



**TOWN OF  
BRECKENRIDGE**

**Town Council Regular Meeting**

Tuesday, May 14, 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 - APRIL 23, 2019

**III. APPROVAL OF AGENDA**

**IV. COMMUNICATIONS TO COUNCIL**

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

B. BRECKENRIDGE TOURISM OFFICE UPDATE

**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)*

**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)*

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)*

B. RESOLUTIONS, SERIES 2019

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

C. OTHER

1. *NATIONAL PUBLIC WORKS WEEK PROCLAMATION*

**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)

E. WATER TASK FORCE (MR. GALLAGHER)

**X. OTHER MATTERS**

**XI. SCHEDULED MEETINGS**

A. SCHEDULED MEETINGS FOR MAY AND JUNE

**XII. ADJOURNMENT**

**D) CALL TO ORDER, ROLL CALL**

Mayor Mamula called the meeting of April 23, 2019 to order at 7:00pm. The following members answered roll call: Ms. Owens, Mr. Bergeron, Mr. Gallagher, Mr. Carleton, Ms. Wolfe, Ms. Gigliello and Mayor Mamula.

**II) APPROVAL OF MINUTES**

**A) TOWN COUNCIL MINUTES - APRIL 9, 2019**

With no changes or corrections to the meeting minutes of April 9, 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)**

Prior to opening Citizen's Comment, Mayor Mamula and other Council Members acknowledged the many contributions and positive attributes of former Town Council Member Mark Burke, who recently passed away.

Mayor Mamula opened Citizen's Comment.

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

**V) CONTINUED BUSINESS**

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

**1) COUNCIL BILL NO. 8, SERIES 2019 - AN ORDINANCE CONCERNING THE OPERATION OF ELECTRICAL ASSISTED BICYCLES ON TOWN-OWNED RECREATIONAL PATHWAYS**

Mayor Mamula read the title into the minutes. Mr. Berry stated there were changes to this ordinance from first reading, which included a clarification about class 1 electrical assisted bicycles and use on paved recreational pathways only.

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

Mr. Bergeron moved to approve COUNCIL BILL NO. 8, SERIES 2019 - AN ORDINANCE CONCERNING THE OPERATION OF ELECTRICAL ASSISTED BICYCLES ON TOWN-OWNED RECREATIONAL PATHS. Mr. Gallagher seconded the motion.

The motion passed 7-0.

**VI) NEW BUSINESS**

**A) FIRST READING OF COUNCIL BILLS, SERIES 2019**

**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 this ordinance would authorize a land exchange between the Town and the Summit School District, which would consist of a trade of a parcel of land on the McCain property for a parcel adjacent to the Blue 52 area. Mr. Berry also stated there will be an IGA that will be brought in the form of a resolution at a future meeting.

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

Mr. Bergeron 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 7-0.

**B) RESOLUTIONS, SERIES 2019**

**1) RESOLUTION NO. 12, SERIES 2019 - A RESOLUTION MAKING CERTAIN FINDINGS OF FACT AND CONCLUSIONS REGARDING THE PROPOSED ANNEXATION TO THE TOWN OF BRECKENRIDGE OF A PARCEL OF LAND (Kenington Townhomes – 2.80 acres, more or less)**

Mayor Mamula read the title into the minutes. Mr. Berry stated this resolution contains a series of findings that are necessary to determine if the Kenington Townhomes property is eligible for an annexation. He also stated this is the official public hearing for that annexation.

Mayor Mamula opened the public hearing.

Mr. Gallagher asked if there was a timeframe for this annexation, and Mr. Berry said there was not.

Ms. Croker, a member of the Kenington Townhomes Board, stated she understood this was a mandatory annexation based on a prior water agreement. Mr. Berry stated that yes, it is mandatory, but the Council retains the discretion to choose to annex it.

Ms. Nichole Rex stated the findings are true and accurate and the property is eligible for annexation.

There were no additional comments and the public hearing was closed.

Mr. Bergeron moved to approve RESOLUTION NO. 12, SERIES 2019 - A RESOLUTION MAKING CERTAIN FINDINGS OF FACT AND CONCLUSIONS REGARDING THE PROPOSED ANNEXATION TO THE TOWN OF BRECKENRIDGE OF A PARCEL OF LAND (Kenington Townhomes – 2.80 acres, more or less). Mr. Gallagher seconded the motion.

The motion passed 7-0.

**C) OTHER**

**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**

Mr. Holman stated he had no report.

**IX) REPORT OF MAYOR AND COUNCIL MEMBERS**

**A. Cast/MMC**

Mayor Mamula covered this update as part of the afternoon Work Session.

**B. Breckenridge Open Space Advisory Committee**

Mr. Bergeron covered this update as part of the afternoon Work Session.

**C. Breckenridge Tourism Office**

Ms. Wolfe covered this update as part of the afternoon Work Session.

**D. Breckenridge Heritage Alliance**

Ms. Owens stated they are discussing Milne Park project and are working on designs. Washington Stamp Mill is on track and on budget. Possibility of adding technology to the Town's historic tours, including a virtual tour. New welcome center

**E. Breckenridge Creative Arts**

Mr. Gallagher stated there was no report.

**F. Breckenridge Events Committee**

Mr. Bergeron, filling in for Ms. Gigliello, stated the canceled Hazel Miller concert will be rescheduled for possibly next December, the Breckenridge Spring Finale will take place every weekend in May at the Ski Resort, and there will be three fewer large events this summer and fall with no Dew Tour, Spartan or Colorado Classic this year.

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

**X) OTHER MATTERS**

Mr. Bergeron stated the new murals at the Recreation Center are great and he would like to see more of those in the future.

Mr. Carleton stated he went to the retail association meeting and the discussion was that retail success was mixed this season. He added that this group is a great start and members were engaged.

Mr. Gallagher stated one of the Red, White and Blue Fire District Directors is leaving in May and they are looking for someone to fill that seat on the board. He further stated it would be appointed at this time, and filled by election later.

Mr. Carleton stated he would like to see a Block 11 brainstorming session, with the consideration of some sports fields on the property next to Upper Blue Elementary School. He further stated turf fields could be good for our youth, and we could consider bubbling the fields for an indoor space. Mr. Bergeron stated we could get a price quote for that kind of use, and others added that we could also use a bathroom facility in that space for fields and the adjacent parking lots.

**XI) SCHEDULED MEETINGS**

- A) SCHEDULED MEETINGS FOR APRIL, MAY & JUNE

**XII) ADJOURNMENT**

With no further business to discuss, the meeting adjourned at 7:30pm. Submitted by Helen Cospolich, CMC, Town Clerk.

ATTEST:

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Helen Cospolich, CMC, Town Clerk

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Eric S. Mamula, Mayor



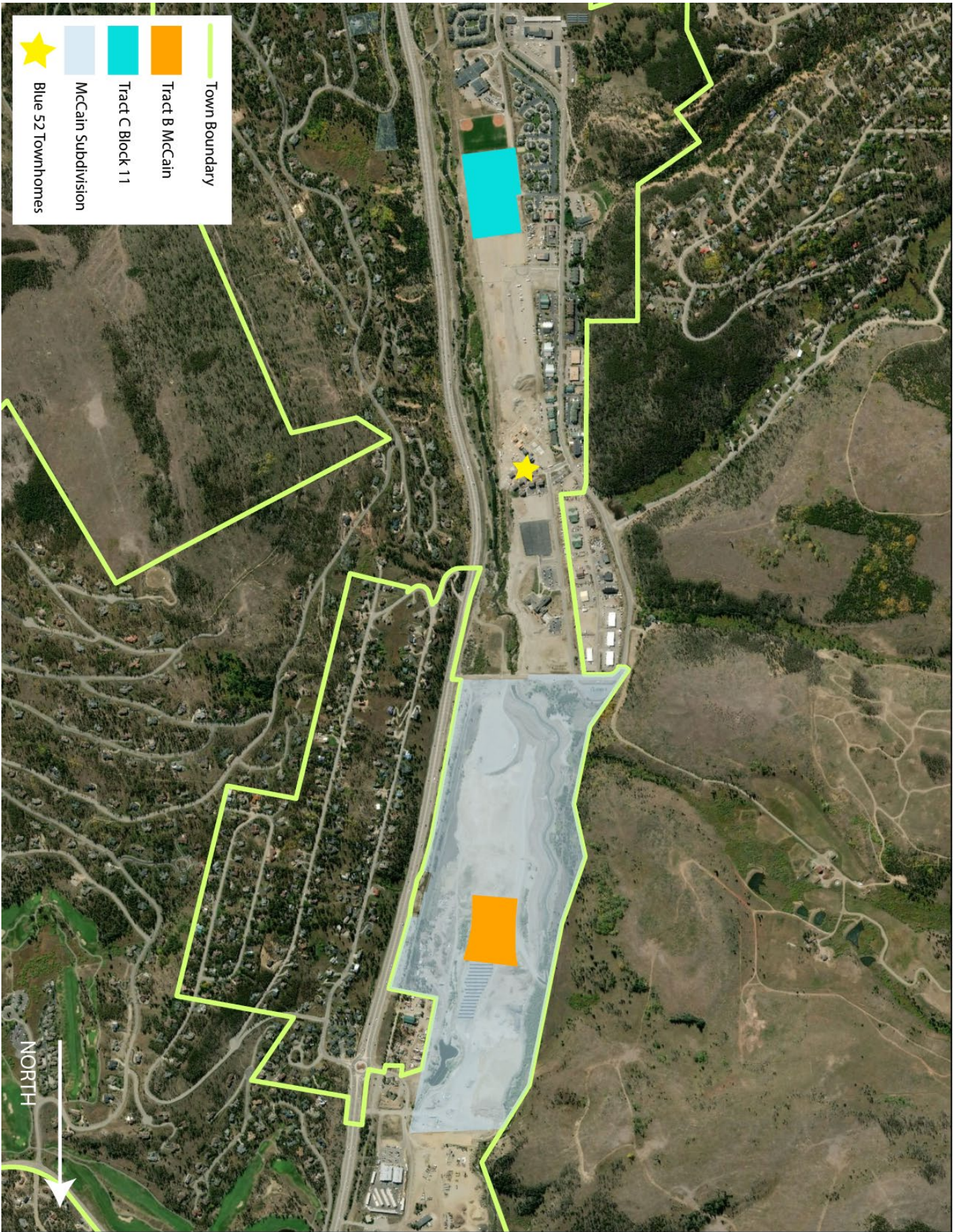
# Memo

**To:** Breckenridge Town Council Members  
**From:** Nichole Rex  
**Date:** 5/8/2019 (for May 14<sup>th</sup> meeting)  
**Subject:** AN ORDINANCE AUTHORIZING THE EXCHANGE OF TOWN-OWNED REAL PROPERTY (Summit School District Land Exchange)

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The Town and the Summit School District are developing an agreement for a land exchange where the Town would transfer ownership of two Blue 52 Townhomes and a 10 acre parcel on the McCain Subdivision in exchange for a 8.7 acre vacant Summit School District parcel on Block 11 (See Exhibit A). This Ordinance is the second reading of the Ordinance to Authorize the Exchange of Town-Owned Real Property to Summit School District RE-1.

Staff looks forward to discussing this with you and answering your questions during the May 14<sup>th</sup> worksession.



NORTH



# Memo

**To:** Mayor and Town Council Members  
**From:** Tim Berry, Town Attorney  
**Date:** 5/07/2019  
**Subject:** Council Bill No. 9 (Authorizing Exchange of Town Property to School District)

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The second reading of the ordinance authorizing the conveyance of certain Town property to the Summit School District as part of the proposed land exchange is scheduled for your meeting on May 14<sup>th</sup>.

Because the subdivision plat creating the parcel within the McCain property has not yet been recorded with the Summit County Clerk and Recorder, I have added language in the legal description of Parcel "A" on page 1 of the ordinance authorizing the Town Clerk to insert the appropriate recording information once the subdivision plat has been recorded. I expect the plat to be recorded at the time of the closing of the land exchange.

There are no other proposed changes to the ordinance from first reading.

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



1 **FOR WORKSESSION/SECOND READING – MAY 14**

2  
3 Additions To The Ordinance As Approved on First Reading Are  
4 Indicated By **Bold + Double Underline**; Deletions By ~~Strikeout~~

5  
6 COUNCIL BILL NO. 9

7  
8 Series 2019

9  
10 AN ORDINANCE AUTHORIZING THE EXCHANGE OF TOWN-OWNED  
11 REAL PROPERTY  
12 (Summit School District Land Exchange)

13  
14 WHEREAS, the Town of Breckenridge is the owner of the following described real  
15 property:

16  
17 Parcel “A”

18  
19 Tract B, McCain Subdivision, according to the plat recorded \_\_\_\_\_, 2019  
20 under Reception No. \_\_\_\_\_ of the records of the Clerk and Recorder of  
21 Summit County, Colorado; containing 10.1262 acres more or less

22 **[RECORDING INFORMATION TO BE INSERTED BY TOWN CLERK**  
23 **ONCE AVAILABLE]**

24  
25 Parcel “B”

26  
27 Units 12 and 13, Blue 52 Townhomes, according to the Map thereof recorded  
28 December 13, 2017 at Reception No. 1159017 in the records of the Clerk and  
29 Recorder of the County of Summit, Colorado and as defined and described in the  
30 Declaration Of Covenants, Conditions, And Restrictions Of The Blue 52  
31 Townhomes, dated December 12, 2017 and recorded December 13, 2017 under  
32 Reception No. 1159019 of the records of the Clerk and Recorder of Summit  
33 County, Colorado, together with any “Common Elements” of the Blue 52  
34 Townhomes, in each case that are appurtenant to such Units, but subject to: (i) the  
35 “Residential Housing Restriction and Notice of Lien For Blue 52 Townhomes”  
36 recorded December 13, 2017 at Reception No. 1159018 of the records of the  
37 Clerk and Recorder of Summit County, Colorado, and (ii) the rules and  
38 regulations of the Blue 52 Townhomes Association, a Colorado nonprofit  
39 corporation.

40  
41 (collectively, “Property”)

42 ; and

43  
44 WHEREAS, the Town desires to convey the Property to Summit School District RE-1 as  
45 part of a land exchange to be negotiated by the Town Manager; and

1  
2 WHEREAS, Section 15.3 of the Breckenridge Town Charter provides that the Town  
3 Council may lawfully authorize the exchange of Town-owned real property by ordinance.  
4

5 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF  
6 BRECKENRIDGE, COLORADO:  
7

8 Section 1. The Town Manager is authorized, empowered, and directed to convey the  
9 Property to Summit School District RE-1 as part of a land exchange to be negotiated with the  
10 District.  
11

12 Section 3. The Town Council hereby finds, determines, and declares that it has the power to  
13 adopt this Ordinance pursuant to the authority granted to home rule municipalities by Article XX of  
14 the Colorado Constitution and the powers contained in the Breckenridge Town Charter.  
15

16 Section 4. This ordinance shall be published and become effective as provided by Section  
17 5.9 of the Breckenridge Town Charter.  
18

19 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED  
20 PUBLISHED IN FULL this \_\_\_\_ day of \_\_\_\_\_, 2019. A Public Hearing shall be held at the  
21 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the \_\_\_\_ day of  
22 \_\_\_\_\_, 2019, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the  
23 Town.  
24

25 TOWN OF BRECKENRIDGE, a Colorado  
26 municipal corporation  
27

28  
29  
30 By: \_\_\_\_\_  
31 Eric S. Mamula, Mayor  
32

33 ATTEST:  
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37 \_\_\_\_\_  
38 Helen Cospolich, CMC,  
39 Town Clerk  
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# Memo

**To:** Breckenridge Town Council Members  
**From:** Nichole Rex  
**Date:** 5/8/2019 (for May 14<sup>th</sup> meeting)  
**Subject:** AN ORDINANCE ANNEXING CERTAIN REAL PROPERTY TO THE TOWN OF BRECKENRIDGE (Kenington Townhomes – 2.80 acres, more or less) – First Reading

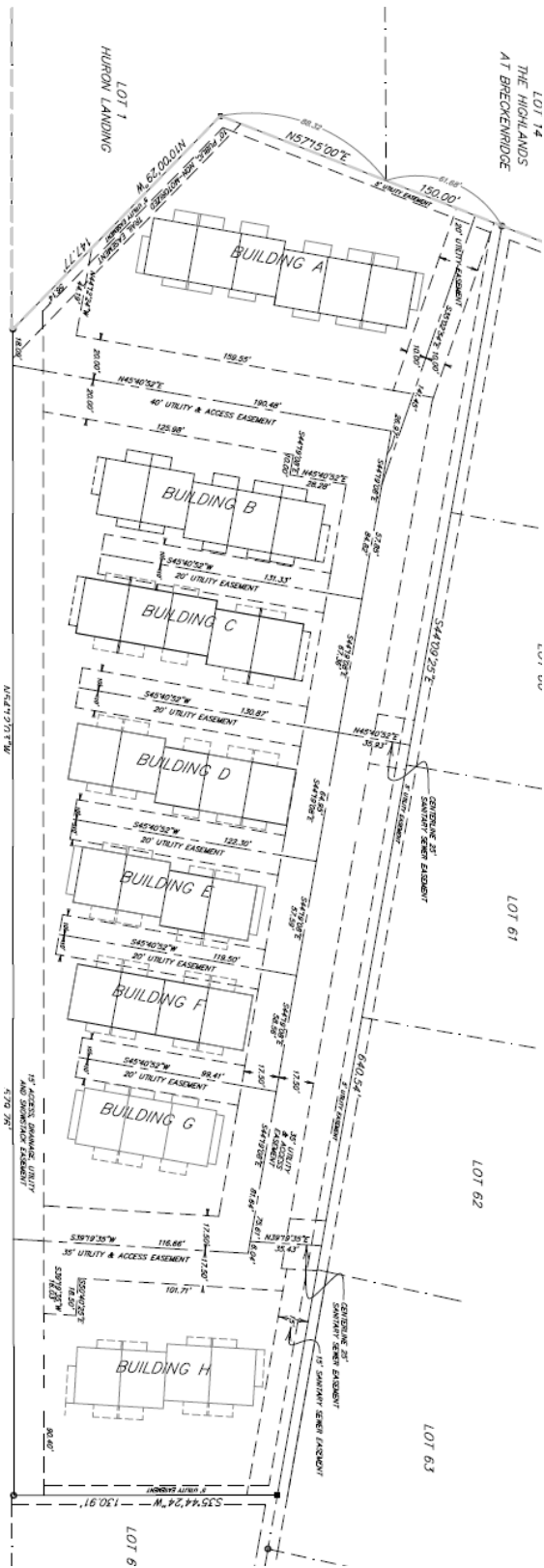
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Kenington Townhomes is a 36 unit townhome project located east-adjacent to Huron Landing in unincorporated Summit County. These townhomes have received Town water since they were developed in 1995 and they are deed restricted for long-term occupancy only. The deed restriction was a condition of the out of Town "Water Service Agreement" that was signed by the project developer and the Town on February 22, 1995. The Water Service Agreement was recorded in the real estate records of the Summit County Clerk and Recorder on April 19, 1995 under Reception No. 513376. Pursuant to Section 22 of the Water Service Agreement the owners of the Kenington Townhomes are required to join in a valid annexation petition when directed to do so by the Town.

When the Huron Landing property was annexed into the Town of Breckenridge in 2015, Kenington Townhomes became eligible for annexation because of the contiguity to the Town boundary (Exhibit A). In summer of 2018, the Town requested that Kenington Townhome Owners join in a valid annexation petition. The Town Clerk received their petition seeking annexation of the Kenington Townhomes to the Town, and on February 26<sup>th</sup>, the Town Council approved a Sufficiency Resolution for the annexation of Kenington Townhomes. That Resolution confirmed that the Petition was complete, and the next steps in the annexation process could proceed. On April 23<sup>rd</sup>, the Fact Finding Resolution for the annexation of Kenington Townhomes was adopted. This resolution made specific "findings" that the Kenington Townhomes property meets all of the statutory and constitutional requirements, and the property is therefore eligible for annexation to the Town. In addition, a Public Hearing was held for the annexation of Kenington Townhomes during this meeting. There was no opposition to the annexation shared during the Public Hearing.

During today's meeting, Council will be asked to approve the first reading of the Annexation Ordinance for the Annexation of Kenington Townhomes into the Town of Breckenridge. This will be followed by the second reading of the Annexation Ordinance that will occur on May 28<sup>th</sup>, 2019. Attached is the proposed form of the Annexation Ordinance.

Staff looks forward to discussing this with you and answering your questions during the May 14<sup>th</sup> worksession.



NORTH  
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1 ***FOR WORKSESSION/FIRST READING – MAY 14***

2  
3 COUNCIL BILL NO. \_\_\_\_

4  
5 Series 2019

6  
7 AN ORDINANCE ANNEXING CERTAIN REAL PROPERTY TO  
8 THE TOWN OF BRECKENRIDGE  
9 (Kenington Townhomes – 2.80 acres, more or less)

10  
11 WHEREAS, the Town Council of the Town of Breckenridge has found a Petition For  
12 Annexation of the hereinafter described parcel of land to be in substantial compliance with the  
13 requirements of Section 31-12-107(1), C.R.S.; and

14  
15 WHEREAS, after notice as required by Section 31-12-108, C.R.S., the Town Council  
16 held a public hearing on the proposed annexation on April 23, 2019; and

17  
18 WHEREAS, the Town Council has by resolution determined that the requirements of  
19 Sections 31-12-104 and 105, C.R.S., have been met; that an election is not required; and that no  
20 additional terms or conditions are to be imposed on the annexed area.

21  
22 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF  
23 BRECKENRIDGE, COLORADO:

24  
25 Section 1. The following described parcel of land, to wit:

26  
27 Kenington Place Townhomes, including all buildings and units thereof, and all  
28 common areas, according to the plats thereof recorded in the real property records  
29 of the Clerk and Recorder of Summit County, Colorado.

30  
31 The parcel is more particularly described as follows:

32  
33 A tract of land being all of Kenington Place Townhomes (previously Lot 67,  
34 Huron Heights), located in summit County Colorado, and being more particularly  
35 described as follows:

36  
37 Beginning at the Southeast corner of said Kenington Place Townhomes (Lot 67,  
38 Huron Heights); thence along the following 5 courses:

- 39  
40 1.) N54°12'03"W a distance of 579.76 feet;  
41 2.) N10°00'29"W a distance of 147.77 feet;  
42 3.) N57°15'00"E a distance of 150.00 feet;  
43 4.) S44°09'25"E a distance of 640.54 feet;  
44 5.) S35°44'24"W a distance of 130.91 feet;  
45 6.)

46 To the Point of Beginning, containing 2.80 acres, more or less

1  
2 is hereby annexed to and made a part of the Town of Breckenridge, Colorado.  
3

4 Section 2. The annexation of the above described property shall be complete and  
5 effective on the effective date of this ordinance, except for the purpose of general property taxes,  
6 and shall be effective as to general property taxes on and after January 1, 2020.  
7

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

- 10  
11 A. File one copy of the annexation map with the original of the annexation  
12 ordinance in the office of the Town Clerk of the Town of Breckenridge,  
13 Colorado; and  
14  
15 B. File for recording three certified copies of the annexation ordinance and  
16 map of the area annexed containing a legal description of such area with  
17 the Summit County Clerk and Recorder.  
18

19 Section 4. This ordinance shall be published and become effective as provided by law.  
20

21 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED  
22 PUBLISHED IN FULL this \_\_\_\_ day of \_\_\_\_\_, 2019. A Public Hearing shall be  
23 held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the  
24 \_\_\_\_ day of \_\_\_\_\_, 2019, at 7:30 P.M. or as soon thereafter as possible in the Municipal  
25 Building of the Town.  
26

27 TOWN OF BRECKENRIDGE, a Colorado  
28 municipal corporation  
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30  
31 By: \_\_\_\_\_  
32 Eric S. Mamula, Mayor  
33

34 ATTEST:  
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37 \_\_\_\_\_  
38 Helen Cospolich, CMC,  
39 Town Clerk  
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## Memorandum

To: Mayor and Town Council, Town of Breckenridge  
Copy: Rick Holman and Tim Berry  
From: Rebecca Anderson Fischer  
Date: May 6, 2019  
Re: Proposed Ground Lease between Vail Summit Resorts, Inc.,  
and the Town of Breckenridge

This memorandum summarizes the key terms and conditions of the Ground Lease proposed for execution between Vail Summit Resorts, Inc. (“**VSRI**”), as landlord, and the Town, as tenant, for the development of a new parking facility on the South Gondola Lot.

**1. Use of the South Gondola Lot.** The Town may use the South Gondola Lot for the development, construction and operation of the new facility, including a garage and a surface parking lot, which together are to provide at least 950 parking spaces (400 more than the 550 spaces currently in place on the lot) (the “**Project**”). In months outside of the days when the Breckenridge Ski Area is open for alpine skiing and snowboarding (the “**Ski Season**”), the Town may use the Property for special events after obtaining VSRI’s consent, which VSRI may not unreasonably withhold.

**2. Initial Term and Extension Options; Lease Year Defined.** The Lease has an initial term of 50 years, beginning on the date when the Town begins construction of the Project. The Town has the right to extend the Lease for two additional terms of 10 years each. Each Lease Year (a “**Lease Year**”) is defined as a 12-month period beginning on June 1 and ending on the following May 31; however, the first **Lease Year** will begin upon Project Opening and end on the next occurring May 31.

**3. Planning Period.**

a. Planning Period for Satisfaction of Conditions to the Parties’ Obligations. In advance of the initial term, the Lease calls for a “**Planning Period**” beginning on the date the Lease is fully executed and ending **July 1, 2020**, during which the parties are to accomplish the following objectives:

i. Project Plans. Agreement on the final plans and specifications for the Project. (The Town is to deliver preliminary plans to VSRI by **March 31, 2020**.)

ii. Construction Contract. The Town’s execution of a guaranteed maximum price contract for construction of the Project. The contract is to include covenants by the contractor to (a) provide a one-year warranty against defects in workmanship and materials, (b) deliver a performance bond and payment bond as required by law, and (c) meet construction milestones set in collaboration with VSRI. Those milestones include the requirement that, in the event of any construction delays, the contractor will shift focus as necessary to make the surface

area of the Project available (in paved or unpaved condition) for parking 300 vehicles no later than **December 2021**. (That deadline may be postponed one year under circumstances explained in Paragraph 4 below).

iii. COP Financing. The Town's adoption of an ordinance for financing the Project through an offering of certificates of participation with a maximum term of 25 years.

- If the financing is not tax exempt, then the Town is to determine the difference between the annual interest expense for taxable COP's, compared to the annual interest expense the Town would have incurred for tax-exempt COP's (that difference being the "**Incremental Annual Expense**"). If the Incremental Annual Expense is \$250,000 or less, then VSRI will pay 50% of the Incremental Annual Expense each year, over the term of the financing.

iv. Density Transfer Covenant. Agreement on a density transfer covenant to transfer all remaining South Gondola Lot density allocations to the Gold Rush Lot, the North Gondola Lot or other parcels owned by VSRI or its affiliates.

v. Pedestrian Easement and Roundabout. Negotiation of permanent easements to be granted by VSRI to the Town (a) for a recreation path/pedestrian corridor access way along the eastern edge of the South Gondola Lot, outside the surface parking area, and (b) for a round-about on a portion of VSRI's adjacent property at the intersection of North Park Avenue and Watson Avenue, if the round-about is required under the terms of the CDOT Approval (described below) or otherwise agreed by the parties.

vi. CDOT Approval. The Town's receipt of a permit issued by the Colorado Department of Transportation under terms acceptable to both parties, for access to the South Gondola Lot from State Highway 9/North Park Avenue and use of the lot for at least 950 parking spaces (the "**CDOT Approval**").

b. Termination Right. If any of the conditions listed above are not satisfied or waived by the parties by the end of the Planning Period on **July 1, 2020**, then each party has the right to terminate the Lease by giving written notice to the other no later than **August 1, 2020**. (Special provisions summarized below provide later termination rights if the CDOT Approval is the only condition remaining unsatisfied at end of the Planning Period on July 1, 2020.)

#### **4. Commencement of Construction and CDOT Approval Extensions.**

a. Scheduled Construction Start Date. The Town may not begin construction before May 1, 2020 (to avoid any interference with VSRI's ski area operations). The parties have targeted **August 1, 2020**, as the deadline for the Town's starting construction.

b. Delay in Obtaining CDOT Approval.



i. First Extension. If all the conditions listed in Paragraph 3 above, except the CDOT Approval condition, have been fulfilled or waived to the satisfaction of the Town and VSRI, the Town has the right to request, no later than the end of the Planning Period on **July 1, 2020**, an extension of the deadline for obtaining CDOT Approval. VSRI must respond to the Town's extension request by **August 1, 2020**, and if the request is granted, the CDOT Approval deadline will be postponed until **November 1, 2020**.

ii. Second Extension. If the Town does not receive the CDOT Approval by **October 15, 2020**, then the Town may request by that date a second extension of the CDOT Approval deadline. VSRI must respond to the Town's extension request by **November 1, 2020**, and if the request is granted, the CDOT Approval Deadline will be postponed until **February 1, 2021**.

iii. Final Extension. If the Town does not receive the CDOT Approval by **January 15, 2021**, then the Town may request by that date a third extension of the CDOT Approval deadline. VSRI must respond to the Town's extension request by **February 1, 2021**, and if the request is granted, the CDOT Approval Deadline will be postponed until **May 1, 2021**. If the Town does not receive the CDOT Approval by May 1, 2021, then VSRI may terminate the Lease.

c. Construction Schedule.

i. Excusable Delay Provisions. The Lease includes a clause applicable to both parties, allowing a deadline for performance to be reasonably extended for the duration of any "Excusable Delay," defined to include labor strikes and lockouts, utility service failures, unusual, inclement weather, inability to procure materials, acts of terrorism or war, and other circumstances beyond the obligated party's control and not caused by its fault or negligence. The Excusable Delay clause pertains to any performance deadline, including construction deadlines, unless the Lease provides otherwise.

ii. Targeted Schedule. If the Town begins construction by **August 1, 2020**, the Town is obligated to complete construction so that the Project receives a certificate of occupancy and opens for use by the public (marking the "Project Opening") no later than **November 1, 2021**.

iii. Postponement of Start Date for CDOT Approval. If the parties proceed under the First CDOT Extension, then the Town may begin construction in 2020 as late as August 31. If the Town does not begin construction by **August 31, 2020**, then the deadline for starting construction will be automatically postponed until **June 1, 2021**, and the deadline for completion will be extended to **November 1, 2022**.

iv. Termination if No Start by June 1, 2021. If the Town does not begin construction by June 1, 2021, then VSRI may terminate the Lease unless the delay is caused by some Excusable Delay occurring between March 1, 2021 and June 1, 2021.

v. Late Fees for Missed Completion Deadline. If the Project Opening does not occur by the applicable deadline, whether November 1, 2021 (following an August 2020 start), or November 1, 2022 (following a June 2021 start), then the Town will be liable for liquidated damages payable to VSRI according to the timeline and rates listed in the chart below. The Town may collect the late fees from its contractor under the GMP contract, but the Town’s failure to collect those fees from the contractor will not mitigate the Town’s obligation for payment of the late fees to VSRI.

Late Fees Start Date	Late Fees End Date	Late Fees Amount
30 <sup>th</sup> day following the Construction Completion Deadline	60 <sup>th</sup> day following the Construction Completion Deadline	Late Fees of \$5,000.00 per day
61 <sup>st</sup> 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

vi. Termination Fee for Prolonged Delay in Construction Completion. If the Town does not complete construction by **November 1, 2022** (after an August 2020 start date) or by **November 1, 2023** (after a June 2021 start date), then VSRI may terminate the Lease upon notice to the Town by **November 15, 2022** (after an August 2020 start date) or by **November 15, 2023** (after a June 2021 start date). In that event, the Town will be liable to VSRI for liquidated damages of \$2,000,000. Again, the Lease provides for an extension of the deadline for the Town’s performance for reasons of Excusable Delay.

vii. Use of Satellite Lot During Construction. Throughout construction, the Town is to make 700 spaces at the Satellite Lot (Block 11, Breckenridge Airport Subdivision) available for parking free of charge.

**5. Rent.**

a. Annual Rent Formula. Annual rent is due to VSRI within 45 days after the end of each **Lease Year**. Annual rent will be calculated as “Landlord’s Share of Ski Season Profitability.” Those terms and related terms are defined in the Lease as follows:

i. **“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 South Gondola Lot currently), and the denominator of which is the number of passenger car parking spaces in the Project after completion of construction (at least 950).

ii. **“Ski Season Profitability”** means, in any given **“Lease Year”**, the difference between (1) the Gross Receipts generated during the Ski Season, and (2) the sum of the Ground Lease Expenses and annual contribution to the Maintenance Reserve allocable to the Ski Season. For the purposes of calculating Ski Season Profitability, Ground Lease Expenses and the annual Maintenance Reserve contribution will 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 Project (including the cost of operating any snow melting system in the Parking Garage), will not be expensed in equal monthly installments over the course of the **Lease Year**, but instead, will be charged to the Ski Season months when those expenses were incurred, in the full amount actually paid by the Town (but at a price no higher than the prevailing market rate for such snow removal services and operations).

iii. **“Gross Receipts”** means (1) all funds paid by persons parking in the Project or otherwise utilizing the Project, and (2) all fees for seasonal parking passes, if any, to the Project distributed by VSRI or the Town to their respective guests and patrons.

iv. **“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. Schedule 6.2.B to the Lease lists examples of Ground Lease Expenses.

v. **“Maintenance Reserve”** means the reserve established by the Town from Gross Receipts to cover the cost of periodic maintenance and repairs required to preserve the condition of the Project throughout the Lease term, including the items listed on Schedule 6.2.C to the Lease. From and after the Project Opening, the Town will fund the Maintenance Reserve over a period of five years at the rate of \$70,000 per year, using Gross Receipts funds. At least every five years, the parties will reassess the Maintenance Reserve and make any necessary adjustments to the amount required to cover the costs contemplated with the reserve.

b. Annual Rent Calculation Example and Dispute Resolution. An example of the calculation of Annual Rent is attached to this memorandum. VSRI has the right to audit the Town’s books and records pertaining to the Project, and if a dispute results from the audit that the parties cannot resolve in 30 days, they will follow procedures set forth in Schedule 6.1 to the Lease, for resolving the matter with the assistance of qualified certified public accountants.

c. The Town’s Share of Gross Receipts. The Town is entitled to retain all Ski Season Profitability funds that remain after the Town’s payment of the annual rent due in any given **Lease Year**.

## **6. The Town’s Operation of the Project.**

a. Maintenance. The Town is to keep the completed Project in good condition and repair.

b. Taxes. The Town is to obtain all available exemptions from real and personal property taxes associated with the Project. If any taxes are payable, then once construction starts, the Town is obligated to pay those sums, and beginning with the Project Opening, those sums will be part of the Ground Lease Expenses payable from Gross Receipts.

c. Utilities. Once construction begins, the Town is to pay all utility costs. Upon the Project Opening, those costs will be part of the Ground Lease Expenses payable from Gross Receipts.

d. Alterations. The Town may make non-capital alterations to the Project with VSRI's reasonable approval, provided that the alterations do not reduce the number of parking spaces in the Project or interfere with the Ski Area operations.

e. Pricing for Parking.

i. VSRI's Pricing. During each Ski Season, VSRI alone may set pricing and hours of operation of the Project (including variable pricing). For the first Ski Season after the Project Opening, VSRI will base its pricing on the rate charged for the previous Ski Season. In subsequent years, VSRI may not increase the highest parking rate by more than 20% of the highest rate charged during the previous Ski Season unless the Town agrees to a larger increase.

ii. Guest Parking Incentives for Après Ski Hours. The parties will collaborate on parking plans to encourage parking patrons to extend their stay beyond those ski hours (with strategies such as such as reductions or waivers of fees to remain parked in the Project beyond peak departure periods).

iii. Town's Control During Non-Ski Season. On all days outside of the Ski Season, the Town sets parking pricing and strategies for the Project.

iv. Seasonal Passes. VSRI may sell seasonal parking passes for any Ski Season, and the Town may sell seasonal parking passes for the remainder of the Lease Year, but neither party may sell annual parking passes.

## **7. Other Issues.**

The remainder of the Ground Lease covers issues such as insurance, indemnification, casualty and condemnation, default, and other common issues that are typically contained in a long-term lease such as this one. These provisions are commercially reasonable.

## Attachment to Executive Summary of Breckenridge Ground Lease

### Sample Annual Rent calculation (for example purposes only)

- Assume that the total number of parking spaces in the Project after completion of the Project is 950 parking spaces. VSRI's share of Ski Season Profitability, as defined in the Lease, would equal 57.89% (ratio of 550 current parking spaces to total after construction).
- Assume the Ski Season for the **Lease Year** in question contains 180 days.
- Assume that Gross Receipts for such Ski Season equal \$1,000,000.00.
- Assume that 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 VSRI for such **Lease Year** would equal \$428,822.15 (which is VSRI's 57.89% share of Ski Season Profitability, multiplied by \$740,753.42).

1 **FOR WORKSESSION/FIRST READING – MAY 14**

2  
3 COUNCIL BILL NO. \_\_\_\_

4  
5 Series 2019

6  
7 AN ORDINANCE APPROVING A LONG-TERM LEASE WITH VAIL SUMMIT RESORTS,  
8 INC., A COLORADO CORPORATION  
9 (South Gondola Lot Parking Structure)

10  
11 WHEREAS, Vail Summit Resorts, Inc., a Colorado corporation, owns the following real  
12 property located in the Town of Breckenridge, Summit County, Colorado:

13  
14 Lots 1-A, 3-A, 3-B and 4, Sawmill Station Square, Filing No. 3, Amendment No. 2,  
15 according to the Plat thereof filed with the Summit County, Colorado Clerk and Recorder  
16 on January 21, 1986 at Reception No. 311104; and

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

21 (the “**Property**”)

22  
23 ; and

24  
25 WHEREAS, Vail Summit Resorts, Inc., a Colorado corporation, has agreed to lease the  
26 Property to the Town; and

27  
28 WHEREAS, Section 15.4 of the Breckenridge Town Charter provides:

29  
30 The council may lease, for such time as council shall determine, any real or  
31 personal property to or from any person, firm, corporation, public and private,  
32 governmental or otherwise.

33  
34 and;

35  
36 WHEREAS, a proposed Ground Lease between the Town and Vail Summit Resorts, Inc.,  
37 a Colorado corporation, has been prepared, a copy of which is marked **Exhibit “A”**, attached  
38 hereto, and incorporated herein by reference; and

39  
40 WHEREAS, the Town Council has reviewed the proposed Ground Lease, and finds and  
41 determines that it should be approved; and

42  
43 WHEREAS, the proposed Ground Lease has a term longer than one year; and  
44

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

3  
4 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF  
5 BRECKENRIDGE, COLORADO:

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

9  
10 Section 2. The Town Council hereby finds, determines and declares that it has the  
11 power to adopt this ordinance pursuant to the authority granted to home rule municipalities by  
12 Article XX of the Colorado Constitution and the powers contained in the Breckenridge Town  
13 Charter.

14  
15 Section 3. This ordinance shall be published and become effective as provided by  
16 Section 5.9 of the Breckenridge Town Charter.

17  
18 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED  
19 PUBLISHED IN FULL this \_\_\_\_ day of \_\_\_\_\_, 2019. A Public Hearing shall be held at the  
20 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the \_\_\_\_ day of  
21 \_\_\_\_\_, 2019, at 7:00 P.M., or as soon thereafter as possible in the Municipal  
22 Building of the Town.

23 TOWN OF BRECKENRIDGE, a Colorado  
24 municipal corporation

25  
26  
27  
28 By: \_\_\_\_\_  
29 Eric S. Mamula, Mayor

30  
31 ATTEST:

32  
33  
34  
35 \_\_\_\_\_  
36 Helen Cospolich, CMC,  
37 Town Clerk

**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 48<sup>th</sup> 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 58<sup>th</sup> 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 (61<sup>st</sup>) 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
30 <sup>th</sup> day following the Construction Completion Deadline	60 <sup>th</sup> day following the Construction Completion Deadline	Late Fees of \$5,000.00 per day
61 <sup>st</sup> 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**

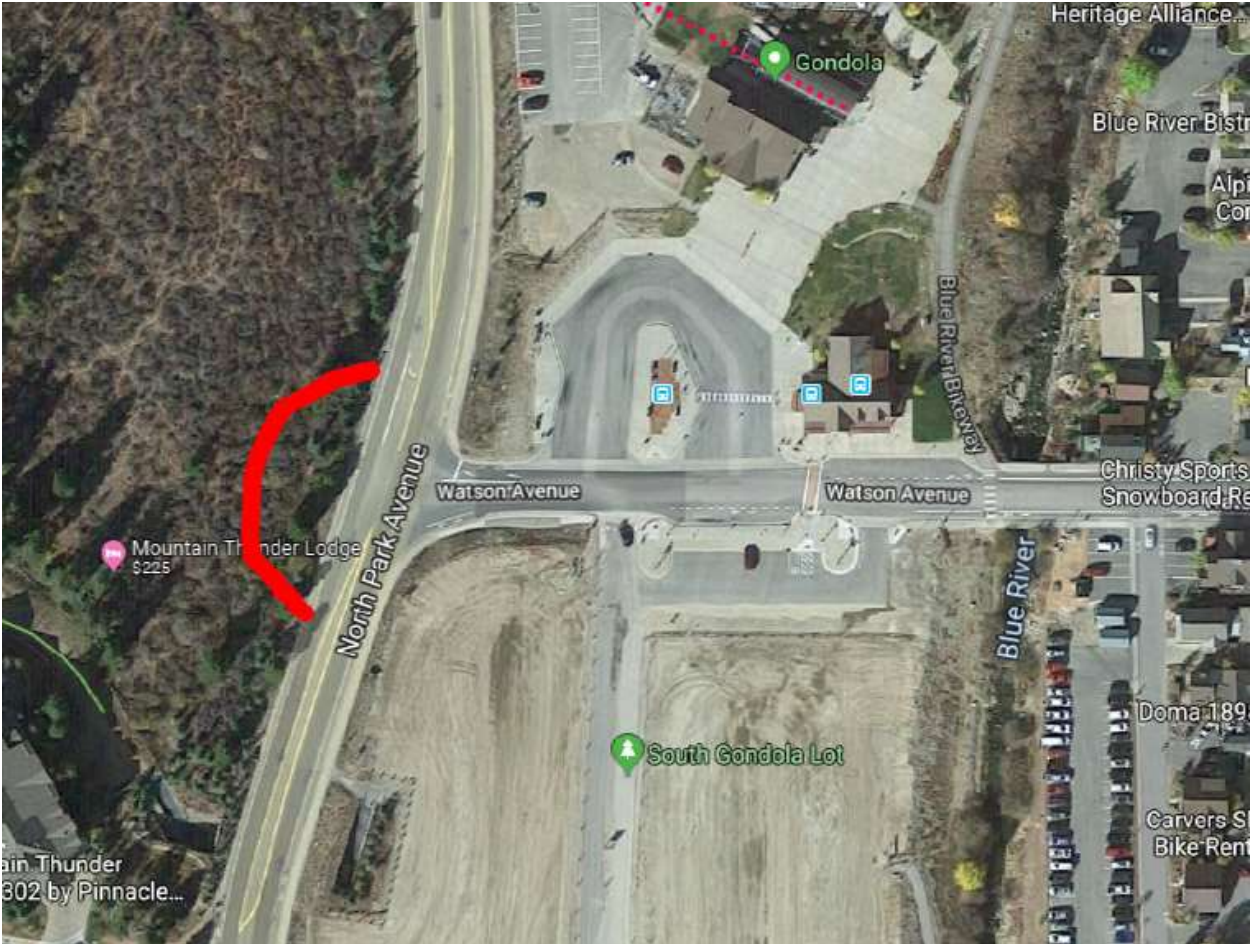
Lots 1-A, 3-A, 3-B and 4, Sawmill Station Square, Filing No. 3, Amendment No. 2, according to the Plat thereof filed with the Summit County, Colorado Clerk and Recorder on January 21, 1986 at Reception No. 311104; and

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

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**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        )  
  )  
COUNTY OF \_\_\_\_\_    )        ss.

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        )  
  )  
COUNTY OF SUMMIT        )        ss.

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        )  
  )  
COUNTY OF SUMMIT        )        ss.

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.

TO: Town Council  
FROM: Richard Sosville and Lucy Kay, Breckenridge Tourism Office  
RE: Breckenridge Destination Management Plan

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BTO facilitated the development of a community destination management plan on behalf of the Town of Breckenridge. The consulting firm, InterVistas, was hired to lead the process which included soliciting input from over 600 stakeholders in interviews, focus groups and a large Visioning Session. The results of the Expectations Research (1100+ respondents) also informed this plan. Key stakeholders from greater Summit County were included as well.

This plan defines the community's collective Vision for the next ten years or more. It defines four key goals, respective initiatives, and responsible entities to accomplish them. The Vision and goals were reviewed and approved by Town Council and the BTO Board in February 2019. There is a very strong alignment with Town Council goals and community priorities identified in this process. The BTO's five year strategic plan aligns as well.

We recommend that Town Council formally endorse the Breckenridge Destination Management Plan via resolution.

RESOLUTION NO.

Series 2019

A RESOLUTION ADOPTING THE BRECKENRIDGE DESTINATION MANAGEMENT PLAN FOR THE TOWN OF BRECKENRIDGE

WHEREAS, the Town of Breckenridge recognizes the importance of a collective community vision for its future, and

WHEREAS, the Town's Vision Plan was adopted in 2002 and the most recent community visioning project was completed in 2009, and

WHEREAS, the Town requested that the Breckenridge Tourism Office lead this project, and

WHEREAS, the community's economy is based on its popularity as a tourism destination and the Town of Breckenridge has an opportunity to participate in local and state-level initiatives, demonstrating destination management leadership by example; and

WHEREAS, the Breckenridge Tourism Office, hired InterVISTAS consultancy to facilitate the project in which over 35 individual interviews with community leaders were conducted, as well as 13 community focus groups, two town halls, and one 80- person Visioning session were conducted over a one year period, and

WHEREAS, this extensive public input was combined with results of the Breckenridge Tourism Office-led Expectations Research to which over 1100 residents responded, as well as other data commissioned by the Breckenridge Tourism Office, and

WHEREAS, public input has been carefully considered and prioritized and is the basis for the Vision, and 4 Key Goals presented in the Breckenridge Destination Management Plan.

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

Section 1. The Town Council hereby adopts the Breckenridge Destination Management Plan, prepared by InterVISTAS and dated May 2019, a copy of which is attached to this resolution as **Exhibit "A"**.

Section 2. This resolution is effective upon adoption.

RESOLUTION APPROVED AND ADOPTED this 14<sup>th</sup> day of May, 2019.

TOWN OF BRECKENRIDGE

By: \_\_\_\_\_/s/\_\_\_\_\_

Eric S. Mamula, Mayor



ATTEST:

\_\_\_\_\_/s/\_\_\_\_\_

Helen Cospolich, CMC,  
Town Clerk

APPROVED IN FORM

\_\_\_\_\_/s/\_\_\_\_\_

Town Attorney                      Date

**Exhibit A**

**Breckenridge Destination Management Plan**

# BRECKENRIDGE DESTINATION MANAGEMENT PLAN

# DESTINATION MANAGEMENT PLAN

## **Steering Committee**

### **EXECUTIVE MEMBERS**

Travis Beck

Gary Gallagher

Peter Grosshuesch

Jesse Keaveny

Meg Lass

Mark Truckey

Wendy Wolfe

Dave Askeland

Tim Gagen

Leigh Girvin

Bob Gordman

Shannon Haynes

Rick Holman

Bruce Horri

Lucy Kay

Jim Keating

Turk Montepare

Ken Nelson

Scott Sodergren

Dick Sosville

Deb Spiers

Jeff Zimmerman



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# Executive Summary

**The Breckenridge Destination Management Plan is a 10-year road map to accomplish a shared vision for a more balanced long-term future. Specifically, it's designed to help ensure economic sustainability for the community while preserving the quality of life for residents and quality of place for visitors.**

According to the World Travel & Tourism Council, the global travel industry grew at 3.9% in 2018, contributing a record \$8.8 trillion and 319 million jobs to the world economy. For the eighth consecutive year, the growth of global travel expenditures outpaced the growth rate of world GDP, and that trend looks to continue based on the resiliency of the tourism industry.

As such, more and more iconic destinations worldwide are being overwhelmed with visitors, creating friction between residents, governments, tourism organizations, and the visitors themselves.

At some point, if left unmanaged, this continually increasing compression of travelers undermines the quality of life for residents and diminishes the destination experience for visitors. Over time, that can also damage the destination brand, which decreases visitor satisfaction and loyalty because the destination is "too touristy."

The Breckenridge Tourism Office facilitated the development of this Destination Management Plan (DMP) to specifically help mitigate those types of challenges by providing inspired solutions to protect and enhance the Town's authentic character.



The four strategic goals included in this Destination Management Plan (DMP) will inform the future direction of Breckenridge in terms of how the public and private sectors collaborate to navigate the future of the year-round visitor economy. Each of the goals includes initiatives designed to accomplish the primary objectives, as well as the people and organizations responsible for their implementation.

The strategic goals and initiatives were determined during a comprehensive series of individual and group community engagement sessions. They included one-on-one interviews with key stakeholders, small workshops with various community segments and public departments, and large, well-attended town halls where residents were invited to share their opinions to help determine their Town's destiny.

The final ratification of the Plan's strategic goals took place during a Breckenridge Town Council Planning

Session with the Breckenridge Tourism Office in February 2019. This process confirmed the solid alignment of community member priorities with Town goals and initiatives.

That alignment of community priorities and Town goals is highlighted on pages 11/12, showing the ongoing investments in infrastructure and social programs over the years, which have continually enhanced the quality of life for local residents and the destination experience for visitors. They include tens of millions of dollars directed toward public transportation, parking facilities, workforce housing, childcare, broadband, parks and recreation, arts and culture, and environment protection.

One of the biggest highlights of this Destination Management Plan (DMP) is confirmation of all that has been accomplished in Breckenridge to balance the needs of the community and the demands of visitors.





The local tourism industry is the economic lifeblood of the town. But at the same time, it's imperative that future growth is managed responsibly so residents can enjoy the lifestyle that brought them to Breckenridge in the first place.

Looking ahead, the successful implementation of the Destination Management Plan (DMP) and its initiatives will require ongoing strategic alignment

and engagement among industry, the community and stakeholders for Breckenridge to flourish. The purpose of this document is not to grow visitor volumes. Rather, the overarching vision is to use tourism as a catalyst for providing more opportunities for more people in Breckenridge, so the local community can help protect the authentic character of the Town while adding new layers to it for future generations.

---

***"The purpose of this document is not to grow visitor volumes. Rather, the overarching vision is to use tourism as a catalyst for providing more opportunities for more people in Breckenridge, so the local community can help protect the authentic character of the Town while adding new layers to it for future generations."***

# VISION

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*Harmony of Quality of Life  
for Residents and Quality of  
Place for Visitors*



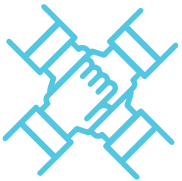
# STRATEGIC GOALS

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The Breckenridge Town Council, Breckenridge Tourism Office, many key stakeholders, and a wide breadth of other local community and business members have aligned around these four strategic goals to realize the Vision:



**Deliver a balanced year-round economy driven by destination tourism by 2024**



**Elevate and fiercely protect Breckenridge's authentic character and brand — our hometown feel and friendly atmosphere**



**More boots and bikes, less cars**



**Establish Breckenridge at the leading edge in mountain environmental stewardship and sustainable practices.**



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# Why a Destination Management Plan for Breckenridge?

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Denver, Boulder, Colorado Springs and the rest of the Front Range in Colorado together rank among the fastest growing metropolitan corridors in the United States. According to the Colorado Department of Local Affairs, statewide population is expected to grow from 5.8 million in 2020 to 8.1 million in 2050.

In Denver County, the growth is roughly 739,000 to 887,000 for the same timeframe, while El Paso County/Colorado Springs is expected to jump from 735,000 to 1.1 million people.

Furthermore, the Front Range is attracting a high-value demographic of new residents. In 2018, for example, LinkedIn ranked Denver as the city welcoming the highest percentage of relocating professional talent in the country.

Breckenridge, therefore, being a 2-4 hour commute from various points in the Front Range and Colorado Springs, is seeing greater management impacts from increasing traffic counts and parking demand. Higher traffic volume is a function of not only the rapidly growing Front Range, but that of Summit County and the local commuters as well.

In addition to inherent Colorado population growth impacts, the winter traffic is likely increased due to growing EPIC pass sales by Vail Resorts and the subsequent number of day visitors and destination guests to the Breckenridge Ski Resort that the pass attracts. Given the projected net growth of Colorado residents for the foreseeable long-term future, we expect that these vehicle-related impacts will continue to be a primary destination management issue.

Colorado visitors spur our local economy in terms of lodging, retail and restaurant sales, although to a lesser extent than our out-of-state visitors. However, Colorado residents will continue to travel to Breckenridge in a slow economy. They also account for a significantly high number of real estate investments in Breckenridge.

The Breckenridge Tourism Office at the direction of the Town of Breckenridge has led this Breckenridge Destination Management Plan (DMP). The overarching purpose of the plan is to project forward 10 years and commit today to actionable strategies and management that will deliver the residents' collective vision for our future. That vision is effectively leveraging our local visitor economy to protect the quality of life for residents and enhance the quality of place for visitors and residents alike. Protecting the authentic character of Breckenridge is of paramount importance to everyone who participated in this project.

For Breckenridge to achieve and protect the harmony between quality of life and quality of place successfully over the long term, it will require continual open dialog and progress checks among all community stakeholders.

## DEFINING 'SUSTAINABILITY'

The current global industry definition of sustainable tourism development and destination management today encompasses strategies that align decision-making at the intersection of economic, social and environmental impacts. Thought leadership around sustainability extends well beyond "eco" and "green" themes. Economic sustainability refers to equitable development, where the economy benefits a broader spectrum of citizens. Social sustainability emphasizes the need to protect the societal and cultural fabric of a destination and its residents.

Tourism has historically prioritized the needs of the visitor. Today's sustainable tourism thinking prioritizes the needs of the local community, along with, in Breckenridge's case, our natural environment, while maintaining the long-term benefits derived from a strong visitor economy.

This DMP process intends to keep Breckenridge focused on the three pillars of economic, social and environmental sustainability.



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*"Protecting the authentic character of Breckenridge is of paramount importance to everyone who participated in this project."*



# Key Tourism Trends

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In today's tourism industry marketplace, there's an unprecedented convergence of trends reshaping how people travel, driven by emerging technologies and changing consumer motivations. It is important to understand these macro trends to develop long-term strategies for steering Breckenridge's visitor economy into the future.

## TECHNOLOGY TODAY

From a technology standpoint, there are many different types of platforms that are shifting how we connect, move and buy things.

The tours and activities sector is evolving rapidly with big companies like TripAdvisor, Google, Booking.com and Airbnb expanding beyond lodging to selling travel experiences. Other platforms like Viator, FareHarbor and GetYourGuide are scaling exponentially. People tend to wait to book destination experiences when they travel, often until day-of. Today, the increasing sophistication and lower cost of ecommerce functionality, mixed with improved live inventory technology, means that more small tour operators are able to sell travel experiences on-demand, in-destination, and on mobile to better convert spontaneous purchase decisions.

Text-based chat is now mainstream. Conversational commerce platforms connect travel brands and travelers with a more frictionless immediacy, which drives higher customer engagement and conversion

rates. For example, chatbots like "Rose" at The Cosmopolitan in Las Vegas are delivering 30% higher in-hotel spending. Also, San Francisco Travel employs a chat platform developed by Chatfuel, which helps consumers search for tours and activities with a highly personalized user experience. Likewise, voice-based chat is also growing with artificial intelligence platforms like Amazon's Alexa changing the rules of customer and brand engagement.

Say hello to the "3D Internet." New augmented reality (AR) platforms such as Google Lens are creating new ways to connect brands and visitors by providing an added layer of content customized to the individual. Also, the rise of esports and other immersive experiences that use AR is changing the face of entertainment, events, dining and retail.

Another huge disruption, autonomous systems such as driverless vehicles and robots will have a profound impact on automating many touch points throughout the travel experience, which will also provide some solutions for workforce challenges. Autonomous vehicles (AV) are no longer science fiction with driverless shuttles and taxis riding on public roads from Las Vegas to Oslo.

Building on the AV evolution, many companies and cities are developing on-demand multimodal mobility frameworks to get people out of their cars. This will dramatically change how both locals and visitors navigate destinations in the future.





## TODAY'S CONSUMER

From an overall consumer standpoint, the modern traveler is seeking a much more customized and unique experience that connects them with local like-minded communities.

One of the biggest trends to answer that demand relates to how more destinations are developing visitor dispersal strategies to do three things: Deliver on the demand for more authentic experiences, drive year-round economic development to underserved communities, and mitigate crowding in high-compression areas. Culinary (including craft beer), cultural, wellness and adventure travel are the four primary themes that destinations are leveraging to connect more visitors with more small businesses in the region.

“Maker culture” has become a new buzzword, relating to small and independent entrepreneurs who provide a unique, hyperlocal visitor experience in their neighborhoods. Many destinations are now promoting their maker communities to help define and differentiate their regional identity. Portland, for example, sees its community of creators as the next differentiator for the destination, and Travel Portland specifically emphasizes makers and the DIY spirit in its marketing, ranging from local distilleries to fashion designers.

Transformational travel and now transformative placemaking are growing trends in tourism globally. These themes resonate with travelers who are looking for innovative experiences and communities that

provide an opportunity for personal and professional enrichment, however that might be defined. The Transformational Travel Council, for example, works with destinations and tour operators to develop experiences that help clients identify and track their personal goals. Destination Canada and the Singapore Tourism Board are leading this trend.

The sharing economy is a global juggernaut, continuing to grow year-over-year based on a variety of factors related to value, personalization, discovery and empowerment. The market is still in its infancy, considering that a hospitality giant like Marriott announced it's developing a whole new short-term rental (STR) platform in April 2019.

Notably, baby boomers and luxury consumers are two of the consumer segments showing the strongest growth in overall spending and adoption, and the STR market is rapidly expanding to cater to those segments with new brands emerging in the room-sharing marketplace, such as Sonder, The Guild and Locale.

Locally, as in many similar mountain and resort destinations, the rent-by-owner (RBO) market is rapidly expanding lodging revenues and number of guests faster than the regulatory process anticipated. While the RBO segment supports the economic and the authentic experience parts of the tourism equation, there are significant local quality of life impacts such as noise, trash, commercial encroachment in residential neighborhoods and loss of workforce housing that require solutions.

# Breckenridge Today

## The Little Town That Could

Breckenridge is a very special and unique community with a small town feel offering world-class amenities and attractions. The scope of those experiences currently available to locals go far beyond what is typically available in most other communities of this size.

The Town of Breckenridge has been extremely proactive in improving the destination and quality of life for residents. These are a few examples of how the Town Council is investing in the future of the community.



### HISTORIC MAIN STREET

Breckenridge has a beautiful Victorian Main Street and one of the largest historic districts in Colorado. The Breckenridge Heritage Alliance is charged with protecting the 21 historic landmarks and significant buildings and artifacts throughout town and surrounding area.



### BRECKENRIDGE ARTS DISTRICT

The Town's epicenter of creativity where studios, galleries, performance spaces, historic landmarks and public art come together to animate and populate a vibrant cultural corridor in downtown Breckenridge.

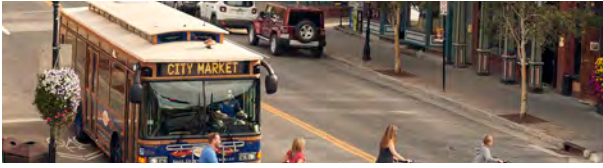


### RECREATION

The Breckenridge Recreation Center has recently undergone an impressive \$17.2 million renovation. The Stephen C. West Ice Arena provides a popular skating and hockey venue scheduled for more than \$2 million in facility improvements beginning in 2019. The Town maintains a portion of a 40-mile paved recreation path connecting Summit and Eagle County, and more than 60 miles of hiking and mountain biking trails within the town limits. Much of this trail system was acquired through the Town's Open Space Program.

### Breckenridge Ski Resort

Breckenridge Ski Resort delivers a world-class ski experience with one of the longest ski seasons in the U.S. and an extensive trail system covering five mountain peaks. For 2019, Vail Resorts reports it is investing \$7 million in capital improvements at the base of Peak 8.



## **PUBLIC TRANSIT**

The Town offers free public transportation, including a Main Street Trolley system. The Free Ride program ridership surpassed 1.2 million in 2018, a staggering total for such a small town. The Town and County are investing in new electric buses. The Ski Resort maintains a fleet of busses as well as the Gondola connecting town and mountain. These Ski Resort transit services are free to the public.



## **PARKING & MOBILITY**

The Town established a Parking & Transit Task Force to address key issues, and more than \$6.5 million in investments have been targeted for infrastructure improvements. Paid parking, more public transit, new lighting, and walkability improvements are the initial accomplishments. The Town and Vail Resorts are working toward an agreement to partner in building and managing a highly anticipated parking garage on resort-owned land in the town core.



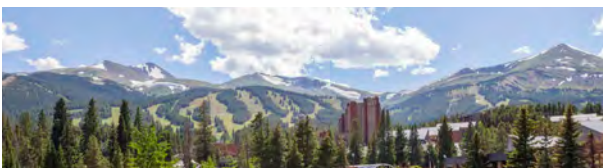
## **SMART CITY**

In 2018, Breckenridge Town Council approved investing \$8 million in fiber infrastructure that will position Breckenridge for the future of digital communications. The project is designed to meet the connectivity needs of area homes and businesses well into the foreseeable future.



## **HOUSING**

The Town continues committing significant funding to develop attainable housing for local residents and workers, over \$35 million in 2017-18. The Town continues evaluating other strategies, including micro units, rental housing and others to address this critical issue.



## **ENVIRONMENT**

Since its inception, the Town's Open Space and Trails program has invested over \$22 million in acquiring and protecting 4,700 acres of land from development. The Town recently voted to adopt the Summit Community Climate Action Plan with a community goal to reduce emissions countywide 80% by 2050. A new Sustainability Coordinator position was recently added to the Town's Community Development Department.



## **CHILDCARE**

The Town offers subsidized childcare programs in four non-profit partner facilities providing Early Education. More than 250 children of local working families are currently enrolled in childcare programs at various partner schools in Breckenridge.

# Approach

**This Destination Management Plan (DMP) is a 10-year strategy that includes a vision, goals and strategic initiatives. It is an ongoing platform that will be used to cooperatively fulfill the vision for Breckenridge and be the foundation for future community engagement and business success.**

This DMP is based on extensive research, notably the Community Expectations Survey, conducted by the Breckenridge Tourism Office, which collected impassioned feedback from more than 1,100+ residents. Input from tourism industry leaders, elected officials, residents, visitors and clients

informed the development of all of the strategic goals and initiatives. The DMP also considers key insights in other local planning initiatives that are underway or were recently completed.

The Breckenridge Tourism Office is poised to have a role in coordinating the next phase of the Destination Management Plan (DMP). Because this is a strategy with ideas that transcend the tourism industry, initiative planning and implementation will be shared responsibilities among the tourism industry, Town of Breckenridge and various organizations within Summit County.

The effective engagement and alignment of all stakeholders is the key element in the journey of successful destination management. It is a journey the people of Breckenridge will take together, and one that will benefit residents, businesses and visitors for years to come.



# Timeline



# Stakeholder and Community Feedback



**35+**  
1-on-1 Interviews

**3**  
Town Halls



**13**  
Focus Groups

**250+**  
Engagements

The 12-month process to develop the Breckenridge Destination Management Plan (DMP) was anchored in a robust series of community engagement experiences to ensure that key stakeholders and residents were aligned around a collective vision for their future.

Community members from around Breckenridge shared their views on the opportunities and challenges in the local visitor economy in a variety of formats including: 35+ one-on-one interviews, 13 focus groups with various industry and community segments, and three town halls with a wide cross-section of participants.

All together, there were more than 250 individual engagements, leading to a broad coalition of agreed-upon priorities and strategies between the Town of Breckenridge, Breckenridge Tourism Office, and local people who make Breckenridge such a dynamic destination.

Many residents, who were eager to contribute to this process, shared a lot of strong opinions and creative ideas about quality of life in Breckenridge. The following page shows where there was significant consensus relating to opportunities and challenges, which ultimately determined the four strategic goals in this Destination Management Plan (DMP).



*Key stakeholders and local community members in Breckenridge were aligned around the below opportunities and challenges impacting quality of life for residents and quality of place for visitors. The many community engagements ensured a transparent process that delivered a cohesive vision for the future.*

## OPPORTUNITIES

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### THE DESTINATION EXPERIENCE

Continue to diversify the off-season destination experience

Increase culinary and cultural experiences

Further develop new communities such as Airport Road and Block 11

Create initiatives to disperse visitors throughout the community

### SUSTAINABILITY & INNOVATION

Invest in technology and intellectual capital to diversify economy, support local business, and connect the community.

Continue to develop sustainability initiatives with residents and visitors.

Experiment with modern co-living and micro-housing design

Continue to support and grow the local non-profit community

### MODERN MOBILITY & INFRASTRUCTURE

Expand transportation networks for people who work in Breckenridge but live remotely in neighboring towns

Develop incentives to convert aging condo stock into workforce housing

Explore opportunities in autonomous systems to increase efficiencies

## CHALLENGES

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### ALIGNING VISION & PRIORITIES

More collaboration needed between the public and private sectors

Diversity of views among stakeholders and residents regarding the Town's future

Diverse views among community regarding how to adapt to growth

### WORKFORCE, HOUSING & HEALTH CARE

Solving workforce housing and development issues is a priority

Lack of educational, health and child care facilities and services

Young people not confident about ability to raise a family in Breckenridge due to rising costs

Average age of residents is rising

### DESTINATION MANAGEMENT

Event fatigue with some residents

Need deeper research data showing impact of short term rental market

Infrastructure not keeping up with growth

Parking and traffic congestion have reached a critical point





# Strategic Goals & Initiatives

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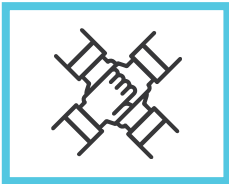
For Breckenridge to realize its bold vision for the future, the public and private sectors must work in unison to achieve the four major goals and strategic initiatives on the following pages. Each goal is the result of an extensive and transparent community engagement process, bringing together the Town of Breckenridge, Breckenridge Tourism Office, key stakeholders and local residents.

The goals are aligned around elevating the long-term viability of the local economy, maintaining the community's authentic character, protecting the environment, and improving the overall destination experience for both visitors and residents.



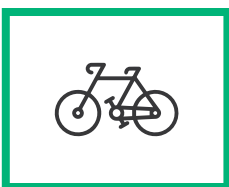
## **Deliver a balanced year-round economy driven by destination tourism by 2024**

Expand initiatives to increase overnight visitor dispersal, spend, and length of stay across a wider breadth of calendar months and the destination itself to ensure a more consistent and diversified visitor economy.



## **Elevate and fiercely protect Breckenridge's authentic character and brand — our hometown feel and friendly atmosphere**

Ensure that locals and visitors are always aware that the most valuable asset for Breckenridge is the authenticity of the Town and the character of the people. Much of that is based on the fact that a high percentage of people who work in Breckenridge live within the town limits.



## **More boots and bikes, less cars**

Develop a comprehensive series of initiatives to get people out of their cars as much as possible to maintain the outdoor quality of life that both locals and visitors are craving, as well as minimize the environmental impacts in the region. The goal is 10% fewer vehicles in the next 3-5 years.



## **Establish Breckenridge at the leading edge in mountain environmental stewardship and sustainable practices**

Expand the dialogue among locals and visitors about how to protect the fragility of the mountain landscape in the face of increasing challenges. Execute the Summit Community Climate Action Plan, promote Colorado-adopted Leave No Trace messaging, and develop a range of new responsible tourism programs.



## Deliver a balanced year-round economy driven by destination tourism by 2024

The volume of car traffic and day visitors arriving in Breckenridge is growing every year, and based on current population projections in the Front Range and Colorado Springs, that is only going to continue to increase. Furthermore, visitor volumes are surging during special events and holidays at higher levels every year, most often during winter season, causing increasing dissonance among the local community.

It is imperative that the Town of Breckenridge and Breckenridge Tourism Office collaborate to protect the year-round economy, expand the visitor experience both seasonally and geographically, and increase out-of-state overnight visitation in order to provide a more consistent and lucrative economic pipeline for local businesses and workforce.

Most tourism destinations worldwide are focusing on this due to the rise in travel globally. They're striving to create a more sustainable visitor economy by developing and diversifying the destination experience to drive visitor dispersal and more equitable economic development.

The most successful methods to accomplish that revolve around enhancing local culinary, cultural, wellness and active tourism, often with an integrated educational delivery connecting two or more of those themes. Those verticals also spur higher visitor spend, length of stay, and loyalty, and they're effective catalysts for accelerating off-season demand.

**[TOB leads; BTO executes]**

### Strategic Initiatives

- ➔ **Ensure long-term economic viability irrespective of climate conditions by diversifying and amplifying arts, historic, culinary products and experiences on a year-round basis.**  
*[BTO messaging; BCA/Arts]*
- ➔ **Attract and retain entry and mid-level workforce**  
*[Partnership: BTO community services; TOB HR, Breckenridge Chamber; HR Leader group]*
- ➔ **Continue filling need periods to de-emphasize peaks**
  - **Metrics: sales tax revenue, occupancy, visitor mix ratios – more level across 12 months**
- ➔ **Provide reliable and competitive broadband service to citizens, businesses and vendors**  
*[TOB Fiber9600 project]*

## GOAL 02

### Elevate and fiercely protect Breckenridge's authentic character and brand — our hometown feel and friendly atmosphere

The identity of Breckenridge is rooted in the proud spirit of community among locals and the authentic character of the destination. That personality is baked into both the destination brand and visitor experience, which helps differentiate Breckenridge from its competitors.

The Breckenridge community, however, has been clear and unified about how they feel that authentic character is being undermined due to a variety of factors. For example, there are too many cars overwhelming the Main Street appeal during various

months. The growth of short-term vacation rentals is taking long-term rental housing for local workforce off the market, forcing more employees to move outside Town limits. Among parents, more of them are saying that the rising costs of housing, health care and childcare is making it challenging to raise kids in Breckenridge. And lastly, many residents feel too many events are produced without local buy-in, which for them, chips away at the local sense of place and community spirit.

*[TOB leads]*

#### Strategic Initiatives

- ➔ **Protect cultural heritage and National Historic Designation**  
*[TOB - Community Development]*
- ➔ **Develop more robust peak day management strategy:**
  - Augment transit services (public and private); increase messaging regarding not using cars in town; reconsider parking fee structure for peak season *[TOB - Parking & Transportation]*
  - Define lodging and traffic capacity thresholds with regard to infrastructure constraints *[TOB]*
- ➔ **Create more town hall-type events focusing on topical issues for residents, especially targeting young entrepreneurs**  
*[TOB - Marketing & Communications]*
- ➔ **Develop more family-oriented programming and events**  
*[BTO/Breckenridge Events Committee]*
- ➔ **Define a "to be determined" percentage (or other metric) of the Breckenridge workforce that lives in Town, and ensure there is a diversity of housing types and prices for locals (sufficient to preserve the sense of community and support the local economy)**  
*[TOB - Community Development/Housing]*
- ➔ **Ensure access to affordable quality childcare for local working families**  
*[TOB - Community Development/Childcare]*
- ➔ **Enhance and develop avenues for citizens to engage with the Town of Breckenridge so they are informed, feel heard, and become involved and collaborate to find solutions**  
*[TOB leads; partnership with BTO]*



## GOAL 03

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### More boots and bikes, less cars

The growing volume of car traffic in Breckenridge diminishes quality of life for locals and the overall destination experience for visitors. The new parking structure will ease some of that compression, but there also needs to be more public and private initiatives to inspire both locals and visitors to walk, bike and use public transportation.

The Town of Breckenridge will continue to invest in modern transportation infrastructure, including a new fleet of electric busses to lessen environmental impacts, elevate the rider experience, and show the Town's commitment to sustainable, responsible

tourism. To drive adoption, the community suggests that these investments should be supported with a comprehensive communications plan targeting locals and visitors that specifically explains how and where to access public transportation.

The Town will also add new wayfinding and improve existing signage to direct and disperse visitors more effectively, along with improved lighting to help pedestrians navigate a greater number of streets during more hours.

***[TOB - Parking & Transportation]***

#### Strategic Initiatives

- ➔ **Improve pedestrian access, lighting, safety and use of crosswalks (Nelson/Nygaard)**
- ➔ **Increase public transportation use and busses**
- ➔ **Reduce visitor and resident car traffic by 10% (Nelson/Nygaard)**
- ➔ **Develop and implement a parking and multi-modal transportation plan that preserves the character of the community**



# GOAL 04

## Establish Breckenridge at the leading edge in mountain environmental stewardship and sustainable practices

Breckenridge has an opportunity to elevate its position as a destination for thought leadership and activation around environmental sustainability. Doing so communicates to current and prospective visitors that the local community is committed to protecting the environmental ecosystem in the face of climate change, population growth, and irresponsible mass-consumption. This has a halo effect on the destination brand, especially for younger visitor segments who make purchase decisions based on environmental stewardship in greater numbers than previous generations.

Defining exactly how the Town of Breckenridge is approaching this goal is critical moving forward. The Town Council and Breckenridge Tourism Office will expand their messaging about the importance of sustainability and Leave No Trace, and elevate

support for industry partners and community organizations that are leading sustainability efforts to inspire and educate both locals and visitors.

The public and private sectors in Breckenridge should also consider developing an event dedicated to responsible tourism and enhanced mountain livability. Such an event could align with similar sustainable tourism events worldwide, where destination leaders in other fragile destinations are actively sharing knowledge on best practices. Lastly, there are numerous sustainable destination certifications, including those provided by Biosphere and the Global Sustainable Tourism Council. Their criteria can help inform more resilient destination management.

***[TOB - Community Development & Sustainability Team; partner w/ BTO]***

### Strategic Initiatives

- ➔ **Develop cutting edge messaging/programs around responsible tourism and responsible citizenry, extending beyond environmental issues**  
*[TOB - Community Development/Sustainability, TOB - Marketing & Communication, BTO]*
- ➔ **Improve current recycling programs, usage and education**  
*[TOB - Community Development/Sustainability, TOB - Public Works]*
- ➔ **All major community events are zero waste by 2024**  
*[TOB - Community Development/Sustainability/BTO-SEPA/BEC]*
- ➔ **Identify and earn appropriate national sustainability certification (LEED, etc.)**  
*[TOB - Community Development/Sustainability]*
- ➔ **Implement action that further the Town's efforts towards suitability and reduction of our community's carbon footprint**  
*[TOB - Community Development/Sustainability]*
  - Pursue additional energy efficiency requirement for new construction *[TOB - Community Development/Sustainability/Housing]*



# Key Takeaways

Following the extensive community engagement and in-depth analysis during the 12-month development of the Destination Management Plan (DMP), seven key takeaways emerged about the future of Breckenridge's visitor economy.



## STRONG TOURISM BASE

Breckenridge has a strong tourism base that will help ensure the Town's long-term economic sustainability. However, the impacts of growth need to be managed more responsibly than ever moving forward due to the anticipated higher volumes of vehicular traffic coming from the Front Range and Colorado Springs.



## PROACTIVE STEWARDSHIP

Breckenridge has been proactive in terms of how it has stewarded responsible growth and invested heavily in infrastructure and housing that contributes to the local quality of life.



## TOWN MOBILITY

Parking has been a major point of contention over the years. Now that a new parking structure is in development, there is much to consider in terms of traffic flow, wayfinding, visitor dispersal, walkability, and other points in the Nelson Nygard recommendations.

# NEIGHBORHOOD DEVELOPMENT

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The development of new neighborhoods in Block 11 and Airport Road could help disperse visitors and diversify the Breckenridge experience for both locals and visitors.



# EVENTS & ACTIVITIES

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There is mixed opinion regarding more/new events and family oriented activities. Some residents want to develop the off-season with more community-led events, but some say they want their off-season back.



# ENVIRONMENTAL SUSTAINABILITY

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The Town has an opportunity to develop a stronger leadership position in environmental sustainability and innovation across all sectors. That was a high priority especially among the younger generations of locals who represent the future of Breckenridge.



# QUALITY OF LIFE DEFINED

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Working definitions of “balanced economy” and “quality of life” need to be developed collectively among the community for the purpose of this Destination Management Plan (DMP).



# **APPENDIX A**

## **Review of Focus Group Consultations**



add focus group  
data

# **APPENDIX B**

## **Community Suggestions for Strategic Initiatives**

## 1. Prioritize Three Pillars of Sustainability

- Develop a cohesive tourism framework that positions sustainability at the center of all policy making related to local development, strategy and communications
- Economic Sustainability: Increase business opportunities for SMEs across sectors, including sports, recreation, culture, entertainment, events, culinary, retail, etc.
- Social Sustainability: Maintain Breckenridge's unique cultural DNA embracing an authentic sense of community and place
- Environmental Sustainability: Enhance initiatives to protect and measure the health of the local environment that's transparent to the public
- Develop more comprehensive educational programs relating to sustainability for both locals and visitors
- Create a central online hub for advice about how to best experience the mountain and trail ecosystem
- Create ambassador system to manage trailheads and develop messaging
- Develop and promote more "zero-waste events"
- Develop a sustainability and innovation-themed conference/festival promoting sustainable tourism, development and mountain living

## 2. Prioritize Workforce Housing, Health Care & Development

- Better understand short term rental data and ownership landscape to determine the overall impact on local housing stock
- Prioritize and expand the development of a childcare fund, and align public-private sector awareness of childcare as a critical need
- Increase funding and develop for more after-school programs
- Leverage the strong non-profit culture in Breckenridge to develop more initiatives that benefit the local community
- Develop incentives to convert aging condo stock into workforce housing
- Develop incentives for property owners to provide long-term rentals and limit total annual days for short term rentals
- Build more dorm-style, co-living, and micro-housing units for permanent and seasonal workforce
- Develop work fairs to attract workforce
- Ensure all restaurants (new and established) are part of the Restaurants Association to address workforce needs more collectively

## 3. Enhance Regional Collaboration & Community Engagement

- Protect, preserve and promote Breckenridge's down-to-earth, family-friendly, community-centric, and authentic spirit in all community messaging and events
- Hire a 3rd party mediator to build greater consensus between the Town and resort on the most important economic and social issues facing the long-term viability of Breckenridge
- Create a "Locals Card" for events, restaurants and attractions and expand collaboration between cultural and business owners across County to better engage locals
- Create more Town Hall-style gathering for all locals
- Ensure that young families can afford to live and work in Breckenridge by giving them a platform to co-create solution with local government and industry
- Develop more sustainable tourism and development classes at College to support local industry, workforce development, and community engagement around the future of Breckenridge
- Develop internal advocacy and communications strategy to educate and provide local stakeholders and residents with a more holistic overview of facts and figures relating to the visitor economy and BTO efforts. Will help mitigate anti-tourism sentiment.
- Crowdfund needs and opportunities to create better local amenities, such as grocery store
- Develop networks and gathering events for young entrepreneurs to support their growth in business and government leadership
- Create an umbrella organization that manages the arts & culture within the Town

#### **4. Improve Local and Regional Mobility**

- Improve road and transportation infrastructure to increase mobility for people who work in Breckenridge but live outside the town
- Develop public transportation subsidies and incentives for remote workers
- Address access from Denver including higher adoption of environmentally-friendly shuttles
- Explore options for tiered pricing of vehicles entering Breckenridge, and increase parking fee structure
- Develop a long-term sustainability plan for mixed-use parking structure
- Explore long-term opportunities in autonomous vehicles and systems to increase efficiencies across all levels of the destination experience for both visitors and locals
- Pedestrianize Main Street
- Develop PSA for visitors promoting: “Get out of your car” and “Sustainability is cool.”
- Develop public education showing how and where to use alternative transportation
- Develop better online/offline wayfinding, infrastructure such as better lighting, and public messaging to drive visitor dispersal
- Incentive use of higher-occupancy vehicles

#### **5. Diversify Events, Experiences & Neighborhoods**

- Develop events that offer more experiences relevant for locals and families
- Continue to diversify the off-season visitor experience in creative ways to provide a more consistent flow of visitors, tourism spend, and taxes year-round.
- Expand music and events along Riverwalk, especially for younger audiences
- Diversify the year-round destination experience, especially with more emphasis on culinary and cultural facilities and activities. This will help drive higher average visitor spend, plus higher visitor loyalty and customer lifetime value, and help position the destination brand to a more diverse audience.
- Develop food markets and festivals to support local vendors/growers that cater to locals
- Develop more events combining food, beverage, arts, music, culture, sustainability and LGBT travel themes with national brand sponsors and philanthropic components
- Attract more upscale hospitality brands to elevate destination brand among travel trade, and attract more corporate meetings and retreats mid-week and off-season
- Develop Airport Road more intentionally into its own unique neighborhood that embraces a creative and progressive mindset. The goal is to disperse visitors beyond Main Street and provide a new community experience for locals.

#### **6. Invest in Modern Infrastructure**

- Build a new midsize performing arts center for larger cultural events
- Build an indoor kids and teens facility and develop more children-themed day/night activities and venues for year-round use.
- Attract higher-end lodging to grow corporate meetings and retreats business off-season and mid-week
- Build a solar-powered gondola to connect Airport Road and Downtown
- Expand infrastructure for all-season e-bikes
- Develop strategies to leverage expanded broadband background to support the growth of locals SMEs across sectors
- Develop online portal to facilitate better collaboration with different communities on ensuring resources (Police, Medical Services, Fire) are measured and not over-taxed

***"My goal for the future of Breckenridge is that my daughter can continue to live and thrive in the community she grew up in."***

— Breckenridge resident during Management Plan consultation

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## **PROJECT TEAM**

**The Staff and Leadership of the Breckenridge Tourism Office:**

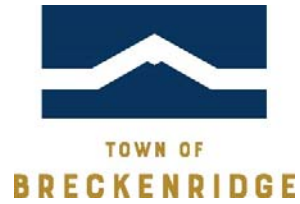
**Lucy Kay  
Sarah Wetmore  
Brett Howard  
Bill Wishowski**

**with:**

**InterVISTAS Consulting and  
NEXTFactor Enterprises Inc.**

**Paul Ouimet  
Greg Oates  
Bruce MacMillan  
Jordan Young  
Cheryll Girard  
Brooks Lai**

# **ADD BTO LOGO & INFO**



# Memo

To: Breckenridge Town Council Members  
From: Mark Johnston, Public Works Assistant Director  
Date: 5/8/2019  
Subject: National Public Works Week Proclamation

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Town staff has prepared a proclamation to help celebrate National Public Works Week. The Town of Breckenridge joins many states, provinces, cities/towns, and municipalities from across North America to come together to celebrate with official government proclamations and resolutions in honor of the contribution public works makes to their communities: in planning, building, managing, and operating the heart of our local communities and in building the quality of life. Please join us in celebrating the 2019 National Public Works week from May 19<sup>th</sup> to 25<sup>th</sup>.



National Public Works Week Proclamation

May 19 – 25, 2019

“It Starts Here”

WHEREAS, public works professionals focus on infrastructure, facilities, and services that are of vital importance to sustainable and resilient communities and to the public health, high quality of life, and well-being of the people of the Town of Breckenridge; and,

WHEREAS, these infrastructure, facilities, and services could not be provided without the dedicated efforts of public works professionals, who are engineers, managers, and employees at all levels of government and the private sector, who are responsible for rebuilding, improving, and protecting our nation’s transportation, water supply, water treatment, public buildings, and other structures and facilities essential for our citizens; and,

WHEREAS, it is in the public interest for the citizens, civic leaders, and children in the Town of Breckenridge to gain knowledge of and to maintain a progressive interest and understanding of the importance of public works and public works programs in their respective communities; and,

WHEREAS, the year 2019 marks the 59<sup>th</sup> annual National Public Works Week sponsored by the American Public Works Association be it now,

RESOLVED, I, Eric Mamula, Mayor of the Town of Breckenridge, do hereby designate the week May 19 – 25, 2019 as National Public Works Week; I urge all citizens to join with representatives of the American Public Works Association and government agencies in activities, events, and ceremonies designed to pay tribute to our public works professionals, engineers, managers, and employees and to recognize the substantial contributions they make to protecting our national health, safety, and quality of life.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the State (to be affixed),

DONE at the Town of Breckenridge, Colorado this 14th day of May 2019.





# Memo

To: Breckenridge Town Council Members  
From: Peter Grosshuesch, Director of Community Development  
Date: May 8, 2019  
Subject: Planning Commission Decisions of the May 7, 2019 Meeting

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***DECISIONS FROM THE PLANNING COMMISSION MEETING, May 7, 2019:***

**CLASS A APPLICATIONS:** None.

**CLASS B APPLICATIONS:** Preliminary hearing only.

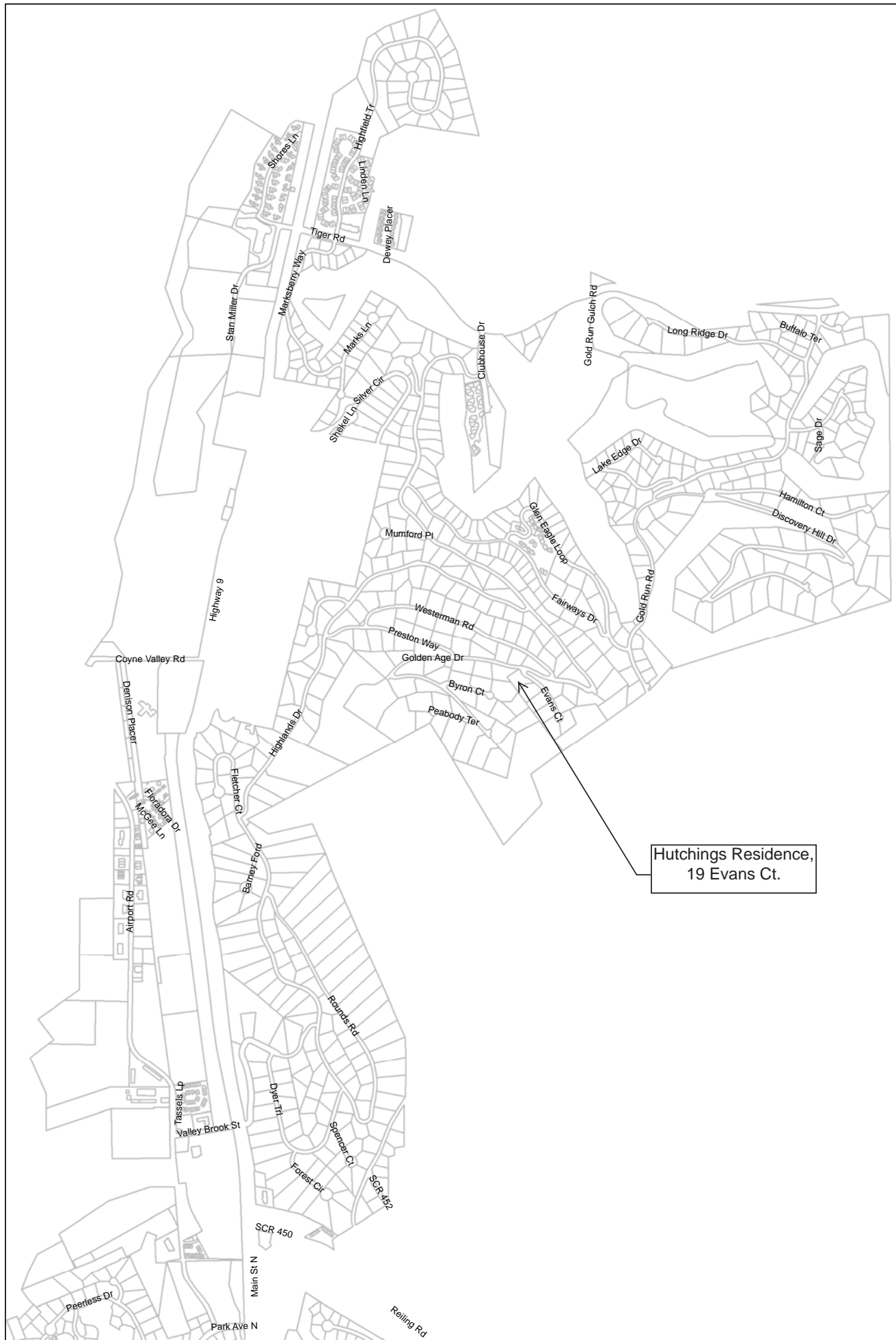
**CLASS C APPLICATIONS:**

1. Hutchings Residence, 19 Evans Ct, PL-2019-0089.

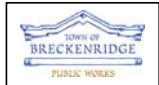
A proposal to construct a new 3,950 sq. ft. single family residence with 3 bedrooms and 3.5 bathrooms, and a FAR of 1:12.36. *Approved.*

**TOWN PROJECT HEARINGS:** None.

**OTHER:** None.



Hutchings Residence,  
19 Evans Ct.





Cavanaugh Residence,  
208 N. Ridge



NOT TO SCALE

**Breckenridge South**



## PLANNING COMMISSION MEETING

The meeting was called to order at 5:32 p.m. by Vice Chair Gerard.

### ROLL CALL

Christie Mathews-Leidal  
Mike Giller - absent  
Dan Schroder

Jim Lamb  
Steve Gerard  
Lowell Moore

Ron Schuman

### APPROVAL OF MINUTES

With no changes, the April 10, 2019 Planning Commission Minutes were approved.

### APPROVAL OF AGENDA

With no changes, the May 7, 2019 Planning Commission Agenda was approved.

### PUBLIC COMMENT ON HISTORIC PRESERVATION ISSUES:

- No comments.

### CONSENT CALENDAR:

1. Hutchings Residence (JL), 19 Evans Court, PL-2019-0089

With no call-ups, the Consent Calendar was approved as presented.

### PRELIMINARY HEARINGS:

1. Cavanaugh Residence (CK), 305 N. French Street, PL-2019-0067

Mr. Kulick presented a proposal to construct a new 1,275 sq. ft. residence on North Ridge Street with 2 bedrooms, 2 bathrooms, and a 3 car subterranean garage. The applicant, Michael Cavanaugh, was present; along with the Architect, Mark Provino. The following specific questions were asked of the Commission:

1. Landscaping – Staff finds the proposed landscaping plan does not provide adequate street trees along French Street. Does the Commission agree?
2. Perceived Scale and Height– Staff finds the perceived scale in compliance with Priority Design Standards 80, 86, 138, 140 and 144. Does the Commission agree?
3. Windows and Doors - Staff believes the windows and doors comply with Design Standards 95, 96 and 148. Does the Commission support this recommendation?
4. Does the Commission agree with the preliminary point analysis?

### *Commissioner Questions / Comments:*

Mr. Schuman: Do all three owners (of properties associated with the Development Agreement) qualify for a positive point for shared access? (Mr. Kulick: I'm not sure about the previous point allocations, but there is precedent for each subsequent property taking access from a common driveway to receive a positive point.)

Mr. Lamb: This project is part of a development agreement that was approved by Council. What I recall was a lot of discussion around the parking and the concrete block. Why are we giving them a positive point for something that was in the development agreement to begin with? (Mr. Kulick: Council weighed the benefit of restoring the Brown Hotel to a point in time and restoring the outbuilding. The Council felt the public benefit for the historic preservation was a fair trade to reduce the amount of required parking for the Brown Hotel.) It just strikes me as strange. (Mr. Kulick: The required amount of parking vs. the access are separate things, and the Streets Department desires to reduce the number of curb

cuts throughout Town to ease circulation and make snow plowing more efficient. Without a shared driveway, each property would have had its own curb cut. Assigning one positive point to each property helps discourage additional curb cuts.) (Ms. Puester: Typically, if the points aren't specifically addressed in the development agreement we follow the code.)

Mr. Schuman: I recall there being a heated walk but I don't see that in the site plan. (Mr. Kulick: I'm not aware but maybe the applicant can address that.)

Ms. Leidal: Are we under the old or new code? (Mr. Kulick: Old code, prior to the recently adopted code amendments.)

Mr. Schroder: The functionality of parking, it seems like a Rubik's cube to make it work. Maybe it's a question for the applicant to clarify. (Mr. Kulick: The design is three parking spaces, and essentially, like tandem parking where you have to move one to get to the other. But by code this is one more space than required. We do have another house that uses this system on French Street. It does take some additional time.) It just takes a little bit of planning.

Mark Provino, Architect, Presented:

Thank you to the staff and to the Planning Commission for hearing this application. I have a couple things to state and then I can answer questions. Regarding the drive access and parking off French Street, as was noted, this was established under a previous development agreement. The negative points recommended are because I don't have room to put any more trees. Landscaping should have been addressed previously when the existing parking was approved. I hope the commission understands that burden and finds an exception. I designed the adjacent house for the Kelleys. My recollection is we got positive points for landscaping on that application. I think that given the limited amount of space I have to work with, the additional landscaping is above and beyond and perhaps we can negotiate a positive point on that. In terms of parking, the vehicle will be driven onto a platform, which lowers to the basement slab, and auto dollies will roll it sideways. It's not a daily thing moving the cars; but it's a car collector scenario.

Mr. Schuman: What about the heated sidewalk? (Mr. Provino: The sidewalk was approved under the Brown Hotel application. Lot 7B also has a heated sidewalk I believe but is not part of this application.) Mr. Schuman: It should be part of this application if it's on the property, it equals negative points. (Mr. Provino: It was in the Brown's development permit and points were assessed during that review. We can note it on the future plans.)

Mr. Gerard: Are we in a situation where the points come into play if they're not in the agreement? (Ms. Puester: We wouldn't give this applicant negative points for something that the other owner has already received a permit for. Not sure if the Brown received the points or not for heating, we can check that but either way, assuming it was permitted since it exists today, it is an estoppel issue if not). Mr. Gerard: I'm saying, if we're assessing points under one scenario, don't we need to do it for all? (Mr. Kulick: It's existing under a separate permit, not proposed, so they can't get negative points twice.) (Ms. Puester: If the town already approved it, we do not ding people later again. Will report back if it had a legal permit.)

Mr. Schuman: I know it was heated because I've plowed it before so I was curious.

The hearing was opened for public comment. No comments and the hearing was closed.

*Commissioner Questions / Comments:*

Mr. Schuman: Question 1. Landscaping, I agree. Question 2. I agree with scale and height. Question 3. I believe the windows and doors comply. Question 4. I agree with the point analysis.

Mr. Lamb: Question 1. With the landscaping, when you're packing product on a certain size lot, you run out of room. The negative points are a result of that. Question 2. Scale is good, it fits with the buildings on each side. Question 3. Windows and doors are fine. Question 4. I'm still struggling for positive one point for something that was in development agreement. It's off to a good start. I think it will get to positive points.

- Mr. Moore: I agree with everything said. Question 1. Landscaping, you can only do what you can do so I agree with staff. Question 2. The scale fits the standards. I really like the renderings and they fit the standards very nicely. Question 3. Windows and doors comply with standards. Question 4. With point analysis, I do agree at this time but I would double check the negative two points recommended for landscaping if there is no way to get positive.
- Ms. Leidal: Good job, that's a tough site. Question 1. I agree on number one with staff, it's a trade off. Question 2. The perceived scale includes height, and policy 138 talks about story height and this is a full two stories. The garage is lower, but I see it's not meeting the policy. Question 3. Windows and doors I agree. Question 4. The point analysis, I share Jim, Ron and Steve's question about the development agreement and I don't know how the points should be assessed. Can you let us know what's been done in the past? (Mr. Kulick: We'll research it more and include our findings in the next staff report.)
- Mr. Schroder: Question 1. Landscaping, I'm not in support of negative two points. The missing thing is every 15 feet. All of the previous things don't let the applicant do it, so I recommend a variance so points could be avoided. This is preliminary, so there's still time to work these things out. Question 2. Scale, it's interesting that the code says 1.5 stories but the building next door is taller. Perceived scale fits so I support. Question 3. I also support the window and door arrangement. Question 4. I don't agree with the point analysis about the landscaping on French Street.
- Mr. Gerard: I think this is a clever project in a difficult space. I think there's a real issue of balancing out the development project. When you look at what's already been approved with parking, there's no place for landscaping. I don't know if people didn't think of it before. Question 1. I agree with Dan that this applicant shouldn't be dinged two points when it's physically impossible. By the same token, you don't get the positive point for the shared drive. We have to be consistent if we give a pass on landscaping. Question 2. Height, it's a story and a half, but in context it does fit and the perceived scale is acceptable. If you could get positive points for landscaping it's hard to tell. I think there's ways to work some additional points into this. I think the project is a good one. I wouldn't want to be down there jacking up the cars and sliding them, but that's an interesting idea.
- Ms. Puester: Do we want to have more discussion on the points analysis?
- Mr. Lamb: What I'm hearing from Steve and Dan is that going back to the development agreement, I could hop on the bandwagon that you don't ding for landscaping.
- Mr. Schuman: I disagree, it could have been contemplated in the development agreement and it wasn't. I think negative two are warranted.
- Mr. Moore: I don't think the negative points are warranted under the circumstances. The positive point should stay because they could have easily come in and tried to do another type of weird access.
- Ms. Puester: We may want to come up with special findings since this is unique.
- Ms. Puester: Does anyone besides Christie have concerns with the façade height?
- Mr. Schuman: I agree with Christie, it looks like two stories. (Mr. Kulick: It's sort of 1.75 stories; it is not a true two stories. A true two stories is 26'.)
- Mr. Schroder: It's a little house, so perception comes into the massing as well. I support that it fits with the neighborhood.
- Mr. Lamb: I think it's pushing the envelope, so it does give the image of a story and a half. It's pushing it, but I can see the 1.75 stories argument; it complies with policy 138.
- Mr. Schuman: I feel that at this point, we've given feedback but we're trying to correct the situation that's been presented to us and not giving it back to the applicant. (Ms. Puester: I'm just trying to get a feeling for yes or no.)
- Mr. Schroder: The original thing that struck me is how do we do three cars. Someone else in the future will own this house, how will they handle the garage? It would have to be approved in the future. Ms. Puester: We have to determine if you think it meets the parking requirement

right now.  
Mr. Gerard: On the next hearing, can you add the dev agreement to the packet? (Mr. Kulick: Yes.)

**OTHER MATTERS:**

1. Town Council Summary (Memo Only)

Ms. Puester: We had another stakeholder group meeting today and are starting to form recommendations. We'll see where we are at the next meeting May 21.

Mr. Truckey: We'll have an update on the 21<sup>st</sup> for the Planning Commission as a work session.

Mr. Gerard: People are starting to think about the average size module being the standard for size of additions. The remaining issue on that is the mass bonus and the building height of additions.

Mr. Schroder: About the eBikes, is that passage of Class 1 eBikes consistent with what the county is doing? (Mr. Truckey: Yes. And we'll change the signage when the County has adopted the changes.)

**ADJOURNMENT:**

The meeting was adjourned at 6:29 pm.

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Steve Gerard, Vice Chair



## 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 13th, 2019	AM and PM Mtgs	Council Chambers	Info Fiber Construction Mtgs
<b>Tuesday, May 14, 2019</b>	<b>3:00pm / 7:00 pm</b>	<b>Town Hall Chambers</b>	<b>First Meeting of the Month</b>
May 18th, 2019	8:00am - 2:00pm	Riverwalk Lawn	County Clean Up Day
May 27th, 2019	10:00am - 11:00am	Valley Brook Cemetery	Memorial Day Commemoration
<b>Tuesday, May 28, 2019</b>	<b>3:00pm / 7:00 pm</b>	<b>Town Hall Chambers</b>	<b>Second Meeting of the Month</b>
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 8th, 2019	8:30am - 2:00pm	Carter Park	RAM Walk
<b>Tuesday, June 11, 2019</b>	<b>3:00pm / 7:00 pm</b>	<b>Town Hall Chambers</b>	<b>First Meeting of the Month</b>
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
<b>Tuesday, June 25, 2019</b>	<b>3:00pm / 7:00 pm</b>	<b>Town Hall Chambers</b>	<b>Second Meeting of the Month</b>
June 26th, 2019	All Day	Throughout Town	Bike To Work Day

### Other Meetings

May 14th, 2019	Board of County Commissioners Meeting	9:00am / 1:30pm
	Troll Committee Meeting	11:30am
	Workforce Housing Committee	Noon
May 20th, 2019	Open Space & Trails Open House & Meeting	5:30pm
	Breckenridge Creative Arts	4:00pm
May 21st, 2019	Board of County Commissioners Meeting	9:00am
	Liquor & Marijuana Licensing Authority	9:00am
	Planning Commission Meeting	5:30pm
May 22nd, 2019	Summit Stage Transit Board Meeting	8:15am
	Summit Combined Housing Authority	9:00am
May 23rd, 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
May 28th, 2019	Board of County Commissioners Meeting	9:00am / 1:30pm





## 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.*

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
June 20th, 2019	CAST	Noon
June 24th, 2019	Open Space & Trails Meeting	5:30pm
June 25th, 2019	Board of County Commissioners Meeting	9:00am
	Planning Commission Meeting	5:30pm
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 3rd, 2019	Police Advisory Committee	7:30am
	Breckenridge Events Committee	9:00am
	I-70 Coalition	10:00am
	Childcare Advisory Committee	3:00pm
<i>July 4th - TBD</i>	Board of County Commissioners Meeting	9:00am
	Planning Commission Meeting	5:30pm
July 11th, 2019	Upper Blue Sanitation District	5:30pm
TBD	Water Task Force Meeting	8:30am