

**A BILL FOR AN ORDINANCE AMENDING 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 (“Developer”) owns, or has a ground lease, for 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, Gondola Lots, Filing 1
- Lot 2, Gondola Lots, Filing 1
- Lot 3, Gondola Lots, Filing 1
- Lot 4, Gondola Lots, Filing 2
- 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 (“Application”) which is currently under review by the planning commission.

D. Developer hereby withdraws the Application under the terms and conditions of the Development Agreement, Exhibit A.

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.

**Section 3.** The Town Council finds, determines, and declares that this ordinance is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort, and convenience of the Town of Breckenridge and the inhabitants thereof.

**Section 4.** The Town Council finds, determines, and declares that it has the power to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article XX of the Colorado Constitution and the powers contained in the municipal charter.

**Section 5.** This ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Charter.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this 25th day of April 2023.

1 READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED IN FULL ON  
2 THE TOWN'S WEBSITE this 9th day of May, 2023. A copy of this Ordinance is available for  
3 inspection in the office of the Town Clerk.

ATTEST:

TOWN OF BRECKENRIDGE

\_\_\_\_\_  
Helen Cospolich, CMC, Town Clerk

\_\_\_\_\_  
Eric S. Mamula, Mayor

APPROVED IN FORM

\_\_\_\_\_  
Town Attorney                      Date

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Exhibit "A"

APPROVAL OF THIS DEVELOPMENT AGREEMENT CONSTITUTES A VESTED PROPERTY RIGHT PURSUANT TO ARTICLE 68 OF TITLE 24, COLORADO REVISED STATUTES, AS AMENDED

DEVELOPMENT AGREEMENT

This Amended and Restated Development Agreement ("Agreement") is made as of the 13th day of June, 2023 ("Effective Date," which shall be the date when this ordinance approving this Agreement becomes effective) between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation (the "Town") and GONDOLA LOT PROPERTIES LLC, a Colorado limited liability company, (the "Developer"). This Agreement amends and restates that Development Agreement dated as of April 14, 2023, and recorded April 14, 2023, at Reception No. 1309020 of the records of the Clerk and Recorder of Summit County, Colorado ("Original Development Agreement"). The Town and the Developer are sometimes collectively referred to in this Agreement as the "Parties," and individually by name or as a "Party."

Recitals

A. The Developer owns, or has a ground lease, for the following described real property in the Town of Breckenridge, Summit County, Colorado that is controlled by the Breckenridge Grand Vacations Gondola Lot Master Plan (PL-2021-0052) ("Master Plan"):

- Lot 1, Gondola Lots, Filing No. 1
Lot 2, Gondola Lots, Filing No. 1
Lot 3, Gondola Lots, Filing No. 1
Lot 4, Gondola Lots, Filing No. 2
Lot 1B, Block 4, Parkway Center ("Property").

B. In accordance with Subsection (H)(1) of Section 9-1-19-39A, "Policy 39 (Absolute) Master Plan" of the Breckenridge Town Code a development permit for an approved master plan is vested for three (3) years.

C. The approved vesting of the Master Plan expires three (3) years from the approval, November 23, 2024.

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

1  
2 E. A development agreement is necessary in order to authorize the Extension.  
3

4 F. In accordance with Section 9-1-17-2 of the Breckenridge Town Code, development  
5 permits shall be granted or denied on the basis of the policies contained in the Development  
6 Code and on no other basis.  
7

8 G. The Developer proposes an allowance for any site-specific Development Permit  
9 application within the Gondola Lots Master Plan area to not be subject to any Development Code  
10 changes subsequent to May 25, 2022, for a period of six months from the effective date of this  
11 amendment, June 13, 2023. This time limited provision is referred to in this Agreement as the  
12 “**Allowance.**”  
13

14 H. A development agreement is necessary in order to authorize the Allowance.  
15

16 I. Town has received a completed application for a Class A Development Permit  
17 (“**Application**”) within the Gondola Lots Master Plan area which is currently under review by  
18 the planning commission.  
19

20 J. The Developer proposes to withdraw the Application.  
21

22 K. Pursuant to Chapter 9 of Title 9 of the Breckenridge Town Code the Town Council  
23 has the authority to enter into a development agreement.  
24

25 L. The commitments proposed by the Developer in connection with this Agreement are  
26 set forth hereafter and are found and determined by the Town Council to be adequate.  
27

28 M. The Town Council has received a completed application and all required submittals  
29 for a development agreement; had a preliminary discussion of such application and submittals;  
30 determined that it should commence proceedings for the approval of this Agreement; and, in  
31 accordance with the procedures set forth in Section 9-9-10(C) of the Breckenridge Town Code,  
32 has approved this Agreement by non-emergency ordinance.  
33

### 34 Agreement 35

36 1. Subject to the provisions of this Agreement, the Master Plan, is hereby extended until  
37 May 23, 2025, with the option of the Town Council, by affirmative vote of a majority of Council  
38 members at a regularly scheduled Town Council meeting, to extend the Master Plan’s vesting an  
39 additional six (6) months to November 23, 2025, provided the extension is granted prior to this  
40 agreement’s expiration on May 23, 2025.  
41

42 2. Subject to the provisions of this Agreement, any site-specific Development Permit  
43 application within the Master Plan area will not be subject to any Development Code changes  
44 subsequent to May 25, 2022 for a period of six months from the effective date of this

1 amendment, expiring on December 13, 2023 with the option of the Town Council, by affirmative  
2 vote of a majority of Council members at a regularly scheduled Town Council meeting, to extend  
3 this provision an additional six (6) months to June 13, 2024, provided the extension is granted  
4 prior to this provision's expiration on December 13, 2023.

5  
6 3. Subject to the provisions of this Agreement, the applicant will withdraw the  
7 Application (PL-2022-0208) on or prior to the effective date of this Agreement.

8  
9 4. As the commitments encouraged to be made in connection with a development  
10 agreement pursuant to Section 9-9-4 of the Breckenridge Town Code, the Developer shall do the  
11 following: agree to make a \$100,000 capital contribution toward either a new in-town childcare  
12 center or a project that increases capacity to an existing in-town childcare center prior to the  
13 Agreement going to into effect.

14  
15 5. The term of the Extension described in this Agreement shall commence on the  
16 Effective Date and shall end, subject to earlier termination in the event of a breach of this  
17 Agreement, on May 23, 2025, unless extended an additional six (6) months in accordance with  
18 section 1 above to November 23, 2025, upon which approval will require an additional \$100,000  
19 for the purpose of Section 2 above.

20  
21 6. The term of the Allowance described in this Agreement shall commence on the  
22 Effective Date and shall end, subject to earlier termination in the event of a breach of this  
23 Agreement, on December 13, 2023, unless extended an additional six (6) months in accordance  
24 with section 2 above to May 13, 2024.

25  
26 7. Nothing in this Agreement shall preclude or otherwise limit the lawful authority of  
27 the Town to adopt or amend any Town law, including, but not limited to the Town's: (i)  
28 Development Code, (ii) Comprehensive Plan, (iii) Land Use Guidelines, and (iv) Subdivision  
29 Standards.

30  
31 8. The Agreement shall run with the title to the land and be binding upon the owners,  
32 heirs, successors and assigns.

33  
34 9. Prior to any action against the Town for breach of this Agreement, the Developer  
35 shall give the Town a sixty (60) day written notice of any claim of a breach or default by the  
36 Town, and the Town shall have the opportunity to cure such alleged default within such time  
37 period.

38  
39 10. The Town shall not be responsible for, and the Developer shall not have any remedy  
40 against the Town, if the Project is prevented or delayed for reasons beyond the control of the  
41 Town.

42  
43 11. Actual development of the real property which is the subject of the Agreement shall  
44 require the issuance of such other and further permits and approvals by the town as may be

1 required from time to time by applicable town ordinances.  
2

3 12. No official or employee of the Town shall be personally responsible for any actual or  
4 alleged breach of this Agreement by the Town.  
5

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

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

26 15. This Agreement constitutes a vested property right pursuant to Article 68 of Title 24,  
27 Colorado Revised Statutes, as amended.  
28

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

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

38 18. Personal jurisdiction and venue for any civil action commenced by any Party to this  
39 Agreement shall be deemed to be proper only if such action is commenced in District Court of  
40 Summit County, Colorado. The Developer expressly waives any right to bring such action in or  
41 to remove such action to any other court, whether state or federal. **The Parties hereby mutually**  
42 **agree to waive any right to a jury trial in connection with any action to enforce, interpret or**  
43 **construe this agreement.**  
44

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

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

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

16 If to the Developer: Mike Dudick  
17 Gondola Lot Properties LLC  
18 P.O. Box 6879  
19 Breckenridge, CO 80424  
20

21 Notices mailed in accordance with the provisions of this Section 19 shall be deemed to have been  
22 given upon delivery. Notices personally delivered shall be deemed to have been given upon  
23 delivery. Nothing herein shall prohibit the giving of notice in the manner provided for in the  
24 Colorado Rules of Civil Procedure for service of civil process.  
25

26 20. This Agreement shall be interpreted in accordance with the laws of the State of  
27 Colorado without regard to principles of conflicts of laws.  
28

29 21. This Agreement constitutes the entire agreement and understanding between the  
30 Parties relating to the subject matter of this Agreement and supersedes any prior agreement or  
31 understanding relating to such subject matter.  
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33 TOWN OF BRECKENRIDGE, a Colorado  
34 municipal corporation  
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38 By: \_\_\_\_\_  
39 Rick G. Holman, Town Manager  
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43 GONDOLA LOT PROPERTIES LLC,  
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A COLORADO LIMITED LIABILITY  
COMPANY

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE:  
\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Helen Cospolich, CMC, Town  
Clerk