

COUNCIL BILL NO. 9

Series 2023

A BILL FOR AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH GONDOLA LOT PROPERTIES LLC.

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

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

A. That Gondola Lot Properties, LLC owns the following described real property in the Town of Breckenridge that is controlled by the Breckenridge Grand Vacations Gondola Lot Master Plan (PL-2021-0052) (“Master Plan”):

Lot 1, Block 3, Parkway Center

Lot 1A, Block 4, Parkway Center

Lot 1B, Block 4, Parkway Center (“Property”).

B. A proposed development agreement between the Town and the Developer has been prepared, a copy of which is marked Exhibit “A”, attached hereto and incorporated herein by reference (“Development Agreement”).

C. The Town has received a completed application for a Class A Development Permit and all required submittals for a development agreement and Town Council had a preliminary discussion of such application.

D. The approval of the proposed Development Agreement is warranted in light of all relevant circumstances.

E. The procedures to be used to review and approve a development agreement are provided in chapter 9 of title 9 of the municipal code. The requirements of such chapter have substantially been met or waived in connection with the approval of the proposed Development Agreement and the adoption of this ordinance.

Section 2. The Development Agreement between the Town and the Developer is approved, and the Town Manager is authorized, empowered, and directed to execute such agreement for and on behalf of the Town of Breckenridge.

1 **Section 3.** The Development Agreement shall contain a notice in the form provided in
2 section 9-9-13 of the code. In addition, a notice in compliance with the requirements of section
3 9-9-13 of the code shall be published by the town clerk one time in a newspaper of general
4 circulation in the town within fourteen days after the adoption of this ordinance. Such notice
5 shall satisfy the requirement of section 24-68-103, C.R.S.

6 **Section 4.** The Town Council finds, determines, and declares that this ordinance is
7 necessary and proper to provide for the safety, preserve the health, promote the prosperity, and
8 improve the order, comfort, and convenience of the Town of Breckenridge and the inhabitants
9 thereof.

10 **Section 5.** The Town Council finds, determines, and declares that it has the power to
11 adopt this ordinance pursuant to the authority granted to home rule municipalities by Article XX
12 of the Colorado Constitution and the powers contained in the municipal charter.

13 **Section 6.** This ordinance shall be published and become effective as provided by
14 Section 5.9 of the Breckenridge Town Charter.

15 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
16 PUBLISHED IN FULL this 28th day of February, 2023. A Public Hearing shall be held at the
17 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the 14th day of
18 March, 2023, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the
19 Town.

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21 TOWN OF BRECKENRIDGE, a Colorado
22 municipal corporation
23

24
25
26 By: _____
27 Eric S. Mamula, Mayor
28

29 ATTEST:
30
31 _____
32 Helen Cospolich, CMC,
33 Town Clerk
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2 APPROVAL OF THIS DEVELOPMENT AGREEMENT CONSTITUTES A VESTED
3 PROPERTY RIGHT PURSUANT TO ARTICLE 68 OF TITLE 24, COLORADO REVISED
4 STATUTES, AS AMENDED
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6
7 DEVELOPMENT AGREEMENT
8

9 This Development Agreement (“**Agreement**”) is made as of the ____ day of
10 _____, 2023 (“**Effective Date**”) between the TOWN OF BRECKENRIDGE, a
11 Colorado municipal corporation (the “**Town**”) and GONDOLA LOT PROPERTIES LLC, a
12 Colorado limited liability company, (the “**Developer**”). The Town and the Developer are
13 sometimes collectively referred to in this Agreement as the “**Parties**,” and individually by name
14 or as a “**Party**.”
15

16 Recitals
17

18 A. The Developer owns the following described real property in the Town of
19 Breckenridge, Summit County, Colorado that is controlled by the Breckenridge Grand Vacations
20 Gondola Lot Master Plan (PL-2021-0052) (“**Master Plan**”):
21

22 Lot 1, Block 3, Parkway Center
23 Lot 1A, Block 4, Parkway Center
24 Lot 1B, Block 4, Parkway Center (“**Property**”).
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27 B. In accordance with Subsection (H)(1) of Section 9-1-19-39A, “Policy 39 (Absolute)
28 Master Plan” of the Breckenridge Town Code a development permit for an approved master plan
29 is vested for three (3) years.
30

31 C. The approved vesting of the Master Plan expires three (3) years from the approval,
32 November 21, 2024.
33

34 D. The Developer proposes to extend the vesting of the Master Plan by six (6) months to
35 May 23, 2025. The extended vesting period is referred to in this Agreement as the “**Extension**.”
36

37 E. A development agreement is necessary in order to authorize the Extension.
38

39 F. Pursuant to Chapter 9 of Title 9 the Breckenridge Town Code the Town Council has
40 the authority to enter into a development agreement.
41

1 G. The commitments proposed by the Developer in connection with this Agreement are
2 set forth hereafter and are found and determined by the Town Council to be adequate.
3

4 H. The Town Council has received a completed application and all required submittals
5 for a development agreement; had a preliminary discussion of such application and submittals;
6 determined that it should commence proceedings for the approval of this Agreement; and, in
7 accordance with the procedures set forth in Section 9-9-10(C) of the Breckenridge Town Code,
8 has approved this Agreement by non-emergency ordinance.
9

10 Agreement
11

12 1. Subject to the provisions of this Agreement, the Master Plan, is hereby extended until
13 May 23, 2025, with the option of the Town Council, by affirmative vote of a majority of Council
14 members at a regularly scheduled Town Council meeting, to extend the Master Plan's vesting an
15 additional six (6) months to November 21, 2025 provided the extension is granted prior to this
16 agreement's expiration on May 25, 2025.
17

18 2. As the commitments encouraged to be made in connection with a development
19 agreement pursuant to Section 9-9-4 of the Breckenridge Town Code, the Developer shall do the
20 following: agree to make a \$100,000 capital contribution toward either a new in-town childcare
21 center or an addition to an existing in-town childcare center prior to the Extension going into
22 effect.
23

24 3. The term of this Agreement shall commence on the Effective Date and shall end,
25 subject to earlier termination in the event of a breach of this Agreement, on May 23, 2024 unless
26 extended an additional six (6) months in accordance with section 1 above to November 21, 2025,
27 upon which approval will require an additional \$100,000 for the purpose of Section 2 above
28

29 4. Nothing in this Agreement shall preclude or otherwise limit the lawful authority of
30 the Town to adopt or amend any Town law, including, but not limited to the Town's: (i)
31 Development Code, (ii) Comprehensive Plan, (iii) Land Use Guidelines, and (iv) Subdivision
32 Standards.
33

34 5. This Agreement shall be exclusive to the Developer and does not run with the title to
35 the Property to successors and assigns.
36

37 6. Prior to any action against the Town for breach of this Agreement, the Developer
38 shall give the Town a sixty (60) day written notice of any claim of a breach or default by the
39 Town, and the Town shall have the opportunity to cure such alleged default within such time
40 period.
41

1 7. The Town shall not be responsible for, and the Developer shall not have any remedy
2 against the Town, if the Project is prevented or delayed for reasons beyond the control of the
3 Town.
4

5 8. No official or employee of the Town shall be personally responsible for any actual or
6 alleged breach of this Agreement by the Town.
7

8 9. The Developer agrees to indemnify and hold the Town, its officers, employees,
9 insurers, and self-insurance pool, harmless from and against all liability, claims, and demands, on
10 account of injury, loss, or damage, including without limitation claims arising from bodily
11 injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any
12 kind whatsoever, which arise out of or are in any manner connected with this Agreement, if such
13 injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in
14 part by, the negligence or intentional act or omission of the Developer; any subcontractor of the
15 Developer, or any officer, employee, representative, or agent of the Developer or of any
16 subcontractor of the Developer, or which arise out of any worker's compensation claim of any
17 employee of the Developer, or of any employee of any subcontractor of the Developer; except to
18 the extent such liability, claim or demand arises through the negligence or intentional act or
19 omission of the Town, its officers, employees, or agents. The Developer agrees to investigate,
20 handle, respond to, and provide defense for and defend against, any such liability, claims, or
21 demands at the sole expense of the Developer. The Developer also agrees to bear all other costs
22 and expenses related thereto, including court costs and attorney's fees.
23

24 10. If any provision of this Agreement shall be invalid, illegal, or unenforceable, it shall
25 not affect or impair the validity, legality, or enforceability of the remaining provisions of the
26 Agreement.
27

28 11. This Agreement constitutes a vested property right pursuant to Article 68 of Title 24,
29 Colorado Revised Statutes, as amended.
30

31 12. No waiver of any provision of this Agreement shall be deemed or constitute a waiver
32 of any other provision, nor shall it be deemed to constitute a continuing waiver, unless expressly
33 provided for by a written amendment to this Agreement signed by the Parties; nor shall the
34 waiver of any default under this Agreement be deemed a waiver of any subsequent default or
35 defaults of the same type.
36

37 13. Nothing contained in this Agreement shall constitute a waiver of the Town's
38 sovereign immunity under any applicable state or federal law.
39

40 14. Personal jurisdiction and venue for any civil action commenced by any Party to this
41 Agreement shall be deemed to be proper only if such action is commenced in District Court of
42 Summit County, Colorado. The Developer expressly waives any right to bring such action in or
43 to remove such action to any other court, whether state or federal. **The Parties hereby mutually**

1 agree to waive any right to a jury trial in connection with any action to enforce, interpret or
2 construe this agreement.

3
4 15. Any notice required or permitted hereunder shall be in writing and shall be sufficient
5 if personally delivered or mailed by certified mail, return receipt requested, addressed as follows:

6
7 If to the Town: Rick G. Holman, Town Manager
8 Town of Breckenridge
9 P.O. Box 168
10 Breckenridge, CO 80424

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12 With a copy (which
13 shall not constitute
14 notice to the Town) to: Kirsten Crawford, Esq.
15 Town Attorney
16 P.O. Box 168
17 Breckenridge, CO 80424

18
19 If to the Church: Mike Dudick
20 Gondola Lot Properties LLC
21 P.O. Box 6879
22 Breckenridge, CO 80424

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24 Notices mailed in accordance with the provisions of this Section 15 shall be deemed to have been
25 given upon delivery. Notices personally delivered shall be deemed to have been given upon
26 delivery. Nothing herein shall prohibit the giving of notice in the manner provided for in the
27 Colorado Rules of Civil Procedure for service of civil process.

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29 16. This Agreement shall be interpreted in accordance with the laws of the State of
30 Colorado without regard to principles of conflicts of laws.

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32 17. This Agreement constitutes the entire agreement and understanding between the
33 Parties relating to the subject matter of this Agreement and supersedes any prior agreement or
34 understanding relating to such subject matter.

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36 TOWN OF BRECKENRIDGE, a Colorado
37 municipal corporation

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41 By: _____
42 Rick G. Holman, Town Manager
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GONDOLA LOT PROPERTIES LLC,
A COLORADO LIMITED LIABILITY
COMPANY

BY: _____

NAME: _____

TITLE:

ATTEST:

Helen Cospolich, CMC, Town
Clerk