

ORDINANCE NO. 15

Series 2023

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 No. 1
- Lot 2, Gondola Lots, Filing No. 1
- Lot 3, Gondola Lots, Filing No. 1
- Lot 4, Gondola Lots, Filing No. 2
- Lot 5, Gondola Lots, Filing No. 2
- Lot 6, Gondola Lots, Filing No. 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 contains a notice in the form provided in Section 9-9-13 of the Breckenridge Town Code. In addition, a notice in compliance with the requirements of Section 9-9-13 of the Breckenridge Town Code shall be published by the Town Clerk one time in a newspaper of general circulation in the Town within fourteen days after the adoption of this ordinance. Such notice shall satisfy the requirement of Section 24-68-103, C.R.S.

Section 3. The 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 4. 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 5. 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 6. This ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Charter.

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

This ordinance was published in full on the Town of Breckenridge website on April 26, April 27, April 28, April 29 and April 30, 2023.

A public hearing on this ordinance was held on May 9, 2023.

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

ATTEST:

TOWN OF BRECKENRIDGE

_____/s/_____
Helen Cospolich, CMC, Town Clerk

_____/s/_____
Eric S. Mamula, Mayor

APPROVED IN FORM

_____/s/_____
Town Attorney Date

This Ordinance was published on the Town of Breckenridge website on May 9, May 10, May 11, May 12 and May 13, 2023. This ordinance shall become effective on June 12, 2023.

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 12th 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 5, Gondola Lots, Filing No. 2
Lot 6, 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.

1 D. The Developer proposes to extend the vesting of the Master Plan by six (6) months to
2 May 23, 2025. The extended vesting period is referred to in this Agreement as the “**Extension.**”
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4
5 E. In accordance with Section 9-1-17-2 of the Breckenridge Town Code, development
6 permits shall be granted or denied on the basis of the policies contained in the Development
7 Code and on no other basis.
8

9 F. The Developer proposes an allowance for any site-specific Development Permit
10 application within the Gondola Lots Master Plan area to not be subject to any Development Code
11 changes subsequent to May 25, 2022, for a period of six months from the effective date of this
12 amendment, June 12, 2023. This time limited provision is referred to in this Agreement as the
13 “**Allowance.**”
14

15 G. A development agreement is necessary both in order to authorize the Extension of the
16 vesting and in order to authorize the Allowance in paragraphs D and F, respectively.
17

18 H. Town has received a completed application for a Class A Development Permit
19 (“**Application**”) within the Gondola Lots Master Plan area which is currently under review by
20 the planning commission.
21

22 I. The Developer proposes to withdraw the pending Application in order to explore
23 with the Town whether there are development opportunities that provide maximum opportunity
24 for public benefits to the Town.
25

26 J. Pursuant to Chapter 9 of Title 9 of the Breckenridge Town Code the Town Council
27 has the authority to enter into a development agreement.
28

29 K. The commitments proposed by the Developer in connection with this Agreement are
30 set forth hereafter and are found and determined by the Town Council to be adequate.
31

32 L. The Town Council has received a completed application and all required submittals
33 for a development agreement; had a preliminary discussion of such application and submittals;
34 determined that it should commence proceedings for the approval of this Agreement; and, in
35 accordance with the procedures set forth in Section 9-9-10(C) of the Breckenridge Town Code,
36 has approved this Agreement by non-emergency ordinance.
37

38 Agreement

39

40 1. Subject to the provisions of this Agreement, the Master Plan, is hereby extended until
41 May 23, 2025, with the option of the Town Council, by affirmative vote of a majority of Council
42 members at a regularly scheduled Town Council meeting, to extend the Master Plan’s vesting an

1 additional six (6) months to November 23, 2025, provided the extension is granted prior to this
2 agreement's expiration on May 23, 2025.
3

4 2. Subject to the provisions of this Agreement, any site-specific Development Permit
5 application within the Master Plan area will not be subject to any Development Code changes
6 subsequent to May 25, 2022 for a period of six months from the effective date of this
7 amendment, expiring on December 12, 2023 with the option of the Town Council, by affirmative
8 vote of a majority of Council members at a regularly scheduled Town Council meeting, to extend
9 this provision an additional six (6) months to June 12, 2024, provided the extension is granted
10 prior to this provision's expiration on December 12, 2023.
11

12 3. Subject to the provisions of this Agreement, the applicant will withdraw the
13 Application (PL-2022-0208) on or prior to the effective date of this Agreement.
14

15 4. As the commitments encouraged to be made in connection with a development
16 agreement pursuant to Section 9-9-4 of the Breckenridge Town Code, the Developer shall do the
17 following: agree to make a \$100,000 capital contribution toward either a new in-town childcare
18 center or a project that increases capacity to an existing in-town childcare center prior to the
19 Agreement going to into effect.
20

21 5. The term of the Extension 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 May 23, 2025, unless extended an additional six (6) months in accordance with
24 section 1 above to November 23, 2025, upon which approval will require an additional \$100,000
25 for the purpose of Section 2 above.
26

27 6. The term of the Allowance described in this Agreement shall commence on the
28 Effective Date and shall end, subject to earlier termination in the event of a breach of this
29 Agreement, on December 12, 2023, unless extended an additional six (6) months in accordance
30 with section 2 above to June 12, 2024.
31

32 7. Nothing in this Agreement shall preclude or otherwise limit the lawful authority of
33 the Town to adopt or amend any Town law, including, but not limited to the Town's: (i)
34 Development Code, (ii) Comprehensive Plan, (iii) Land Use Guidelines, and (iv) Subdivision
35 Standards.
36

37 8. The Agreement shall run with the title to the land and be binding upon the owners,
38 heirs, successors and assigns.
39

40 9. Prior to any action against the Town for breach of this Agreement, the Developer
41 shall give the Town a sixty (60) day written notice of any claim of a breach or default by the
42 Town, and the Town shall have the opportunity to cure such alleged default within such time
43 period.
44

1 10. 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 11. Actual development of the real property which is the subject of the Agreement shall
6 require the issuance of such other and further permits and approvals by the town as may be
7 required from time to time by applicable town ordinances.
8

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

12 13. The Developer agrees to indemnify and hold the Town, its officers, employees,
13 insurers, and self-insurance pool, harmless from and against all liability, claims, and demands, on
14 account of injury, loss, or damage, including without limitation claims arising from bodily
15 injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any
16 kind whatsoever, which arise out of or are in any manner connected with this Agreement, if such
17 injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in
18 part by, the negligence or intentional act or omission of the Developer; any subcontractor of the
19 Developer, or any officer, employee, representative, or agent of the Developer or of any
20 subcontractor of the Developer, or which arise out of any worker's compensation claim of any
21 employee of the Developer, or of any employee of any subcontractor of the Developer; except to
22 the extent such liability, claim or demand arises through the negligence or intentional act or
23 omission of the Town, its officers, employees, or agents. The Developer agrees to investigate,
24 handle, respond to, and provide defense for and defend against, any such liability, claims, or
25 demands at the sole expense of the Developer. The Developer also agrees to bear all other costs
26 and expenses related thereto, including court costs and attorney's fees.
27

28 14. If any provision of this Agreement shall be invalid, illegal, or unenforceable, it shall
29 not affect or impair the validity, legality, or enforceability of the remaining provisions of the
30 Agreement.
31

32 15. This Agreement constitutes a vested property right pursuant to Article 68 of Title 24,
33 Colorado Revised Statutes, as amended.
34

35 16. No waiver of any provision of this Agreement shall be deemed or constitute a waiver
36 of any other provision, nor shall it be deemed to constitute a continuing waiver, unless expressly
37 provided for by a written amendment to this Agreement signed by the Parties; nor shall the
38 waiver of any default under this Agreement be deemed a waiver of any subsequent default or
39 defaults of the same type.
40

41 17. Nothing contained in this Agreement shall constitute a waiver of the Town's
42 sovereign immunity under any applicable state or federal law.
43

1 18. Personal jurisdiction and venue for any civil action commenced by any Party to this
2 Agreement shall be deemed to be proper only if such action is commenced in District Court of
3 Summit County, Colorado. The Developer expressly waives any right to bring such action in or
4 to remove such action to any other court, whether state or federal. The Parties hereby mutually
5 agree to waive any right to a jury trial in connection with any action to enforce, interpret or
6 construe this agreement.
7

8 19. Any notice required or permitted hereunder shall be in writing and shall be sufficient
9 if personally delivered or mailed by certified mail, return receipt requested, addressed as follows:
10

11 If to the Town: Rick G. Holman, Town Manager
12 Town of Breckenridge
13 P.O. Box 168
14 Breckenridge, CO 80424
15

16 With a copy (which
17 shall not constitute
18 notice to the Town) to: Kirsten Crawford, Esq.
19 Town Attorney
20 P.O. Box 168
21 Breckenridge, CO 80424
22

23 If to the Developer: Mike Dudick
24 Gondola Lot Properties LLC
25 P.O. Box 6879
26 Breckenridge, CO 80424
27

28 Notices mailed in accordance with the provisions of this Section 19 shall be deemed to have been
29 given upon delivery. Notices personally delivered shall be deemed to have been given upon
30 delivery. Nothing herein shall prohibit the giving of notice in the manner provided for in the
31 Colorado Rules of Civil Procedure for service of civil process.
32

33 20. This Agreement shall be interpreted in accordance with the laws of the State of
34 Colorado without regard to principles of conflicts of laws.
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36 21. This Agreement constitutes the entire agreement and understanding between the
37 Parties relating to the subject matter of this Agreement and supersedes any prior agreement or
38 understanding relating to such subject matter.
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40 TOWN OF BRECKENRIDGE, a Colorado
41 municipal corporation
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By: _____
Rick G. Holman, Town Manager

GONDOLA LOT PROPERTIES LLC,
A COLORADO LIMITED LIABILITY
COMPANY

BY: _____

NAME: _____

TITLE:

ATTEST:

Helen Cospolich, CMC, Town
Clerk