B. Construction Schedule. Tenant shall use its best efforts to begin construction of the Project in the spring of 2020, but in no event, prior to May 1, 2020 unless Landlord has otherwise consented to such earlier date, and to complete construction so that the Project Opening date occurs no later than November 1, 2021 ("**Construction Completion Deadline**"). For all purposes under this Lease, construction on the Project shall be deemed to have commenced when Tenant's contractors have begun to pour footings and foundations for the Parking Structure.

C. Construction Schedule Delays.

(1) Delays in Start of Construction. Subject to Tenant's obligation to use its best efforts to begin construction of the Project in the spring of 2020 as set forth in Section 7.1.B, if Tenant does not begin construction of the Project by August 1, 2020, and Landlord has approved the First CDOT Approval Extension Request under Section 5.4.B., then Tenant may start construction at a later date in August 2020; provided, however, if Tenant does not commence construction of the Project on or before August 31, 2020, then the deadline for Tenant to commence construction of the Project shall be automatically extended to June 1, 2021 ("**Commencement Extension")**. If the Commencement Extension occurs, then Section 7.1.B above shall be automatically amended as follows: "spring of 2020" shall be replaced with "spring of 2021", "May 1, 2020" shall be replaced with "May 1, 2021" and the Construction Completion Deadline shall be amended to be November 1, 2022. Notwithstanding anything to the contrary contained in this Lease, if Tenant has not commenced construction of the Project on or before June 1, 2021 (subject only to Excusable Delay occurring between March 1, 2021 and June 1, 2021 and specifically excluding any delays in obtaining CDOT Approval), then Landlord shall have the right to terminate this Lease by providing written notice thereof to Tenant.

(2) Delays in Completion of Construction. If the Project Opening does not occur by the Construction Completion Deadline for any reason other than circumstances constituting an Excusable Delay, subject to the terms of Section 21.12, then Tenant shall be liable to Landlord for a late fee of $5,000.00 per day commencing on the date that is thirty (30) days following the Construction Completion Deadline and continuing for thirty (30) days thereafter (the "**Initial Late Fees**"). If the Project Opening still has not occurred on the date that is sixty (60) days following the Construction Completion Deadline for any reason other than circumstances constituting an Excusable Delay, subject to the terms of Section 21.12, then Tenant shall be liable to Landlord for a late fee of $10,000.00 per day commencing on the sixty-first (61st) day following the Construction Completion Deadline and continuing until the date of the Project Opening (together with the Initial Late Fees, the "**Late Fees**"). In no event shall the Late Fees due and payable by Tenant to Landlord exceed a total of One Million and 00/100 Dollars ($1,000,000.00). Tenant shall pay Landlord the Late Fees, if applicable, within thirty (30) days after receipt of an invoice therefor. For the avoidance of doubt, the Late Fees due and payable by Tenant shall be assessed and calculated as follows:

Late Fees Start Date	Late Fees End Date	Late Fees Amount
30th day following the Construction Completion Deadline	60th day following the Construction Completion Deadline	Late Fees of $5,000.00 per day
61st day following the Construction Completion Deadline	Upon the earlier of (i) Project Opening, or (ii) total amount of Late Fees equal $1,000,000.00	Late Fees of $10,000.00 per day

The Parties acknowledge and agree that Landlord's damages because of the failure of the Project Opening for the entire Project to occur by the deadline described above are difficult to ascertain and agree that the Late Fees represent a reasonable estimate of Landlord's damages.

(3) Late Fee Chargeable to Contractors. Tenant shall be entitled to collect from the general contractor under the GMP Contract any Late Fees for which Tenant becomes liable to Landlord under this Section, but Tenant's collection of such Late Fees from the general contractor shall not be a condition to or otherwise affect Tenant's obligation under this Lease to pay such Late Fees to Landlord.

(4) Termination Right. If Tenant fails to complete Project Opening by an outside date of November 1, 2022 (or November 1, 2023 if the Commencement Extension occurs), then Landlord shall have the right (in its sole and absolute discretion) to terminate this Lease by providing written notice thereof to Tenant on or before November 15, 2022 (or November 15, 2023 if the Commencement Extension occurs), in which case Tenant shall be liable to Landlord for a termination fee in the amount of Two Million and 00/100 Dollars ($2,000,000.00) ("**Termination Fee**"). Tenant shall pay Landlord the Termination Fee within thirty (30) days after receipt of an invoice therefor. The Parties acknowledge and agree that Landlord's damages because of the failure of the Project Opening for the entire Project to occur by the deadline described above are difficult to ascertain and agree that the Termination Fee represents a reasonable estimate of Landlord's damages.

D. Use of Tenant's Satellite Parking Lot During Construction. Landlord acknowledges that, throughout the construction of the Project, no portion of the Land will be available for parking by guests visiting the Resort or other persons, except the approximately three hundred (300) parking spaces on the Surface Area to be made available to Landlord as provided in Section 5.3.C. Accordingly, throughout the construction period, Tenant shall continue to make a minimum of 700 spaces available at the parking facility operated by Tenant on the Satellite Lot at Block 11, Breckenridge Airport Subdivision, for free public parking. Tenant will not charge Landlord or the public for use of the parking on the Satellite Lot in accordance with this Section.

7.2 Operation and Maintenance of the Project by Tenant. Tenant shall keep and maintain the Property (including the Tenant Improvements) in good order, condition and repair throughout each Lease Year of the Term. Without limiting the generality of the preceding sentence, Tenant shall maintain all landscaping on the Land in good repair and keep the sidewalks, curbs and parking areas on the Land clean, free of snow and ice, and in a good state of repair; provided, however, that no such maintenance of the landscaping, sidewalks, curbs or parking areas shall disturb the use of or impair the flow of traffic on adjoining public ways. Tenant shall coordinate with Landlord any major maintenance or repairs that Tenant desires to perform during the Ski Season in order to minimize any adverse impacts on Resort operations caused by such maintenance or repairs. Landlord shall not be required to perform any maintenance or make any repairs, improvements or alterations of any kind to the Property (including the Tenant Improvement)s. The costs of performing Tenant's obligations under this Section shall be included in the Ground Lease Expenses, subject to the Exclusions.

7.3 Alterations. Tenant, at its sole cost and expense, shall be entitled to make improvements or other alterations (excluding alterations that are capital improvements) to the Tenant Improvements from time to time, provided that, all such improvements or alterations shall be subject to Landlord's reasonable approval, and unless Landlord agrees otherwise in writing, (i) the number of passenger car parking spaces shall not be reduced below the number of such spaces included in the Project on the Project Opening, and (ii) the alterations shall not be made during any portion of the Ski Season. Tenant shall submit plans and specifications for any proposed alterations to Landlord for its review and approval. Landlord shall have 10 days to review the plans and specifications and provide written notice to Tenant of any objection to the same. If Landlord fails or declines to provide such written objection notice within such 10 day period, then Tenant may send Landlord a Response Reminder and, if Landlord fails to respond to Tenant within 5 days after its receipt of such Response Reminder, then Landlord will be deemed to have approved the plans and specifications as submitted. In the event Landlord provides written notice of objection to the plans and specifications as provided above, Tenant shall coordinate the preparation of a revised set of plans and specifications as soon as reasonably possible and submit a revised draft thereof to Landlord for review and approval. The same procedures for review and approval (or deemed approval) by Landlord, set forth in this Section above shall apply to the process of revised drafts, but with expedited deadlines as the Parties may determine appropriate in light of the proposed construction schedule and other pertinent considerations.

7.4 Standard and Conduct of Tenant's Work. Tenant shall perform any work undertaken on the Property (including construction of the Tenant Improvements) diligently and in a good and workmanlike manner and in compliance with Tenant's covenants set forth in Article 11 and Section 12.2. Tenant shall obtain all permits and approvals (including approvals, if any, required under the Permitted Exceptions) before beginning the work and shall conduct all work in accordance with applicable requirements of law. Tenant shall take all necessary precautions to prevent damage to contiguous property in the course of any work on the Property. If such damage occurs, Tenant, at its own cost and expense, shall fully restore the contiguous property to its condition prior to the damage. Tenant shall keep the Property free from any liens created by or through Tenant in accordance with Section 11.1. At Landlord's request, a construction fence shall

be erected around the Property by Tenant's contractor and maintained in a good condition during all phases of construction of the Tenant Improvements. If Tenant fails to clean up and keep in an orderly condition the Property and surrounding areas affected by Tenant's construction of the Tenant Improvements, Tenant hereby authorizes Landlord to perform any necessary clean-up thereof at Tenant's sole expense, subject to such reasonable requirements for advance notice of Landlord's intention to access the Property, restrictions on the interference with the performance of the work under the construction contract, and compliance with the security and safety regulations imposed by Tenant's general contractor.

7.5 Tenant's Covenants Regarding Hazardous Materials. Tenant shall comply with all statutes, laws, ordinances, rules, regulations, and precautions now or hereafter mandated or advised by any federal, state, local or other governmental agency with respect to the use, generation, storage, or disposal of Hazardous Materials. Tenant shall not cause, or allow anyone else to cause, any Hazardous Materials to be used, generated, stored, or disposed of on or about the Property without the prior written consent of Landlord, which consent may be withheld in the sole and absolute discretion of Landlord, and which consent may be revoked at any time. Tenant's indemnification of Landlord pursuant to this Lease shall extend to all liability, including all foreseeable and unforeseeable consequential damages, directly or indirectly arising out of the use, generation, storage, or disposal of Hazardous Materials by Tenant or any person claiming under Tenant, including the cost of any required or necessary repair, cleanup, or detoxification and the preparation of any closure or other required plans, whether such action is required or necessary prior to or following the termination of this Lease, to the full extent that such action is attributable, directly or indirectly, to the use, generation, storage, or disposal of Hazardous Materials by Tenant or any person claiming under Tenant; provided, however, the written consent by Landlord to the use, generation, storage, or disposal of Hazardous Materials shall not excuse Tenant from Tenant's obligation of indemnification. In the event Tenant is in breach of the covenants herein, after notice to Tenant and the expiration of the earlier of (i) the cure period provided in Section 15.1.F or (ii) the cure period permitted under applicable law, regulation, or order, Landlord may, in its sole and absolute discretion, declare Tenant in default and/or cause the Property to be freed from the Hazardous Material, and the cost of such actions shall be deemed Rent and shall immediately be due and payable from Tenant. The covenants of Tenant under this Section shall survive, notwithstanding the termination of this Lease.

7.6 Pricing for Parking.

A. Landlord's Control During Ski Season.

(1) Pricing. During the Ski Season of each Lease Year, Landlord shall have the sole right to set parking pricing and parking techniques (including the hours and days of operation of the Project, with variable pricing) with the objective to optimize the use of the Project by guests of the Resort in the mornings on days when Landlord anticipates high volumes of skiers.

For the Ski Season of the first Lease Year in which the Project Opening occurs, Landlord will base its pricing for parking in the Project on the rate charged for the previous Ski Season. For

the Ski Season in each subsequent Lease Year, Landlord shall not increase the highest parking rate charged to parties using the Project by more than 20% of the highest rate charged during the previous Ski Season unless Tenant agrees in writing to a larger increase.

(2) Guest Parking Incentives for Après Ski Hours. Landlord shall collaborate with Tenant to discuss parking plans designed to encourage guests who use the Project during ski hours to extend their stay beyond those hours (such as reductions or waivers of fees to remain parked in the Project beyond peak departure periods), as determined by Landlord.

B. Tenant's Control During Non-Ski Season. On all days in each Non-Ski Season, Tenant shall set parking pricing and strategies for all use of the Project.

C. Seasonal Passes. Landlord shall be permitted to sell seasonal parking passes for the Ski Season, and Tenant shall be permitted to sell seasonal parking passes for Non-Ski Season, but neither Party shall be permitted to sell annual parking passes.

7.7 Title to the Project.

A. Landlord's Covenant.

(1) Additional Exceptions to Title. Landlord shall be permitted (without Tenant's approval) to encumber the Property with utility and other easements, encumbrances and restrictions in connection with its use, operations and development of its adjacent properties (including the North Gondola Lot, as defined below) so long as such easements, encumbrances and restrictions do not materially and adversely affect Tenant's use and operations of the Property. Except as provided in this Section and in Article 18, all other encumbrances, restrictions, easements or other exceptions affecting title to the Property shall require Tenant's prior written consent, which consent shall not be unreasonably withheld or delayed. Tenant shall respond to any written request made by Landlord pursuant to this Section within 10 Business Days after receiving Landlord's request. Tenant's failure to timely respond to Landlord's request shall be deemed Tenant's disapproval. If any such exceptions are so placed of record in violation of this Section, then Tenant may declare Landlord in default and, subject to applicable cure periods, exercise Tenant's remedies as provided in Article 16.

(2) Landlord's Work. In exercising Landlord's right to establish easements and install utilities and other improvements within such easements as permitted in Section 7.7.A(1), Landlord shall (i) provide Tenant with written notice and a surveyed description of the easement area, (ii) conduct all installation work in such a manner as to minimize interference with the use and operation of the Project (to the extent reasonably possible under the circumstances), and (iii) defend Tenant against all causes of action, claims (including without limitation, claims for mechanics' and materialmen's liens arising from Landlord's work), suits and judgments, and indemnify Tenant against all loss, damages, costs and expenses (including without limitation reasonable attorneys' fees) arising in connection with Landlord's work, in accordance with Section 12.2.

B. Tenant's Covenant. Tenant shall not create or permit any encumbrances, restrictions, easements or other exceptions to affect title to the Property without Landlord's prior written consent, which consent shall not be unreasonably withheld or delayed. Landlord shall respond to any written request made by Tenant pursuant to this Section within 10 Business Days after receiving Tenant's request. Landlord's failure to timely respond to Tenant's request shall be deemed Landlord's disapproval. If any such exceptions are so placed of record in violation of this Section, then Landlord may declare Tenant in default and, subject to applicable cure periods, exercise Landlord's remedies as provided in Article 15.

7.8 Notices Received from Third Parties. Each Party shall advise the other promptly of the receipt after the Effective Date of any notice of (i) any litigation, administrative hearing or other legal proceeding concerning the Property brought by any third party, and (ii) any notice of default under any agreement relating to the Property, (iii) any known or alleged violation of any applicable law or other legal requirement with respect to the Property, or (iv) the cancellation or threatened cancellation of any insurance carried by the Party with respect to the Property.

ARTICLE 8
TAXES

8.1 Parties' Obligations and Rights.

A. Exempt Status. Pursuant to Article 10, Section 4 of the Colorado Constitution and §39-3-105, C.R.S., all real and personal property of Tenant and certain real and personal property leased by Tenant is exempt from taxation. However, the Parties acknowledge that the Property may be subject to taxation. Tenant shall be solely responsible for obtaining exempt status for the Property ("**Exempt Status**") and for paying any Taxes accruing with respect to the Property (including the Tenant Improvements) on or after the Commencement Date.

B. Direct Payment by Tenant. Any Taxes for which Tenant has not received Exempt Status shall be paid by Tenant to the taxing authority in a timely manner, before the date of application of any fine, penalty, interest or similar cost. With respect to Taxes for any real property or personal property which do not qualify for Exempt Status, Tenant shall provide to Landlord, before the last day for payment of such Taxes without penalty or interest, a copy of the receipts showing payment of the same.

C. Additional Tenant Payment Obligations. In addition to agreeing to pay Taxes as provided above, Tenant shall pay, or cause to be paid, before any fine, penalty, interest or cost may be added, all license and franchise taxes of Tenant, all personal property taxes, all water rents, sewer rents and charges, and other governmental charges which are levied, assessed, imposed or become a lien upon the Property or the contents of it.

D. Landlord's Delivery of Tax Information. Tenant shall use reasonable efforts to cause the taxing authority to send all notices of valuation and other notices and invoices with respect to Taxes directly to Tenant, and Landlord shall reasonably cooperate with Tenant in connection therewith. Notwithstanding the foregoing, Landlord shall promptly deliver to Tenant

any invoices for Taxes received by Landlord and relating to the Property and copies of all notices of valuation relating to the Property which are sent to Landlord in sufficient time to allow Tenant to determine whether to contest any increase in Taxes or valuation.

E. Tenant's Right to Contest Taxes. If Tenant is liable for the payment of any Taxes, then without limiting the right of Landlord to contest any Taxes, Tenant shall have the right, at its sole expense, to contest the Taxes (including any valuations serving as the basis for the same) payable by Tenant by the commencement and prosecution, in good faith and with due diligence, of appropriate legal proceedings, provided (i) the commencement and prosecution of such legal proceedings does not jeopardize Landlord's interest in the Property during the pendency of the proceedings, and (ii) Tenant makes timely payment of such Taxes if Tenant loses the contest or there is any risk whatsoever that the Property may be sold. Tenant shall advise Landlord prior to instituting any such contest and, as a condition of exercising such right, shall provide Landlord such reasonable assurance as it may request that such contest shall be in compliance with the provisions of this Section. Landlord, at Tenant's sole cost and expense, shall reasonably cooperate with Tenant in any such contest, may join in the contest, and shall execute and deliver such documents and instruments as may be necessary or appropriate for prosecuting an effective contest.

8.2 Proration of Taxes. If the Term ends on any date other than December 31st of any year, the amount payable by Tenant during the calendar year in which such termination occurs shall be prorated on the basis which the number of days from the commencement of said tax fiscal year to and including said termination date bears to 365. A similar proration shall be made for the tax fiscal year in which the Initial Term commences.

ARTICLE 9
UTILITIES

Beginning on the Commencement Date, Tenant shall cause all necessary utilities to be furnished to the Property and Tenant shall pay, as part of the Ground Lease Expenses, all applicable charges for all utilities consumed on the Property. Except in the event of an emergency, neither Landlord nor Tenant shall take any action which shall interrupt or interfere with any utility service to the Property.

ARTICLE 10
SUBLETTING AND ASSIGNMENT

10.1 Restrictions on Transfers by Tenant. Tenant shall not assign, transfer, mortgage, pledge or encumber this Lease or any interest in this Lease or in the Property, and shall not sublet all or any part of the Property without, in each case, first obtaining the prior consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion, except that Landlord shall not unreasonably withhold its consent to an assignment of this Lease, or a sublet of the entire Property to a special district or other governmental or quasi-governmental entity or agency ("**Quasi-Governmental/Governmental Transfer**").

10.2 Effect of Prohibited Transfer by Tenant. If Tenant attempts to make any assignment or subletting without the requisite consent, of Landlord, such assignment or subletting shall be void and, at the option of Landlord, shall terminate this Lease. Any consent by Landlord to any assignment of this Lease or any consent by Landlord to any sublease of the Property shall not constitute a waiver by Landlord of the provisions of this Article 10 as to subsequent transactions of the same or similar nature. In the event of any Quasi-Governmental/Governmental Transfer, Landlord may, but shall not be required to, release Tenant from its obligations under this Lease for the remainder of the Term.

10.3 Assignment by Landlord. Upon any transfer of title to the Property by Landlord, all of Landlord's rights and obligations under this Lease arising from and after such transfer shall be assigned automatically to Landlord's successor.

ARTICLE 11
MECHANICS LIENS

11.1 Liens. Tenant shall promptly pay when due the entire cost of all work done to the Property by or at the request of Tenant (including work done prior to the Commencement Date), and Tenant shall keep the Property free of liens for labor or materials as a result of Tenant's work or work performed on behalf of or at the request of Tenant. Should mechanics', materialmen's, or other liens be filed against the Property as a result of work by or at the request of Tenant, Tenant shall cause the lien to be canceled and discharged of record, or shall file a bond in substitution of the mechanic's lien in accordance with the provisions of C.R.S. 38-22-131, *et. seq.*, within 30 days of Tenant's receipt of notice of such lien. Notwithstanding the foregoing, Tenant may contest, in good faith and with reasonable diligence, the validity of any such lien or claimed lien, provided that Tenant shall provide Landlord with such security as Landlord may reasonably request to ensure the payment of any amounts claimed. If Tenant contests a lien or claimed lien, then on final determination of the validity of such lien or claimed lien, Tenant shall cause the lien to be released and, in the event of an adverse judgment, satisfy such judgment.

11.2 Protection of Landlord's Interest in Property. Landlord shall have the right at all reasonable times to post and keep posted on the Property any notices which Landlord may deem necessary for the protection of Landlord and its interest in the Property from mechanics' liens or other claims.

ARTICLE 12
INDEMNITY AND INSURANCE

12.1 Indemnity by Tenant.

A. Tenant's Covenant. To the fullest extent permitted by law, Tenant agrees to defend (with counsel approved by Landlord, which approval shall not be unreasonably withheld), indemnify and hold Landlord, its officers, agents and employees, harmless from and against any and all liability, claims, damage, penalties, actions, demands or expenses of any kind or nature, including damage to any property of third parties and injury (including death) to any

person, to the extent arising from Tenant's use or occupation of the Property (including the Tenant Improvements), or from any activity, work or things done, permitted or suffered by Tenant on the Property, or any omission (where there is an affirmative duty to act) of Tenant on or about the Property, or from any breach or default by Tenant in the performance of any of its obligations under this Lease (that continues beyond applicable notice and cure periods), or any of the foregoing acts or omissions by any of Tenant's agents, employees, contractors, subcontractors or invitees, or from any litigation concerning any of the foregoing in which Landlord is made a party defendant. This obligation to indemnify shall include reasonable attorneys' fees, expert witness fees, and investigation costs and all other reasonable costs, expenses and liabilities incurred by Landlord or its counsel from the first notice that any claim or demand is to be made or may be made.

B. Limitations Regarding Tenant's Indemnity. The foregoing indemnities shall not apply to any injuries, death, claims, losses, damages and expenses to the extent arising as a result of any negligence or intentional acts of Landlord or its officers, employees, contractors or agents, or to any claims waived by Landlord pursuant to Section 12.4.G (to the extent covered by insurance as provided therein).

12.2 Indemnity by Landlord.

A. Landlord's Covenant. To the fullest extent permitted by law, Landlord agrees to defend (with counsel approved by Tenant, which approval shall not be unreasonably withheld), indemnify and hold Tenant, its officers, agents and employees, harmless from and against any and all liability, claims, damage, penalties, actions, demands or expenses of any kind or nature, including damage to any property of third parties and injury (including death) to any person, to the extent arising from Landlord's use or occupation of the Property pursuant to Landlord's rights reserved in this Lease, or from any activity, work or things done by Landlord on the Property, or any omission (where there is an affirmative duty to act) of Landlord on or about the Property, or from any breach or default by Landlord in the performance of any of its obligations under this Lease (that continues beyond applicable notice and cure periods), or any of the foregoing acts or omissions by any of Landlord's agents, employees, contractors, subcontractors or invitees, or from any litigation concerning any of the foregoing in which Tenant is made a party defendant. This obligation to indemnify shall include reasonable attorneys' fees, expert witness fees, and investigation costs and all other reasonable costs, expenses and liabilities incurred by Tenant or its counsel from the first notice that any claim or demand is to be made or may be made.

B. Limitations Regarding Landlord's Indemnity. The foregoing indemnities shall not apply to any injuries, death, claims, losses, damages and expenses to the extent arising as a result of any negligence or intentional acts of Tenant or its officers, employees, contractors or agents, or to any claims waived by Tenant pursuant to Section 12.4.G below.

12.3 Survival of Indemnity Obligations. The Parties' indemnity obligations under this Article 12 shall survive the expiration or earlier termination of this Lease.

12.4 Insurance.

A. Property Damage Insurance.

(1) During Construction. During the period of construction of the Tenant Improvements, Tenant, at its sole cost and expense, shall keep or require its general contractor to keep, a policy of builders risk insurance covering loss or damage to the Tenant Improvements for the full replacement cost of all such construction, which shall list Landlord as an additional named insured if such coverage is available at reasonable cost and under reasonable terms and conditions. Otherwise, the policy of builders risk insurance shall name Landlord as an additional insured.

(2) Following Construction. From and after the Project Opening, Tenant shall keep in full force and effect a policy of all risk, special form or equivalent form property insurance covering loss or damage to the Property in the amount of the full replacement cost of the Parking Structure and other Tenant Improvements, in an amount at least equal to the hard costs of construction, with a deductible that is commercially reasonable under prevailing standards for comparable properties in the vicinity of the Project.

B. Liability Insurance. During the Term, Tenant shall keep in full force commercial general liability insurance ("**CGL**"), with bodily injury and property damage coverage with respect to the Property and business operated by Tenant, which shall list Landlord as an additional insured. The limits of such CGL policy shall be not less than $2,000,000.00 in coverage through primary and/or excess insurance, with a deductible that is commercially reasonable in light of Tenant's financial strength. The required CGL policy limit for bodily injury and property damage requirement may be increased by Landlord, but not more than once in any five year period, to a commercially prudent and reasonable amount, based upon the then current general liability insurance conditions prevailing in the Summit County market.

C. Workers' Compensation Insurance. To the extent required by law, Tenant shall maintain workers' compensation insurance covering its employees in statutory limits.

D. Premiums for Insurance.

(1) Premiums During Planning Period. Throughout the Planning Period and continuing until the Commencement Date, Tenant shall maintain the insurance coverage described in this Section above at its sole cost and expense.

(2) Premiums Upon Commencement Date. From and after the Commencement Date, the premiums required for the insurance coverage described in this Section above shall be included in Ground Lease Expenses.

E. Policy Coverage. Any insurance carried under this Lease may be provided under blanket policies of insurance. During the last year of the Term, after all rights of Tenant to an Extension Term have expired, property insurance maintained by Tenant pursuant to

Section 12.4.A shall list Tenant as insured and Landlord as a loss payee, as their interests may appear in accordance with Section 13.3. All CGL insurance maintained by Tenant shall list Tenant as insured and Landlord as additional insured, as their interests may appear.

F. Tenant's Municipal Self-Insurance Pool. Tenant may obtain any insurance coverage required by this Section through the Colorado Intergovernmental Risk Sharing Agency. Landlord shall not object to such insurance solely on the basis that Tenant's insurance is provided by a municipal self-insurance pool.

G. Waiver of Right of Recovery and Subrogation. With respect to any loss covered by insurance or required to be covered by insurance under this Lease, Landlord and Tenant waive all rights of recovery against each other for any loss or damage to the Property, or for loss of income on account of fire or other casualty; and each Party's policies of insurance shall, to the extent available, contain appropriate provisions recognizing this mutual release and waiving all rights of subrogation by the respective insurance carriers.

H. Evidence of Insurance. On or before the Effective Date, Tenant shall cause to be issued to Landlord certificates of insurance evidencing compliance with the applicable covenants of this Article 12. Tenant shall use commercially reasonable efforts to obtain from the insurer a certificate which provides that the certificate holder shall be given at least 30 days' notice prior to cancellation, but if Tenant is unable to obtain such provision, then Tenant shall provide to Landlord at least 30 days' notice of any anticipated cancellation of an existing insurance policy.

ARTICLE 13
DAMAGE OR DESTRUCTION

13.1 Restoration. If any Tenant Improvements are damaged or destroyed by fire or other casualty, Tenant shall give reasonably prompt notice of the event to Landlord, and Tenant shall proceed to repair, replace or rebuild the Tenant Improvements in accordance with the requirements of Sections 7.3 and 7.4, but subject to this Article 13. Tenant shall commence the work within six months (or sooner if reasonably practicable under the circumstances) after the date of the damage or destruction subject to this Article 13, and shall proceed to complete the work with due diligence. Notwithstanding the foregoing, if Tenant's negotiations with its insurance carrier, requirements or any governmental authorities acting under applicable law, or other circumstances giving rise to any Excusable Delay prevent Tenant from beginning the restoration work within the six month period allowed above, Tenant shall not be in default if Tenant uses diligent, commercially reasonable efforts to begin the work and prosecute it to completion as soon as reasonably possible. As used in this Lease, "other casualty" shall include collapse of any Tenant Improvements due to snow load or otherwise.

13.2 Condition for Adequate Insurance Proceeds. On the condition that Tenant abides by its covenants under this Lease to carry property insurance covering the Project, the obligation of Tenant to pay for the restoration of the Project following a casualty event shall be limited to the amount of insurance proceeds received by Tenant, plus the deductible amount

under such insurance, for the restoration work. If those proceeds are not sufficient to restore the Project to substantially the same condition as existed before the casualty, then Landlord and Tenant shall use good faith efforts to agree on modified design plans for the restoration of the Project consistent with a budget based on the insurance payments received. If Landlord and Tenant cannot agree on modified design plans within sixty (60) days after the date of such casualty, Landlord may terminate this Lease.

13.3 Election Not to Rebuild at End of Term. Notwithstanding anything in this Lease to the contrary, Tenant shall not be required to rebuild the Tenant Improvements and instead, may elect to terminate this Lease if the Tenant Improvements are damaged in a casualty occurring when there are fewer than 18 months remaining in the Term then in effect (including any Extension Terms for which Tenant has then elected to renew this Lease), resulting in repairs requiring more than three months' time. Notwithstanding the foregoing, Tenant shall not be entitled to terminate this Lease if the damage is caused by Tenant's or its officers', employees', contractors' or agents' gross negligence or intentional act.

Tenant shall notify Landlord of its election to terminate this Lease in accordance with this Section within 30 days after the occurrence of the fire or other casualty, and this Lease shall terminate upon the giving of that notice. In that event, Tenant shall remain responsible for Rent accruing to the date of termination, and Tenant shall assign to Landlord all right, title and interest of Tenant in all property insurance proceeds otherwise payable to Tenant.

ARTICLE 14
CONDEMNATION

14.1 Definitions Relating to Condemnation.

A. Taking. "**Taking**" means any condemnation or exercise of the power of eminent domain by any authority vested with such power or any other taking for public use, including a private purchase in lieu of condemnation by an authority vested with the power of eminent domain.

B. Date of Taking. "**Date of Taking**" means the earlier of the date upon which title to the Property or any portion of it or any right appurtenant to it, that has been subject to a Taking is vested in the condemning authority or the date upon which possession of the Property or any portion of it is taken by the condemning authority.

C. Substantially All of the Property. "**Substantially All of the Property**" means so much of the Property as, when taken, leaves the untaken portion unsuitable for the continued feasible and economic operation and use of the Property by Tenant as existed immediately prior to such Taking or as contemplated in this Lease. "**Less than Substantially All of the Property**" means any Taking that does not constitute a Taking of Substantially All of the Property.

14.2 Notice. Each Party agrees to furnish the other a copy of any notice of a threatened or proposed Taking received by such Party.

14.3 Total Taking. In the event of a Taking of Substantially All of the Property, this Lease shall terminate and both Landlord and Tenant shall be relieved from all further obligations under this Lease from and after the Date of Taking.

14.4 Partial Taking. In the event of a Taking of less than Substantially All of the Property, this Lease shall not terminate. However, if any Taking of less than Substantially All of the Property occurs following the expiration of the First Extension Term and such Taking has a material impact on Tenant's ability to conduct its operation of the Project as reasonably determined by Tenant, this Lease shall terminate at Tenant's or Landlord's option, which option shall be exercised by Tenant or Landlord giving not less than 30 days' prior written notice to the other Party, such notice to be given not more than 60 days after Tenant's or Landlord's (as applicable) receipt of notice of the impending Taking.

14.5 Temporary Taking. Notwithstanding the foregoing, in the event of a Taking of Substantially All of the Property for temporary use (specifically, a Taking not exceeding 180 consecutive days in duration), without the Taking of the fee simple title to the Property, this Lease shall remain in full force and effect. A temporary Taking for any period in excess of 180 consecutive days may, at Tenant's option, be deemed a permanent Taking.

14.6 Settlement of Obligations and Award upon Termination.

A. Rent Obligations. If this Lease is terminated following a Taking, then Tenant shall pay any Rent that has accrued and remains unpaid as of the termination date.

B. Award Upon Termination for Total or Substantial Taking. If this Lease is terminated due to a Taking of Substantially All the Property, the award shall be reasonably apportioned between Landlord and Tenant based on the relative value of the interests of Landlord and Tenant in the Property as follows:

1. To Tenant: Tenant shall be compensated for (i) the value of Tenant's interest in the Tenant Improvements and any of Tenant's personal property taken, and (ii) the value of Tenant's leasehold interest in the Property.

2. To Landlord: Landlord shall be compensated for (i) the value of Landlord's fee interest in the Property, and (ii) Landlord's reversionary interest in the Tenant Improvements.

14.7 Settlement of Obligations and Award upon Temporary Taking. In the event of a temporary Taking of the Project as described in Section 14.5 outside of a Ski Season, Tenant shall be entitled to any award which may be paid for the use and occupation of the Project for the period involved. In the event of a temporary Taking of the Project as described in Section 14.5 during a Ski Season, Landlord shall be entitled to Landlord's Share of any award which may be paid for the use and occupation of the Project for the period involved and falling within the Ski Season, and Tenant shall be entitled to the remainder of such award.

14.8 Settlement of Obligations and Award upon Partial Taking. In the event of a Taking of less than Substantially All of the Project, then subject to Section 14.4, the Parties shall proceed in accordance with this Section.

1. Award. The award shall be reasonably apportioned between Landlord and Tenant based on the relative value of their respective interests in the Project, as follows:

(a) To Tenant. Tenant shall be compensated for (i) the value of Tenant's interest in the Tenant Improvements, (ii) the value of Tenant's leasehold interest in the Land taken, and (iii) the cost to repair and restore the remaining Tenant Improvements not conveyed in the Taking.

(b) To Landlord. Landlord shall be compensated for (i) the value of Landlord's fee interest in the Land taken and (ii) Landlord's reversionary interest in the Tenant Improvements.

2. Tenant's Obligation to Rebuild. Tenant shall use the portion of the award attributable to the cost to repair and restore the remaining Tenant Improvements (but not the portion of the Award attributable to the value of the Tenant Improvements taken) for the restoration of the Tenant Improvements to the extent necessary to render the same a complete unit as nearly as possible equal in quality and character as existed prior to the Taking.

ARTICLE 15
DEFAULT BY TENANT

15.1 Default by Tenant. Any of the following events shall constitute a default by Tenant under this Lease:

A. Failure to Pay Rent. Tenant's failure to make any payment required by this Lease when it is due and the continuance of such failure for a period of 15 days after Tenant's receipt of written notice of such failure from Landlord.

B. Abandonment. The abandonment of the Property by Tenant, but not including mere vacation as may be necessary to facilitate the re-occupancy of the Property for a permitted use pursuant to an assignment or subletting authorized under the terms of this Lease, or except as caused by any casualty or condemnation or as ordered by any legal authority having jurisdiction (and not in response to a request of Tenant).

C. Bankruptcy, Insolvency and Related Concerns. The making by Tenant of any general assignment or general arrangement for the benefit of creditors; the filing by or against Tenant of a petition to have Tenant adjudged bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, such petition is dismissed within 90 days); the taking of any action by Tenant to authorize any of the foregoing actions on behalf of Tenant; the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Property or of Tenant's interest

in this Lease (unless possession is restored to Tenant within 60 days); or the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Property or of Tenant's interest in this Lease (unless such seizure is discharged within 30 days.

D. Prohibited Transfer. Any attempted assignment of this Lease, subletting of the Property or any portion of it or other transfer without Landlord's consent.

E. Mechanic's Liens. Tenant's failure to cancel or discharge of record any lien filed against the Property as a result of work by or at the request of Tenant within the 30 day period provided for in Section 11.1.

F. Other Breach. The failure by Tenant to observe, perform or comply with any term, condition or obligation in this Lease not already specifically mentioned in this Section 15.1, where such failure continues for 30 days after Landlord gives Tenant written notice of such failure; provided, however, that if the nature of Tenant's failure is such that more than 30 days are reasonably required for its cure, then Tenant shall not be in default if it begins to undertake action to cure the failure within the 30-day period and thereafter prosecutes such cure to completion with due diligence and in good faith; and provided further, that if Tenant's failure is in the giving of any notice or the doing of any task or thing at a particular time or times, then it shall be deemed a sufficient cure for the purposes hereof if such notice is given or thing is done within such 30-day cure period (extended as may be necessary for the due diligence completion of any such thing to be done), notwithstanding that Tenant's performance thereof shall not occur at the time or times specified herein. Any cure period shall terminate at any time that the subject breach becomes incurable or that the cure efforts become futile.

15.2 Landlord's Remedies. In the event of any default by Tenant, after the expiration of applicable cure periods, Landlord shall have the right, at its election, then or at any time thereafter, to exercise any one or more of the following remedies.

A. Cure for Tenant's Account. At Landlord's option, but without obligation to do so and without releasing Tenant from any obligations under this Lease, following five Business Days' notice to Tenant, Landlord may make any payment or take any action to cure any such default by Tenant in such manner and to such extent as Landlord may in good faith deem reasonably necessary. Tenant shall then pay to Landlord, within 30 days after demand, all sums paid and costs and expenses reasonably incurred by Landlord in connection with the making of any such payment or the taking of any such action, including reasonable attorneys' fees, together with interest as provided in Section 17.4. The actions which Landlord is authorized to take under this Section 15.2.A shall include commencing, appearing in, defending or otherwise participating in any action or proceeding and paying, purchasing, contesting or compromising any claim, right, encumbrance, charge or lien with respect to the Property which Landlord reasonably deems necessary to protect its interests in the Property or under this Lease.

B. Termination. By giving Tenant written notice in accordance with the Colorado forcible entry and detainer laws, Landlord may terminate this Lease as of the date of Tenant's default, or as of any later date specified in the notice and may demand and recover

possession of the Property from Tenant. In surrendering possession, Tenant and its assignees, subtenants, licensees, and invitees, shall be entitled to remove and retain all of their removable trade fixtures and other personal property located on the Property, so long as the removal is completed within 10 days after the notice is given.

C. Other Remedies. Such other rights and remedies as may be available to Landlord under applicable law.

15.3 Landlord's Duty to Mitigate Damages. In the case of any breach or default by Tenant, Landlord shall use reasonable efforts to mitigate its damages in accordance with Colorado law.

15.4 Suspension of Landlord's Obligations. In the event of the occurrence of any of the defaults specified in Section 15.1, if Landlord shall choose not to exercise its remedies under Section 15.2, or by law shall not be able to exercise such remedies, then, in addition to any other rights of Landlord under this Lease or by law, and, until the subject default is cured, neither Tenant, as debtor-in-possession, nor any Assuming Tenant, shall be entitled to assume this Lease unless, on or before the date of such assumption, the Assuming Tenant (i) cures, or provides assurance that the latter shall promptly cure, any existing default under this Lease, such cure to be completed within the time frames set forth in Section 15.1 above, measured from the date of such assumption, (ii) compensates or provides adequate assurance that the Assuming Tenant shall compensate Landlord for any pecuniary loss (including reasonable attorneys' fees and disbursements) resulting from such default, and (iii) provides adequate assurance of future performance under this Lease, including its ability to operate the Tenant Improvements in the manner contemplated in this Lease.

15.5 Remedies Cumulative. Each of the remedies described above, and all remedies available to Landlord at law or at equity for a default by Tenant, shall be cumulative with and in addition to one another and may be exercised simultaneously or successively, as Landlord may deem appropriate, without any exercise of one remedy being deemed an election of remedies or a waiver to the exclusion of any other remedy.

ARTICLE 16
DEFAULT BY LANDLORD

16.1 Landlord's Default Defined. Each of the following shall constitute a default by Landlord under this Lease.

A. Monetary Default. Landlord's failure to pay when due any amounts owing from Landlord to Tenant under the terms of this Lease, including Landlord's share of the Incremental Annual Expense under Section 5.3.D, if such failure shall continue for 15 days after Landlord is in actual receipt of written notice of such failure from Tenant.

B. Other Default. Landlord's failure to comply with any term, condition or obligation of Landlord's in this Lease not otherwise mentioned in this Section 16.1, if such failure

to comply shall continue for a period of 30 days after Tenant gives Landlord written notice of such failure, unless such failure cannot reasonably be cured within such 30-day period, in which event the cure period shall extend so long as Landlord begins to undertake action to cure such failure within such 30 days and thereafter prosecutes such cure to completion with due diligence and in good faith.

16.2 Tenant's Remedies. Upon the occurrence of any default by Landlord, after the expiration of applicable cure periods, Tenant shall have the right, at its election, then or at any time thereafter, to exercise any one or more of the following remedies:

B. Cure for Landlord's Account. Tenant may, at Tenant's option, without obligation to do so and without releasing Landlord from any obligation under this Lease, following five Business Days' notice to Tenant, make any payment or take any action to cure any such default by Landlord (provided such action does not prevent Resort guests from using the Property for parking or otherwise have a material and adverse effect on Resort operations) in such manner and to such extent as Tenant may in good faith deem the same necessary or reasonable. Landlord shall pay to Tenant within 30 days after demand for all sums paid and costs and expenses reasonably incurred by Tenant in connection with such action, including reasonable attorneys' fees, together with interest on all sums as provided in Section 17.4. Tenant at its election may also offset all such sums and interest against the Rent and other monetary obligations of Tenant under this Lease up to an amount equal to twenty-five percent (25%) of each subsequent Rent payment hereunder until Tenant has been paid or recovered through offset such sums and interest in full. Action taken by Tenant may include commencing, appearing in, defending, or otherwise participating in any action or proceeding and paying, purchasing, contesting or compromising any claim, right, encumbrance, charge or lien affecting the Property which Tenant reasonably deems necessary to protect Tenant's interest in the Property or under this Lease.

C. Termination. By giving Landlord written notice, Tenant may terminate this Lease as of the date of the default by Landlord, or as of any later date specified in the notice, but only so long as Landlord's default causes a permanent material impairment of the ability of Tenant to use, occupy and enjoy the Property. The Rent and other sums otherwise payable by Tenant shall be apportioned to the date of termination.

D. Specific Enforcement. Tenant may commence any permissible action to specifically enforce any of Landlord's obligations under this Lease.

E. Other Remedies. Tenant may exercise such other rights and remedies as may be available to Tenant under applicable law, including, in the event of a default arising from the bankruptcy of Landlord, all rights available to Tenant under 11 U.S.C. §365(h).

16.3 Tenant's Duty to Mitigate Damages. In the case of any breach or default by Landlord, Tenant shall use reasonable efforts to mitigate its damages in accordance with Colorado law.

ARTICLE 17
GENERAL DEFAULT PROVISIONS

17.1 Attorneys' Fees. In the event that either Landlord or Tenant commences any suit for the collection of any amounts for which the other may be in default or for the performance of any other covenant or agreement under this Lease or other dispute arising from or related to this Lease, the prevailing Party in any such action shall be awarded its reasonable costs and expenses, including all attorneys' fees, expert witness fees and other expenses incurred in enforcing such obligations and collecting such amounts, from the other Party to such action. For purposes of this Section, "prevailing Party" means the Party that is awarded, by verdict, judgment, order or award, at least 50% of the highest total damages disclosed or claimed in writing by said Party at any time in the action. Should neither Party be a prevailing Party, each Party will pay its own costs and fees incurred in connection with the legal action. Should both Parties be a prevailing Party, both will be entitled to recover their reasonable attorneys' fees and costs respectively, as proved by them and determined by the judge.

17.2 Waiver of Consequential Damages. In no event shall either Landlord or Tenant have the right to recover consequential damages of any kind from the other. Except as limited in this Lease above, all rights and remedies may be exercised and enforced concurrently and whenever and as often as Landlord or Tenant shall deem necessary.

17.3 No Implied Waiver . No failure by Landlord or Tenant to insist upon the strict performance of any term, covenant, or agreement contained in this Lease or to exercise any right or remedy in connection therewith, and no acceptance of full or partial payment during the continuance of any default by Tenant or default by Landlord, shall constitute a waiver of any such term, covenant, or agreement or any such right or remedy or any such default by Tenant or default by Landlord, it being understood and agreed by the Parties that any such waiver shall be effective only to the extent expressly and specifically set forth in a written instrument executed by the Party against whom such waiver is sought. Any waiver of a default by Tenant or default by Landlord or any right or remedy applied thereto shall not serve to waive any other default by Tenant or default by Landlord or the same default by Tenant or default by Landlord arising in the future or other rights or remedies or the same rights or remedies as applied to any future default by Tenant or default by Landlord.

17.4 Interest. In any case where any sum or charge which is owing under this Lease, whether from Tenant to Landlord, or from Landlord to Tenant, is not paid within 10 Business Days after the same is due and payable or within any other cure period applicable to the payment, whichever is later, then the delinquent sum or charge shall bear interest after the due date at an annual rate of 10% over the Prime Rate.

17.5 Regarding Payments. No payment by one Party or receipt by the other Party of a lesser amount than the sum required from the paying Party as provided in this Lease shall be deemed to be other than on account of the earliest payment due from the paying Party. Further, an endorsement or statement on any check or any letter accompanying any check or payment shall not be deemed an accord and satisfaction unless expressly agreed to by Party receiving the

payment, acting through its authorized representative, and a Party may accept such check or payment without prejudice to its right to recover the balance due from the paying Party or to pursue any other remedy then available.

ARTICLE 18
SUBORDINATION; LANDLORD'S RIGHT TO MORTGAGE AND CONVEY PROPERTY

Landlord may mortgage its interest in the Property, provided such mortgage expressly provides that the rights and interests of the mortgagee are subject and subordinate to the rights and interests of Tenant under this Lease. Should Landlord mortgage or otherwise transfer its interest in the Property or should any mortgagee of Landlord succeed to Landlord's interest through foreclosure or deed in lieu of foreclosure, Tenant shall attorn to Landlord's successor in title as the landlord under this Lease promptly upon any such succession, provided the successor in title assumes all of Landlord's duties and obligations under this Lease. The successor party shall not be liable for any of Landlord's obligations and duties accruing under this Lease before its assumption of Landlord's duties and obligations as provided in this Article above.

No transfer of Landlord's interest under this Lease shall release Landlord from any of its obligations or duties under this Lease accruing before the transfer. Landlord shall be released of any ongoing obligations under this Lease from and after the date of such transfer only upon the assumption of all such obligations and duties by the transferee of Landlord arising from and after the transfer.

ARTICLE 19
REPRESENTATIONS BY LANDLORD AND TENANT

19.1 Landlord's Representations. Except as otherwise disclosed on **Schedule 19.1**, Landlord represents and warrants to Tenant, as of the Effective Date, as follows.

A. Authority. Landlord has all inherent legal power and authority required to enter into this Lease, has taken all action necessary to authorize the execution of this Lease and to perform and satisfy the transactions and obligations binding Landlord under this Lease, and has duly authorized the signatories to execute this Lease on behalf of Landlord.

B. Violation of Laws Generally. Landlord has received no written notice from a governmental agency of any existing and uncured violation of any laws with respect to the Property.

C. Legal Proceedings. There is no litigation pending with respect to the Property.

D. Environmental Matters. Without limiting the generality of Sections 19.1.B and 19.1.C, Landlord has received no written notice or other written communication from a governmental agency alleging an Environmental Law violation on the Property. Landlord, its

agents and employees have not caused any Hazardous Substances to be placed, held, located or disposed of in, on or at the Property or any part thereof in violation of Environmental Law.

19.2 Tenant's Representation. Tenant has all inherent legal power and authority required to enter into this Lease, has taken all action necessary to authorize the execution of this Lease and to perform and satisfy the transactions and obligations binding Tenant under this Lease, and has duly authorized the signatories to execute this Lease on behalf of Tenant. Specifically, Tenant's execution of this Lease, was authorized by Ordinance No. ____, Series 2019, adopted by the Town Council of the Town of Breckenridge on _____, 2019, and an appropriation of funds to allow Tenant to perform its obligations under this Lease during the 2020 calendar year was approved by resolution of the Town Council of the Town of Breckenridge concurrently with the adoption of such ordinance.

ARTICLE 20
LANDLORD DISCLOSURES

Tenant is hereby advised of and Landlord hereby discloses the following matters that may affect the Property, including if Landlord or any successor in interest to Landlord develops the parcel located north of the Land and commonly known (and referred to here) as the "**North Gondola Lot**."

A. Mountain Activities. The Property is located adjacent to or in the vicinity of skiing facilities and other all-season recreational areas (the "**Mountain Recreational Areas**"). The Mountain Recreational Areas are expected to generate an unpredictable amount of visible, audible and odorous impacts and disturbances from activities relating to the construction, operation, use and maintenance of the Mountain Recreational Areas (the "**Mountain Activities**"). The Mountain Activities may include: (a) movement and operation of passenger vehicles (including buses, vans and other vehicles transporting passengers over adjacent streets and over, around and through the Mountain Recreational Areas), commercial vehicles, and construction vehicles and equipment; (b) activities relating to the construction, operation and maintenance of roads, trails, ski trails, ski-ways and other facilities relating to the Mountain Recreational Areas (including tree cutting and clearing, grading and earth moving and other construction activities, construction, operation and maintenance of access roads, snow-making equipment, chairlifts, gondolas, buses or other transportation systems, operation of vehicles and equipment relating to trash removal, snow removal, snow grooming, and over-the-snow or over-the-terrain transportation purposes, and operation of safety and supervision vehicles); (c) activities relating to the use of the Mountain Recreational Areas (including skiing, snow-boarding, ski-patrol activities, and other over-the-snow activities, hiking, horseback riding, alpine slide, bicycling and other recreational activities); (d) ski racing and organized events and competitions relating to the activities described in clause (c) above; (e) concerts, festivals, art and other shows and displays, fireworks displays, outdoor markets and other performances and special events; (f) lodging cabins, restaurants, clubs, restrooms and other public use facilities; (g) public access to adjacent U.S. Forest Service lands; (h) public parking facilities and the traffic related thereto; and (i) other activities permitted by law. The Mountain Activities may occur during daytime and nighttime

and may be temporarily or permanently interrupted, discontinued or modified, in whole or in part, from time to time.

B. Construction Activities. The development of the North Gondola Lot and/or other properties in the vicinity of the Property may require ongoing construction activities (collectively, the "**Construction Activities**"). The Construction Activities may generate an unpredictable amount of visible, audible and odorous impacts and disturbances. The Construction Activities may include: (a) construction traffic (including construction vehicles, equipment and vehicles used or owned by Landlord, its affiliates, adjacent landowners, and the employees, agents and contractors of any of them); and (b) construction activities (including grading, excavation, clearing, site work, relocation of roadways and public utilities and construction of improvements) relating to nearby properties, or the Mountain Recreational Areas.

C. Commercial Activities. A variety of commercial activities (the "**Commercial Activities**") are and may be conducted within the Mountain Recreational Areas both before and after the Effective Date (the "Commercial Activity Areas"). The Commercial Activities are expected to generate an unpredictable amount of visible, audible and odorous impacts and disturbances. The Commercial Activities may include: (a) operation of full-service hotel(s) and/or timeshare, vacation club or similar facilities which may include health spa(s) with associated swimming pool(s) and other indoor or outdoor recreational facilities; (b) meetings, conferences, banquets and other group events; (c) sales and rentals of clothing, skis, ski-related equipment, other over-the-snow equipment, bicycles, and other recreational equipment; (d) sales of tickets for chairlifts, gondolas, other transportation systems, and other activities and events conducted on the Mountain Recreational Areas; (e) indoor and outdoor restaurant and bar operations (including the sale of food and alcoholic and non-alcoholic beverages for on-site and off-site consumption) and preparation of hot and cold food (through the use of barbecue grills, fire pits and other smoke and/or odor producing means) and beverages at indoor and outdoor facilities on and immediately adjacent to the Property; (f) sales of services relating to skiing, other over-the-snow activities, and other recreational activities (including tuning, waxing, repairing, mounting of bindings on, renting, storing and transporting skis, snowboards and similar equipment, ski schools and other forms of individual and group lessons, tours and excursions); (g) public use of the adjacent properties for access to the Mountain Recreational Areas, vehicle passenger drop-off and pick-up, locker room, changing room, rest room and lounge purposes in designated areas, and short-term clothing and equipment storage; (h) parking activities (including activities relating to valet parking or parking relating to adjacent properties); (i) the installation, operation and maintenance of illuminated and non-illuminated signage; (j) concerts and other outdoor and indoor entertainment, performances and special events, which may include amplified live or recorded music; and (k) any operation of one or more treatment facilities; and (l) any other uses or activities permitted by law.

D. No View Easement. Notwithstanding any oral, written, or other representation made to Tenant to the contrary by Landlord, any real estate agency or any agent, employee or representative of Landlord, or any other person, and by signing this Lease, Tenant

acknowledges and agrees, there is no easement or other right, express or implied, for the benefit of Tenant or the Property for light, view or air included in or created by this Lease or as a result of Tenant ground leasing the Property. Tenant acknowledges and agrees that any view, sight lines, or openings for light or air available from the Property as of the Effective Date, may be blocked or altered in whole or in part in the future by virtue of natural or unnatural causes, including but not limited to future construction or expansion of commercial or residential buildings or facilities, future construction or expansion of ski lifts, gondolas, and associated poles and towers, or by natural (including, but not limited to, disease or insects such as pine beetles) or unnatural loss or alteration of vegetation or mountain slopes. **LANDLORD HEREBY DISCLAIMS ANY AND ALL REPRESENTATIONS, WARRANTIES, OBLIGATIONS OR LIABILITIES CONCERNING EASEMENTS OR OTHER RIGHTS, WHETHER EXPRESS OR IMPLIED, FOR LIGHT, AIR, OR VIEW IN THE PROPERTY; TENANT HEREBY ACCEPTS SUCH DISCLAIMER, AND AGREES THAT LANDLORD AND ITS AFFILIATES SHALL NOT HAVE ANY OBLIGATION OR LIABILITY FOR, AND WAIVES ANY CLAIM AGAINST LANDLORD OR ITS AFFILIATES, AND THEIR CONTRACTORS OR AGENTS, RELATED TO ANY LOSS OF LIGHT, AIR, OR VIEW THAT MAY AFFECT THE PROPERTY.**

E. Other Properties. Tenant acknowledges that other properties are located adjacent to and in the general vicinity of the Property (the "**Other Properties**") may be developed pursuant to the land uses permitted by applicable zoning regulations, as well as any other governmental rules, regulations, or policies in effect now or in the future which are applicable to the Other Properties (collectively, the "**Ordinances**"). Neither Landlord nor Landlord's employees, agents, officers, directors and affiliates make any representations concerning the planned uses of the Other Properties. Tenant further acknowledges that the zoning for the Property and the Other Properties is established and governed by the Ordinances. Any amendment of those Ordinances requires approval of applicable governmental authorities. By executing this Lease, Tenant acknowledges that Tenant has not relied upon any statements or representations regarding the Property or the Other Properties, including any representations made by Landlord or any agents or employees of Landlord or any real estate agency or any agent, except for those statements and representations expressly set forth in this Lease and the Ordinances.

ARTICLE 21
MISCELLANEOUS

21.1 Memorandum of Lease. This Lease shall not be recorded. The Parties shall execute, acknowledge, and deliver to each other duplicate originals of a short form or memorandum of this Lease ("**Memorandum of Lease**") in substantially the form of **Schedule 21.1**, describing the Property and setting forth the Term. The Memorandum of Lease shall be recorded at Tenant's expense. If this Lease is terminated, upon request of Landlord, Tenant shall execute and deliver to Landlord a termination of the Memorandum of Lease suitable for recording within 10 days of Landlord's request.

21.2 Colorado Open Records Act. The Parties acknowledge that this Lease is subject to public disclosure under the Colorado Open Records Act, Part 2 of Article 72 of Title 24, C.R.S.

21.3 Governmental Immunity. The Parties understand and agree that in entering into this Lease Tenant is relying on, and does not waive or intend to waive by any provision of this Lease, the monetary limitations, or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101 et seq., C.R.S. as from time to time amended, or any other limitation, right, immunity or protection otherwise available to Tenant, its officers, or its employees.

21.4 Time of Essence. Time is of the essence under this Lease for the performance and observance of all obligations of Landlord and Tenant, and all provisions of this Lease shall be strictly construed.

21.5 Notice. Any notice, request, offer, approval, consent, or other communication required or permitted to be given by or on behalf of either Party to the other shall be given or communicated in writing by personal delivery, reputable overnight courier service which keeps receipts of deliveries (i.e., Federal Express), or United States certified mail (return receipt requested with postage fully prepaid) or express mail service addressed to the other Party as follows:

If to Tenant:
Town of Breckenridge
Attention: Rick Holman, Town Manager
P.O. Box 168
150 Ski Hill Road
Breckenridge, Colorado 80424
Telephone number: (970) 547-3166

With copies to:
Timothy H. Berry, Esq.
Timothy H. Berry, P.C.
131 West 5th Street
P.O. Box 2
Leadville, Colorado 80461
Telephone number: (719) 486-1889

If to Landlord:
Vail Summit Resorts, Inc.
Attention: John Buhler
P.O. Box 1058
Breckenridge, CO 80424
Telephone number: (970) 453-3309

With copies to: Vail Summit Resorts, Inc.
Attention: Legal Department
390 Interlocken Crescent
Broomfield, CO 80021

With copies to: Polsinelli PC
Attention: Nickolas J. McGrath
1401 Lawrence Street, Suite 2300
Denver, Colorado 80202
Telephone number: (303) 256-2757

or at such other address as may be specified from time to time in writing by either Party. All such notices under this Lease shall be deemed to have been given on the date personally delivered or the date marked on the return receipt, unless delivery is refused or cannot be made, in which case the date of postmark shall be deemed the date notice has been given.

21.6 Successors and Assigns. All covenants, promises, conditions, representations, and agreements in this Lease contained shall be binding upon, apply to, and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, successors (including subtenants), and permitted assigns.

21.7 Construction.

A. Partial Invalidity. If any provision of this Lease or the application thereof to any person or circumstance shall to any extent be held invalid, the remainder of this Lease or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

B. Interpretation. In interpreting this Lease in its entirety, there shall be no inference, by operation of law or otherwise, that any provision of this Lease shall be construed against either Party hereto. This Lease shall be construed without regard to any presumption or other rule requiring construction against the Party causing this Lease to be drafted.

C. Headings, Captions, and References. The section captions contained in this Lease are for convenience only and do not in any way limit or amplify any term or provision hereof. The use of the terms "under this Lease" and "in this Lease" shall refer to this Lease as a whole, inclusive of the schedules attached hereto, except when noted otherwise. The use of the masculine or neuter gender in this Lease shall include the masculine, feminine and neuter genders, and the singular form shall include the plural when the context so requires.

D. "Includes" and its Derivatives. The use of the word "includes" shall be construed to mean "includes without limitation," unless the context clearly states otherwise. The same construction shall be applied to "including" or any other derivative of the word "include."

E. Termination by Right. Whenever this Lease is terminated by the exercise of any right, election or option under this Lease in favor of either Party, any corresponding release of the Parties from "all further obligations" under this Lease shall apply only to such obligations which have not then accrued and shall not relieve either Party of liability for any pre-existing breach or default by that Party of its respective obligations under this Lease. Furthermore, each Party expressly acknowledges that, in connection with any such termination by right, each Party shall have rights of reimbursement or repayment against the other only to the extent expressly provided for in this Lease.

21.8 Integration. This Lease, the schedules attached to it, and the other documents expressly referenced in this Lease constitute the entire agreement between the Parties with regard to the subject matter of this Lease, and any extrinsic covenants, agreements, representations, warranties, conditions or terms are superseded by this Lease and shall be of no force or effect.

21.9 Governing Law; Waiver of Jury Trial. This Lease shall be construed under the laws of the State of Colorado, without giving effect to conflicts of laws principles. Any reference in this Lease to a state or federal statute or municipal ordinance shall include any successor statute or ordinance. BOTH LANDLORD AND TENANT WAIVE THE RIGHT TO A JURY TRIAL IN ANY ACTION PERTAINING TO THIS LEASE.

21.10 Venue and Jurisdiction. The exclusive venue for any dispute between the Parties relating to or arising out of this Lease or relating to the Property shall be the Colorado State district court for Summit County. The Parties consent to the jurisdiction and venue of any of the above-described courts and waive any argument that venue in such forums is not proper or convenient.

21.11 Further Assurances. Landlord and Tenant shall each cooperate with the other and execute such documents as the other Party may reasonably require or request so as to enable it to perform its obligations under this Lease, so long as the requested conduct or execution of documents does not derogate or alter the powers, rights, duties, and responsibilities of the respective Parties.

21.12 Excusable Delays. Except to the extent otherwise expressly provided by this Lease, if either Party is delayed in the performance of any act required under this Lease by reason of an Excusable Delay, that Party may extend the deadline for the required performance for the duration of the Excusable Delay, subject to the terms and conditions of this Section. If a Party elects to so extend a deadline, then that Party shall first give written notice to the other Party within five Business Days after confirming the circumstances giving rise to an Excusable Delay have arisen, and the notice shall detail those circumstances. Within five Business Days after the circumstances that gave rise to the Excusable Delay have been resolved, the Party who elected to extend the deadline shall give an additional written notice to the other Party setting forth the total

number of days the period for performance has been extended as a result of the Excusable Delay (provided, however, if a Party claims that an Excusable Delay has a duration of thirty (30) days or more, then the Parties shall be required to mutually agree on the length of such Excusable Delay). The availability of an Excusable Delay as grounds for extending a deadline for performance is subject to any express limitations stated in other provisions of this Lease.

21.13 Amendment. No provision of this Lease may be modified except by an amendment expressly and specifically set forth in a written instrument executed by each Party.

21.14 Estoppel Certificate. Each Party agrees, from time to time, within 20 days following written request from the other Party, to execute and deliver an estoppel certificate stating that this Lease is in full force and effect, and if modified, setting forth such modification, that no default exists, or if a default exists, setting forth the same, and such other factual matters regarding this Lease as may be reasonably requested, provided such estoppel does not obligate the Party to acknowledge or consent to any modifications or interpretations of this Lease not previously agreed upon by both Parties in writing.

21.15 Brokers. Each Party warrants and represents to the other that they have not engaged any broker or finder with regard to the transactions contemplated by this Lease. Each Party hereby indemnifies and agrees to hold the other Party harmless from all damages, claims, liabilities or expenses, including reasonable and actual attorneys' fees (through all levels of proceedings), resulting from any claims that may be asserted against the other Party by any real estate broker or finder with whom the indemnifying Party either has or is purported to have dealt.

21.16 Reasonable Consent. Except as expressly provided otherwise in this Lease, in all cases where consent or approval shall be required pursuant to this Lease, the giving of each consent or approval shall not be unreasonably withheld, conditioned or delayed by the Party from whom such consent is required or requested.

21.17 Counterparts. For the convenience of the Parties, this Lease may be executed in one or more counterparts, and each executed counterpart shall for all purposes be deemed an original and shall have the same force and effect as an original, but all of such counterparts together shall constitute in the aggregate but one and the same instrument. Any electronic counterpart of this Lease shall be deemed to be an original.

21.18 Survival of Provisions. Notwithstanding any termination of this Lease, this Lease shall continue in force and effect as to any provisions hereof which require observance or performance by Landlord or Tenant subsequent to termination.

[Signatures on following page]

LANDLORD:

Vail Summit Resorts, Inc.,
a Colorado corporation

By:_____

_____
Name

_____
Title

TENANT:

Town of Breckenridge,
a Colorado municipal corporation

By:_____
Name: Eric S. Mamula
Title: Mayor

Attest:

_____
Helen Cospolich, CMC, Town Clerk

SCHEDULE 1.S
TO
GROUND LEASE

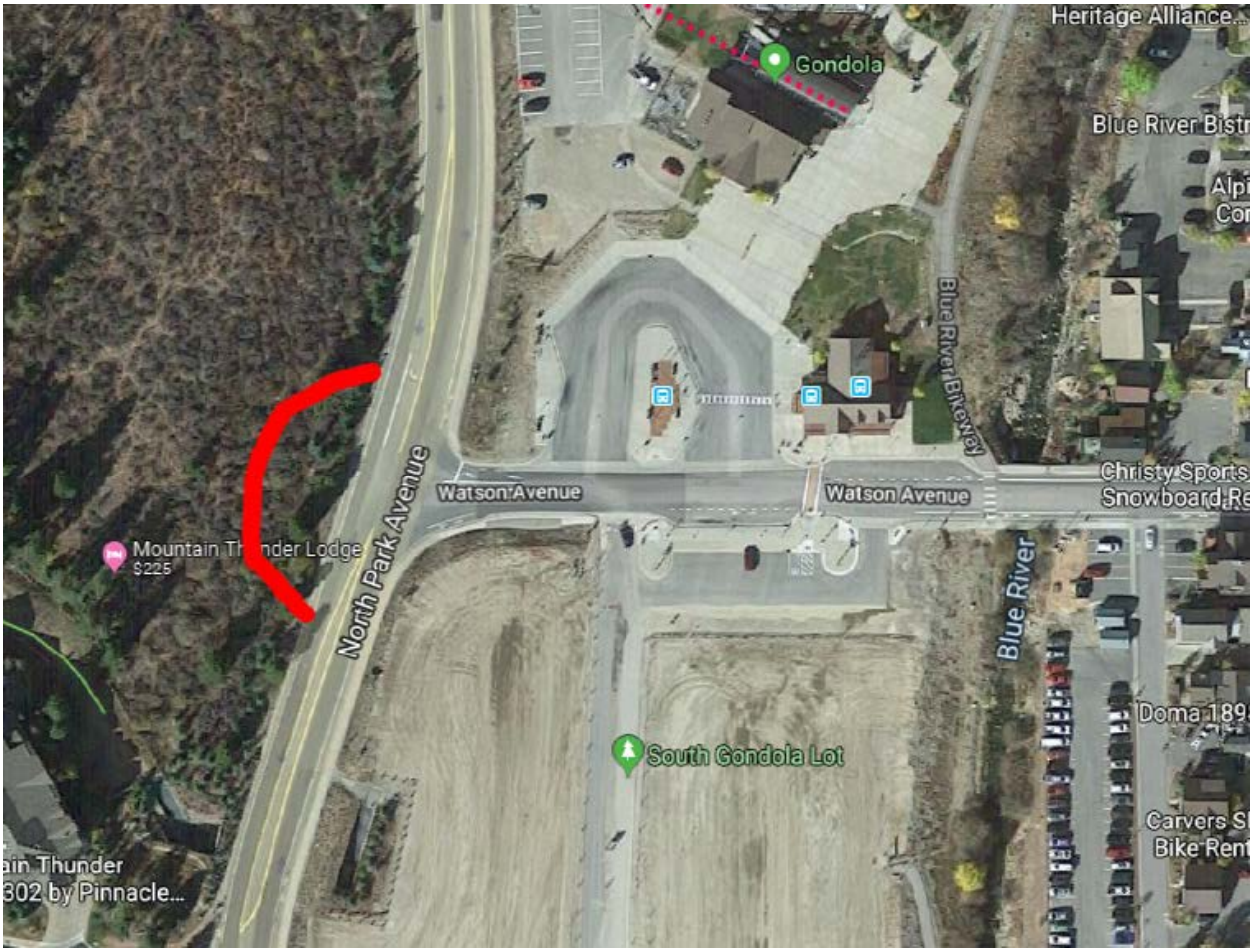
LEGAL DESCRIPTION OF LAND

Lots 1-A, 3-A, 3-B and 4, Sawmill Station Square, Filing No. 3, Amendment No. 2, according to the Plat thereof filed with the Summit County, Colorado Clerk and Recorder on January 21, 1986 at Reception No. 311104; and

Lots 1-B and 1-C, A Replat of Lots 1-B & 1-C, Sawmill Station Square, Filing No. 3, Amendment No. 2 & Lot 1, Sawmill Station Square, Filing No. 1, Amendment No. 2 according to the Plat thereof filed with the Summit County, Colorado Clerk and Recorder on December 14, 1990 at Reception No. 397221.

SCHEDULE 5.3.F
TO
GROUND LEASE

ROUND-A-BOUT LOCATION



SCHEDULE 6.1
TO
GROUND LEASE

AUDIT DISPUTE PROCEDURES

In the event of any disagreement regarding the calculation of Annual Rent that is not otherwise resolved as provided in Section 6.1 of this Lease during the Negotiation Period, then, unless otherwise agreed to in writing by the Parties, each Party shall, within ten (10) days after the expiration of the Negotiation Period, designate by written notice to the other Party one (1) independent certified public accountant with appropriate experience and of good reputation, having at least ten (10) years of experience in the metropolitan Denver real estate market ("**Accountant(s)**"). The two (2) Accountants so designated shall together determine whether Landlord's calculation of Annual Rent or Tenant's calculation of Annual Rent is correct. Landlord and Tenant shall each require the Accountants to make such determination and report it in writing to Landlord and Tenant within twenty (20) days after such selection, and each Party shall use its commercially reasonable efforts to secure such determination within such time period. If the two selected Accountants fail to agree on the correct calculation of Annual Rent pursuant to this procedure, they shall together immediately select a third independent Accountant who shall then (within ten (10) days of the Accountants' selection) determine the correct calculation of Annual Rent. The third Accountant shall notify Landlord and Tenant of the Accountant's determination and such determination shall be final. Each Party will pay the fee of the Accountant selected by it and one-half (½) of the fee of the third Accountant.

SCHEDULE 6.2.B
TO
GROUND LEASE

GROUND LEASE EXPENSES AND EXCLUSIONS

Ground Lease Expenses shall include the following:

1. Costs incurred by Tenant or its contractors or other agents in maintaining the Project in accordance with Section 7.2, including annual service fees associated with parking technology employed by the Town in the operation of the Project, such as fees for mobile applications and annual fees for parking entrance/exit machines. These fees shall not include any amortization payments of initial installation costs and shall reflect service fees associated with annual operation only.

2. Costs of supplies as required for Tenant to carry out its obligations for the maintenance and repair of the Project in accordance with Section 7.2.

3. Costs incurred in providing energy for the Project, including natural gas, steam, electricity, solar energy or any other energy sources.

4. Costs of water and sanitary and storm drainage services.

5. Costs of security services.

6. Costs of maintenance and replacement of landscaping.

7. Insurance premiums and deductibles, including property insurance coverage, together with loss of rent endorsement; public liability insurance; and any other insurance carried by Tenant.

8. Labor costs, including wages and other payments, costs incurred by Tenant for worker's compensation and disability insurance, payroll taxes, retirement, health and other fringe benefits of employees up to the level of property manager for the Project and all legal fees and other costs or expenses incurred in resolving any labor disputes.

9. Legal, accounting, inspection, and other consultation fees incurred in the ordinary course of operating the Project, including fees charged by consultants retained by Tenant for services that are designed to produce a reduction in Ground Lease Expenses or to reasonably improve the operation, maintenance or state of repair of the Project.

10. Routine annual striping maintenance and touch-up of parking spaces in Parking Structure and Surface Area.

11. Other expenses agreed to by Landlord and Tenant during the Term of this Lease as properly being included as Ground Lease Expenses.

In no event shall Ground Lease Expenses include any of the following (collectively, "**Exclusions**"):

1. Costs of repair or other work occasioned by fire, windstorm or other casualty.

2. Costs of repairs or rebuilding necessitated by condemnation.

3. Depreciation and amortization on the Project and all equipment, fixtures, improvements and facilities used in connection with it.

4. Any costs incurred by Tenant associated with payment of damages, overtime wages or other disbursements as a result of any breach of this Lease by Tenant.

5. Costs resulting from the negligence or intentional acts of Tenant or its agents, contractors or employees; and damage awards (or settlement payments) or other costs paid by Tenant and arising from Tenant's breach of contract obligations.

6. Tenant's Incremental Annual Expense, debt service payments or other costs and fees associated with the Project Financing.

7. Costs for which Tenant is reimbursed by any third party (including under warranties).

8. All costs associated with the operation of the business of Tenant (as distinguished from the costs of Project operations) including, but not limited to, Tenant's general overhead and general administrative expenses.

9. Interest and penalties due to late payment of any amounts owed by Tenant, except as may be incurred as a result of Landlord's failure to timely pay its portion of such amounts or as a result of Tenant's contesting such amounts in good faith.

10. Fines or penalties incurred because Tenant violated any governmental rule or authority.

11. Costs of a capital nature including capital improvements, capital repairs, capital equipment, and capital tools.

12. Costs of design and construction of the Tenant Improvements (including, without limitation, any tap and/or impact fees) and costs of correcting design and construction defects in the Tenant Improvements.

13. Taxes.

14. Maintenance Reserve Items.

15. Other items agreed to by Landlord and Tenant during the Term of this Lease as properly being Exclusions.

SCHEDULE 6.2.C
TO
GROUND LEASE

MAINTENANCE RESERVE ITEMS

1. Re-surfacing of the Surface Area.

2. Re-striping of parking spaces in Parking Structure and Surface Area (other than routine annual striping maintenance and touch-up of parking spaces which will be part of Ground Lease Expenses).

3. Replacement (but not initial installation) of parking technology that was installed as part of the initial Tenant Improvements.

4. Expansion joint replacement.

5. Concrete maintenance and repair.

6. Other items agreed to by Landlord and Tenant during the Term of this Lease as properly being included as Maintenance Reserve Items.

Notwithstanding the items listed above, Maintenance Reserves and Maintenance Reserve Items shall specifically exclude costs of correcting design and construction defects in the Tenant Improvements.

SCHEDULE 19.1
TO
GROUND LEASE

EXCEPTIONS TO LANDLORD REPRESENTATIONS

None.

SCHEDULE 21.1

FORM OF MEMORANDUM OF LEASE

After recording return to: The Town of Breckenridge, Colorado c/o Timothy H. Berry, P.C. P.O. Box 2 Leadville, CO 80461	

MEMORANDUM OF GROUND LEASE

This Memorandum of Ground Lease (this "Memorandum") is made as of June __, 2019, by and between **Vail Summit Resorts, Inc.**, a Colorado corporation ("Landlord"), and **The Town of Breckenridge, Colorado**, a Colorado municipal corporation ("Tenant"), who agree as follows:

1. Leased Property. Pursuant to the Ground Lease dated as of June __, 2019, between Landlord and Tenant (the "Lease"), Landlord leases to Tenant and Tenant leases from Landlord the real property described on **Exhibit A** attached to and incorporated in this Memorandum by this reference, together with all the improvements located on that real property and appurtenances relating to it (all together, the "Property"). All capitalized or defined terms used in this Memorandum shall have the same meaning as provided in the Lease.

2. Permitted Uses. Tenant leases the Property for the principal purpose of planning, constructing and operating of a parking garage structure and surface parking improvements (the "Project") and for vehicular and pedestrian ingress and ingress to those parking facilities, and for other limited purposes described in the Lease, with Landlord's consent, not to be unreasonably withheld, conditioned or delayed.

3. Term. The initial term of the Lease is 50 years beginning on the date when Tenant begins construction of the Project, which date Landlord and Tenant may confirm in a separate statement in form suitable for recording to supplement this Memorandum. Tenant has two options to extend the term of the Lease for 10 years each, all as more particularly set forth in the Lease.

4. Related Parking Agreements. Landlord and Tenant acknowledge and agree as follows:

A. June 29, 2004 Parking Agreement. Landlord and Tenant are parties to that certain Parking Agreement recorded in the real property records of Summit County, Colorado (the "County Records") on June 29, 2004 at Reception No. 760358 (the "6-29-04 Parking Agreement"), and five hundred fifty (550) parking spaces on the Property shall continue to apply

towards Landlord's obligations under the 6-29-04 Parking Agreement, notwithstanding Landlord's and Tenant's execution of the Lease, closure of the Property for construction of the Tenant Improvements, and/or Tenant's operation of the parking on the Property from and after the Project Opening.

B. April 29, 2004 Parking Agreement. Landlord and Tenant are parties to that certain Parking Lot Agreement recorded in the County Records on April 29, 2004 at Reception No. 754445 (the "4-29-04 Parking Agreement"). In the event of any conflict between the terms and conditions of the 4-29-04 Parking Agreement and the terms and conditions of the Lease (or any other signed written agreements reached by the Parties related to the operation of the Project pursuant to the Lease), the terms and conditions of the Lease (or such related agreements) shall govern the matter.

C. Intermodal Center Ground Lease. Landlord, as lessor, and Tenant, as lessee, are parties to the Intermodal Center Ground Lease recorded in the County Records on June 27, 2003 at Reception No. 721375 (the "Intermodal Lease"), which encumbers a portion of the Property. The execution of the Lease by Landlord represents written consent by Landlord, as required by Section 3.3 of the Intermodal Lease, to Tenant's use of the portion of the Land subject to the Intermodal Lease for income producing activities under the Lease, and to Tenant's use of the Land subject to the Intermodal Lease for those uses permitted by the Lease, even though such uses are not specifically authorized in Section 3.1 of the Intermodal Lease. Further, in the event of any conflict between the terms and conditions of the Intermodal Lease and the terms and conditions of the Lease (or any other signed written agreements reached by the Parties related to the operation of the Project pursuant to the Lease), the terms and conditions of the Lease (or such related agreements) shall govern the matter.

D. June 14, 2004 Parking Lease. Landlord, as lessee, and Tenant, as lessor, are parties to the Parking Lease recorded in the County Records on June 14, 2004 at Reception No. 758998, as amended by the Amendment to Parking Lease recorded in the County Records on December 14, 2009 at Reception No. 928308 (collectively, the "6-14-04 Parking Agreement"), which provides that the parking area on land described in the 6-14-04 Parking Agreement as the "South Block 11 Property" may be substituted with other property under conditions set forth in the 6-14-04 Parking Agreement. Landlord and Tenant confirm that, notwithstanding any provision in the 6-14-04 Parking Agreement, no part of the parking areas established under the 6-14-04 Parking Agreement shall be substituted with, or relocated to, the Property.

5. Notice. Until changed as provided in the Lease, the addresses for Landlord and Tenant shall be as follows:

If to Tenant: Town of Breckenridge
Attention: Rick Holman, Town Manager
P.O. Box 168
150 Ski Hill Road

Breckenridge, Colorado 80424

With copies to: Timothy H. Berry, Esq.
Timothy H. Berry, P.C.
131 West 5th Street
P.O. Box 2
Leadville, Colorado 80461

If to Landlord: Vail Summit Resorts, Inc.
Attention: John Buhler
P.O. Box 1058
Breckenridge, CO 80424

With copies to: Vail Summit Resorts, Inc.
Attention: Legal Department
390 Interlocken Crescent
Broomfield, CO 80021

With copies to: Polsinelli PC
Attention: Nickolas J. McGrath
1401 Lawrence Street, Suite 2300
Denver, Colorado 80202

6. Rights and Restrictions Regarding Transfer. Tenant shall not assign, transfer, mortgage, pledge or encumber the Lease or any interest in the Lease or in the Property, and shall not sublet all or any part of the Property without, in each case, first obtaining the prior consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion, except that Landlord shall not unreasonably withhold its consent to an assignment of the Lease, or a sublet of the entire Property to a special district or other governmental or quasi-governmental entity or agency.

Upon any transfer of title to the Property by Landlord, all of Landlord's rights and obligations under the Lease arising from and after such transfer shall be assigned automatically to Landlord's successor.

7. Binding Effect. The Property shall be held, used and occupied subject to the covenants, terms and provisions set forth in the Lease, which binds and benefits Landlord and Tenant and their respective successors and permitted assigns.

8. Lease Terms Controlling. The terms, conditions and covenants of the Lease are incorporated in this Memorandum by this reference as though fully set forth in this Memorandum. This Memorandum is prepared for recording in the County Records for the purpose of providing notice of the Lease to all third parties. However, this Memorandum does

not modify any provision of the Lease, and if a conflict arises between the Lease and this Memorandum, the provisions of the Lease shall prevail.

9. Counterparts. This Memorandum may be executed with counterpart signature pages.

[Remainder of Page Left Intentionally Blank]

LANDLORD:

Vail Summit Resorts, Inc.,
a Colorado corporation

By: _____
Name:_____
Title: _____

TENANT:

Town of Breckenridge,
a Colorado municipal corporation

By:_____
Name: Eric S. Mamula
Title: Mayor

Attest:

_____
Helen Cospolich, CMC, Town Clerk

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____ 2019, by _____ as _____ of Vail Summit Resorts, Inc., a Colorado corporation.

WITNESS my hand and official seal.

_____
Notary Public

My commission expires _____.

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this ___ day of _____ 2019, by Eric S. Mamula as Mayor of the Town of Breckenridge, a Colorado municipal corporation.

WITNESS my hand and official seal.

_____
Notary Public

My commission expires _____.

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this ___ day of _____ 2019, by Helen Cospolich, CMC, as Town Clerk of the Town of Breckenridge, a Colorado municipal corporation.

WITNESS my hand and official seal.

_____
Notary Public

My commission expires _____.

EXHIBIT A

Lots 1-A, 3-A, 3-B and 4, Sawmill Station Square, Filing No. 3, Amendment No. 2, according to the Plat thereof filed with the Summit County, Colorado Clerk and Recorder on January 21, 1986 at Reception No. 311104, Summit County, Colorado; and

Lots 1-B and 1-C, A Replat of Lots 1-B & 1-C, Sawmill Station Square, Filing No. 3, Amendment No. 2 & Lot 1, Sawmill Station Square, Filing No. 1, Amendment No. 2 according to the Plat thereof filed with the Summit County, Colorado Clerk and Recorder on December 14, 1990 at Reception No. 397221, Summit County, Colorado.

Memo

TOWN OF BRECKENRIDGE

To: Breckenridge Town Council Members

From: Shannon Haynes, Assistant Town Manager

Date: 5/22/2019

Subject: Ordinance Approving a Franchise Agreement with ALLO Communications

---

Town Council has the authority to grant non-exclusive, revocable franchise agreements with entities engaged in the construction, operation, maintenance, reconstruction and rebuilding of cable systems that provide services in Breckenridge.

A franchise agreement authorizes the cable provider to use the Town's rights-of-way to install its equipment and operate its cable system. Without a franchise agreement the cable provider could not legally use the Town's rights-of-way to operate its business.

The attached franchise agreement is between the Town and ALLO Communications. The proposed franchise agreement is similar to the Town's existing franchise agreement with Comcast. It complies with the requirements and limitations of the Town Charter, and the Town ordinance governing franchise agreements.

Staff believes the agreement is in the best interest of the Town.

Tim Berry and I will be available at the May 28th work session to answer any questions.

FOR WORKSESSION/FIRST READING – MAY 28

COUNCIL BILL NO. ___

Series 2019

AN ORDINANCE APPROVING A FRANCHISE AGREEMENT BETWEEN THE TOWN OF BRECKENRIDGE AND ALLO COMMUNICATIONS, LLC, A NEBRASKA LIMITED LIABILITY COMPANY

WHEREAS, the Town of Breckenridge is authorized by Article XIII of the Breckenridge Town Charter, Section 4-12-3 of the Breckenridge Town Code, and other applicable law, to grant one or more non-exclusive, revocable franchises to construct, operate, maintain, reconstruct and rebuild a cable system for the purpose of providing cable services within the boundaries of the Town; and

WHEREAS, Section 13.1 of the Breckenridge Town Charter provides that all powers concerning the granting of franchises shall be exercised by the Town Council without any requirement of voter approval; and

WHEREAS, Section 4-12-7 of the Breckenridge Town Code provides that a franchise may only be granted by the Town by an ordinance approved by the Town Council in the manner set forth in Section 5.10 of the Breckenridge Town Charter; and

WHEREAS, a proposed Franchise Agreement between the Town and ALLO Communications, LLC, a Nebraska limited liability company authorized to do business in Colorado, has been negotiated, a copy of which is marked **Exhibit "A"**, attached hereto and incorporated herein by reference; and

WHEREAS, the Town Council has reviewed the proposed new Franchise Agreement, and finds and determines that its approval would be in the best interest of the Town and its citizens; and

WHEREAS, the Town Council finds and determines that the procedural requirements contained in Chapter 12 of Title 4 of the Breckenridge Town Code have been satisfied in connection with the adoption of this ordinance.

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

Section 1. The Franchise Agreement Between the Town Of Breckenridge and ALLO Communications, LLC, a Nebraska limited liability company authorized to do business in Colorado" (**Exhibit "A"** hereto), is approved; and the Mayor is authorized, empowered, and directed to execute such agreement for and on behalf of the Town of Breckenridge.

Section 2. The Town Council hereby finds, determines and declares that it has the power to adopt this ordinance pursuant to: (i) the provisions of Article XIII of the Breckenridge Town Charter; (ii) Chapter 12 of Title 4 of the Breckenridge Town Code; and (iii), and the powers possessed by home rule municipalities in Colorado.

Section 3. This ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Charter.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this ____ day of _____, 2019. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ___ day of ____, 2019, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

TOWN OF BRECKENRIDGE, a Colorado municipal corporation

By: _____
Eric S. Mamula, Mayor

ATTEST:

_____
Helen Cospolich, CMC,
Town Clerk

ALLO COMMUNICATIONS, LLC AND
THE TOWN OF BRECKENRIDGE, COLORADO

CABLE FRANCHISE AGREEMENT

TABLE OF CONTENTS

ALLO COMMUNICATIONS, LLC AND
TOWN OF BRECKENRIDGE, COLORADO

CABLE FRANCHISE AGREEMENT

WHEREAS, the Town of Breckenridge owns the Breckenridge Fiber Network ("BFN") which is capable of providing a variety of broadband services, including Cable Services, throughout the Town; and

WHEREAS, on October 31, 2018, the Town issued a "Request for Interest: Use of a Town-Owned, Fiber Optic Backbone Network to Provide Advanced Telecommunications Services"; and

WHEREAS, ALLO Communications, LLC was one of a number of respondents to the Town's Request for Interest; and

WHEREAS, after evaluating responses, the Town chose to enter into negotiations with ALLO Communications, LLC for a Lease and Network Operation Agreement, governing the leasing and operations of the BFN; and

WHEREAS, the parties have entered into a Lease and Network Operation Agreement and this Franchise is subject to terms of the Lease and Network Operation Agreement; and

WHEREAS, to the extent that ALLO desires to provide Cable Services over the BFN, it is considered a Cable Operator and requires a Franchise authorizing such use, as required by the federal Cable Act, 47 U.S.C. Sec. 521, *et seq*., as amended; and

WHEREAS, ALLO has requested a Franchise from the Town to authorize the provision of Cable Services, and the Town, after considering its future cable-related needs and interests, and the provisions of Applicable Law, has determined that it is in the best interests of the Town, and the Town is willing to enter into a Franchise to authorize and govern the provision of Cable Services within the Town.

NOW, THEREFORE, the parties have agreed to terms of this Franchise as set forth below.

SECTION 1. DEFINITIONS AND EXHIBITS

(A) DEFINITIONS

For the purposes of this Franchise, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

1.1 "Access" means the availability for noncommercial use by various agencies, institutions, organizations, groups and individuals in the community, including the Town and its designees, of the Cable System to acquire, create, receive, and distribute video Cable Services and other services and signals as permitted under Applicable Law including, but not limited to:

a. "Public Access" means Access where community-based, noncommercial organizations, groups or individual members of the general public, on a nondiscriminatory basis, are the primary users.

b. "Educational Access" means Access where schools are the primary users having editorial control over programming and services. For purposes of this definition, "school" means any State-accredited educational institution, public or private, including, for example, primary and secondary schools, colleges and universities.

c. "Government Access" means Access where governmental institutions or their designees are the primary users having editorial control over programming and services.

1.2 "Access Channel" means any Channel, or portion thereof, designated for Access purposes or otherwise made available to facilitate or transmit Access programming or services.

1.3 "Activated" means the status of any capacity or part of the Cable System in which any Cable Service requiring the use of that capacity or part is available without further installation of system equipment, whether hardware or software.

1.4 "Affiliate," when used in connection with Grantee, means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.

1.5 "Applicable Law" means any statute, ordinance, judicial decision, executive order or regulation having the force and effect of law, that determines the legal standing of a case or issue.

1.6 "Bad Debt" means amounts lawfully billed to a Subscriber and owed by the Subscriber for Cable Service and accrued as revenues on the books of Grantee, but not collected after reasonable efforts have been made by Grantee to collect the charges.

1.7 "Basic Service" is the level of programming service which includes, at a minimum, all Broadcast Channels, all PEG SD Access Channels required in this Franchise, and any additional Programming added by the Grantee, and is made available to all Cable Services Subscribers in the Franchise Area.

1.8 "Broadcast Channel" means local commercial television stations, qualified low power stations and qualified local noncommercial educational television stations, as referenced under 47 USC § 534 and 535.

1.9 "Broadcast Signal" means a television or radio signal transmitted over the air to a wide geographic audience, and received by a Cable System by antenna, microwave, satellite dishes or

any other means.

1.10 "Cable Act" means the Title VI of the Communications Act of 1934, as amended.

1.11 "Cable Operator" means any Person or groups of Persons, including Grantee, who provide(s) Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System or who otherwise control(s) or is (are) responsible for, through any arrangement, the management and operation of such a Cable System.

1.12 "Cable Service" means the one-way transmission to Subscribers of video programming or other programming service, and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

1.13 "Cable System" means any facility, including Grantee's, consisting of a set of closed transmissions paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any Right-of-Way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with federal statutes; or (E) any facilities of any electric utility used solely for operating its electric utility systems.

1.14 "Channel" means a portion of the electromagnetic frequency spectrum which is used in the Cable System and which is capable of delivering a television channel (as television channel is defined by the FCC by regulation).

1.15 "Commercial Subscribers" means any Subscribers other than Residential Subscribers.

1.16 "Designated Access Provider" means the entity or entities designated now or in the future by the Town to manage or co-manage Access Channels and facilities. The Town may be a Designated Access Provider.

1.17 "Digital Starter Service" means the Tier of optional video programming services, which is the level of Cable Service received by most Subscribers above Basic Service, and does not include Premium Services.

1.18 "Downstream" means carrying a transmission from the Headend to remote points on the Cable System or to Interconnection points on the Cable System.

1.19 "Dwelling Unit" means any building, or portion thereof, that has independent living facilities, including provisions for cooking, sanitation and sleeping, and that is designed for

residential occupancy. Buildings with more than one set of facilities for cooking shall be considered Multiple Dwelling Units unless the additional facilities are clearly accessory.

1.20 "FCC" means the Federal Communications Commission.

1.21 "Fiber Optic" means a transmission medium of optical fiber cable, along with all associated electronics and equipment, capable of carrying Cable Service by means of electric lightwave impulses.

1.22 "Franchise" means the document in which this definition appears, *i.e.*, the contractual agreement, executed between the Town and Grantee, containing the specific provisions of the authorization granted, including references, specifications, requirements and other related matters.

1.23 "Franchise Area" means the area within the jurisdictional boundaries of the Town, including any areas annexed by the Town during the term of this Franchise.

1.24 "Franchise Fee" means that fee payable to the Town described in subsection 3.1 (A).

1.25 "Grantee" means ALLO Communications LLC or its lawful successor, transferee or assignee.

1.26 "Gross Revenues" means, and shall be construed broadly to include all revenues derived directly or indirectly by Grantee and/or an Affiliated Entity that is the cable operator of the Cable System, from the operation of Grantee's Cable System to provide Cable Services within the Town. Gross revenues include, by way of illustration and not limitation:

- monthly fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial customers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event and video-on-demand Cable Services);

- installation, reconnection, downgrade, upgrade or similar charges associated with changes in subscriber Cable Service levels;

- fees paid to Grantee for channels designated for commercial/leased access use and shall be allocated on a pro rata basis using total Cable Service subscribers within the Town;

- converter, remote control, and other Cable Service equipment rentals, leases, or sales;

- Advertising Revenues as defined herein;

- late fees, convenience fees and administrative fees which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total subscriber revenues within the Town;

- revenues from program guides;

- Franchise Fees;

- FCC Regulatory Fees; and,

- commissions from home shopping channels and other Cable Service revenue sharing arrangements which shall be allocated on a pro rata basis using total Cable Service subscribers within the Town.

(A) "Advertising Revenues" shall mean revenues derived from sales of advertising that are made available to Grantee's Cable System subscribers within the Town and shall be allocated on a pro rata basis using total Cable Service subscribers reached by the advertising. Additionally, Grantee agrees that Gross Revenues subject to franchise fees shall include all commissions, rep fees, Affiliated Entity fees, or rebates paid to National Cable Communications ("NCC") and Comcast Spotlight ("Spotlight") or their successors associated with sales of advertising on the Cable System within the Town allocated according to this paragraph using total Cable Service subscribers reached by the advertising.

(B) "Gross Revenues" shall not include:

- actual bad debt write-offs, except any portion which is subsequently collected which shall be allocated on a *pro rata* basis using Cable Services revenue as a percentage of total subscriber revenues within the Town;

- any taxes and/or fees on services furnished by Grantee imposed by any municipality, state or other governmental unit, provided that Franchise Fees and the FCC regulatory fee shall not be regarded as such a tax or fee;

- fees imposed by any municipality, state or other governmental unit on Grantee including but not limited to Public, Educational and Governmental (PEG) Fees;

- launch fees and marketing co-op fees; and,

- unaffiliated third party advertising sales agency fees which are reflected as a deduction from revenues.

(C) To the extent revenues are received by Grantee for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a *pro rata* basis when comparing the bundled service price and its components to the sum of the published rate card, except as required by specific federal, state or local law, it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value. This calculation shall be applied to every bundled service package containing Cable

Service from which Grantee derives revenues in the Town. The Town reserves its right to review and to challenge Grantee's calculations.

(D) Grantee reserves the right to change the allocation methodologies set forth in this Section 1.26 in order to meet the standards required by governing accounting principles as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Grantee will explain and document the required changes to the Town within three (3) months of making such changes, and as part of any audit or review of franchise fee payments, and any such changes shall be subject to 1.26(E) below.

(E) Resolution of any disputes over the classification of revenue should first be attempted by agreement of the Parties, but should no resolution be reached, the Parties agree that reference shall be made to generally accepted accounting principles ("GAAP") as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Notwithstanding the forgoing, the Town reserves its right to challenge Grantee's calculation of Gross Revenues, including the interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.

1.27 "Headend" means any facility for signal reception and dissemination on a Cable System, including cables, antennas, wires, satellite dishes, monitors, switchers, modulators, processors for Broadcast Signals, equipment for the Interconnection of the Cable System with adjacent Cable Systems and Interconnection of any networks which are part of the Cable System, and all other related equipment and facilities.

1.28 "Leased Access Channel" means any Channel or portion of a Channel commercially available for video programming by Persons other than Grantee, for a fee or charge.

1.29 "Manager" means the Town Manager of the Town or designee.

1.30 "Person" means any individual, sole proprietorship, partnership, association, or corporation, or any other form of entity or organization.

1.31 "Premium Service" means programming choices (such as movie Channels, pay-per-view programs, or video on demand) offered to Subscribers on a per-Channel, per-program or per-event basis.

1.32 "Residential Subscriber" means any Person who receives Cable Service delivered to Dwelling Units or Multiple Dwelling Units, excluding such Multiple Dwelling Units billed on a bulk-billing basis.

1.33 "Right-of-Way" means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the Town: streets, roadways, highways, avenues, lanes, alleys, bridges, sidewalks, easements, rights-of-way and similar public property and areas.

1.34 "State" means the State of Colorado.

1.35 "Subscriber" means any Person who or which elects to subscribe to, for any purpose, Cable Service provided by Grantee by means of or in connection with the Cable System and whose premises are physically wired and lawfully Activated to receive Cable Service from Grantee's Cable System, and who is in compliance with Grantee's regular and nondiscriminatory terms and conditions for receipt of service.

1.36 "Subscriber Network" means that portion of the Cable System used primarily by Grantee in the transmission of Cable Services to Residential Subscribers.

1.37 "Summit County Telecommunication Consortium" or "SCTC" means the non-profit entity formed by the franchising authorities and/or local governments from the Towns of Breckenridge, Silverthorne, Frisco, and Dillon, and Summit County, Colorado or the SCTC's successor entity, whose purpose is, among other things, to communicate with regard to franchising matters collectively and cooperatively.

1.38 "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received (as provided in 47 U.S.C. Section 153(43)).

1.39 "Telecommunications Service" means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used (as provided in 47 U.S.C. Section 153(46)).

1.40 "Tier" means a group of Channels for which a single periodic subscription fee is charged.

1.41 "Town" is the Town of Breckenridge, Colorado, a body politic and corporate under the laws of the State of Colorado.

1.42 "Town Council" means the Breckenridge Town Council, or its successor, the governing body of the Town of Breckenridge, Colorado.

1.43 "Two-Way" means that the Cable System is capable of providing both Upstream and Downstream transmissions.

1.44 "Upstream" means carrying a transmission to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.

(B) EXHIBITS

The following documents, which are occasionally referred to in this Franchise, are formally incorporated and made a part of this Franchise by this reference:

1) ***Exhibit A,*** entitled Customer Service Standards.

2) ***Exhibit B,*** entitled Report Form.

SECTION 2. GRANT OF FRANCHISE

2.1 Grant

(A) The Town hereby grants to Grantee a nonexclusive authorization to make reasonable and lawful use of the Rights-of-Way within the Town to construct, operate, maintain, reconstruct and rebuild a Cable System for the purpose of providing Cable Service subject to the terms and conditions set forth in this Franchise and in any prior utility or use agreements entered into by Grantee with regard to any individual property. This Franchise shall constitute both a right and an obligation to provide the Cable Services required by, and to fulfill the obligations set forth in, the provisions of this Franchise.

(B) Nothing in this Franchise shall be deemed to waive the lawful requirements of any generally applicable Town ordinance existing as of the Effective Date, as defined in subsection 2.3.

(C) Each and every term, provision or condition herein is subject to the provisions of State law, federal law, the Charter of the Town, and the ordinances and regulations enacted pursuant thereto. The Charter and Municipal Code of the Town, as the same may be amended from time to time, are hereby expressly incorporated into this Franchise as if fully set out herein by this reference. Notwithstanding the foregoing, the Town may not unilaterally alter the material rights and obligations of Grantee under this Franchise.

(D) This Franchise shall not be interpreted to prevent the Town from imposing additional lawful conditions, including additional compensation conditions for use of the Rights-of-Way, should Grantee provide service other than Cable Service.

(E) Grantee promises and guarantees, as a condition of exercising the privileges granted by this Franchise, that any Affiliate of the Grantee directly involved in the offering of Cable Service in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, will also comply with the obligations of this Franchise.

(F) No rights shall pass to Grantee by implication. Without limiting the foregoing, by way of example and not limitation, this Franchise shall not include or be a substitute for:

(1) Any other permit or authorization required for the privilege of transacting and carrying on a business within the Town that may be required by the ordinances and laws of the Town;

(2) Any permit, agreement, or authorization required by the Town for Right-of-Way users in connection with operations on or in Rights-of-Way or public property including, by way of example and not limitation, street cut permits; or

(3) Any permits or agreements for occupying any other property of the Town or private entities to which access is not specifically granted by this Franchise including, without limitation, permits and agreements for placing devices on poles, in conduits or in or on other structures.

(G) This Franchise is intended to convey limited rights and interests only as to those Rights-of-Way in which the Town has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide the Grantee with any interest in any particular location within the Right-of-Way; and it does not confer rights other than as expressly provided in the grant hereof.

(H) This Franchise does not authorize Grantee to provide Telecommunications Service, or to construct, operate or maintain Telecommunications facilities. This Franchise is not a bar to the provision of non-Cable Services, or to the imposition of any lawful conditions on Grantee with respect to Telecommunications, whether similar, different or the same as the conditions specified herein. This Franchise does not relieve Grantee of any obligation it may have to obtain from the Town an authorization to provide Telecommunications Services, or to construct, operate or maintain Telecommunications facilities, or relieve Grantee of its obligation to comply with any such authorizations that may be lawfully required.

2.2 Use of Rights-of-Way

(A) Subject to the Town's supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Rights-of-Way within the Town such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System within the Town. Grantee, through this Franchise, is granted extensive and valuable rights to operate its Cable System for profit using the Town's Rights-of-Way in compliance with all applicable Town construction codes and procedures. As trustee for the public, the Town is entitled to fair compensation as provided for in Section 3 of this Franchise to be paid for these valuable rights throughout the term of the Franchise.

(B) Grantee must follow Town established nondiscriminatory requirements for placement of Cable System facilities in Rights-of-Way, including the specific location of facilities in the Rights-of-Way, and must in any event install Cable System facilities in a manner that minimizes interference with the use of the Rights-of-Way by others, including others that may be installing communications facilities. Within limits reasonably related to the Town's role in protecting public health, safety and welfare, the Town may require that Cable System facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to a particular Right-of-Way; may deny access if Grantee is not willing to comply with Town's requirements; and may remove, or require removal of, any facility that is not installed by Grantee in compliance with the requirements established by the Town, or which is installed without prior Town approval of the time, place or manner of installation, and charge Grantee for all the costs associated with removal; and may require Grantee to cooperate with others to

minimize adverse impacts on the Rights-of-Way through joint trenching and other arrangements.

2.3 Effective Date and Term of Franchise

This Franchise and the rights, privileges and authority granted hereunder shall take effect on _____, 2019 (the "Effective Date"), and shall terminate on _____, 2029 unless terminated sooner as hereinafter provided. Notwithstanding anything to the contrary reference herein, the parties acknowledge their Fiber Lease and Network Operation Agreement dated _____, 2019, and agree that should that agreement terminate for any reason, this Franchise, and any renewal or extension hereof, shall also terminate at the same time.

2.4 Franchise Nonexclusive

This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements or licenses granted by the Town to any Person to use any property, Right-of-Way, right, interest or license for any purpose whatsoever, including the right of the Town to use same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. The Town may at any time grant authorization to use the Rights-of-Way for any purpose not incompatible with Grantee's authority under this Franchise and for such additional franchises for Cable Systems as the Town deems appropriate.

2.5 Police Powers

Grantee's rights hereunder are subject to the police powers of the Town to adopt and enforce ordinances necessary to the safety, health, and welfare of the public, and Grantee agrees to comply with all laws and ordinances of general applicability enacted, or hereafter enacted, by the Town or any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof. The Town shall have the right to adopt, from time to time, such ordinances as may be deemed necessary in the exercise of its police power; provided that such hereinafter enacted ordinances shall be reasonable and not materially modify the terms of this Franchise. Any conflict between the provisions of this Franchise and any other present or future lawful exercise of the Town's police powers shall be resolved in favor of the latter.

2.6 Competitive Equity

(A) The Grantee acknowledges and agrees that the Town reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to provide Cable Services within the Town. If the Town grants such an additional franchise or other similar lawful authorization containing material terms and conditions that differ from Grantee's material obligations under this Franchise, then the Town agrees that the obligations in this Franchise will, pursuant to the process set forth in this Section, be amended to include any material terms or conditions that it imposes upon the new entrant, or provide relief from existing material terms or conditions, so as to insure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include, but are not limited to: Franchise Fees and Gross Revenues; insurance; System build-out requirements; security instruments; Public,

Education and Government Access Channels and support; customer service standards; required reports and related record keeping; competitive equity (or its equivalent); audits; dispute resolution; remedies; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entity so long as the regulatory and financial burdens on each entity are materially equivalent. Video programming services (as defined in the Cable Act) delivered over wireless broadband networks are specifically exempted from the requirements of this Section.

(B) The modification process of this Franchise as provided for in Section 2.6 (A) shall only be initiated by written notice by the Grantee to the Town regarding specified franchise obligations. Grantee's notice shall address the following: (1) identifying the specific terms or conditions in the competitive cable services franchise which are materially different from Grantee's obligations under this Franchise; (2) identifying the Franchise terms and conditions for which Grantee is seeking amendments; (3) providing text for any proposed Franchise amendments to the Town, with a written explanation of why the proposed amendments are necessary and consistent.

(C) Upon receipt of Grantee's written notice as provided in Section 2.6 (B), the Town and Grantee agree that they will use best efforts in good faith to negotiate Grantee's proposed Franchise modifications, and that such negotiation will proceed and conclude within a ninety (90) day time period, unless that time period is reduced or extended by mutual agreement of the parties. If the Town and Grantee reach agreement on the Franchise modifications pursuant to such negotiations, then the Town shall amend this Franchise to include the modifications.

(D) In the alternative to Franchise modification negotiations as provided for in Section 2.6 (C), or if the Town and Grantee fail to reach agreement in such negotiations, Grantee may, at its option, elect to replace this Franchise by opting into the franchise or other similar lawful authorization that the Town grants to another provider of Cable Services, so as to insure that the regulatory and financial burdens on each entity are equivalent. If Grantee so elects, the Town shall immediately commence proceedings to replace this Franchise with the franchise issued to the other Cable Services provider.

(E) Notwithstanding anything contained in this Section 2.6(A) through (D) to the contrary, the Town shall not be obligated to amend or replace this Franchise unless the new entrant makes Cable Services available for purchase by Subscribers or customers under its franchise agreement with the Town.

(F) Notwithstanding any provision to the contrary, at any time that non-wireless facilities based entity, legally authorized by state or federal law, makes available for purchase by Subscribers or customers, Cable Services or multiple Channels of video programming within the Franchise Area without a franchise or other similar lawful authorization granted by the Town, then:

(1) Grantee may negotiate with the Town to seek Franchise modifications as per Section 2.6(C) above; or

(a) the term of Grantee's Franchise shall, upon ninety (90) days written notice from Grantee, be shortened so that the Franchise shall be deemed to expire on a date eighteen (18) months from the first day of the month following the date of Grantee's notice; or,

(b) Grantee may assert, at Grantee's option, that this Franchise is rendered "commercially impracticable," and invoke the modification procedures set forth in Section 625 of the Cable Act.

2.7 Familiarity with Franchise

The Grantee acknowledges and warrants by acceptance of the rights, privileges and agreements granted herein, that it has carefully read and fully comprehends the terms and conditions of this Franchise and is willing to and does accept all lawful and reasonable risks of the meaning of the provisions, terms and conditions herein. The Grantee further acknowledges and states that it has fully studied and considered the requirements and provisions of this Franchise, and finds that the same are commercially practicable at this time, and consistent with all local, State and federal laws and regulations currently in effect, including the Cable Act.

2.8 Effect of Acceptance

By accepting the Franchise, the Grantee: (1) acknowledges and accepts the Town's legal right to issue and enforce the Franchise; (2) accepts and agrees to comply with each and every provision of this Franchise subject to Applicable Law; and (3) agrees that the Franchise was granted pursuant to processes and procedures consistent with Applicable Law, and that it will not raise any claim to the contrary.

SECTION 3. FRANCHISE FEE PAYMENT AND FINANCIAL CONTROLS

3.1 Franchise Fee

As compensation for the benefits and privileges granted under this Franchise and in consideration of permission to use the Town's Rights-of-Way, Grantee shall continue to pay as a Franchise Fee to the Town, throughout the duration of and consistent with this Franchise, an amount equal to five percent (5%) of Grantee's Gross Revenues.

3.2 Payments

Grantee's Franchise Fee payments to the Town shall be computed quarterly for the preceding calendar quarter ending March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than thirty (30) days after said dates.

3.3 Acceptance of Payment and Recomputation

No acceptance of any payment shall be construed as an accord by the Town that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as

a release of any claim the Town may have for further or additional sums payable or for the performance of any other obligation of Grantee.

3.4 Quarterly Franchise Fee Reports

Each payment shall be accompanied by a written report to the Town, or concurrently sent under separate cover, verified by an authorized representative of Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount. Such reports shall detail all Gross Revenues of the Cable System.

3.5 Annual Franchise Fee Reports

Grantee shall, within sixty (60) days after the end of each year, furnish to the Town a statement stating the total amount of Gross Revenues for the year and all payments, deductions and computations for the period.

3.6 Audits

On an annual basis, upon thirty (30) days prior written notice, the Town, including the Town's Auditor or his/her authorized representative, or the SCTC, as assigned by the Town, shall have the right to conduct an independent audit/review of Grantee's records reasonably related to the administration or enforcement of this Franchise. An audit conducted by the SCTC pursuant to this section may be joined with an audit/review of Grantee's records being conducted by another SCTC community related to the administration or enforcement of its cable franchise agreement with Grantee. Pursuant to subsection 1.26, as part of the Franchise Fee audit/review the Town shall specifically have the right to review relevant data related to the allocation of revenue to Cable Services in the event Grantee offers Cable Services bundled with non-Cable Services. For purposes of this section, "relevant data" shall include, at a minimum, Grantee's records, produced and maintained in the ordinary course of business, showing the subscriber counts per package and the revenue allocation per package for each package that was available for Town subscribers during the audit period. To the extent that the Town does not believe that the relevant data supplied is sufficient for the Town to complete its audit/review, the Town may require other relevant data. For purposes of this Section 3.6, the "other relevant data" shall generally mean all: (1) billing reports, (2) financial reports (such as General Ledgers) and (3) sample customer bills used by Grantee to determine Gross Revenues for the Franchise Area that would allow the Town to recompute the Gross Revenue determination. If the audit/review shows that Franchise Fee payments have been underpaid by five percent (5%) or more (or such other contract underpayment threshold as set forth in a generally applicable and enforceable regulation or policy of the Town related to audits), Grantee shall pay the total cost of the audit/review, such cost not to exceed five thousand dollars ($5,000) for each year of the audit period for all SCTC communities combined. The Town's right to audit/review and the Grantee's obligation to retain records related to this subsection shall expire three (3) years after each Franchise Fee payment has been made to the Town.

3.7 Late Payments

In the event any payment due quarterly is not received within thirty (30) days from the end of the calendar quarter, Grantee shall pay interest on the amount due (at the prime rate as listed in the Wall Street Journal on the date the payment was due), compounded daily, calculated from the date the payment was originally due until the date the Town receives the payment.

3.8 Underpayments

If a net Franchise Fee underpayment is discovered as the result of an audit, Grantee shall pay interest at the rate of the eight percent (8%) per annum, compounded quarterly, calculated from the date each portion of the underpayment was originally due until the date Grantee remits the underpayment to the Town.

3.9 Alternative Compensation

In the event the obligation of Grantee to compensate the Town through Franchise Fee payments is lawfully suspended or eliminated, in whole or part, then Grantee shall pay to the Town compensation equivalent to the compensation paid to the Town by other similarly situated users of the Town's Rights-of-Way for Grantee's use of the Town's Rights-of-Way, provided that in no event shall such payments exceed the equivalent of five percent (5%) of Grantee's Gross Revenues (subject to the other provisions contained in this Franchise), to the extent consistent with Applicable Law.

3.10 Maximum Legal Compensation

The parties acknowledge that, at present, applicable federal law limits the Town to collection of a maximum permissible Franchise Fee of five percent (5%) of Gross Revenues. In the event that at any time during the duration of this Franchise, the Town is authorized to collect an amount in excess of five percent (5%) of Gross Revenues, then this Franchise may be amended unilaterally by the Town to provide that such excess amount shall be added to the Franchise Fee payments to be paid by Grantee to the Town hereunder, provided that Grantee has received at least ninety (90) days prior written notice from the Town of such amendment, so long as all cable operators in the Town are paying the same Franchise Fee amount.

3.11 Additional Commitments Not Franchise Fee Payments

No term or condition in this Franchise, including the funding required by Section 9, shall in any way modify or affect Grantee's obligation to pay Franchise Fees. Although the total sum of Franchise Fee payments and additional commitments set forth elsewhere in this Franchise may total more than five percent (5%) of Grantee's Gross Revenues in any twelve (12) month period, Grantee agrees that the additional commitments herein are not Franchise Fees as defined under any federal law, nor are they to be offset or credited against any Franchise Fee payments due to the Town, nor do they represent an increase in Franchise Fees.

3.12 Tax Liability

The Franchise Fees shall be in addition to any and all taxes or other levies or assessments which are now or hereafter required to be paid by businesses in general by any law of the Town, the State or the United States including, without limitation, sales, use and other taxes, business license fees or other payments. Payment of the Franchise Fees under this Franchise shall not exempt Grantee from the payment of any other license fee, permit fee, tax or charge on the business, occupation, property or income of Grantee that may be lawfully imposed by the Town. Any other license fees, taxes or charges shall be of general applicability in nature and shall not be levied against Grantee solely because of its status as a Cable Operator, or against Subscribers, solely because of their status as such.

3.13 Financial Records

Grantee agrees to meet with a representative of the Town upon request to review Grantee's methodology of record-keeping, financial reporting, the computing of Franchise Fee obligations and other procedures, the understanding of which the Town deems necessary for reviewing reports and records.

3.14 Payment on Termination

If this Franchise terminates for any reason, the Grantee shall file with the Town within ninety (90) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. The Town reserves the right to satisfy any remaining financial obligations of the Grantee to the Town by utilizing the funds available in the letter of credit or other security provided by the Grantee.

SECTION 4. ADMINISTRATION AND REGULATION

4.1 Authority

(A) The Town shall be vested with the power and right to reasonably regulate the exercise of the privileges permitted by this Franchise in the public interest, or to delegate that power and right, or any part thereof, to the extent permitted under Federal, State and local law, to any agent including, but not limited to, the SCTC, in its sole discretion.

(B) Nothing in this Franchise shall limit nor expand the Town's right of eminent domain under State law.

4.2 Rates and Charges

All of Grantee's rates and charges related to or regarding Cable Services shall be subject to regulation by the Town to the full extent authorized by applicable federal, State and local laws.

4.3 Rate Discrimination

All of Grantee's rates and charges shall be published (in the form of a publicly-available

rate card) and be non-discriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with Applicable Law, with identical rates and charges for all Subscribers receiving identical Cable Services, without regard to race, color, ethnic or national origin, religion, age, sex, sexual orientation, marital, military or economic status, or physical or mental disability or geographic location within the Town. Grantee shall offer the same Cable Services to all Residential Subscribers at identical rates to the extent required by Applicable Law and to Multiple Dwelling Unit Subscribers to the extent authorized by FCC rules or applicable Federal law. Grantee shall permit Subscribers to make any lawful in-residence connections the Subscriber chooses without additional charge nor penalizing the Subscriber therefor. However, if any in-home connection requires service from Grantee due to signal quality, signal leakage or other factors, caused by improper installation of such in-home wiring or faulty materials of such in-home wiring, the Subscriber may be charged reasonable service charges by Grantee. Nothing herein shall be construed to prohibit:

(A) The temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns; or,

(B) The offering of reasonable discounts to senior citizens or economically disadvantaged citizens; or,

(C) The offering of rate discounts for Cable Service; or,

(D) The Grantee from establishing different and nondiscriminatory rates and charges and classes of service for Commercial Subscribers, as allowable by federal law and regulations.

4.4 Filing of Rates and Charges

(A) Throughout the term of this Franchise, Grantee shall maintain on file with the Town a complete schedule of applicable rates and charges for Cable Services provided under this Franchise. Nothing in this subsection shall be construed to require Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns.

(B) Upon request of the Town, Grantee shall provide a complete schedule of current rates and charges for any and all Leased Access Channels, or portions of such Channels, provided by Grantee. The schedule shall include a description of the price, terms, and conditions established by Grantee for Leased Access Channels.

4.5 Cross Subsidization

Grantee shall comply with all Applicable Laws regarding rates for Cable Services and all Applicable Laws covering issues of cross subsidization.

4.6 Reserved Authority

Both Grantee and the Town reserve all rights they may have under the Cable Act and any other relevant provisions of federal, State, or local law.

4.7 Time Limits Strictly Construed

Whenever this Franchise sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a breach of this Franchise, and sufficient grounds for the Town to invoke any relevant remedy in accordance with Section 13.1 of this Franchise.

4.8 Franchise Amendment Procedure

Either party may at any time seek an amendment of this Franchise by so notifying the other party in writing. Within thirty (30) days of receipt of notice, the Town and Grantee shall meet to discuss the proposed amendment(s). If the parties reach a mutual agreement upon the suggested amendment(s), such amendment(s) shall be submitted to the Town Council for its approval. If so approved by the Town Council and the Grantee, then such amendment(s) shall be deemed part of this Franchise. If mutual agreement is not reached, there shall be no amendment.

4.9 Performance Evaluations

(A) The Town may hold performance evaluation sessions upon ninety (90) days written notice, provided that such evaluation sessions shall be held no more frequently than once every two (2) years. All such evaluation sessions shall be conducted by the Town.

(B) Special evaluation sessions may be held at any time by the Town during the term of this Franchise, upon ninety (90) days written notice to Grantee.

(C) All regular evaluation sessions shall be open to the public and announced at least two (2) weeks in advance in any manner within the discretion of the Town. Grantee shall also include with or on the Subscriber billing statements for the billing period immediately preceding the commencement of the session, written notification of the date, time, and place of the regular performance evaluation session, and any special evaluation session as required by the Town, provided Grantee receives appropriate advance notice.

(D) Topics which may be discussed at any evaluation session may include, but are not limited to, Cable Service rate structures; Franchise Fee payments; liquidated damages; free or discounted Cable Services; application of new technologies; Cable System performance; Cable Services provided; programming offered; Subscriber complaints; privacy; amendments to this Franchise; judicial and FCC rulings; line extension policies; and the Town or Grantee's rules; provided that nothing in this subsection shall be construed as requiring the renegotiation of this Franchise.

(E) During evaluations under this subsection, Grantee shall fully cooperate with the Town and shall provide such information and documents as the Town may reasonably require to perform the evaluation.

4.10 Late Fees

(A) For purposes of this subsection, any assessment, charge, cost, fee or sum, however characterized, that the Grantee imposes upon a Subscriber solely for late payment of a bill is a late fee and shall be applied in accordance with the Town's Customer Service Standards, as the same may be amended from time to time by the Town Council acting by ordinance or resolution, or as the same may be superseded by legislation or final court order.

(B) Nothing in this subsection shall be deemed to create, limit or otherwise affect the ability of the Grantee, if any, to impose other assessments, charges, fees or sums other than those permitted by this subsection, for the Grantee's other services or activities it performs in compliance with Applicable Law, including FCC law, rule or regulation.

(C) The Grantee's late fee and disconnection policies and practices shall be nondiscriminatory and such policies and practices, and any fees imposed pursuant to this subsection, shall apply equally in all parts of the Town without regard to the neighborhood or income level of the Subscriber.

4.11 Force Majeure

In the event Grantee is prevented or delayed in the performance of any of its obligations under this Franchise by reason beyond the control of Grantee, Grantee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise or to procure a substitute for such obligation which is satisfactory to the Town. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, work stoppages or labor disputes, power outages, telephone network outages, and severe or unusual weather conditions which have a direct and substantial impact on the Grantee's ability to provide Cable Services in the Town and which was not caused and could not have been avoided by the Grantee which used its best efforts in its operations to avoid such results.

If Grantee believes that a reason beyond its control has prevented or delayed its compliance with the terms of this Franchise, Grantee shall provide documentation as reasonably required by the Town to substantiate the Grantee's claim. If Grantee has not yet cured the deficiency, Grantee shall also provide the Town with its proposed plan for remediation, including the timing for such cure.

SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

5.1 Indemnification

(A) General Indemnification. Grantee shall indemnify, defend and hold the Town, its officers, officials, boards, commissions, agents and employees, harmless from any action or claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses, arising from any casualty or accident to Person or property, including, without limitation, copyright infringement, defamation, and all other

damages in any way arising out of, or by reason of, any construction, excavation, operation, maintenance, reconstruction, or any other act done under this Franchise, by or for Grantee, its agents (not to include the Town), or its employees, or by reason of any neglect or omission of Grantee. Grantee shall consult and cooperate with the Town while conducting its defense of the Town.

(B) Indemnification for Relocation. Grantee shall indemnify the Town for any damages, claims, additional costs or reasonable expenses assessed against, or payable by, the Town arising out of, or resulting from, directly or indirectly, Grantee's failure to remove, adjust or relocate any of its facilities in the Rights-of-Way in a timely manner in accordance with any relocation required by the Town required by the Town under this Franchise or Applicable Law.

(C) Additional Circumstances. Grantee shall also indemnify, defend and hold the Town harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses in any way arising out of:

(1) The lawful actions of the Town in granting this Franchise to the extent such actions are consistent with this Franchise and Applicable Law.

(2) Damages arising out of any failure by Grantee to secure consents from the owners, authorized distributors, or licensees/licensors of programs to be delivered by the Cable System, whether or not any act or omission complained of is authorized, allowed or prohibited by this Franchise.

(D) Procedures and Defense. If a claim or action arises, the Town or any other indemnified party shall promptly tender the defense of the claim to Grantee, which defense shall be at Grantee's expense. The Town may participate in the defense of a claim, but if Grantee provides a defense at Grantee's expense then Grantee shall not be liable for any attorneys' fees, expenses or other costs that Town may incur if it chooses to participate in the defense of a claim, unless and until separate representation as described below in Paragraph 5.1(F) is required. In that event the provisions of Paragraph 5.1(F) shall govern Grantee's responsibility for Town's/ /Town's attorney's fees, expenses or other costs. In any event, Grantee may not agree to any settlement of claims affecting the Town without the Town's approval.

(E) Non-waiver. The fact that Grantee carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to Grantee's duty of defense and indemnification under this subsection.

(F) Expenses. If separate representation to fully protect the interests of both parties is or becomes necessary, such as a conflict of interest between the Town and the counsel selected by Grantee to represent the Town, Grantee shall pay, from the date such separate representation is required forward, all reasonable expenses incurred by the Town in defending itself with regard to any action, suit or proceeding indemnified by Grantee. Provided, however, that in the event that such separate representation is or becomes necessary, and Town desires to hire counsel or any other outside experts or consultants and desires Grantee to pay those expenses, then Town

shall be required to obtain Grantee's consent to the engagement of such counsel, experts or consultants, such consent not to be unreasonably withheld. The Town's expenses shall include all reasonable out-of-pocket expenses, such as consultants' fees, and shall also include the reasonable value of any services rendered by the Town Attorney or his/her assistants or any employees of the Town or its agents but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the Town by Grantee.

5.2 Insurance

(A) Grantee shall maintain in full force and effect at its own cost and expense each of the following policies of insurance:

(1) Commercial General Liability insurance with limits of no less than one million dollars ($1,000,000.00) per occurrence and one million dollars ($1,000,000.00) general aggregate. Coverage shall be at least as broad as that provided by ISO CG 00 01 1/96 or its equivalent and include severability of interests. Such insurance shall name the Town, its officers, officials and employees as additional insureds per ISO CG 2026 or its equivalent. There shall be a waiver of subrogation and rights of recovery against the Town, its officers, officials and employees. Coverage shall apply as to claims between insureds on the policy, if applicable.

(2) Commercial Automobile Liability insurance with minimum combined single limits of one million dollars ($1,000,000.00) each occurrence with respect to each of Grantee's owned, hired and non-owned vehicles assigned to or used in the operation of the Cable System in the Town. The policy shall contain a severability of interests provision.

(B) The insurance shall not be canceled or materially changed so as to be out of compliance with these requirements without thirty (30) days' written notice first provided to the Town, via certified mail, and ten (10) days' notice for nonpayment of premium. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this subsection within the term of this Franchise, Grantee shall provide a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts required, for the duration of this Franchise and, in the case of the Commercial General Liability, for at least one (1) year after expiration of this Franchise.

5.3 Deductibles / Certificate of Insurance

Any deductible of the policies shall not in any way limit Grantee's liability to the Town.

(A) Endorsements.

(1) All policies shall contain, or shall be endorsed so that:

(a) The Town, its officers, officials, boards, commissions, employees and agents are to be covered as, and have the rights of, additional insureds with

respect to liability arising out of activities performed by, or on behalf of, Grantee under this Franchise or Applicable Law, or in the construction, operation or repair, or ownership of the Cable System;

(b) Grantee's insurance coverage shall be primary insurance with respect to the Town, its officers, officials, boards, commissions, employees and agents. Any insurance or self-insurance maintained by the Town, its officers, officials, boards, commissions, employees and agents shall be in excess of the Grantee's insurance and shall not contribute to it; and

(c) Grantee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

(B) Acceptability of Insurers. The insurance obtained by Grantee shall be placed with insurers with a Best's rating of no less than "A VII."

(C) Verification of Coverage. The Grantee shall furnish the Town with certificates of insurance and endorsements or a copy of the page of the policy reflecting blanket additional insured status. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices.

(D) Self-Insurance In the alternative to providing a certificate of insurance to the Town certifying insurance coverage as required above, Grantee may provide self-insurance in the same amount and level of protection for Grantee and Town, its officers, agents and employees as otherwise required under this Section. The adequacy of self-insurance shall be subject to the periodic review and approval of the Town.

5.4 **Letter of Credit**

(A) If there is a claim by the Town of an uncured breach by Grantee of a material provision of this Franchise or pattern of repeated violations of any provision(s) of this Franchise, then the Town may require and Grantee shall establish and provide within thirty (30) days from receiving notice from the Town, to the Town as security for the faithful performance by Grantee of all of the provisions of this Franchise, a letter of credit from a financial institution satisfactory to the Town in the amount of ten thousand dollars ($10,000).

(B) In the event that Grantee establishes a letter of credit pursuant to the procedures of this Section, then the letter of credit shall be maintained ten thousand dollars ($10,000) until the allegations of the uncured breach have been resolved.

(C) After completion of the procedures set forth in Section 13.1 or other applicable provisions of this Franchise, the letter of credit may be drawn upon by the Town for purposes including, but not limited to, the following:

(1) Failure of Grantee to pay the Town sums due under the terms of this Franchise;

(2) Reimbursement of costs borne by the Town to correct Franchise violations not corrected by Grantee;

(3) Monetary remedies or damages assessed against Grantee due to default or breach of Franchise requirements; and,

(4) Failure to comply with the Customer Service Standards of the Town, as the same may be amended from time to time by the Town Council acting by ordinance or resolution.

(E) The Town shall give Grantee written notice of any withdrawal under this subsection upon such withdrawal. Within seven (7) days following receipt of such notice, Grantee shall restore the letter of credit to the amount required under this Franchise.

(F) Grantee shall have the right to appeal to the Town Council for reimbursement in the event Grantee believes that the letter of credit was drawn upon improperly. Grantee shall also have the right of judicial appeal if Grantee believes the letter of credit has not been properly drawn upon in accordance with this Franchise. Any funds the Town erroneously or wrongfully withdraws from the letter of credit shall be returned to Grantee with interest, from the date of withdrawal at a rate equal to the prime rate of interest as quoted in the Wall Street Journal.

SECTION 6. CUSTOMER SERVICE

6.1 Customer Service Standards

Grantee shall comply with Customer Service Standards of the Town, as the same may be amended from time to time by the Town Council in its sole discretion, acting by ordinance. Any requirement in Customer Service Standards for a "local" telephone number may be met by the provision of a toll-free number. The Customer Services Standards in effect as of the Effective Date of this Franchise are attached as Exhibit A. Grantee reserves the right to challenge any customer service ordinance which it believes is inconsistent with its contractual rights under this Franchise.

6.2 Subscriber Privacy

Grantee shall fully comply with any provisions regarding the privacy rights of Subscribers contained in federal, State, or local law.

6.3 Subscriber Contracts

Grantee shall not enter into a contract with any Subscriber which is in any way

inconsistent with the terms of this Franchise, or any Exhibit hereto, or the requirements of any applicable Customer Service Standard. Upon request, Grantee will provide to the Town a sample of the Subscriber contract or service agreement then in use.

6.4 Advance Notice to Town

The Grantee shall use reasonable efforts to furnish information provided to Subscribers or the media in the normal course of business to the Town in advance.

6.5 Identification of Local Franchise Authority on Subscriber Bills

Within sixty (60) days after written request from the Town, Grantee shall place the Town's phone number on its Subscriber bills, to identify where a Subscriber may call to address escalated complaints.

SECTION 7. REPORTS AND RECORDS

7.1 Open Records

Grantee shall manage all of its operations in accordance with a policy of keeping its documents and records open and accessible to the Town. The Town, including the Town's Auditor or his/her authorized representative, shall have access to, and the right to inspect, any books and records of Grantee, its parent corporations and Affiliates which are reasonably related to the administration or enforcement of the terms of this Franchise. Grantee shall not deny the Town access to any of Grantee's records on the basis that Grantee's records are under the control of any parent corporation, Affiliate or a third party. The Town may, in writing, request copies of any such records or books and Grantee shall provide such copies within thirty (30) days of the transmittal of such request. One (1) copy of all reports and records required under this or any other subsection shall be furnished to the Town, at the sole expense of Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then Grantee may request, in writing within ten (10) days, that the Town inspect them at Grantee's local offices. If any books or records of Grantee are not kept in a local office and not made available in copies to the Town upon written request as set forth above, and if the Town determines that an examination of such records is necessary or appropriate for the performance of any of the Town's duties, administration or enforcement of this Franchise, then all reasonable travel and related expenses incurred in making such examination shall be paid by Grantee.

7.2 Confidentiality

The Town agrees to treat as confidential any books or records that constitute proprietary or confidential information under federal or State law, to the extent Grantee makes the Town aware of such confidentiality. Grantee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under State or federal law. If the Town believes it must release any such confidential books and records in the course of enforcing this Franchise, or for any other reason,

it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. If the Town receives a demand from any Person for disclosure of any information designated by Grantee as confidential, the Town shall, so far as consistent with Applicable Law, advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, the Town agrees that, to the extent permitted by State and federal law, it shall deny access to any of Grantee's books and records marked confidential as set forth above to any Person. Grantee shall reimburse the Town for all reasonable costs and attorneys fees incurred in any legal proceedings pursued under this Section.

7.3 Records Required

(A) Grantee shall at all times maintain, and shall furnish to the Town upon 30 days written request and subject to Applicable Law:

(1) A complete set of maps showing the exact location of all Cable System equipment and facilities in the Right-of-Way owned or used by the Grantee, but excluding detail on proprietary electronics contained therein and Subscriber drops. As-built maps including proprietary electronics shall be available at Grantee's offices for inspection by the Town's authorized representative(s) or agent(s) and made available to such during the course of technical inspections as reasonably conducted by the Town. These maps shall be certified as accurate by an appropriate representative of the Grantee;

(2) A copy of all FCC filings on behalf of Grantee, its parent corporations or Affiliates which relate to the operation of the Cable System in the Town;

(3) Current Subscriber Records and information;

(4) A log of Cable Services added or dropped, Channel changes, number of Subscribers added or terminated, all construction activity, and total homes passed for the previous twelve (12) months; and

(5) A list of Cable Services, rates and Channel line-ups.

(B) Subject to subsection 7.2, all information furnished to the Town is public information, and shall be treated as such, except for information involving the privacy rights of individual Subscribers.

7.4 Annual Reports

Within sixty (60) days of the Town's written request, Grantee shall submit to the Town a written report, in a form acceptable to the Town, which shall include, but not necessarily be limited to, the following information for the Town:

(A) A Gross Revenue statement, as required by subsection 3.5 of this Franchise;

(B) A summary of the previous year's activities in the development of the Cable System, including, but not limited to, Cable Services begun or discontinued during the reporting year, and the number of Subscribers for each class of Cable Service (*i.e.*, Basic, Digital Starter, and Premium);

(C) The number of homes passed, beginning and ending plant miles, any services added or dropped, and any technological changes occurring in the Cable System;

(D) A statement of planned construction by Grantee, if any, for the next year; and,

(E) A copy of the most recent annual report Grantee filed with the SEC or other governing body.

The parties agree that the Town's request for these annual reports shall remain effective, and need only be made once. Such a request shall require the Grantee to continue to provide the reports annually, until further written notice from the Town to the contrary.

7.5 Copies of Federal and State Reports

Within thirty (30) days of a written request, Grantee shall submit to the Town copies of all pleadings, applications, notifications, communications and documents of any kind, submitted by Grantee or its parent corporation(s), to any federal, State or local courts, regulatory agencies and other government bodies if such documents directly relate to the operations of Grantee's Cable System within the Town. Grantee shall not claim confidential, privileged or proprietary rights to such documents unless under federal, State, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or State agency.

7.6 Complaint File and Reports

(A) Grantee shall keep an accurate and comprehensive file of any complaints regarding the Cable System, in a manner consistent with the privacy rights of Subscribers, and Grantee's actions in response to those complaints. These files shall remain available for viewing to the Town during normal business hours at Grantee's local business office.

(B) Within thirty (30) days of a written request, Grantee shall provide the Town a quarterly executive summary in the form attached hereto as Exhibit B, which shall include the following information from the preceding quarter:

(1) A summary of service calls, identifying the number and nature of the requests and their disposition;

(2) A log of all service interruptions;

(3) A summary of customer complaints referred by the Town to Grantee; and,

(4) Such other information as reasonably requested by the Town.

The parties agree that the Town's request for these summary reports shall remain effective, and need only be made once. Such a request shall require the Grantee to continue to provide the reports quarterly, until further written notice from the Town to the contrary.

7.7 Failure to Report

The failure or neglect of Grantee to file any of the reports or filings required under this Franchise or such other reports as the Town may reasonably request (not including clerical errors or errors made in good faith), may, at the Town 's option, be deemed a breach of this Franchise.

7.8 False Statements

Any false or misleading statement or representation in any report required by this Franchise (not including clerical errors or errors made in good faith) may be deemed a material breach of this Franchise and may subject Grantee to all remedies, legal or equitable, which are available to the Town under this Franchise or otherwise.

SECTION 8. PROGRAMMING

8.1 Broad Programming Categories

Grantee shall provide or enable the provision of at least the following initial broad categories of programming to the extent such categories are reasonably available:

(A) Educational programming;

(B) Colorado news, weather & information;

(C) Sports;

(D) General entertainment (including movies);

(E) Children/family-oriented;

(F) Arts, culture and performing arts;

(G) Foreign language;

(H) Science/documentary;

(I) National news, weather and information; and,

(J) Public, Educational and Government Access, to the extent required by this Franchise.

8.2 Deletion or Reduction of Broad Programming Categories

(A) Grantee shall not delete or so limit as to effectively delete any broad category of programming within its control without the prior written consent of the Town.

(B) In the event of a modification proceeding under federal law, the mix and quality of Cable Services provided by Grantee on the Effective Date of this Franchise shall be deemed the mix and quality of Cable Services required under this Franchise throughout its term.

8.3 Obscenity

Grantee shall not transmit, or permit to be transmitted over any Channel subject to its editorial control, any programming which is obscene under, or violates any provision of, Applicable Law relating to obscenity, and is not protected by the Constitution of the United States. Grantee shall be deemed to have transmitted or permitted a transmission of obscene programming only if a court of competent jurisdiction has found that any of Grantee's officers or employees or agents have permitted programming which is obscene under, or violative of, any provision of Applicable Law relating to obscenity, and is otherwise not protected by the Constitution of the United States, to be transmitted over any Channel subject to Grantee's editorial control. Grantee shall comply with all relevant provisions of federal law relating to obscenity.

8.4 Parental Control Device

Upon request by any Subscriber, Grantee shall make available a parental control or lockout device, traps or filters to enable a Subscriber to control access to both the audio and video portions of any or all Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter. Any device offered shall be at a rate, if any, in compliance with Applicable Law.

8.5 Continuity of Service Mandatory

(A) It shall be the right of all Subscribers to continue to receive Cable Service from Grantee insofar as their financial and other obligations to Grantee are honored. The Grantee shall act so as to ensure that all Subscribers receive continuous, uninterrupted Cable Service regardless of the circumstances. For the purposes of this subsection, "uninterrupted" does not include short-term outages of the Cable System for maintenance or testing.

(B) In the event of a change of grantee, or in the event a new Cable Operator acquires the Cable System in accordance with this Franchise, Grantee shall cooperate with the Town, new franchisee or Cable Operator in maintaining continuity of Cable Service to all Subscribers. During any transition period, Grantee shall be entitled to the revenues for any period during which it operates the Cable System, and shall be entitled to reasonable costs for its services when it no longer operates the Cable System.

(C) In the event Grantee fails to operate the Cable System for four (4) consecutive

days without prior approval of the Manager, or without just cause, the Town may, at its option, operate the Cable System itself or designate another Cable Operator until such time as Grantee restores service under conditions acceptable to the Town or a permanent Cable Operator is selected. If the Town is required to fulfill this obligation for Grantee, Grantee shall reimburse the Town for all reasonable costs or damages that are the result of Grantee's failure to perform.

8.6 Services for the Disabled

Grantee shall comply with the Americans with Disabilities Act and any amendments thereto.

8.7 Ascertainment of Programming and Customer Satisfaction

Upon written request of the Town, the Grantee shall provide to the Town written questions that it intends to use in formal upcoming customer ascertainments, if any, to survey community-wide views of cable operations, customer-service issues and programming issues within the Franchise Area. The Town may suggest new or modified questions to such formal community-wide ascertainment, which the Grantee, in the reasonable exercise of its discretion, may add to the next formal community-wide ascertainment it conducts. Upon completion of the next formal community-wide ascertainment of Subscribers in the Town, Grantee shall provide the results from any portion of such survey that addresses customer satisfaction and/or programming issues. Nothing herein shall be construed to limit the right of the Town to conduct its own surveys at its own expense.

SECTION 9. ACCESS

9.1 Designated Access Providers

(A) The Town shall have the sole and exclusive responsibility for identifying the Designated Access Providers, including itself for Access purposes, to control and manage the use of any or all Access Facilities provided by Grantee under this Franchise. As used in this Section, such "Access Facilities" includes the Channels, services, facilities, equipment, technical components and/or financial support provided under this Franchise, which is used or useable by and for Public Access, Educational Access, and Government Access ("PEG" or "PEG Access"). At the commencement of the Term of this Franchise, the Town is authorizing the SCTC as its Designated Access Provider for all Access purposes as permitted in this Franchise and Applicable Law.

(B) Grantee shall cooperate with Town in Town's efforts to provide Access programming, but will not be responsible or liable for any damages resulting from a claim in connection with the programming placed on the Access Channels by the Designated Access Provider.

9.2 Channel Capacity and Use

(A) Grantee shall make available to the SCTC four (4) Downstream Channels for PEG use as provided for in this Section. It is intended that these four (4) Downstream Channels will be used for the provision of programming to subscribers of PEG programming by the Town, which programming may be developed in conjunction with and/or shared with the individual jurisdictions and educational institutions within the SCTC, at the sole discretion of the Town.

(B) Grantee shall have the right to temporarily use any Channel, or portion thereof, which is allocated under this Section for Public, Educational, or Governmental Access use, within sixty (60) days after a written request for such use is submitted to Town, if such Channel is not "fully utilized" as defined herein. A Channel shall be considered fully utilized if substantially unduplicated programming is delivered over it more than an average of 38 hours per week over a six (6) month period. Programming that is repeated on an Access Channel up to two times per day shall be considered "unduplicated programming." Character-generated programming shall be included for purposes of this subsection, but may be counted towards the total average hours only with respect to two (2) Channels provided to Town. If a Channel allocated for Public, Educational, or Governmental Access use will be used by Grantee in accordance with the terms of this subsection, the institution to which the Channel has been allocated shall have the right to require the return of the Channel or portion thereof. Town shall request return of such Channel space by delivering written notice to Grantee stating that the institution is prepared to fully utilize the Channel, or portion thereof, in accordance with this subsection. In such event, the Channel or portion thereof shall be returned to such institution within sixty (60) days after receipt by Grantee of such written notice.

(C) High Definition ("HD") Digital Access Channels.

(1) Each of the four (4) Downstream Channels for PEG Access use shall be in a High Definition ("HD") digital format ("HD Access Channel or Channels"), and provided as part of Grantee's Basic tier of service.

(2) The Town shall be responsible for providing the HD Access Channel signal in an HD digital format to the demarcation point at the designated point of origination for the HD Access Channel. For purposes of this Franchise, an HD signal refers to a television signal delivering picture resolution of at least 1080p, or such other resolution in this same range that Grantee utilizes for commercial programming channels on the Cable System, whichever is greater.

(3) Grantee shall transport and distribute the HD Access Channel signal on its Cable System and shall not unreasonably discriminate against HD Access Channels with respect to accessibility, functionality and to the application of any applicable Federal Communications Commission Rules & Regulations, including without limitation Subpart K Channel signal standards. With respect to signal quality, Grantee shall not be required to carry a HD Access Channel in a higher quality format than that of the HD Access Channel signal delivered to Grantee, but Grantee shall distribute the HD Access Channel signal without degradation. Grantee shall carry all components of the HD Access Channel signals provided by the Designated Access Provider including, but not limited to, closed captioning, stereo audio and

other elements associated with the Programming. Upon reasonable written request by the Town, Grantee shall verify signal delivery to Subscribers with the Town, consistent with the requirements of this Section 9.2(C).

(4) HD Access Channels may require Subscribers to buy or lease special equipment, available to all Subscribers. Grantee is not required to provide free HD equipment to Subscribers, nor modify its equipment or pricing policies in any manner.

(5) The Town or any Designated Access Provider is responsible for acquiring all equipment necessary to produce programming in HD.

(6) Grantee shall cooperate with the Town to procure and provide, at Town's cost, all necessary transmission equipment from the Designated Access Provider channel origination point, at Grantee's headend and through Grantee's distribution system, in order to deliver the HD Access Channels. The Town shall be responsible for the costs of all transmission equipment, including HD modulator and demodulator, and encoder or decoder equipment, and multiplex equipment, required in order for Grantee to receive and distribute the HD Access Channel signal, or for the cost of any resulting upgrades to the video return line. The Town and Grantee agree that such expense of acquiring and installing the transmission equipment or upgrades to the video return line qualifies as a capital cost for PEG Facilities within the meaning of the Cable Act 47 U.S.C.A. Section 542(g)(20)(C), and therefore is an appropriate use of revenues derived from those PEG Capital fees provided for in this Franchise.

(D) There shall be no restriction on Grantee's technology used to deploy and deliver HD signals so long as the requirements of the Franchise are otherwise met. Grantee may implement HD carriage of the PEG channel in any manner (including selection of compression, utilization of IP, and other processing characteristics) that produces a signal quality for the consumer that is reasonably comparable and functionally equivalent to similar commercial HD channels carried on the Cable System. In the event the Town believes that Grantee fails to meet this standard, Town will notify Grantee of such concern, and Grantee will respond to any complaints in a timely manner.

9.3 Access Channel Assignments

Grantee will use reasonable efforts to minimize the movement of Access Channel assignments. If Grantee expands its Cable System to serve other SCTC communities, Grantee shall also use reasonable efforts to institute common Access Channel assignments among the SCTC members served by the same Headend as Town for compatible Access programming, for example, assigning all Educational Access Channels programmed by higher education organizations to the same Channel number. In addition, Grantee will make reasonable efforts to locate Access Channels provided pursuant to Subsection 9.2(C) in a location on its Channel line-up that is easily accessible to Subscribers.

9.4 Relocation of Access Channels

Grantee shall provide Town a minimum of sixty (60) days' notice, and use its best efforts to provide one hundred and twenty (120) days notice, prior to the time Public, Educational, and Governmental Access Channel designations are changed.

9.5 Web-Based Video On Demand and Streaming

(A) Within one hundred and twenty (120) days of written request, Grantee shall provide at no cost to the Town, at 110 Ski Hill Road, Breckenridge, Colorado, a business class broadband connection, broadband service and all necessary hardware, to enable the Town's delivery of web-based PEG content. If, during the term of this Franchise, the Town desires an upgrade to the business class broadband connection provided into 110 Ski Hill Road and such upgrade results in any construction costs, or if the Town moves its location and such new location does not have the capacity to connect and receive the broadband service described in this Section 9.5(A), the cost of upgrading the network to enable such service and/or the cost for any increased level of service shall be incurred by the Town. The broadband connection provided herein shall be used exclusively for web-based on demand Access programming and/or web-based video streaming of Access content.

(B) For all of the Town's and its Designated Access Provider's web-based on demand Access programming facilitated through the broadband connection and service described in this Section 9.5, Grantee shall be permitted to provide its logo which shall be displayed on the main web page for the web-based Access programming. Notwithstanding the foregoing, the size of the Town's or Designated Access Provider's logos may be as large as or larger than Grantee's logo, in the Town's or Designated Access Provider's sole reasonable discretion.

(C) Any costs incurred by Grantee in facilitating the web-based on demand Access programming described in this Section 9.5 may be recovered from Subscribers by Grantee in accordance with Applicable Law.

9.6 Video On Demand

(A) Grantee shall provide the Town (or its Designated Access Provider) fifty (50) hours of Video On Demand ("VOD") capacity on Grantee's Cable System VOD platform for PEG Access programming, in accordance with the provisions of this Section 9.5. For purposes of this Franchise, the PEG Access programming that Town or its Designated Access Provider submits to Grantee's VOD platform shall be referred to as "PEG VOD Programming."

(B) The Town shall be responsible for acquiring, at its cost, all equipment necessary to produce and deliver the PEG VOD Programming in the format required for Grantee's VOD servers, including the cost of any necessary return line upgrades, and the transmission equipment needed to transmit it to Grantee in the format required; provided however that such requirements shall be no different that imposed upon other providers of video on demand programming content available on Grantee's Cable System.

(C) The Town and/or a Designated Access Provider shall be responsible for uploading PEG VOD Programming to the VOD server pursuant to the procedures required by Grantee's

VOD system, this Section 9.5, and any the terms imposed upon all other video on demand content providers on the Cable System. Upon request, Grantee shall provide monthly reports to the Town showing the number of views of VOD programming provided by the Town.

(D) The Town and/or a Designated Access Provider shall be additionally responsible for entering all necessary information for populating the VOD menu system. While Grantee shall determine, in its sole discretion, the specific placement of PEG VOD Programming within the VOD menu system, Grantee will use reasonable efforts to locate such programming near similar government or educational programming, or Colorado based programming in the VOD menu listings, so that such PEG VOD Programming is as comparably accessible as other similar government or education or Colorado based programming offered through the Cable System's VOD menu.

(E) The Town acknowledges that VOD programming may require special viewer equipment and subscription to advanced service tiers and that, by agreeing to make PEG VOD Programming available on VOD, Grantee shall not be required to provide free VOD-capable equipment to Subscribers, nor to modify its equipment or pricing policies in any manner. Not all television equipment may be able to access VOD programming, and additional Subscribers costs may be incurred in the reception of VOD programming.

9.7 Support for Access Costs

During the term of this Franchise Agreement, Grantee shall provide fifty cents ($.50) per month per Residential Subscriber (the "PEG Contribution") to be used solely for capital costs related to Public, Educational and Governmental Access and the web based on demand Access programming described in Section 9.5, or as may be permitted by Applicable Law. To address inflationary impacts on capital equipment or to evaluate whether the Town's PEG Access capital costs have reduced with time, the Town and Grantee may meet no more than three times after the Effective Date to discuss whether to increase or to decrease the PEG Contribution. The primary purpose of such meetings will be for the parties to review prior expenditures and future capital plans to determine if the current PEG Contribution is reasonably appropriate to meet future needs. The Town and Grantee may suggest to each other, based upon their own assessments of reasonable past practices and future anticipated needs, whether the current level of PEG Contribution is appropriate. If either party believes that the PEG Contribution should be modified in a reasonable amount to address such future needs the parties shall share all relevant information supporting their positions and negotiate in good faith to determine if the PEG Contribution should be increased or decreased, and if so, in what amount. Such discussions regarding potential adjustment to the PEG Contribution will be conducted pursuant to the Franchise amendment procedures in Section 4.8 of this Franchise. Grantee shall make PEG Contribution payments quarterly, following the effective date of this Franchise Agreement for the preceding quarter ending March 31, June 30, September 30, and December 31. Each payment shall be due and payable no later than thirty (30) days following the end of the quarter. Town shall have sole discretion to allocate the expenditure of such payments for any capital costs related to PEG Access. The parties agree that this Franchise shall provide Town discretion to utilize Access payments for new internal network connections and enhancements to the Town's existing network.

9.8 Access Channels and Support Not Franchise Fees

Grantee agrees that provision of Access Channels, capital support for Access Costs arising from or relating to the obligations set forth in this Section and other requirements of this Section 9 shall in no way modify or otherwise affect Grantee's obligations to pay Franchise Fees to Town. Grantee agrees that although the sum of Franchise Fees plus the payments set forth in this Section may total more than five percent (5%) of Grantee's Gross Revenues in any 12-month period, the additional commitments shall not be offset or otherwise credited in any way against any Franchise Fee payments under this Franchise Agreement so long as such support is used for capital Access purposes consistent with this Franchise and federal law.

9.9 Access Channels On Basic Service or Lowest Priced HD Service Tier

All Access Channels under this Franchise Agreement shall be included by Grantee, without limitation, as part of Basic Service.

9.10 Change In Technology

In the event Grantee makes any change in the Cable System and related equipment and Facilities or in Grantee's signal delivery technology, which directly or indirectly affects the signal quality or transmission of Access services or programming, Grantee shall at its own expense take necessary technical steps or provide necessary technical assistance, including the acquisition of all necessary equipment, and full training of Town's Access personnel to ensure that the capabilities of Access services are not diminished or adversely affected by such change. If the Town implements a new video delivery technology that is currently offered and can be accommodated on the Grantee's local Cable System then the same provisions above shall apply. If the Town implements a new video delivery technology that is not currently offered on and/or that cannot be accommodated by the Grantee's local Cable System, then the Town shall be responsible for acquiring all necessary equipment, facilities, technical assistance, and training to deliver the signal to the Grantee's headend for distribution to subscribers.

9.11 Technical Quality

Grantee shall maintain all upstream and downstream Access services and Channels on its side of the demarcation point at the same level of technical quality and reliability required by this Franchise Agreement and all other applicable laws, rules and regulations for Residential Subscriber Channels. Grantee shall provide routine maintenance for all transmission equipment on its side of the demarcation point, including modulators, decoders, multiplex equipment, and associated cable and equipment necessary to carry a quality signal to and from Town's facilities for the Access Channels provided under this Franchise Agreement, including the business class broadband equipment and services necessary for the video on demand and streaming service described in Sections 9.5 and 9.6. Grantee shall also provide, if requested in advance by the Town, advice and technical expertise regarding the proper operation and maintenance of transmission equipment on the Town's side of the demarcation point. The Town shall be responsible for all initial and replacement costs of all HD modulator and demodulator equipment,

web-based video on demand servers and web-based video streaming servers. The Town shall also be responsible, at its own expense, to replace any of the Grantee's equipment that is damaged by the gross negligence or intentional acts of Town staff. The Grantee shall be responsible, at its own expense, to replace any of the Grantee's equipment that is damaged by the gross negligence or intentional acts of Grantee's staff. The Town will be responsible for the cost of repairing and/or replacing any PEG Access transmission equipment that Grantee maintains that is used exclusively for transmission of the Town's and/or its Designated Access Providers' Access programming.

9.12 Access Cooperation

Town may designate any other jurisdiction which has entered into an agreement with Grantee or an Affiliate of Grantee based upon this Franchise Agreement, any SCTC member, the SCTC, or any combination thereof to receive any Access benefit due Town hereunder, or to share in the use of Access Facilities hereunder. The purpose of this subsection shall be to allow cooperation in the use of Access and the application of any provision under this Section as Town in its sole discretion deems appropriate, and Grantee shall cooperate fully with, and in, any such arrangements by Town.

9.13 Return Lines/Access Origination

(A) Grantee shall continuously maintain the return lines owned by Grantee to the SCTC's facility at 110 Ski Hill Road, Breckenridge, Colorado, throughout the Term of the Franchise, in order to enable the distribution of Access programming to Residential Subscribers on the Access Channels; provided however that Grantee's maintenance obligations with respect to this location shall cease if a location is no longer used in the future by the Town to originate Access programming.

(B) Grantee shall construct and maintain new Fiber Optic return lines to the Headend from production facilities of new or relocated Designated Access Providers delivering Access programming to Residential Subscribers as requested in writing by the Town. All actual construction costs incurred by Grantee from the nearest interconnection point to the Designated Access Provider shall be paid by the Town or the Designated Access Provider. New return lines shall be completed within one (1) year from the request of the Town or its Designated Access Provider, or as otherwise agreed to by the parties. If an emergency situation necessitates movement of production facilities to a new location, the parties shall work together to complete the new return line as soon as reasonably possible.

SECTION 10. GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION

10.1 Right to Construct

Subject to Applicable Law, regulations, rules, resolutions and ordinances of the Town and the provisions of this Franchise, Grantee may perform all construction in the Rights-of-Way for any facility needed for the maintenance or extension of Grantee's Cable System.

10.2 Right-of-Way Meetings

Grantee will regularly attend and participate in meetings of the Town, of which the Grantee is made aware, regarding Right-of-Way issues that may impact the Cable System.

10.3 Joint Trenching/Boring Meetings

Grantee will regularly attend and participate in planning meetings of the Town, of which the Grantee is made aware, to anticipate joint trenching and boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, licensees, permittees, and franchisees so as to reduce so far as possible the number of Right-of-Way cuts within the Town.

10.4 General Standard

All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. All installations of equipment shall be permanent in nature, durable and installed in accordance with good engineering practices.

10.5 Permits Required for Construction

Prior to doing any work in the Right-of Way or other public property, Grantee shall apply for, and obtain, appropriate permits from the Town. As part of the permitting process, the Town may impose such conditions and regulations as are necessary for the purpose of protecting any structures in such Rights-of-Way, proper restoration of such Rights-of-Way and structures, the protection of the public, and the continuity of pedestrian or vehicular traffic. Such conditions may also include the provision of a construction schedule and maps showing the location of the facilities to be installed in the Right-of-Way. Grantee shall pay all applicable fees for the requisite Town permits received by Grantee.

10.6 Emergency Permits

In the event that emergency repairs are necessary, Grantee shall immediately notify the Town of the need for such repairs. Grantee may initiate such emergency repairs, and shall apply for appropriate permits within forty-eight (48) hours after discovery of the emergency.

10.7 Compliance with Applicable Codes

(A) Town Construction Codes. Grantee shall comply with all applicable Town construction codes, including, without limitation, the Uniform Building Code and other building codes, the Uniform Fire Code, the Uniform Mechanical Code, the Electronic Industries Association Standard for Physical Location and Protection of Below-Ground Fiber Optic Cable Plant, and zoning codes and regulations.

(B) Tower Specifications. Antenna supporting structures (towers) shall be designed for the proper loading as specified by the Electronics Industries Association (EIA), as those

specifications may be amended from time to time. Antenna supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable federal, State, and local codes or regulations.

(C) Safety Codes. Grantee shall comply with all federal, State and Town safety requirements, rules, regulations, laws and practices, and employ all necessary devices as required by Applicable Law during construction, operation and repair of its Cable System. By way of illustration and not limitation, Grantee shall comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.

10.8 GIS Mapping

Grantee shall comply with any generally applicable ordinances, rules and regulations of the Town regarding geographic information mapping systems for users of the Rights-of-Way.

10.9 Minimal Interference

Work in the Right-of-Way, on other public property, near public property, or on or near private property shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. Grantee's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the Town, or with any other pipes, wires, conduits, pedestals, structures, or other facilities that may have been laid in the Rights-of-Way by, or under, the Town's authority. The Grantee's Cable System shall be located, erected and maintained so as not to endanger or interfere with the lives of Persons, or to interfere with new improvements the Town may deem proper to make or to unnecessarily hinder or obstruct the free use of the Rights-of-Way or other public property, and shall not interfere with the travel and use of public places by the public during the construction, repair, operation or removal thereof, and shall not obstruct or impede traffic. In the event of such interference, the Town may require the removal or relocation of Grantee's lines, cables, equipment and other appurtenances from the property in question at Grantee's expense.

10.10 Prevent Injury/Safety

Grantee shall provide and use any equipment and facilities necessary to control and carry Grantee's signals so as to prevent injury to the Town's property or property belonging to any Person. Grantee, at its own expense, shall repair, renew, change and improve its facilities to keep them in good repair, and safe and presentable condition. All excavations made by Grantee in the Rights-of-Way shall be properly safeguarded for the prevention of accidents by the placement of adequate barriers, fences or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly designated by warning lights.

10.11 Hazardous Substances

(A) Grantee shall comply with any and all Applicable Laws, statutes, regulations and

orders concerning hazardous substances relating to Grantee's Cable System in the Rights-of-Way.

(B) Upon reasonable notice to Grantee, the Town may inspect Grantee's facilities in the Rights-of-Way to determine if any release of hazardous substances has occurred, or may occur, from or related to Grantee's Cable System. In removing or modifying Grantee's facilities as provided in this Franchise, Grantee shall also remove all residue of hazardous substances related thereto.

(C) Grantee agrees to indemnify the Town against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the Town arising out of a release of hazardous substances caused by Grantee.

10.12 Locates

Prior to doing any work in the Right-of-Way, Grantee shall give appropriate notices to the Town and to the notification association established in C.R.S. Section 9-1.5-105, as such may be amended from time to time.

Within forty-eight (48) hours after any Town representative or franchisee, licensee or permittee notifies Grantee of a proposed Right-of-Way excavation, Grantee shall, at Grantee's expense:

(A) Mark on the surface all located underground facilities within the area of the proposed excavation owned by Grantee;

(B) Notify the excavator of any unlocated underground facilities in the area of the proposed excavation owned by Grantee; or

(C) Notify the excavator that Grantee does not have any underground facilities in the vicinity of the proposed excavation.

10.13 Notice to Private Property Owners

Grantee shall give notice to private property owners of work on or adjacent to private property in accordance with the Town's Customer Service Standards, as the same may be amended from time to time by the Town Council acting by Ordinance or resolution.

10.14 Underground Construction and Use of Poles

(A) When required by general ordinances, resolutions, regulations or rules of the Town or applicable State or federal law, Grantee's Cable System shall be placed underground at Grantee's expense unless funding is generally available for such relocation to all users of the Rights-of-Way. Placing facilities underground does not preclude the use of ground-mounted appurtenances.

(B) Where electric, telephone, and other above-ground utilities are installed underground at the time of Cable System construction, or when all such wiring is subsequently placed underground, all Cable System lines shall also be placed underground with other wireline service at no expense to the Town or Subscribers unless funding is generally available for such relocation to all users of the Rights-of-Way. Related Cable System equipment, such as pedestals, must be placed in accordance with the Town's applicable code requirements and rules. In areas where either electric or telephone utility wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation.

(C) The Grantee shall utilize existing poles and conduit wherever possible.

(D) In the event Grantee cannot obtain the necessary poles and related facilities pursuant to a pole attachment agreement, and only in such event, then it shall be lawful for Grantee to make all needed excavations in the Rights-of-Way for the purpose of placing, erecting, laying, maintaining, repairing, and removing poles, supports for wires and conductors, and any other facility needed for the maintenance or extension of Grantee's Cable System. All poles of Grantee shall be located as designated by the proper Town authorities.

(E) This Franchise does not grant, give or convey to the Grantee the right or privilege to install its facilities in any manner on specific utility poles or equipment of the Town or any other Person. Copies of agreements for the use of poles, conduits or other utility facilities must be provided upon request by the Town.

(F) The Grantee and the Town recognize that situations may occur in the future where the Town may desire to place its own cable or conduit for Fiber Optic cable in trenches or bores opened by the Grantee. The Grantee agrees to cooperate with the Town in any construction by the Grantee that involves trenching or boring, provided that the Town has first notified the Grantee in some manner that it is interested in sharing the trenches or bores in the area where the Grantee's construction is occurring. The Grantee shall allow the Town to lay its cable, conduit and Fiber Optic cable in the Grantee's trenches and bores, provided the Town shares in the cost of the trenching and boring on the same terms and conditions as the Grantee at that time shares the total cost of trenches and bores. The Town shall be responsible for maintaining its respective cable, conduit and Fiber Optic cable buried in the Grantee's trenches and bores under this paragraph.

10.15 Undergrounding of Multiple Dwelling Unit Drops

In cases of single site Multiple Dwelling Units, Grantee shall minimize the number of individual aerial drop cables by installing multiple drop cables underground between the pole and Multiple Dwelling Unit where determined to be technologically feasible in agreement with the owners and/or owner's association of the Multiple Dwelling Units.

10.16 Burial Standards

(A) Depths. Unless otherwise required by law or the written instructions of the Town,

Grantee, and its contractors, shall comply with the following burial depth standards. In no event shall Grantee be required to bury its cable deeper than electric or gas facilities, or existing telephone facilities in the same portion of the Right-of-Way, so long as those facilities have been buried in accordance with Applicable Law:

> Underground cable drops from the curb shall be buried at a minimum depth of eight (8) inches, unless a sprinkler system or other construction concerns preclude it, in which case, underground cable drops shall be buried at a depth of at least six (6) inches.
>
> Feeder lines shall be buried at a minimum depth of twenty-four inches.
>
> Trunk lines shall be buried at a minimum depth of twenty-four (24) inches.
>
> Fiber Optic cable shall be buried at a minimum depth of thirty-six (36) inches.

In the event of a conflict between this subsection and the provisions of any customer service standard, this subsection shall control.

(B) Timeliness. Cable drops installed by Grantee to residences shall be buried according to these standards within one calendar week of initial installation, or at a time mutually-agreed upon between the Grantee and the Subscriber. When freezing surface conditions prevent Grantee from achieving such timetable, Grantee shall apprise the Subscriber of the circumstances and the revised schedule for burial, and shall provide the Subscriber with Grantee's telephone number and instructions as to how and when to call Grantee to request burial of the line if the revised schedule is not met.

10.17 Cable Drop Bonding

Grantee shall ensure that all cable drops are properly bonded at the home, consistent with applicable code requirements.

10.18 Prewiring

Any ordinance or resolution of the Town which requires prewiring of subdivisions or other developments for electrical and telephone service shall be construed to include wiring for Cable Systems. The Town shall give the same notification to Grantee that is gives to any electrical or telephone service companies as set forth in its ordinance.

10.19 Repair and Restoration of Property

(A) The Grantee shall protect public and private property from damage. If damage occurs, the Grantee shall promptly notify the property owner within twenty-four (24) hours in writing.

(B) Whenever Grantee disturbs or damages any Right-of-Way, other public property or any private property, Grantee shall promptly restore the Right-of-Way or property to at least its prior condition, normal wear and tear excepted, at its own expense.

(C) Rights-of-Way and Other Public Property. Grantee shall warrant any restoration work performed by or for Grantee in the Right-of-Way or on other public property in accordance with Applicable Law. If restoration is not satisfactorily performed by the Grantee within a reasonable time, the Town may, after prior notice to the Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the cost of those repairs from the Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Grantee shall pay the Town.

(D) Private Property. Upon completion of the work which caused any disturbance or damage, Grantee shall promptly commence restoration of private property, and will use best efforts to complete the restoration within seventy-two (72) hours, considering the nature of the work that must be performed. Grantee shall also perform such restoration in accordance with the Town's Customer Service Standards, as the same may be amended from time to time by the Town Council acting by ordinance or resolution.

10.20 Use of Conduits by the Town

The Town may install or affix and maintain wires and equipment owned by the Town for Town purposes in or upon any and all of Grantee's ducts, conduits or equipment in the Rights-of-Way and other public places if such placement does not interfere with Grantee's use of its facilities, without charge to the Town, to the extent space therein or thereon is reasonably available, and pursuant to all applicable ordinances and codes. For the purposes of this subsection, "Town purposes" includes, but is not limited to, the use of the structures and installations for Town fire, police, traffic, water, telephone, and/or signal systems, and for use by the Town's broadband network, but not for Cable Service or transmission to third parties of telecommunications or information services in competition with Grantee. Grantee shall not deduct the value of such use of its facilities from its Franchise Fee payments or from other fees payable to the Town.

10.21 Common Users

(A) For the purposes of this subsection:

(1) "Attachment" means any wire, optical fiber or other cable, and any related device, apparatus or auxiliary equipment, for the purpose of voice, video or data transmission.

(2) "Conduit" or "Conduit Facility" means any structure, or section thereof, containing one or more Ducts, conduits, manholes, handhole or other such facilities in Grantee's Cable System.

(3) "Duct" means a single enclosed raceway for cables, Fiber Optics or other wires.

(4) "Licensee" means any Person licensed or otherwise permitted by the Town to use the Rights-of-Way.

(5) "Surplus Ducts or Conduits" are Conduit Facilities other than those occupied by Grantee or any prior Licensee, or unoccupied Ducts held by Grantee as emergency use spares, or other unoccupied Ducts that Grantee reasonably expects to use within two (2) years from the date of a request for use.

(B) Grantee acknowledges that the Rights-of-Way have a finite capacity for containing Conduits. Therefore, Grantee agrees that whenever the Town determines it is impracticable to permit construction of an underground Conduit system by any other Person which may at the time have authority to construct or maintain Conduits or Ducts in the Rights-of-Way, but excluding Persons providing Cable Services in competition with Grantee, the Town may require Grantee to afford to such Person the right to use Grantee's Surplus Ducts or Conduits in common with Grantee, pursuant to the terms and conditions of an agreement for use of Surplus Ducts or Conduits entered into by Grantee and the Licensee. Nothing herein shall require Grantee to enter into an agreement with such Person if, in Grantee's reasonable determination, such an agreement could compromise the integrity of the Cable System.

(C) A Licensee occupying part of a Duct shall be deemed to occupy the entire Duct.

(D) Grantee shall give a Licensee a minimum of one hundred twenty (120) days notice of its need to occupy a licensed Conduit and shall propose that the Licensee take the first feasible action as follows:

(1) Pay revised Conduit rent designed to recover the cost of retrofitting the Conduit with multiplexing, Fiber Optics or other space-saving technology sufficient to meet Grantee's space needs;

(2) Pay revised Conduit rent based on the cost of new Conduit constructed to meet Grantee's space needs;

(3) Vacate the needed Ducts or Conduit; or

(4) Construct and maintain sufficient new Conduit to meet Grantee's space needs.

(E) When two or more Licensees occupy a section of Conduit Facility, the last Licensee to occupy the Conduit Facility shall be the first to vacate or construct new Conduit. When Conduit rent is revised because of retrofitting, space-saving technology or construction of new Conduit, all Licensees shall bear the increased cost.

(F) All Attachments shall meet local, State, and federal clearance and other safety

requirements, be adequately grounded and anchored, and meet the provisions of contracts executed between Grantee and the Licensee. Grantee may, at its option, correct any attachment deficiencies and charge the Licensee for its costs. Each Licensee shall pay Grantee for any fines, fees, damages or other costs the Licensee's attachments cause Grantee to incur.

(G) In order to enforce the provisions of this subsection with respect to Grantee, the Town must demonstrate that it has required that all similarly situated users of the Rights-of-Way to comply with the provisions of this subsection.

10.22 Acquisition of Facilities

Upon Grantee's acquisition of Cable System-related facilities in any Town Right-of-Way, or upon the addition to the Town of any area in which Grantee owns or operates any such facility, Grantee shall, at the Town's request, submit to the Town a statement describing all such facilities involved, whether authorized by franchise, permit, license or other prior right, and specifying the location of all such facilities to the extent Grantee has possession of such information. Such Cable System-related facilities shall immediately be subject to the terms of this Franchise.

10.23 Discontinuing Use/Abandonment of Cable System Facilities

Whenever Grantee intends to discontinue using any facility it owns within the Rights-of-Way, Grantee shall submit for the Town's approval a complete description of the facility and the date on which Grantee intends to discontinue using the facility. Grantee may remove the facility or request that the Town permit it to remain in place. Notwithstanding Grantee's request that any such facility remain in place, the Town may require Grantee to remove the facility from the Right-of-Way or modify the facility to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. The Town may require Grantee to perform a combination of modification and removal of the facility. Grantee shall complete such removal or modification in accordance with a schedule set by the Town. Until such time as Grantee removes or modifies the facility as directed by the Town, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, Grantee shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Right-of-Way, in the same manner and degree as if the facility were in active use, and Grantee shall retain all liability for such facility. If Grantee abandons its facilities, the Town may choose to use such facilities for any purpose whatsoever including, but not limited to, Access purposes.

10.24 Movement of Cable System Facilities For Town Purposes

The Town shall have the right to require Grantee to relocate, remove, replace, modify or disconnect Grantee's facilities and equipment located in the Rights-of-Way or on any other property of the Town for public purposes, in the event of an emergency, or when the public health, safety or welfare requires such change (for example, without limitation, by reason of traffic conditions, public safety, Right-of-Way vacation, Right-of-Way construction, change or establishment of Right-of-Way grade, installation of sewers, drains, gas or water pipes, or any

other types of structures or improvements by the Town for public purposes). Such work shall be performed at the Grantee's expense. Except during an emergency, the Town shall provide reasonable notice to Grantee, not to be less than five (5) business days, and allow Grantee with the opportunity to perform such action. In the event of any capital improvement project exceeding $500,000 in expenditures by the Town which requires the removal, replacement, modification or disconnection of Grantee's facilities or equipment, the Town shall provide at least sixty (60) days' written notice to Grantee. Following notice by the Town, Grantee shall relocate, remove, replace, modify or disconnect any of its facilities or equipment within any Right-of-Way, or on any other property of the Town. If the Town requires Grantee to relocate its facilities located within the Rights-of-Way, the Town shall make a reasonable effort to provide Grantee with an alternate location within the Rights-of-Way. If funds are generally made available to users of the Rights-of-Way for such relocation, Grantee shall be entitled to its pro rata share of such funds.

If the Grantee fails to complete this work within the time prescribed and to the Town's satisfaction, the Town may cause such work to be done and bill the cost of the work to the Grantee, including all costs and expenses incurred by the Town due to Grantee's delay. In such event, the Town shall not be liable for any damage to any portion of Grantee's Cable System. Within thirty (30) days of receipt of an itemized list of those costs, the Grantee shall pay the Town.

10.25 Movement of Cable System Facilities for Other Franchise Holders

If any removal, replacement, modification or disconnection of the Cable System is required to accommodate the construction, operation or repair of the facilities or equipment of another Town franchise holder, Grantee shall, after at least thirty (30) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. Grantee may require that the costs associated with the removal or relocation be paid by the benefited party.

10.26 Temporary Changes for Other Permittees

At the request of any Person holding a valid permit and upon reasonable advance notice, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The expense of such temporary changes must be paid by the permit holder, and Grantee may require a reasonable deposit of the estimated payment in advance.

10.27 Reservation of Town Use of Right-of-Way

Nothing in this Franchise shall prevent the Town or public utilities owned, maintained or operated by public entities other than the Town from constructing sewers; grading, paving, repairing or altering any Right-of-Way; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System.

10.28 Tree Trimming

Grantee may prune or cause to be pruned, using proper pruning practices, any tree in the Town's Rights-of-Way which interferes with Grantee's Cable System. Grantee shall comply with any general ordinance or regulations of the Town regarding tree trimming. Except in emergencies, Grantee may not prune trees at a point below thirty (30) feet above sidewalk grade until one (1) week written notice has been given to the owner or occupant of the premises abutting the Right-of-Way in or over which the tree is growing. The owner or occupant of the abutting premises may prune such tree at his or her own expense during this one (1) week period. If the owner or occupant fails to do so, Grantee may prune such tree at its own expense. For purposes of this subsection, emergencies exist when it is necessary to prune to protect the public or Grantee's facilities from imminent danger only.

10.29 Inspection of Construction and Facilities

The Town may inspect any of Grantee's facilities, equipment or construction at any time upon at least twenty-four (24) hours notice, or, in case of emergency, upon demand without prior notice. The Town shall have the right to charge generally applicable inspection fees therefore. If an unsafe condition is found to exist, the Town, in addition to taking any other action permitted under Applicable Law, may order Grantee, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the Town establishes. The Town has the right to correct, inspect, administer and repair the unsafe condition if Grantee fails to do so, and to charge Grantee therefore.

10.30 Stop Work

(A) On notice from the Town that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the Town, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the Town.

(B) The stop work order shall:

(1) Be in writing;

(2) Be given to the Person doing the work, or posted on the work site;

(3) Be sent to Grantee by overnight delivery at the address given herein;

(4) Indicate the nature of the alleged violation or unsafe condition; and

(5) Establish conditions under which work may be resumed.

10.31 Work of Contractors and Subcontractors

Grantee's contractors and subcontractors shall be licensed and bonded in accordance with the Town's ordinances, regulations and requirements. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it, and shall ensure that all such work is performed in compliance with this Franchise and other Applicable Law, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors or other Persons performing work on Grantee's behalf are familiar with the requirements of this Franchise and other Applicable Law governing the work performed by them.

SECTION 11. CABLE SYSTEM, TECHNICAL STANDARDS AND TESTING

11.1 Subscriber Network

(A) Grantee's Cable System shall be equivalent to or exceed technical characteristics of a traditional HFC 860 MHz Cable System and provide Activated Two-Way capability. The Cable System shall be capable of supporting video and audio. The Cable System shall deliver no less than two hundred (200) Channels of digital video programming services to Subscribers, provided that the Grantee reserves the right to use the bandwidth in the future for other uses based on market factors.

(B) Equipment must be installed so that all closed captioning programming received by the Cable System shall include the closed caption signal so long as the closed caption signal is provided consistent with FCC standards. Equipment must be installed so that all local signals received in stereo or with secondary audio tracks (broadcast and Access) are retransmitted in those same formats.

(C) All construction shall be subject to the Town's permitting process.

(D) Grantee and Town shall meet, at the Town's request, to discuss the progress of the design plan and construction.

(E) Grantee will take prompt corrective action if it finds that any facilities or equipment on the Cable System are not operating as expected, or if it finds that facilities and equipment do not comply with the requirements of this Franchise or Applicable Law.

(F) Grantee's construction decisions shall be based solely upon legitimate engineering decisions and shall not take into consideration the income level of any particular community within the Franchise Area.

11.2 Technology Assessment

(A) The Town may notify Grantee on or after five (5) years after the Effective Date, that the Town will conduct a technology assessment of Grantee's Cable System. The technology assessment may include, but is not be limited to, determining whether Grantee's Cable System

technology and performance are consistent with current technical practices and range and level of services existing in the fifteen (15) largest U.S. cable systems owned and operated by Grantee's Parent Corporation and/or Affiliates pursuant to franchises that have been renewed or extended since the Effective Date.

(B) Grantee shall cooperate with the Town to provide necessary non-confidential and proprietary information upon the Town's reasonable request as part of the technology assessment.

(C) At the discretion of the Town, findings from the technology assessment may be included in any proceeding commenced for the purpose of identifying future cable-related community needs and interests undertaken by the Town pursuant to 47 U.S.C. §546.

11.3 Standby Power

Grantee's Cable System Headend shall be capable of providing at least twenty-four (24) hours of emergency operation. In addition, throughout the term of this Franchise, Grantee shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than four (4) hours. This outage plan and evidence of requisite implementation resources shall be presented to the Town no later than thirty (30) days following receipt of a request.

11.4 Emergency Alert Capability

(A) Grantee shall provide an operating Emergency Alert System ("EAS") throughout the term of this Franchise in compliance with FCC standards. Grantee shall test the EAS as required by the FCC. Upon request, the Town shall be permitted to participate in and/or witness the EAS testing up to twice a year on a schedule formed in consultation with Grantee. If the test indicates that the EAS is not performing properly, Grantee shall make any necessary adjustment to the EAS, and the EAS shall be retested.

11.5 Technical Performance

The technical performance of the Cable System shall meet or exceed all applicable federal (including, but not limited to, the FCC), State and local technical standards, as they may be amended from time to time, regardless of the transmission technology utilized. The Town shall have the full authority permitted by Applicable Law to enforce compliance with these technical standards.

11.6 Cable System Performance Testing

(A) Grantee shall, at Grantee's expense, perform the following tests on its Cable System:

(1) All tests required by the FCC;

(2) All other tests reasonably necessary to determine compliance with technical standards adopted by the FCC at any time during the term of this Franchise; and

(3) All other tests as otherwise specified in this Franchise.

(B) At a minimum, Grantee's tests shall include:

(1) Cumulative leakage index testing of any new construction;

(2) Semi-annual compliance and proof of performance tests in conformance with generally accepted industry guidelines;

(3) Tests in response to Subscriber complaints;

(4) Periodic monitoring tests, at intervals not to exceed six (6) months, of Subscriber (field) test points, the Headend, and the condition of standby power supplies; and

(5) Cumulative leakage index tests, at least annually, designed to ensure that one hundred percent (100%) of Grantee's Cable System has been ground or air tested for signal leakage in accordance with FCC standards.

(C) Grantee shall maintain written records of all results of its Cable System tests, performed by or for Grantee. Copies of such test results will be provided to the Town upon reasonable request.

(D) If the FCC no longer requires proof of performance tests for Grantee's Cable System during the term of this Franchise, Grantee agrees that it shall continue to conduct proof of performance tests on the Cable System in accordance with the standards that were in place on the Effective Date, or any generally applicable standards later adopted, at least once a year, and provide written results of such tests to the Town upon request.

(E) The FCC semi-annual testing is conducted in January/February and July/August of each year. If the Town contacts Grantee prior to the next test period (*i.e.*, before December 15 and June 15 respectively of each year), Grantee shall provide Town with no less than seven (7) days prior written notice of the actual date(s) for FCC compliance testing. If Town notifies Grantee by the December 15th and June 15th dates that it wishes to have a representative present during the next test(s), Grantee shall cooperate in scheduling its testing so that the representative can be present. Notwithstanding the above, all technical performance tests may be witnessed by representatives of the Town.

(F) Grantee shall be required to promptly take such corrective measures as are necessary to correct any performance deficiencies fully and to prevent their recurrence as far as possible. Grantee's failure to correct deficiencies identified through this testing process shall be a material violation of this Franchise. Sites shall be re-tested following correction.

11.7 Additional Tests

Where there exists other evidence which in the judgment of the Town casts doubt upon the reliability or technical quality of Cable Service, the Town shall have the right and authority to require Grantee to test, analyze and report on the performance of the Cable System. Grantee shall fully cooperate with the Town in performing such testing and shall prepare the results and a report, if requested, within thirty (30) days after testing. Such report shall include the following information:

(A) the nature of the complaint or problem which precipitated the special tests;

(B) the Cable System component tested;

(C) the equipment used and procedures employed in testing;

(D) the method, if any, in which such complaint or problem was resolved; and

(E) any other information pertinent to said tests and analysis which may be required.

SECTION 12. SERVICE AVAILABILITY, INTERCONNECTION AND SERVICE TO SCHOOLS AND PUBLIC BUILDINGS

12.1 Service Availability

(A) In General. Except as otherwise provided in herein, Grantee shall provide Cable Service within seven (7) days of a request by any Person within the Town at a location that is passed by the BFN. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee, receipt of a written request by Grantee or receipt by Grantee of a verified verbal request. Except as otherwise provided herein, Grantee shall provide such service:

(1) With no line extension charge except as specifically authorized elsewhere in this Franchise Agreement.

(2) At a non-discriminatory installation charge for a standard installation, consisting of a ___ foot drop connecting to an inside wall for Residential or Commercial Subscribers, with additional charges for non standard installations computed according to a non discriminatory methodology for such installations, adopted by Grantee and provided in writing to the Town;

(3) At non discriminatory monthly rates for Residential Subscribers.

(B) Service to Multiple Dwelling Units. Consistent with this Section 12.1, the Grantee shall offer the individual units of a Multiple Dwelling Unit all Cable Services offered to other Dwelling Units in the Town and shall individually wire units upon request of the property

owner or renter who has been given written authorization by the owner; provided, however, that any such offering is conditioned upon the Grantee having legal access to said unit. The Town acknowledges that the Grantee cannot control the dissemination of particular Cable Services beyond the point of demarcation at a Multiple Dwelling Unit.

12.2 Connection of Public Facilities

Grantee shall, at no cost to the Town, provide one outlet of Basic Service to all Town owned and occupied buildings, schools and public libraries located in areas where Grantee provides Cable Service, so long as these facilities are located within 150 feet of its Cable System. For purposes of this subsection, "school" means all State-accredited K-12 public and private schools. Such obligation to provide free Cable Service shall not extend to areas of Town buildings where the Grantee would normally enter into a commercial contract to provide such Cable Service (*e.g.,* golf courses, airport restaurants and concourses, and recreation center work out facilities). Outlets of Basic Service provided in accordance with this subsection may be used to distribute Cable Services throughout such buildings, provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. Such outlets may only be used for lawful purposes. The Cable Service provided shall not be distributed beyond the originally installed outlets without authorization from Grantee, which shall not be unreasonably withheld.

SECTION 13. FRANCHISE VIOLATIONS

13.1 Procedure for Remedying Franchise Violations

(A) If the Town reasonably believes that Grantee has failed to perform any obligation under this Franchise or has failed to perform in a timely manner, the Town shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged default. Grantee shall have thirty (30) days from the receipt of such notice to:

(1) respond to the Town, contesting the Town's assertion that a default has occurred, and requesting a meeting in accordance with subsection (B), below;

(2) cure the default; or,

(3) notify the Town that Grantee cannot cure the default within the thirty (30) days, because of the nature of the default. In the event the default cannot be cured within thirty (30) days, Grantee shall promptly take all reasonable steps to cure the default and notify the Town in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the Town may set a meeting in accordance with subsection (B) below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether Grantee's proposed completion schedule and steps are reasonable.

(B) If Grantee does not cure the alleged default within the cure period stated above, or

by the projected completion date under subsection (A)(3), or denies the default and requests a meeting in accordance with (A)(1), or the Town orders a meeting in accordance with subsection (A)(3), the Town shall set a meeting to investigate said issues or the existence of the alleged default. The Town shall notify Grantee of the meeting in writing and such meeting shall take place no less than thirty (30) days after Grantee's receipt of notice of the meeting. At the meeting, Grantee shall be provided an opportunity to be heard and to present evidence in its defense.

(C) If, after the meeting, the Town determines that a default exists, the Town shall order Grantee to correct or remedy the default or breach within fifteen (15) days or within such other reasonable time frame as the Town shall determine. In the event Grantee does not cure within such time to the Town's reasonable satisfaction, the Town may:

(1) Withdraw an amount from the letter of credit as monetary damages;

(2) Recommend the revocation of this Franchise pursuant to the procedures in subsection 13.2; or,

(3) Recommend any other legal or equitable remedy available under this Franchise or any Applicable Law.

(D) The determination as to whether a violation of this Franchise has occurred shall be within the discretion of the Town, provided that any such final determination may be subject to appeal to a court of competent jurisdiction under Applicable Law.

13.2 Revocation

(A) In addition to revocation in accordance with other provisions of this Franchise, the Town may revoke this Franchise and rescind all rights and privileges associated with this Franchise in the following circumstances, each of which represents a material breach of this Franchise:

(1) If Grantee fails to perform any material obligation under this Franchise or under any other agreement, ordinance or document regarding the Town and Grantee;

(2) If Grantee willfully fails for more than forty-eight (48) hours to provide continuous and uninterrupted Cable Service*;*

(3) If Grantee attempts to evade any material provision of this Franchise or to practice any fraud or deceit upon the Town or Subscribers; or

(4) If Grantee becomes insolvent, or if there is an assignment for the benefit of Grantee's creditors;

(5) If Grantee makes a material misrepresentation of fact in the application for or negotiation of this Franchise.

(B) Following the procedures set forth in subsection 13.1 and prior to forfeiture or termination of the Franchise, the Town shall give written notice to the Grantee of its intent to revoke the Franchise and set a date for a revocation proceeding. The notice shall set forth the exact nature of the noncompliance.

(C) Any proceeding under the paragraph above shall be conducted by the Town Council and open to the public. Grantee shall be afforded at least forty-five (45) days prior written notice of such proceeding.

(1) At such proceeding, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce evidence, and to question witnesses. A complete verbatim record and transcript shall be made of such proceeding and the cost shall be shared equally between the parties. The Town Council shall hear any Persons interested in the revocation, and shall allow Grantee, in particular, an opportunity to state its position on the matter.

(2) Within ninety (90) days after the hearing, the Town Council shall determine whether to revoke the Franchise and declare that the Franchise is revoked and the letter of credit forfeited; or if the breach at issue is capable of being cured by Grantee, direct Grantee to take appropriate remedial action within the time and in the manner and on the terms and conditions that the Town Council determines are reasonable under the circumstances. If the Town determines that the Franchise is to be revoked, the Town shall set forth the reasons for such a decision and shall transmit a copy of the decision to the Grantee. Grantee shall be bound by the Town's decision to revoke the Franchise unless it appeals the decision to a court of competent jurisdiction within fifteen (15) days of the date of the decision.

(3) Grantee shall be entitled to such relief as the Court may deem appropriate.

(4) The Town Council may at its sole discretion take any lawful action which it deems appropriate to enforce the Town's rights under the Franchise in lieu of revocation of the Franchise.

13.3 Procedures in the Event of Termination or Revocation

(A) If this Franchise expires without renewal after completion of all processes available under this Franchise and federal law or is otherwise lawfully terminated or revoked, the Town may, subject to Applicable Law:

(1) Allow Grantee to maintain and operate its Cable System on a month-to-month basis or short-term extension of this Franchise for not less than six (6) months, unless a sale of the Cable System can be closed sooner or Grantee demonstrates to the Town's satisfaction that it needs additional time to complete the sale; or

(2) Purchase Grantee's Cable System in accordance with the procedures set

forth in subsection 13.4, below.

(B) In the event that a sale has not been completed in accordance with subsections (A)(1) and/or (A)(2) above, the Town may order the removal of the above-ground Cable System facilities and such underground facilities owned by the Grantee from the Town at Grantee's sole expense within a reasonable period of time as determined by the Town. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Rights-of-Way, public places and private property in as good condition as that prevailing prior to Grantee's removal of its equipment without affecting the electrical or telephone cable wires or attachments. The indemnification and insurance provisions and the letter of credit shall remain in full force and effect during the period of removal, and Grantee shall not be entitled to, and agrees not to request, compensation of any sort therefore.

(C) If Grantee fails to complete any removal required by subsection 13.3 (B) to the Town's satisfaction, after written notice to Grantee, the Town may cause the work to be done and Grantee shall reimburse the Town for the costs incurred within thirty (30) days after receipt of an itemized list of the costs, or the Town may recover the costs through the letter of credit provided by Grantee.

(D) The Town may seek legal and equitable relief to enforce the provisions of this Franchise.

13.4 Purchase of Cable System

(A) If at any time this Franchise is revoked, terminated, or not renewed upon expiration in accordance with the provisions of federal law, the Town shall have the option to purchase the Cable System.

(B) The Town may, at any time thereafter, offer in writing to purchase Grantee's Cable System. Grantee shall have thirty (30) days from receipt of a written offer from the Town within which to accept or reject the offer.

(C) In any case where the Town elects to purchase the Cable System, the purchase shall be closed within one hundred twenty (120) days of the date of the Town's audit of a current profit and loss statement of Grantee. The Town shall pay for the Cable System in cash or certified funds, and Grantee shall deliver appropriate bills of sale and other instruments of conveyance.

(D) For the purposes of this subsection, the price for the Cable System shall be determined as follows:

(1) In the case of the expiration of the Franchise without renewal, at fair market value determined on the basis of Grantee's Cable System valued as a going concern, but with no value allocated to the Franchise itself. In order to obtain the fair market value, this valuation shall be reduced by the amount of any lien, encumbrance, or other obligation of Grantee which the Town would assume.

(2) In the case of revocation for cause, the equitable price of Grantee's Cable System.

13.5 Receivership and Foreclosure

(A) At the option of the Town, subject to Applicable Law, this Franchise may be revoked one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

(1) The receivership or trusteeship is vacated within one hundred twenty (120) days of appointment; or

(2) The receivers or trustees have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Franchise, and have remedied all defaults under the Franchise. Additionally, the receivers or trustees shall have executed an agreement duly approved by the court having jurisdiction, by which the receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Franchise.

(B) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Grantee, the Town may serve notice of revocation on Grantee and to the purchaser at the sale, and the rights and privileges of Grantee under this Franchise shall be revoked thirty (30) days after service of such notice, unless:

(1) The Town has approved the transfer of the Franchise, in accordance with the procedures set forth in this Franchise and as provided by law; and

(2) The purchaser has covenanted and agreed with the Town to assume and be bound by all of the terms and conditions of this Franchise.

13.6 No Monetary Recourse Against the Town

Grantee shall not have any monetary recourse against the Town or its officers, officials, boards, commissions, agents or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this Franchise or the enforcement thereof, in accordance with the provisions of applicable federal, State and local law. The rights of the Town under this Franchise are in addition to, and shall not be read to limit, any immunities the Town may enjoy under federal, State or local law.

13.7 Alternative Remedies

No provision of this Franchise shall be deemed to bar the right of the Town to seek or obtain judicial relief from a violation of any provision of the Franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies

identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the Town to recover monetary damages for such violations by Grantee, or to seek and obtain judicial enforcement of Grantee's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

13.8 Assessment of Monetary Damages

(A) The Town may assess against Grantee monetary damages (i) up to five hundred dollars ($500.00) per day for general construction delays, violations of PEG obligations or payment obligations, (ii) up to two hundred fifty dollars ($250.00) per day for any other material breaches, or (iii) up to one hundred dollars ($100.00) per day for defaults, and withdraw the assessment from the letter of credit or collect the assessment as specified in this Franchise. Damages pursuant to this Section shall accrue for a period not to exceed one hundred twenty (120) days per violation proceeding. To assess any amount from the letter of credit, Town shall follow the procedures for withdrawals from the letter of credit set forth in the letter of credit and in this Franchise. Such damages shall accrue beginning thirty (30) days following Grantee's receipt of the notice required by subsection 13.1(A), or such later date if approved by the Town in its sole discretion, but may not be assessed until after the procedures in subsection 13.1 have been completed.

(B) The assessment does not constitute a waiver by Town of any other right or remedy it may have under the Franchise or Applicable Law, including its right to recover from Grantee any additional damages, losses, costs and expenses that are incurred by Town by reason of the breach of this Franchise.

13.9 Effect of Abandonment

If the Grantee abandons its Cable System during the Franchise term, or fails to operate its Cable System in accordance with its duty to provide continuous service, the Town, at its option, may operate the Cable System; designate another entity to operate the Cable System temporarily until the Grantee restores service under conditions acceptable to the Town, or until the Franchise is revoked and a new franchisee is selected by the Town; or obtain an injunction requiring the Grantee to continue operations. If the Town is required to operate or designate another entity to operate the Cable System, the Grantee shall reimburse the Town or its designee for all reasonable costs, expenses and damages incurred.

13.10 What Constitutes Abandonment

The Town shall be entitled to exercise its options in subsection 13.9 if:

(A) The Grantee fails to provide Cable Service in accordance with this Franchise over a substantial portion of the Franchise Area for four (4) consecutive days, unless the Town authorizes a longer interruption of service; or

(B) The Grantee, for any period, willfully and without cause refuses to provide Cable Service in accordance with this Franchise.

SECTION 14. FRANCHISE RENEWAL AND TRANSFER

14.1 Renewal

(A) Subject to the provisions of Section 2.3, the Town and Grantee agree that any proceedings undertaken by the Town that relate to the renewal of the Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or State law.

(B) In addition to the procedures set forth in said Section 626(a), the Town agrees to notify Grantee of the completion of its assessments regarding the identification of future cable-related community needs and interests, as well as the past performance of Grantee under the then current Franchise term. Notwithstanding anything to the contrary set forth herein, Grantee and Town agree that at any time during the term of the then current Franchise, while affording the public adequate notice and opportunity for comment, the Town and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Franchise and the Town may grant a renewal thereof. Grantee and Town consider the terms set forth in this subsection to be consistent with the express provisions of Section 626 of the Cable Act.

14.2 Transfer of Ownership or Control

(A) The Cable System and this Franchise shall not be sold, assigned, transferred, leased or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger or consolidation; nor shall title thereto, either legal or equitable, or any right, interest or property therein pass to or vest in any Person or entity without the prior written consent of the Town, which consent shall be by the Town Council/Commission, acting by ordinance/resolution.

(B) The Grantee shall promptly notify the Town of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Grantee. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. Every change, transfer or acquisition of control of the Grantee shall make this Franchise subject to cancellation unless and until the Town shall have consented in writing thereto.

(C) The parties to the sale or transfer shall make a written request to the Town for its approval of a sale or transfer and furnish all information required by law and the Town.

(D) In seeking the Town's consent to any change in ownership or control, the proposed transferee shall indicate whether it:

(1) Has ever been convicted or held liable for acts involving deceit including any violation of federal, State or local law or regulations, or is currently under an indictment, investigation or complaint charging such acts;

(2) Has ever had a judgment in an action for fraud, deceit, or misrepresentation entered against the proposed transferee by any court of competent jurisdiction;

(3) Has pending any material legal claim, lawsuit, or administrative proceeding arising out of or involving a cable system or a broadband system;

(4) Is financially solvent, by submitting financial data including financial statements that are audited by a certified public accountant who may also be an officer of the transferee, along with any other data that the Town may reasonably require; and

(5) Has the financial, legal and technical capability to enable it to maintain and operate the Cable System for the remaining term of the Franchise.

(E) The Town shall act by ordinance on the request within one hundred twenty (120) days of the request, provided it has received all information required by this Franchise and/or by Applicable Law. The Town and the Grantee may by mutual agreement, at any time, extend the 120 day period. Subject to the foregoing, if the Town fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the Town agree to an extension of time.

(F) Within thirty (30) days of any transfer or sale, if approved or deemed granted by the Town, Grantee shall file with the Town a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee, and the transferee shall file its written acceptance agreeing to be bound by all of the provisions of this Franchise, subject to Applicable Law. In the event of a change in control, in which the Grantee is not replaced by another entity, the Grantee will continue to be bound by all of the provisions of the Franchise, subject to Applicable Law, and will not be required to file an additional written acceptance.

(G) In reviewing a request for sale or transfer, the Town may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the Town in so inquiring. The Town may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, in accordance with Applicable Law.

(H) Notwithstanding anything to the contrary in this subsection, the prior approval of the Town shall not be required for any sale, assignment or transfer of the Franchise or Cable System to an entity controlling, controlled by or under the same common control as Grantee, provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the Town and must agree in writing to comply with all of the provisions of the Franchise. Further, Grantee may pledge the assets of the Cable System for the purpose of financing without the consent of the Town; provided that such pledge of assets shall not impair or mitigate Grantee's responsibilities and capabilities to meet all of its obligations under the provisions of this Franchise.

SECTION 15. SEVERABILITY

If any Section, subsection, paragraph, term or provision of this Franchise is determined to be illegal, invalid or unconstitutional by any court or agency of competent jurisdiction, such determination shall have no effect on the validity of any other Section, subsection, paragraph, term or provision of this Franchise, all of which will remain in full force and effect for the term of the Franchise.

SECTION 16. MISCELLANEOUS PROVISIONS

16.1 Preferential or Discriminatory Practices Prohibited

NO DISCRIMINATION IN EMPLOYMENT. In connection with the performance of work under this Franchise, the Grantee agrees not to refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any Person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Grantee further agrees to insert the foregoing provision in all subcontracts hereunder. Throughout the term of this Franchise, Grantee shall fully comply with all equal employment or non-discrimination provisions and requirements of federal, State and local laws, and in particular, FCC rules and regulations relating thereto.

16.2 Notices

Throughout the term of the Franchise, each party shall maintain and file with the other a local address for the service of notices by mail. All notices shall be sent overnight delivery postage prepaid to such respective address and such notices shall be effective upon the date of mailing. These addresses may be changed by the Town or the Grantee by written notice at any time. At the Effective Date of this Franchise:

Grantee's address shall be:

ALLO Communications LLC
330 S. 21st Street
Lincoln, Nebraska 68510
Attn: Brad Moline

The Town's address shall be:

Town of Breckenridge
Attn: Town Manager
150 Ski Hill Road; P.O. Box 168
Breckenridge, CO 80424

16.3 Descriptive Headings

The headings and titles of the Sections and subsections of this Franchise are for reference purposes only, and shall not affect the meaning or interpretation of the text herein.

16.4 Publication Costs to be Borne by Grantee

Grantee shall reimburse the Town for all costs incurred in publishing this Franchise, if such publication is required.

16.5 Binding Effect

This Franchise shall be binding upon the parties hereto, their permitted successors and assigns.

16.6 No Joint Venture

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third Persons or the public in any manner which would indicate any such relationship with the other.

16.7 Waiver

The failure of the Town at any time to require performance by the Grantee of any provision hereof shall in no way affect the right of the Town hereafter to enforce the same. Nor shall the waiver by the Town of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

16.8 Reasonableness of Consent or Approval

Whenever under this Franchise "reasonableness" is the standard for the granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards as well as business and economic considerations.

16.9 Entire Agreement

This Franchise and all Exhibits represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersede all prior oral negotiations between the parties.

16.10 Jurisdiction

Venue for any judicial dispute between the Town and Grantee arising under or out of this Franchise shall be in Summit County District Court, Colorado, or in the United States District Court in Denver.

IN WITNESS WHEREOF, this Franchise is signed in the name of the Town of Breckenridge, Colorado this ___ day of _____, 2019.

ATTEST: TOWN OF BRECKENRIDGE, COLORADO:

Town Clerk Mayor

APPROVED AS TO FORM: RECOMMENDED AND APPROVED:

Town Attorney Town Manager

Accepted and approved this _____ day of _____, 2015.

ATTEST: COMCAST OF COLORADO V, LLC

Public Notary

Name/Title: _____

EXHIBIT A:
CUSTOMER SERVICE STANDARDS

EXHIBIT B
Report Form

Comcast
Quarterly Executive Summary - Escalated Complaints
Section 7.6 (B) of our Franchise Agreement
Quarter Ending _____, Year
BRECKENRIDGE, COLORADO

Type of Complaint	Number of Calls
Accessibility	0
Billing, Credit and Refunds	0
Courtesy	0
Drop Bury	0
Installation	0
Notices/Easement Issues (Non-Rebuild)	0
Pedestal	0
Problem Resolution	0
Programming	0
Property Damage (Non-Rebuild)	0
Rates	0
Rebuild/Upgrade Damage	0
Rebuild/Upgrade Notices/Easement Issues	0
Reception/Signal Quality	0
Safety	0
Service and Install Appointments	0
Service Interruptions	0
Serviceability	0
TOTAL	**0**

Compliments	

Memo

TOWN OF BRECKENRIDGE

To: Breckenridge Town Council Members

From: Julia Puester, AICP, Planning Manager

Date: 5/21/19

Subject: First Reading: LH Mountain Ventures, LLC Development Agreement Modification (aka Lionheart, East Peak 8 Hotel)

The applicant for the Lionheart East Peak 8 Hotel (LH Mountain Ventures) has applied for a modification of the Development Agreement on the property approved by the Town Council on July 10, 2018 (Ordinance 15, Series 2018) which the Town Council reviewed at the May 14 meeting. The Council gave direction regarding modifications to the proposed the workforce housing requirement. The Town Attorney and staff have since worked with the applicant and present the first reading version attached which reflect the following primary changes to the existing Development Agreement.

- Revised agreement to delete any reference to Peak 8 properties, LLC and Barton Landing Apartments and reflect the following regarding workforce housing (Section C), which is in addition to the 20,000 square feet of deed restricted housing in the Upper Blue Basin required in Section B.
    - 24 bedrooms in a mix of 1, 2, and 3 bedroom units as determined by the Developer;
    - Bedrooms must be an average size of 150 square feet;
    - All 24 bedrooms must be deed restricted at an average AMI of 80% within the Upper Blue Basin; and
    - Must be completed prior to the issuance of a Certificate of Occupancy.
- Revised agreement to provide an extension of the period for review and approval by the Town's Planning Commission from twelve months (expiring August 15, 2019) to February 15, 2020.
- Revise all developer references to reflect the name and address as Ricardo Dunin, LH Mountain Ventures, LLC.

Staff has attached both the revised Development Agreement as proposed, as well as the approved Development Agreement (Ordinance 15, Series 2018) for review.

Staff and the applicant will be available at the meeting for any questions.

FOR WORKSESSION/FIRST READING – MAY 24

COUNCIL BILL NO. ____

Series 2019

AN ORDINANCE APPROVING AN AMENDED AND RESTATED DEVELOPMENT AGREEMENT WITH LH MOUNTAIN VENTURES, LLC, A COLORADO LIMITED LIABILITY COMPANY

WHEREAS, the Town and Lionheart BGV Ventures, LLC, a Colorado limited liability company, entered into that Development Agreement dated as of August 15, 2018 and recorded September 28, 2018 at Reception No. 1181305 of the records of the Clerk and Recorder of Summit County, Colorado; and

WHEREAS, Lionheart BGV Ventures, LLC has changed its name to LH Mountain Ventures, LLC, a Colorado limited liability company ("**LH Mountain Ventures**"); and

WHEREAS, the Town and LH Mountain Ventures desire to amend and restate the development agreement; and

WHEREAS, a proposed Amended and Restated Development Agreement between the Town and LH Mountain Ventures has been prepared, a copy of which is marked **Exhibit "A**", attached hereto and incorporated herein by reference; and

WHEREAS, the Town Council has reviewed the proposed Amended and Restated Development Agreement, and finds and determines that it should be approved.

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

Section 1. The Amended and Restated Development Agreement between the Town and LH Mountain Ventures, LLC, a Colorado limited liability company (**Exhibit "A"** hereto), is approved, and the Town Manager is authorized, empowered, and directed to execute such agreement for and on behalf of the Town of Breckenridge.

Section 2. The Amended and Restated Development Agreement must contain a notice in the form provided in Section 9-9-13 of the Breckenridge Town Code. In addition, a notice in compliance with the requirements of Section 9-9-13 of the Breckenridge Town Code must be published by the Town Clerk one time in a newspaper of general circulation in the Town within fourteen days after the adoption of this ordinance. Such notice shall satisfy the requirement of Section 24-68-103, C.R.S.

Section 3. The Town Council 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 4. The Town Council hereby finds, determines and declares that it has the power to adopt this ordinance pursuant to: (i) the Local Government Land Use Control Enabling Act, Article 20 of Title 29, C.R.S.; (ii) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal zoning powers); (iii) Section 31-15-103, C.R.S. (concerning municipal police powers); (iv) Section 31-15-401, C.R.S.(concerning municipal police powers); (v) Section 24-68-101, et seq., C.R.S.; (vi) the authority granted to home rule municipalities by Article XX of the Colorado Constitution; and (vii) the powers contained in the Breckenridge Town Charter.

Section 5. 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 ____ day of _____, 2019. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ___ day of ____, 2019, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

TOWN OF BRECKENRIDGE

By:_____
Eric S. Mamula, Mayor

ATTEST:

_____
Helen Cospolich, CMC,
Town Clerk

APPROVAL OF THIS DEVELOPMENT AGREEMENT CONSTITUTES A VESTED PROPERTY RIGHT PURSUANT TO ARTICLE 68 OF TITLE 24, COLORADO REVISED STATUTES, AS AMENDED

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

This Amended and Restated Development Agreement ("**Agreement**") is made as of July 19, 2019 (the "**Effective Date**," which shall be the date when the ordinance approving this Agreement becomes effective) and is between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation ("**Town**"), and LH MOUNTAIN VENTURES, LLC, a Colorado limited liability company ("**Developer**"). This Agreement amends and restates that Development Agreement dated as of August 15, 2018 and recorded September 28, 2018 at Reception No. 1181305 of the records of the Clerk and Recorder of Summit County, Colorado ("**Original Development Agreement**"). In this Agreement Town and Developer are referred to individually as a "**Party**" and collectively as the "**Parties**."

Recitals

A. Developer is the owner of the following real property located in the Town of Breckenridge, Summit County, Colorado:

LOT 4, PEAK 8 SUBDIVISION FILING NO. 1, ACCORDING TO THE PLAT OF THE FOURTH RESUBDIVISION, THE REMAINDER OF TRACT C, PEAK 8 SUBDIVISION FILING NO. 1 RECORDED ON DECEMBER 20, 2018 AT RECEPTION NO. 1187721, SUMMIT COUNTY, COLORADO

("**Property**").

B. Developer acquired the Property from Vail Summit Resorts, Inc., a Colorado corporation ("**VSRI**"), by that deed recorded April 12, 2019 at Reception No. 1195438 of the records of the Clerk and Recorder of Summit County, Colorado.

C. VSRI was not a party to the Original Development Agreement, but was an intended third party beneficiary of such agreement. VSRI is an intended beneficiary of this Agreement.

D. The Property is subject to the Amendment to Amended Peaks 7 & 8 Master Plan approved by Development Permit PL-2015-0444 on January 12, 2016, the Notice of Approval of Master Plan for which Amendment was recorded August 30, 2016 at Reception No. 1120265 of the Summit County, Colorado records ("**Master Plan**"). The Master Plan was further amended to contemplate Developer's proposed development (as hereafter defined) in Development Permit No. PL-2018-0546, dated January 18, 2019 ("**2019 Master Plan Amendment**").

E. Developer proposes to develop on the Property a hotel, condominiums, commercial facilities, and amenities ("**Proposed Development**").

F. In connection with its Proposed Development Developer has requested Town to approve: (i) a density transfer to the Property by VRSI; (ii) development of the Property that exceeds the gross density for the Property recommended by the Town's Land Use Guidelines ("**Guidelines**") as provided for in Subsection 9-1-19-39AI2 of the Breckenridge Town Code[1]; (iii) agreements concerning such density in excess of that recommended by the Guidelines; and (iv) such other agreements as the Town and the Developer may agree are appropriate.

G. Pursuant to Chapter 9 of Title 9 of the Breckenridge Town Code the Town Council has the authority to enter into a development agreement. Further, in connection with a master plan amendment, there is no process in the Town's Development Code for approval of density in excess of that recommended by the Guidelines and a transfer of density to support such excess density, and, therefore, a development agreement provides a means for such an approval and transfer.

H. In order for Developer to develop the Property in a manner that will include a four star, flagged, luxury hotel containing approximately 150 rooms and approximately 110,000 square feet of condominiums, with the amenities and commercial services required for such a project, up to the total of an additional 58 single family equivalents of density (each an "**SFE**" as defined in the Town's Development Code), which may include up to 2.0 SFEs of commercial density, will be required and authorization to acquire and transfer such additional SFEs will be required.

I. Because there is no provision in the Breckenridge Town Code allowing site work to begin prior to issuance of a building permit, in order to facilitate the beginning of vertical construction of Developer's Proposed Development in the spring of 2020, the Town is prepared to authorize its Department of Community Development ("**Department**") to grant permission for the commencement of infrastructure improvements, including, but not limited to, demolition of VSRI's administration office building and ski patrol locker building located on the Property ("**Administration Facilities**"), construction of storm water management facilities, relocation of utilities, and site excavation prior to issuance of a building permit, but subject to receipt of assurances of completion deemed satisfactory by the Department.

J. In order to accommodate VSRI's administration functions necessary or appropriate for the operation of the Breckenridge Ski Resort, which currently occur in the Administration Facilities, the Town acknowledges and understands that one or more temporary structures will need to be placed on the Property in locations acceptable to VSRI, Developer, and the Town as determined by VSRI, Developer, and the Town, and maintained in such locations until the proposed Guest Services (as defined in the Master Plan) spaces to be included in Developer's Proposed Development on the Property (the "**Guest Services Spaces**") are completed and ready

[1] Chapter 1 of Title 9 of the Breckenridge Town Code is known and is referred to in this Agreement as the "Town's Development Code."

for occupancy by VSRI and a temporary permit will need to be issued. The permit referenced in this paragraph must be reviewed and approved by the Town's Planning Commission and Town Council as provided for in subparagraph 1C, below, and nothing in this Agreement requires the Planning Commission or Town Council to approve such a permit if the permit application does not meet the applicable requirements of the Town's Development Code.

K. The commitments encouraged to be made by Developer in connection with an application for a development agreement in accordance with Section 9-9-4 of the Breckenridge Town Code are as hereafter set forth in this Agreement.

L. The Town Council has received a completed application and all required submittals for a development agreement, had a preliminary discussion of the application and this Agreement, determined that it should commence proceedings for the approval of this Agreement and, in accordance with the procedures set forth in Subsection 9-9-10C of the Breckenridge Town Code, has approved this Agreement by non-emergency ordinance.

Agreement

1. The Developer's obligations under Paragraph 3 of this Agreement are subject to the final approval of all of the following by the Town[2]:

A. Such permits or approvals necessary for the transfer of density consisting of up to a total of 58 SFEs, including up to two (2) commercial SFEs, to the Property by VSRI from the density that was included under the expired Gondola Lots Master Plan[3];

B. A Class A development permit acceptable to Developer consistent with the 2019 Master Plan Amendment and allowing for the development of the Property to accommodate: a four star, flagged, luxury hotel containing approximately 150 rooms; approximately 110,000 square feet of residential condominiums; approximately 11,000 square feet of commercial; and approximately 10,300 square feet of Guest Services and Support Facilities (as defined in the Master Plan) space for acquisition and use by VSRI (the "**Permit**"); and

C. Such permit as may be required by the Town to allow one or more temporary structures accommodating VSRI's administration functions necessary or appropriate for the operation of the Breckenridge Ski Resort to be placed on the Property in locations acceptable to VSRI, Developer, and Town as determined by VSRI, Developer, and Town and maintained in such locations until the proposed Guest Services Spaces are completed and ready for occupancy by VSRI; provided, however,

[2] "Final approval" includes and the passage of any time periods within which any referendums, appeals, or other challenges to the enumerated approvals must be brought, without any such referendums, appeals or other challenges having been filed, commenced or asserted, or, if filed, commenced or asserted, after any such appeal, referendum or challenge is resolved with affirmation that this Agreement is effective.

[3]The Gondola Lots Master Plan was described in that Notice of Approval of Master Plan dated July 12, 2010 and recorded at Reception No. 942513 of the records of the Clerk of Recorder of Summit County, Colorado.

that all approved temporary structures shall be removed not later than the first to occur of: (i) the end of 60 days after the issuance of any final certificate of occupancy for the Proposed Development, or (ii) 7 years after the date of demolition of VSRI's administration building. The deadline shall not be extended.

2. Notwithstanding anything in the Town's Development Code to the contrary, the Permit shall provide that the building height of the Developer's Proposed Development shall be measured as follows:

A. The maximum height of the buildings within the Proposed Development shall not exceed the elevation of the existing east cross gable of One Ski Hill Place, as shown on the Building Elevations exhibit attached hereto. This maximum height will serve as an "Absolute" policy under the Town's Development Code.

B. Policy 6 (Relative) "Building Height" of the Town's Development Code shall apply to the Town's review of the Permit application. Pursuant to the Master Plan, for the purpose of assessing or awarding points under Policy 6 (Relative) the heights of the buildings to be constructed within the Proposed Development shall be evaluated against the height requirements of the Town's Development Code and the recommended heights for Land Use District 39 as they were in effect at the time the amendment to the Master Plan that was approved on February 26, 2013;

C. Pursuant to the Master Plan, the height of buildings at the Peak 8 Base area only (including the site of the Proposed Development) are to be measured "<u>to the proposed finished grade elevation at the exterior wall below</u>," and not to natural grade, which generally does not exist in the area, provided that such proposed finished grades shall not include artificial appearing berming or fill. Artificial appearing berming or fill is characterized by excessive rise and steep grades in the vicinity of building foundations. (emphasis added). The height of the buildings within the Proposed Development shall be established in accordance with the Town's Development Code and District 39 of the Guidelines, as they are in effect at the time of the execution of this Agreement; provided, however, that the Town and Developer shall establish a method for determining the finished grades above which heights shall be measured in order to account for the lack of natural grades and the anticipated filling of the lowered and generally flat grades currently existing at the Peak 8 base area.

3. When all of the approvals set forth in Paragraph 1 have been satisfied then Developer shall do the following:

<u>Prior to Issuance of a Building Permit for the Proposed Development</u>

A. Cause VSRI to enter into a density transfer covenant with the Town, in a form substantially similar to the previous density transfer covenant between VSRI and the Town executed and recorded in connection with the expired Gondola Lots Master Plan, to transfer from the property that was the subject of the expired Gondola Lots

Master Plan the density required to support the total residential and commercial density authorized by the Permit minus the residential density of 71.6 SFEs and the commercial density of 9.0 SFEs remaining available for the Property under the Master Plan.

Prior to Issuance of a Certificate of Occupancy for the Proposed Development

A. Pay $125,000 to the Town to be applied to the improvement and maintenance of the Town's Cucumber Gulch property or as otherwise directed by the Town Council.

B. Execute standard form Town employee housing covenants restricting previously unrestricted residential housing units as employee housing in an amount equal to the difference between 20,000 square feet (the total square footage of employee housing Developer has committed to restrict) and that square footage of employee housing applied by Developer to obtain an allocation of up to 10 positive points under Subsection 9-1-19-24R of the Town's Development Code. The difference between 20,000 square feet of employee housing and that square footage of employee housing applied by Developer to obtain an allocation of up to 10 positive points under Subsection 9-1-19-24R of the Town's Development Code shall be treated as a commitment to the Town under Section 9-9-4 of the Breckenridge Town Code.

C. Provide "newly constructed" rental housing units that contain not less than twenty four (24) bedrooms, all of which are located in the Upper Blue River Basin. A unit is not "**Newly Constructed**" for purposes of this Agreement if, prior to July 19, 2019, the Town has either: (a) issued a certificate of occupancy allowing occupancy of such bedroom; or (b) issued a development permit for the construction of such bedroom. "**Upper Blue River Basin**" means the geographic area bounded by Farmers Korner to the north; Hoosier Pass to the south; the Continental Divide to the East; and the top of the Ten Mile Range to the west. The average size of each newly constructed bedroom shall be a minimum of one hundred fifty (150) square feet. The units shall be a mixture of one (1), two (2), and (3) bedroom units as determined by Developer.

(i) Execute, acknowledge, and deliver to the Town, in a form acceptable to the Town Attorney:

(a) a restrictive housing covenant encumbering the required twenty four (24) bedrooms described above in favor of the Town. The term of the covenant shall be perpetual, and the covenant shall provide that the encumbered bedrooms shall only be rented to qualified tenants at a monthly rental rate not greater than an average of eighty percent (80%) of the Area Median Income (AMI) for Breckenridge, Colorado (or if not available, for the Area Median Income for Summit County, Colorado) most recently available immediately prior to such bedroom being rented. A "**qualified tenant**" is a person not less than eighteen (18) years of age who is actually employed in Summit County, Colorado at least thirty (30) hours per week

on an annual basis during the entirety of the period of his or her occupancy of the apartment; and

(b) a second restrictive covenant prohibiting any of the required twenty four (24) bedrooms from being rented, leased, or otherwise occupied for a term of less than three (3) consecutive months (i.e., there shall be no "short term rental" of any of the required bedrooms). The term of this covenant shall also be perpetual.

(c) At the time of their signing both of the required restrictive covenants shall not be subordinate to any prior lien or encumbrance of any kind, except the lien of the general property taxes for the year in which the covenants are executed.

D. Enter into a lease with the Breckenridge Outdoor Education Center, a Colorado nonprofit corporation ("**BOEC**") for approximately 1,500 square feet of space in the Proposed Development. The term of such lease shall be at least fifty (50) years, and the rent for such space shall be $1.00 per year. The lease shall otherwise contain terms that are mutually acceptable to Developer and the BOEC.

E. Establish with the Town an environmental improvement fund dedicated to drainage and similar improvements to protect the Town's Cucumber Gulch property funded by a fee of $2.00 per paid room night to be added to the amount paid for rentals of the hotel rooms in the Proposed Development, and only those hotel rooms, for a period of twenty (20) years from the date a certificate of occupancy is issued for the hotel component of the Proposed Development. Such funds shall be transferred to Town in accordance with a schedule to be established by the Finance Director of the Town, and may be spent by the Town in its sole discretion;

F. Provide such document as is reasonably acceptable to the Town to provide for the abandonment of any right of access to the Property from Saw Mill Run Road. The Parties understand and acknowledge that to completely eliminate any potential public right of access to the Property from Saw Mill Run Road (and the extension thereof across what has been denominated as "County Road 709") it will be necessary for the Town to vacate County Road 709 in the manner provided by law. The Town agrees to consider a request to vacate County Road 709 pursuant to Chapter 4 of Title 11 of the Breckenridge Town Code.

G. Enter into such agreement as the Town reasonably may require to provide for the following: At the end of the first year after issuance of a final certificate of occupancy for the Proposed Development and every year thereafter for the first 5 years after issuance of such final certificate of occupancy, the Developer will provide a trip report to the Town. Trips will be defined as the number of trips into the garage plus the number of trip out of the garage on a daily basis. If during any single calendar month of each of such 5 years the number of trips exceeds an average of

1,600 trips per day, for every 100 trips in excess of 1,600 the Developer will acquire and transfer 1 additional shuttle van to the Breckenridge Mountain Master Association ("**BMMA**"). Until such time as the threshold described in the preceding sentence has been reached the residents and guests of the Proposed Development shall have access to the transportation (van) system operated by the BMMA in the same manner as is provided to other properties located within the boundaries of the BMMA. Prior to the issuance of a certificate of occupancy for the Proposed Development a letter from the BMMA confirming the same shall be provided to the Town.

4. In addition to those restrictive covenants required in Paragraph 3 all of the Developer's obligations set forth in this Agreement that will extend beyond completion of the Proposed Development shall be set forth in one or more restrictive covenants to be executed by the Developer and the Town and recorded in the real property records of the Clerk and Recorder of Summit County. Colorado. The form of the restrictive covenants shall be acceptable to the Developer's counsel and the Town Attorney, and the covenants shall not be subordinate to any prior lien or encumbrance of any kind, except the lien of the general property taxes for the year in which the covenants are executed.

5. Pursuant to Subsection 9-1-19-39I2 of the Town's Development Code, the Town's Planning Commission is hereby authorized to review and approve, by February 15, 2020 and subject to compliance with all other applicable development policies of the Town, an application for the Permit allowing for the additional density and other terms and conditions provided for in this Agreement. If such approval is not obtained by February 15, 2020 this Agreement shall be null and void.

6. Subject to the Department's receipt of adequate assurances of or security for completion of the authorized infrastructure improvements or return of the Property generally to the condition it was in before the commencement of any work, the Department, after final approval of the Permit, is hereby authorized to permit the demolition of Administration Facilities and the excavation for and construction of infrastructure improvements, including, but not limited to, construction of storm water management facilities, relocation of utilities, and site excavation, after issuance of the Permit but before issuance of a building permit.

7. Except as provided in Section 24-68-105, C.R.S., and except as specifically provided for herein, 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 Property (collectively, "**laws**"), including, but not limited to, building, fire, plumbing, engineering, electrical and mechanical codes, and the Town's Development Code, Subdivision Standards and other land use laws, as the same may be in effect from time to time throughout the term of this Agreement. Except to the extent the Town otherwise specifically agrees, any development of the Property shall be done in compliance with the then-current laws of the Town.

8. 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) Master Plan, (iii) Land Use Guidelines and (iv) Subdivision Standards.

9. 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.

10. The Town shall not be responsible for and the Developer shall have no remedy against the Town if the development of the Property is prevented or delayed for reasons beyond the control of the Town.

11. Actual development of the Property 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.

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

13. 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 such benefits under 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 wrongful 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.

14. 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.

15. This Agreement constitutes a vested property right pursuant to Article 68 of Title 24, Colorado Revised Statutes, as amended.

16. 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.

17. This Agreement shall be binding upon and inure to the benefit of Town and Developer, and their successors and assigns.

18. This Agreement shall be recorded in the office of the Clerk and Recorder of Summit County, Colorado and shall run with title to the Property.

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

20. 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. Developer and Town expressly waive their right to bring such action in or to remove such action to any other court, whether state or federal. **BOTH PARTIES FURTHER WAIVE THE RIGHT TO A JURY TRIAL IN ACTION TO ENFORCE, INTERPRET OR CONSTRUE THIS AGREEMENT.**

21. 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:

Rick G. Holman, 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:

Ricardo Dunin
LH Mountain Ventures, LLC
4218 NE 2nd Avenue, 2nd Floor

Miami. FL 33137

With a copy (which
shall not constitute
notice) to:

Jessica Wasserstrom
Lionheart Capital, LLC
4218 NE 2nd Avenue, 2nd Floor
Miami, FL 33137

John L. Palmquist, Esq.
GC Legal Strategies
2520 S. St. Paul Street
Denver, CO 80210

Thomas J. Ragonetti, Esq.
Otten Johnson Robinson Neff + Ragonetti PC
Suite 1600
950 17th Street
Denver, CO 80202

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.

22. 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.

23. This Agreement shall be interpreted in accordance with the laws of the State of Colorado without regard to principles of conflicts of laws.

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

[SIGNATURE AND ACKNOWLEDGEMENT PAGES FOLLOW]

TOWN OF BRECKENRIDGE

By: _____
Rick G. Holman, Town Manager

ATTEST:

_____
Helen Cospolich, CMC,
Town Clerk

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing was acknowledged before me this _____ day of _____, 2019 by Rick G. Holman as Town Manager and Helen Cospolich, CMC, as Town Clerk of the Town of Breckenridge.

Witness my hand and official seal.

My commission expires:_____

_____
Notary Public

LH MOUNTAIN VENTURES, LLC
a Colorado limited liability company

By: LIONHEART MANAGEMENT, LLC,
a Florida limited liability company,
its Managing Member

By: OZ HOLDINGS OF MIAMI, LLC,
a Florida limited liability company,
its Managing Member

By: _____

Name: Ophir Sternberg
Title: Managing Member

STATE OF FLORIDA)
) ss.
COUNTY OF DADE)

The foregoing was acknowledged before me this _____ day of _____, 2019 by Ophir Sternberg as the Managing Member of Oz Holdings of Miami, LLC, a Florida limited liability company, as the Managing Member of Lionheart Management, LLC, a Florida limited liability company, as the Managing Member of LH MOUNTAIN Ventures, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires:_____

_____
Notary Public

APPROVED:

VAIL SUMMIT RESORTS, INC.,
a Colorado corporation

By: _____

Name:_____

Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____ 2019, by _____ as _____ of Vail Summit Resorts, Inc., a Colorado corporation.

Witness my hand and official seal.

My commission expires:_____

_____
Notary Public

Memo

TOWN OF
BRECKENRIDGE

To: Breckenridge Town Council Members

From: Brian Waldes, Finance Director

Date: 5/21/19

Subject: 2019 Supplemental Appropriation

The purpose of this memo is to submit for Council's approval a resolution appropriating $3M in expenses to the Town of Breckenridge 2019 budget for the planned South Gondola Lot Parking Structure Project (the Project).

The resolution attached will increase 2019 budgeted expenses to the Town's Capital Fund (003) $3,000,000 that will be assigned to the Project. As this appropriation is for a capital expense, the budget authority persists until the funds are expensed or other Council action is taken to remove the authority.

Staff will be at the May 28th Council meeting to answer any questions.

A RESOLUTION

SERIES 2019

A RESOLUTION MAKING SUPPLEMENTAL APPROPRIATIONS TO THE 2019 TOWN BUDGET

WHEREAS, the Town Council of the Town of Breckenridge desires to amend the Town's 2019 budget by making supplemental appropriations in the amount of $3,000,000 in expenditures; and

WHEREAS, pursuant to Section 10.12(a) of the Breckenridge Town Charter, the Finance Department, on behalf of the Town Manager, has certified that there are available for appropriation revenues in excess of those estimated in the Town's 2019 budget or revenues not previously appropriated in an amount sufficient for the proposed supplemental appropriations; and

WHEREAS, a public hearing on the proposed supplemental appropriations was held on May 28, 2019, in accordance with the requirements of Section 10.12(a) of the Breckenridge Town Charter.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO that the 2019 budget is amended, and supplemental appropriations for the amended 2019 Town budget are made as follows:

Capital Fund Expense (003):

1.	Parking Structure Expenses	$	3,000,000

This Resolution shall become effective upon its adoption.

RESOLUTION APPROVED AND ADOPTED THIS 28th DAY OF MAY, 2019.

ATTEST TOWN OF BRECKENRIDGE

_____ By_____
Helen Cospolich, Town Clerk Eric Mamula, Mayor

APPROVED IN FORM

_____
Town Attorney Date

Memo

TOWN OF BRECKENRIDGE

To: Breckenridge Town Council Members

From: Nichole Rex

Date: 5/22/2019 (for May 28th meeting)

Subject: A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH SUMMIT SCHOOL DISTRICT RE-1 (Summit School District Land Exchange)

The Town and the Summit School District have drafted an agreement for a land exchange where the Town would transfer ownership of two Blue 52 Townhomes and a 10 acre parcel to be used for district uses only on the McCain Subdivision in exchange for an 8.7 acre vacant Summit School District parcel on Block 11. The approval of this Resolution would allow the Town to enter into an intergovernmental agreement between the Town and Summit School District RE-1. The attached Resolution and IGA define the details of the agreement between the Town and Summit School District.

Staff looks forward to discussing this with you and answering your questions during the May 28th worksession.

FOR WORKSESSION/ADOPTION – MAY 28

RESOLUTION NO. ____

SERIES 2019

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH SUMMIT SCHOOL DISTRICT RE-1
(McCain Property)

WHEREAS, Summit School District RE-1 ("**District**") and the Town have entered into an Agreement to Exchange Real Estate ("**Exchange Agreement**"); and

WHEREAS, as part of the Exchange Agreement the District and the Town have agreed on certain rights and obligations that will apply after the closing of the transaction described in the Exchange Agreement; and

WHEREAS, in order to memorialize the rights and obligations that will apply after the closing of the transaction described in the Exchange Agreement an Intergovernmental Agreement between the Town and the District has been prepared, a copy of which is marked **Exhibit "A"**, attached hereto and incorporated herein by reference; and

WHEREAS, the Town Council has reviewed the proposed Intergovernmental Agreement, and finds and determines that it would be in the best interest of the Town to enter into such agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO, as follows:

Section 1. The Intergovernmental Agreement with Summit School District RE-1 entitled "Intergovernmental Agreement Regarding Transfer of McCain Property" (**Exhibit "A"** hereto) is approved, and the Town Manager is authorized, empowered, and directed to execute such agreement for and on behalf of the Town of Breckenridge.

Section 2. This resolution is effective upon adoption.

RESOLUTION APPROVED AND ADOPTED THIS _____ DAY OF _____, 2019.

TOWN OF BRECKENRIDGE, a Colorado municipal corporation

By:_____
Eric S. Mamula, Mayor

ATTEST:

_____
Helen Cospolich, CMC,
Town Clerk

APPROVED IN FORM

_____
Town Attorney date

600-314\IGA Resolution (05-21-19)

INTERGOVERNMENTAL AGREEMENT
REGARDING TRANSFER OF MCCAIN PROPERTY

This Agreement is entered into as of this ___ day of _____, 2019 by and between the Summit School District RE-1 ("District"), a Colorado public school district and political subdivision of the state, and the Town of Breckenridge ("Town"), a Colorado municipal corporation. District and Town are referred to individually in this Agreement by name or as a "Party," and collectively as the "Parties."

RECITALS

WHEREAS, the District and the Town have entered into an Agreement to Exchange Real Estate ("Exchange Agreement"), dated _____, 2019, pursuant to which the Town has agreed to transfer all of its interest to real estate consisting of the McCain Property ("McCain Property") and two townhomes, legally described in Exhibit A, to the District;

WHEREAS, the District, pursuant to the Exchange Agreement, has agreed to transfer all of its interest to real estate known as the Upper Blue Property, described on Exhibit B, to the Town;

WHEREAS, the District has had a Phase I Environmental Site Assessment ("ESA") on the McCain Property that determined that the former and current uses and occupants are unlikely to pose an environmental concern;

WHEREAS, the Town is in the process of implementing the Blue River Corridor Improvement Project, aimed to address issues relating to the floodplain, realignment of the existing Blue River, establishment of more delineated channel banks, and the reduction of the width of the 100-year floodplain;

WHEREAS, the Town has agreed to provide fill (dirt) to the McCain Property to assist in removing the McCain Property from the 100-year floodplain, all as more fully set forth in this Agreement;

WHEREAS, pursuant to the Exchange Agreement, the Town has agreed to undertake certain infrastructure improvements for the benefit of the McCain Property;

WHEREAS, the District and the Town have agreed on certain other rights and obligations that will apply after the closing of the transaction described in the Exchange Agreement ("Closing"); and

WHEREAS, 29-1-203, C.R.S., authorizes local governments to cooperate or contract with each other to provide any function or service lawfully authorized to each other.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the benefits and obligations contained herein, and subject to the terms and conditions set forth herein, the Parties agree as follows:

AGREEMENT

A. Obligations of the Town.

1. The Town shall provide fill to the McCain Property as part of the Blue River Corridor Improvement Project and as part of its efforts to remove the entire 10 acres of the McCain Property from the 100-year floodplain, all as more fully set forth below**.**

2. The Parties agree that the District's Phase I Environmental Site Assessment (ESA) on the McCain Property established that the baseline environmental condition of the McCain Property is and will be acceptable to the District as of the date of the Closing. Subsequent to Closing, the Town agrees to provide and to deliver to the McCain Property, at the Town's cost, approximately 20,000 cubic yards of fill to be placed on the McCain Property to increase the elevation of the McCain Property, and to thereby assist the Town in removing the McCain Property from the 100-year floodplain.

2.1. The Town expects to begin delivery of the fill to the McCain Property in May 2019, and to conclude the delivery of fill to the property in the on or before December 31, 2023. In order to confirm that the Town is providing "clean fill" to the McCain Property, beginning January 1, 2019, the Town certifies, warrants and represents that any and all fill material used on the McCain Property by or at the direction of the Town shall be certified clean fill that has been tested by a third-party at the Town's sole cost. For the purposes of this Agreement, the term "clean fill" shall mean fill material that is below the Residential or Unrestricted Use values as set forth in the current Colorado Soil Evaluations Values Table, available from the Colorado Department of Public Health and Environment.

2.2. If the Town is moving fill material from any other property for which the Town has conducted a Phase I or Phase II ESA, the Town shall provide the District with a copy of the Phase I or Phase II report.

3. The District reserves the right to perform random testing on the McCain Property to confirm that uncontaminated, clean fill, is being used. Such testing may include, at the District's sole discretion, testing for RCRA 8 Metals, volatile organic compounds and semivolatile organic compounds. If, during the course of any such testing the results demonstrate that the Town's fill was not clean fill, the District shall give the Town written notice and a reasonable opportunity to determine the validity of such testing results. If the testing results are confirmed, the Town shall be liable for any cleanup costs, mitigation costs, or other reasonable and necessary costs incurred as a result of any such fill.

4. At Closing, the Town shall provide the District with access to the McCain Property. Such access shall abut the McCain Property along the full length of its easterly boundary. Initially, such access shall be provided by an access easement reasonably acceptable to the District. Once the final location of the public street to be constructed by

the Town through the subdivision in which the McCain Property is located has been constructed by the Town, the access easement shall be terminated, and access to the McCain Property shall be provided through the public street. In addition, the Town shall be responsible, at its sole cost, for the installation of water, gas, and electric utilities to serve the McCain Property within the street right-of-way/access easement (as applicable).

4.1. The Town shall complete the street and utilities infrastructure prior to or in conjunction with the District's construction of a new building on the McCain Property, and no later than December 31, 2023; provided, however, the District acknowledges that gas and electric service to the McCain Property cannot be provided until detailed construction plans are completed by the District and submitted to and approved by Xcel Energy. Xcel Energy cannot design gas or electric infrastructure for the McCain Property until utility loads for the District's new facilities are determined. At the time of the execution of this Agreement, the lead time required to obtain Xcel Energy approval is approximately twelve months. The Town shall not be in default of this Agreement if it is unable to complete the street and utilities infrastructure by the deadline provided above in this Section 4.1 because final approval from Xcel Energy has not been obtained in time to meet such deadline. In such event, the Town shall complete the street and utilities infrastructure improvements to the McCain Property with due diligence after final approval from Xcel Energy has been obtained.

4.2. The Parties shall cooperate with each other to create a sewer easement as necessary to provide service to the McCain Property when the District begins development of the McCain Property.

4.3. The Town shall be diligent in the construction of the street and utilities.

5. The Town shall grant an access easement to the District on the bus access drive currently existing and used by the District on the Town's neighboring Upper Blue Property to the east of Breck Terrace. The form of the access easement shall be substantially as set forth on Exhibit C and shall be signed concurrently with this Agreement**.**

B. Obligations of the District

6. The District shall be responsible for all costs associated with any utility connections to any new development on the McCain Property from the street and utility infrastructure to be constructed by the Town, as set forth in paragraph 4, above. The District shall be solely responsible for all costs associated with any such connections from the utility infrastructure to any new development on the McCain Property.

7. The Parties acknowledge the powers of the District under Section 22-32-124, C.R.S., and the District agrees to comply with its obligations under Section 22-32-124(1)(a), C.R.S., prior to the construction of any buildings on the McCain Property.

8. The District shall permit the Town to stack snow on the McCain Property for the next two winter seasons following the date of Closing.

C. Miscellaneous Provisions

9. *Entire Agreement*. This Agreement contains the entire agreement of the Parties. Amendments to this Agreement may be made only in writing and signed by both Parties.

10. *Relationship of the Parties*. It is mutually agreed and understood that nothing contained in this Agreement is intended or shall be construed in any way as establishing a joint venture or partnership between the Town and the District, nor shall anything in this Agreement be construed as establishing that the officers, agents, volunteers, employees of one Party are agents of the other Party.

11. *Third-Party Beneficiaries*. None of the terms, conditions, or covenants in this Agreement gives or allows any claim, benefit, or right of action by any third party not a Party hereto. Any person or entity other than the Town or the District receiving any services or benefits as a result of this Agreement is only an incidental beneficiary.

12. *Preservation of Immunity*. Nothing in this Agreement shall be construed (i) as a waiver by either Party of any privilege, defense, immunity, or limitation provided by common law or statute, specifically including the Colorado Governmental Immunity Act, Section 24-10-101, *et seq.*, C.R.S., as amended; (ii) as creating an assumption of any duty or obligation with respect to any third party where no such duty previously existed; or (iii) as creating any rights enforceable by any third party.

13. *Incorporation of Exhibits*. The attached Exhibits A, B, and C are incorporated into this Agreement by reference.

14. *Annual Appropriation*.

14.1. The Town's financial obligations under this Agreement are subject to an annual appropriation being made by the Town Council of the Town of Breckenridge, Colorado in an amount sufficient to allow Town to perform its obligations under this Agreement. Town's financial obligations under this Agreement do not constitute a general obligation indebtedness or multiple year direct or indirect debt or other financial obligation whatsoever within the meaning of the Constitution or laws of the State of Colorado.

14.2. The District's financial obligations under this Agreement are subject to an annual appropriation being made by the Board of Education of Summit School District RE-1 in an amount sufficient to allow District to perform its obligations under this Agreement. District's financial obligations hereunder do not constitute a general obligation indebtedness or multiple year direct or indirect debt or other financial obligation whatsoever within the meaning of the Constitution or laws of the State of Colorado.

Executed and effective this ___ day of _____, 2019.

TOWN OF BRECKENRIDGE

By:_____

Its: Town Manager

ATTEST: _____
Town Clerk

APPROVED AS TO FORM:

_____
Town Attorney

SUMMIT SCHOOL DISTRICT RE-1

By:_____

Its: Kerry Buhler, Superintendent

ATTEST: _____
Secretary, Board of Education

APPROVED AS TO FORM:

_____
School District's Attorney

EXHIBIT A

Legal Description of the Property

McCain Property

Tract B, McCain Subdivision, according to the plat recorded _____, 2019 under Reception No. _____ of the records of the Clerk and Recorder of Summit County, Colorado; containing 10.1262 acres more or less

Blue 52 Townhomes

Units 12 and 13, Blue 52 Townhomes, according to the Map thereof recorded December 13, 2017 at Reception No. 1159017 in the records of the Clerk and Recorder of the County of Summit, Colorado and as defined and described in the Declaration Of Covenants, Conditions, And Restrictions Of The Blue 52 Townhomes, dated December 12, 2017 and recorded December 13, 2017 under Reception No. 1159019 of the records of the Clerk and Recorder of Summit County, Colorado, together with any "Common Elements" of the Blue 52 Townhomes, in each case that are appurtenant to such Units, but subject to: (i) the "Residential Housing Restriction and Notice of Lien For Blue 52 Townhomes" recorded December 13, 2017 at Reception No. 1159018 of the records of the Clerk and Recorder of Summit County, Colorado, and (ii) the rules and regulations of the Blue 52 Townhomes Association

EXHIBIT B

Legal Description of Block 11 Parcel

Tract C, Final Plat, A Replat Of Block 11, An Amended Replat Of Breckenridge Airport Subdivision, recorded August 3, 2005 under Reception No. 797050 of the records of the Clerk and Recorder of Summit County, Colorado; containing 8.7017 acres, more or less

EXHIBIT C

Access Easement

EASEMENT DEED AND AGREEMENT

TOWN OF BRECKENRIDGE, a Colorado municipal corporation, whose legal address is P.O. Box 168, Breckenridge, Colorado 80424 (“Grantor”), for good and valuable consideration, the receipt and sufficiency of which are hereby confessed and acknowledged, does hereby sell, convey, and quitclaim unto SUMMIT SCHOOL DISTRICT RE-1, a Colorado public school district and political subdivision of the state, whose legal address is P.O. Box 7, Frisco, Colorado 80443 (“Grantee”) and Grantee’s successors and assigns, a perpetual access easement (the “Easement”) over, across, and through the following real property located in the Town of Breckenridge, County of Summit and State of Colorado:

AN ACCESS EASEMENT LOCATED WITHIN TRACT C, ACCORDING TO A REPLAT OF BLOCK 11, AN AMENDED REPLAT OF BRECKENRIDGE AIRPORT SUBDIVISION,. A SUBDIVISION AS FILED FOR RECORD IN THE OFFICE OF THE CLERK AND RECORDER FOR SUMMIT COUNTY AT RECEPTION NO. 797050. SAID EASEMENT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHWEST CORNER OF SAID TRACT C, A REPLAT OF BLOCK 11, AN AMENDED REPLAT OF BRECKENRIDGE AIRPORT SUBDIVISION. POINT BEING IN FACT THE 1RUE POINT OF BEGINNING.

THENCE CONTINUING FOR THE FOLLOWING 4 COURSES:

1) N08°02'15"W, ALONG THE WESTERLY LINE OF SAID TRACT C, A DISTANCE OF 436.39 FEET.
2) N81 °52'47"E, ALONG THE NORTHERLY LINE OF SAID TRACT C, A DISTANCE OF 35.00 FEET.
3) S08°02' 15"E, A DISTANCE OF 436.39 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID TRACT C.
4) S81°52'47"W, ALONG SAID SOUTHERLY LINE, A DISTANCE OF 35.00 FEET TO THE POINT OF BEGINNING.

DESCRIBED PARCEL CONTAINING 15,274 SQUARE FEET, OR 0.3506 ACRES, MORE OR LESS.

The Easement is depicted on the attached Exhibit “A”, which is incorporated herein by reference.

Grantee, at Grantee’s expense, shall have the right to operate, use, maintain, and repair a driveway within the Easement for vehicular and pedestrian access to and from its public school known as the Upper Blue Elementary School, 1200 Airport Road,

Breckenridge, Colorado and Airport Road, a public street. Grantee's adjoining real property described as follows:

The Easement shall be an easement appurtenant to Grantee's property ("Grantee's Property") described as follows:

> Tract B, Final Plat, A Replat Of Block 11, An Amended Replat Of Breckenridge Airport Subdivision, recorded August 3, 2005 under Reception No. 797050 of the records of the Clerk and Recorder of Summit County, Colorado; containing 11.2983 acres, more or less

and shall inure to the benefit of Grantee's successors and assigns, subject to the conditions set forth herein.

.

All costs associated with the Easement, including surveying, construction, repair, maintenance, and snow removal, shall be borne by Grantee; and Grantee shall and does hereby indemnify and save Grantor harmless from all claims for damages or liens arising from the operation, use, surveying, construction, repair, maintenance, and snow plowing by Grantee on or over the Easement.

To the maximum extent allowed by law, Grantee shall indemnify and hold Grantor harmless from all claims, demands, judgments and causes of action (including Grantor's reasonable attorney's fees, court costs and expert witness fees) arising from the use of the Easement by Grantee, its employees, licensees, lessees, business invitees, contractors, successors and assigns; provided, however, Grantee shall have no obligation under this section to the extent any claim, demand, judgment or cause of action is caused by the negligence of Grantor, its agents, employees, officers, contractors, licensees, lessees, successors or assigns.

Grantee's use of the Easement shall not be exclusive, and Grantor and Grantor's successors, assigns, guests, and invitees shall have an equal right to the use of the Easement, but without interference with Grantee's use thereof.

This Easement grant is without warranty of title and is subject to all prior liens, encumbrances, easements, restrictions, reservations, and rights of way affecting Grantor's property.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Easement Deed and Agreement this ___ day of_____, 2019.

TOWN OF BRECKENRIDGE

By:
Its: Town Manager

ATTEST:

Town Clerk

SUMMIT SCHOOL DISTRICT RE-1

By:
Its: Superintendent

ATTEST:

Secretary, Board of Education

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019 by Rick G. Holman, Town Manager, and Helen Cospolich, CMC, Town Clerk, of the Town of Breckenridge, a Colorado municipal corporation.

WITNESS my hand and official seal.

My commission expires: _____.

_____
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019 by _____, President, and_____, Secretary, of the Board of Education of Summit School District Re-1, a Colorado public school district and political subdivision of the state.

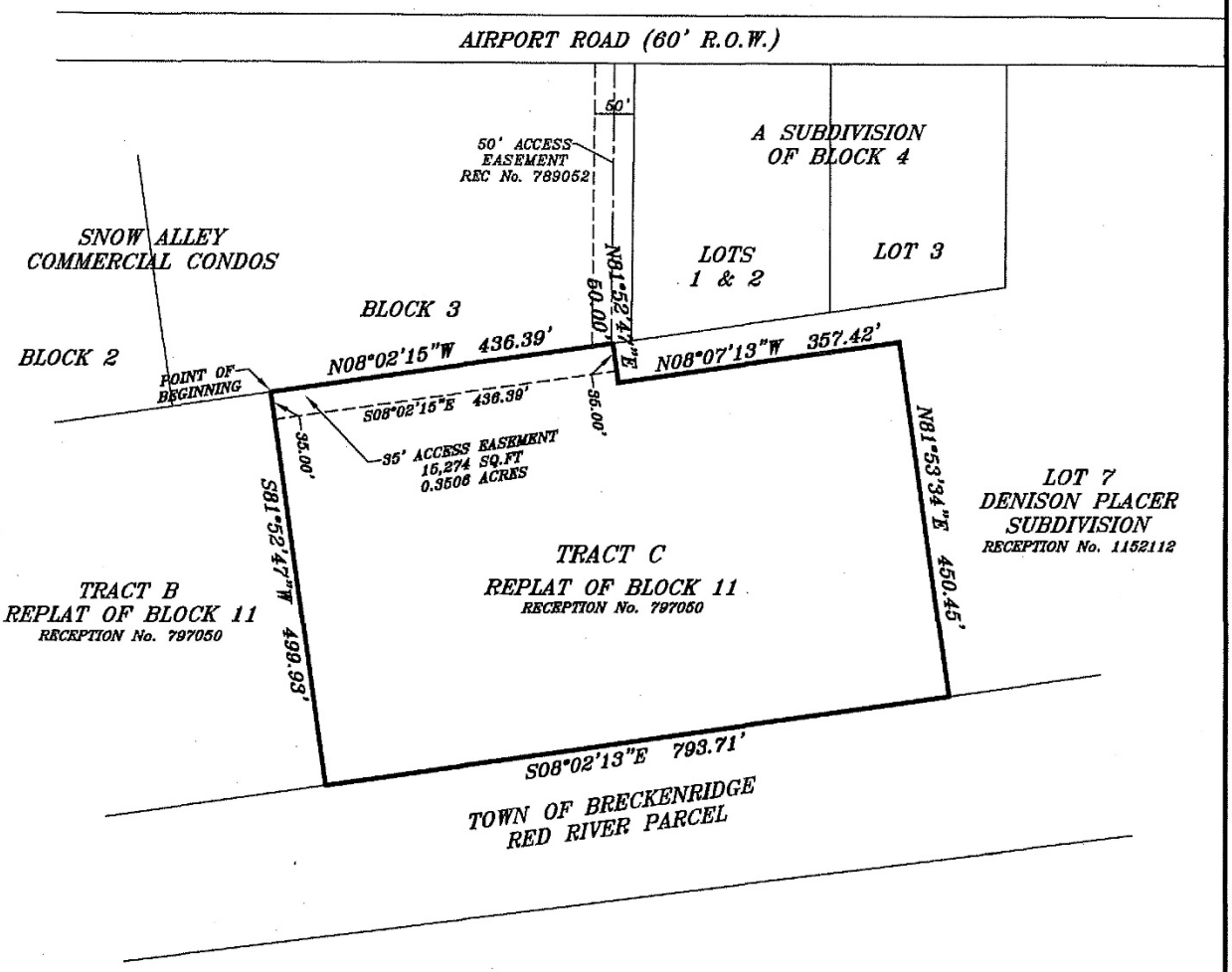
WITNESS my hand and official seal.

My commission expires: _____.

_____
Notary Public

EXHIBIT A
ACCESS EASEMENT

SCALE: 1"= 200'



BASELINE SURVEYS, LLC		
P.O. BOX 7578 BRECKENRIDGE COLO. 80424		
SCALE: 1"=200'	DATE: 4/10/19	JOB NO. 4055
DRAWN BY: R.D.G.	CHECKED BY: D.E.O.	DRAWING NO. 4055 TR.C

Memo

TOWN OF BRECKENRIDGE

To: Breckenridge Town Council Members

From: Peter Grosshuesch, Director of Community Development

Date: May 22, 2019

Subject: Planning Commission Decisions of the May 21, 2019 Meeting

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DECISIONS FROM THE PLANNING COMMISSION MEETING, May 21, 2019:

CLASS A APPLICATIONS: None.

CLASS B APPLICATIONS: None.

CLASS C APPLICATIONS: None.

TOWN PROJECT HEARINGS: None.

OTHER:
Two work sessions were held; one to discuss off-street parking requirements for residential development, and one to update the Planning Commission on the progress of the Handbook of Design Standards updates.

PLANNING COMMISSION MEETING

The meeting was called to order at 5:30 p.m. by Chair Giller.

ROLL CALL

Christie Mathews-Leidal	Jim Lamb	Ron Schuman
Mike Giller	Steve Gerard	
Dan Schroder	Lowell Moore	

APPROVAL OF MINUTES
With no changes, the May 7, 2019 Planning Commission Minutes were approved.

APPROVAL OF AGENDA
With no changes, the May 21, 2019 Planning Commission Agenda was approved.

PUBLIC COMMENT ON HISTORIC PRESERVATION ISSUES:

- No comments.

WORK SESSIONS:
1. Off Street Parking Policy Review

Ms. Puester presented an overview of recent changes to the Development Code in regards to off street residential parking requirements outside of the Parking Service Area, and how they are being interpreted by staff in the first few applications seen by the Commission. Planning Commissioners were asked for feedback and if they were comfortable with the interpretation thus far.

Commissioner Questions / Comments:

Mr. Schroder: In the policy, do they have to be identified and shown so we know where these spaces are? (Ms. Puester: Yes, they are required to show all required parking spaces on the site plan. This is a balancing act. Our code currently allows for tandem parking and we have seen two stacked typically. If more than two in a stack than we are also looking at more pavement, more hard surface and more disturbance, less open space on sites.) On ones with long paver strip driveways on the side of a building running all the way to the back, could an owner propose they tandem 5 on those strips? (Ms. Puester: In practice, yes but per our interpretation thus far, we are looking at 3 spaces as precedent but that is why we are here.) (Mr. Grosshuesch: Tandem in the dictionary says 2.)

Ms. Leidal: Would you allow 3-4 tandem? (Ms. Puester: We are thinking three could be reasonable.)

Mr. Truckey: One of the plans, page 11 of packet, that's where we have at least triple back-to-back parking. So we are struggling with this and looking for input. One of the solutions is that the landowner manages their parking issue. However, if it's managed poorly, they will start to park on the street and we'll have issues.

Mr. Gerard: Street parking is prohibited for rentals.

Ms. Leidal: Three is pushing it for me. I like the code change to require more spaces, and the parking management is on the people staying there. But neighbors are also impacted. I live across the street from a rental and have had people park in my driveway so they can shuffle cars. It's a no-win situation. But this is a good start. Let's make sure we don't allow commercial uses to start doing this.

Mr. Moore: What was the old rule? (Ms. Puester: Two spaces for a single family home.)

Mr. Lamb: The historic district is a parking nightmare.

Mr. Kulick: To Christie's point, it's what we can approve. If there are three designated spaces, and they put 8 in there, there's nothing that says they can't.

Mr. Grosshuesch: You can easily see someone say they don't want to pave over the sites.

Mr. Giller: Is there any info provided for overnight paid parking on Airport Rd.? (Mr. Grosshuesch: It is available).

Mr. Moore: At our condo, we actually would provide people with the info for what to do if they had extra cars.

Ms. Puester: Do you have any thoughts (referring to site plan on screen) if they have to shuffle? (Mr. Giller: That's a good thing and important for the renters to know. I wouldn't want to expand paving. I think it's a necessary answer to a problem.)

Mr. Schroder: We don't want people parking on the street. It's in the Town's best interest to have the applicant lay out as many spaces as possible. This should be given to the renters to show them how to park.

Mr. Gerard: When we were doing the walking tour for the stakeholders group, people expressed that the Town was not enforcing the parking ordinance. If the Town doesn't get tough and enforce, it will still be a parking free-for-all. In our HOA it was like that until people got some fines. Enforcement of this goes up the food chain, people need to be talking about it.

Mr. Moore: Parking in the alley, people need to be getting tickets. Our parking company – do they have jurisdiction other than the metered areas? (Mr. Grosshuesch: Yes, they enforce in the Historic District. One thing we should get on the table is that in the historic district, we are floating a proposal where on those sites where we have perpendicular parking and half is in town ROW, when the short term rental permits come up for renewal, we would require owners to show that they comply 100 percent with parking policies and that they are completely on private property. If they can't meet that standard, then we would deny the license. If you were not going to be short term renting, (then as an incentive) we would consider grandfathering that condition and allow people to keep doing it. We will vet this idea internally and then potentially advance it to the Town Council for adoption. Mr. Moore: Sounds reasonable.

Mr. Lamb: You can't compare where Christie lives with where I live (in the historic district). And you can't say it's just short term, it's a long term parking problem too. (Mr. Kulick: Largely when we see people apply for the residential parking permit, it is where a home was rented to multiple people long term. To Jim's point, it's accurate.) Speaking for a few long term rentals, is that they are getting huge bucks for these places by letting 10 people live there.

Mr. Schuman: Enforcement can solve that. There's nothing from HOAs that show what meets the code for parking.

Ms. Puester: Legally we can't stop an application because of the HOA rules. We may have seen it when the subdivision was approved, and it gets modified overtime and we can't hold entitlements subject to an HOA process.

Mr. Schuman: Fines work.

Mr. Lamb: Something making this more complicated is that people used to park at the Library overnight, and where there is now the Arts District. Now you can't park overnight in the Library lot which sits empty overnight. That use could alleviate some pressure. A lot of the parking in my neighborhood has gone away. Also, the paid parking on Ridge now pushes people to park further into the residential areas of the historic district so they don't have to pay.

Mr. Grosshuesch: Right now, PD is not enforcing overnight parking prohibitions on Harris and High Streets. Harris and High is an area of study of ours, and we've gone out there during peak times to see how full it is. We've never seen it more than 60 percent occupied. Ridge and French Streets are another story. We are evaluating the idea of expanding the residential parking permit program to cover those two streets.

Mr. Lamb: I just got a notice from PD that I had to take down parking signs in front. I was surprised they could regulate content on signs because of the Gilbert sign case. (Mr. Grosshuesch: The Town Attorney said signs could not control what happened in the Town ROW. Tim

Berry is very aware of that case. When did you get the letter?) Mr. Lamb: A couple of days ago. Also, in front of Longbranch, the Town said they could have those spaces. (Mr. Grosshuesch: Those are out of the ROW.)

Ms. Leidal: Do you want to consider this parking requirement for duplexes? Would you need it? (Ms. Puester: we will have to look at that.)

2. Handbook of Design Standards Update

Ms. Puester presented an update on recent meetings held with the Historic and Conservation Districts Stakeholder Group and their consensus regarding proposed updates to the Handbook of Design Standards including the meeting held this afternoon. Planning Commissioners were asked for their feedback.

Mr. Schroder: Can they still move the building and get the negative points? (Mr. Truckey: Yes.) Mr. Schroder: How could they offset with a lot of positive points? (Mr. Truckey: Workforce housing, energy efficiency, landscaping, historic preservation).

Mr. Gerard: Did we discuss a positive point for going down to 8 feet width (in regards to connectors)? I think if they agreed to 8 ft, they got positive points. (Mr. Truckey: We couldn't resolve the formula today (regarding length). It may be some criteria for commission and staff to review.) (Mr. Grosshuesch: Part of the formula is attached to the height of the building to be connected, and the height of the addition). There was another discussion about positive points for reducing non-conformities and I think that has merit.

Ms. Leidal: Don't we give that now under historic preservation? (Peter: Yes, but this would break it out as its own policy.)

Mr. Schuman: I like the 8 width and 12 length to try to stick to. On the process, once the stakeholders have their last meeting, do we get another chance to review before it goes to Council? (Peter: Yes, it will come to the Planning Commission.)

Mr. Gerard: I was stunned at the pushback on connectors. I thought that would be an easy fix.

Ms. Leidal: Did you discuss the addition location off a connector? Does it have to be behind, or can it be like a dog-leg? (Mr. Grosshuesch: Off the back of the primary structure.) (Mr. Gerard: You have to maintain one sidewall.) (Ms. Puester: One sidewall has to be maintained (referenced the diagram on screen).) (Mr. Truckey: You could potentially pivot the structure even if it wasn't straight behind. We want to limit that to avoid it being too visible from the street.) (Mr. Grosshuesch: You can only have access to the mass bonus if you respect the wall plains.) (Ms. Puester: The state actually likes the roof plane changing to be perpendicular.) Ms. Leidal: I would hope that we can draft something to not see a U-shape where the new structure comes up to toward the front.

Ms. Leidal: Was the no change to UPA a big discussion? With one average size module you think we don't need to reduce the UPA? (Mr. Grosshuesch: NO, it should keep it with the scale).

Mr. Giller: I thought the meeting went well and it was a diverse representation of the citizens. It was interesting that the discussions would end up in the middle and reach consensus. I think it worked well.

OTHER MATTERS:

1. Town Council Summary (Memo Only)

ADJOURNMENT:

The meeting was adjourned at 6:23 pm.

Mike Giller, Chair

TOWN OF BRECKENRIDGE
TOWN COUNCIL

Scheduled Meetings

Shading indicates Council required attendance – others are optional

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

May 2019

May 27th, 2019	10:00am - 11:00am	Valley Brook Cemetery	Memorial Day Commemoration
Tuesday, May 28, 2019	**3:00pm / 7:00 pm**	**Town Hall Chambers**	**Second Meeting of the Month**
May 29th, 2019	6:00pm - 8:00pm	Council Chambers	State of the Town
May 30th - June 1st	All Day	Throughout Town	WAVE: Light+Water+Sound

June 2019

June 3rd, 2019	4:00pm - 6:00pm	Rec Center Multipurpose	ALLO & ToB Fiber9600
June 7th, 2019	Evening	RAM Sponsor Reception	
June 8th, 2019	8:30am - 2:00pm	Carter Park	RAM Walk
Tuesday, June 11, 2019	**3:00pm / 7:00 pm**	**Town Hall Chambers**	**First Meeting of the Month**
June 12th, 2019	8:00am - Noon	TBD	BTO Annual Meeting
June 13th, 2019	4:00pm - 8:00pm	Riverwalk Lawn	Town Party
June 15th, 2019	3:00pm - 5:00pm	Wellington Office	BOEC Open House
June 18th, 2019	6:30pm - 9:30pm	Kathryn Works CML Dinner	
June 18th - 21st, 2019	All Day	Beaver Run	CML Annual Conference
June 21st, 2019	6:00pm - 9:00pm	Riverwalk Center	FIRC Fashion Show
Tuesday, June 25, 2019	**3:00pm / 7:00 pm**	**Town Hall Chambers**	**Second Meeting of the Month**
June 26th, 2019	All Day	Throughout Town	Bike To Work Day

Other Meetings

May 28th, 2019	Board of County Commissioners Meeting	9:00am / 1:30pm
May 29th, 2019	Summit County Transit Board Meeting	8:15am
June 4th, 2019	Board of County Commissioners Meeting	9:00am
	Planning Commission Meeting	5:30pm
June 5th, 2019	Police Advisory Committee	7:30am
	Breckenridge Events Committee	9:00am
	I-70 Coalition	10:00am
	Childcare Advisory Committee	3:00pm
June 11th, 2019	Board of County Commissioners Meeting	9:00am / 1:30pm
	Workforce Housing Committee	1:30pm
June 12th, 2019	Breckenridge Heritage Alliance	Noon
June 13th, 2019	Upper Blue Sanitation District	5:30pm
June 18th, 2019	Board of County Commissioners Meeting	9:00am
	Liquor & Marijuana Licensing Authority	9:00am
	Planning Commission Meeting	5:30pm

TOWN OF BRECKENRIDGE
TOWN COUNCIL

Scheduled Meetings

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

June 20th, 2019	CAST	Noon
June 24th, 2019	Open Space & Trails Meeting	5:30pm
June 25th, 2019	Board of County Commissioners Meeting	9:00am / 1:30pm
June 26th, 2019	Summit Stage Transit Board Meeting	8:15am
	Summit Combined Housing Authority	9:00am
June 27th, 2019	Transit Advisory Council Meeting	8:00am
	Breckenridge Tourism Office Board Meeting	8:30am
	QQ - Quality and Quantity - Water District	9:00am
	Northwest CO Council of Governments	10:00am
July 2nd, 2019	Board of County Commissioners Meeting	9:00am
	Planning Commission Meeting	5:30pm
July 3rd, 2019	Police Advisory Committee	7:30am
	Breckenridge Events Committee	9:00am
	I-70 Coalition	10:00am
	Childcare Advisory Committee	3:00pm
July 4th - TBD	Board of County Commissioners Meeting	9:00am
	Planning Commission Meeting	5:30pm
July 9th, 2019	Board of County Commissioners Meeting	9:00am / 1:30pm
	Workforce Housing Committee	Noon
July 11th, 2019	Upper Blue Sanitation District	5:30pm
July 15th, 2019	Breckenridge Creative Arts	4:00pm
July 16th, 2019	Board of County Commissioners Meeting	9:00am
	Liquor & Marijuana Licensing Authority	9:00am
	Planning Commission Meeting	5:30pm
July 22nd, 2019	Open Space & Trails Open House & Meeting	5:30pm
July 23rd, 2019	Board of County Commissioners Meeting	9:00am / 1:30pm
July 24th, 2019	Summit Stage Transit Board Meeting	8:15am
	Summit Combined Housing Authority	9:00am
July 25th, 2019	Transit Advisory Council Meeting	8:00am
	Breckenridge Tourism Office Board Meeting	8:30am
	Northwest CO Council of Governments	10:00am
	RW&B Board Meeting	3:00pm
TBD	Water Task Force Meeting	8:30am
	Troll Committee Meeting	11:30am