



**TOWN OF  
BRECKENRIDGE**

**Town Council Regular Meeting**  
Tuesday, March 12, 2024, 7:00 PM  
Town Hall Council Chambers  
150 Ski Hill Road  
Breckenridge, Colorado

THE TOWN OF BRECKENRIDGE CONDUCTS HYBRID MEETINGS. This meeting will be held in person at Breckenridge Town Hall and will also be broadcast live over Zoom. Login information is available in the calendar section of our website: [www.townofbreckenridge.com](http://www.townofbreckenridge.com). If you will need special assistance in order to attend any of the Town's public meetings, please notify the Town Clerk's Office at (970) 547-3127, at least 72 hours in advance of the meeting.

**I. CALL TO ORDER, ROLL CALL**

**II. APPROVAL OF MINUTES**

A. TOWN COUNCIL MINUTES - FEBRUARY 27, 2024

**III. APPROVAL OF AGENDA**

**IV. COMMUNICATIONS TO COUNCIL**

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

**V. CONTINUED BUSINESS**

A. SECOND READING OF COUNCIL BILLS, SERIES 2024

1. *COUNCIL BILL NO. 5, SERIES 2024 - A BILL FOR AN ORDINANCE APPROVING A SUBORDINATION AGREEMENT WITH FIRST BANK PERTAINING TO STABLES VILLAGE HOMES LLC FINANCING FOR THE STABLES VILLAGE PROJECT*
2. *COUNCIL BILL NO. 6, SERIES 2024 - A BILL FOR AN ORDINANCE AMENDING THE CODE PERTAINING TO WATER SERVICE CHARGES*

**VI. NEW BUSINESS**

A. FIRST READING OF COUNCIL BILLS, SERIES 2024

1. *COUNCIL BILL NO. 7, SERIES 2024 - A BILL FOR AN ORDINANCE AMENDING THE DEVELOPMENT CODE TO CREATE DEFENSIBLE SPACE FOR MITIGATION OF WILDFIRE*
2. *COUNCIL BILL NO. 8, SERIES 2024 - A BILL FOR AN ORDINANCE ESTABLISHING CRITERIA FOR DETERIORATION OF LANDMARKS AND HISTORIC STRUCTURES IN A MANNER THAT CONSTITUTES DEMOLITION BY NEGLECT*
3. *COUNCIL BILL NO. 9, SERIES 2024 - AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE TOWN OF BRECKENRIDGE AND*

*GONDOLA PROPERTIES, LLC, A COLORADO LIMITED LIABILITY COMPANY (“GONDOLA PROPERTIES”), BGV PARTNERS ENTRADA LLC, A COLORADO LIMITED LIABILITY COMPANY (“BGV ENTRADA”); VAIL SUMMIT RESORTS, INC., A COLORADO CORPORATION (“VSRI”); AND LC BRECKENRIDGE HOLDCO, LLC, A DELAWARE LIMITED LIABILITY COMPANY (“LC BRECKENRIDGE”)*

**B. RESOLUTIONS, SERIES 2024**

1. *RESOLUTION NO. 9, SERIES 2024 - A RESOLUTION ADOPTING THE TOWN OF BRECKENRIDGE COMPREHENSIVE PLAN AND LAND USE GUIDELINES AS THE TOWN'S ANNEXATION PLAN PURSUANT TO SECTION 31-12-105(1)(e), C.R.S.*

**C. OTHER**

**VII. PLANNING MATTERS**

**A. PLANNING COMMISSION DECISIONS**

**VIII. REPORT OF TOWN MANAGER AND STAFF**

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

- A. CAST/MMC (Town Manager)
- B. BRECKENRIDGE OPEN SPACE ADVISORY COMMITTEE (Bergeron)
- C. BRECKENRIDGE TOURISM OFFICE (Carleton)
- D. BRECKENRIDGE HISTORY (Saade)
- E. BRECKENRIDGE CREATIVE ARTS (Rankin)
- F. CML ADVISORY BOARD UPDATE (Saade)
- G. CHILD CARE ADVISORY COMMITTEE (Beckerman)
- H. SOCIAL EQUITY ADVISORY COMMISSION (Saade)
- I. ARTS & CULTURE MASTER PLAN STEERING COMMITTEE (Beckerman)

**X. OTHER MATTERS**

**XI. SCHEDULED MEETINGS**

- A. SCHEDULED MEETINGS FOR MARCH, APRIL AND MAY

**XII. ADJOURNMENT**

**I) CALL TO ORDER, ROLL CALL**

Mayor Pro Tem Owens called the meeting of February 27, 2024, to order at 7:00pm. The following members answered roll call: Carol Saade, Jeffrey Bergeron, Dick Carleton, Jay Beckerman, and Mayor Pro Tem Kelly Owens. Todd Rankin was absent.

**II) APPROVAL OF MINUTES**

**A) TOWN COUNCIL MINUTES – February 13, 2024**

With no changes or corrections to the meeting minutes of February 13, Mayor Pro Tem Owens declared they would stand approved as presented.

**III) APPROVAL OF AGENDA**

Town Manager Shannon Haynes stated there were no changes to the agenda. Mayor Pro Tem Owens declared the agenda approved as presented.

**IV) COMMUNICATIONS TO COUNCIL**

**A) PUBLIC COMMENT (NON-AGENDA ITEMS ONLY; 3-MINUTE TIME LIMIT PLEASE)**

Mayor Pro Tem Owens opened Public Comment.

With no public comment Mayor Pro Tem Owens closed public comment.

**B) Breckenridge Ski Resort Update**

Jon Copeland, COO of Breckenridge Ski Resort, stated they had to be creative leading up to Christmas due to low snow early in the season, including opening Peak 6 and some other creative solutions. He stated early season feedback about grooming wasn't good due to low snow and they are happy to be back to normal with snow now. Copeland stated the resort recorded the largest controlled avalanche ever on Peak 7 this winter, and the terrain park has a new location, which was fully opened on February 10th. He also stated we are closer to the 10-year average for natural snowfall now. He stated the resort is working on a new workforce management plan, and using a digital system to streamline the staffing process. He stated the resort is spending a lot of time investing in staff with the goal to increase return rates every year, and also working on flow and traffic management in Peak 8, pushing carpooling and Snowstang as alternative transportation, and shifting more guests to Chair 5. Copeland stated the resort will start working with the USFS on the evolution of Peak 9, including new gondola, a new ski school and upgraded lifts. Copeland also stated the First Tracks program was successful in January, and the resort will continue to partner with the Town on bus routes. He stated that they have reached 100% renewable energy for second year in a row, ahead of waste goals, and the plastic ban at Pioneer Crossing is going well. He stated all summer F&B will be plastic free, the Junior Freeride Championships will take place in April, and the resort plans to operate through May 28th as conditions allow. Also, summer daily operations will take place June 14<sup>th</sup> to Labor Day, with all slides and the coaster operating.

Council commended him for the sustainability efforts and staff community engagement.

**C) Breckenridge Tourism Office Update**

Lucy Kay, Director of the BTO, thanked the ski resort for their help during the Snow Sculpture Championships. She stated President's Weekend was flat and March is down 6% now but we expect it to fill in with a late Easter. Kay stated we are looking at a season flat to last year, and summer is looking up. She stated BTO staff are looking deeper into the resident sentiment survey, and second homeowner sentiment went down significantly, but they are happy overall. She stated the survey is overall favorable to tourism, and comments express different views about controls about STRs, for and against, across all groups. She stated more second-homeowners responded this year, which means they may be more engaged, and they felt less welcome with a 68% Net Promoter Score. Kay stated the BTO will take on this focus moving forward and will work on engaging this group. Kay stated summer 2024 marketing is out now, the Summer Preview will be in April, and we have already begun our 2025 strategic planning. She stated there is a strong forecast for tourism looking forward, and sustainable tourism is growing.

Council asked if I-70 construction was making a difference for visitation and Kay stated it's hard to notice or quantify. Mayor Pro Tem Owens stated she has seen the ads on the buses and she enjoyed that.

**VI) CONTINUED BUSINESS**

- A) SECOND READING OF COUNCIL BILLS, SERIES 2024  
1) COUNCIL BILL NO. 2, SERIES 2024 - AN ORDINANCE OF THE TOWN OF BRECKENRIDGE SETTING FORTH THE ANNUAL SUPPLEMENTAL APPROPRIATION FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2023, AND ENDING DECEMBER 31, 2023

Mayor Pro Tem Owens read the title into the minutes. Tracey Lambert, Senior Accountant, stated this ordinance sets the final appropriations required for the 2023 budget year. She stated there were no changes from first reading.

Mayor Pro Tem Owens opened the public hearing.  
There were no public comments, and the hearing was closed.

Council Member Bergeron moved to approve COUNCIL BILL NO. 2, SERIES 2024 - AN ORDINANCE OF THE TOWN OF BRECKENRIDGE SETTING FORTH THE ANNUAL SUPPLEMENTAL APPROPRIATION FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2023, AND ENDING DECEMBER 31, 2023. Council Member Beckerman seconded the motion.

The motion passed 5-0.

- 2) COUNCIL BILL NO. 3, SERIES 2024 - A BILL FOR AN ORDINANCE ESTABLISHING A PROCESS FOR CERTIFYING LIENS TO THE COUNTY FOR UNPAID ADMINISTRATIVE FINES IMPOSED FOR VIOLATIONS OF THE HOUSING CODE

Mayor Pro Tem Owens read the title into the minutes. Town Attorney Kirsten Crawford stated this ordinance creates a process for certifying liens to the County for the purpose of violations of the Housing Code. She stated there were no changes from first reading.

Mayor Pro Tem Owens opened the public hearing.  
There were no public comments, and the hearing was closed.

Council Member Bergeron moved to approve COUNCIL BILL NO. 3, SERIES 2024 - A BILL FOR AN ORDINANCE ESTABLISHING A PROCESS FOR CERTIFYING LIENS TO THE COUNTY FOR UNPAID ADMINISTRATIVE FINES IMPOSED FOR VIOLATIONS OF THE HOUSING CODE. Council Member Carleton seconded the motion.

The motion passed 5-0.

- 3) COUNCIL BILL NO. 4, SERIES 2024 - A BILL FOR AN ORDINANCE AMENDING THE ADMINISTRATIVE APPEALS PROVISION OF THE HOUSING REGULATIONS

Mayor Pro Tem Owens read the title into the minutes. Town Attorney Kirsten Crawford stated this ordinance amends the Housing Regulations to allow for the previously proposed appeals process. She stated there were no changes from first reading.

Mayor Pro Tem Owens opened the public hearing.  
There were no public comments, and the hearing was closed.

Council Member Bergeron moved to approve COUNCIL BILL NO. 4, SERIES 2024 - A BILL FOR AN ORDINANCE AMENDING THE ADMINISTRATIVE APPEALS PROVISION OF THE HOUSING REGULATIONS. Council Member Beckerman seconded the motion.

The motion passed 5-0.

**VII) NEW BUSINESS**

- A) FIRST READING OF COUNCIL BILLS, SERIES 2024  
1) COUNCIL BILL NO. 5, SERIES 2024 - A BILL FOR AN ORDINANCE APPROVING A SUBORDINATION AGREEMENT WITH FIRST BANK PERTAINING TO

**STABLES VILLAGE HOMES LLC FINANCING FOR THE STABLES VILLAGE PROJECT**

Mayor Pro Tem Owens read the title into the minutes. Laurie Best, Housing and Childcare Manager, stated this ordinance will approve a subordination agreement with First Bank and the developer for the purpose of financing the Stables Village Project.

Mayor Pro Tem Owens opened the public hearing.  
There were no public comments, and the hearing was closed.

Council Member Bergeron moved to approve COUNCIL BILL NO. 5, SERIES 2024 - A BILL FOR AN ORDINANCE APPROVING A SUBORDINATION AGREEMENT WITH FIRST BANK PERTAINING TO STABLES VILLAGE HOMES LLC FINANCING FOR THE STABLES VILLAGE PROJECT. Council Member Carleton seconded the motion.

The motion passed 5-0.

2) **COUNCIL BILL NO. 6, SERIES 2024 - A BILL FOR AN ORDINANCE AMENDING THE CODE PERTAINING TO WATER SERVICE CHARGES**

Mayor Pro Tem Owens read the title into the minutes. Public Works Director James Phelps stated this ordinance codifies water service charges as discussed by Council in previous meetings.

Mayor Pro Tem Owens opened the public hearing.  
There were no public comments, and the hearing was closed.

Council Member Bergeron moved to approve COUNCIL BILL NO. 6, SERIES 2024 - A BILL FOR AN ORDINANCE AMENDING THE CODE PERTAINING TO WATER SERVICE CHARGES. Council Member Beckerman seconded the motion.

The motion passed 5-0.

B) **RESOLUTIONS, SERIES 2024**

1) **RESOLUTION NO. 8, SERIES 2024 - A RESOLUTION APPROVING A DONATION TO THE FAMILY AND INTERCULTURAL RESOURCE CENTER COMMUNITY FOOD MARKETS**

Mayor Pro Tem Owens read the title into the minutes. Town Manager Shannon Haynes stated this resolution is a formal acknowledgement of a verbal agreement by Council at the last meeting to donate \$50,000 to FIRC. She further stated all towns and the County have been asked to contribute this amount.

Council Member Bergeron moved to approve RESOLUTION NO. 8, SERIES 2024 - A RESOLUTION APPROVING A DONATION TO THE FAMILY AND INTERCULTURAL RESOURCE CENTER COMMUNITY FOOD MARKETS. Council Member Carleton seconded the motion.

The motion passed 5-0.

C) **OTHER**

1) **ACTION TO APPROVE WATER ATTORNEY RATES**

Town Attorney Kirsten Crawford stated this action should be done through a simple motion.

Council Member Bergeron moved to approve the increase in rates for the Town's Water Attorney. Council Member Beckerman seconded the motion.

The motion passed 5-0.

**VIII) PLANNING MATTERS**

A) **PLANNING COMMISSION DECISIONS**

Mayor Pro Tem Owens declared the Planning Commission Decisions would stand approved as presented.

**IX) REPORT OF TOWN MANAGER AND STAFF**

Town Manager Shannon Haynes stated the Gold Rush Games are planned to take place on June 14, and the event organizer is proposing a one-day closure of Ridge Street from Washington to Lincoln. She further stated this event will go through the SEPA planning process. She also stated the organizational meeting for Council will be held right before the April 23<sup>rd</sup> meeting, in the afternoon, and Tamara Park from Breck Create sent an update that we have sent to Council including information about plastic sleds and the effort to reuse them.

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

A. CAST/MMC  
No update.

B. BRECKENRIDGE OPEN SPACE ADVISORY COMMISSION  
Council Member Beckerman stated he attended this meeting and the Dry Gulch connection was halted due to elk on camera, and we had a State trails grant denied. He also stated there will be a joint meeting with Town Council on April 9th, and winter and summer visitation to trails is leveling out. He stated the commission reviewed the 2024 projects list and accessible trail improvements, including ADA accessibility for the Troll Trail and Cucumber Gulch ADA improvements. Council Member Beckerman stated a signage package RFP is coming out soon, and meetings will now be the 3<sup>rd</sup> Monday of each month beginning in May.

C. BRECKENRIDGE TOURISM OFFICE  
No update.

D. BRECKENRIDGE HISTORY  
No update.

E. BRECKENRIDGE CREATIVE ARTS  
No update.

F. CML ADVISORY BOARD UPDATE  
No update.

G. CHILD CARE ADVISORY COMMITTEE  
No update.

H. SOCIAL EQUITY ADVISORY COMMISSION  
No update.

I. ARTS AND CULTURAL MASTER PLANNING  
No update.

**XI) OTHER MATTERS**

Mayor Pro Tem Kelly Owens stated there will be a Candidate Forum at Town Hall on March 6<sup>th</sup>.

**XII) SCHEDULED MEETINGS**

A) SCHEDULED MEETINGS FOR FEBRUARY, MARCH AND APRIL

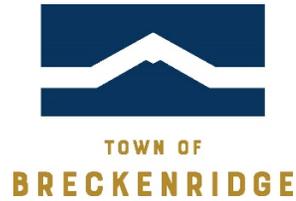
**XIII) ADJOURNMENT**

With no further business to discuss, the meeting adjourned at 7:44 pm. Submitted by Helen Cospolich, CMC, Town Clerk.

ATTEST:

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

\_\_\_\_\_  
Kelly Owens, Mayor Pro Tem



# Memo

To: Breckenridge Town Council Members  
From: Melanie Leas, Housing Project Manager and Laurie Best Housing Manager  
Date: 3/6/2024 (For March 12, 2024 Meeting)  
Subject: Second Reading-Bill for an Ordinance Approving Agreement Relating to Development and Subordination-Stables Village Development

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The Town received a request from Stables Village LLC (Developer) and First Bank to execute a Subordination Agreement pertaining to the Stables Village Homes LLC financing for the Stables Village project. This Agreement will enable the Developer to obtain financing from 1stBank (\$20m) for the completion of the first phase (37 units). Because this Agreement assigns development rights to the lender in event of a default, an Ordinance is necessary. The Council approved the bill on first reading on February 27, 2024 and there are no changes since first reading.

## Summary

Staff fully supports the Agreement as presented and recommends approval of this Bill to facilitate the Developers financing.

COUNCIL BILL NO. \_\_\_\_

SERIES 2024

A BILL FOR AN ORDINANCE APPROVING A SUBORDINATION AGREEMENT WITH FIRST BANK PERTAINING TO STABLES VILLAGE HOMES LLC FINANCING FOR THE STABLES VILLAGE PROJECT.

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

**Section 1.** That the Town Council of the Town of Breckenridge hereby approves the Agreement Relating to Development and Subordination attached hereto as **Exhibit A**.

**Section 2.** 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 27th day of February, 2024. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the 12th day of March, 2024, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

TOWN OF BRECKENRIDGE, a Colorado municipal corporation

By: \_\_\_\_\_  
Kelly Owens, Mayor Pro Tem

ATTEST:

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

After recording return to:  
FirstBank  
Attn: Loan Operations  
12345 West Colfax Avenue  
Lakewood, CO 80215

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## AGREEMENT RELATING TO DEVELOPMENT AND SUBORDINATION

THIS AGREEMENT RELATING TO DEVELOPMENT AND SUBORDINATION (this “Agreement”) dated \_\_\_\_\_, 2024 (the “Effective Date”), is by and among the TOWN OF BRECKENRIDGE, COLORADO, a Colorado home rule municipality (the “Town”), STABLES VILLAGE HOMES LLC, a Colorado limited liability company (“Borrower”), and FIRSTBANK, a Colorado state banking corporation (“Lender”).

### RECITALS

A. On or about May 15, 2023, the Town and Stables Village, LLC, a Colorado limited liability company, as a predecessor in interest to Borrower, entered into that certain Stables Village Project Agreement (“Project Agreement”), related to the construction of workforce housing (the “Project”) on the real property more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference (the “Property”).

B. The Property is subject to a Master Plan (PL-2023-0034) approved by the Town on April 11, 2023, commonly known as the Stillson Master Plan .

C. On October 10, 2023, the Town conveyed to the Borrower, a portion of the Property (Phase I of the Project, which included Phase 1A and Phase 1B per the budget documents and Tracts A, B, and C, collectively referred to herein as, “Phase 1 Property”) in consideration for the agreements set forth in the Project Agreement and for construction of the [thirty-seven homes comprised of 18 townhome units, 16 duplexes, and 3 single family homes] (“Phase 1 Project”).

D. In connection with the conveyance of the Phase 1 Property to Borrower, also on October 10, 2023, the Town and Borrower entered into a Restrictive Housing Covenant and Notice of Lien for Stables Village, Summit County, Colorado recorded with the Clerk and Recorder at Reception No. 1319331 on October 18, 2023 (the “Restrictive Covenant”). Also in connection with the conveyance of the Phase 1 Property to Borrower, the Town and Borrower entered into the Public Improvements, Site Work, and Infrastructure Construction Agreement dated August 15, 2023 (“Improvement Agreement”).

E. On or about even date herewith, Lender will close a construction loan to Borrower in an original principal amount of [approximately Twenty Million and No/100ths Dollars (\$20,000,000.00)] to fund a portion of the costs of the Phase 1 Project (“Loan”). The Loan is secured by, among other things, that certain Deed of Trust dated on or about even date herewith and recorded in the Records on \_\_\_\_\_ at Reception No. \_\_\_\_\_

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and Assignment of Leases, Rents, and other Rights dated on or about even date herewith and recorded in the Records on \_\_\_\_\_ at Reception No. \_\_\_\_\_ (collectively, the “Deed of Trust”), encumbering the Phase 1 Property. The Deed of Trust, together with any and all agreements, documents, writings or instruments which evidence and/or secure the Loan, as the same may be extended, consolidated, amended, modified, supplemented, or restated are collectively referred to herein as the “Loan Documents.”

F. As a condition precedent to closing and advancing the Loan, Lender requires the parties execute and deliver this Agreement and the Borrower and Town wish to execute and deliver this Agreement. Capitalized terms not defined herein shall have the meanings ascribed in the Loan Documents.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing Recitals which are incorporated herein, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, and to induce Lender to enter into the transactions contemplated by the Loan Documents, Borrower, Lender and the Town agree as follows:

1. Consent to Loan. The Town hereby consents to the Loan and agrees that the Loan meets the conditions of the Project Agreement for an “Encumbrance” as defined in Section 16 of the Project Agreement.

2. Collateral Assignment of Development Rights and Project Agreement. As additional collateral for the Loan, Borrower has collaterally assigned to Lender all of Borrower’s right, title, and interest in and to the Project Agreement and any and all vested development rights under C.R.S. § 24-68-101 *et seq.*, development rights issued, granted, conveyed, or accruing to Borrower in connection with the Phase 1 Project, including, without limitation, all rights, benefits, approvals, variances and exemptions (collectively, with the Project Agreement, the “Development Rights”) and the Borrower has collaterally assigned the Improvement Agreement. The Town, upon demand from Lender as a result of Borrower’s uncured default under the Loan Documents, will recognize and accept Lender as the holder of the Development Rights and the Improvement Agreement for any and all purposes relating to Phase 1 Project as fully as it would recognize and accept Borrower and the performance of Borrower thereunder. Following a default or an Event of Default under the Loan Documents, without further notice or demand and without the necessity for any action and at Borrower’s sole cost and expense, (i) the Town upon written notice from Lender of the occurrence of a default or an Event of Default, shall be and is hereby authorized by Borrower to allow Lender to perform under the Project Agreement and the Improvement Agreement in accordance with the terms and conditions thereof without any obligation to determine whether or not such default or Event of Default has in fact occurred or is continuing, (ii) Lender is entitled to exercise all rights of Borrower under the Project Agreement and Improvement Agreement; and (iii) if Lender does so perform under either of the Project Agreement or the Improvement Agreement, Town shall not find a default of the Project Agreement or the Improvement Agreement merely on the basis of Lender assuming Borrower’s rights and responsibilities thereunder. Any amounts collected by Borrower or Lender under the Project Agreement or the Improvement Agreement after the occurrence of a default or

Event of Default by Borrower under the Loan Documents shall be applied in accordance with the provisions of the Loan Documents.

3. Subordination. Notwithstanding anything to the contrary set forth in the Project Agreement, the reverter obligations of Borrower set forth in Paragraph 13 of the Project Agreement and the termination rights set forth in Section 28 (individual, or collectively, as the context may require, the “Reverter and Termination Provisions”) (a) are hereby subordinated to Lender’s Deed of Trust, and if Lender shall complete a foreclosure of the lien of the Deed of Trust, or accept a deed in lieu thereof, such Reverter and Termination Provisions automatically terminate and shall be deemed null and void and of no further force or effect, and (b) are subject to the repayment of the Loan in full, until such time as the Loan is paid in full at which time the Lender’s Deed of Trust shall be released from the Property. In no event shall the Property be reconveyed by Borrower without payment of the Loan in full. In consideration of the terms in this Agreement, the parties agree upon Lender or its successors or assigns becoming an owner of the Property whether through foreclosure, deed in lieu thereof, or otherwise, Lender or its successors or assigns is entitled and has development authority from the Town to complete the Phase 1 Project in accordance with all of its customary requirements for developments under the authority of the Town, including issuances of permits, which approval shall not be unreasonably delayed or withheld by the Town, and/or Lender is entitled to sell any part of or the whole Property subject to the Stillson Master Plan and applicable land use guidelines. It being acknowledged by the Town that after the Lender or its successor or assigns is the owner of the Property, Town has no right to withhold permits, authorizations, or verifications of completeness of Phase 1 for the reason that the Phase 1 Project except the Town has the full right and authority to withhold permits, authorizations or verifications if the Property does not comply with the Town’s customary requirements for developments and in accordance with the Stillson Master Plan and applicable land use guidelines.

4. Restrictive Covenant. The Town acknowledges and agrees that the Restrictive Covenant and any Notice of Lien (as defined in and in the form attached to the Restrictive Covenant) between Town and Borrower are hereby irrevocably made and shall be subject and unconditionally subordinate to the Loan Documents, including, without limitation, (A) the liens created by the Deed of Trust and any and all renewals, extensions, modifications, assignments, replacements, or consolidations thereof; (B) all of the terms, covenants and conditions contained in the Loan Documents, including, without limitation, any and all of such advances, interest, expenses, charges and fees that are secured by the Deed of Trust and rights, privileges, and powers of Lender under the Loan Documents and all renewals, extensions, modifications, assignments, replacements, or consolidations thereof; and (C) the liens, terms, covenants and conditions contained in any security or loan documents (including, without limitation, any and all advances, interest, expenses, charges and fees) of any commercial lender who shall hereafter refinance the Loan in an amount equal to or less than all of the amount to pay in full Loan at such time of refinance. Upon Lender’s foreclosure of the Deed of Trust or deed in lieu thereof, the Restrictive Covenant and any Notice of Lien shall automatically terminate and shall be deemed null and void and of no further force or effect.

5. Town Agreements. Notwithstanding any provision in the Project Agreement to the contrary, without prior written approval of the Lender during the Standstill Period, the Town

will standstill from (i) proceeding with or assuming any responsibilities of the Borrower under the Project Agreement (except to complete the Public Improvements); (ii) entering the Property without an easement or license approved in writing by Lender which approval will not be unreasonably withheld (except for the purposes of constructing the Public Improvements, or as is customarily required for developments under the authority of the Town for inspections for issuances of permits or verifications of completion of improvements or for authorized governmental functions of the Town); (iii) taking possession of the Project, materials or any equipment relating to the Project; or (iv) terminating the Project Agreement. For purposes of this subsection 5 and otherwise in the Agreement, the “Standstill Period” means from the Effective Date and ending ninety (90) days after Lender’s receipt from the Town of written notice describing the Borrower’s default or event of default under the Project Agreement (“Town Default Notice”) or such longer time as Lender may need if within ninety (90) days of receipt of the Town Default Notice, Lender shall deliver to Town evidence that is has (x) commenced an action for appointment of receiver; (y) commenced foreclosure; or (z) is pursuing a cure for the event of default or default described in the Town Default Notice.

6. Estoppel. The Town and Borrower represent and warrant that all of the following are true:

(a) The “Master Plan” as defined in the Project Agreement has been approved by the Town;

(b) The budget for Phase 1 has been approved by the Town and the Town will be contributing \$11,100,000.00 to the costs of construction for Phase 1 Project which the Town and Borrower agree will be expended in full for costs of the Phase 1 Project before the Borrower is entitled to draw on the Loan;

(c) Neither the Town or Borrower have a right to terminate the Project Agreement pursuant to Section 9 of the Agreement with respect to the Phase 1 Project and if the Project Agreement shall be terminated with respect to any future phase of the Project, the Project Agreement still remains with respect to the Phase 1 Project;

(d) The Town has approved the plans and specifications for the Phase 1 Project and all of the public improvements required for the development of the Phase 1 Project have been approved;

(e) As of the Effective Date, the Project and any and all applications, plans, agreements and other required submittals in connection with the Project comply with all zoning and land use approvals of the Town, including site plan approvals and the site plan has been approved, and there are no conditions remaining outstanding for the Town approval of the site plan;

(f) The Project Agreement is in full force and effect and has not been modified, amended or assigned other than pursuant to this Agreement;

(g) The Improvement Agreement is in full force and effect and has not been modified, amended or assigned other than pursuant to this Agreement;

(h) Neither Town nor Borrower is in default under any of the terms, covenants or provisions of the Project Agreement, and the Town knows of no event or circumstance

which, with the passage of time or the giving of notice, or both, would constitute an event of default under the Project Agreement;

(i) Neither Town nor Borrower has commenced any action or given or received any notice for the purpose of terminating the Project Agreement; and

(j) The Town has the full power and authority to enter into this Agreement.

7. No Amendments or Termination. The Town and Borrower agree that the Project Agreement shall not be terminated, amended or modified without the prior written consent of Lender.

8. Notices to Lender and Town. Borrower and the Town, respectively agree to provide Lender with any and all notices delivered between them in connection with the Project and under the Project Agreement.

9. Repayment of Loan.

(a) The Town and the Borrower acknowledge that the Loan Documents require at all times that the Loan proceeds left to be drawn pursuant to the Loan Documents together with Borrower's equity paid into the Phase 1 Project are sufficient to complete construction the Phase 1 Project. If the remaining Loan funds plus Borrower's equity paid into the Phase 1 Project are insufficient to fund the Phase 1 Project, Lender will send notice thereof to Borrower and the Town ("Budget Shortfall Notice"). Upon receipt of the Budget Shortfall Notice, if Borrower shall not fund the shortfall set forth therein, the Town will fund the shortfall, subject to Paragraph 10 of this Agreement.

(b) In the event of default under the Loan which is uncured by the Borrower for ninety (90) days, Town will pay the Loan in full, including without limitation all fees, costs, interest, and principal, subject to Paragraph 10 of this Agreement. Upon receipt of payment of the Loan, Lender will release the lien of the Deed of Trust and this Agreement will terminate. Borrower authorizes and the Lender agrees to accept the payment in full of the Loan from the Town.

10. Annual Appropriation. Any payment of the Loan or other financial obligation of the Town under this Agreement payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available by the Town Council of the Town of Breckenridge, Colorado. If sufficient funds shall not be made available, the Town shall have no financial obligation hereunder. The Town's obligations hereunder 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 laws of the State of Colorado.

11. Further Assurances. So long as the Deed of Trust shall remain a lien upon the Property or any part thereof, the parties hereto, and their respective successors or assigns, shall execute, acknowledge and deliver, promptly after being requested to do so any and all further instruments in recordable form reasonably requested by the requesting party for the purpose of confirming and carrying out the purpose and intent of the foregoing covenants. Promptly upon repayment in full of the Loan, Lender will release the lien of the Deed of Trust, unless Lender determines in its reasonable discretion that any such repayment of the Loan may be considered a

“preference” as such term is used by applicable bankruptcy law or may otherwise be set aside or subject to return or recovery. Upon the release of the Deed of Trust, this Agreement shall be deemed to have terminate.

12. Notices. Any notice from Lender to Borrower, or Borrower to Lender, shall be given in the manner set forth in the Loan Documents. Any notice from the Town to Lender, or Lender to the Town, shall be in writing, shall be given by certified mail, return receipt requested, by Federal Express or other nationally recognized overnight delivery service, or delivered by hand, addressed as follows, or at such other address as a party entitled to receive notices hereunder (a “Notice Party”) may notify the other Notice Parties in writing:

If to the Town: Town of Breckenridge  
Attn:  
\_\_\_\_\_  
\_\_\_\_\_

With a Copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Lender: FirstBank  
Attn: Presley Ilieva  
12345 West Colfax Avenue  
Lakewood, Colorado 80215

With a Copy to: Lewis Roca Rothgerber Christie LLP  
Attn: Lindsay McKae, Esq.  
1601 19<sup>th</sup> Street, Suite 3000  
Denver, Colorado 80202

Any notice given hereunder if given by certified mail will be deemed received when delivered, or if delivery is refused, when delivery is first attempted in the ordinary course. Any notice sent by hand delivery shall be deemed received when actually received. Any notice sent by Federal Express or any nationally recognized overnight courier service shall be deemed received one business day after having been deposited with such overnight courier service if designated for next business day delivery.

13. Specific Performance and Injunctive Relief. Notwithstanding the availability of any other remedies, the non-defaulting party hereunder shall be entitled to obtain specific performance, mandatory or prohibitory injunctive relief, or other equitable relief requiring any defaulting party to cure any breach by it of the terms of this Agreement or refrain from repeating any breach or default hereunder

14. No Waiver, Remedies. No failure on the part of a party hereto to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of that right or any

other right (except as specifically referenced in this Agreement); nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise of the right or the exercise of any other right. All remedies are cumulative and not exclusive of any remedies provided by law or in equity. The failure at any time of the Town, Lender, or Borrower to timely comply with this Agreement shall constitute a default. No waiver of any provision of this Agreement shall be effective against any party hereto unless the waiver is in writing and signed by the party against whom the waiver shall apply and shall be a waiver only with respect to the specific instance involved, nor shall the same establish a course of conduct.

15. Modification of Loan Documents. No renewal or extension of time of payment or modification of the Loan Documents, no release or surrender of security for the payment thereof, no delay in the enforcement of payment thereof and no delay or omission in exercising any right or power under the Loan Documents, shall in any manner impair or adversely affect the rights of Lender under this Agreement. The Town hereby waives any further notice of the creation, existence, extension or renewal of the Loan or of any modification of the Loan or of any other actions or matters of any nature whatsoever in connection with the Loan.

16. Miscellaneous.

(a) This Agreement shall be binding upon and inure to the benefit of the parties hereto and each of their successors and assigns.

(b) This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado.

(c) This Agreement may be signed in any number of counterparts, all of which will constitute an original, and all of which when taken together shall constitute one instrument.

(d) Any action concerning this Agreement may be brought in the Colorado District Court for the county in which the Property is located and the parties hereto hereby agree that all claims in respect of any such action or proceeding may be heard in any of the courts described above.

(e) No provision of this Agreement may be changed, waived, discharged or terminated orally, by telephone or by any other means except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

(f) If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provisions shall be fully severable and there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid or enforceable.

(g) Headings used in this Agreement are used for reference purposes only and do not constitute substantive matter to be considered in construing the terms of this Agreement. The Recitals to this Agreement and all exhibits referenced herein are incorporated herein and made a part of this Agreement.

*[Remainder of Page Intentionally Left blank]*





IN WITNESS WHEREOF, this Agreement Relating to Development and Subordination is executed as of the date and year set forth above.

**LENDER:**

**FIRSTBANK,**  
a Colorado state banking corporation

By: \_\_\_\_\_  
Name:  
Title:

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2024, by \_\_\_\_\_, as \_\_\_\_\_ of FirstBank, a Colorado state banking corporation.

WITNESS MY HAND AND OFFICIAL SEAL.

My Commission expires: \_\_\_\_\_.

[ S E A L ]

\_\_\_\_\_  
Notary Public

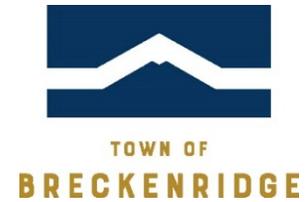
**EXHIBIT A**

**The Property**

Legal Description

# Memo

To: Breckenridge Town Council Members  
Cc: Shannon Haynes – Town Manager  
From: James Phelps – Director Public Works  
Date: 3/6/2024 (for March 12, TC meeting)  
Subject: A Bill for Ordinance (Second Reading) Amending Title 12 – Municipal Water System, pertaining to water service charges.



---

There have been no changes to the attached ordinance from the First Reading.

The Town of Breckenridge water utility is responsible for providing safe drinking water for the Town and surrounding service areas. The 2024 Adopted Budget included new water rates and fee structure. The ordinance attached for 1<sup>st</sup> Reading will amend Title 12 to reflect these water rate and fees increases. The revised water rates and fee changes became effective in January 2024. The rate and fee increases will annually increase by the below percentages.

The increases of water rates and fees were presented and approved by the Town Council (February 2023). The approval deferred the rates and fee changes to be effective January 2024. Raftelis, a local government and utility management consulting firm conducted the water rates analysis. The water rate analysis did propose the water rates revert to 5% for calendar year 2028.

The ordinance revises: definition, rates, usages, and fee service charges as follows:

1. 12-1-06 - Billing Cycle definition. Change from a bi-monthly to a monthly billing.
2. 12-4-11 – Gallons per billing cycle and Base User Fee updated, including Tier I and Tier II with Excess Usage
3. 12-4-12 – Non-Residential Water Rates (Commercial) revised to Base Fee/1000gallons. Usage is base rate with no meter sizing calculation.
4. 12-4-13 – Mixed Use Water1 - Eliminates the previously assessed excess use charge for mixed use properties.
5. 12-4-14 – Bulk Water 10% increase
6. 12-4-20 – Water Service Maintenance Fee – The bi-monthly cost was \$12.00. Accounting for the change to monthly billing, the \$6.00/month fee is increased by 5% to \$6.30/month/
7. 12-4-21 – Fee for paper Statements – Fee increasing from \$15.00/bi-monthly to \$10/month, which will cover the Town’s increased expenses.
8. 12-4-23 – Annual adjustment of certain fees and charges
9. 12-5-6-1- Out of Town Water Service – WSMF - Out of Town Service 5% increase

Staff will be available to address questions of the Town Council.

COUNCIL BILL NO. \_\_\_\_

Series 2024

**A BILL FOR AN ORDINANCE AMENDING THE CODE PERTAINING TO WATER SERVICE CHARGES.**

**WHEREAS**, in February of 2022, the Town of Breckenridge commissioned a rate study to be conducted by a third-party consultant, Raftelis, specializing in helping communities fairly and equitably price utility services, to perform the study;

**WHEREAS**, Town Council created a committee that included members of the Council and representatives from the community, including commercial and residential stakeholders, to provide policy guidance and feedback on the process;

**WHEREAS**, Town staff gathered historical data along with budget figures and planned capital investments to provide underlying data to the consultant and committee members;

**WHEREAS**, in November of 2023, the Town Council adopted the rates, charges, and fees in the underlying study to be effective January 1, 2024; and,

**WHEREAS**, the Town Council is now updating the municipal code consistent with the newly adopted rates, charges and fees.

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

**Section 1.** That section 12-1-6 is amended to delete the language stricken to read as follows:

**12-1-6: DEFINITIONS; GENERAL:**

**BILLING CYCLE:** A bimonthly billing period for water charges incurred at a water using property during such time period. The billing cycle shall be established by the finance director.

**Section 2.** That section 12-4-11 is amended to delete the language stricken

1 and add the language underlined to read as follows:

2 **12-4-11: WATER USER FEES; RESIDENTIAL:**

3 A. The in Town base rate user fee for all residential water users, regardless of the size  
4 of the water meter, includes a usage allowance of not to exceed ~~ten~~three thousand  
5 (403,000) gallons of water per SFE per billing cycle, and shall be computed according to  
6 the following table:

Water Use Date	Base User Fee
Effective January 1, 201 <u>6</u> <u>24</u>	<del>\$34.45</del> <u>26.66</u> per billing cycle per SFE

7 B. In addition to the base user fee set forth in subsection A of this section, each in  
8 Town residential water user shall pay an excess use charge for each one thousand  
9 (1,000) gallons of metered water, or fraction thereof, used per SFE per billing cycle in  
10 excess of the usage allowance of ~~ten~~ three thousand (403,000) gallons of water per  
11 SFE per billing cycle. The amount of the excess use charge shall be computed  
12 according to the following table:

Water Use Date	Excess Use Charge
Effective January 1, 201 <u>6</u> <u>24</u>	<u>Tier 1: 3,001-10,000 gallons \$8.13</u> <u>Tier 2: <del>\$5.25</del> &gt; 10,000 gallons \$12.19</u>

13 **Section 3.** That section 12-4-12 is amended to delete the section stricken and  
14 add the language underlined to read as follows:

15 **12-4-12: WATER USER FEES; NONRESIDENTIAL:**

16 A. The in Town base rate user fee, regardless of the size of the water meter, is  
17 charged at a flat rate for each one thousand (1,000) gallons of metered water, or  
18 fraction thereof, used per billing cycle, and shall be computed according to the following

1 ~~table: and the usage allowance per SFE per billing cycle for all nonresidential water~~  
 2 ~~users shall be determined based upon the size of the water meter which connects the~~  
 3 ~~water using property to the water system, as follows:~~

<u>Water Use Date</u>	<u>User Fee</u>
<u>Effective January 1, 2024</u>	<u>\$8.13 per 1,000 gallons per billing cycle</u>

4  
 5 For water used commencing January 1, 2016:

<b>Meter Size</b>	<b>Base Water Fee</b>	<b>Usage Allowance</b>
	<b>Per Account</b>	<b>Per Account (Gallons)</b>
Less than 1 inch	\$ 39.46	13,000
1 inch	59.19	20,000
1 1/2 inch	103.29	35,000
2 inch	162.64	54,000
3 inch	312.72	105,000
4 inch	483.42	162,000
6 inch	949.84	318,000

6 (Ord. [33](#), Series 2015)  
 7 ~~B. In addition to the base user fee set forth in subsection [A](#) of this section, each in~~  
 8 ~~Town nonresidential water user shall pay an excess use charge for water used in~~  
 9 ~~excess of the usage allowance for the applicable meter size set forth in the table in~~

1 subsection A of this section. The amount of the ~~excess use charge for nonresidential~~  
2 ~~water users shall be calculated at the same rate for each one thousand (1,000) gallons~~  
3 ~~of metered water used, or fraction thereof, as the residential excess use charge set forth~~  
4 ~~in subsection 12-4-11B of this chapter. (Ord. 30, Series 2005)~~

5 **Section 4.** That section 12-4-13 is amended to delete the language stricken  
6 and add the language underlined to read as follows:

7 **12-4-13: WATER USER FEES; MIXED USE:**

8 The in Town ~~base rate user fee and the usage allowance~~ per billing cycle for all mixed  
9 use water using properties shall be calculated based upon the predominant use of the  
10 water using property as determined by the finance director. ~~In addition to the base user~~  
11 ~~fee, each in Town mixed use water user shall pay an excess use charge of five dollars~~  
12 ~~twenty five cents (\$5.25) per one thousand (1,000) gallons of metered water, or fraction~~  
13 ~~thereof, used per billing cycle in excess of the applicable usage allowance.~~

14 **Section 5.** That section 12-4-14 is amended to delete the language stricken  
15 and add the language underlined to read as follows:

16 **12-4-14: BULK WATER:**

17 The rate for each one thousand (1,000) gallons of bulk water sold by the town shall be  
18 ~~twenty one~~ thirty two dollars and fifty cents ~~dollars~~ (\$21.00~~32.50~~). In addition, a  
19 connection fee of one hundred dollars (\$100.00), and a one thousand dollar (\$1,000.00)  
20 deposit shall be collected at the time of each bulk water sale. The damage deposit, less  
21 any amount necessary to reimburse the town for damage to the town's water meter and  
22 hydrant arising from the sale and delivery of the bulk water, shall be returned to the  
23 purchaser of the bulk water within thirty (30) days after the sale.

24 **Section 6.** That section 12-4-20 is amended to delete the language stricken  
25 and add the language underlined to read as follows:

1 **12-4-20: WATER SYSTEM MAINTENANCE FEE:**

2 There shall be included with each billing statement for water service, and there shall be  
3 assessed and paid by each owner whose water using property was connected to the  
4 town's water system during any portion of the billing cycle, in arrears, a WSMF fee in  
5 the amount of ~~twelve~~six dollars and thirty cents (~~\$12.00~~6.30) per SFE per billing cycle.  
6 The WSMF shall be a water charge within the meaning of section [12-1-6](#) of this title,  
7 and shall be due and payable to the town at the same time and in the same manner as  
8 other water charges are due and payable to the town under this chapter. Unpaid  
9 WSMFs may be collected by the town as provided by chapter [6](#) of this title.

10 **Section 7.** That section 12-4-21 is amended to delete the language stricken  
11 and add the language underlined to read as follows:

12 **12-4-21: FEE FOR PAPER STATEMENTS; ACCOUNT SETUP FEE:**

13 A. Commencing with the periodic billing statement issued by the town in ~~March~~  
14 February 2024 (for water service provided during the months of January  
15 February 2015 24), there shall be added to each paper billing statement mailed by the  
16 town through the United States postal service, and there shall be assessed and paid by  
17 the owner of the property that is the subject of the billing statement, a statement fee in  
18 the amount of ~~fifteen~~ ten dollars (~~\$15~~10.00) per statement per billing cycle. The  
19 statement fee shall be a water charge within the meaning of section [12-1-6](#) of this title,  
20 and shall be due and payable to the town at the same time and in the same manner as  
21 other water charges are due and payable to the town under this chapter. There shall be  
22 no statement fee charged if the owner elects to have the billing statement delivered by  
23 electronic means.

24 **Section 8.** That section 12-4-23 is amended to delete the language stricken  
25 and add the language underlined to read as follows:

26 **12-4-23: ANNUAL ADJUSTMENT OF CERTAIN FEES AND CHARGES:**

27 A. On January 1 of each year, commencing in ~~2018~~24 and continuing thereafter, the  
28 amount of the following fees and charges payable to the town pursuant to Chapter shall  
29 be increased as follows:

1 1. On January 1, 2018~~24~~ the amount of the PIF to be paid to the town pursuant to  
2 Section [12-4-3](#) shall be increased by an amount equal to ~~twenty~~ten (20~~10~~%) percent  
3 of the previous year's PIF. ~~On January 1, 2019, and each year thereafter, the~~  
4 ~~amount of the PIF to be paid to the town pursuant to Section [12-4-3](#) shall be~~  
5 ~~increased by an amount equal to ten percent (10%) of the previous year's PIF.~~ The  
6 increased PIF rate shall apply to all applications for water service that have not  
7 been fully paid by the effective date of such rate increase.

8 2. The amount of the in Town base user fee for all residential water users to be  
9 paid to the town pursuant to Section [12-4-11A](#) shall be increased by an amount  
10 equal to (~~5~~10%) of the previous year's base user fee.

11 3. The amount of the excess use charge to be paid to the town pursuant to Section  
12 [12-4-11B](#) shall be increased by an amount equal to ~~five~~ ten percent (~~5~~10%) of the  
13 previous year's excess use charge.

14 4. Each of the in Town base user fees for all nonresidential water users to be paid  
15 to the town pursuant to Section [12-4-12A](#) shall be increased by an amount equal to  
16 ~~five~~ ten percent (~~5~~10%) of the previous year's base user fee.

17 5. The water service maintenance fee due to the town pursuant to Section [12-4-13](#)  
18 shall be increased by an amount equal to five percent (5%) of the previous year's  
19 fee.

20 6. The bulk water fee due to the town pursuant to Section [12-4-14](#) shall be  
21 increased by an amount equal to ~~five~~ ten percent (~~5~~10%) of the previous year's bulk  
22 water fee. The connection fee and deposit required by Section [12-4-14](#) shall not be  
23 increased.

24 **Section 9.** That section 12-5-6-1 is amended to delete the language stricken  
25 and add the language underlined to read as follows:

26 **12-5-6-1: WATER SYSTEM MAINTENANCE FEE:**

27 There shall be included with each billing statement for out of town water service, and  
28 there shall be assessed and paid by each owner whose out of town water using  
29 property was connected to the town's water system during any portion of the billing  
30 cycle, in arrears, a WSMF in the amount of ~~twelve~~ six dollars and thirty cents

1 (~~\$12,006.30~~) per SFE per billing cycle. The WSMF shall be a water charge within the  
2 meaning of section [12-1-6](#) of this title, and shall be due and payable to the town at the  
3 same time and in the same manner as other water charges are due and payable to the  
4 town under this chapter. Unpaid WSMFs due from out of town water users may be  
5 collected by the town as provided by chapter [6](#) of this title.

6 **Section 10.** This ordinance shall be published and become effective as provided  
7 by Section 5.9 of the Breckenridge Town Charter.

8  
9 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED  
10 PUBLISHED IN FULL this \_\_\_\_ day of \_\_\_\_\_, 2024. A Public Hearing shall be held at  
11 the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the  
12 \_\_\_\_ day of \_\_\_\_\_, 2024, at 7:00 P.M., or as soon thereafter as possible in the Municipal  
13 Building of the Town.

14  
15 TOWN OF BRECKENRIDGE, a Colorado  
16 municipal corporation  
17

18  
19  
20 By: \_\_\_\_\_  
21 Kelly Owens, Mayor Pro Tem  
22

23 ATTEST:  
24  
25  
26  
27

28 \_\_\_\_\_  
29 Helen Cospolich, CMC,  
30 Town Clerk

31 ATTEST:  
32  
33  
34



# Memo

To: Town Council  
From: Clif Cross, Planner II  
Date: March 5, 2024 (for meeting of March 12, 2024)  
Subject: First Reading: Defensible Space Code

---

Staff presented proposed code amendments to *Policy 22A: Landscaping* and *Policy 48A: Voluntary Defensible Space* during a Town Council worksession held on January 9, 2024 after holding two worksessions with the Planning Commission on June 20 and August 15, 2023. Previously, the Commission and Town Council requested staff review how the Town Code could be amended to align with the Firewise standards adopted by our community partners while preserving the visual buffers and scenic backdrops within the Town. The proposed changes would:

1. Create a new “Immediate” zone (0 – 5’)
2. Reorganize the existing zones to align closer with the Firewise standards.
3. Create a new map for policy implementation within and outside of the Downtown Core.

Based on comments from our community partners and Town Council members heard during the worksession on January 9, 2024, staff has amended the relevant sections of the two policies regarding Defensible Space below for consideration.

1. Added language regarding the removal of combustibles under architectural features within the Immediate zone (0-5’).
2. Removed allowance for mulch within landscape beds within the Immediate zone (0-5’).
3. Refined language regarding cutting plantings when irrigation is turned off within the Immediate zone (0-5’).
4. Created a voluntary opportunity for the implementation of a non-combustible, horizontal layer intended to reduce structural ignitability on properties within and outside of the Downtown Core.

The proposed changes in both Policy 22A Landscaping and Policy 48A Voluntary Defensible Space are specifically intended to provide guidance for implementing voluntary or involuntary defensible space on private property. There are no changes proposed to the procedural aspects completed by staff or when the implementation of defensible space is required by new construction or major remodels.

**Staff Recommendation:**

Staff recommends the Town Council approve the proposed Code amendments to Policy 22A and Policy 48A at first reading.

Staff will be available at the worksession to answer any questions.

**A BILL FOR AN ORDINANCE AMENDING THE DEVELOPMENT CODE TO CREATE DEFENSIBLE SPACE FOR MITIGATION OF WILDFIRE.**

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

**Section 1.** That a new definition be added to section 9-1-5, underlined to read as follows:

DOWNTOWN CORE: A delineated land area of the Town established by the Downtown Core Map located in Policy 22A and Policy 48A used to distinguish properties that require additional consideration of the site in regard to the implementation of Defensible Space.

**Section 2.** That beginning at subsection C., entitled Required Wildfire Mitigation, of section 9-1-19-22A: Policy 22 (Absolute) Landscaping, the section be amended by deleting the language stricken and adding the language underlined to read as follows:

C. Required Wildfire Mitigation:

1. The creation of defensible space around structures is required for all new construction and for major remodels<sup>1</sup> that affect the exterior of a structure and/or a structures footprint.

2. Properties that are located within the ~~conservation district~~, Downtown Core, and those master planned properties with approved setbacks smaller than the setbacks described in section 9-1-19-9A, "Policy 9 (Absolute) Placement Of Structures", of this chapter, shall be given special consideration to allow for site buffers and screening to be created ~~and~~, maintained, and protected while still meeting the intent of reducing wildfire fuels.

3. The following standards shall apply to the creation of defensible space around a structure:

1 a. The property shall be divided into ~~three (3)~~ four (4) zones shown in the table  
 2 below. The zones shall measure from the eaves of the building or structure  
 3 including attached structures or protrusions, such as a deck on the property.  
 4 ~~Zone one shall be measured thirty feet (30') from the eaves of the building or~~  
 5 ~~structure including attached structures or protrusions, such as a deck on the~~  
 6 ~~property. Zone two shall be measured seventy five feet (75') or greater from the~~  
 7 ~~eaves of the building or structure including attached structures or protrusions,~~  
 8 ~~such as a deck on the property, depending on slope from the eaves of the~~  
 9 ~~building or structure on the property, and shall exclude the portion of the~~  
 10 ~~property located within zone one. Zone three shall extend beyond zone two to~~  
 11 ~~the property boundary.~~

<u>Zone</u>	<u>Distance</u>
<u>Immediate Zone</u>	<u>0' to 5'</u>
<u>Intermediate Zone</u>	<u>5' to 30'</u>
<u>Extended Zone 1</u>	<u>30' to 60'</u>
<u>Extended Zone 2</u>	<u>60' and greater</u>

12

13 b. Except as may be required to comply with the requirements of title [5](#),  
 14 chapter [11](#) of this code concerning mountain pine beetle infested trees, no  
 15 portion of any property may be "clear cut" in order to achieve defensible space.

16 c. Except as may be required to comply with the requirements of title [5](#),  
 17 chapter [11](#) of this code concerning mountain pine beetle infested trees, no more  
 18 trees shall be allowed to be removed than are necessary in order for the  
 19 landowner to create defensible space around his or her property.

20 d. Both the horizontal clearance between aerial fuels, such as the outside edge  
 21 of the tree crowns or high brush, as well as the vertical clearance between lower

1 limbs of aerial fuels and the nearest surface fuels and grass/weeds, shall be  
2 considered when determining compliance with the defensible space  
3 requirements of this policy.

4 e. Each property shall be reviewed individually, and the location and other  
5 physical characteristics of the property shall be considered. Without limiting the  
6 generality of the preceding provisions, the planning commission shall consider  
7 the property's proximity to a roadway, parking lot, and other similar areas that  
8 create fuel firebreaks. Similarly, large tracts of open space and forest service  
9 land that may require larger buffers shall be considered.

10 4. Immediate Zone: The following specific standards apply to the creation of  
11 defensible space within the immediate zone ~~one~~ (0-5'):

12 a. All dead and diseased trees, shrubs, and other landscaping materials shall  
13 be removed.

14 b. All vegetation and combustible and flammable material shall be removed  
15 from under all eaves, decks, and other architectural features. This includes, but not  
16 limited to, mulch, combustible ground debris, flammable plants, leaf and needle  
17 clutter, and firewood piles.

18 c. All grasses and ground cover shall be kept under six inches (6") in height;  
19 provided, however, plantings in irrigated planting beds, wildflowers or native grasses  
20 may exceed six inches (6") during the time the irrigation system is operable only. All  
21 plantings in irrigated planting beds must be cut when the irrigation system in no  
22 longer operable.

23 d. Additional Firewise landscaping material is encouraged and may be authorized  
24 by the development permit.

25 5. Intermediate Zone: The following specific standards apply to the creation of  
26 defensible space within the intermediate zone (5' -30'):

- 1 a. Healthy trees, shrubs, and other landscaping materials that provide visual  
2 buffers shall be preserved if they are well spaced so as to reduce the risk of a  
3 fire spreading to other vegetation or structures, but shall be pruned to remove  
4 dead branches.
- 5 b. Healthy trees, shrubs, and other landscaping material required by an  
6 existing approved landscape plan shall be preserved if they are well spaced so  
7 as to reduce the risk of a fire spreading to other vegetation or structures, but  
8 shall be pruned to remove dead branches.
- 9 c. Other healthy firewise trees, shrubs, and other landscaping material shall be  
10 preserved if they are well spaced so as to reduce the risk of a fire spreading to  
11 other vegetation or structures, but shall be pruned to remove dead branches.
- 12 d. Irrigated trees, shrubs, and other landscaping material may be preserved if  
13 they are pruned to remove dead branches and well spaced to reduce the risk of  
14 a fire spreading to other vegetation or structures.
- 15 e. All dead and diseased trees, shrubs, and other landscaping material shall  
16 be removed.
- 17 f. ~~All vegetation and combustible material shall be removed from under all~~  
18 ~~eaves and decks.~~
- 19 g. All leaf clutter, dead branches, and dead standing trees shall be removed  
20 from the property. Dead branches on living trees shall be trimmed to a minimum  
21 height of six feet (6') and a maximum height of ten feet (10') above the ground.
- 22 ~~hg. All grasses and ground cover shall be kept under six inches (6") in height.~~
- 23 ~~Exception: Plantings located in an irrigated planting bed, and wildflowers or~~  
24 ~~native grasses; however, wildflowers and native grasses shall be cut back to~~  
25 ~~under six inches (6") in height in the fall of each year once they go to seed. All~~  
26 ~~grasses and ground cover shall be kept under six inches (6") in height;~~  
27 ~~provided, however, plantings in irrigated planting beds, wildflowers or native~~

1 grasses may exceed six inches (6") during the time the irrigation system is  
2 operable only. All plantings in irrigated planting beds must be cut when the  
3 irrigation system in no longer operable.

4 h. All leaf and needle clutter and combustible ground debris shall be removed.  
5 Mulch within landscape beds that are irrigated may be maintained at a  
6 maximum depth of three inches (3").

7 ii. All firewood shall be removed unless covered by a canvas tarp, or as  
8 approved by the fire district.

9 56. Extended Zone One: The following specific standards apply to the creation of  
10 defensible space within the extended zone two-one (30'-60'):

11 a. Healthy trees, shrubs, and other landscaping material required by an  
12 approved landscape plan shall be preserved.

13 b. Healthy trees, shrubs, and other landscaping material that provide visual  
14 buffers shall be preserved if they are well spaced so as to reduce the risk of a  
15 fire spreading to other vegetation or structures, but shall be pruned to remove  
16 dead branches.

17 c. Other healthy firewise trees, shrubs, and other landscaping material shall be  
18 preserved if they are well spaced so as to reduce the risk of a fire spreading to  
19 other vegetation or structures, but shall be pruned to remove dead branches.

20 d. Irrigated trees, shrubs and other landscaping material may be preserved if  
21 they are pruned to remove dead branches and are well spaced to reduce the  
22 risk of a fire spreading to other vegetation or structures.

23 e. All dead and diseased trees, shrubs, and other landscaping material shall  
24 be removed. However, one snag per acre may be preserved for wildlife habitat if  
25 it is well spaced to avoid the spread of fire to other vegetation or structures.

26 f. Trees shall be thinned to open up crown spacing to a minimum of ~~ten~~ twelve  
27 feet (102') between the widest portion of individual crowns of the trees.

1 g. Groups of trees with a minimum of ~~ten~~ twelve feet (102') between the edges  
2 of the widest portions of crowns of each grouping shall be preserved to allow  
3 buffers to remain and to prevent wind throw.

4 h. Firewood may be maintained if an adequate buffer around the firewood is  
5 determined to exist by the fire district.

6 67. Extended Zone Two: The following specific standards apply to the creation of  
7 defensible space within the extended zone ~~three~~ two (60' and greater):

8 a. All dead and diseased trees, shrubs, and other landscaping material shall  
9 be removed. However, one snag per acre may be preserved for wildlife habitat if  
10 it is well spaced to avoid the spread of fire to other vegetation or structures.

11 78. New landscaping installed on a property shall comply with the requirements of  
12 subsections C(4), C(5) ~~and~~, C(6), and C(7) of this section.

13 9. The director has the authority from time to time to adopt, amend, alter and repeal  
14 administrative rules and regulations as necessary for the proper administration of  
15 this policy. Such regulations shall be adopted in accordance with the procedures  
16 established by title 1, chapter 18 of this code. The director's administrative rules  
17 may include, without limitation, spacing guidelines for trees, shrubs, and other  
18 vegetation and, if adopted, shall provide that the allowed distances between  
19 vegetation will depend on slopes, vegetation size, vegetation type (trees, shrubs,  
20 grass), and other fuel characteristics (including, but not limited to, fuel compaction  
21 and chemical content). In the event there is a conflict between these rules and  
22 regulations and the ordinance, the ordinance shall control.

23 10. Trees, shrubs, and other landscaping authorized by the director to be removed  
24 by the landowner in order to achieve the required defensible space shall be clearly  
25 identified in the field and photographed or located by global positioning satellite  
26 software by the director.

1 11. Prior to issuing a development permit authorizing the creation of defensible  
2 space Town staff shall conduct a physical inspection of each building, structure, or  
3 property that is the subject of the application.

4 12. Downtown Core Map

5 Properties that have been identified within the Downtown Core Map are areas that  
6 were developed in a manner that includes many roadways and other hard surface  
7 features that act as fire breaks. Further, due to the Downtown Core's tight  
8 development pattern, a limited number of plantings would be able to be planted,  
9 maintained, and preserved within this delineated area if the full extent of the  
10 standards were applied.

11 **Section 3.** That beginning at subsection C. of section 9-1-19-48A: Policy 48  
12 (Absolute) Voluntary Defensible Space, the code be amended by deleting the language  
13 stricken and adding the language underlined to read as follows:  
14

15 C. Properties that are located within the Downtown Core, and those master  
16 planned properties with approved setbacks smaller than the setbacks described in  
17 section [9-1-19-9A](#), "Policy 9 (Absolute) Placement Of Structures", of this chapter,  
18 shall be given special consideration to allow for site buffers and screening to be  
19 created, maintained, and protected while still meeting the intent of reducing wildfire  
20 fuels.

21 D. The following standards shall apply to an application for the voluntary creation of  
22 defensible space:

23 1. The property shall be divided into ~~three~~ four (34) zones shown in the table  
24 below. The zones shall measure from the eaves of the building or structure  
25 including attached structures or protrusions, such as a deck on the property. Zone  
26 one shall be measured thirty feet (30') from the eaves of the building or structure  
27 including attached structures or protrusions, such as a deck on the property. Zone  
28 two shall be measured seventy five feet (75') or greater from the eaves of the  
29 building or structure including attached structures or protrusions, such as a deck on

1 the property, depending on slope from the eaves of the building or structure on the  
2 property, and shall exclude the portion of the property located within zone one. Zone  
3 three shall extend beyond zone two to the property boundary.

<u>Zone</u>	<u>Distance</u>
<u>Immediate Zone</u>	<u>0' to 5'</u>
<u>Intermediate Zone</u>	<u>5' to 30'</u>
<u>Extended Zone 1</u>	<u>30' to 60'</u>
<u>Extended Zone 2</u>	<u>60' and greater</u>

4  
5 2. Except as may be required to comply with the requirements of title 5, chapter 11  
6 of this code concerning mountain pine beetle infested trees, no portion of any  
7 property may be "clear cut" in order to achieve defensible space.

8 3. Except as may be required to comply with the requirements of title 5, chapter 11  
9 of this code concerning mountain pine beetle infested trees, no more trees shall be  
10 allowed to be removed than are necessary in order for the landowner to create  
11 defensible space around his or her property.

12 4. In reviewing an application for the voluntary creation of defensible space the  
13 director shall consider both the horizontal clearance between aerial fuels, such as  
14 the outside edge of the tree crowns or high brush, as well as the vertical clearance  
15 between lower limbs of aerial fuels and the nearest surface fuels and grass/weeds.

16 5. Each property that is the subject of an application for the voluntary creation of  
17 defensible space shall be reviewed individually, and the location and other physical  
18 characteristics of the property shall be considered. Without limiting the generality of  
19 the preceding provisions, the director shall consider the property's proximity to a  
20 roadway, parking lot, and other similar areas that create fuel firebreaks. Similarly,  
21 large tracts of open space and forest service land that may require larger buffers  
22 shall be considered.

23 DE. Immediate Zone: The following specific standards apply to the creation of  
24 defensible space within the Immediate zone one (0'-5'):

1 1. All dead and diseased trees, shrubs, and other landscaping materials shall be  
2 removed.

3 2. All vegetation and combustible and flammable material shall be removed from  
4 under all eaves, decks, and other architectural features. This includes, but not  
5 limited to, mulch, combustible ground debris, flammable plants, leaf and needle  
6 clutter, and firewood piles.

7 3. All grasses and ground cover shall be kept under six inches (6") in height;  
8 provided, however, plantings in irrigated planting beds, wildflowers or native  
9 grasses may exceed six inches (6") during the time the irrigation system is  
10 operable only. All plantings in irrigated planting beds must be cut when the  
11 irrigation system is no longer operable.

12 4. Additional firewise landscaping material is encouraged and may be authorized  
13 by the development permit.

14 5. To prevent fire spreading by coming in direct contact with structures, a non-  
15 combustible, horizontal layer, known as a rock dripline, may be implemented.  
16 The follow specific standards apply:

17 a. Properties located within the Downtown Core:

18 A. It is encouraged that structures implement a horizontal clearance  
19 area starting at the structure's siding and extending the distance of  
20 the eave overhang, or a maximum of three feet (3') to reduce  
21 structural ignitability. The clearance area should utilize non-  
22 combustible material, such as rock, gravel, sand, cement, or  
23 stone/concrete pavers.

24 b. Properties located outside of the Downtown Core

25 A. It is encouraged that structures implement a horizontal clearance  
26 area starting at the structure's siding and extending the distance of  
27 the eave overhang, or a maximum of five feet (5') to reduce  
28 structural ignitability. The clearance area should utilize non-  
29 combustible material, such as rock, gravel, sand, cement, or  
30 stone/concrete pavers.

1 F. Intermediate Zone: The following specific standards apply to the create of  
2 defensible space within the Intermediate zone (5'-30'):

3 1. Healthy trees, shrubs, and other landscaping materials that provide visual  
4 buffers shall be preserved if they are well spaced so as to reduce the risk of a fire  
5 spreading to other vegetation or structures, but shall be pruned to remove dead  
6 branches.

7 2. Healthy trees, shrubs, and other landscaping material required by a town  
8 approved landscape plan shall be preserved if they are well spaced so as to reduce  
9 the risk of a fire spreading to other vegetation or structures, but shall be pruned to  
10 remove dead branches.

11 3. Other healthy firewise trees, shrubs, and other landscaping material shall be  
12 preserved if they are well spaced so as to reduce the risk of a fire spreading to other  
13 vegetation or structures, but shall be pruned to remove dead branches.

14 4. Irrigated trees, shrubs, and other landscaping material may be preserved if they  
15 are pruned to remove dead branches and well spaced to reduce the risk of a fire  
16 spreading to other vegetation or structures.

17 5. All dead and diseased trees, shrubs, and other landscaping material shall be  
18 removed.

19 ~~6. All vegetation and combustible material shall be removed from under all eaves~~  
20 ~~and decks.~~

21 7. All leaf clutter, dead branches, and dead standing trees shall be removed from  
22 the property. Dead branches on living trees shall be trimmed to a minimum height of  
23 six feet (6') and a maximum height of ten feet (10') above the ground.

24 ~~87. All grasses and ground cover shall be kept under six inches (6") in height.~~

25 ~~Exception: Plantings located in an irrigated planting bed, and wildflowers or native~~  
26 ~~grasses; however, wildflowers and native grasses shall be cut back to under six~~  
27 ~~inches (6") in height in the fall of each year once they go to seed. All grasses and~~  
28 ~~ground cover shall be kept under six inches (6") in height; provided, however,~~  
29 ~~plantings in irrigated planting beds, wildflowers or native grasses may exceed six~~

1 inches (6") during the time the irrigation system is operable only. All plantings in  
2 irrigated planting beds must be cut when the irrigation system in no longer operable.

3 ~~98.~~ All leaf and needle clutter and combustible ground debris shall be removed.  
4 Mulch within landscape beds that are irrigated may be maintained at a maximum  
5 depth of three inches (3").

6 ~~109.~~ All firewood shall be removed unless covered by a canvas tarp, or as  
7 approved by the fire district.

8 ~~140.~~ Additional firewise landscaping material is encouraged and may be  
9 authorized by the development permit.

10 ~~E.G.~~ Extended Zone One: The following specific standards apply to the creation of  
11 defensible space within the extended zone ~~two one~~ (0'-5'30'-60'):

12 1. Healthy trees, shrubs, and other landscaping material required by a town  
13 approved landscape plan shall be preserved.

14 2. Healthy trees, shrubs, and other landscaping material that provide visual buffers  
15 shall be preserved if they are well spaced so as to reduce the risk of a fire spreading  
16 to other vegetation or structures, but shall be pruned to remove dead branches.

17 3. Other healthy firewise trees, shrubs, and other landscaping material shall be  
18 preserved if they are well spaced so as to reduce the risk of a fire spreading to other  
19 vegetation or structures, but shall be pruned to remove dead branches.

20 4. Irrigated trees, shrubs and other landscaping material may be preserved if they  
21 are pruned to remove dead branches and are well spaced to reduce the risk of a fire  
22 spreading to other vegetation or structures.

23 5. All dead and diseased trees, shrubs, and other landscaping material shall be  
24 removed. However, one snag per acre may be preserved for wildlife habitat if it is  
25 well spaced to avoid the spread of fire to other vegetation or structures.

26 6. Trees shall be thinned to open up crown spacing to a minimum of ~~ten~~ twelve  
27 feet (~~10~~12') between the widest portion of individual crowns of the trees.

1 7. Groups of trees with a minimum of ~~ten~~ twelve feet (102') between the edges of  
2 the widest portions of crowns of each grouping shall be preserved to allow buffers to  
3 remain and to prevent wind throw.

4 8. Firewood may be maintained if an adequate buffer around the firewood is  
5 determined to exist by the fire district.

6 9. Additional firewise landscaping material is encouraged and may be authorized  
7 by the development permit.

8 FH. Extended Zone Two: The following specific standards apply to the creation of  
9 defensible space within the Extended zone three two (60' and greater):

10 1. All dead and diseased trees, shrubs, and other landscaping material shall be  
11 removed. However, one snag per acre may be preserved for wildlife habitat if it is  
12 well spaced to avoid the spread of fire to other vegetation or structures.

13 2. Additional firewise landscaping material is encouraged and may be authorized  
14 by the development permit.

15 G. The director has the authority from time to time to adopt, amend, alter and repeal  
16 administrative rules and regulations as necessary for the proper administration of this  
17 policy. Such regulations shall be adopted in accordance with the procedures  
18 established by title 1, chapter 18 of this code. The director's administrative rules may  
19 include, without limitation, spacing guidelines for trees, shrubs, and other vegetation  
20 and, if adopted, shall provide that the allowed distances between vegetation will depend  
21 on slopes, vegetation size, vegetation type (trees, shrubs, grass), and other fuel  
22 characteristics (including, but not limited to, fuel compaction and chemical content). In  
23 the event there is a conflict between these rules and regulations and the ordinance, the  
24 ordinance shall control.

25 ~~H. For the purpose of attempting to make certain that tree removal contractors working~~  
26 ~~within the town are familiar with the goals of this policy, but not to regulate the means,~~  
27 ~~methods, training, equipment, or business practices of tree removal contractors, the~~  
28 ~~director shall maintain a list of town approved tree removal contractors. The town makes~~  
29 ~~no guarantees or representations whatsoever concerning the qualifications, experience,~~  
30 ~~ability, competence, or business practices of any town approved tree removal~~  
31 ~~contractor. The town has no liability to any person with respect to the work or business~~  
32 ~~practices of a town approved tree removal contractor, and no action at law or in equity~~

1 shall lie against the town as a result of a person being placed on or removed from the  
2 director's list of town approved tree removal contractors. The director may provide in his  
3 rules and regulations for the removal of a contractor from the list of town approved  
4 contractors.

5 IJ. Trees, shrubs, and other landscaping authorized by the director to be voluntarily  
6 removed by the landowner in order to achieve the required defensible space shall be  
7 clearly identified in the field and photographed or located by global positioning satellite  
8 software by the director.

9 JK. The fire district may assist the director in administering this policy if authorized by  
10 an intergovernmental agreement with the town. The intergovernmental agreement shall  
11 be consistent with the provisions of this policy. All personnel involved in the  
12 enforcement of this policy shall be trained by the director to make sure that they are  
13 aware of the town's goals of preserving buffers and required landscape materials while  
14 creating defensible space.

15 L. Downtown Core Map

16 Properties that have been identified within the Downtown Core Map are areas that were  
17 developed in a manner that includes many roadways and other hard surface features  
18 that act as fire breaks. Further, due to the Downtown Core's tight development pattern,  
19 a limited number of plantings would be able to be planted, maintained, and preserved  
20 within this delineated area if the full extent of the standards were applied.

21  
22

23 **Section 4.** This ordinance shall be published and become effective as provided  
24 by Section 5.9 of the Breckenridge Town Charter.

25  
26

27 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED  
28 PUBLISHED IN FULL this \_\_\_\_ day of \_\_\_\_\_, 2024. A Public Hearing shall be held at  
29 the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the  
30 \_\_\_\_ day of \_\_\_\_\_, 2024, at 7:00 P.M., or as soon thereafter as possible in the Municipal  
31 Building of the Town.

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TOWN OF BRECKENRIDGE, a Colorado  
municipal corporation

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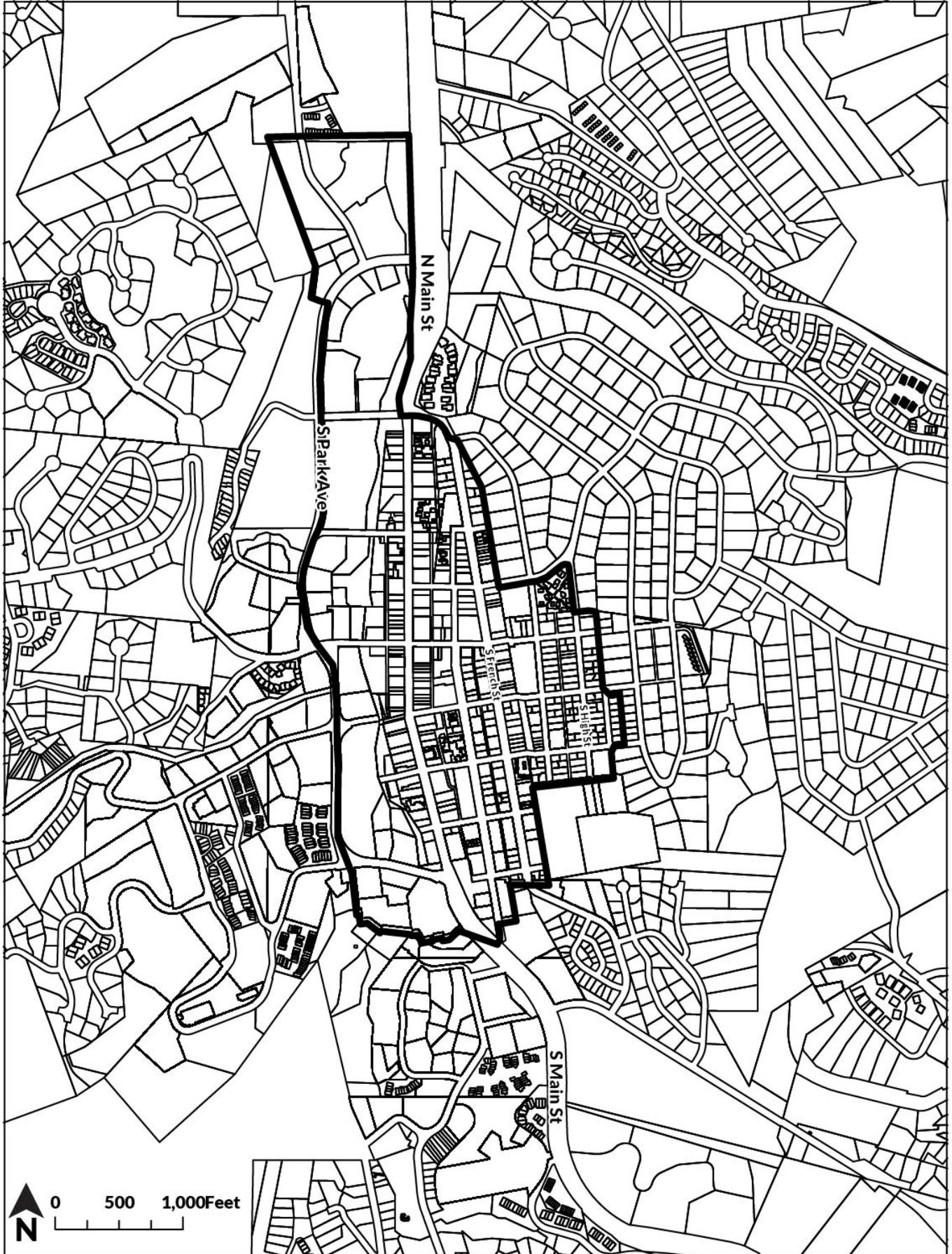
By: \_\_\_\_\_  
Kelly Owens, Mayor Pro Tem

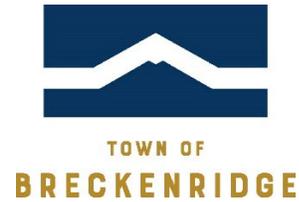
ATTEST:

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

ATTEST:

Downtown Core Map





# Memo

To: Town Council  
From: Ellie Muncy, Planner I  
Date: March 4, 2024 (for March 12, 2024 Meeting)  
Subject: Demolition By Neglect Code Amendments (First Reading)

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To address a concern of the lack of maintenance of historic sheds and secondary structures on private property, staff created an [interactive map](#) documenting 96 historic secondary structures. When this was brought to the November 21<sup>st</sup> and February 20<sup>th</sup> Planning Commission meetings, the Commissioners determined it was important to protect historic structures and were supportive of the proposed code changes to expand protection of historic structures. This topic was also presented to Town Council at the December 26<sup>th</sup> meeting where Council was also supportive of potential code changes. Subsequently a draft of proposed Code changes was presented to Council at the February 13<sup>th</sup> meeting.

Current Town Code only requires property owners to stabilize historic structures on locally landmarked properties (Code Section 9-11-7: Property Stabilization Required). The proposed Code amendments include adding demolition by neglect provisions and extending the requirement to all historic structures which fall within the Town's period of significance. The modifications also include minor changes to some definitions, two permit classifications changes, and some added wording for clarification.

Changes since the Town Council meeting on February 13<sup>th</sup>:

- The demolition by neglect definition and stabilization definitions were changed based on several wording suggestions by the Council, Breck History, and Staff.
- The title for 9-11-7 (section 3 of the bill) was changed.
- Some proposed wording in the demolition section was removed and changed.
- Wording was added designating stabilization of a secondary structure as a Class D Minor permit with a waived fee and reduced submittal requirements.
- The existing penalties in the Enforcement and Penalties section were extended to all historic structures.
- Additional enforcement and penalty options were drafted and added by the Town Attorney, with an appeal process for cases of demolition by neglect.

These amendments will increase the number of properties subject to the demolition by neglect provisions. In conjunction with this action, staff has also proposed a grant program to assist property owners in stabilizing structures. Additionally, in order to monitor the integrity of historic structures, staff will do a yearly walkthrough to monitor the condition of historic buildings and secondary structures, potentially with Breckenridge History.

Staff recommends the Town Council approve the Demolition by Neglect Code amendments at first reading.

COUNCIL BILL NO. \_\_\_\_

Series 2024

**A BILL FOR AN ORDINANCE ESTABLISHING CRITERIA FOR  
DETERIORATION OF LANDMARKS AND HISTORIC STRUCTURES  
IN A MANNER THAT CONSTITUTES DEMOLITION BY NEGLECT.**

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

**Section 1.** That section 9-11-2 entitled "Definitions" be amended by deleting the language stricken and adding the language underlined maintaining alphabetical order to read as follows:

**9-11-2: DEFINITIONS:**

DEMOLITION: Any act or process which destroys, in whole or in part, any landmark or historic structure.

DEMOLITION BY NEGLECT: Failure to provide ordinary and necessary maintenance and repairs to a degree that compromises the structural integrity of any landmark or historic structure.

DIRECTOR: The director of the department of community development of the town or their designee.

LANDMARK: A designated individual building, structure, object, site or an integrated group of buildings, structures or objects having a special historical or architectural value. Unless otherwise indicated in this chapter, the term "landmark" shall include both federally designated landmarks and town designated landmarks.

STABILIZATION OR STABILIZE: Providing weather protection; ~~or repair or preservation of a roofing structure, roof rafter, load bearing wall or foundation,~~ shoring and/or bracing to ensure structural integrity, as approved by the Town to ensure longevity of the structure and its historic fabric, including roofing, siding, roof structure, roof rafters, load bearing walls, drainage/grading and foundation

1           **Section 2.** That section 9-11-3 entitled “Definitions” be amended by deleting the  
2 language stricken and adding the language underlined maintaining alphabetical order to read  
3 as follows:  
4

5   **9-11-3:           DESIGNATION OF LANDMARKS, LANDMARK SITES, HISTORIC**  
6                           **DISTRICTS AND CULTURAL LANDSCAPE DISTRICTS:**

7   A. Designation Authorized: Pursuant to the procedures hereinafter set forth in this section, and  
8 subject to section [9-11-4](#) of this chapter, the town council may, by ordinance, designate a  
9 landmark, landmark site, historic district or a cultural landscape district. The property included in  
10 any such designation shall be subject to the controls and standards set forth in this chapter, and  
11 eligible for such incentive programs as may be developed by the town.

12   B. Designation Procedures: The town shall follow the following procedures in connection with  
13 any proposal to designate a landmark, landmark site, historic district or a cultural landscape  
14 district:

15           1. Property Owner Consent:

16           a. Landmarks And Landmark Sites: No proposal for the designation of a landmark or a  
17 landmark site shall be accepted by the director as complete and ready for town action  
18 unless the property owner of the landmark or landmark site has consented to such  
19 designation.

20           b. Historic Districts And Cultural Landscape Districts: No proposal for the designation  
21 of a historic district or a cultural landscape district site shall be accepted by the director  
22 as complete and ready for town action unless at least fifty one percent (51%) of the  
23 property owners of the land within the proposed historic district or cultural landscape  
24 district have consented to such designation.

25           c. Director To Give Notice: Within thirty (30) days following receipt of a historic district  
26 or cultural landscape district designation proposal, and prior to accepting such proposal  
27 as being complete and ready for town action, the director shall send written notice of  
28 the submission of such designation proposal to the owner(s) of the land which is the  
29 subject of the designation proposal as shown on the records of the Summit County

1 assessor. The notice provided by the director shall outline the reasons for and the  
2 effects of the proposed designation. (Ord. [24](#), Series 2001)

3 2. Process To Be Followed: A proposal to designate a historic district or cultural landscape  
4 district shall be processed by the town using the Class A development permit process as  
5 set forth in the development code, except as otherwise expressly provided in this section. A  
6 proposal to designate a landmark or landmark site shall be processed by the town using the  
7 Class ~~BC~~ minor development permit process as set forth in the development code, except  
8 as otherwise expressly provided in subsections [B3](#) and [B4](#) of this section. Any application  
9 submitted under this chapter may be processed concurrently with a development permit  
10 application for the same property. In the event of the submission of an application under this  
11 chapter and a concurrent development permit application for the same property, the  
12 applications shall be processed jointly as a Class A and the applicant shall only be required  
13 to pay one application fee which shall be calculated ~~based on the higher development~~  
14 ~~permit classification of the two (2) applications~~ as a Class A fee.

15 **Section 3.** That section 9-11-7 be retitled and amended to delete the language stricken  
16 and add the language underlined to read as follows:

17 **9-11-7: ~~PROPERTY STABILIZATION REQUIRED~~CRITERIA FOR ESTABLISHING**  
18 **LACK OF MAINTENANCE AND REPAIRS CONSTITUTING DEMOLITION BY**  
19 **NEGLECT:**

20 A. The town intends to preserve from deliberate or inadvertent neglect of any landmark or  
21 historic structure whose stabilization is necessary to prevent the landmark's or historic  
22 structure's deterioration that constitutes demolition without a permit.

23 B. No owner, lessee, or occupant of any landmark or historic structure shall neglect or fail to  
24 prevent stabilization of the landmark or any historic structure.

25 C. No owner, lessee or occupant of any landmark or any historic structure shall neglect or fail  
26 to comply with all applicable provisions of this chapter and other ordinances of the town  
27 regulating property maintenance of the landmark or any historic structure.

28 D. ~~Before the town attorney files a complaint for failure to stabilize a property as required by~~  
29 ~~this section,~~ Where the director identifies a case of demolition by neglect, they shall notify the

1 property owner, lessee, or occupant of the need to stabilize the property, shall endeavor to  
2 assist the owner, lessee, or occupant in determining how to stabilize the property, and shall give  
3 the owner a reasonable time, not less than thirty (30) days, to perform the required stabilization.

4 E. Stabilization of a secondary structure shall be processed under a Class D Minor permit with a  
5 waived permit fee. The required documents shall be reduced to the following: description of  
6 work, basic site plan, altered photos or drawings on graph paper to show proposed changes,  
7 and before and after photos of the structure. As part of the permit a pre-construction meeting is  
8 required.

9 **Section 4.** . That section 9-11-9 be amended to delete the language stricken and add  
10 the language underlined to read as follows:

11

12 **9-11-9:DEMOLITION CRITERIA:**

13 No "historic structure" as defined in section [9-1-5](#) of this title, or landmark shall be demolished  
14 without the owner first having obtained a demolition permit from the town. A demolition permit  
15 shall not be approved by the town until a replacement/reuse plan for the property has been  
16 approved by the town. An application for a demolition permit pursuant to this section shall be  
17 processed as a Class B major development permit application in accordance with the  
18 development code, but shall be evaluated only under the following criteria. As part of the  
19 development permit application, the town may require that a cultural survey be prepared by a  
20 qualified person at the applicant's cost.

21 A. Review Criteria For Total Demolition: A permit for demolition shall only be approved if all of  
22 the following criteria are met:

23 1. The building, structure or object proposed for demolition is not structurally sound  
24 despite evidence of the owner's efforts to properly maintain it;

25 2. The building, structure or object cannot be rehabilitated or reused on site to provide for  
26 any reasonable economical use of the property;

27 3. The building or structure that has been relocated from the historic site and ~~The building,~~  
28 ~~structure or object~~ cannot be practically moved to another site in the town;

29 4. The applicant demonstrates that the demolition proposal mitigates to the greatest extent  
30 practical the following:

- 1 a. Any impact(s) that will occur to the visual character of the neighborhood where  
2 demolition is proposed to occur.
- 3 b. Any impact(s) that will occur to the historic importance of the buildings, structures or  
4 objects located on the property and adjacent properties.
- 5 c. Any impact that will occur to the architectural integrity of the buildings, structures or  
6 objects located on the property and adjacent properties.

7 Consideration will be given to whether materials can be recycled for use as part of  
8 another building, structure or object.

9 In the case of archaeological sites, consideration will be given to whether information  
10 can be recovered as part of the demolition process.

11 B. Review Criteria For Partial Demolition: A permit for partial demolition shall only be approved  
12 if all of the following criteria are met:

- 13 1. The partial demolition is required for the renovation, restoration or rehabilitation of the  
14 building, structure or object;
- 15 2. The applicant has mitigated, to the greatest extent possible:
  - 16 a. Impacts on the historic importance of the buildings, structures or objects located on  
17 the property.
  - 18 b. Impacts on the architectural integrity of the buildings, structures or objects located  
19 on the property; and

20 Consideration will be given to whether materials can be recycled for use as part of another  
21 building, structure or object.

22 **Section 5.** That section 9-11-12 is hereby repealed and replaced with the following  
23 language underlined to read as follows:

24 **9-11-12: ENFORCEMENT AND PENALTIES; APPEALS:**

25 A. Anyone who is found to have violated this chapter is subject to criminal and civil  
26 penalties as set forth below and in the Town code.

1 1. Criminal penalties. Failure to comply with the requirements of this chapter may  
2 result in a summons and complaint and subject to the general penalty under section 1-4-1  
3 and/or an infraction under 1-4-1-1 of the municipal code.

4 2. Civil penalties. Failure to comply with the requirements of this chapter may result  
5 in the imposition of a fine not to exceed one hundred dollars (\$100.00) for each day of  
6 continuing violation.

7 3. In addition to the civil and criminal penalties provided above, neglect of a  
8 landmark, landmark site, or building in the historic district may result in up to a one-year  
9 moratorium on all building and development permits being issued for the subject property or  
10 imposed on the same owner or same developer on other properties as provided under section  
11 9-1-6 of the development code.

12 B. Continuing Violations: A person shall be guilty of a separate offense for each and  
13 every day during any portion of which any violation of this chapter is committed, continued or  
14 permitted by such person, and such person shall be punished accordingly.

15 1. An alteration which is made to a landmark or historic structure without an approved  
16 development permit issued under the development code may result in up to a one-year  
17 moratorium on all building and development permits for the subject property.

18 2. The relocating or demolition of a landmark or historic structure without an approved  
19 permit issued under this chapter may result in up to a five (5) year moratorium on all relocation,  
20 demolition, or building permits for the structure and for the property at the structure's original  
21 location.

22 C. Fines and penalties under this section may be imposed separately or  
23 cumulatively.

24 D. Warnings and Notice.

25 1. Prior to imposing any fines or administrative penalties under this chapter,  
26 community development will issue a first warning and an opportunity to cure the violation.

27 2. If the violation is not cured within thirty (30) days of the date of the notice, which  
28 time period may be extended in writing by the director or their designee for good cause shown,  
29 the director shall send written notice of an administrative penalty by first class United States  
30 mail to such person at such person's last known address.

1           E. Appeals.

2           1.     Any party found in violation of this chapter or who disputes the demand for  
3 stabilization has a right to appeal to the planning commission by submitting a complaint to the  
4 director within thirty (30) days of the notice of violation. A complaint shall be in writing and set  
5 forth both the grounds for the appeal and supporting facts next regularly scheduled planning  
6 commission meeting, or as soon thereafter as reasonably practical.

7           2.     The burden of proof shall be on the proponent of a claim or issue to prove such  
8 claim or issue by a preponderance of the evidence, and on the party raising any affirmative  
9 defense or matter of mitigation to prove such affirmative defense or matter of mitigation by a  
10 preponderance of the evidence. "Preponderance of the evidence" means to prove that  
11 something is more probably true than not.

12          3.     The finding or decision of planning commission in connection with any appeal  
13 shall be delivered in writing within thirty (30) days following the hearing on the matter. The  
14 decision of the planning commission shall be final, subject to the right of any aggrieved party to  
15 contest the matter in an appropriate court action commenced under rule 106(a)(4) of the  
16 Colorado Rules of Civil Procedure. For purposes of determining the time limit for the  
17 commencement of an action under rule 106(a)(4) of the Colorado Rules of Civil Procedure, the  
18 decision of the planning commission shall be deemed to be final upon the issuance of the  
19 written finding or decision.

20           **Section 6.** That chapter 1 of the Breckenridge Development Code be amended to  
21 delete the language stricken and add the language underlined to read as follows:

22 **9-1-5:           DEFINITIONS:**

23 CLASS A DEVELOPMENT: Any development which includes any of the following activities or  
24 elements:

25           A. Residential uses which include three (3) units or more.

26           B. Lodging and hotel uses.

27           C. Any site work or landscaping which is in excess of two hundred thousand dollars  
28 (\$200,000.00) in value, to include ski lifts and parking lots.

- 1 D. Commercial and industrial uses, additions and remodels thereto which are one
- 2 thousand (1,000) square feet in size or greater.
- 3 E. Approval of a master plan on a site five (5) acres or more in size.
- 4 F. Major amendment to a master plan pursuant to section [9-1-19-39A](#), "Policy 39
- 5 (Absolute) Master Plan", subsection L, of this chapter.
- 6 G. Those wireless communication facilities permit applications described in section [9-1-19-](#)
- 7 [50A](#), subsection D(1), of this chapter.
- 8 H. Remodel or addition to any historic residential structure within the Historic District or the
- 9 Conservation District.
- 10 I. Demolition or moving of a landmark or historic structure or any portion of the same.

11 CLASS B DEVELOPMENT: Any development which includes any of the following activities or

12 elements:

13 Class B - Major:

- 14 A. New single-family nonhistoric residential within the Historic District or the
- 15 Conservation District.
- 16 B. New duplex residential within the Historic District or Conservation District.
- 17 C. Bed and breakfasts, and boarding houses.
- 18 D. Commercial and industrial uses and additions which are less than one thousand
- 19 (1,000) square feet in size or ten percent (10%) of the existing square footage (unless
- 20 classified as a Class A development).
- 21 E. Approval of a master plan on a site of less than five (5) acres.
- 22 ~~F. Demolition or moving of a landmark or historic structure (including any portion of~~
- 23 ~~the structure).~~

24 Class B - Minor:

- 25 A. Change of use within a Residential District.

- 1 B. Site work, landscaping, grading, and utility installations on steep slopes (greater
- 2 than 15 percent) or within environmentally sensitive areas.
- 3 C. Operation of a home childcare business.
- 4 D. Vendor carts, large.
- 5 E. Application for exempt large vendor cart designation.

6 Class B development is divided into major and minor categories for purposes of payment of  
7 application fees<sup>1</sup> only. The procedures set forth in this chapter for the processing of Class B  
8 development permit applications apply to both major and minor categories.

9 CLASS C DEVELOPMENT: Any development which includes any of the following activities or  
10 elements:

- 11 A. Change of use outside of a Residential District.
- 12 B. Master sign plans.
- 13 C. Temporary structures to be used for longer than three (3) days.
- 14 D. Additions to commercial, office or industrial structures of less than ten percent (10%) of
- 15 the existing square footage.
- 16 E. Matters relating to nonconforming uses.
- 17 F. Minor amendment to a master plan pursuant to section [9-1-19-39A](#), subsection L, of this
- 18 chapter.
- 19 G. Installation of solar device within the Conservation District.
- 20 H. *Vendor Carts, Small*: A small vendor cart shall be processed as a Class C development
- 21 permit with public notice requirements per a Class B development permit.
- 22 I. Major remodel to residential condominium, lodging, or hotel structure.
- 23 J. Temporary tents meeting the special requirements set forth in section [9-1-19-36A](#),
- 24 subsection F(2), of this chapter.
- 25 K. Exterior loudspeakers associated with a commercial use.

1 L. Any exterior food and beverage area.

2 M. A proposal to designate a landmark or landmark site pursuant to section 9-11-3(B)(2)  
3 except when processed concurrently with a rehabilitation development permit.

4 CLASS D DEVELOPMENT: Any development which includes any of the following activities and  
5 elements:

6 *Class D - Major:*

7 1. New single-family, duplex structure, or major remodel outside of the Historic  
8 District, with or without an accessory dwelling unit, including, without limitation, master  
9 planned property with multiple single-family and duplex structures, except where the  
10 proposed development either:

11 a. Warrants the assessment of any negative points based upon the director's  
12 preliminary assessment at the time the application is initially filed; or

13 b. Is located on a lot, tract, or parcel without a platted building or disturbance  
14 envelope outside of the conservation district as defined in section [9-1-19-3A](#) of this  
15 chapter (density).

16 A Class D - Major permit application that meets the conditions described in subsection  
17 1(a) or 1(b) of this definition shall be reclassified as a Class C development permit  
18 application.

19 2. Those wireless communication facilities permit applications described in section [9-](#)  
20 [1-19-50A\(D\)\(2\)](#) of this chapter.

21 3. Accessory dwelling units except when the permit application meets the conditions  
22 described in subsection 1(a) or 1(b) of this definition, in which case the application shall  
23 be reclassified as a Class C development permit application.

24 *Class D - Minor:*

25 1. Banners and sponsor banners (all).

26 2. Individual signs (all).

27 3. Demolition or moving of any structure outside of the historic or conservation district.

- 1 4. Demolition of nonhistoric structure within the historic or conservation district.
- 2 5. Fencing (all).
- 3 6. Home occupation.
- 4 7. Minor remodel<sup>2</sup> of any residential structure.
- 5 8. Temporary structures to be used for three (3) days or less.
- 6 9. Operation of a chalet house.
- 7 10. Any painting of a structure within the historic or conservation district, except for
- 8 paint maintenance.
- 9 11. Any painting of a structure with a commercial or lodging use outside of the historic
- 10 district in land use districts 3, 4, 5, 6, 9, 13, 20, 23, 25, 28, 31, 32, 33, 35 or 39; except
- 11 for paint maintenance.
- 12 12. The painting of a contemporary landmark as provided in section [9-1-19-5A](#), "Policy
- 13 5 (Absolute) Architectural Compatibility," subsection A(2), of this chapter.
- 14 13. The placement of a commercial handbill dispenser outside of a fully enclosed
- 15 building as provided in section [11-5-6](#) of this Code.
- 16 14. Construction of approved private trash enclosure or conversion of nonconforming
- 17 private trash enclosure to approved private trash enclosure.
- 18 15. Placement of public art.
- 19 16. Substitution of employee housing unit or modification to unit floor plan.
- 20 17. Summer seasonal occupancy of employee housing unit as provided in section [9-](#)
- 21 [1-19-24R](#), "Policy 24 (Relative) Social Community," subsection A(5), of this chapter.
- 22 18. Placement of a satellite earth station larger than 2 meters in diameter in land use
- 23 districts where industrial or commercial uses are recommended, or larger than 1 meter
- 24 in diameter in land use districts where any other use is recommended.
- 25 19. Site work, landscaping, grading, and utility installations unless done on steep
- 26 slopes or within environmentally sensitive areas.

- 1           20. The outdoor display or storage of bicycles as provided in section [9-7-6C](#) of this  
2           Code.
- 3           21. Any other development described as a Class D minor development in any town  
4           ordinance.
- 5           22. Installation of swimming pool, spa or hot tub.
- 6           23. Seasonal noncommercial greenhouse.
- 7           24. Installation of solar device outside the Conservation District.
- 8           25. Creation of voluntary defensible space around a building or structure, or on a  
9           parcel of land.
- 10          26. Application for a renewable energy mechanical system.
- 11          27. Master sign plan modification.
- 12          28. Radio broadcast.
- 13          29. Temporary tents to be used for five (5) days or less.
- 14          30. Those small cell facilities applications described in section [9-1-19-50A\(D\)\(3\)](#) of  
15          this chapter.
- 16          31. Stabilization of a historic secondary structure.

17          Class D development is divided into major and minor categories for purposes of payment of  
18          application fees only. The procedures set forth in this chapter for the processing of Class D  
19          development permit applications apply to both major and minor categories.

20          \* Major remodel - Additional residential square footage of more than ten percent (10%) of  
21          existing structure square footage and/or change of character to the exterior of the structure.

22          \* Minor remodel - Additional residential square footage of ten percent (10%) or less of the  
23          existing structure's square footage.

24



# Memo

**To:** Town Council  
**From:** Planning Staff  
**Date:** March 6, 2024, for the meeting of March 12, 2024  
**Subject:** BGV Peak 8/ Gold Rush Lot Draft Development Agreement (First Reading)

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Included in the packet is a Development Agreement for First Reading for the Peak 8/ Gold Rush Lots/ Entrada Sites, collectively Parcels 1-7. Staff, representing the Planning, Engineering and Housing Divisions, finds the proposed Development Agreement is consistent with the direction of the twelve previous worksessions held between June, 2023 and February 2024 and supports its adoption as drafted.

## **Changes Since the February 12, 2024 Draft Development Agreement Worksession**

Based on feedback from the Council's review of the draft Development Agreement at the February 12<sup>th</sup> worksession, the applicant has worked with Town staff to revise the Development Agreement in preparation of this First Reading. For ease of comparison, a redlined version of the Development Agreement is included in the packet with the Council Bill and the Clean version of the Development Agreement. Noteworthy changes to the Development Agreement are listed below.

- Phasing Summary – (Page 3, Section 10) – Staff supports the proposed phasing because certain milestones are required in the Development Agreement that will effectively enforce the specified phasing:
  - Requirement of certificate of occupancy (CO) for the Parcel 2 workforce housing and completion of the roundabout prior to the sale of the remaining 8 single-family home lots (Page 10, Section 4.3) - Section 4.3's language was revised and now proposes restrictive covenants and deed restrictions to be placed on half of the lots that the Town will have to release to in order for the applicants to sell.
  - Requirement of Parcel 1 Improvements to be implemented by Applicant in stages and be substantially completed either upon the issuance of a final certificate of occupancy for all improvements on Parcel 4 or within six (6) years from the Effective Date of the Development Agreement, whichever is earlier. (Page 12, section 5.3)
  - Requirement of completion of the roundabout prior to CO of the Parcel 2 workforce housing. (Page 14, Section 6.1(d))
  - Requirement of CO for the Parcel 2 workforce housing prior to the issuance of any COs for the Parcel 3 duplexes. (Page 16, Section 7.1(b))
  - Requirement of providing space to the BOEC prior to the CO of any unit on Parcel 4. (Page 17, Section 8.1 (b))
  - Requirement of CO for the Parcel 7 workforce housing prior to the CO of any unit on Parcel 4. (Page 18, Section 8.1 (e) (ii))
- No Vertical Construction on Parcel 1 – (Page 7, Section 2.3) – This section was amended to eliminate the phrase “at this time”. Additional language acknowledges that this Development Agreement would not limit a future Council and landowner from jointly agreeing to a different use.

- Sol Center Contribution – (Page 8, Section 2.6) – The commitment to the capital campaign has increased to \$2,000,000.
- NRO Lease – (Page 13, Section 6.1 (b) (vi)) – The applicant proposes new language with the added comment to staff, “We look forward to working collaboratively with the Council at Tuesday’s meeting on the language so we can reasonably meet the goals of the Town and the community. We propose the current language be a place holder for the first reading and will then finalize this section prior to the second reading.
- Non-Natural Materials - (Page 14, Section 6.2 (d)) - This section was revised to comply with Policy 5R and does not require a waiver.
- Tree Buffer Requirements for Parcels 2 and 3 – (Page 15, section 6.2 (e) & Page 16, section 7.2 (c)) – Staff and the applicant worked together to provide satisfactory language that ensures adequate mature trees are retained and new trees are planted to achieve adequate buffering. Staff supports the proposed language in both sections because eligibility for the requested waivers is tied to providing tree preservation and revegetation consistent with the DTJ concept plan that was reviewed and supported by the Council on December 12th and is attached as an exhibit to the Development Agreement.
- Greater Specificity on Requested Code Relief — New Code references and information were added by the applicant to provide more specificity to the requested Code Relief as desired by staff and the Council. The Town Engineer has reviewed all Engineering related references to ensure they are accurate and supports the relief requested.
  - (Page 11, Sections 4.7, 4.8 and 4.9)
  - (Page 15, Sections 6.2 (g) and (h))
  - (Page 17, Section 7.2 (e))
  - (Page 22, Section 9.2 (b))
  - (Page 23, Section 10.2 (c) and (d))
- Breck Terrace Cannot be Utilized for Housing Mitigation - (Page 18, Section 8.1 (e) (ii)) – The Development Agreement was amended to prohibit Breckenridge Terrace from being utilized as employee housing mitigation.
- Workforce Housing Cannot be Banked for Future Use – (Page 23, Section 11.4) – Any additional housing that is constructed beyond what is required for employee mitigation cannot be used to offset future employee housing mitigation requirements.

Staff and the applicant will be available to answer any questions at the meeting, including any provisions of the Development Agreement that are not highlighted in this memo.

**AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE TOWN OF BRECKENRIDGE AND GONDOLA PROPERTIES, LLC, A COLORADO LIMITED LIABILITY COMPANY (“GONDOLA PROPERTIES”), BGV PARTNERS ENTRADA LLC, A COLORADO LIMITED LIABILITY COMPANY (“BGV ENTRADA”); VAIL SUMMIT RESORTS, INC., A COLORADO CORPORATION (“VSRI”); AND LC BRECKENRIDGE HOLDCO, LLC, A DELAWARE LIMITED LIABILITY COMPANY (“LC BRECKENRIDGE”).**

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. Gondola Properties is the owner of real property in the Town legally described below and in Exhibit 1 (“Parcel 1”).

**LOT 4, GONDOLA LOTS, FILING NO. 2 - AMENDED, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 25, 2023 UNDER RECEPTION NO. 1319752, COUNTY OF SUMMIT, STATE OF COLORADO.**

B. VSRI is the owner of real property in the Town legally described below and in Exhibit 2 (“Parcel 2”).

**LOT 1B, BLOCK 4, A RESUBDIVISION OF LOT 1, BLOCK 4, PARKWAY CENTER SUBDIVISION FILING NO. 1 AMENDED & TRACT Q, SHOCK HILL SUBDIVISION, ACCORDING TO THE PLAT FILED NOVEMBER 30, 2005 UNDER RECEPTION NO. 807735 COUNTY OF SUMMIT, STATE OF COLORADO.**

C. Gondola Properties is the owner of real property in the Town legally described below and in Exhibit 3 (“Parcel 3”).

**LOT 1 AND LOT 3, GONDOLA LOTS, FILING NO. 1 - AMENDED, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 25, 2023 UNDER RECEPTION NO. 1319751, COUNTY OF SUMMIT, STATE OF COLORADO.**

D. LC Breckenridge is the is the owner of real property in the Town legally described below and in Exhibit 4 (“Parcel 4”).

**LOT 4, FOURTH RESUBDIVISION THE REMAINDER OF TRACT C, PEAK 8 SUBDIVISION FILING NO. 1, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 20, 2018 UNDER RECEPTION NO. 1187721,COUNTY OF SUMMIT, STATE OF COLORADO.**

1 E. VSRI is the owner of real property in the Town legally described below  
2 and in Exhibit 5 ("Parcel 5").  
3

4 A PARCEL OF LAND LOCATED IN A PORTION OF THE REMAINDER OF  
5 TRACT C, PEAK 8 SUBDIVISION FILING No. 1 IN SECTION 1, T7S, R78W  
6 AND SECTION 36, T6S, R78W OF THE 6th P.M., SUMMIT COUNTY,  
7 COLORADO.

8 SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:  
9 BEGINNING AT THE SOUTHWEST CORNER OF LOT 4, PEAK 8  
10 SUBDIVISION FILING No. 1, RECORDED IN THE OFFICE OF THE SUMMIT  
11 COUNTY CLERK AND RECORDER UNDER RECEPTION No. 1187721,  
12 THENCE ALONG THE EAST LINE OF SAID REMAINDER OF TRACT C  
13 S05°36'59"W, 348.85 FEET, THENCE ALONG THE FOLLOWING THREE (3)  
14 COURSES AND DISTANCES:

- 15 1. S81°32'31"W, 37.65 FEET S81°32'31"W, 37.65 FEET
- 16 2. N22°54'12"W, 407.45 FEET N22°54'12"W, 407.45 FEET
- 17 3. S84°23'01"E, 231.06 FEET BACK TO THE POINT OF BEGINNING.
- 18 S84°23'01"E, 231.06 FEET BACK TO THE POINT OF BEGINNING.
- 19

20 F. VSRI is the owner of real property in the Town legally described below  
21 and in Exhibit 6 ("Parcel 6").  
22

23 A PARCEL OF LAND LOCATED IN A PORTION OF THE REMAINDER OF  
24 TRACT C, PEAK 8 SUBDIVISION FILING No. 1, A PORTION OF THE ADA  
25 PLACER (MS 13744) AND A PORTION OF THE TYRA PLACER (MS 13343),  
26 IN SECTION 1, T7S, R78W AND SECTION 36, T6S, R78W OF THE 6th P.M.,  
27 SUMMIT COUNTY, COLORADO. SAID PARCEL BEING MORE  
28 PARTICULARLY DESCRIBED AS FOLLOWS:

29 BEGINNING AT THE SOUTHEAST CORNER OF TRACT C, PEAK 8  
30 SUBDIVISION FILING No. 1, RECORDED IN THE OFFICE OF THE SUMMIT  
31 COUNTY CLERK AND RECORDER UNDER RECEPTION No. 1187721,  
32 THENCE ALONG THE SOUTH LINE OF TIMBER TRAIL SUB. RECORDED  
33 UNDER REC. No. 730224 AND FILED IN THE OFFICE OF THE SUMMIT  
34 COUNTY CLERK AND RECORDER THE FOLLOWING THREE (3) COURSES  
35 AND DISTANCES:

- 36 1. N63°32'19"E, 141.01 FEET N63°32'19"E, 141.01 FEET
- 37 2. N67°05'19"E, 148.45 FEET N67°05'19"E, 148.45 FEET
- 38 3. N56°47'38"E, 25.66 FEET, N56°47'38"E, 25.66 FEET,  
39 THENCE DEPARTING SAID SOUTH LINE THE FOLLOWING TEN (10)  
40 COURSES AND DISTANCES:  
41 1. S20°08'31"E, 66.15 FEET S20°08'31"E, 66.15 FEET  
42 2. 185.78 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A  
43 RADIUS OF 200.00 FEET, 185.78 FEET ALONG THE ARC OF A CURVE TO  
44 THE RIGHT, HAVING A RADIUS OF 200.00 FEET, A CENTRAL ANGLE OF  
45 53°13'18" AND A CHORD WHICH BEARS S06°28'08"W, 179.17 FEET.  
46 3. S33°04'47"W, 45.55 FEET S33°04'47"W, 45.55 FEET  
47 4. S16°15'16"E, 343.70 FEET S16°15'16"E, 343.70 FEET  
48 5. S04°00'43"E, 86.48 FEET S04°00'43"E, 86.48 FEET  
49 6. S36°33'26"E, 132.68 FEET S36°33'26"E, 132.68 FEET

1 7. S78°51'48"W, 172.09 FEET S78°51'48"W, 172.09 FEET  
2 8. N78°33'09"W, 673.06 FEET N78°33'09"W, 673.06 FEET  
3 9. N12°32'17"W, 219.71 FEET N12°32'17"W, 219.71 FEET  
4 10. N39°22'25"E, 750.61 FEET TO A POINT ON THE EAST LINE OF SAID  
5 TRACT C. N39°22'25"E, 750.61 FEET TO A POINT ON THE EAST LINE OF  
6 SAID TRACT C.  
7 THENCE ALONG SAID EAST LINE S26°38'02"E, 255.76 FEET BACK TO THE  
8 POINT OF BEGINNING.  
9

10 G. BGV Entrada is the owner of real property in Summit County (the "County")  
11 legally described below and in Exhibit 7 ("Parcel 7").  
12

13 **TRACT A2, A REPLAT OF LOTS A1, B1 AND C, ENTRADA AT**  
14 **BRECKENRIDGE, ACCORDING TO THE PLAT FILED JULY 24, 2017 UNDER**  
15 **RECEPTION NO. 1146781, COUNTY OF SUMMIT, STATE OF COLORADO.**  
16

17 H. The owners of Parcels 1, 2, 3, 4, 5, 6, and, 7 (collectively the "Properties" ) have  
18 completed an application and all required submittals for a development agreement, had  
19 preliminary discussions of the application and the term of this proposed development  
20 agreement, and the Town has determined that it should commence proceedings for the  
21 approval of this Development Agreement.

22 I. Section 9-9-5 of the Breckenridge Town Code states the Town Council has the  
23 authority to enter into a development agreement.

24 J. Per Section 9-1-17-12: A of the Breckenridge Town Code, a transfer of density  
25 from one lot or parcel within the Town to another lot or parcel within the Town may be approved  
26 by the Town Council only in connection with the approval of a development agreement and,  
27 therefore, a development agreement provides a means for such an approval and transfer.

28 K. The Town Council finds, determines, and declares that it has the power to adopt  
29 this ordinance pursuant to the authority granted to home rule municipalities by Article XX of the  
30 Colorado Constitution and the powers contained in the Breckenridge Town Charter.  
31

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

36 **Section 2.** The Town Council of the Town of Breckenridge hereby approves the  
37 Development Agreement, **Att. A** and **Exs. 1** through 11, attached hereto and incorporated by  
38 reference.  
39

40 **Section 3.** The Development Agreement shall contain a notice in the form provided in  
41 Section 9-9-13 of the Breckenridge Town Code. In addition, a notice in compliance with the  
42 requirements of Section 9-9-13 of the Breckenridge Town Code shall be published by the Town  
43 Clerk one time in a newspaper of general circulation in the Town within fourteen days after the  
44 adoption of this ordinance. Such notice shall satisfy the requirement of Section 24-68-103,  
45 C.R.S.  
46



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 DEVELOPMENT AGREEMENT (this “**Agreement**”) is made as of this \_\_\_\_ day of \_\_\_\_\_, 202\_\_, by and between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation (the “**Town**”), GONDOLA PROPERTIES, LLC, a Colorado limited liability company (“**Gondola Properties**”), BGV PARTNERS ENTRADA LLC, a Colorado limited liability company (“**BGV Entrada**”); Vail Summit Resorts, Inc., a Colorado corporation (“**VSRI**”); and LC Breckenridge Holdco, LLC, a Delaware limited liability company (“**LC Breckenridge**”). The Town, Gondola Properties, BGV Entrada, VSRI, and LC Breckenridge may collectively be referred to herein as the “**Parties**” and each individually as a “**Party**”.

**RECITALS**

A. Gondola Properties is the owner of real property in the Town legally described in Exhibit 1 (“**Parcel 1**”).

B. VSRI is the owner of real property in the Town legally described in Exhibit 2 (“**Parcel 2**”).

C. Gondola Properties is the owner of real property in the Town legally described in Exhibit 3 (“**Parcel 3**”).

D. LC Breckenridge is the is the owner of real property in the Town legally described in Exhibit 4 (“**Parcel 4**”).

E. VSRI is the owner of real property in the Town legally described in Exhibit 5 (“**Parcel 5**”).

F. VSRI is the owner of real property in the Town legally described in Exhibit 6 (“**Parcel 6**” and collectively with Parcels 1, 2, 3, 4, and 5, the “**Properties**,” each individually a “**Property**”).

G. BGV Entrada is the owner of real property in Summit County (the “**County**”) legally described in Exhibit 7 (“**Parcel 7**”).

H. Parcels 1, 2, and 3 are subject to and controlled by the Breckenridge Grand Vacations Gondola Lot Master Plan (PL-2021-0052) (the “**Gondola Lot Master Plan**”).

I. Parcels 4, 5, and 6 are subject to and controlled by the Eighth Amendment to the Amended Peak 7 & 8 Master Plan PL-2018-0546 (an amendment to PERMIT #2000155) (the “**Peak 7 & 8 Master Plan**”).

J. The current “**Density**” as that term is used in Section 9-1-19-3A of the Breckenridge Town Code (the “**Town Code**”) and reflected as “**SFEs**” as that term is defined in

Section 9-1-5 of the Town Code, existing in the Gondola Lot Master Plan, the Peak 7 & 8 Master Plan, and Parcel 7 is as follows:

- (1) Gondola Lot Master Plan: 143.0 SFEs;
- (2) Peak 7 & 8 Master Plan: 145.8 SFEs; and
- (3) Parcel 7 (Per Land Use District 5): 14.2 SFEs.

K. BGV Entrada has submitted a petition for annexation to annex Parcel 7 (the “**Annexation**”), and upon the annexation of Parcel 7, BGV Entrada and the Town anticipate setting the terms of the Annexation and the development of Parcel 7 by separate agreement.

L. The Parties desire to articulate a comprehensive and coordinated approach to guide the Properties’ use and development.

M. To that end, the Parties further desire to provide for the following general plan of development for the Properties (collectively, the “**Project**”):

(1) With respect to Parcel 1: To preserve the existing parking lot and improve it with limited grading, drainage and water quality, lighting, and landscaping improvements, and to confirm that the historic, 610 parking-space capacity for winter recreational visitors will be credited toward the 1,560 spaces required under that certain Parking Agreement dated November 11, 2003 and recorded on June 29, 2004 in the records of the Summit County Clerk and Recorder (the “**Records**”) at Reception No. 760358 (the “**Parking Agreement**”) irrespective of any reductions resulting from grading, drainage and water quality, lighting, and landscaping improvements or roundabout improvements, on the understanding that a parking attendant will be provided during the winter recreational season to ensure effective parking utilization;

(2) With respect to Parcel 2: To establish a site for employee housing, on privately owned property, as well as the provision of a minimum of 400 parking spaces, as a continuation of historical use of Parcel 2 for overflow parking, plus any required parking for approved employee housing, for winter recreational visitors that will be credited toward the 1,560 spaces required under the Parking Agreement;

(3) With respect to Parcel 3: To allow up to sixteen (16) duplex units distributed in eight (8) buildings;

(4) With respect to Parcel 4: To provide for development of condominium, hotel, and lock-off units and associated uses (including whole and/or fractional ownership), while preserving and/or providing space for VSRI administrative services and the Breckenridge Outdoor Education Center (“**BOEC**”);

(5) With respect to Parcel 5: To create two (2) lots for single-family residential development;

(6) With respect to Parcel 6: To establish a single-family residential subdivision with up to fourteen (14) homesites;

(7) With respect to Parcel 7: If the Annexation occurs, to allow for development of employee housing on Parcel 7 and to authorize the transfer of Density required to accommodate that employee housing; and

(8) With respect to the Gondola Lot Master Plan and Peak 7 & 8 Master Plan: to accommodate the parcel-specific development contemplated above and to provide for the Density transfers necessary to accomplish that development.

(9) With respect to the intersection of North French Street and Park Avenue: to provide for the construction of a roundabout and certain pedestrian improvements as currently contemplated in the Gondola Lot Master Plan, subject to Colorado Department of Transportation (“CDOT”) review and approval.

(10) With respect to all of the foregoing: the Parties currently anticipate phasing the completion of all vertical and horizontal elements on the Properties and Parcel 7 as follows. The improvements on Parcel 1 will occur on the schedule set forth in Section 5.3. The development of Parcels 2 and 3, the construction of a roundabout and associated pedestrian improvements, and the horizontal infrastructure associated with Parcels 5 and 6 will occur in the first phase; the concurrent development of Parcels 4 and 7 will occur in the second phase. This Subsection 10 reflects the Parties’ present, nonbinding intentions, which are subject to change.

N. The Parties acknowledge that Parcels 4 and 5 will include “accommodation units” as that term is defined in Section 4-6-1 of the Town Code (as the same may be amended from time to time) and more commonly known as “Short-Term Rentals.”

O. In connection with the Project, the Parties anticipate that Density will be transferred to and from the Gondola Lot Master Plan to the Properties, resulting in the following total Density-allocations to each Property:

- (1) Parcel 1: 0.0 SFEs;
- (2) Parcel 2: Up to 21.7 SFEs (with up to 13.9 to be provided by the Town);
- (3) Parcel 3: Up to 30.0 SFEs;
- (4) Parcel 4: Up to 220.0 SFEs;
- (5) Parcel 5: Up to 2.0 SFEs;
- (6) Parcel 6: Up to 14.0 SFEs; and
- (7) Parcel 7: Up to 29.2 SFEs.

P. To provide for the Project's development, Gondola Properties (including its successors and assigns, "**Applicant**") anticipates submitting one or more Development Applications to (1) amend the Gondola Lot Master Plan (the "**Gondola Lot Amendment**"); (2) amend the Peak 7 & 8 Master Plan (the "**Peak 7 & 8 Amendment**" and collectively with the Gondola Lots Amendment, the "**Master Plan Amendments**"); (3) provide for the development of one or more of the Properties upon the approval of the Master Plan Amendments. The term "**Development Application**" includes, without limitation, any application for any of the development permits described in Section 9-1-18 of the Town Code as well as any subdivision application under Section 9-2-3 of the Town Code.

Q. To guide the Project and to achieve public benefits desired by the Town, the Town and Applicant desire to establish (1) the commitments Applicant will include in its Development Application(s) and (2) the terms upon which the Town will review and approve Applicant's Development Application(s) that includes those commitments.

R. The Town Council of the Town of Breckenridge (the "**Town Council**") is the governing body of the Town, with the legal authority to enter into development agreements conferring "**Vested Property Rights**" as defined in and pursuant to, *inter alia*, C.R.S. §§ 24-68-101 *et seq.* (the "**Vested Property Rights Act**") and ARTICLE 12 of this Agreement.

S. Pursuant to Section 103 of the Vested Property Rights Act, its legislative authority, and Section 9-1-17-11K of the Town Code, and notwithstanding any provision to the contrary set forth in the Town Code, the Town Council intends that this Agreement will be designated as a "**Site Specific Development Plan**" as that term is defined in the Vested Property Rights Act.

T. Pursuant to Chapter 9 of Title 9 of the Town Code, the Town Council has the authority to enter into a development agreement. Section 9-1-17-12A of the Code requires a development agreement to transfer Density within the Town and between master plans. The Town finds that a development agreement is appropriate to accommodate the Density transfers described below. Section 9-17-11K of the Code further authorizes development agreements to extend vested rights beyond the standard three-year vesting period when "warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of the development, economic cycles and market conditions." The Town finds that all of the relevant circumstances support a vesting period beyond the standard three years.

U. Section 9-1-19-39A.L.5 of the Town Code allows the Town Council to authorize the Planning Commission to review and approve (subject to compliance with all other applicable development policies of the town) an amendment to an approved master plan which is not in compliance with the then current Land use District Guidelines (the "**Guidelines**"). The Town finds that the authorizations described below are warranted under the circumstances.

V. The commitments encouraged to be made in connection with an application for a development agreement in accordance with Section 9-9-4 of the Town Code are as hereafter set forth in this Agreement.

W. The Town Council has received a complete application and all required submittals for a development agreement, has had preliminary discussions of the application and this Agreement, determined that it should commence proceedings for the approval of this Agreement and, in accordance with the procedures set forth in Section 9-9-10C of the Town Code, desires to approve this Agreement by ordinance.

## AGREEMENT

NOW, THEREFORE, in consideration of the promises, mutual covenants, and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the Parties hereto, the Parties agree as follows:

### ARTICLE 1 GENERAL PROVISIONS

**1.1** Incorporation of Recitals. The foregoing Recitals are incorporated into and made substantive provisions of this Agreement.

**1.2** Effective Date. The rights and obligations of the Parties under this Agreement shall commence on the Effective Date as defined in this Section 1.2, except as otherwise set forth herein. The “**Effective Date**” shall be the date upon which the Town Council, by ordinance or otherwise, approves the Agreement.

**1.3** Nature of Agreement. As further provided in ARTICLE 12, as between the Parties, this Agreement is a Site Specific Development Plan as that term is defined in Section 102 of the Vested Property Rights Act and constitutes a development agreement granting and establishing Vested Property Rights for a period consistent with Section 12.3 in accordance with Section 104(2) of the Vested Property Rights Act.

**1.4** Relationship to Previous Agreements. This Agreement replaces, supersedes and effects the termination of the following agreements, which shall be of no further force and effect with respect to the Properties:

(a) Amended and Restated Development Agreement between the Town and Gondola Lot Properties LLC dated June 12, 2023, and recorded in the Records on June 14, 2023, at Reception No. 1312523;

(b) Development Agreement between the Town and Gondola Lot Properties LLC dated April 14, 2023, and recorded in the Records at Reception No. 1309020 on April 14, 2023.

(c) Amended and Restated Development Agreement between the Town and LH Mountain Ventures, LLC dated July 19, 2019, and recorded in the Records on January 8, 2020, at Reception No. 1217695; and

(d) Development Agreement between the Town and Lionheart BGV Ventures, LLC, dated August 15, 2018, and recorded in the Records on September 28, 2018, at Reception No. 1181305;

## 1.5 Landowner Cooperation and Consent.

(a) “**Landowner**” shall mean the owner of a legal or equitable interest in any Property, and includes the heirs, successors, and assigns of such ownership interests.

(b) Each Landowner hereby covenants and agrees to reasonably cooperate and consent to Applicant’s preparation, submittal, and pursuit of any Development Application(s) contemplated under this Agreement and the Town’s approval of the same, subject to such Landowner’s prompt prior review and approval of the applicable Development Application, which shall not be unreasonably withheld. In connection with every Development Application contemplated under this Agreement where Applicant and Landowner are not the same person or entity, the Parties acknowledge and agree that Applicant shall be considered Landowner’s “representative” within the meaning of Section 24-68-102(4)(a) of the Vested Property Rights Act, solely with respect to submission to the Town of this Agreement and any Development Application approved pursuant to this Section 1.5(b).

(c) Each Landowner hereby covenants and agrees to reasonably cooperate in the creation, amendment, and/or execution of such further agreements as may be required to effectuate the provisions of this Agreement. By way of example but not limitation, every Landowner shall, if necessary, execute a Density Transfer Covenant to accomplish the Density transfers contemplated in this Agreement, as more particularly set forth in Section 1.6. Notwithstanding the foregoing, VSRI’s obligation to execute Density Transfer Covenants shall be limited to the transfer of 58.0 SFEs from the Gondola Lot Master Plan to the Peak 7 & 8 Master Plan, and VSRI shall have no further obligation to transfer Density or execute any Density Transfer Covenant following the successful transfer of the same.

**1.6 Density Transfer Covenants.** This Agreement contemplates the Town’s authorization of various Density transfers. Pursuant to Section 9-1-17-12 of the Town Code, Density transfers must be evidenced by a written covenant (a “**Density Transfer Covenant**”). For all Density transfers contemplated under this Agreement, the following terms shall apply:

(a) The Density Transfer Covenant shall be in a form substantially similar to that attached hereto as Exhibit 8.

(b) All Parties necessary for any Density transfer contemplated under this Agreement shall execute a Density Transfer Covenant within thirty-five (35) days of the Final, Non-Appealable Approval of a master plan amendment or other Development Application authorizing the Density transfer. (“**Final, Non-Appealable Approval**” shall mean the passage of any time periods within which any referendum, administrative appeal, or request for review of such approval pursuant to C.R.C.P. 106(a)(4) must be brought, without any such referendum, administrative appeal or C.R.C.P. 106(a)(4) action having been filed, commenced or asserted, or, if filed, commenced or asserted, after any such referendum, administrative appeal or C.R.C.P. 106(a)(4) action is resolved with affirmation that such approval is effective.) The first sentence of this Section 1.6(b) shall not apply to any Density transfer contemplated or authorized for Parcel 7, which Density transfer shall

be accomplished as soon as practicable following the Annexation, if the Annexation is approved.

## **ARTICLE 2 COMMITMENTS (PUBLIC BENEFITS)**

In exchange for the development rights conferred by this Agreement, the Town determines that it is in the public interest to recognize and memorialize the public benefits that the Project will provide as set forth below and more fully in this Agreement.

**2.1** Density Relocation. The Town acknowledges and agrees that the Density transfers contemplated in this Agreement will relocate Density from the Town core to the Peak 8 base area, which is a more appropriate development location. The Town further acknowledges that the contemplated transfers will relocate approximately seventy-four (74) percent of the currently available Density away from Town core (approximately sixty-three [63] percent to the Peak 8 base area, and approximately eleven [11] percent to Parcel 7), and, after all density transfers occur, Density within Gondola Lot Master Plan will be reduced by approximately sixty-four (64) percent.

**2.2** Development Intensity Reduction. The Gondola Lots Master Plan protects and provides for Density to be used in the Town core under an earlier version of the Town Code. The Town acknowledges and agrees that as the result of later modifications to the Town Code that will apply to development contemplated under this Agreement, the Density contemplated in this Agreement is anticipated to reduce development intensity as compared to the existing approved Gondola Lot Master Plan by approximately 90,000 square feet.

**2.3** No Vertical Construction Proposed on Parcel 1; Parking Improved on Parcel 2. Upon approval of the Development Application(s) contemplated in this Agreement, Parcel 1 will remain as a surface parking lot for winter recreational visitors. Drainage and water quality, landscaping, and lighting will all be improved as set forth in ARTICLE 5, and, as more particularly set forth in ARTICLE 6, no parking structure will be erected on Parcel 2 and the existing surface parking lot on Parcel 2 will also be improved by Applicant. Nothing in this Agreement precludes the Landowner of Parcel 1 and the Town from jointly agreeing through a future development agreement process to a different use on Parcel 1.

**2.4** Employee Housing. The Town acknowledges and agrees that the Agreement:

(a) Provides for, on private property, critically needed employee housing for the community beyond the employee housing that would be required by the Town Code;

(b) Does not require any construction costs to be incurred by the Town for any of the employee housing contemplated in this Agreement;

(c) Obligates Applicant to provide up to 7.8 SFEs of market-rate Density on Parcel 2, which reduces the need for Town-transferred Density for employee housing on that parcel; and.

(d) For Parcel 4, requires Applicant to provide employee housing in compliance with the Town Code on Parcel 7, if the Annexation is successful, or elsewhere if it is not.

Additionally, if the Annexation is successful and Applicant constructs employee housing on Parcel 7, any housing constructed beyond that required to satisfy the employee housing requirements for the development of Parcel 4 shall not be “banked” or “reserved” to satisfy the employee housing obligations of future developments and shall instead represent a public benefit.

**2.5 Infrastructure Contribution.** Subject to CDOT review and approval and provided circumstances beyond Applicant’s control do not prevent Applicant from complying with the timing set forth herein, prior to issuance of any certificate of occupancy for Parcel 3, Applicant shall design and construct Park Avenue and Ski Hill Road intersection improvements including such improvements as signage, ADA compliant pedestrian facilities (e.g., ramps and push buttons), and turn-lane restriping for eastbound and westbound movements as described in the East Peak 8 Traffic Impact Study Update (July 2023) up to \$500,000 of design and construction costs.

**2.6 Sol Center Contribution.** Applicant shall, within a reasonable time following the Family & Intercultural Resource Center’s (“**FIRC**”) written request, contribute \$2.0 million toward the FIRC/Building Hope capital fundraising campaign for use toward the Sol Center.

**2.7 Cucumber Gulch Improvements.**

(a) Prior to issuance of any certificate of occupancy for any building on Parcel 4, Applicant will establish with the Town an environmental improvement fund dedicated to ecosystem and habitat improvements to protect Cucumber Gulch funded by a fee of \$2/rental room per night in perpetuity.

(b) Prior to issuance of any certificate of occupancy for any building on Parcel 4, Applicant shall make a one-time \$125,000 contribution to the Town for constructed improvements or other management or conservation expenses in Cucumber Gulch.

**2.8 Vehicle Trips.** As set forth more particularly in ARTICLE 8, vehicle trips on Ski Hill Road will be reduced through the construction of the required employee housing for Parcel 4 on Parcel 7 or otherwise off-site as allowed by Absolute Policy 24/Social Community subsection F.1.a.(iv).

**ARTICLE 3  
GONDOLA LOT MASTER PLAN AMENDMENT**

Upon and from Applicant’s submission of a complete Development Application for the Gondola Lot Amendment, the Town covenants and agrees that the Town shall:

**3.1** Recognize that 143 SFEs of Density exist under the Gondola Lot Master Plan. The 143 SFEs do not include the fifty-eight (58) SFEs of Density to be transferred by VSRI, including up to two (2) SFEs to be used as commercial SFEs, that were intended to be transferred to Parcel 4 but for which no Density Transfer Covenant was ever entered into or recorded.

**3.2** Specify total proposed Density and allocate Density to the Properties as follows:

(a) Parcel 1: 0.0 SFEs

(b) Parcel 2: Up to 21.7 SFEs (provided that the Town transfers 13.9 SFEs of Town Density as more fully set forth in Section 6.1(a)); and

(c) Parcel 3: Up to 30.0 SFEs.

**3.3** Authorize the transfer of Density from the Gondola Lot Master Plan to the Peak 7 & 8 Master Plan, allow any new Density transfer into the Gondola Lot Master Plan for the construction of employee housing on Parcel 2, and specify total overall Density for the Gondola Lot Master Plan without the assignment of negative points under any “**Relative Policy**” or the failure of an “**Absolute Policy**” as those terms are defined in Section 9-1-5 of the Town Code. This includes, but is not limited to, a waiver from Absolute Policy 39/Master Plans 9-1-19-39A subsection I regarding Density and acknowledgment that no modification to any of the underlying Guidelines is necessary.

**3.4** Require separate Density Transfer Covenant(s) for the transferred Density.

**3.5** Grant a waiver from Absolute Policy 39/Master Plans 9-1-19-39A. subsection L.3 that requires a master plan to be brought into compliance with the current development policies of the Town when amended to the extent necessary to accommodate the more particular provisions set forth in this Agreement.

**3.6** Recognize and carry forward the existing applicable Gondola Lot Master Plan Point Analysis, as reflected in PL-2021-0052, as allowed by Development Code Section 9-1-17-3.5 Duration of Point Assignments.

**3.7** As authorized by Section 9-1-17-11K of the Town Code, establish a vesting period of five years for the Gondola Lot Master Plan, beginning from the date the Gondola Lot Amendment becomes effective.

#### **ARTICLE 4 PEAK 7 & 8 MASTER PLAN AMENDMENT**

Upon and from Applicant’s submission of a complete Development Application for the Peak 7 & 8 Amendment, the Town covenants and agrees that the Town shall:

**4.1** Acknowledge that a total of 145.8 SFEs exist in the Peak 7 & 8 Master Plan. This includes the total remaining entitled Density for the Peak 8 Base Area of the Peak 7 & 8 Master Plan of 71.6 Residential SFEs, 9.0 Commercial SFEs, and 7.2 Guest Service Facilities SFEs and the fifty-eight (58) SFEs, including up to two (2) SFEs to be used as commercial SFEs, to be transferred from the Gondola Lot Master Plan to the Peak 7 & 8 Master Plan as currently reflected in those master plans, and as reflected in Staff Reports PL-2018-0576 and PL-2018-0546.

**4.2** Authorize a Density transfer into the Peak 7 & 8 Master Plan area, from the Gondola Lot Master Plan, in excess of the existing Peak 7 & 8 Master Plan allowance and

underlying Guidelines without the assignment of negative points under any Relative Policy, the failure of an Absolute Policy, or need to modify the underlying Guidelines. This also includes a waiver from Absolute Policy 39/Master Plan, 9-1-19-39A subsection I regarding Density.

**4.3** Concurrently process a Development Application or Applications for the subdivision of Parcels 5 and 6 to create individual residential lots, provided that the application(s) are complete and comply with the provisions of Chapter 2 of Title 9 of the Town Code (“**Subdivision Standards**”) and on the condition that a restrictive covenant (the “**Restrictive Covenant and Deed Restriction**”) will be recorded in title to the further subdivided lots so established on Parcels 5 and 6 (each, a “**Lot**”, and collectively, the “**Lots**”) providing as follows:

(a) Applicant shall designate a minimum of eight (8) of the Lots as restricted lots (each, a “**Restricted Lot**” and collectively, the “**Restricted Lots**”) that cannot be sold or conveyed to a third party until (i) the Town issues a temporary or final certificate of occupancy for the employee housing contemplated on Parcel 2; and (ii) CDOT accepts the roundabout improvements or Applicant posts the security contemplated in Section 6.1(d) (the “**Restricted Lot Release Conditions**”).

(b) Applicant shall have the right, from time to time in its sole discretion, and with written notice to the Town but without the requirement of further consent or action by the Town, to designate or redesignate any of the Lots a Restricted Lot, so long as a minimum of eight (8) of the Lots remain Restricted Lots until the Restricted Lot Release Conditions are satisfied.

(c) Upon satisfaction of the Restricted Lot Release Conditions, the Town shall promptly terminate the Restrictive Covenant and Deed Restriction by recording an instrument evidencing such termination. The Town’s Community Development Director is authorized to execute and record such termination upon confirmation that the Restricted Lot Release Conditions have been satisfied.

**4.4** Specify total proposed Density, including the previous fifty-eight (58) SFEs of Density with up to two (2) SFEs to be used as commercial SFEs, and allocate Density to the Peak 7 & 8 Master Plan’s planning areas and/or specific sites in the Peak 7 & 8 Master Plan as follows:

- (a) Parcel 4: Up to 220 SFEs
- (b) Parcel 5: Up to two (2) SFEs; and
- (c) Parcel 6: Up to fourteen (14) SFEs.

**4.5** Require separate Density Transfer Covenant(s) for the transferred Density.

**4.6** Provided the Peak 7 & 8 Amendment includes a sufficiently specific request for the following, create new development locations in the Peak 7 & 8 Master Plan’s Planning Areas with Density and use assignments, without the assignment of any negative points, failure of an Absolute Policy, or the need to modify the underlying Guidelines, for the following:

- (a) Parcel 5; and

(b) Parcel 6.

**4.7** Recognize and find that (a) the Peak 7 & 8 Master Plan was first adopted prior to October 17, 1994; (b) the Peak 7 & 8 Master Plan contains provisions which are materially inconsistent with the current Guidelines; (c) a legal and factual basis exists for the assertion the Landowners of Parcels 4, 5, and 6 have vested property rights under the existing master plan; and (d) there are significant public benefits which will result from the approval of the amendment to the master plan without requiring compliance with the current Guidelines, and that therefore, pursuant to Absolute Policy 39/Master Plans 9-1-19-39A subsection L.5, the Peak 7 & 8 Master Plan may be amended without requiring compliance with the then current Guidelines.

**4.8** Grant a waiver from Absolute Policy 39/Master Plans 9-1-19-39A subsection L.3, which requires master plans to brought into compliance with the Town's then current development policies and master plan, to allow existing provisions of the Peak 7 & 8 Master Plan to be carried forward.

**4.9** Recognize and find that the Peak 7 & 8 Master Plan is located in two (2) or more land use districts and that Absolute Policy 39/Master Plans 9-1-19-39A subsection I.2 therefore allows density to be reallocated notwithstanding Section 9-1-17-12's density transfer requirements, and acknowledge that no modification to the underlying Guidelines is necessary.

**4.10** Per 9-1-17-3.5, Duration of Point Assignments, recognize and continue to apply the Amended Peak 7 & 8 Master Plan Point Analyses from the original Permit #2000155. By way of example but not limitation, the Town shall use the point analysis from the Seventh Amendment to the Peak 7 & 8 Master Plan (PL-2017-0697, Class A, Combined Hearing - A Modification to PERMIT #2000155) and the point assignments set forth therein.

**4.11** Extend vesting of the Peak 7 & 8 Master Plan from November 8, 2025, to November 8, 2032 as allowed by 9-1-17-11K of the Town Code.

## **ARTICLE 5 PARCEL 1**

**5.1** With respect to Parcel 1, any Development Application shall comply with the following terms:

(a) The configuration of the proposed use and improvements shall be similar to the DTJ Design conceptual plan reviewed and endorsed by the Town Council on November 28, 2023, and attached hereto as Exhibit 9 (the "**Parcel 1 Concept Plan**").

(b) Stormwater facilities and practices will be designed, constructed, and/or implemented pursuant to the standards set forth in Chapter 6 of the Town's Engineering Design and Construction Specifications.

(c) A limited amount of landscaping will be provided to the extent compatible with snow storage locations and stormwater and/or water quality improvements. Subject to staff design suggestions, additional landscaping will be installed on the northern and eastern portion of Parcel 1 as requested by the Town Council.

(d) A limited amount of Dark-Sky lighting will be provided to the extent required for pedestrian safety. Over-lighting the site is discouraged, and lighting shall be kept to a minimum that still allows for pedestrian safety.

(e) A parking attendant shall be provided on-site while Breckenridge Ski Resort is open to the public for lift-accessed skiing to facilitate vehicle parking on the lot from opening to 3:00 p.m., or until the lot is filled, whichever is first to occur.

**5.2** Upon and from Applicant’s submission of a Development Application or Applications consistent with the provisions of Section 5.1, the Town covenants and agrees that the Town shall:

(a) Consistent with definition of “Development” and Town Council’s discretion under Section 9-1-5C of the Town Code, and in recognition that no Density will be required, refrain from considering improvements depicted on the Parcel 1 Concept Plan and/or described in Section 5.1(a)-(d) (collectively, the “**Parcel 1 Improvements**”) as, “Development”; refrain from assigning any negative points under a Relative Policy or the failure of an Absolute Policy; and not apply the Town’s Off-Street Parking Regulations.

(b) Acknowledge that no modification to the underlying Guidelines is required.

(c) Acknowledge and agree that Parcel 1 has historically provided, and following the construction of the Parcel 1 Improvements, will, with the support of the required attendant, continue to provide 610 vehicle parking spaces toward the 1,560 parking spaces required under Section 1.G of the Parking Agreement. None of the Parcel 1 Improvements shall be construed as diminishing this acknowledged and agreed 610-space capacity.

(d) Include all terms concerning the contemplated Parcel 1 Improvements, as set forth in the above Section 5.1 in the amended Gondola Lot Master Plan, including without limitation recognition of the 610 qualifying spaces.

**5.3** Following Final, Non-Appealable Approval of the Gondola Lot Amendment upon the terms set forth in Section 5.2, Applicant shall submit to the Town a site plan application for approval of the Parcel 1 Improvements, in substantially the form depicted on the Parcel 1 Concept Plan, with the addition of the Town Council-requested improvements. This site plan application shall be independent of any other site plan application(s) in the Gondola Lot Master Plan boundaries and the Town’s conditional obligations set forth in Section 5.2 shall continue to apply in connection with its consideration of such site plan application. The Parcel 1 Improvements will be implemented by Applicant in stages and shall be substantially completed either upon the issuance of a final certificate of occupancy for all improvements on Parcel 4 or within six (6) years from the Effective Date, whichever is earlier.

## **ARTICLE 6 PARCEL 2**

**6.1** With respect to Parcel 2, any Development Application shall comply with the following terms:

(a) Applicant and the Town will make available to Parcel 2 Density sufficient to construct employee housing beyond that required by the Town Code as follows:

(i) Applicant will provide up to 7.8 SFEs of Density; and

(ii) The Town will provide up to 13.9 SFEs of Density upon or before issuance of a building permit for the employee housing contemplated for Parcel 2.

(iii) A separate Density Transfer Covenant shall be required to transfer the Town-supplied Density.

(b) Applicant shall cause to be constructed forty-eight (48) bedrooms of employee housing in eight (8), six-plex dorm-style units with each bedroom to include its own bathroom, or in such other format as Applicant and the Town may in writing agree upon, per Absolute Policy 24/Social Community, and shall provide an executed covenant consistent with Policy 24 and the Town's Administrative Housing Rules and Regulations as follows:

(i) **Minimum Lease Term:** When rental of an affordable workforce housing unit is authorized, the master lessor shall be authorized to set the length of the lease, provided that no unit shall be used as an Accommodation Unit, as that term is defined under the Town Code. Any such tenancy approved by the Town shall be to a person meeting the definition of a Qualified Occupant under the Town Code. Unrelated roommates must all be Qualified Occupants;

(ii) The Town will establish a maximum rental rate for each rental unit based on factors including the market conditions, the type of development and/or the AMI targets as further specified below;

(iii) Rental units shall not be used for or be eligible for Short-Term Rental as defined in Title 4 of the Town Code;

(iv) All Town and Applicant provided Density will be limited to approximately 85% of a 60% Area Median Income ("AMI") studio unit rental rates per bedroom for dormitory style units as specified in the Summit County Housing Authority 2023 Summit County Area Median Income (AMI) Table as baseline rents. This equates to \$989.40 per bedroom per month as of the Effective Date. Rents shall include electric, gas, water, sewer, trash, and snow removal costs.

(v) Beginning from the Effective Date, initial rates will escalate at 2.0% annually until construction is completed and the improvements on Parcel 2 receive a final certificate of occupancy, at which point annual rents will escalate at 3.0% annually in perpetuity; and

(vi) Any owner/master lessor of the provided employee housing on Parcel 2 will offer any seasonal vacancy to local community non-profit organizations for use pending availability and subject to the owner/master lessor's reasonable discretion.

(c) To facilitate a safe Park Avenue crossing for winter recreational parking lot users, upon the issuance of a final certificate of occupancy for the improvements contemplated on Parcel 2, Applicant shall provide an electric shuttle connection from the contemplated Parcel 2 parking area to the BreckConnect Gondola and/or Breckenridge Station transit center on Watson Avenue when the parking lot is open to winter recreational visitors. Subject to CDOT review and approval, no later than two years after the Town's and CDOT's approval of the same, Applicant shall install Park Avenue/French Street pedestrian improvements, such as at-grade crosswalk striping, push buttons, signage, pedestrian refuge islands, or barriers in Park Avenue to the extent permitted by the Town, CDOT, and any other applicable regulatory entity.

(d) Subject to CDOT approval, Applicant will complete a roundabout at the intersection of North French Street and Park Avenue and prior to the issuance of a final certificate of occupancy for the employee housing contemplated in Section 6.1(b), or, if Applicant is unable to complete the roundabout prior to the issuance of such certificate of occupancy, Applicant shall post a completion bond in an amount sufficient to guarantee the roundabout's completion. Notwithstanding any provision to the contrary in this Agreement, the Parties acknowledge and agree that Applicant's obligation to complete the roundabout contemplated in this Section shall not be considered a public benefit and shall be eligible for an award of positive points.

(e) Stormwater facilities and practices will be designed, constructed, and/or implemented pursuant to the standards set forth in Chapter 6 of the Town's Engineering Design and Construction Specifications.

**6.2** Upon and from Applicant's submission of a Development Application or Applications consistent with the provisions of Section 6.1, the Town covenants and agrees that the Town shall:

(a) Permit the Density transfers contemplated in Section 6.1(a) in excess of the existing Gondola Lot Master Plan Density and underlying Guidelines without the assignment of negative points under any Relative Policy or the failure of any Absolute Policy arising from such transfers at the time of master plan amendment and/or site plan review, or the need to amend the underlying Guidelines to accomplish such transfers.

(b) Acknowledge and agree that the 400 winter recreational parking spaces on Parcel 2 (or other proposed and approved amount) will count towards the overall 1,560 total parking space requirement of Section 1.G of the Parking Agreement.

(c) In recognition of the historical and proposed vehicle parking, consistent with the Parking Agreement, grant waivers from Absolute Policy 2/Land Use District Guidelines and Relative Policy 2/Land Use District Guidelines for the parking lot use.

(d) Not award negative points under Relative Policy 5/ Architectural Compatibility (Town Code Sections 9-1-19-5R.A and 9-1-19-5R.B) for use of modular construction of the building(s) and the use of non-natural materials to reduce maintenance and increase longevity of the building(s), provided that fiber cement siding is used on

building elevations and windows are trimmed in natural wood as allowed by Relative Policy 5.

(e) Grant a waiver from Relative Policy 7/Site and Environmental Design and its multiple subsections, including, but not limited to: Site Design and Grading for site disturbance associated with constructing a parking lot and employee housing building(s) into the hillside; under Retaining Walls for the use of retaining walls and for walls that exceed four (4) feet in height; and Site Buffering, and from Relative Policy 22/Landscaping relating to the tree buffer adjacent to Park Avenue, to accommodate the effort to preserve the trees along Park Avenue and provide revegetation efforts consistent with conceptual plan prepared by DTJ Design and reviewed by the Town Council on December 12, 2023 (the “**Parcel 2 Concept Plan**” attached hereto as Exhibit 10). The Parcel 2 Concept Plan, or a plan substantially similar thereto, shall be incorporated into the design of Parcel 2 in order for these waivers to become effective.

(f) Grant waivers from Absolute Policy 22/Landscaping subsection B.8 requiring six (6) percent of the interior area of a parking lot to be landscaped and Section 9-3-9J. of the Off-Street Parking Standards requiring landscaping equal to twenty-five (25) feet per parking stall based on the nature of the recreation skier parking lot use and needed snowplowing operations.

(g) Grant a waiver from Relative Policy 13/Snow Storage, provided that Applicant accommodates snow storage at a minimum ten (10) percent of the plowable area.

(h) With considerations for public safety, grant waivers for up to two private accesses on Woods Drive, private accesses radius and geometry, private accesses spacing, road slope connections for private accesses, private accesses cross-slopes, and design to accommodate a 30’ bus shuttle service to serve the winter recreational visitor parking spaces on the site. These waivers are from the Engineering Process and Regulations, Chapter 5 of the Engineering Design Standards and Construction Specifications (Sections 5.10.2.1 and 5.10.2.2 for up to two accesses; 5.10.7.2 and Table 5.11 for the driveway/private access radius; 5.10.8.2 for the access geometry; 5.10.8.1 for the cross-slopes; and 5.10.5 and Table 5.10 for spacing); Off-Street Parking Regulations (Section 9-3-9.A compliance with codes); and associated Absolute Policies 16/Internal Circulation, 17/External Circulation, 18/Parking, and 26/Infrastructure of the Town Code.

(i) Permit a limited amount of Dark Sky compliant lighting to be provided on-site for pedestrian safety and waivers from Absolute Policy 46/Exterior Lighting, Title 9, Chapter 12 Exterior Lighting Regulations, and Title 9, Chapter 3 of the Town Code as over-lighting the site is discouraged. Timers, motion sensors, or other devices are encouraged to keep the lighting at a minimum for safety.

(j) Acknowledge that the construction and maintenance of an overpass or underpass traversing Park Avenue is unnecessary based upon the proposed residential uses and limited use of the winter recreational parking lot, and provision of shuttle service and other improvements as set forth in Section 6.1(c).

(k) To the extent Applicant is required to install barriers in or adjacent to Park Avenue as contemplated in Section 6.1(c), grant a waiver from Absolute Policy 47/Fences, Gates and Gateway Entrance Monuments.

## **ARTICLE 7 PARCEL 3**

**7.1** With respect to Parcel 3, any Development Application shall comply with the following terms:

(a) If the Town identifies any wetland impacts beyond those identified in that certain The Gold Rush Lots Wetland Technical Report prepared by Alpine Ecological Resources dated October 26, 2023 (attached hereto as Exhibit 11, the “**Wetlands Report**”), the impacted wetland area shall be replaced at a rate of 2:1 through an in-lieu fee program assumed by Applicant substantially similar to the Colorado Western Slope In-Lieu Fee Program identified in the Wetlands Report.

(b) No certificate of occupancy for any improvements on Parcel 3 shall be issued until a certificate of occupancy is issued for the employee housing contemplated on Parcel 2, as more particularly set forth in ARTICLE 6.

**7.2** Upon and from Applicant’s submission of a Development Application or Applications consistent with the provisions of Section 7.1, the Town covenants and agrees that the Town shall:

(a) Acknowledge that the impact to the wetlands on Parcel 3 is as reflected in the Wetlands Report and the mitigation proposed therein is sufficient to grant the waivers set forth in this Section 7.2.

(b) Grant waivers from Town Code Section 10-2-4-3 Setbacks of the Engineering Process and Regulations, Section 7.6.1 Setbacks of the Engineering Design Standards and Construction Specifications, and Title 10 of the Engineering Process and Regulations regarding mitigation for the limited purposed of site grading, drainage and water quality improvements.

(c) Grant waivers from Policy 7/R Site and Environmental Design and all its subsections, and from Relative Policy 22/Landscaping relating to the tree buffer adjacent to Park Avenue, to accommodate the effort to preserve the trees along Park Avenue and provide revegetation efforts consistent with conceptual plan prepared by DTJ Design and reviewed and approved by the Town Council on November 14, 2003 (the “**Parcel 3 Concept Plan**”), or a plan substantially similar thereto.

(d) If the Town identifies any wetland impacts beyond those identified in the Report and Applicant mitigates the newly identified impacts consistent with Section 7.1(a), the Town shall grant any needed waivers from any Engineering Process and Regulations and Engineering Design Standards and Construction Specifications, and the Town Code policies related to such impacts and replacement, including but not limited to Absolute Policy 31/Water Quality.

(e) With considerations for public safety, grant waivers for multiple private accesses on Woods Drive, private accesses spacing, road slope connections for private accesses, and private accesses cross-slopes. These waivers are from the Engineering Process and Regulations, Chapter 5 of the Engineering Design Standards and Construction Specifications (Sections 5.10.2.1 and 5.10.2.2 for the multiple accesses; 5.10.5 and Table 5.10 for spacing; and 5.10.8.1 for the cross-slopes); Off-Street Parking Regulations (Section 9-3-9.A compliance with codes and 9-3-9.F for grades); and the corresponding Absolute Town Code Policies 16/Internal Circulation, 17/External Circulation, 18/Parking, and 26/Infrastructure.

(f) Grant a waiver from the Engineering Process and Regulations, Chapter 5 of the Engineering Design Standards and Construction Specifications (Section 5.10.1), Off-Street Parking Regulations (Section 9-3-9.A), and the corresponding Absolute Development Code Policies 16/Internal Circulation, 17/External Circulation, 18/Parking, and 26/Infrastructure, allowing more than four units to be served by a private access, provided that Applicant shall construct and maintain any such access in perpetuity.

(g) To the extent Applicant is required to install barriers in or adjacent to Park Avenue as contemplated in Section 6.1(c), grant a waiver from Absolute Policy 47/Fences, Gates and Gateway Entrance Monuments.

(h) Provide for the Parcel 3's subdivision into duplex lots or footprint lots in accordance with the Town's Subdivision Standards.

## **ARTICLE 8 PARCEL 4**

**8.1** With respect to Parcel 4, any Development Application shall comply with the following terms:

(a) The Peak 7 & 8 Master Plan shall be amended to transfer Density into the master plan and assign additional Density to Parcel 4, in excess of the Density currently allowed by the master plan and underlying Guidelines, without the assignment of negative points under any Relative Policy or failure of any Absolute Policy, or the need to modify the underlying Guidelines, as follows: up to 74.2 SFES shall be transferred to the Peak 7 & 8 Master Plan from the Gondola Lot Master Plan for Parcel 4 and fifty-eight (58) SFES, including up to two (2) SFES to be used as commercial SFES, will be transferred from the Gondola Lot Master Plan to the Peak 7 & 8 Master Plan. The Town acknowledges and agrees that such fifty-eight (58) SFE transfer is reflected in the now-existing versions of the Gondola Lot Master Plan and the Peak 7 & 8 Master Plan, but no Density Transfer Covenant was ever entered into or recorded.

(b) Prior to the issuance of a final certificate of occupancy for any building(s) on Parcel 4, Applicant shall make space available to the BOEC. Notwithstanding any provision to the contrary in this Agreement, the Parties acknowledge and agree that Applicant's obligation to make space available to the BOEC as contemplated in this Section shall not be considered a public benefit and shall be eligible for an award of positive points.

(c) In addition to the parking spaces required to be provided by the Peak 7 & 8 Master Plan at the time of site plan review, Applicant shall provide, and reserve in perpetuity, up to thirty-five (35) parking spaces for VSRI on-site employees and six (6) oversized/ADA parking stalls for use by the BOEC. The VSRI parking spaces may not be used by the general public or for any other use but for parking for on-site VSRI employees and the BOEC parking spaces may not be used by the general public or for any other use other than parking for BOEC activities. The provisions of this Section 8.1(b) shall be included in the Peak 7 & 8 Master Plan.

(d) Building Height

(i) The maximum height of any building proposed for Parcel 4 shall not exceed the elevation of the existing east cross gable of One Ski Hill Place, as specified in the Peak 7 & 8 Master Plan and its attachments. This maximum height will serve as an “Absolute” policy under the Town Code.

(ii) Relative Policy 6 “Building Height” shall apply to the Town’s review of a site plan application. Pursuant to the Peak 7 & 8 Master Plan, for the purpose for assessing or awarding points under Relative Policy 6 the heights of the buildings to be constructed on Parcel 4 shall be evaluated against the height requirements of the Town Code and the recommended heights for Land Use District 39 as they were in effect on February 26, 2013.

(iii) Pursuant to the Peak 7 & 8 Master Plan, the height of buildings at the Peak 8 base area only (including Parcel 4) are to be measured “to the proposed finished grade elevation at the exterior wall below,” and not to natural grade, which generally does not exist in the area, provided that such proposed finished grades shall not include artificial appearing berming or fill. Artificial appearing berming or fill is characterized by excessive rise and steep grades in the vicinity of building foundations. (Emphasis added.) The height of the building on Parcel 4 shall be established in accordance with the Town Code and Land Use District 39 of the Guidelines, in effect on the Effective Date, provided, however, that the Town and Applicant shall establish a method for determining the finished grades above which heights shall be measured in order to account for the lack of natural grades and the anticipated filling of the lowered and generally flat grades currently existing at the Peak 8 base area.

(e) Employee housing will be provided subject to the following terms:

(i) Applicant shall comply with Absolute Policy 24/Employee Housing and will relinquish any rights to provide such housing in connection with the development of Parcel 4 upon any different terms that may have been identified in any earlier agreement or approval.

(ii) If Parcel 7 has been annexed into the Town, Applicant shall cause all required employee housing to be provided on Parcel 7 prior to the issuance of a certificate of occupancy for Parcel 4, unless it is not feasible to construct all

required units on Parcel 7, in which case Applicant shall provide the balance of any required units through any alternative means permitted under the Town Code. If Parcel 7 has not been annexed into the Town, Applicant's obligation to provide employee housing under the Town Code shall remain unchanged, and it shall be Applicant's responsibility to provide the required employee housing through any alternative means permitted under the Town Code. In no event shall Applicant provide employee housing required for Parcel 4 through conversion of housing units in Breckenridge Terrace.

(f) Upon issuance of the final certificate of occupancy for all buildings on Parcel 4 Applicant shall deliver to the Town documentation sufficient to demonstrate that any right of access to Parcel 4 via Saw Mill Run Road has been abandoned.

**8.2** Upon and from Applicant's submission of a Development Application or Applications consistent with the provisions of Section 8.1, the Town covenants and agrees that the Town shall:

(a) Grant a waiver from Absolute and Relative Policy 3/Density for the underground parking area square footage.

(b) Permit amendment of the Peak 7 & 8 Master Plan that reflects that maximizing the buffer distance to Parcel 4's eastern property line is more important than designing any building to step down to the east, provided that the eastern edge of a building's footprint may not be located any further to the east than that shown on the DTJ Design plans reviewed and approved by the Town Council during the November 14, 2023 work session (the "**Parcel 4 Concept Plan**").

(c) Not assign negative points under Relative Policy 7/Site and Environmental Design – Retaining Walls, in recognition that the site has been previously disturbed and that retaining walls will be used in an effort to retain slopes as called for by Policy 7.

(d) Grant waivers from the Engineering Process and Regulations, Chapter 5 of the Engineering Design Standards and Construction Specifications (Sections 5.10.2.1 and 5.10.2.2), Off-Street Parking Regulations (Section 9-3-9A), and corresponding Development Code Absolute Policies 16/Internal Circulation, 17/External Circulation, 18/Parking, 26/Infrastructure for two (2) accesses onto Parcel 4 – for deliveries/loading and for public/guests, and for loading area backout movements onto Ski Hill Road.

(e) Acknowledge and agree that constructing the required employee housing on Parcel 7 or otherwise off-site will reduce vehicle trips up/down Ski Hill Road meeting Absolute Policy 24/Social Community subsection F.1.a.(iv).

(f) Acknowledge and agree that outdoor heated sidewalks, pools/spas impacts, etc. will be minimized to the extent practicable but that Applicant cannot mitigate all required impacts on-site due to elevation, current technology, and roof design/size. The Town shall allow off-site mitigation of the Renewable Energy Mitigation Program ("**REMP**") upon the following terms:

(i) REMP mitigation will be provided via a three-step approach: (1) solar on-site; (2) off-site within the Town on properties controlled by Applicant; and (3) fee in lieu based on the current REMP policy and calculator if offset energy is not provided prior to Certificate of Occupancy for Parcel 4. Applicant consents to the Town's review and approval of all mitigation via the applicable development review process(es). Applicant may submit, and the Town will process, an application meeting Town Code requirements for off-site solar mitigation improvements for credit to the Town for review and approval upon execution of this Development Agreement due to the construction lead time for Parcel 4 credit.

(ii) Applicant will provide a third-party analysis, in a form acceptable to the Town, of the required amount of solar offset.

(iii) The Town staff shall determine the extent of emergency egress and pedestrian circulation safety to be exempt from REMP and Absolute and Relative Policy 33/Energy Conservation during site plan review.

(g) Issue, upon application for the same, such permit(s) as may be required by the Town to allow one or more Applicant-provided temporary structures accommodating VSRI's administration functions necessary or appropriate for the operation of the Breckenridge Ski Resort, as well as Applicant's pre-operation functions on Parcel 4, to be placed on Parcel 4, or other location(s) suitable to the Town and VSRI and Applicant, and maintained in such location(s) until Applicant constructs guest services spaces for VSRI's use and occupancy; provided, however, that all approved temporary structures shall be removed by Applicant no later than sixty (60) days after the issuance of any final certificate of occupancy for all structures on Parcel 4. The Town shall also grant such waivers including, without limitation, from Absolute Policy 36/Temporary Structures as may be necessary to effectuate the terms of this section.

(h) Allow the parking garage contemplated on Parcel 4 to be used as temporary construction parking while the on-site building(s) is under construction.

(i) Permit Condominium, Condominium/Hotel, and/or Hotel/Lodging/Inn uses, and Timeshare Interests, whether by way of whole or fractional ownership, as those capitalized terms are defined in Section 9-1-5 of the Town Code, and associated commercial, guest services facilities, and other amenities.

**8.3** Following Final, Non-Appealable Approval of the Development Application(s) contemplated under Section 8.1 and prior to issuance of the final certificate of occupancy for the improvements on Parcel 4, Applicant shall enter into such agreement as the Town reasonably may require that provides for the following:

(a) At the end of the first year after issuance of the final certificate of occupancy and every year thereafter for the first five (5) years after issuance of such final certificate of occupancy, Applicant will provide a trip report to the Town. Trips will be defined as the number of trips into the garage anticipated to be constructed on Parcel 4 plus the number of trips out of that garage on a daily basis.

(b) If during any single calendar month of each of such five (5) years the number of trips exceeds an average of 1,600 trips per day, for every 100 trips in excess of 1,600, Applicant will acquire and transfer one additional electric shuttle van to the Breckenridge Mountain Master Association (“**BMMA**”). Until such time as the threshold described in the preceding sentence has been reached the residents and guests of the anticipated development shall have access to the transportation (van) system operated by the BMMA in the same manner as is provided to other properties located within the boundaries of the BMMA. A letter from the BMMA confirming the same shall be provided to the Town.

**8.4** If the Annexation has not been approved at or before the time the obligation to provide employee housing under Absolute Policy 24/Social Community in connection with the development of Parcel 4 is due, the Town shall allow Applicant to transfer up to 15.0 SFEs for employee housing mitigation to other properties within the Town to satisfy the employee housing mitigation requirements. Nothing in this Section 8.4 shall be construed as limiting the alternative means of delivering employee housing to satisfy Absolute Policy 24/Social Community as permitted under the Town Code.

## **ARTICLE 9 PARCEL 5**

**9.1** With respect to Parcel 5, any Development Application shall comply with the following terms:

(a) The Peak 7 & 8 Master Plan shall be amended to create a Parcel 5 Planning Area, allow single-family residential uses, and assign Density to this area without the assignment of any negative points under any Relative Policy or the failure of an Absolute Policy, or the need to modify the underlying Guidelines;

(b) Applicant shall construct and maintain private driveways on Parcel 5 serving the two homesites from Four O’Clock Run Road;

(c) Applicant shall include a plat note on the final plat indicating that the future homes on the lots will be limited to a total of 7,500 square feet of Density per lot;

(d) Applicant shall include a plat note on the final plat stating that a Plant Investment Fee (“**PIF**”) equal to 1.25 of the in-Town PIF rate shall be assessed at the time of building permit for each single-family residence.

(e) Applicant shall cause BMMA shuttles to serve each completed home.

**9.2** Upon and from Applicant’s submission of a Development Application or Applications consistent with the provisions of Section 9.1, the Town covenants and agrees that the Town shall:

(a) Allow for the transfer of Density contemplated in Section 8.1(a) without the assignment of negative points under any Relative Policy or the failure of an Absolute Policy and acknowledge that no modification of the underlying Guidelines is necessary.

(b) Grant waivers allowing the private driveways' grade to exceed, up to a maximum grade of ten (10) percent, the requirements set forth in Engineering Process and Regulations, Chapter 5 of the Engineering Design Standards and Construction Specifications (Section 5.10.8.1), Off-Street Parking Regulations (Sections 9-3-9.A and 9-3-9.F), and corresponding Development Code Absolute Development Code Policies 16/Internal Circulation, 17/External Circulation, 18/Parking and 26/Infrastructure.

(c) Grant relief from the Subdivision Standards Sections 9-2-4-5C.2 and 9-2-4-5C.7.b.4 related to the depth and widths of lots and shape of disturbance envelopes.

## **ARTICLE 10 PARCEL 6**

**10.1** With respect to Parcel 6, any Development Application shall comply with the following terms:

(a) The Peak 7 & 8 Master Plan shall be amended to create a new Parcel 6 Planning Area, allow the single-family residential uses, and assign Density to this area without the assignment of negative points under any Relative Policy or the failure of an Absolute Policy, and no modification of the underlying Guidelines is necessary.

(b) Each proposed single-family lot on Parcel 6 shall be a minimum of .60 acres.

(c) Applicant shall include a plat note indicating that the future single-family homes will be limited to 7,500 square feet of Density.

(d) Applicant shall include a plat note stating that a PIF equal to 1.25 of the in-Town PIF rate shall be assessed at the time of building permit for each single-family residence.

(e) Applicant shall cause BMMA shuttles to serve completed homes on Parcel 6.

**10.2** Upon and from Applicant's submission of a Development Application or Applications consistent with the provisions of Section 10.1, the Town covenants and agrees that the Town shall:

(a) Allow for the transfer of Density contemplated in Section 10.1(a) without the assignment of negative points under any Relative Policy or the failure of an Absolute Policy and acknowledge that no modification of the underlying Guidelines is necessary.

(b) Grant waivers from the Engineering Process and Regulations, Chapter 5 of the Engineering Design Standards and Construction Specifications (Section 5.6.3.2), Off-Street Parking Regulations (Section 9-3-9.A), and corresponding Development Code Absolute Policies 16/Internal Circulation, 17/External Circulation, 18/Parking, and 26/Infrastructure that requires the Engineering Regulations to be met for the length of the Timber Trail Drive extension and grade during the subdivision review process, on the

condition that all International Fire Code requirements are met and an emergency turn-around, fire hydrants, and the future homes are equipped with individual automatic sprinkler systems (via a plat note on the subdivision plat) will be provided, as previously allowed for the Timber Trail subdivision. The maximum grade shall be 6.5% unless a greater grade is reviewed and approved by the Town.

(c) Grant waivers for the private driveways' grades during the subdivision and site plan review processes from the Engineering Process and Regulations, Chapter 5 of the Engineering Design Standards and Construction Specifications (Section 5.10.8.1), Off-Street Parking Regulations (Sections 9-3-9.A and 9-3-9.F), and corresponding Development Code Absolute Policies 16/Internal Circulation, 17/External Circulation, 18/Parking, and 26/Infrastructure that requires the Engineering regulations to be met.

(d) Grant waivers from the Engineering Process and Regulations, Chapter 5 of the Engineering Design Standards and Construction Specifications (Section 5.10.1), Off-Street Parking Regulations (Section 9-3-9.A), and corresponding Development Code Absolute Policies 16/Internal Circulation, 17/External Circulation, 18/Parking, and 26/Infrastructure allowing two private accesses to serve more than four (4) lots as applicable during the subdivision and site plan review processes, provided that Applicant shall construct and maintain any such accesses in perpetuity.

(e) Grant waivers from the Subdivision Standards Sections 9-2-4-5.C.2, 9-2-4-5.C.3 and 9-2-4-5.C.7.b.4 related to the depth and width of lots and shape of disturbance envelopes.

## **ARTICLE 11 PARCEL 7**

**11.1** Development Upon Annexation. If the Annexation is approved, Applicant or BGV Entrada shall be entitled to submit Development Applications for the development of employee housing on Parcel 7, subject to the terms of any annexation and development agreement executed by the Town and BGV Entrada with respect to Parcel 7. To provide for that development, the Town authorizes the following, subject to the execution of any required Density Transfer Covenant: The transfer of up to fifteen (15) SFEs from the Gondola Lot Master Plan to Parcel 7, which shall in addition to the existing 14.2 SFEs on Parcel 7 as allowed by Land Use District 5, result in a total of up to 29.2 SFEs on Parcel 7.

**11.2** If the Annexation is not successful, Applicant is authorized, upon written notice to the Town, to transfer up to fifteen (15) SFEs from the Gondola Lot Master Plan to another property in the Town suitable to Applicant and VSRI for the purpose of providing deed restricted workforce housing. Compliance with Section 1.6(b) shall be determined from the date the written notice required under this Section 11.2 is delivered to the Town.

**11.3** If the Annexation has not been approved within one (1) year of the Effective Date, this Agreement shall terminate and be of no further force and effect with respect to Parcel 7 alone.

**11.4** If any additional employee housing square footage is built upon Parcel 7 beyond that which is required for Parcel 4 compliance with Absolute Policy 24/Social Community, such

additional square footage shall not be eligible to satisfy employee housing requirements for future developments.

## **ARTICLE 12 VESTED PROPERTY RIGHTS**

**12.1** Establishment of Vested Property Rights. This Agreement shall constitute a Site Specific Development Plan. All of Applicants' and Landowners' rights, and the Town's obligations, under this Agreement shall be Vested Property Rights. Applicant and Landowners shall have a Vested Property Right to undertake and complete development and use of the Properties as provided in this Agreement, and the Vested Property Rights will be effective against any other governmental entities and their respective governing bodies that subsequently obtain or assert jurisdiction over the Properties or any portion thereof. The rights and obligations under this Agreement shall vest in Applicant and Landowners, which terms, by their definitions, include successors, and assigns. The Vested Property Rights described in this Agreement shall constitute benefits and burdens to the land and shall run with title to the land.

**12.2** Rights Which are Vested. By way of illustration, the Vested Property Rights include, but are not limited to, the following:

(a) Processing of Applications. The right to submit and for the Town to process Development Applications in accordance with the procedures and upon such terms set forth in this Agreement, or to the extent not addressed herein, the procedures set forth in the Town Code (as the same was in effect on the Effective Date). In the event that any amendment to the Town Code approved after the Effective Date creates generally applicable submittal requirements, procedural requirements, or approval criteria which conflict with or are in addition to the terms and conditions of this Agreement, Applicant may choose whether the Town Code or the terms of this Agreement will apply to the Development Application.

(b) Use and Development Standards. The right to be protected against the Town or any citizen initiating any action to apply any less-favorable use and development standards to any Property or the Project, including, but not limited to, any reduction in the maximum allowed Density, the development intensity allowed under that Density, or total area of the Project. In the event that any amendment to the Town Code approved after the Effective Date creates generally applicable use or development standards that conflict with or are in addition to the terms and conditions of this Agreement, Applicant, and VSRI, in the event the affected Property is owned by VSRI, may choose whether the Town Code or the terms of this Agreement will apply to the affected Property or Properties, or the Project.

(c) Uniformity of Requirements. The right to continue and complete development of the Properties with conditions, standards, dedications, and requirements that are no more onerous than those then being imposed by the Town on other properties within the Town's municipal boundaries on a reasonably uniform and consistent basis, except to the extent such conditions, standards, dedications, and requirements conflict with the terms and conditions of this Agreement, in which case the terms and conditions of this Agreement shall control except as otherwise set forth herein.

**12.3 Term.** In recognition of the complexity of the development contemplated by this Agreement, the time required to complete development, and the possible impact of economic cycles and varying market conditions during the course of development, the Town has concluded and hereby agrees that the Vested Property Rights, including those identified in Section 12.1 of this Agreement, shall continue and have a duration until **SEVEN (7) YEARS** from the Effective Date (the “**Term**”). The rights and obligations set forth in this Agreement shall survive the termination of the Term, the effect of which shall be limited to eliminating the protections set forth in the Vested Property Rights Act.

**12.4 Compliance with General Regulations.** The establishment of the rights vested under this Agreement shall not preclude the application of Town regulations of general applicability including, but not limited to, the application of local improvement districts, building, fire, plumbing, engineering, electrical and mechanical codes, or the application of regional, state or federal regulations, as all of the foregoing exist on the Effective Date or may be enacted or amended after the date hereof, except as otherwise provided herein, as against the Properties and the Project. Landowners do not waive their rights to oppose adoption of any such regulations.

## **ARTICLE 13 DEFAULT AND REMEDIES**

**13.1 Default by the Town.** A “breach” or “default” by the Town Council or the Town under this Agreement will be defined as the Town Council’s or the Town’s failure to fulfill or perform any express material obligation of the Town Council or the Town stated in this Agreement. Consistent with Sections 105(1)(a) and (b) of the Vested Property Rights Act, the Parties acknowledge and expressly intend that the Vested Property Rights preclude any zoning or land use action by a local government or pursuant to any initiated measure which would materially alter, impair, prevent, diminish, impose a moratorium on development, or otherwise delay the development of the Project or the use of the Properties as set forth in this Agreement, except that such rights may be divested only (a) with the consent of the owner of the affected portion of the Properties; or (b) upon the discovery of natural or manmade hazards on, or in the immediate vicinity of, the Properties, which hazards could not have been reasonably discovered at the time of approval of this Agreement, and which hazards, if uncorrected, would pose a serious threat to the public health, safety and welfare. Such natural or manmade hazards may include, but are not limited to, acts of God or other *force majeure*, or failure(s) of Town utilities necessary to serve the Properties or Project. Accordingly, subject to the exceptions listed in clauses (a) and (b) above, any of the foregoing zoning or land use actions by the Town Council or the Town would impermissibly divest Applicant and/or Landowners of the benefits of the Vested Property Rights, would constitute a breach or default under the Vested Property Rights Act and would entitle Landowners to the specific and limited remedies set forth herein.

(a) **No Responsibility or Remedy.** The Town shall not be responsible for and Applicant and Landowners shall have no remedy against the Town if development of the Property is prevented or delayed for reasons beyond the control of the Town.

(b) **No Personal Responsibility.** No official or employee of the Town shall be personally responsible for any actual or alleged breach of this Agreement by the Town.

## 13.2 Remedies.

(a) Generally. Except to the extent this Agreement expressly states otherwise, the Party asserting the default will have the right to pursue and be entitled to enforce specific performance of the defaulting Party's obligations under this Agreement, which will be the sole remedy under this Agreement; provided, however, if there is a final judicial determination that a Party is in default under this Agreement but the court determines specific performance is not available or will not be granted as a remedy for such default: (i) Applicant or Landowners will be entitled to the contingent remedy described in Section 13.2(c); and (ii) if Applicant or Landowners are determined in a final judicial judgment to have failed to abide by the terms of this Agreement, the Town Council and the Town will be entitled such remedies as may be available at law or in equity, subject to the limitations set forth in Section 13.2(b), and, additionally, to enforce the forfeiture of the Vested Property Rights.

(b) Vested Property Rights; Mutual Waivers. Although the Vested Property Rights Act provides for the payment of certain monetary damages upon a deprivation, impairment, violation or other divestment of the Vested Property Rights, the Town desires not to be subject to liability for monetary damages pursuant to the Vested Property Rights Act as a remedy for breach or default with respect to the Vested Property Rights. Accordingly, Applicants and Landowners hereby knowingly, intentionally, voluntarily and irrevocably waive, for themselves and for their successors and assigns, any remedial right they may have pursuant to Section 105(1)(c) of the Vested Property Rights Act to be paid money damages as just compensation upon a deprivation, impairment, violation or other divestment of the Vested Property Rights; and the Town Council hereby knowingly, intentionally, voluntarily and irrevocably waives, for itself and for its successors and assigns, any right the Town Council or the Town may have pursuant to Section 105(1)(c) of the Vested Property Rights Act to pay money damages to Landowners and/or their successor(s) and assign(s) as just compensation upon a deprivation, impairment, violation or other divestment of the Vested Property Rights. The Parties have executed and entered into the foregoing mutual waivers with the express intent that such waivers will be mutually binding and enforceable as to each of them and their respective successors and assigns, having been given in consideration of the mutual benefits accruing to each of them as a result of such mutual waivers and otherwise accruing to each of them pursuant to this Agreement, and with the intent and mutual understanding that the effect of such mutual waivers will be that the Town Council and the Town are precluded from divesting, depriving, impairing or violating the Vested Property Rights under any circumstances other than those stated in Section 13.1.

(c) Contingent Remedy. Only if, notwithstanding the foregoing mutual waivers and the Parties' express intent as to the enforceability and remedial effect of such waivers, it is judicially determined that the terms and conditions (either in whole or in part) set forth in this ARTICLE 13 will not be enforced against the Town Council and the Town as written, Applicant and/or Landowners will be entitled to pursue and be awarded just compensation pursuant to Section 105(1)(c) of the Vested Property Rights Act to the extent the Town

Council or the Town takes any action which has the effect of divesting, depriving, impairing or violating the Vested Property Rights and such action constitutes a compensable action under the Vested Property Rights Act.

## **ARTICLE 14 RESPONSIBILITIES OF THE TOWN**

**14.1 Processing of Applications.** The Town shall process all applications received in connection with the development of the Project, in accordance with the Town Code and any other applicable laws, ordinances, and regulations.

**14.2 Infrastructure Permit.** The Town shall, upon Applicant's request at any point following the approval of any Development Application contemplated in this Agreement, issue to Applicant at least one infrastructure permit for the Property subject to the Development Application approval that will allow for infrastructure and site work related to the approved Development Application, including deep utilities, grading, construction of storm water management systems, and mass excavation, to commence prior to issuance of a building permit, subject to approval by the Town Engineering Department. Each property with an approved Development Permit, as that term is defined in Section 9-1-5 of the Town Code, may be issued an infrastructure permit.

**14.3 Building Permits.** The Town shall issue all necessary building permits for the Project, in accordance with the Town Code and any other applicable laws, ordinances, and regulations.

**14.4 Consent.** The Town will not unreasonably withhold its consent or approval when such consent or approval is required hereunder.

## **ARTICLE 15 MANDATORY PROVISIONS**

Pursuant to Section 9-9-12 of the Town Code, the following mandatory provisions shall apply:

**15.1** Nothing in the agreement shall preclude or otherwise limit the lawful authority of the Town to adopt or amend any Town law, including, but not limited to, the Town's: 1) Development Code, 2) land use guidelines, 3) master plan, and 4) subdivision ordinance.

**15.2** Successors and Assigns; Binding Effect; Recording.

(a) **Recording.** Within five (5) business days of the Effective Date, the Parties shall deliver original copies of their signature pages and the signature pages of any lienholder or lender on their respective Property to the Town. This Agreement shall be recorded in the Records as against every Property and Parcel 7.

(b) **Successors and Assigns of Applicant.** Applicant may, in its sole discretion, assign its rights and obligations under this Agreement in whole and in part. Upon any such assignment and delivery of written notice to the Town along with a copy of the instrument

of assignment, Applicant shall be released from its obligations and responsibilities hereunder to the extent so assigned and the Town shall recognize the rights and obligations of such assignee as so assigned.

(c) Successors and Assigns of Landowner. This Agreement shall be binding upon and inure to the benefit of Landowners and their respective successors and assigns. For avoidance of doubt, the Agreement shall run with the title to the land and benefit and burden the Properties. Any Party bound by obligations of Landowner in this Agreement shall be released from its obligations and responsibilities hereunder upon the valid conveyance of its interest herein to its successor pursuant to the terms and conditions of such conveyance, if any.

**15.3** If a Party defaults in the performance of its obligations under this Agreement, the Party(ies) asserting the default will deliver notice of the asserted default to the Party alleged to be in default, with copies to any other non-defaulting Parties. The Party alleged to be in default will have sixty (60) days from and after receipt of the notice to cure the default without liability for the default. If the default is not of a type which can be cured within such period and the Party alleged to be in default gives written notice to the Party(ies) who asserted the default within such 60-day period that it is actively and diligently pursuing a cure, the Party alleged to be in default will have a reasonable period of time given the nature of the default following the end of the 60-day period to cure the default, provided that the Party alleged to be in default is at all times within the additional time period actively and diligently pursuing the cure. Notwithstanding the foregoing cure period, the Party asserting that the Town Council and/or the Town is in default will have the right to include a claim for breach of this Agreement and/or of the Vested Property Rights Act in any claim brought under C.R.C.P. 106(a)(4) if the Party reasonably believes that failure to include such claim could jeopardize the Party's ability to exercise its remedies under this Agreement or under the Vested Property Rights Act at a later date. Any claim for breach of this Agreement or the Vested Property Rights Act that is brought before the expiration of the applicable cure period will not be prosecuted by the Party asserting such claim until expiration of the applicable cure period, and will be dismissed by the Party if the default is cured in accordance with this Section 15.3.

**15.4** The Town shall not be responsible for and Applicant shall have no remedy against the Town if development of the real property which is the subject of this Agreement is prevented or delayed for reasons beyond the control of the Town.

**15.5** Actual development of the real property which is the subject of this Agreement shall require the issuance of such other and further permits and approvals by the Town as may be required from time to time by applicable Town ordinances.

**15.6** No official or employee of the Town shall be personally responsible for any actual or alleged breach of this Agreement by the Town.

**15.7** Applicant shall agree to indemnify and hold the Town, its officers, employees, insurers, and self-insurance pool, harmless from and against all liability, claims, and demands, on account of injury, loss, or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind

whatsoever, which arise out of or are in any manner connected with this Agreement, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the negligence or intentional act or omission of Applicant, any subcontractor of Applicant, or any officer, employee, representative, or agent of Applicant or of any subcontractor of Applicant, or which arise out of any workers' compensation claim of any employee of Applicant, or of any employee of any subcontractor of Applicant; except to the extent such liability, claim or demand arises through the negligence or intentional act or omission of the Town, its officers, employees, or agents. Applicant agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims, or demands at the sole expense of Applicant. Applicant also agrees to bear all other costs and expenses related thereto, including court costs and attorney fees.

**15.8** If any provision of this Agreement shall be invalid, illegal or unenforceable, it shall not affect or impair the validity, legality or enforceability of the remaining provisions of the agreement.

**15.9** In connection with an application for a development permit to develop the real property that is the subject of this Agreement the application shall not receive an award of positive points under the Town Code for any commitment offered to the Town by Applicant pursuant to Section 9-9-4, or any other obligation or requirement of Applicant under this Agreement.

## **ARTICLE 16 MISCELLANEOUS**

**16.1** Amendments. This Agreement may be amended or terminated only with the prior written consent and approval of the Town, Applicant, and the Landowner of the Property(ies) or portion of the Property(ies) to which the amendment applies, following public notice and public hearings as required for Development Agreements.

**16.2** Notices. In order to be deemed delivered and effective, any notice required or permitted pursuant to this Agreement must be in writing, and must be given either personally or by registered or certified mail, return receipt requested, in either case to the applicable Party(ies) at their addresses set forth below:

If to the Town:

Town of Breckenridge  
Shannon Haynes, Town Manager  
150 Ski Hill Road, P.O. Box 168  
Breckenridge, CO 80424  
shannonh@townofbreckenridge.com

With a required copy to:

Kirsten J. Crawford  
Town Attorney, Town of Breckenridge  
150 Ski Hill Road, P.O. Box 168  
Breckenridge, CO 80424

kirstenc@townofbreckenridge.com

If to Gondola Properties:

Gondola Properties LLC  
c/o Breckenridge Grand Vacations  
100 South Main Street, P.O. Box 6879  
Breckenridge, Colorado 80424  
Attention: Graham Frank, Chief Development Officer

With a required copy to:

Otten, Johnson, Robinson, Neff & Ragonetti, P.C.  
950 Seventeenth Street, Suite 1600  
Denver, Colorado 80202  
Attention: Andrew L.W. Peters  
apeters@ottenjohnson.com

If to BGV Entrada:

BGV Partners Entrada, LLC  
c/o Breckenridge Grand Vacations  
100 South Main Street, P.O. Box 6879  
Breckenridge, Colorado 80424  
Attention: Graham Frank, Chief Development Officer

With a required copy to:

Otten, Johnson, Robinson, Neff & Ragonetti, P.C.  
950 Seventeenth Street, Suite 1600  
Denver, Colorado 80202  
Attention: Andrew L.W. Peters  
apeters@ottenjohnson.com

If to VSRI:

Vail Resorts, Inc.  
390 Interlocken Crescent #100  
Broomfield, CO 80021  
Attention: Legal Department  
legalnotices@vailresorts.com

If to LC Breckenridge:

LC Breckenridge  
c/o Leste  
1450 Brickell Avenue, Suite 2600  
Miami, Florida 33131

Attention: Jordan Suppan  
Jordan.Suppan@leste.com

With required copy to:

Carlton Fields  
2 Miami Central  
700 NW 1st Avenue, Suite 1200  
Miami, Florida 33136-4118  
Attention: Matthew H Jacobson  
MJacobson@carltonfields.com

Notices will be deemed delivered and effective as follows: (i) if given personally, when delivered to the Party to whom it is addressed; or (ii) if given by registered or certified mail, on the first to occur of (A) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (B) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. Any Party may at any time, by giving notice as provided in this Section, designate additional persons to whom notices or communications will be given, and designate any other address in substitution of the address to which such notice or communication will be given.

**16.3 Entire Agreement.** This Agreement constitutes the entire and final understanding between the Parties with respect to the subject matter hereof. This Agreement supersedes all prior agreements and understandings between the Parties relating to the subject matter hereof, which shall be of no further force and effect. For the avoidance of doubt, the Parking Agreement is not an agreement or understanding subject to this Section 16.3 and remains in full force and effect.

**16.4 No Implied Representations.** No representations, warranties, or certifications, express or implied, shall exist as between the Parties except as stated herein.

**16.5 Waivers and Modifications in Writing.** No waivers or modifications hereof shall be made or deemed to have been made unless in writing executed by the Party to be bound thereby.

**16.6 Conflict with Other Provisions of the Town Code.** In the event any provision of this Agreement or the application thereof conflicts with any provision of the Town Code, this Agreement shall control the determination of the rights and obligations of the Parties with respect to such conflicting matter. When adopted by the Town pursuant to ordinance, this Agreement shall be deemed to be an amendment of any such conflicting provision of the Town Code with respect to the subject matter thereof.

**16.7 Adoption of Agreement Deemed to be a Legislative and Administrative Act; Referendum.** As set forth in and expressly authorized by Section 104(2) of the Vested Property Rights Act, this Agreement and the Vested Property Rights conferred hereby are adopted as a legislative act pursuant to such authority conferred upon the Town Council by the Vested Property Rights Act. If and to the extent the Vested Property Rights Act subjects the Town Council's establishment of the Vested Property Rights pursuant to this Agreement to referendum, and any referendum succeeds in overturning the Town Council's establishment of the Vested Property

Rights pursuant to this Agreement, such result will not be construed as overturning, negating or otherwise affecting the Council's approval of this Agreement.

**16.8 Covenant of General Cooperation.** The Parties covenant and agree to cooperate in good faith with one another in the performance of their respective rights and obligations hereunder in order that each may reasonably realize their respective benefits hereunder. The Parties further agree to cooperate in good faith with one another in the event of any third-party legal action, initiative, or referendum challenging the approval(s) of any Development Application contemplated in this Agreement.

**16.9 No Third-Party Beneficiaries.** Except as otherwise provided herein, none of the terms, conditions, or covenants contained in this Agreement shall be deemed to be for the benefit of any person not a Party hereto, and no such person shall be entitled to rely hereon in any manner.

**16.10 Counterparts; Electronic Delivery.** This Agreement may be executed in multiple counterparts, each of which will be deemed to be an original and all of which taken together will constitute one and the same agreement. Executed copies hereof may be delivered by telecopier or e-mail (pdf) and upon receipt will be deemed originals and binding upon the Parties, regardless of whether originals are delivered thereafter.

**16.11 Headings for Convenience.** All headings and captions used herein are for convenience only and are of no meaning in the interpretation or effect of this Agreement.

**16.12 Applicable Law.** This Agreement shall be interpreted and enforced according to the laws of the State of Colorado.

**16.13 Venue and Choice of Law; Waiver of Right to Jury Trial; Construction.** Venue will be in the district court for the State of Colorado, Summit County, Colorado. To reduce the cost of and to expedite the resolution of disputes under this Agreement, each Party hereby waives any and all right to request a jury trial in any civil action relating primarily to the enforcement of this Agreement. In the event of ambiguity in this Agreement, any rule of construction which favors a Party's interpretation as a non-drafting party will not apply, and the ambiguous provision will be interpreted as though no specific party was the drafter.

[SIGNATURE PAGES TO FOLLOW]











Exhibit 1

[Parcel 1 Legal Description]

LOT 4, GONDOLA LOTS, FILING NO. 2 - AMENDED, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 25, 2023 UNDER RECEPTION NO. 1319752, COUNTY OF SUMMIT, STATE OF COLORADO.

Exhibit 2

[Parcel 2 Legal Description]

LOT 1B, BLOCK 4, A RESUBDIVISION OF LOT 1, BLOCK 4, PARKWAY CENTER SUBDIVISION FILING NO. 1 AMENDED & TRACT Q, SHOCK HILL SUBDIVISION, ACCORDING TO THE PLAT FILED NOVEMBER 30, 2005 UNDER RECEPTION NO. 807735 COUNTY OF SUMMIT, STATE OF COLORADO.

Exhibit 3  
[Parcel 3 Legal Description]

LOT 1 AND LOT 3, GONDOLA LOTS, FILING NO. 1 - AMENDED, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 25, 2023 UNDER RECEPTION NO. 1319751, COUNTY OF SUMMIT, STATE OF COLORADO.

Exhibit 4  
[Parcel 4 Legal Description]

LOT 4, FOURTH RESUBDIVISION THE REMAINDER OF TRACT C, PEAK 8  
SUBDIVISION FILING NO. 1, ACCORDING TO THE PLAT THEREOF RECORDED  
DECEMBER 20, 2018 UNDER RECEPTION NO. 1187721,COUNTY OF SUMMIT, STATE  
OF COLORADO.

Exhibit 5  
[Parcel 5 Legal Description]

A PARCEL OF LAND LOCATED IN A PORTION OF THE REMAINDER OF TRACT C, PEAK 8 SUBDIVISION FILING No. 1 IN SECTION 1, T7S, R78W AND SECTION 36, T6S, R78W OF THE 6th P.M., SUMMIT COUNTY, COLORADO.

SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 4, PEAK 8 SUBDIVISION FILING No. 1, RECORDED IN THE OFFICE OF THE SUMMIT COUNTY CLERK AND RECORDER UNDER RECEPTION No. 1187721, THENCE ALONG THE EAST LINE OF SAID REMAINDER OF TRACT C S05°36'59"W, 348.85 FEET, THENCE ALONG THE FOLLOWING THREE (3) COURSES AND DISTANCES:

1. S81°32'31"W, 37.65 FEET S81°32'31"W, 37.65 FEET
2. N22°54'12"W, 407.45 FEET N22°54'12"W, 407.45 FEET
3. S84°23'01"E, 231.06 FEET BACK TO THE POINT OF BEGINNING. S84°23'01"E, 231.06 FEET BACK TO THE POINT OF BEGINNING.

Exhibit 6  
[Parcel 6 Legal Description]

A PARCEL OF LAND LOCATED IN A PORTION OF THE REMAINDER OF TRACT C, PEAK 8 SUBDIVISION FILING No. 1, A PORTION OF THE ADA PLACER (MS 13744) AND A PORTION OF THE TYRA PLACER (MS 13343), IN SECTION 1, T7S, R78W AND SECTION 36, T6S, R78W OF THE 6th P.M., SUMMIT COUNTY, COLORADO.

SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF TRACT C, PEAK 8 SUBDIVISION FILING No. 1, RECORDED IN THE OFFICE OF THE SUMMIT COUNTY CLERK AND RECORDER UNDER RECEPTION No. 1187721, THENCE ALONG THE SOUTH LINE OF TIMBER TRAIL SUB. RECORDED UNDER REC. No. 730224 AND FILED IN THE OFFICE OF THE SUMMIT COUNTY CLERK AND RECORDER THE FOLLOWING THREE (3) COURSES AND DISTANCES:

1. N63°32'19"E, 141.01 FEET N63°32'19"E, 141.01 FEET
2. N67°05'19"E, 148.45 FEET N67°05'19"E, 148.45 FEET
3. N56°47'38"E, 25.66 FEET, N56°47'38"E, 25.66 FEET,

THENCE DEPARTING SAID SOUTH LINE THE FOLLOWING TEN (10) COURSES AND DISTANCES:

1. S20°08'31"E, 66.15 FEET S20°08'31"E, 66.15 FEET
2. 185.78 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 200.00 FEET, 185.78 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 200.00 FEET, A CENTRAL ANGLE OF 53°13'18" AND A CHORD WHICH BEARS S06°28'08"W, 179.17 FEET.
3. S33°04'47"W, 45.55 FEET S33°04'47"W, 45.55 FEET
4. S16°15'16"E, 343.70 FEET S16°15'16"E, 343.70 FEET
5. S04°00'43"E, 86.48 FEET S04°00'43"E, 86.48 FEET
6. S36°33'26"E, 132.68 FEET S36°33'26"E, 132.68 FEET
7. S78°51'48"W, 172.09 FEET S78°51'48"W, 172.09 FEET
8. N78°33'09"W, 673.06 FEET N78°33'09"W, 673.06 FEET
9. N12°32'17"W, 219.71 FEET N12°32'17"W, 219.71 FEET
10. N39°22'25"E, 750.61 FEET TO A POINT ON THE EAST LINE OF SAID TRACT C. N39°22'25"E, 750.61 FEET TO A POINT ON THE EAST LINE OF SAID TRACT C.

THENCE ALONG SAID EAST LINE S26°38'02"E, 255.76 FEET BACK TO THE POINT OF BEGINNING.

Exhibit 7

[Parcel 7 Legal Description]

TRACT A2, A REPLAT OF LOTS A1, B1 AND C, ENTRADA AT BRECKENRIDGE,  
ACCORDING TO THE PLAT FILED JULY 24, 2017 UNDER RECEPTION NO. 1146781,  
COUNTY OF SUMMIT, STATE OF COLORADO.

Exhibit 8  
[Form Density Transfer Covenant]

**DENSITY TRANSFER AGREEMENT AND COVENANT**

This Density Transfer Agreement And Covenant (“**Agreement**”) is made and entered into at Breckenridge, Colorado this \_\_\_ day of \_\_\_\_\_, 2024, by and between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation (“**Town**”), and \_\_\_\_\_ (“**XXXX**”).

RECITALS

A. WHEREAS, \_\_\_\_\_ is the owner of real property located in the Town of Breckenridge, Summit County, Colorado more particularly described on Exhibit “A”, which real property is hereafter referred to in this Agreement as the “**Sending Parcel**”.

B. WHEREAS, \_\_\_\_\_ is the owner of real property located in the Town of Breckenridge, Summit County, Colorado more particularly described on Exhibit “B”, which real property is hereafter referred to in this Agreement as the “**Receiving Site**”.

C. WHEREAS, pursuant to the Development Agreement between the Town and \_\_\_\_\_ dated \_\_\_\_\_ and recorded \_\_\_\_\_ at Reception No. \_\_\_\_\_ of the real property records of the Clerk and Recorder of Summit County, Colorado (“**Development Agreement**”) \_\_\_\_\_ is authorized, without further approval from the Town, to transfer density from the Sending Parcel to the Receiving Site; and

D. WHEREAS, this Agreement is executed and recorded in the real property records of the Clerk and Recorder of Summit County, Colorado to effectuate and memorialize the density transfer described in this Agreement.

NOW, THEREFORE, in consideration of the promises and covenants contained herein, the parties agree as follows:

1. Town and \_\_\_\_\_ hereby agree that XXXX (XX) SFEs of the density heretofore allocated to the Sending Parcel shall be and hereby are transferred to the Receiving Site. As used in this Agreement, “**SFE**” means a single-family equivalent of density as defined from time to time in the Town’s land use regulations.

2. \_\_\_\_\_ acknowledges and agrees that following the transfer of the XXX (XX) SFEs of density to the Receiving Site as described in Section 1, above, there shall remain XXX (XX) SFEs of density upon the Sending Parcel.

3. Town and \_\_\_\_\_ further acknowledge and agree that following the transfer of XXX (XX) SFEs of density to the Receiving Site as described in Section 1, above, the Receiving Site shall then have a total of XXX (XX) SFEs of residential and commercial density, which density may only be used in connection with a development approved by Town pursuant to the Town’s applicable land use ordinances, policies, and codes. Nothing in this Agreement shall constitute a site specific development plan for the development of the Sending Parcel or the Receiving Site, nor shall this Agreement give rise to the creation of any vested rights with respect to the

development of the Sending Parcel or the Receiving Site (without limiting ARTICLE 12 of the Development Agreement).

4. The agreements and covenants contained in this Agreement shall: (i) run with the land; (ii) burden the Sending Parcel and benefit the Receiving Site; and (iii) be binding upon the Town and XXXX and their successors and assigns, and all persons who hereafter acquire any interest in either the Sending Parcel or the Receiving Site.

5. This Agreement shall be recorded in the real property records of the Clerk and Recorder of Summit County, Colorado, to place prospective purchasers and other interested parties on notice as to the terms, conditions, and limitations contained herein.

6. This Agreement and the exhibits hereto represent the entire understanding between the parties with respect to the subject matter of this Agreement.

7. This Agreement may be executed in several counterparts and/or signature pages and all counterparts and signature pages so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties are not signatories to the original or the same counterpart or signature page.

IN WITNESS WHEREOF, the parties hereto have executed this Density Transfer Agreement And Covenant effective as of date above.

[SIGNATURE AND ACKNOWLEDGEMENT PAGES FOLLOW]





Exhibit “A” [to Ex. 8 Form Density Transfer Covenant]

**Legal Description of the Sending Parcel**

Exhibit “B” [to Ex. 8 Form Density Transfer Covenant]

**Legal Description of the Receiving Site**

Exhibit 9  
[Parcel 1 Concept Plan]

Drawing: U:\101926266\submittals\032323\032323.dwg  
 User: dtj  
 Date: 11/09/2023 11:15:18 AM  
 Plot Date: 11/09/2023 11:15:18 AM  
 Plot Scale: 1:1  
 Plot Orientation: Landscape  
 Plot Size: 11.00 x 17.00  
 Plot Title: NORTH GONDOLA LOT & GOLD RUSH LOTS  
 Project: 2019026  
 Client: DTJ DESIGN, INC. 2022



LANDSCAPE LEGEND	
---	PROPERTY LINE
---	SETBACK LINE
---	LOT SUBMISSION LINE
○	ASSUMED EXISTING TREES
○	LOCATION
TREE LEGEND	
SYMBOL	TYPE
○	NARROW LEAF COTTONWOOD
△	QUAKING ASPEN
○	RIVER BIRCH
○	COLORADO SPRUCE
○	DOUGLAS FIR
TREE REMOVAL AND REPLACEMENT LEGEND	
SYMBOL	CATEGORY
○	EXISTING TREE TO BE PRESERVED
○	EXISTING TREE TO BE REMOVED
○	TREE REPLACEMENT/ADDED
TOTAL PRESERVED	
TOTAL REMOVED	
TOTAL REPLACEMENT	

**NOTES**

ALL EXISTING TREE LOCATIONS AND QUANTITIES REPRESENTED IN THIS EXHIBIT ARE ASSUMED. TREE LOCATIONS AND QUANTITY ASSUMPTIONS ARE BASED ON DETAILING, AERIAL PHOTOGRAPHIC ANALYSIS AND PROVIDED HISTORIC SURVEY INFORMATION. ACTUAL TREE LOCATIONS AND QUANTITIES ARE TO BE VERIFIED IN FUTURE DEVELOPMENT AND DESIGN UTILIZING A CERTIFIED TREE SURVEY PROVIDED BY A PROFESSIONAL SURVEYING ENTITY.

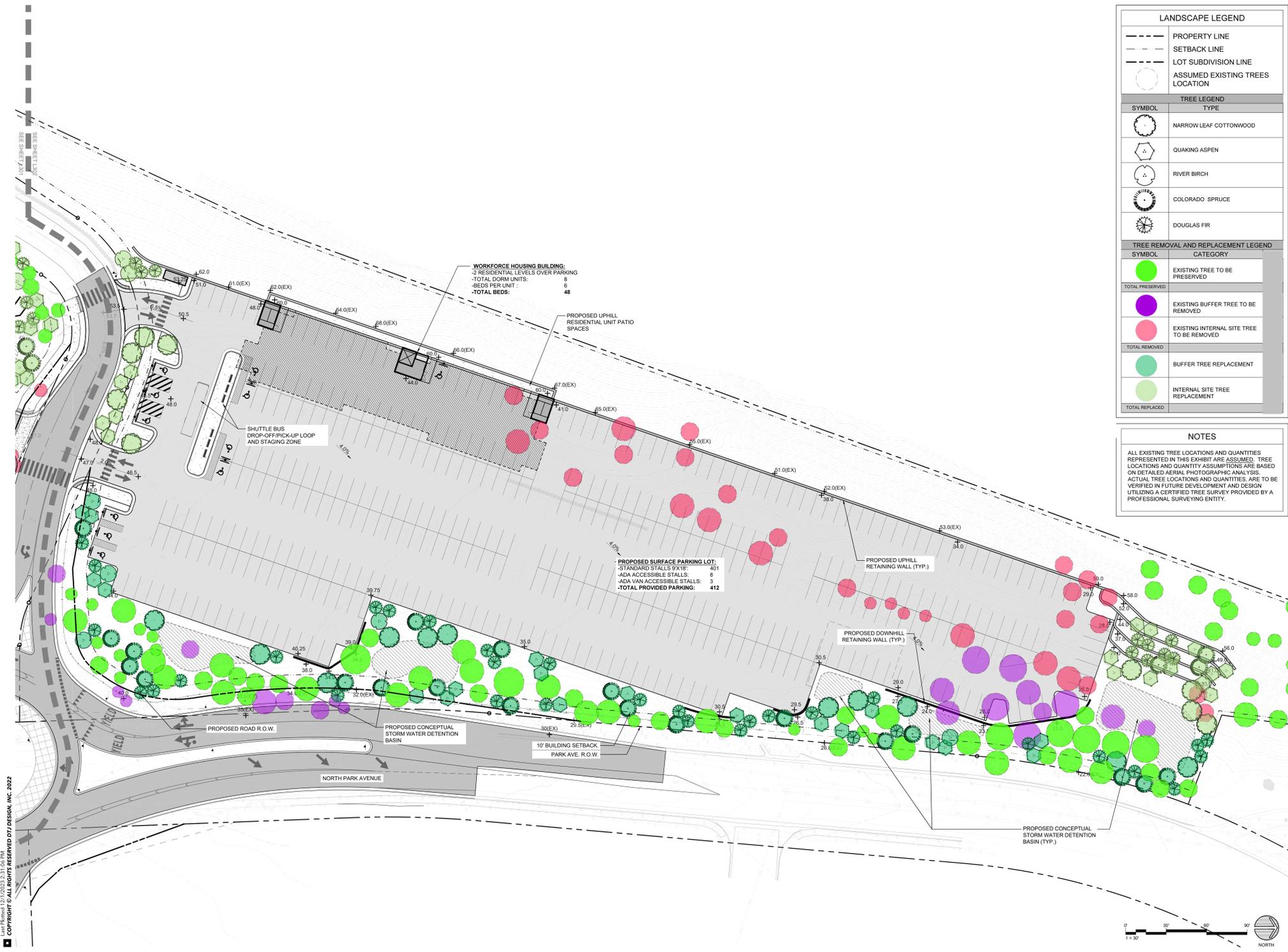


**NORTH GONDOLA LOT & GOLD RUSH LOTS**  
 355 N. PARK AVE. BRECKENRIDGE, CO

NOT FOR CONSTRUCTION	
DRAWN BY	ZE.TJ
CHECKED BY	DTJ
PROJECT NO.	2019026
DATE	11/09/2023
SCALE	
SHEET NO.	
NORTH GONDOLA LOT SITE+PLANTING PLAN	
SHEET NUMBER	

L303

Exhibit 10  
[Parcel 2 Concept Plan]



**LANDSCAPE LEGEND**

--- PROPERTY LINE  
 - - - SETBACK LINE  
 - - - LOT SUBDIVISION LINE  
 ○ ASSUMED EXISTING TREES LOCATION

TREE LEGEND	
SYMBOL	TYPE
○	NARROW LEAF COTTONWOOD
○	QUAKING ASPEN
○	RIVER BIRCH
○	COLORADO SPRUCE
○	DOUGLAS FIR

TREE REMOVAL AND REPLACEMENT LEGEND	
SYMBOL	CATEGORY
○	EXISTING TREE TO BE PRESERVED
○	EXISTING BUFFER TREE TO BE REMOVED
○	EXISTING INTERNAL SITE TREE TO BE REMOVED
○	BUFFER TREE REPLACEMENT
○	INTERNAL SITE TREE REPLACEMENT

**NOTES**

ALL EXISTING TREE LOCATIONS AND QUANTITIES REPRESENTED IN THIS EXHIBIT ARE ASSUMED. TREE LOCATIONS AND QUANTITY ASSUMPTIONS ARE BASED ON DETAILED AERIAL PHOTOGRAPHIC ANALYSIS. ACTUAL TREE LOCATIONS AND QUANTITIES ARE TO BE VERIFIED IN FUTURE DEVELOPMENT AND DESIGN UTILIZING A CERTIFIED TREE SURVEY PROVIDED BY A PROFESSIONAL SURVEYING ENTITY.

Drawing: 11/20/2024: 09:56:00: 355 N. Park Ave. - Golden, CO  
 Last Saved: December 1, 2023 2:36:47 PM by: zsmhart  
 COPYRIGHT © ALL RIGHTS RESERVED DTJ DESIGN, INC. 2022

**dtj**  
 DESIGN

ARCHITECTURE  
 PLANNING  
 LANDSCAPE ARCHITECTURE

DTJ DESIGN, Inc.  
 3101 8th Avenue, Suite 130  
 Boulder, Colorado 80301  
 T 303.443.7533  
 www.dtjdesign.com

**NORTH GONDOLA LOT & GOLD RUSH LOTS**  
 355 N. PARK AVE. BRECKENRIDGE, CO

NOT FOR CONSTRUCTION

DRAWN BY: ZE/TJ  
 CHECKED BY: DTJ  
 PROJECT NO.: 2019026  
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SHEET TITLE:  
**GOLD RUSH  
 NORTH  
 SITE+PLANTING  
 PLAN**

SHEET NUMBER:  
**L302**



Exhibit 11  
[Wetlands Report]

Alpine Ecological Resources, LLC

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# Gold Rush Lots Wetland Technical Report

Breckenridge, Colorado

*Prepared for: Breckenridge Grand Vacations  
October 26, 2023*



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# Gold Rush Lots

## Wetland Technical Report

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### Table of Contents

<b>1.0 Introduction</b> .....	<b>3</b>
1.1 Purpose of This Report.....	3
1.2 Project Description.....	3
<b>2.0 Site Description</b> .....	<b>4</b>
<b>3.0 Methods</b> .....	<b>5</b>
3.1 Literature Review.....	5
3.2 Field Data Collection .....	5
3.3 Mapping .....	6
3.4 Wetland Classification.....	6
3.5 Wetland Functional Assessment.....	6
<b>4.0 Wetlands</b> .....	<b>7</b>
4.1 Vegetation .....	7
4.2 Hydrology .....	7
4.3 Soils .....	7
4.4 Wetland Functional Condition.....	8
<b>5.0 Other Water Features</b> .....	<b>9</b>
<b>6.0 Proposed Impacts</b> .....	<b>10</b>
<b>7.0 Proposed Mitigation</b> .....	<b>11</b>
7.1 Wetland Mitigation.....	11
7.2 Wetland Setback Mitigation .....	11
<b>8.0 Literature Cited</b> .....	<b>13</b>

#### List of Figures

Figure 1 – Site Location Map

Figure 2 – Wetlands and Other Water Features

# Gold Rush Lots

## Wetland Technical Report

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### List of Tables

Table 1 – Permanent Wetland Impacts (p.10)

### Appendices

Appendix A – Wetland Determination Data Forms

Appendix B – Site Photographs

Appendix C - Site Plan and Wetland Disturbance

### Abbreviations and Acronyms

FAC	Facultative
FACW	Facultative Wetland
FACWet	Functional Assessment of Colorado Wetlands
FACU	Facultative Upland
FGDC	Federal Geographic Data Committee
HGM	Hydrogeomorphic Method
HUC	Hydrologic Unit Code
ILF	In-Lieu Fee
NFF	National Forest Foundation
NRCS	Natural Resources Conservation Service
NWPL	National Wetland Plant List
OBL	Obligate
PEM	Palustrine Emergent
PSS	Palustrine Scrub/Shrub
UPL	Upland
USACE	US Army Corps of Engineers
USFWS	United States Fish and Wildlife Service
WGS	World Geodetic System

# Gold Rush Lots

## Wetland Technical Report

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### 1.0 Introduction

#### 1.1 Purpose of This Report

This report formally documents the wetlands and other water features present in the study area. The primary reason for this documentation is to assist with project planning and design, which is intended to maximize avoidance of these features wherever practicable. The wetland and other water features described in this report include all those present, regardless of their jurisdiction under Section 404 of the Clean Water Act.

This report also documents the proposed impacts to wetlands and other water features, and any proposed compensatory mitigation measures.

#### 1.2 Project Description

The project involves the construction of residential duplex/townhomes and the supporting roadway and other infrastructure components.

# Gold Rush Lots

## Wetland Technical Report

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### 2.0 Site Description

The 16.1-acre study area is in Summit County, in the Town of Breckenridge, Colorado (**Figure 1**) and is immediately west of Park Avenue under the Breck Connect Gondola. The site can be found on the United States Geological Survey 7.5-minute series *Breckenridge, Colorado* quadrangle and includes land in both Township 6S, Range 77W, Section 31 and Township 6S, Range 78W, Section 36. The study area centroid has the following approximate coordinates (datum is WGS84):

- Universal Transversal Mercator: 409729E, 4371267N
- Latitude/Longitude: 39.486276°N, -106.049696°W

The study area is approximately 9,575 feet above mean sea level and is flanked by commercial development to the north and east, and residential development to the west and south. The northern portion of the site is mostly developed and consists of large parking lots. The southern portion is mostly comprised of natural habitats, including a mix of willow (*Salix* spp.)-dominated wetlands, associated riparian habitat, and some mixed conifer and Quaking Aspen (*Populus tremuloides*) wooded areas.

The site is in the Sedimentary Subalpine Forests Ecoregion, which is characterized by glaciated mountains with steep slopes and high-gradient perennial streams between 8,500 and 10,000 feet above mean sea level (Chapman, et al. 2006). Vegetation in the ecoregion is generally Engelmann's Spruce/Fir (*Picea engelmannii*/*Abies lasiocarpa*) forest interspersed with Quaking Aspen groves and meadows. Land uses include timber harvest, mining, hunting and other recreation, and some seasonal grazing.

The site is also in the Southern Rocky Mountain Forest and Range Land Resource Region (NRCS 2006). This Land Resource Region is characterized by rugged mountains with some broad valleys and remnants of high plateaus. Precipitation ranges from 7 to 63 inches per year, and the primary soil resource concerns are erosion by wind and water and maintaining the productivity of the soils. The majority of land in this region is federally owned.

The hydrologic unit code (HUC) is 14010002 (Blue).

# Gold Rush Lots

## Wetland Technical Report

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### 3.0 Methods

#### 3.1 Literature Review

Prior to conducting the field survey, numerous sources of data were reviewed to gain a general understanding of the ecology of the study area. These sources included aerial photographs and topographic maps, *Wetlands Mapper* website (USFWS 2023), *Web Soil Survey* (NRCS 2023a), *National Wetland Plant List (NWPL)* (USACE 2020), other state and federal agency websites, and other relevant data.

#### 3.2 Field Data Collection

Andy Herb (senior ecologist) originally identified wetlands and other water features in a portion of the study area in August 2016 and returned in July 2020 to update those boundaries and examine the rest of the study area. All features were delineated within the defined study area using procedures outlined in the *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region* (USACE 2010), which involved a detailed examination of plants, soils, and hydrologic indicators present.

Generally, the detailed examination of each wetland involves the collection of vegetation, soil, and hydrology data at paired data points. These paired points include one point within the suspected wetland and one point in the adjacent upland. However, if numerous wetlands are in close proximity and surrounded by the same or similar upland plant community, then upland data points of nearby sites are often utilized, rather than creating a new upland data point for each wetland area.

During field examinations, all plants considered dominant in wetlands or otherwise commonly observed were identified. A list of dominant plants was documented for each potential wetland area and was compared to the NWPL to determine the “wetland indicator status” of each species. Generally, if at least 50 percent of those species had an indicator status of facultative (FAC) or wetter, the potential wetland area would satisfy the US Army Corps of Engineers (USACE) criterion for wetland vegetation. The botanical nomenclature presented in this report follows the NWPL and is followed by the NWPL indicator status for the Western Mountains, Valleys, and Coast Region. If a species is not listed in the NWPL, then the nomenclature follows the *PLANTS Database* (NRCS 2023b).

Soils were examined at various locations throughout the study area to identify the presence of hydric soil indicators. If indicators were found, multiple pits may have been dug along the gradient to identify the extent of hydric soils.

While recording plant species and identifying soil characteristics, potential wetlands within the study area were assessed for evidence and potential sources of wetland hydrology. This evidence included primary indicators such as the presence of surface water and saturation, and secondary indicators like drainage patterns and geomorphic position.

Most surrounding uplands were not formally sampled or recorded on data forms, and were generally examined while attempting to identify wetland areas. Those uplands examined in more detail or recorded on data forms typically exhibited evidence of at least one wetland indicator (hydrophytic vegetation, hydric soils, or wetland hydrology). Data collected for all areas investigated and deemed non-wetland are not necessarily included in this report.

# Gold Rush Lots

## Wetland Technical Report

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### 3.3 Mapping

After determining the approximate extent of the wetlands based on the presence of hydric soils, hydrophytic vegetation, and wetland hydrology, the wetland boundary was flagged and surveyed using a global positioning system device. This equipment provides accuracy of less than one meter.

### 3.4 Wetland Classification

Wetlands in the study area were classified in accordance with the *Hydrogeomorphic Method* (HGM) (Brinson 1993) and the Federal Geographic Data Committee (FGDC) *Classification of Wetlands and Deepwater Habitats of the United States* (FDGC 2013).

The “slope” wetland classification is the only HGM type applicable to wetlands in the study area. Slope wetlands are those that are generally not on floodplains and that have groundwater as their primary water source.

The FGDC classification scheme includes two wetland types that apply to wetlands in the study area: palustrine emergent (PEM) and palustrine scrub-shrub (PSS). PEM wetlands are those dominated by herbaceous vegetation (grasses, grass-like, and forbs). PSS wetlands are those dominated by shrubs or trees less than 20 feet tall.

### 3.5 Wetland Functional Assessment

Wetland functions were generally assessed using the concepts presented in the *Functional Assessment of Colorado Wetlands* (FACWet) Method (Johnson, et al. 2013), although a complete assessment was not conducted. FACWet is a rapid assessment method that provides a reliable and consistent approach to rating the condition of wetlands relative to their natural potential by focusing on the presence of stressors. Stressors are human-caused changes to a wetland or adjacent lands that alter a wetland’s ability to perform ecological functions and processes.

# Gold Rush Lots

## Wetland Technical Report

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### 4.0 Wetlands

The 16.1-acre study area contains 5.7 acres of mostly PSS slope wetlands that include small pockets of PEM wetlands in the wettest areas. They are shown on **Figure 2** and briefly described in the following sections. *Wetland Determination Data Forms* are in **Appendix A** and photos are in **Appendix B**.

#### 4.1 Vegetation

Most of the wetland area is dominated by willows (**Photo 1 in Appendix B**), with an understory comprised mostly of Bluejoint (*Calamagrostis canadensis*-FACW) and Tall Fringe Bluebells (*Mertensia ciliata*-FACW) in drier wetlands, and Northwest Territory Sedge (*Carex utriculata*-OBL) and Leafy Tussock Sedge (*Carex aquatilis*-OBL) in wetter areas. The most common willows present are Drummond's Willow (*Salix drummondiana*-FACW), Geyer's Willow (*S. geyeriana*-FACW), and Park Willow (*S. monticola*-OBL).

The vegetation along the wetland boundary is generally characterized by a subtle transition away from the hydrophytes mentioned above, to an increasing density of dead and/or dying willow with an understory of more mesic grasses and forbs like Fringed Brome (*Bromus ciliatus*-FAC), Common Yarrow (*Achillea millefolium*-FACU), Meadow Thistle (*Cirsium scariosum*-FAC), and Virginia Strawberry (*Fragaria virginiana*-FACU) (**Photos 2 and 3 in Appendix B**). These areas also often contain scattered mesic and upland trees and shrubs, including Quaking Aspen (FACU), Lodgepole Pine (*Pinus contorta*-FAC), Common Juniper (*Juniperus communis*-UPL), Golden-Hardhack (*Dasiphora fruticosa*-FAC), and Four-Line Honeysuckle (*Lonicera involucrata*-FAC).

#### 4.2 Hydrology

The wetlands are mainly supported by seasonally high groundwater associated with snowmelt. The southwest and west portions of the wetlands are wettest and wetland hydrology in these areas are supplemented by perennial surface water inputs from the adjacent developed areas (see *Section 5.0 Other Water Features*). The remainder of the wetlands (especially the east and north sides) appear to be drier than they were historically, as evidenced by the extensive dead and dying willow, relatively low cover of herbaceous hydrophytes, and limited evidence of recent standing or flowing water. This drying seems to be a result of development up-gradient of the wetland (outside the study area) interrupting surface and/or groundwater flows, as well as the presence of a ditch at the north end that directs surface flows (and some groundwater) out of the wetland area, which then quickly infiltrates into the upland area to the north.

Much of the wetland area (especially the western half) was saturated to the surface during fieldwork and some areas had surface water present (up to 6 inches deep). The wetland hydrology indicators observed in the study area include Surface Water (A1), Saturation (A3), Drainage Patterns (B10), Geomorphic Position (D2), and FAC-Neutral Test (D5).

#### 4.3 Soils

According to the *Web Soil Survey* (NRCS 2023a), the soil in the study area is Grenadier gravelly loam, 0 to 6 percent slopes. This soil is not considered hydric but it is known to have both cumulic cryaquolls and hystic cryaquolls as minor components (20%) in swales, both of

# Gold Rush Lots

## Wetland Technical Report

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which are listed as hydric. The Grenadier gravelly loam is found on fans and at mountain bases, and is derived from glacial drift. It is generally well drained and has a normal depth to water table of more than 80 inches. The typical profile is gravelly loam from 0 to 3 inches and gravelly sandy clay loam from 3 to 16 inches. A total of five soil pits were excavated in and near the wetlands (**Figure 2**), and they generally confirmed the presence of this soil type. Soil observed in the various pits were variable, with sand, silty and sandy loams, and gravel observed within 16 inches of the surface (see data forms in **Appendix A**). The only hydric soil indicator observed in the soil pits was Depleted Matrix (F3).

### 4.4 Wetland Functional Condition

Based on the concepts presented in the *FACWet Method* (Johnson, et al. 2013), the general condition of the wetlands in study area is Functioning to Functioning Impaired (letter grade of "C" to "D"). This is a result of the great loss of historical wetlands in and adjacent to the study area, and the presence of several major ecological stressors. The most severe stressors include: 1) altered water source and distribution caused by upgradient developments (outside the study area), as well as on-site morphological modifications to the wetland itself (ditching and old railroad bed); and 2) modifications to the contributing area, namely the extensive development in the immediate watershed.

The highest functioning part of the wetland is the west side where there appears to be more appropriate wetland hydrology. This part of the wetland is supplemented by surface flows from the two tributaries entering from the west (see *Section 5.0 Other Water Features*) and generally contains the expected vegetation zones. The lower functioning wetlands on the east and north are partially dewatered by adjacent land uses and ditching, which has had a profound impact on the vegetation complexity and overall functional condition.

# Gold Rush Lots

## Wetland Technical Report

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### 5.0 Other Water Features

While there are no other water features in the study area (no channels with a defined bed and bank), surface water flows certainly enter the site and influence the wetlands present. **Figure 2** shows the surface water inputs to the site and the direction of flow, which is typically observable during snowmelt as shallow groundwater flow and/or sheet flow. There are three main surface water inputs:

- **Tributary 1** enters the study area from the south through a small culvert (approximately 18 inches in diameter) and appears to be drainage from the residential development to the south – perhaps from foundation drains or other sources of water more reliable than stormwater since it has been observed flowing during site visits in spring, summer, and fall (**Photo 4 in Appendix B**). The flow path of this tributary is mostly covered with wetland vegetation.
- **Tributary 2** is an unnamed topographic swale that enters the study area from the southwest through a large culvert (approximately 36-inch) under the walking path at the end of Woods Drive (**Photo 5 in Appendix B**). It appears to carry snowmelt and other stormwater flows into the site and has been observed dry during the summer and fall. While some large flows enter through this tributary, as evidenced by recent sediment and rafted debris, it does not contain a defined channel within the study area. Water entering the site sheet flows into the larger wetland area.
- **Tributary 3** appears to be drainage from the residential development to the west, along Woods Drive. Water drains from a retaining wall into a small pond (out of the study area) and sheet flows into the site below the pond (**Photo 6 in Appendix B**). Similar to Tributary 1, this tributary has been observed flowing during site visits in spring, summer, and fall, so it may also originate from foundation drains.

While much of the wetland stays relatively wet throughout the growing season, no surface flows appear to leave the property. During snowmelt, when surface flows are typically at their peak, water can flow out of the large wetland area into a narrow part of the wetland that is an excavated ditch with a vegetated bottom (no channel). This ditch was historically excavated in an apparent attempt to drain the larger wetland and directs water northeast where it can leave the wetland via sheet flow and into a topographic swale. If it makes it that far, it continues north through the swale into a culvert under Woods Drive and into a small upland stormwater pond. There is no channel between the wetland and this pond (**Photo 7 in Appendix B**). The pond is strictly a topographic depression in uplands and does not contain wetlands or a channel. The pond outlets to an elevated wooden box with an opening to an underground stormwater pipe that appears to run east along the north side of French Street approximately 600 feet to the Blue River. The entrance to this pipe is perched above the ground surface and shows no signs of recent or regular flow (**Photos 8 and 9 in Appendix B**). Other than this outlet, there are no other culverts or surface water connections to off-site habitats.

# Gold Rush Lots

## Wetland Technical Report

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### 6.0 Proposed Impacts

The proposed project would result in the permanent loss of 0.10 acre of wetlands for the construction of the residential development and the widening of North Park Avenue (**Table 1**). The drawings in **Appendix C** show the overall site plan and the impacted wetlands.

**Table 1: Permanent Wetland Impacts**

Project Feature	Permanent Impacts (acres)	Notes
Residential Development	0.067	Includes grading for buildings and associated features; 0.198 acre of adjacent wetland setback area also permanently lost
North Park Avenue	0.033	Includes grading for road widening and associated features; wetland setback impacts temporary
<b>Total</b>	<b>0.100</b>	-

The wetlands impacted for residential development are those associated with the historically excavated ditch at the north end and are the lowest quality wetlands in the study area. The wetlands impacted for the widening of North Park Avenue are on the extreme eastern edge of the wetland where substantial evidence of drying was observed. These wetlands are also some of the lowest functioning wetlands in the study area.

Permanent impacts to the wetland setback (25-foot buffer around the wetlands) include 0.198 acre associated with the wetlands impacted by the residential development. The setback where the wetlands would be impacted by the widening of North Park Avenue are expected to be temporarily impacted during construction but will not be permanently lost.

# Gold Rush Lots

## Wetland Technical Report

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### 7.0 Proposed Mitigation

#### 7.1 Wetland Mitigation

The proposed project would permanently fill 0.10 acre of existing wetlands as a result of the construction of the residential duplex/townhomes and supporting roadway and other infrastructure components. The wetlands were determined to be non-jurisdictional under the Clean Water Act on August 31, 2021 by the USACE. Regardless, the project proponent has worked diligently to avoid and minimize impacts to wetlands to the maximum extent practicable by redesigning the project multiple times to keep the project footprint as small as possible and orienting the proposed improvements to maximize the use of upland areas. Since wetlands encompass a large portion of the property (5.7 of the 16.1 acres), there is no feasible alternative to disturbing some wetlands and still meet the project purpose of providing residential housing within the density set forth by the Town of Breckenridge (Town) approved masterplan, meeting local fire code access requirements to the residential units, while simultaneously preserving mature existing trees and vegetation on site as required for Town approval of the project.

The 0.10 acre of wetlands lost have been compensated for by purchasing 0.2 credits (2:1 ratio) from the recently approved Colorado Western Slope In-Lieu Fee (ILF) Program, which is sponsored by the National Forest Foundation (NFF) and approved for use in Summit County by the USACE. The ILF was formally approved in 2020 and began releasing credits for projects seeking compensatory wetland mitigation credits in Summit County in 2022.

Additional information about the program can be found on the Corps' Regulatory In-Lieu Fee and Bank Tracking Information System website:

[https://ribits.ops.usace.army.mil/ords/f?p=107:378::NO::P378\\_PROGRAM\\_ID:2808](https://ribits.ops.usace.army.mil/ords/f?p=107:378::NO::P378_PROGRAM_ID:2808).

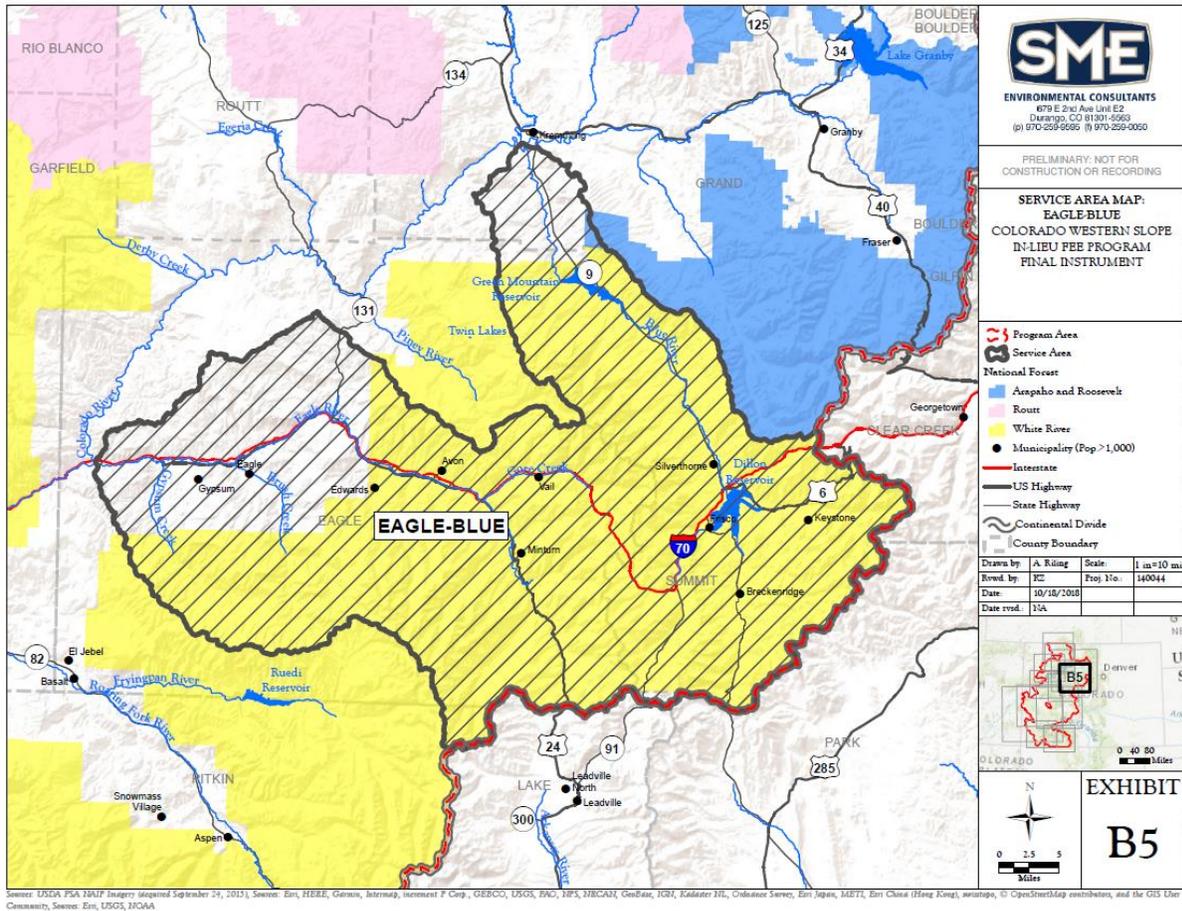
The mitigation credits will be debited from the Program's Blue-Eagle Service Area, which encompasses hydrologic unit code 1401000201 and includes the Town of Breckenridge (see **Figure B5** from the program instrument below). As such, a formal wetland mitigation plan will not be prepared for the project. Details of the wetlands to be used for the ILF Program are available from the NFF by contacting Mr. Marcus Selig (NFF Chief Conservation Officer) at 720.437.0290 or [mseelig@nationalforests.org](mailto:mseelig@nationalforests.org).

#### 7.2 Wetland Setback Mitigation

The project would permanently impact 0.198 acre of wetland setback. The compensation for this setback area includes the purchase of surplus credits from the ILF (0.2 credits instead of the required 0.1 credit), as well as the revegetation of areas around the new residential facilities, including the proposed stormwater detention basin.

The project would also temporarily impact a portion of the wetland setback adjacent to the wetlands impacted by the widening of North Park Avenue. This setback area will be revegetated with a native seed mix after construction.

# Gold Rush Lots Wetland Technical Report



# Gold Rush Lots

## Wetland Technical Report

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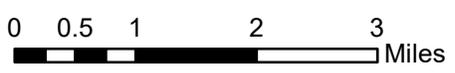
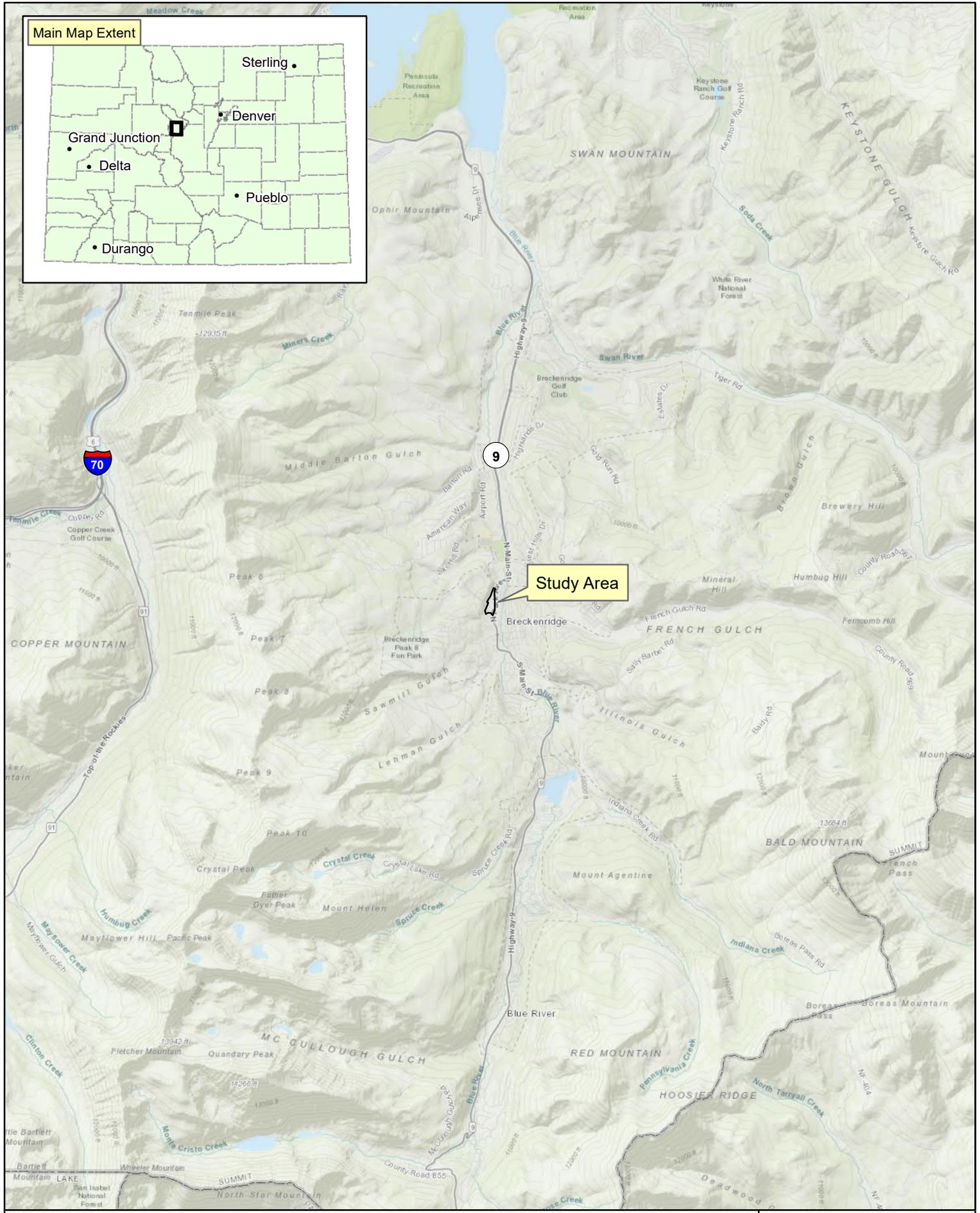
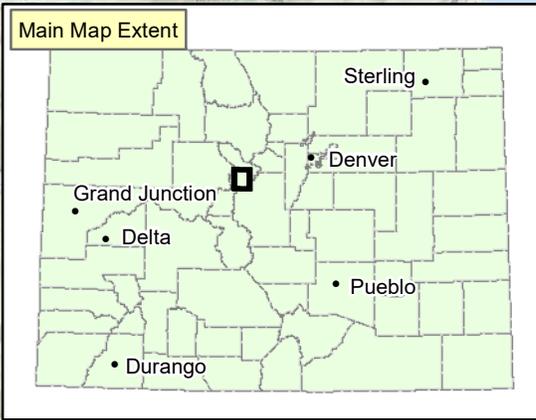
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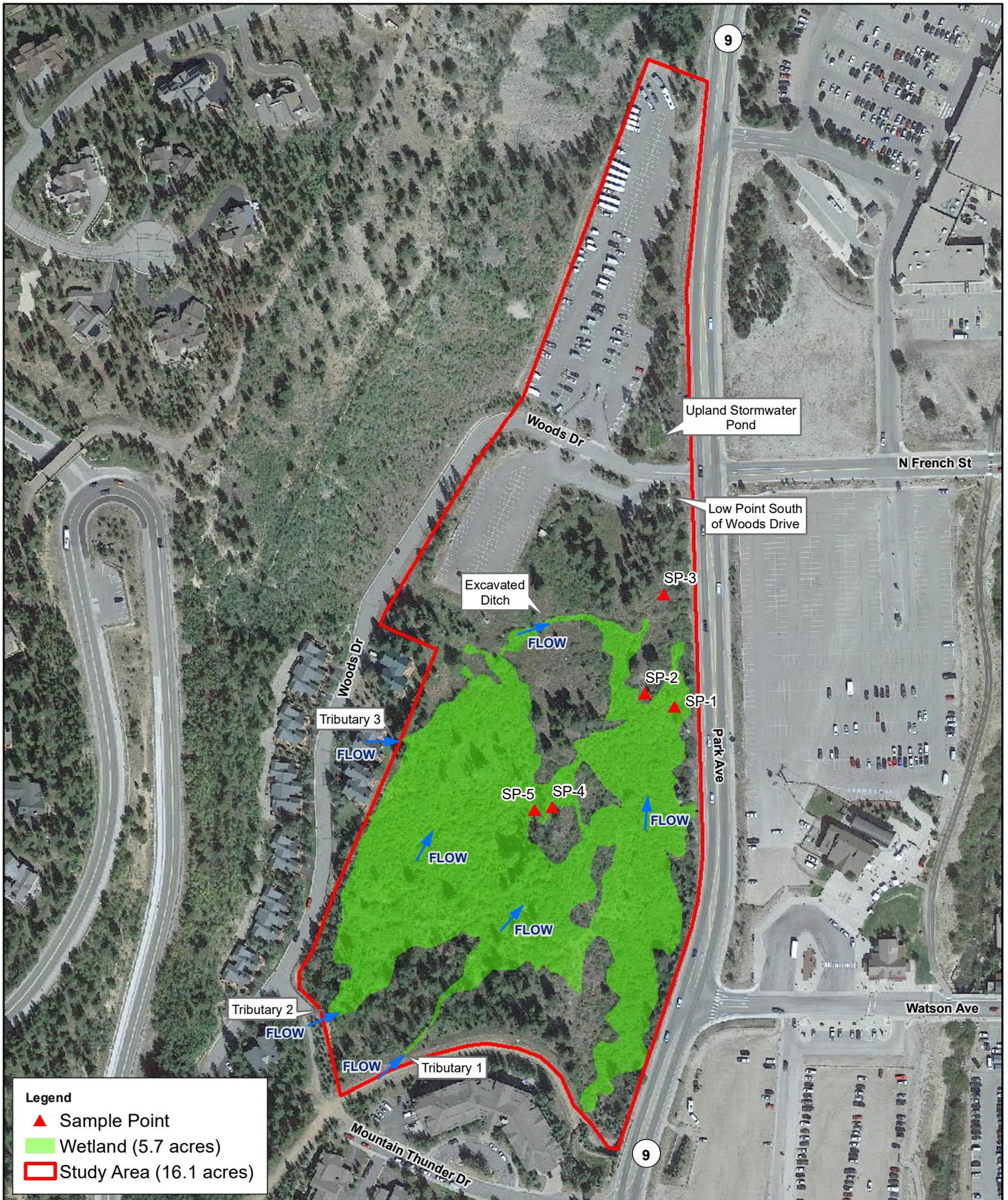
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Gold Rush Parking Lot

Figure 1  
Site Location Map 135

07/19/2021



**Legend**

- ▲ Sample Point
- Wetland (5.7 acres)
- Study Area (16.1 acres)



08/13/2020

Gold Rush Parking Lot

Figure 2  
Wetlands and Other  
Water Features

Appendix A  
Wetland Determination Data Forms

Project/Site: Gold Rush Lots City/County: Breckenridge/Summit Sampling Date: 8/17/16  
 Applicant/Owner: Breckenridge Grand Vacations State: CO Sampling Point: SP1  
 Investigator(s): Andy Herb Section, Township, Range: S31, T7S, R77W  
 Landform (hillside, terrace, etc.): Slope Local relief (concave, convex, none): concave Slope (%): 1 to 2  
 Subregion (LRR): LRR E, MLRA 48A Lat: 39.485950 Long: -106.048847 Datum: WGS84  
 Soil Map Unit Name: Grenadier gravelly loam, 0 to 6 percent slopes NWI classification: PSS  
 Are climatic / hydrologic conditions on the site typical for this time of year? Yes X No      (If no, explain in Remarks.)  
 Are Vegetation     , Soil     , or Hydrology      significantly disturbed? Are "Normal Circumstances" present? Yes X No       
 Are Vegetation     , Soil     , or Hydrology      naturally problematic? (If needed, explain any answers in Remarks.)

**SUMMARY OF FINDINGS – Attach site map showing sampling point locations, transects, important features, etc.**

Hydrophytic Vegetation Present? Yes <u>X</u> No <u>    </u> Hydric Soil Present? Yes <u>X</u> No <u>    </u> Wetland Hydrology Present? Yes <u>X</u> No <u>    </u>	<b>Is the Sampled Area within a Wetland?</b> Yes <u>X</u> No <u>    </u>
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Remarks:  
 Dense willow area with mesic understory; appears to be drier than historically but still meets the wetland criteria; possibly part of a relict beaver pond complex; original data collected in August 2016 but verified in July 2020

**VEGETATION – Use scientific names of plants.**

Tree Stratum	(Plot size: <u>30-ft radius</u> )	Absolute % Cover	Dominant Species?	Indicator Status																																	
1.	_____	_____	_____	_____	<b>Dominance Test worksheet:</b> Number of Dominant Species That Are OBL, FACW, or FAC: <u>6</u> (A) Total Number of Dominant Species Across All Strata: <u>6</u> (B) Percent of Dominant Species That Are OBL, FACW, or FAC: <u>100.0%</u> (A/B)																																
2.	_____	_____	_____	_____																																	
3.	_____	_____	_____	_____																																	
4.	_____	_____	_____	_____																																	
=Total Cover																																					
Sapling/Shrub Stratum	(Plot size: <u>15-ft radius</u> )				<b>Prevalence Index worksheet:</b> <table style="width:100%; border-collapse: collapse; font-size: small;"> <tr> <td style="text-align: right;">Total % Cover of:</td> <td></td> <td style="text-align: right;">Multiply by:</td> <td></td> </tr> <tr> <td>OBL species</td> <td style="text-align: center;"><u>10</u></td> <td>x 1 =</td> <td style="text-align: center;"><u>10</u></td> </tr> <tr> <td>FACW species</td> <td style="text-align: center;"><u>30</u></td> <td>x 2 =</td> <td style="text-align: center;"><u>60</u></td> </tr> <tr> <td>FAC species</td> <td style="text-align: center;"><u>45</u></td> <td>x 3 =</td> <td style="text-align: center;"><u>135</u></td> </tr> <tr> <td>FACU species</td> <td style="text-align: center;"><u>5</u></td> <td>x 4 =</td> <td style="text-align: center;"><u>20</u></td> </tr> <tr> <td>UPL species</td> <td style="text-align: center;"><u>0</u></td> <td>x 5 =</td> <td style="text-align: center;"><u>0</u></td> </tr> <tr> <td>Column Totals:</td> <td style="text-align: center;"><u>90</u> (A)</td> <td></td> <td style="text-align: center;"><u>225</u> (B)</td> </tr> <tr> <td colspan="4">Prevalence Index = B/A = <u>2.50</u></td> </tr> </table>	Total % Cover of:		Multiply by:		OBL species	<u>10</u>	x 1 =	<u>10</u>	FACW species	<u>30</u>	x 2 =	<u>60</u>	FAC species	<u>45</u>	x 3 =	<u>135</u>	FACU species	<u>5</u>	x 4 =	<u>20</u>	UPL species	<u>0</u>	x 5 =	<u>0</u>	Column Totals:	<u>90</u> (A)		<u>225</u> (B)	Prevalence Index = B/A = <u>2.50</u>			
Total % Cover of:		Multiply by:																																			
OBL species	<u>10</u>	x 1 =	<u>10</u>																																		
FACW species	<u>30</u>	x 2 =	<u>60</u>																																		
FAC species	<u>45</u>	x 3 =	<u>135</u>																																		
FACU species	<u>5</u>	x 4 =	<u>20</u>																																		
UPL species	<u>0</u>	x 5 =	<u>0</u>																																		
Column Totals:	<u>90</u> (A)		<u>225</u> (B)																																		
Prevalence Index = B/A = <u>2.50</u>																																					
1.	<u>Salix drummondiana</u>	<u>10</u>	Yes	FACW																																	
2.	<u>Salix monticola</u>	<u>10</u>	Yes	OBL																																	
3.	_____	_____	_____	_____																																	
4.	_____	_____	_____	_____																																	
5.	_____	_____	_____	_____																																	
=Total Cover																																					
Herb Stratum	(Plot size: <u>1x3 meter</u> )				<b>Hydrophytic Vegetation Indicators:</b> <u>    </u> 1 - Rapid Test for Hydrophytic Vegetation <u>X</u> 2 - Dominance Test is >50% <u>X</u> 3 - Prevalence Index is ≤3.0 <sup>1</sup> <u>    </u> 4 - Morphological Adaptations <sup>1</sup> (Provide supporting data in Remarks or on a separate sheet) <u>    </u> 5 - Wetland Non-Vascular Plants <sup>1</sup> <u>    </u> Problematic Hydrophytic Vegetation <sup>1</sup> (Explain) <sup>1</sup> Indicators of hydric soil and wetland hydrology must be present, unless disturbed or problematic.																																
1.	<u>Mertensia ciliata</u>	<u>20</u>	Yes	FACW																																	
2.	<u>Agrostis gigantea</u>	<u>15</u>	Yes	FAC																																	
3.	<u>Poa pratensis</u>	<u>15</u>	Yes	FAC																																	
4.	<u>Elymus trachycaulus</u>	<u>15</u>	Yes	FAC																																	
5.	<u>Taraxacum officinale</u>	<u>5</u>	No	FACU																																	
6.	_____	_____	_____	_____																																	
7.	_____	_____	_____	_____																																	
8.	_____	_____	_____	_____																																	
9.	_____	_____	_____	_____																																	
10.	_____	_____	_____	_____																																	
11.	_____	_____	_____	_____																																	
=Total Cover																																					
Woody Vine Stratum	(Plot size: <u>1x3 meter</u> )				<b>Hydrophytic Vegetation Present?</b> Yes <u>X</u> No <u>    </u>																																
1.	_____	_____	_____	_____																																	
2.	_____	_____	_____	_____																																	
=Total Cover																																					
% Bare Ground in Herb Stratum		<u>25</u>																																			

Remarks:  
 Lots of partially dead or dying willow; overall dense willow with relatively mesic understory

**SOIL**

Sampling Point: SP1

Profile Description: (Describe to the depth needed to document the indicator or confirm the absence of indicators.)								
Depth (inches)	Matrix		Redox Features				Texture	Remarks
	Color (moist)	%	Color (moist)	%	Type <sup>1</sup>	Loc <sup>2</sup>		
0-2	10YR 2/2	100					Loamy/Clayey	silty clay loam
2-6	10YR 4/2	85	10YR 4/6	15	C	M	Loamy/Clayey	sandy loam
6-16	10YR 4/4	100					Sandy	sand and gravel

<sup>1</sup>Type: C=Concentration, D=Depletion, RM=Reduced Matrix, CS=Covered or Coated Sand Grains. <sup>2</sup>Location: PL=Pore Lining, M=Matrix.

Hydric Soil Indicators: (Applicable to all LRRs, unless otherwise noted.)			Indicators for Problematic Hydric Soils <sup>3</sup> :		
<input type="checkbox"/> Histosol (A1)	<input type="checkbox"/> Sandy Gleyed Matrix (S4)	<input type="checkbox"/> 2 cm Muck (A10) (LRR A, E)			
<input type="checkbox"/> Histic Epipedon (A2)	<input type="checkbox"/> Sandy Redox (S5)	<input type="checkbox"/> Iron-Manganese Masses (F12) (LRR D)			
<input type="checkbox"/> Black Histic (A3)	<input type="checkbox"/> Stripped Matrix (S6)	<input type="checkbox"/> Red Parent Material (F21)			
<input type="checkbox"/> Hydrogen Sulfide (A4)	<input type="checkbox"/> Loamy Mucky Mineral (F1) (except MLRA 1)	<input type="checkbox"/> Very Shallow Dark Surface (F22)			
<input type="checkbox"/> 1 cm Muck (A9) (LRR D, G)	<input type="checkbox"/> Loamy Gleyed Matrix (F2)	<input type="checkbox"/> Other (Explain in Remarks)			
<input type="checkbox"/> Depleted Below Dark Surface (A11)	<input checked="" type="checkbox"/> Depleted Matrix (F3)				
<input type="checkbox"/> Thick Dark Surface (A12)	<input type="checkbox"/> Redox Dark Surface (F6)				
<input type="checkbox"/> Sandy Mucky Mineral (S1)	<input type="checkbox"/> Depleted Dark Surface (F7)				
<input type="checkbox"/> 2.5 cm Mucky Peat or Peat (S2) (LRR G)	<input type="checkbox"/> Redox Depressions (F8)				

<sup>3</sup>Indicators of hydrophytic vegetation and wetland hydrology must be present, unless disturbed or problematic.

<b>Restrictive Layer (if observed):</b> Type: _____ Depth (inches): _____	<b>Hydric Soil Present?</b> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
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Remarks:  
All layers dry

**HYDROLOGY**

Wetland Hydrology Indicators:		
Primary Indicators (minimum of one is required; check all that apply)	Secondary Indicators (2 or more required)	
<input type="checkbox"/> Surface Water (A1)	<input type="checkbox"/> Water-Stained Leaves (B9) (except MLRA 1, 2, 4A, and 4B)	<input type="checkbox"/> Water-Stained Leaves (B9) (MLRA 1, 2 4A, and 4B)
<input type="checkbox"/> High Water Table (A2)	<input type="checkbox"/> Salt Crust (B11)	<input checked="" type="checkbox"/> Drainage Patterns (B10)
<input type="checkbox"/> Saturation (A3)	<input type="checkbox"/> Aquatic Invertebrates (B13)	<input type="checkbox"/> Dry-Season Water Table (C2)
<input type="checkbox"/> Water Marks (B1)	<input type="checkbox"/> Hydrogen Sulfide Odor (C1)	<input type="checkbox"/> Saturation Visible on Aerial Imagery (C9)
<input type="checkbox"/> Sediment Deposits (B2)	<input type="checkbox"/> Oxidized Rhizospheres on Living Roots (C3)	<input checked="" type="checkbox"/> Geomorphic Position (D2)
<input type="checkbox"/> Drift Deposits (B3)	<input type="checkbox"/> Presence of Reduced Iron (C4)	<input type="checkbox"/> Shallow Aquitard (D3)
<input type="checkbox"/> Algal Mat or Crust (B4)	<input type="checkbox"/> Recent Iron Reduction in Tilled Soils (C6)	<input checked="" type="checkbox"/> FAC-Neutral Test (D5)
<input type="checkbox"/> Iron Deposits (B5)	<input type="checkbox"/> Stunted or Stressed Plants (D1) (LRR A)	<input type="checkbox"/> Raised Ant Mounds (D6) (LRR A)
<input type="checkbox"/> Surface Soil Cracks (B6)	<input type="checkbox"/> Other (Explain in Remarks)	<input type="checkbox"/> Frost-Heave Hummocks (D7)
<input type="checkbox"/> Inundation Visible on Aerial Imagery (B7)		
<input type="checkbox"/> Sparsely Vegetated Concave Surface (B8)		

<b>Field Observations:</b> Surface Water Present?    Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Depth (inches): _____ Water Table Present?    Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Depth (inches): _____ Saturation Present?    Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Depth (inches): _____ (includes capillary fringe)	<b>Wetland Hydrology Present?</b> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
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Describe Recorded Data (stream gauge, monitoring well, aerial photos, previous inspections), if available:

Remarks:  
Small channels present throughout the area; appears to be relict beaver pond area; currently dry and generally seems to be drier than historically; main source of hydrology is seasonally high groundwater associated with snowmelt

Project/Site: Gold Rush Lots City/County: Breckenridge/Summit Sampling Date: 8/17/16  
 Applicant/Owner: Breckenridge Grand Vacations State: CO Sampling Point: SP2  
 Investigator(s): Andy Herb Section, Township, Range: S31, T7S, R77W  
 Landform (hillside, terrace, etc.): Slope Local relief (concave, convex, none): concave Slope (%): 1 to 2  
 Subregion (LRR): LRR E, MLRA 48A Lat: 39.486027 Long: -106.049056 Datum: WGS84  
 Soil Map Unit Name: Grenadier gravelly loam, 0 to 6 percent slopes NWI classification: PSS  
 Are climatic / hydrologic conditions on the site typical for this time of year? Yes X No      (If no, explain in Remarks.)  
 Are Vegetation     , Soil     , or Hydrology      significantly disturbed? Are "Normal Circumstances" present? Yes X No       
 Are Vegetation     , Soil     , or Hydrology      naturally problematic? (If needed, explain any answers in Remarks.)

**SUMMARY OF FINDINGS – Attach site map showing sampling point locations, transects, important features, etc.**

Hydrophytic Vegetation Present? Yes <u>X</u> No <u>    </u> Hydric Soil Present? Yes <u>    </u> No <u>X</u> Wetland Hydrology Present? Yes <u>    </u> No <u>X</u>	<b>Is the Sampled Area within a Wetland?</b> Yes <u>    </u> No <u>X</u>
Remarks: Open shrubby area dominated by mesic vegetation; meets vegetation criterion but no evidence of hydrology or hydric soils	

**VEGETATION – Use scientific names of plants.**

Tree Stratum (Plot size: <u>30-ft radius</u> )	Absolute % Cover	Dominant Species?	Indicator Status																	
1. _____	_____	_____	_____	<b>Dominance Test worksheet:</b> Number of Dominant Species That Are OBL, FACW, or FAC: <u>5</u> (A) Total Number of Dominant Species Across All Strata: <u>6</u> (B) Percent of Dominant Species That Are OBL, FACW, or FAC: <u>83.3%</u> (A/B)																
2. _____	_____	_____	_____																	
3. _____	_____	_____	_____																	
4. _____	_____	_____	_____																	
_____	_____	_____	_____																	
=Total Cover																				
Sapling/Shrub Stratum (Plot size: <u>15-ft radius</u> )				<b>Prevalence Index worksheet:</b> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Total % Cover of:</td> <td style="width: 50%;">Multiply by:</td> </tr> <tr> <td>OBL species <u>0</u></td> <td>x 1 = <u>0</u></td> </tr> <tr> <td>FACW species <u>15</u></td> <td>x 2 = <u>30</u></td> </tr> <tr> <td>FAC species <u>75</u></td> <td>x 3 = <u>225</u></td> </tr> <tr> <td>FACU species <u>27</u></td> <td>x 4 = <u>108</u></td> </tr> <tr> <td>UPL species <u>0</u></td> <td>x 5 = <u>0</u></td> </tr> <tr> <td>Column Totals: <u>117</u> (A)</td> <td><u>363</u> (B)</td> </tr> <tr> <td colspan="2">Prevalence Index = B/A = <u>3.10</u></td> </tr> </table>	Total % Cover of:	Multiply by:	OBL species <u>0</u>	x 1 = <u>0</u>	FACW species <u>15</u>	x 2 = <u>30</u>	FAC species <u>75</u>	x 3 = <u>225</u>	FACU species <u>27</u>	x 4 = <u>108</u>	UPL species <u>0</u>	x 5 = <u>0</u>	Column Totals: <u>117</u> (A)	<u>363</u> (B)	Prevalence Index = B/A = <u>3.10</u>	
Total % Cover of:	Multiply by:																			
OBL species <u>0</u>	x 1 = <u>0</u>																			
FACW species <u>15</u>	x 2 = <u>30</u>																			
FAC species <u>75</u>	x 3 = <u>225</u>																			
FACU species <u>27</u>	x 4 = <u>108</u>																			
UPL species <u>0</u>	x 5 = <u>0</u>																			
Column Totals: <u>117</u> (A)	<u>363</u> (B)																			
Prevalence Index = B/A = <u>3.10</u>																				
1. <u>Dasiphora fruticosa</u>	<u>10</u>	<u>Yes</u>	<u>FAC</u>																	
2. <u>Salix drummondiana</u>	<u>5</u>	<u>Yes</u>	<u>FACW</u>																	
3. <u>Lonicera involucrata</u>	<u>5</u>	<u>Yes</u>	<u>FAC</u>																	
4. _____	_____	_____	_____																	
5. _____	_____	_____	_____																	
=Total Cover																				
Herb Stratum (Plot size: <u>1x3 meter</u> )				<b>Hydrophytic Vegetation Indicators:</b> <u>    </u> 1 - Rapid Test for Hydrophytic Vegetation <u>X</u> 2 - Dominance Test is >50% <u>    </u> 3 - Prevalence Index is ≤3.0 <sup>1</sup> <u>    </u> 4 - Morphological Adaptations <sup>1</sup> (Provide supporting data in Remarks or on a separate sheet) <u>    </u> 5 - Wetland Non-Vascular Plants <sup>1</sup> <u>    </u> Problematic Hydrophytic Vegetation <sup>1</sup> (Explain) <sup>1</sup> Indicators of hydric soil and wetland hydrology must be present, unless disturbed or problematic.																
1. <u>Agrostis scabra</u>	<u>25</u>	<u>Yes</u>	<u>FAC</u>																	
2. <u>Achillea millefolium</u>	<u>20</u>	<u>Yes</u>	<u>FACU</u>																	
3. <u>Cirsium scariosum</u>	<u>10</u>	<u>No</u>	<u>FAC</u>																	
4. <u>Carex praegracilis</u>	<u>10</u>	<u>No</u>	<u>FACW</u>																	
5. <u>Taraxacum officinale</u>	<u>5</u>	<u>No</u>	<u>FACU</u>																	
6. <u>Penstemon procerus</u>	<u>20</u>	<u>Yes</u>	<u>FAC</u>																	
7. <u>Potentilla gracilis</u>	<u>5</u>	<u>No</u>	<u>FAC</u>																	
8. <u>Taraxacum officinale</u>	<u>2</u>	<u>No</u>	<u>FACU</u>																	
9. _____	_____	_____	_____																	
10. _____	_____	_____	_____																	
11. _____	_____	_____	_____																	
=Total Cover																				
Woody Vine Stratum (Plot size: <u>1x3 meter</u> )				<b>Hydrophytic Vegetation Present?</b> Yes <u>X</u> No <u>    </u>																
1. _____	_____	_____	_____																	
2. _____	_____	_____	_____																	
=Total Cover																				
% Bare Ground in Herb Stratum <u>0</u>																				

Remarks:  
 Relatively open area with mesic shrub cover; scattered Pinus contorta nearby

**SOIL**

Sampling Point: SP2

Profile Description: (Describe to the depth needed to document the indicator or confirm the absence of indicators.)								
Depth (inches)	Matrix		Redox Features				Texture	Remarks
	Color (moist)	%	Color (moist)	%	Type <sup>1</sup>	Loc <sup>2</sup>		
0-3	10YR 2/2	100					Loamy/Clayey	sandy loam; lots of roots
3-16	10YR 4/4	100					Sandy	sand with gravel

<sup>1</sup>Type: C=Concentration, D=Depletion, RM=Reduced Matrix, CS=Covered or Coated Sand Grains. <sup>2</sup>Location: PL=Pore Lining, M=Matrix.

Hydric Soil Indicators: (Applicable to all LRRs, unless otherwise noted.)			Indicators for Problematic Hydric Soils <sup>3</sup> :		
<input type="checkbox"/> Histosol (A1)	<input type="checkbox"/> Sandy Gleyed Matrix (S4)	<input type="checkbox"/> 2 cm Muck (A10) (LRR A, E)			
<input type="checkbox"/> Histic Epipedon (A2)	<input type="checkbox"/> Sandy Redox (S5)	<input type="checkbox"/> Iron-Manganese Masses (F12) (LRR D)			
<input type="checkbox"/> Black Histic (A3)	<input type="checkbox"/> Stripped Matrix (S6)	<input type="checkbox"/> Red Parent Material (F21)			
<input type="checkbox"/> Hydrogen Sulfide (A4)	<input type="checkbox"/> Loamy Mucky Mineral (F1) (except MLRA 1)	<input type="checkbox"/> Very Shallow Dark Surface (F22)			
<input type="checkbox"/> 1 cm Muck (A9) (LRR D, G)	<input type="checkbox"/> Loamy Gleyed Matrix (F2)	<input type="checkbox"/> Other (Explain in Remarks)			
<input type="checkbox"/> Depleted Below Dark Surface (A11)	<input type="checkbox"/> Depleted Matrix (F3)				
<input type="checkbox"/> Thick Dark Surface (A12)	<input type="checkbox"/> Redox Dark Surface (F6)				
<input type="checkbox"/> Sandy Mucky Mineral (S1)	<input type="checkbox"/> Depleted Dark Surface (F7)				
<input type="checkbox"/> 2.5 cm Mucky Peat or Peat (S2) (LRR G)	<input type="checkbox"/> Redox Depressions (F8)				

<sup>3</sup>Indicators of hydrophytic vegetation and wetland hydrology must be present, unless disturbed or problematic.

<b>Restrictive Layer (if observed):</b> Type: _____ Depth (inches): _____	<b>Hydric Soil Present?</b> Yes _____ No <u>X</u>
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Remarks:  
All layers dry

**HYDROLOGY**

Wetland Hydrology Indicators:		
Primary Indicators (minimum of one is required; check all that apply)		Secondary Indicators (2 or more required)
<input type="checkbox"/> Surface Water (A1)	<input type="checkbox"/> Water-Stained Leaves (B9) (except MLRA 1, 2, 4A, and 4B)	<input type="checkbox"/> Water-Stained Leaves (B9) (MLRA 1, 2, 4A, and 4B)
<input type="checkbox"/> High Water Table (A2)	<input type="checkbox"/> Salt Crust (B11)	<input type="checkbox"/> Drainage Patterns (B10)
<input type="checkbox"/> Saturation (A3)	<input type="checkbox"/> Aquatic Invertebrates (B13)	<input type="checkbox"/> Dry-Season Water Table (C2)
<input type="checkbox"/> Water Marks (B1)	<input type="checkbox"/> Hydrogen Sulfide Odor (C1)	<input type="checkbox"/> Saturation Visible on Aerial Imagery (C9)
<input type="checkbox"/> Sediment Deposits (B2)	<input type="checkbox"/> Oxidized Rhizospheres on Living Roots (C3)	<input type="checkbox"/> Geomorphic Position (D2)
<input type="checkbox"/> Drift Deposits (B3)	<input type="checkbox"/> Presence of Reduced Iron (C4)	<input type="checkbox"/> Shallow Aquitard (D3)
<input type="checkbox"/> Algal Mat or Crust (B4)	<input type="checkbox"/> Recent Iron Reduction in Tilled Soils (C6)	<input type="checkbox"/> FAC-Neutral Test (D5)
<input type="checkbox"/> Iron Deposits (B5)	<input type="checkbox"/> Stunted or Stressed Plants (D1) (LRR A)	<input type="checkbox"/> Raised Ant Mounds (D6) (LRR A)
<input type="checkbox"/> Surface Soil Cracks (B6)	<input type="checkbox"/> Other (Explain in Remarks)	<input type="checkbox"/> Frost-Heave Hummocks (D7)
<input type="checkbox"/> Inundation Visible on Aerial Imagery (B7)		
<input type="checkbox"/> Sparsely Vegetated Concave Surface (B8)		

<b>Field Observations:</b> Surface Water Present? Yes _____ No <u>X</u> Depth (inches): _____ Water Table Present? Yes _____ No <u>X</u> Depth (inches): _____ Saturation Present? Yes _____ No <u>X</u> Depth (inches): _____ (includes capillary fringe)	<b>Wetland Hydrology Present?</b> Yes _____ No <u>X</u>
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Describe Recorded Data (stream gauge, monitoring well, aerial photos, previous inspections), if available:

Remarks:  
No evidence of hydrology; sample point approximately 20 feet from SP1 and about the same elevation

Project/Site: Gold Rush Lots City/County: Breckenridge/Summit Sampling Date: 8/17/16  
 Applicant/Owner: Breckenridge Grand Vacations State: CO Sampling Point: SP3  
 Investigator(s): Andy Herb Section, Township, Range: S31, T7S, R77W  
 Landform (hillside, terrace, etc.): Slope Local relief (concave, convex, none): concave Slope (%): 1 to 2  
 Subregion (LRR): LRR E, MLRA 48A Lat: 39.486486 Long: -106.048944 Datum: WGS84  
 Soil Map Unit Name: Grenadier gravelly loam, 0 to 6 percent slopes NWI classification: PSS  
 Are climatic / hydrologic conditions on the site typical for this time of year? Yes X No      (If no, explain in Remarks.)  
 Are Vegetation     , Soil     , or Hydrology      significantly disturbed? Are "Normal Circumstances" present? Yes X No       
 Are Vegetation     , Soil     , or Hydrology      naturally problematic? (If needed, explain any answers in Remarks.)

**SUMMARY OF FINDINGS – Attach site map showing sampling point locations, transects, important features, etc.**

Hydrophytic Vegetation Present? Yes <u>X</u> No <u>    </u> Hydric Soil Present? Yes <u>    </u> No <u>X</u> Wetland Hydrology Present? Yes <u>    </u> No <u>X</u>	<b>Is the Sampled Area within a Wetland?</b> Yes <u>    </u> No <u>X</u>
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Remarks:  
 Swale down-gradient of main wetland area; small pocket of hydrophytes where water must be present during snowmelt/runoff; meets hydrophytic vegetation criterion but no evidence of hydric soils or wetland hydrology.

**VEGETATION – Use scientific names of plants.**

Tree Stratum (Plot size: <u>30-ft radius</u> )	Absolute % Cover	Dominant Species?	Indicator Status																	
1. _____	_____	_____	_____	<b>Dominance Test worksheet:</b> Number of Dominant Species That Are OBL, FACW, or FAC: <u>3</u> (A) Total Number of Dominant Species Across All Strata: <u>3</u> (B) Percent of Dominant Species That Are OBL, FACW, or FAC: <u>100.0%</u> (A/B)																
2. _____	_____	_____	_____																	
3. _____	_____	_____	_____																	
4. _____	_____	_____	_____																	
_____ = Total Cover	_____	_____	_____																	
Sapling/Shrub Stratum (Plot size: <u>15-ft radius</u> )				<b>Prevalence Index worksheet:</b> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">Total % Cover of:</td> <td style="text-align: center;">Multiply by:</td> </tr> <tr> <td>OBL species <u>0</u></td> <td>x 1 = <u>0</u></td> </tr> <tr> <td>FACW species <u>80</u></td> <td>x 2 = <u>160</u></td> </tr> <tr> <td>FAC species <u>10</u></td> <td>x 3 = <u>30</u></td> </tr> <tr> <td>FACU species <u>10</u></td> <td>x 4 = <u>40</u></td> </tr> <tr> <td>UPL species <u>5</u></td> <td>x 5 = <u>25</u></td> </tr> <tr> <td>Column Totals: <u>105</u> (A)</td> <td><u>255</u> (B)</td> </tr> <tr> <td colspan="2" style="text-align: center;">Prevalence Index = B/A = <u>2.43</u></td> </tr> </table>	Total % Cover of:	Multiply by:	OBL species <u>0</u>	x 1 = <u>0</u>	FACW species <u>80</u>	x 2 = <u>160</u>	FAC species <u>10</u>	x 3 = <u>30</u>	FACU species <u>10</u>	x 4 = <u>40</u>	UPL species <u>5</u>	x 5 = <u>25</u>	Column Totals: <u>105</u> (A)	<u>255</u> (B)	Prevalence Index = B/A = <u>2.43</u>	
Total % Cover of:	Multiply by:																			
OBL species <u>0</u>	x 1 = <u>0</u>																			
FACW species <u>80</u>	x 2 = <u>160</u>																			
FAC species <u>10</u>	x 3 = <u>30</u>																			
FACU species <u>10</u>	x 4 = <u>40</u>																			
UPL species <u>5</u>	x 5 = <u>25</u>																			
Column Totals: <u>105</u> (A)	<u>255</u> (B)																			
Prevalence Index = B/A = <u>2.43</u>																				
1. <u>Salix drummondiana</u>	<u>10</u>	Yes	FACW																	
2. _____	_____	_____	_____																	
3. _____	_____	_____	_____																	
4. _____	_____	_____	_____																	
5. _____	_____	_____	_____																	
_____ = Total Cover	<u>10</u>	_____	_____																	
Herb Stratum (Plot size: <u>1x3 meter</u> )				<b>Hydrophytic Vegetation Indicators:</b> <u>    </u> 1 - Rapid Test for Hydrophytic Vegetation <u>X</u> 2 - Dominance Test is >50% <u>    </u> 3 - Prevalence Index is ≤3.0 <sup>1</sup> <u>    </u> 4 - Morphological Adaptations <sup>1</sup> (Provide supporting data in Remarks or on a separate sheet) <u>    </u> 5 - Wetland Non-Vascular Plants <sup>1</sup> <u>    </u> Problematic Hydrophytic Vegetation <sup>1</sup> (Explain) <sup>1</sup> Indicators of hydric soil and wetland hydrology must be present, unless disturbed or problematic.																
1. <u>Calamagrostis canadensis</u>	<u>40</u>	Yes	FACW																	
2. <u>Mertensia ciliata</u>	<u>30</u>	Yes	FACW																	
3. <u>Achillea millefolium</u>	<u>10</u>	No	FACU																	
4. <u>Potentilla gracilis</u>	<u>5</u>	No	FAC																	
5. <u>Chamerion angustifolia</u>	<u>5</u>	No	UPL																	
6. <u>Cirsium arvense</u>	<u>5</u>	No	FAC																	
7. _____	_____	_____	_____																	
8. _____	_____	_____	_____																	
9. _____	_____	_____	_____																	
10. _____	_____	_____	_____																	
11. _____	_____	_____	_____																	
_____ = Total Cover	<u>95</u>	_____	_____																	
Woody Vine Stratum (Plot size: <u>1x3 meter</u> )				<b>Hydrophytic Vegetation Present?</b> Yes <u>X</u> No <u>    </u>																
1. _____	_____	_____	_____																	
2. _____	_____	_____	_____																	
_____ = Total Cover	_____	_____	_____																	
% Bare Ground in Herb Stratum <u>5</u>																				

Remarks:  
 Small pocket of hydrophytes (approx. 100 square feet) on edge of broad swale below main wetland

**SOIL**

Sampling Point: SP3

Profile Description: (Describe to the depth needed to document the indicator or confirm the absence of indicators.)								
Depth (inches)	Matrix		Redox Features				Texture	Remarks
	Color (moist)	%	Color (moist)	%	Type <sup>1</sup>	Loc <sup>2</sup>		
0-6	10YR 2/2	100					Loamy/Clayey	silty clay loam
6-7	10YR 4/2	90	10YR 4/6	10	C	M	Loamy/Clayey	silty clay loam
7-16	10YR 4/4	100	10YR 4/4				Sandy	sand with gravel

<sup>1</sup>Type: C=Concentration, D=Depletion, RM=Reduced Matrix, CS=Covered or Coated Sand Grains. <sup>2</sup>Location: PL=Pore Lining, M=Matrix.

Hydric Soil Indicators: (Applicable to all LRRs, unless otherwise noted.)			Indicators for Problematic Hydric Soils <sup>3</sup> :		
<input type="checkbox"/> Histosol (A1)	<input type="checkbox"/> Sandy Gleyed Matrix (S4)	<input type="checkbox"/> 2 cm Muck (A10) (LRR A, E)			
<input type="checkbox"/> Histic Epipedon (A2)	<input type="checkbox"/> Sandy Redox (S5)	<input type="checkbox"/> Iron-Manganese Masses (F12) (LRR D)			
<input type="checkbox"/> Black Histic (A3)	<input type="checkbox"/> Stripped Matrix (S6)	<input type="checkbox"/> Red Parent Material (F21)			
<input type="checkbox"/> Hydrogen Sulfide (A4)	<input type="checkbox"/> Loamy Mucky Mineral (F1) (except MLRA 1)	<input type="checkbox"/> Very Shallow Dark Surface (F22)			
<input type="checkbox"/> 1 cm Muck (A9) (LRR D, G)	<input type="checkbox"/> Loamy Gleyed Matrix (F2)	<input type="checkbox"/> Other (Explain in Remarks)			
<input type="checkbox"/> Depleted Below Dark Surface (A11)	<input type="checkbox"/> Depleted Matrix (F3)				
<input type="checkbox"/> Thick Dark Surface (A12)	<input type="checkbox"/> Redox Dark Surface (F6)				
<input type="checkbox"/> Sandy Mucky Mineral (S1)	<input type="checkbox"/> Depleted Dark Surface (F7)				
<input type="checkbox"/> 2.5 cm Mucky Peat or Peat (S2) (LRR G)	<input type="checkbox"/> Redox Depressions (F8)				

<sup>3</sup>Indicators of hydrophytic vegetation and wetland hydrology must be present, unless disturbed or problematic.

<b>Restrictive Layer (if observed):</b> Type: _____ Depth (inches): _____	<b>Hydric Soil Present?</b> Yes _____ No <u>X</u>
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Remarks:  
All layers dry

**HYDROLOGY**

Wetland Hydrology Indicators:		
Primary Indicators (minimum of one is required; check all that apply)	Secondary Indicators (2 or more required)	
<input type="checkbox"/> Surface Water (A1)	<input type="checkbox"/> Water-Stained Leaves (B9) (except MLRA 1, 2, 4A, and 4B)	<input type="checkbox"/> Water-Stained Leaves (B9) (MLRA 1, 2, 4A, and 4B)
<input type="checkbox"/> High Water Table (A2)	<input type="checkbox"/> Salt Crust (B11)	<input type="checkbox"/> Drainage Patterns (B10)
<input type="checkbox"/> Saturation (A3)	<input type="checkbox"/> Aquatic Invertebrates (B13)	<input type="checkbox"/> Dry-Season Water Table (C2)
<input type="checkbox"/> Water Marks (B1)	<input type="checkbox"/> Hydrogen Sulfide Odor (C1)	<input type="checkbox"/> Saturation Visible on Aerial Imagery (C9)
<input type="checkbox"/> Sediment Deposits (B2)	<input type="checkbox"/> Oxidized Rhizospheres on Living Roots (C3)	<input type="checkbox"/> Geomorphic Position (D2)
<input type="checkbox"/> Drift Deposits (B3)	<input type="checkbox"/> Presence of Reduced Iron (C4)	<input type="checkbox"/> Shallow Aquitard (D3)
<input type="checkbox"/> Algal Mat or Crust (B4)	<input type="checkbox"/> Recent Iron Reduction in Tilled Soils (C6)	<input checked="" type="checkbox"/> FAC-Neutral Test (D5)
<input type="checkbox"/> Iron Deposits (B5)	<input type="checkbox"/> Stunted or Stressed Plants (D1) (LRR A)	<input type="checkbox"/> Raised Ant Mounds (D6) (LRR A)
<input type="checkbox"/> Surface Soil Cracks (B6)	<input type="checkbox"/> Other (Explain in Remarks)	<input type="checkbox"/> Frost-Heave Hummocks (D7)
<input type="checkbox"/> Inundation Visible on Aerial Imagery (B7)		
<input type="checkbox"/> Sparsely Vegetated Concave Surface (B8)		

<b>Field Observations:</b> Surface Water Present?    Yes _____ No <u>X</u> Depth (inches): _____ Water Table Present?      Yes _____ No <u>X</u> Depth (inches): _____ Saturation Present?        Yes _____ No <u>X</u> Depth (inches): _____ (includes capillary fringe)	<b>Wetland Hydrology Present?</b> Yes _____ No <u>X</u>
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Describe Recorded Data (stream gauge, monitoring well, aerial photos, previous inspections), if available:

Remarks:  
No evidence of hydrology; sample point in lowest part of swale where it would be wettest; likely receives occasional snowmelt/runoff

**WETLAND DETERMINATION DATA FORM - Western Mountains, Valleys, and Coast Region**

Project/Site: Gold Rush Lots City/County: Breckenridge/Summit Sampling Date: 7/22/20  
 Applicant/Owner: Breckenridge Grand Vacations State: CO Sampling Point: SP4  
 Investigator(s): Andy Herb Section, Township, Range: S31, T7S, R77W  
 Landform (hillslope, terrace, etc.): Slope Local relief (concave, convex, none): None Slope (%): 1 to 2  
 Subregion (LRR): Southern Rocky Mountain Forest and Range Land Lat.: 39.485524 -106 Datum: WGS84  
 Soil Map Unit Name: Grenadier gravelly loam, 0 to 6 percent slopes NWI Classification: PSS

Are climatic/hydrologic conditions of the site typical for this time of the year Y (If no, explain in remarks)  
 Are vegetation       , soil       , or hydrology        significantly disturbed? Are "normal circumstances" present? Y  
 Are vegetation       , soil       , or hydrology        naturally problematic? (If needed, explain any answers in remarks)

**SUMMARY OF FINDINGS - Attach site map showing sampling point locations, transects, important features, etc.**

Hydrophytic vegetation present? <u>Y</u>	<b>Is the sampled area within a wetland?</b> <u>      N      </u>
Hydric soil present? <u>      N      </u>	
Indicators of wetland hydrology present <u>      N      </u>	

If yes, optional wetland site ID: \_\_\_\_\_

Remarks: (Explain alternative procedures here or in a separate report.)

Edge of vegetatively diverse mesic meadow; appears to be relic wetland area from when the site was wetter; presence of willows meets the hydrophytic vegetation criterion but no indicators of hydrology or hydric soils

**VEGETATION - Use scientific names of plants**

Tree Stratum	Plot Size ( 30' radius )	Absolute % Cover	Dominant Species	Indicator Status
1	<u>Populus tremuloides</u>	<u>20</u>	<u>Y</u>	<u>FACU</u>
2	_____	_____	_____	_____
3	_____	_____	_____	_____
4	_____	_____	_____	_____
		<u>20</u> =	Total Cover	
Sapling/Shrub Stratum	Plot Size ( 15' radius )	Absolute % Cover	Dominant Species	Indicator Status
1	<u>Salix geeyeriana</u>	<u>15</u>	<u>Y</u>	<u>FACW</u>
2	<u>Dasiphora fruticosa</u>	<u>10</u>	<u>Y</u>	<u>FAC</u>
3	<u>Salix monticola</u>	<u>5</u>	<u>N</u>	<u>OBL</u>
4	_____	_____	_____	_____
5	_____	_____	_____	_____
		<u>30</u> =	Total Cover	
Herb Stratum	Plot Size ( 5' radius )	Absolute % Cover	Dominant Species	Indicator Status
1	<u>Fragaria virginiana</u>	<u>25</u>	<u>Y</u>	<u>FACU</u>
2	<u>Achillea millefolium</u>	<u>20</u>	<u>Y</u>	<u>FACU</u>
3	<u>Phleum pratense</u>	<u>10</u>	<u>Y</u>	<u>FAC</u>
4	<u>Poa pratensis</u>	<u>10</u>	<u>Y</u>	<u>FAC</u>
5	<u>Bromus ciliatus</u>	<u>10</u>	<u>Y</u>	<u>FAC</u>
6	<u>Lupinus</u>	<u>10</u>	<u>Y</u>	_____
7	<u>Festuca</u>	<u>5</u>	<u>N</u>	_____
8	<u>Carex praegracilis</u>	<u>5</u>	<u>N</u>	<u>FACW</u>
9	<u>Gallium boreale</u>	<u>2</u>	<u>N</u>	<u>FACU</u>
10	_____	_____	_____	_____
11	_____	_____	_____	_____
		<u>97</u> =	Total Cover	
Woody Vine Stratum	Plot Size ( N/A )	Absolute % Cover	Dominant Species	Indicator Status
1	<u>N/A</u>	_____	_____	_____
2	_____	_____	_____	_____
		<u>0</u> =	Total Cover	

% Bare Ground in Herb Stratum: <u>      3      </u>
---

<b>50/20 Thresholds</b>	20%	50%
Tree Stratum	4	10
Sapling/Shrub Stratum	6	15
Herb Stratum	19	49
Woody Vine Stratum	0	0

<b>Dominance Test Worksheet</b>	
Number of Dominant Species that are OBL, FACW, or FAC:	<u>      5      </u> (A)
Total Number of Dominant Species Across all Strata:	<u>      9      </u> (B)
Percent of Dominant Species that are OBL, FACW, or FAC:	<u>55.56%</u> (A/B)

<b>Prevalence Index Worksheet</b>	
Total % Cover of:	<input type="checkbox"/>
OBL species	<u>      5      </u> x 1 = <u>      5      </u>
FACW species	<u>      20      </u> x 2 = <u>      40      </u>
FAC species	<u>      40      </u> x 3 = <u>      120      </u>
FACU species	<u>      67      </u> x 4 = <u>      268      </u>
UPL species	<u>      0      </u> x 5 = <u>      0      </u>
Column totals	<u>      132      </u> (A) <u>      433      </u> (B)
Prevalence Index = B/A =	<u>      3.28      </u>

<b>Hydrophytic Vegetation Indicators:</b>	
_____	Rapid test for hydrophytic vegetation
<u>  X  </u>	Dominance test is >50%
_____	Prevalence index is ≤3.0*
_____	Morphological adaptations* (provide supporting data in Remarks or on a separate sheet)
_____	Problematic hydrophytic vegetation* (explain)
*Indicators of hydric soil and wetland hydrology must be present, unless disturbed or problematic	

<b>Hydrophytic vegetation present?</b>	<u>      Y      </u>
--	----------------------

Remarks:

Edge of open meadow area; possibly relic wetland area

**Project Site:** Gold Rush Lots

**SOIL**

**Sampling Point:**

SP4

Profile Description: (Describe to the depth needed to document the indicator or confirm the absence of indicators.)								
Depth (Inches)	Matrix		Redox Features				Texture	Remarks
	Color (moist)	%	Color (moist)	%	Type*	Loc**		
0-16	10YR3/3	100	N/A				Sandy loam	some small gravel throughout

\*Type: C=Concentration, D=Depletion, RM=Reduced Matrix, CS=Covered or Coated Sand Grains \*\*Location: PL=Pore Lining, M=Matrix

Hydric Soil Indicators:		Indicators for Problematic Hydric Soils:	
<input type="checkbox"/> Histisol (A1)	<input type="checkbox"/> Stripped Matrix (S6)	<input type="checkbox"/> 2 cm Muck (A10) (LRR K, L, MLRA 149B)	
<input type="checkbox"/> Histic Epipedon (A2)	<input type="checkbox"/> Loamy Mucky Mineral (F1) (LRR K, L)	<input type="checkbox"/> Red Parent Material (TF2)	
<input type="checkbox"/> Black Histic (A3)	<input type="checkbox"/> Loamy Gleyed Matrix (F2)	<input type="checkbox"/> Very Shallow Dark Surface (TF12)	
<input type="checkbox"/> Hydrogen Sulfide (A4)	<input checked="" type="checkbox"/> Depleted Matrix (F3)	<input type="checkbox"/> Other (Explain in Remarks)	
<input type="checkbox"/> Depleted Below Dark Surface (A11)	<input type="checkbox"/> Redox Dark Surface (F6)		
<input type="checkbox"/> Thick Dark Surface (A12)	<input type="checkbox"/> Depleted Dark Surface (F7)		
<input type="checkbox"/> Sandy Mucky Mineral (S1)	<input type="checkbox"/> Redox Depressions (F8)		
<input type="checkbox"/> Sandy Gleyed Matrix (S4)			
<input type="checkbox"/> Sandy Redox (S5)			

\*Indicators of hydrophytic vegetation and wetland hydrology must be present, unless disturbed or problematic

Restrictive Layer (if observed): Type: _____ Depth (inches): _____	<b>Hydric soil present?</b> <u>Y</u>
Remarks: Recent gopher activity, soil dry	

**HYDROLOGY**

Primary Indicators (minimum of one is required; check all that apply)	Secondary Indicators (minimum of two required)
<input type="checkbox"/> Surface Water (A1)	<input type="checkbox"/> Water-Stained Leaves (B9) (except MLRA 1,2,4A, and 4B)
<input type="checkbox"/> High Water Table (A2)	<input type="checkbox"/> Drainage Patterns (B10)
<input type="checkbox"/> Saturation (A3)	<input type="checkbox"/> Dry-Season Water Table (C2)
<input type="checkbox"/> Water Marks (B1)	<input type="checkbox"/> Saturation Visible on Aerial Imagery (C9)
<input type="checkbox"/> Sediment Deposits (B2)	<input type="checkbox"/> Geomorphic Position (D2)
<input type="checkbox"/> Drift Deposits (B3)	<input type="checkbox"/> Shallow Aquitard (D3)
<input type="checkbox"/> Algal Mat or Crust (B4)	<input type="checkbox"/> FAC-Neutral Test (D5)
<input type="checkbox"/> Iron Deposits (B5)	<input type="checkbox"/> Raised Ant Mounds (D6)(LRR A)
<input type="checkbox"/> Surface Soil Cracks (B6)	<input type="checkbox"/> Frost-Heave Hummocks (D7)
<input type="checkbox"/> Inundation Visible on Aerial Imagery (B7) (B8)	<input type="checkbox"/> Other (Explain in Remarks)

Field Observations: Surface water present? Yes _____ No <u>X</u> Depth (inches): _____ Water table present? Yes _____ No <u>X</u> Depth (inches): _____ Saturation present? Yes _____ No <u>X</u> Depth (inches): _____ (includes capillary fringe)	<b>Indicators of wetland hydrology present?</b> <u>N</u>
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Describe recorded data (stream gauge, monitoring well, aerial photos, previous inspections), if available:  
None

Remarks: Sample point approx. 2.5'(V) above wetland area; likely seasonally wet from snowmelt but no hydrologic indicators obs.

**WETLAND DETERMINATION DATA FORM - Western Mountains, Valleys, and Coast Region**

Project/Site: Gold Rush Lots City/County: Breckenridge/Summit Sampling Date: 7/22/20  
 Applicant/Owner: Breckenridge Grand Vacations State: CO Sampling Point: SP5  
 Investigator(s): Andy Herb Section, Township, Range: S31, T7S, R77W  
 Landform (hillslope, terrace, etc.): Slope Local relief (concave, convex, none): None Slope (%): 1 to 2  
 Subregion (LRR): Southern Rocky Mountain Forest and Range Land Lat.: 39.485559 -106 Datum: WGS84  
 Soil Map Unit Name: Grenadier gravelly loam, 0 to 6 percent slopes NWI Classification: PSS

Are climatic/hydrologic conditions of the site typical for this time of the year Y (If no, explain in remarks)  
 Are vegetation       , soil       , or hydrology        significantly disturbed? Are "normal circumstances" present? Y  
 Are vegetation       , soil       , or hydrology        naturally problematic? (If needed, explain any answers in remarks)

**SUMMARY OF FINDINGS - Attach site map showing sampling point locations, transects, important features, etc.**

Hydrophytic vegetation present? <u>Y</u>	<b>Is the sampled area within a wetland?</b> <u>Y</u>
Hydric soil present? <u>Y</u>	
Indicators of wetland hydrology present <u>Y</u>	
If yes, optional wetland site ID: _____	

Remarks: (Explain alternative procedures here or in a separate report.)

PSS wetland in swale along edge of mesic meadow; includes smaller pockets of PEM wetland. A current flow path for seasonal high water (snowmelt).

**VEGETATION - Use scientific names of plants**

Tree Stratum	Plot Size ( 30' radius )	Absolute % Cover	Dominant Species	Indicator Status
1	_____	_____	_____	_____
2	_____	_____	_____	_____
3	_____	_____	_____	_____
4	_____	_____	_____	_____
		0 =	Total Cover	
Sapling/Shrub Stratum	Plot Size ( 15' radius )	Absolute % Cover	Dominant Species	Indicator Status
1	<u>Salix geyeriana</u>	40	Y	FACW
2	_____	_____	_____	_____
3	_____	_____	_____	_____
4	_____	_____	_____	_____
5	_____	_____	_____	_____
		30 =	Total Cover	
Herb Stratum	Plot Size ( 5' radius )	Absolute % Cover	Dominant Species	Indicator Status
1	<u>Carex aquatilis</u>	65	Y	OBL
2	<u>Geum macrophyllum</u>	15	N	FAC
3	<u>Equisetum arvense</u>	10	N	FAC
4	<u>Poa palustris</u>	5	N	FAC
5	<u>Phleum pratense</u>	2	N	FAC
6	_____	_____	_____	_____
7	_____	_____	_____	_____
8	_____	_____	_____	_____
9	_____	_____	_____	_____
10	_____	_____	_____	_____
11	_____	_____	_____	_____
		97 =	Total Cover	
Woody Vine Stratum	Plot Size ( N/A )	Absolute % Cover	Dominant Species	Indicator Status
1	<u>N/A</u>	_____	_____	_____
2	_____	_____	_____	_____
		0 =	Total Cover	

50/20 Thresholds	20%	50%
Tree Stratum	0	0
Sapling/Shrub Stratum	6	15
Herb Stratum	19	49
Woody Vine Stratum	0	0

Dominance Test Worksheet	
Number of Dominant Species that are OBL, FACW, or FAC:	<u>2</u> (A)
Total Number of Dominant Species Across all Strata:	<u>2</u> (B)
Percent of Dominant Species that are OBL, FACW, or FAC:	100.00% (A/B)

Prevalence Index Worksheet	
Total % Cover of:	<input type="checkbox"/>
OBL species	65 x 1 = 65
FACW species	40 x 2 = 80
FAC species	32 x 3 = 96
FACU species	0 x 4 = 0
UPL species	0 x 5 = 0
Column totals	<u>137</u> (A) <u>241</u> (B)
Prevalence Index = B/A =	1.76

**Hydrophytic Vegetation Indicators:**  
 Rapid test for hydrophytic vegetation  
 Dominance test is >50%  
 Prevalence index is ≤3.0\*  
 Morphological adaptations\* (provide supporting data in Remarks or on a separate sheet)  
 Problematic hydrophytic vegetation\* (explain)  
 \*Indicators of hydric soil and wetland hydrology must be present, unless disturbed or problematic

**Hydrophytic vegetation present?** Y

Remarks:

Willow-dominated area in shallow swale on edge of mesic meadow

**Project Site:** Gold Rush Lots

**SOIL**

**Sampling Point:**

SP5

Profile Description: (Describe to the depth needed to document the indicator or confirm the absence of indicators.)

Depth (Inches)	Matrix		Redox Features				Texture	Remarks
	Color (moist)	%	Color (moist)	%	Type*	Loc**		
0-2	10YR2/1	100	N/A				Silty clay	
2-9	10YR4/2	98	10YR4/6	2	C	M	Silty clay	
9+	-	100					Gravel/cobble.	

\*Type: C=Concentration, D=Depletion, RM=Reduced Matrix, CS=Covered or Coated Sand Grains \*\*Location: PL=Pore Lining, M=Matrix

**Hydric Soil Indicators:**

<input type="checkbox"/> Histisol (A1)	<input type="checkbox"/> Stripped Matrix (S6)	<input type="checkbox"/> 2 cm Muck (A10) (LRR K, L, MLRA 149B)
<input type="checkbox"/> Histic Epipedon (A2)	<input type="checkbox"/> Loamy Mucky Mineral (F1) (LRR K, L)	<input type="checkbox"/> Red Parent Material (TF2)
<input type="checkbox"/> Black Histic (A3)	<input type="checkbox"/> Loamy Gleyed Matrix (F2)	<input type="checkbox"/> Very Shallow Dark Surface (TF12)
<input type="checkbox"/> Hydrogen Sulfide (A4)	<input checked="" type="checkbox"/> Depleted Matrix (F3)	<input type="checkbox"/> Other (Explain in Remarks)
<input type="checkbox"/> Depleted Below Dark Surface (A11)	<input type="checkbox"/> Thick Dark Surface (A12)	
<input type="checkbox"/> Sandy Mucky Mineral (S1)	<input type="checkbox"/> Depleted Dark Surface (F7)	
<input type="checkbox"/> Sandy Gleyed Matrix (S4)	<input type="checkbox"/> Redox Depressions (F8)	
<input type="checkbox"/> Sandy Redox (S5)		

\*Indicators of hydrophytic vegetation and wetland hydrology must be present, unless disturbed or problematic

Restrictive Layer (if observed):  
 Type: \_\_\_\_\_  
 Depth (inches): \_\_\_\_\_

**Hydric soil present?** Y

Remarks: All layers saturated

**HYDROLOGY**

<p>Primary Indicators (minimum of one is required; check all that apply)</p> <input type="checkbox"/> Surface Water (A1) <input type="checkbox"/> Water-Stained Leaves (B9) (except MLRA 1,2,4A, and 4B)	<p>Secondary Indicators (minimum of two required)</p> <input type="checkbox"/> Water-Stained Leaves (B9) (except MLRA 1,2,4A, and 4B)
<input type="checkbox"/> High Water Table (A2)	<input checked="" type="checkbox"/> Drainage Patterns (B10)
<input checked="" type="checkbox"/> Saturation (A3)	<input type="checkbox"/> Dry-Season Water Table (C2)
<input type="checkbox"/> Water Marks (B1)	<input type="checkbox"/> Saturation Visible on Aerial Imagery (C9)
<input type="checkbox"/> Sediment Deposits (B2)	<input checked="" type="checkbox"/> Geomorphic Position (D2)
<input type="checkbox"/> Drift Deposits (B3)	<input type="checkbox"/> Shallow Aquitard (D3)
<input type="checkbox"/> Algal Mat or Crust (B4)	<input checked="" type="checkbox"/> FAC-Neutral Test (D5)
<input type="checkbox"/> Iron Deposits (B5)	<input type="checkbox"/> Raised Ant Mounds (D6)(LRR A)
<input type="checkbox"/> Surface Soil Cracks (B6)	<input type="checkbox"/> Frost-Heave Hummocks (D7)
<input type="checkbox"/> Inundation Visible on Aerial Imagery (B7)	<input type="checkbox"/> Stunted or Stressed Plants (D1)(LRR A)
<input type="checkbox"/> (B8)	<input type="checkbox"/> Other (Explain in Remarks)

Field Observations:

Surface water present?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Depth (inches): _____	<b>Indicators of wetland hydrology present?</b> <u>Y</u>
Water table present?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Depth (inches): _____	
Saturation present? (includes capillary fringe)	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Depth (inches): <u>0</u>	

Describe recorded data (stream gauge, monitoring well, aerial photos, previous inspections), if available:

Remarks: Main source of hydrology is high groundwater, especially during snowmelt

# Appendix B

## Site Photographs



Photo 1 – Typical PSS wetland (July 22, 2020)



Photo 2 – Typical wetland boundary, notice dead and dying willows (July 22, 2020)



Photo 3 – Dead and dying willow along the wetland boundary (July 22, 2020)



Photo 4 – Tributary 1, looking north where it enters the site (July 13, 2020)



Photo 5 – Tributary 2, looking northeast where it enters the site (July 19, 2021)



Photo 6 – Tributary 3, looking southwest where it enters the site from a small pond, which is off the property (July 13, 2020)



Photo 7 - Looking north at the vegetated (non-wetland) entrance to the culvert under Woods Drive (July 19, 2021)



Photo 8 - Looking south at the culvert (black plastic) outlet under Woods Drive, with wooden outlet box to the stormwater system (July 19, 2021)



Photo 9 - Close up view of the outlet box showing no signs of flow, looking south (July 20, 2021)

Appendix C  
Site Plan and Wetland Disturbance



Drawing: IA\2019026\Breckenridge-Gondola Lot\Dev\05-CAD\X-Res\01-GOLD-RUSH-SOUTH\HARDGRADE-GOLD-RUSH-SOUTH\_1\_8DUPLEX.dwg  
 Last Saved: October 25, 2023 10:52:48 AM by Zeanhart  
 Last Plotted: 10/25/2023 11:01:38 AM  
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NOT FOR CONSTRUCTION

DRAWN BY: ZE/TJ  
 CHECKED BY: DTJ  
 PROJECT NO.: 2019026  
 ISSUE DATE: 10/20/2023  
 REVISIONS:

SHEET TITLE:  
**GOLD RUSH SOUTH SITE PLAN**

SHEET NUMBER:

L201



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

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 DEVELOPMENT AGREEMENT (this “**Agreement**”) is made as of this \_\_\_\_ day of \_\_\_\_\_, 202\_\_, by and between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation (the “**Town**”), GONDOLA PROPERTIES, LLC, a Colorado limited liability company (“**Gondola Properties**”), BGV PARTNERS ENTRADA LLC, a Colorado limited liability company (“**BGV Entrada**”); Vail Summit Resorts, Inc., a Colorado corporation (“**VSRI**”); and LC Breckenridge Holdco, LLC, a Delaware limited liability company (“**LC Breckenridge**”)~~Owner~~). The Town, Gondola Properties, BGV Entrada, VSRI, and LC Breckenridge may collectively be referred to herein as the “**Parties**” and each individually as a “**Party**”.

**RECITALS**

- A. Gondola Properties is the owner of real property in the Town legally described in Exhibit 1 (“**Parcel 1**”).
- B. VSRI is the owner of real property in the Town legally described in Exhibit 2 (“**Parcel 2**”).
- C. Gondola Properties is the owner of real property in the Town legally described in Exhibit 3 (“**Parcel 3**”).
- D. LC Breckenridge is the is the owner of real property in the Town legally described in Exhibit 4 (“**Parcel 4**”).
- E. VSRI is the owner of real property in the Town legally described in Exhibit 5 (“**Parcel 5**”).
- F. VSRI is the owner of real property in the Town legally described in Exhibit 6 (“**Parcel 6**” and collectively with Parcels 1, 2, 3, 4, and 5, the “**Properties**,” each individually a “**Property**”).
- G. BGV Entrada is the owner of real property in Summit County (the “**County**”) legally described in Exhibit 7 (“**Parcel 7**”).
- H. Parcels 1, 2, and 3 are subject to and controlled by the Breckenridge Grand Vacations Gondola Lot Master Plan (PL-~~2021-0052~~-2021-0052) (the “**Gondola Lot Master Plan**”).

I. Parcels 4, 5, and 6 are subject to and controlled by the Eighth Amendment to the Amended Peak 7 & 8 Master Plan PL-~~2018-0546~~2018-0546 (an amendment to PERMIT #2000155) (the “**Peak 7 & 8 Master Plan**”).

J. The current “**Density**” as that term is used in Section ~~9-1-19-3A~~9-1-19-3A of the Breckenridge Town Code (the “**Town Code**”) and reflected as “**SFEs**” as that term is defined in Section ~~9-1-59-1-5~~9-1-59-1-5 of the Town Code, existing in the Gondola Lot Master Plan, the Peak 7 & 8 Master Plan, and Parcel 7 is as follows:

- (1) Gondola Lot Master Plan: 143.0 SFEs;
- (2) Peak 7 & 8 Master Plan: 145.8 SFEs; and
- (3) Parcel 7 (Per Land Use District 5): 14.2 SFEs.

K. BGV Entrada has submitted a petition for annexation to annex Parcel 7 (the “**Annexation**”), and upon the annexation of Parcel 7, BGV Entrada and the Town anticipate setting the terms of the Annexation and the development of Parcel 7 by separate agreement.

L. The Parties desire to articulate a comprehensive and coordinated approach to guide the Properties’ use and development.

M. To that end, the Parties further desire to provide for the following general plan of development for the Properties (collectively, the “**Project**”):

(1) With respect to Parcel 1: To preserve the existing parking lot and improve it with limited grading, drainage and water quality, lighting, and landscaping improvements, and to confirm that the historic, 610 parking-space capacity for winter recreational visitors will be credited toward the 1,560 spaces required under that certain Parking Agreement dated November 11, 2003 and recorded on June 29, 2004 in the records of the Summit County Clerk and Recorder (the “**Records**”) at Reception No. 760358 (the “**Parking Agreement**”) irrespective of any reductions resulting from grading, drainage and water quality, lighting, and landscaping improvements or roundabout improvements, on the understanding that a parking attendant will be provided during the winter recreational season to ensure effective parking utilization;

(2) With respect to Parcel 2: To establish a site for employee housing, on privately owned property, as well as the provision of a minimum of 400 parking spaces, as a continuation of historical use of Parcel 2 for overflow parking, plus any required parking for approved employee housing, for winter recreational visitors that will be credited toward the 1,560 spaces required under the Parking Agreement;

(3) With respect to Parcel 3: To allow up to sixteen (16) duplex units distributed in eight (8) buildings;

(4) With respect to Parcel 4: To provide for development of condominium, hotel, and lock-off units and associated uses (including whole and/or fractional

ownership), while preserving and/or providing space for VSRI administrative services and the Breckenridge Outdoor Education Center (“**BOEC**”);

(5) With respect to Parcel 5: To create two (2) lots for single-family residential development;

(6) With respect to Parcel 6: To establish a single-family residential subdivision with up to fourteen (14) homesites;

(7) With respect to Parcel 7: If the Annexation occurs, to allow for development of employee housing on Parcel 7 and to authorize the transfer of Density required to accommodate that employee housing; and

(8) With respect to the Gondola Lot Master Plan and Peak 7 & 8 Master Plan: to accommodate the parcel-specific development contemplated above and to provide for the Density transfers necessary to accomplish that development.

(9) With respect to the intersection of North French Street and Park Avenue: to provide for the construction of a roundabout and certain pedestrian improvements as currently contemplated in the Gondola Lot Master Plan, subject to Colorado Department of Transportation (“**CDOT**”) review and approval.

(10) With respect to all of the foregoing: the Parties currently anticipate phasing the completion of all vertical and horizontal elements on the Properties and Parcel 7 as follows. The improvements on Parcel 1 will occur on the schedule set forth in Section 5.3. The development of Parcels 2 and 3, the construction of a roundabout and associated pedestrian improvements, and the horizontal infrastructure associated with Parcels 5 and 6 will occur in the first phase; the concurrent development of Parcels 4 and 7 will occur in the second phase. This Subsection 10 reflects the Parties’ present, nonbinding intentions, which are subject to change.

N. The Parties acknowledge that Parcels 4 and 5 will include “accommodation units” as that term is defined in Section 4-6-1 of the Town Code (as the same may be amended from time to time) and more commonly known as “Short-Term Rentals.”

O. ~~N.~~ In connection with the Project, the Parties anticipate that Density will be transferred to and from the Gondola Lot Master Plan to the Properties, resulting in the following total Density-allocations to each Property:

- (1) Parcel 1: 0.0 SFEs;
- (2) Parcel 2: Up to 21.7 SFEs (with up to 13.9 to be provided by the Town);
- (3) Parcel 3: Up to 30.0 SFEs;
- (4) Parcel 4: Up to 220.0 SFEs;

- (5) Parcel 5: Up to 2.0 SFEs;
- (6) ~~Parcel~~Parcel 6: Up to 14.0 SFEs; and
- (7) Parcel 7: Up to 29.2 SFEs.

P. ~~Q.~~ To provide for the Project’s development, Gondola Properties (including its successors and assigns, “**Applicant**”) anticipates submitting one or more Development Applications to (1) amend the Gondola Lot Master Plan (the “**Gondola Lot Amendment**”); (2) amend the Peak 7 & 8 Master Plan (the “**Peak 7 & 8 Amendment**” and collectively with the Gondola Lots Amendment, the “**Master Plan Amendments**”); (3) provide for the development of one or more of the Properties upon the approval of the Master Plan Amendments. The term “**Development Application**” includes, without limitation, any application for any of the development permits described in Section ~~9-1-18~~9-1-18 of the Town Code as well as any subdivision application under Section ~~9-2-39~~9-2-3 of the Town Code.

Q. ~~P.~~ To guide the Project and to achieve public benefits desired by the Town, the Town and Applicant desire to establish (1) the commitments Applicant will include in its Development Application(s) and (2) the terms upon which the Town will review and approve Applicant’s Development Application(s) that includes those commitments.

R. ~~Q.~~ The Town Council of the Town of Breckenridge (the “**Town Council**”) is the governing body of the Town, with the legal authority to enter into development agreements conferring “**Vested Property Rights**” as defined in and pursuant to, *inter alia*, C.R.S. §§ ~~24-68-101~~24-68-101 *et seq.* (the “**Vested Property Rights Act**”) and ~~Article 12~~ARTICLE 12 of this Agreement.

S. ~~R.~~ Pursuant to Section 103 of the Vested Property Rights Act, its legislative authority, and Section ~~9-1-17-11K~~9-1-17-11K of the Town Code, and notwithstanding any provision to the contrary set forth in the Town Code, the Town Council intends that this Agreement will be designated as a “**Site Specific Development Plan**” as that term is defined in the Vested Property Rights Act.

T. ~~S.~~ Pursuant to Chapter 9 of Title 9 of the Town Code, the Town Council has the authority to enter into a development agreement. Section ~~9-1-17-12A~~9-1-17-12A of the Code requires a development agreement to transfer Density within the Town and between master plans. The Town finds that a development agreement is appropriate to accommodate the Density transfers described below. Section ~~9-17-11K~~9-17-11K of the Code further authorizes development agreements to extend vested rights beyond the standard three-year vesting period when “warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of the development, economic cycles and market conditions.” The Town finds that all of the relevant circumstances support a vesting period beyond the standard three years.

U. ~~T.~~ Section ~~9-1-19-39A~~9-1-19-39A.L.5 of the Town Code allows the Town Council to authorize the Planning Commission to review and approve (subject to compliance with all other applicable development policies of the town) an amendment to an approved master plan which is not in compliance with the then current Land use District Guidelines (the

“Guidelines”). The Town finds that the authorizations described below are warranted under the circumstances.

V. ~~U.~~ The commitments encouraged to be made in connection with an application for a development agreement in accordance with Section ~~9-9-49-9-4~~ 9-9-10C of the Town Code are as hereafter set forth in this Agreement.

W. ~~V.~~ The Town Council has received a complete application and all required submittals for a development agreement, has had preliminary discussions of the application and this Agreement, determined that it should commence proceedings for the approval of this Agreement and, in accordance with the procedures set forth in Section ~~9-9-10C~~ 9-9-10C of the Town Code, desires to approve this Agreement by ordinance.

## AGREEMENT

NOW, THEREFORE, in consideration of the promises, mutual covenants, and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the Parties hereto, the Parties agree as follows:

### ARTICLE 1 GENERAL PROVISIONS

**1.1** Incorporation of Recitals. The foregoing Recitals are incorporated into and made substantive provisions of this Agreement.

**1.2** Effective Date. The rights and obligations of the Parties under this Agreement shall commence on the Effective Date as defined in this Section 1.2, except as otherwise set forth herein. The “**Effective Date**” shall be the date upon which the Town Council, by ordinance or otherwise, approves the Agreement.

**1.3** Nature of Agreement. As further provided in ARTICLE 12, as between the Parties, this Agreement is a Site Specific Development Plan as that term is defined in Section 102 of the Vested Property Rights Act and constitutes a development agreement granting and establishing Vested Property Rights for a period consistent with Section ~~12.3~~ 12.3 in accordance with Section 104(2) of the Vested Property Rights Act.

**1.4** Relationship to Previous Agreements. This Agreement replaces, supersedes and effects the termination of the following agreements, which shall be of no further force and effect with respect to the Properties:

- (a) Amended and Restated Development Agreement between the Town and Gondola Lot Properties LLC dated June 12, 2023, and recorded in the Records on June 14, 2023, at Reception No. 1312523;

(b) Development Agreement between the Town and Gondola Lot Properties LLC dated April 14, 2023, and recorded in the Records at Reception No. 1309020 on April 14, 2023.

(c) Amended and Restated Development Agreement between the Town and LH Mountain Ventures, LLC dated July 19, 2019, and recorded in the Records on January 8, 2020, at Reception No. 1217695; and

(d) Development Agreement between the Town and Lionheart BGV Ventures, LLC, dated August 15, 2018, and recorded in the Records on September 28, 2018, at Reception No. 1181305;

### **1.5 Landowner Cooperation and Consent.**

(a) “**Landowner**” shall mean the owner of a legal or equitable interest in any Property, and includes the heirs, successors, and assigns of such ownership interests.

(b) Each Landowner hereby covenants and agrees to reasonably cooperate and consent to Applicant’s preparation, submittal, and pursuit of any Development Application(s) contemplated under this Agreement and the Town’s approval of the same, subject to such Landowner’s prompt prior review and approval of the applicable Development Application, which shall not be unreasonably withheld. In connection with every Development Application contemplated under this Agreement where Applicant and Landowner are not the same person or entity, the Parties acknowledge and agree that Applicant shall be considered Landowner’s “representative” within the meaning of Section ~~24-68-102~~24-68-102(4)(a) of the Vested Property Rights Act, solely with respect to submission to the Town of this Agreement and any Development Application approved pursuant to this Section ~~1.5(b)~~1.5(b).

(c) Each Landowner hereby covenants and agrees to reasonably cooperate in the creation, amendment, and/or execution of such further agreements as may be required to effectuate the provisions of this Agreement. By way of example but not limitation, every Landowner shall, if necessary, execute a Density Transfer Covenant to accomplish the Density transfers contemplated in this Agreement, as more particularly set forth in Section 1.6. Notwithstanding the foregoing, VSRI’s obligation to execute Density Transfer Covenants shall be limited to the transfer of 58.0 SFEs from the Gondola Lot Master Plan to the Peak 7 & 8 Master Plan, and VSRI shall have no further obligation to transfer Density or execute any Density Transfer Covenant following the successful transfer of the same.

**1.6 Density Transfer Covenants.** This Agreement contemplates the Town’s authorization of various Density transfers. Pursuant to Section ~~9-1-17-129-1-17-12~~ of the Town Code, Density transfers must be evidenced by a written covenant (a “**Density Transfer Covenant**”). For all Density transfers contemplated under this Agreement, the following terms shall apply:

(a) The Density Transfer Covenant shall be in a form substantially similar to that attached hereto as Exhibit 8.

(b) All Parties necessary for any Density transfer contemplated under this Agreement shall execute a Density Transfer Covenant within ~~thirty-five~~thirty-five (35) days of the Final, Non-Appealable Approval of a master plan amendment or other Development Application authorizing the Density transfer. (“**Final, Non-Appealable Approval**” shall mean the passage of any time periods within which any referendum, administrative appeal, or request for review of such approval pursuant to C.R.C.P. 106(a)(4) must be brought, without any such referendum, administrative appeal or C.R.C.P. 106(a)(4) action having been filed, commenced or asserted, or, if filed, commenced or asserted, after any such referendum, administrative appeal or C.R.C.P. 106(a)(4) action is resolved with affirmation that such approval is effective.) The first sentence of this Section ~~1.6(b)~~1.6(b) shall not apply to any Density transfer contemplated or authorized for Parcel 7, which Density transfer shall be accomplished as soon as practicable following the Annexation, if the Annexation is approved.

## ARTICLE 2 COMMITMENTS (PUBLIC BENEFITS)

In exchange for the development rights conferred by this Agreement, the Town determines that it is in the public interest to recognize and memorialize the public benefits that the Project will provide as set forth below and more fully in this Agreement.

**2.1** Density Relocation. The Town acknowledges and agrees that the Density transfers contemplated in this Agreement will relocate Density from the Town core to the Peak 8 base area, which is a more appropriate development location. The Town further acknowledges that the contemplated transfers will relocate approximately ~~seventy-four~~seventy-four (74) percent of the currently available Density away from Town core (approximately ~~sixty-three~~sixty-three [63] percent to the Peak 8 base area, and approximately eleven [11] percent to Parcel 7), and, after all density transfers occur, Density within Gondola Lot Master Plan will be reduced by approximately sixty-four (64) percent.

**2.2** Development Intensity Reduction. The Gondola Lots Master Plan protects and provides for Density to be used in the Town core under an earlier version of the Town Code. The Town acknowledges and agrees that as the result of later modifications to the Town Code that will apply to development contemplated under this Agreement, the Density contemplated in this Agreement is anticipated to reduce development intensity as compared to the existing approved Gondola Lot Master Plan by approximately 90,000 square feet.

**2.3** No Vertical Construction Proposed on Parcel 1 ~~at this Time~~; Parking Improved on Parcel 2. Upon approval of the Development Application(s) contemplated in this Agreement, Parcel 1 ~~for the time being~~ will remain as a surface parking lot for winter recreational visitors. Drainage and water quality, landscaping, and lighting will all be improved as set forth in ARTICLE 5, and, as more particularly set forth in ~~Article 6~~ARTICLE 6, no parking structure will be erected on Parcel 2 ~~at this time~~, and the existing surface parking lot on Parcel 2 ~~will~~will also be improved by Applicant. Nothing in this Agreement precludes the Landowner of Parcel 1

and the Town from jointly agreeing through a future development agreement process to a different use on Parcel 1.

**2.4 Employee Housing.** The Town acknowledges and agrees that the Agreement:

(a) Provides for, on private property, critically needed employee housing for the community beyond the employee housing that would be required by the Town Code;

(b) Does not require any construction costs to be incurred by the Town for any of the employee housing contemplated in this Agreement; ~~and~~

(c) Obligates Applicant to provide up to 7.8 SFEs of market-rate Density on Parcel 2, which reduces the need for Town-transferred Density for employee housing on that parcel; and.

(d) For Parcel 4, requires Applicant to provide employee housing in compliance with the Town Code on Parcel 7, if the Annexation is successful, or elsewhere if it is not. Additionally, if the Annexation is successful and Applicant constructs employee housing on Parcel 7, any housing constructed beyond that required to satisfy the employee housing requirements for the development of Parcel 4 shall not be “banked” or “reserved” to satisfy the employee housing obligations of future developments and shall instead represent a public benefit.

**2.5 Infrastructure Contribution.** Subject to CDOT review and approval and provided circumstances beyond Applicant’s control do not prevent Applicant from complying with the timing set forth herein, prior to issuance of any certificate of occupancy for ~~any building on Parcels 2 or Parcel 3, whichever is later~~, Applicant shall design and construct Park Avenue and Ski Hill Road intersection improvements including such improvements as signage, ADA compliant pedestrian facilities (e.g., ramps and push buttons), and turn-lane restriping for eastbound and westbound movements as described in the East Peak 8 Traffic Impact Study Update (July 2023) up to \$500,000 of design and construction costs.

**2.6 Sol Center Contribution.** ~~At such time as the Sol Center at Alta Verde has \$1.3 million, or less, in hard building construction obligations remaining,~~ Applicant shall, upon Sol Center at Alta Verde’s within a reasonable time following the Family & Intercultural Resource Center’s (“FIRC”) written request, contribute ~~\$1.3~~2.0 million toward the ~~Family and Intercultural Resource Center~~FIRC/Building Hope capital fundraising campaign for use toward the Sol Center.

**2.7 Cucumber Gulch Improvements.**

(a) Prior to issuance of any certificate of occupancy for any building on Parcel 4, Applicant will establish with the Town an environmental improvement fund dedicated to ~~drainage and similar~~ecosystem and habitat improvements to protect Cucumber Gulch funded by a fee of \$2/rental room per night in perpetuity.

(b) Prior to issuance of any certificate of occupancy for any building on Parcel 4, Applicant shall make a one-time \$125,000 contribution to the Town for

constructed improvements or other management or conservation expenses in Cucumber Gulch.

**2.8** Vehicle Trips. As set forth more particularly in ARTICLE 8, vehicle trips on Ski Hill Road will be reduced through the construction of the required employee housing for Parcel 4 on Parcel 7 or otherwise off-site as allowed by Absolute Policy 24/Social Community subsection F.1.a.(iv).

### **ARTICLE 3 GONDOLA LOT MASTER PLAN AMENDMENT**

Upon and from Applicant's submission of a complete Development Application for the Gondola Lot Amendment, the Town covenants and agrees that the Town shall:

**3.1** Recognize that 143 SFEs of Density exist under the Gondola Lot Master Plan. The 143 SFEs do not include the ~~fifty-eight~~fifty-eight (58) SFEs of Density to be transferred by VSRI, including up to two (2) SFEs to be used as commercial SFEs, that were intended to be transferred to Parcel 4 but for which no Density Transfer Covenant was ever entered into or recorded.

**3.2** Specify total proposed Density and allocate Density to the Properties as follows:

(a) Parcel 1: 0.0 SFEs

(b) Parcel 2: Up to 21.7 SFEs (provided that the Town transfers 13.9 SFEs of Town Density as more fully set forth in Section ~~6-1(a)~~6.1(a)); and

(c) Parcel 3: Up to 30.0 SFEs.

**3.3** Authorize the transfer of Density from the Gondola Lot Master Plan to the Peak 7 & 8 Master Plan, allow any new Density transfer into the Gondola Lot Master Plan for the construction of employee housing on Parcel 2, and specify total overall Density for the Gondola Lot Master Plan without the assignment of negative points under any "**Relative Policy**" or the failure of an "**Absolute Policy**" as those terms are defined in Section ~~9-1-59-1-5~~ of the Town Code. This includes, but is not limited to, a waiver from Absolute Policy 39/Master Plans ~~9-1-19-39A~~9-1-19-39A subsection I— regarding Density and acknowledgment that no modification to any of the underlying Guidelines is necessary.

**3.4** Require separate Density Transfer Covenant(s) for the transferred Density.

**3.5** Grant a waiver from Absolute Policy 39/Master Plans ~~9-1-19-39A~~9-1-19-39A, subsection L.3 that requires a master plan to be brought into compliance with the current development policies of the Town when amended to the extent necessary to accommodate the more particular provisions set forth in this Agreement.

3.6 Recognize and carry forward the existing applicable Gondola Lot Master Plan Point Analysis, as reflected in PL-~~2021-0052~~-2021-0052, as allowed by Development Code Section ~~9-1-17-3.5~~,9-1-17-3.5 Duration of Point Assignments.

3.7 As authorized by Section 9-1-17-11K of the Town Code, establish a vesting period of five years for the Gondola Lot Master Plan, beginning from the date the Gondola Lot Amendment becomes effective.

~~3.7 Extend the Gondola Lot Master Plan vesting five years from the date of the Gondola Lot Amendment's approval as allowed by 9-1-17-11K and grant a waiver from Absolute Policy 39/Master Plans 9-1-19-39A, subsection H.1., if needed.~~

~~3.8 Allow any modification to the Gondola Lot Master Plan required to reflect the terms of this Agreement without assignment of any negative points under any Relative Policy, failure of any Absolute Policy, or need to amend the underlying Guidelines. By way of example but not limitation, this includes allowing the historic winter recreational visitor parking lot uses on Parcels 1 and 2 as contemplated in Section 1 of the Parking Agreement.~~

#### ARTICLE 4 PEAK 7 & 8 MASTER PLAN AMENDMENT

Upon and from Applicant's submission of a complete Development Application for the Peak 7 & 8 Amendment, the Town covenants and agrees that the Town shall:

4.1 Acknowledge that a total of 145.8 SFEs exist in the Peak 7 & 8 Master Plan. This includes the total remaining entitled Density for the Peak 8 Base Area of the Peak 7 & 8 Master Plan of 71.6 Residential SFEs, 9.0 Commercial SFEs, and 7.2 Guest Service Facilities SFEs and the ~~fifty-eight~~fifty-eight (58) SFEs, including up to two (2) SFEs to be used as commercial SFEs, to be transferred from the Gondola Lot Master Plan to the Peak 7 & 8 Master Plan as currently reflected in those master plans, and as reflected in Staff Reports PL-~~2018-0576~~-2018-0576 and PL-~~2018-0546~~-2018-0546.

4.2 Authorize a Density transfer into the Peak 7 & 8 Master Plan area, from the Gondola Lot Master Plan, in excess of the existing Peak 7 & 8 Master Plan allowance and underlying Guidelines without the assignment of negative points under any Relative Policy, the failure of an Absolute Policy, or need to modify the underlying Guidelines. This also includes a waiver from Absolute Policy 39/Master Plan, ~~9-1-19-39A~~,9-1-19-39A subsection I regarding Density.

4.3 Concurrently process a Development Application or Applications for the subdivision ~~and/or creation~~ of Parcels 5 and 6 to create individual residential lots, provided that the application ~~or applications~~(s) are complete and comply with the provisions of Chapter 2 of Title 9 of the Town Code ("Subdivision Standards"); and on the condition that a restrictive covenant (the "Restrictive Covenant and Deed Restriction") will be recorded in title to the further subdivided lots so established on Parcels 5 and 6 (each, a "Lot", and collectively, the "Lots") providing as follows:

(a) Applicant shall designate a minimum of eight (8) of the Lots as restricted lots (each, a “Restricted Lot” and collectively, the “Restricted Lots”) that cannot be sold or conveyed to a third party until (i) the Town issues a temporary or final certificate of occupancy for the employee housing contemplated on Parcel 2; and (ii) CDOT accepts the roundabout improvements or Applicant posts the security contemplated in Section 6.1(d) (the “Restricted Lot Release Conditions”).

(b) Applicant shall have the right, from time to time in its sole discretion, and with written notice to the Town but without the requirement of further consent or action by the Town, to designate or redesignate any of the Lots a Restricted Lot, so long as a minimum of eight (8) of the Lots remain Restricted Lots until the Restricted Lot Release Conditions are satisfied.

(c) Upon satisfaction of the Restricted Lot Release Conditions, the Town shall promptly terminate the Restrictive Covenant and Deed Restriction by recording an instrument evidencing such termination. The Town’s Community Development Director is authorized to execute and record such termination upon confirmation that the Restricted Lot Release Conditions have been satisfied.

4.4 Specify total proposed Density, including the previous ~~fifty-eight~~fifty-eight (58) SFEs of Density with up to two (2) SFEs to be used as commercial SFEs, and allocate Density to the Peak 7 & 8 Master Plan’s planning areas and/or specific sites in the Peak 7 & 8 Master Plan as follows:

- (a) Parcel 4: Up to 220 SFEs
- (b) Parcel 5: Up to two (2) SFEs; and
- (c) Parcel 6: Up to fourteen (14) SFEs.

4.5 Require separate Density Transfer Covenant(s) for the transferred Density.

4.6 Provided the Peak 7 & 8 Amendment includes a sufficiently specific request for the following, create new development locations in the Peak 7 & 8 Master Plan’s Planning Areas with Density and use assignments, without the assignment of any negative points, failure of an Absolute Policy, or the need to modify the underlying Guidelines, for the following:

- (a) Parcel 5; and
- (b) Parcel 6.

~~4.7 Recognize that Absolute Policy 39/Master Plans 9-1-19-39A. subsection L.5 has been satisfied.~~

4.7 Recognize and find that (a) the Peak 7 & 8 Master Plan was first adopted prior to October 17, 1994; (b) the Peak 7 & 8 Master Plan contains provisions which are materially inconsistent with the current Guidelines; (c) a legal and factual basis exists for the assertion the Landowners of Parcels 4, 5, and 6 have vested property rights under the existing master plan; and

(d) there are significant public benefits which will result from the approval of the amendment to the master plan without requiring compliance with the current Guidelines, and that therefore, pursuant to Absolute Policy 39/Master Plans 9-1-19-39A subsection L.5, the Peak 7 & 8 Master Plan may be amended without requiring compliance with the then current Guidelines.

**4.8** Grant a waiver from Absolute Policy 39/Master Plans ~~9-1-19-39A~~9-1-19-39A subsection L.3, which requires master plans to brought into compliance with the Town's then current development policies and master plan, to allow existing provisions of the Peak 7 & 8 Master Plan to be carried forward.

~~4.9 Grant a waiver from Absolute Policy 39/Master Plans 9-1-19-39A, subsection I, regarding Density and acknowledge that no modification to the underlying Guidelines is necessary.~~

**4.9** Recognize and find that the Peak 7 & 8 Master Plan is located in two (2) or more land use districts and that Absolute Policy 39/Master Plans 9-1-19-39A subsection I.2 therefore allows density to be reallocated notwithstanding Section 9-1-17-12's density transfer requirements, and acknowledge that no modification to the underlying Guidelines is necessary.

**4.10** Per ~~9-1-17-3.5~~9-1-17-3.5, Duration of Point Assignments, recognize and continue to apply the Amended Peak 7 & 8 Master Plan Point Analyses from the original Permit #2000155. By way of example but not limitation, the Town shall use the point analysis from the Seventh Amendment to the Peak 7 & 8 Master Plan (PL-~~2017-0697~~2017-0697, Class A, Combined Hearing - A Modification to PERMIT #2000155) and the point assignments set forth therein.

~~4.11 Recognize that, pursuant to Ordinance No. 29, Series 2021 and Ordinance No. 28, Series 2022, proposed developments on Parcel 4 and Parcel 5, provided the same are substantially similar to those reflected in concept plans presented to and endorsed by Town Council, meet the definition of a Resort Property as defined in Ordinance No. 28, Series 2022.~~

**4.11** ~~4.12~~ Extend vesting of the Peak 7 & 8 Master Plan from November 8, 2025, to November 8, 2032 as allowed by ~~9-1-17-11K~~9-1-17-11K of the Town Code.

~~4.13 Allow any modification to the Peak 7 & 8 Master Plan required to reflect the terms of this Agreement without assignment of any negative points under any Relative Policy, failure of any Absolute Policy, or need to amend the underlying Guidelines.~~

## ARTICLE 5 PARCEL 1

**5.1** With respect to Parcel 1, any Development Application shall comply with the following terms:

(a) The configuration of the proposed use and improvements shall be similar to the DTJ Design conceptual plan reviewed and endorsed by the Town Council on November 28, 2023, and attached hereto as Exhibit 9 (the "**Parcel 1 Concept Plan**").

(b) Stormwater facilities and practices will be designed, constructed, and/or implemented pursuant to the standards set forth in Chapter 6 of the Town’s Engineering Design and Construction Specifications.

(c) A limited amount of landscaping will be provided to the extent compatible with snow storage locations and stormwater and/or water quality improvements. Subject to staff design suggestions, additional landscaping will be installed on the northern and eastern portion of Parcel 1 as requested by the Town Council.

(d) A limited amount of Dark-Sky lighting will be provided to the extent required for pedestrian safety. ~~Additional lighting will be installed on the western portion of the site as requested by the Town Council.~~ Over-lighting the site is discouraged, and lighting shall be kept to a minimum that still allows for pedestrian safety.

(e) A parking attendant shall be provided on-site while Breckenridge Ski Resort is open to the public for lift-accessed skiing to facilitate vehicle parking on the lot from opening to 3:00 p.m., or until the lot is filled, whichever is first to occur.

**5.2** Upon and from Applicant’s submission of a Development Application or Applications consistent with the provisions of Section 5.1, the Town covenants and agrees that the Town shall:

(a) Consistent with definition of “Development” and Town Council’s discretion under Section ~~9-1-5C~~9-1-5C of the Town Code, and in recognition that no Density will be required, refrain from considering improvements depicted on the Parcel 1 Concept Plan and/or described in Section 5.1(a)-(d) (collectively, the “**Parcel 1 Improvements**”) as, “Development”; refrain from assigning any negative points under a Relative Policy or the failure of an Absolute Policy; and not apply the Town’s Off-Street Parking Regulations.

(b) Acknowledge that no modification to the underlying Guidelines is required.

(c) Acknowledge and agree that Parcel 1 has historically provided, and following the construction of the Parcel 1 Improvements, will, with the support of the required attendant, continue to provide, ~~610~~ 610 vehicle parking spaces toward the 1,560 parking spaces required under Section 1.G of the Parking Agreement. None of the Parcel 1 Improvements shall be construed as diminishing this acknowledged and agreed 610-space capacity.

(d) Include all terms concerning the contemplated Parcel 1 Improvements, as set forth in the above Section 5.1 in the amended Gondola Lot Master Plan, including without limitation recognition of the 610 qualifying spaces.

**5.3** Following Final, Non-Appealable Approval of the Gondola Lot Amendment upon the terms set forth in Section 5.2, Applicant shall submit to the Town a site plan application for approval of the Parcel 1 Improvements, in substantially the form depicted on the Parcel 1 Concept Plan, with the addition of the Town Council-requested improvements. This site plan

application shall be independent of any other site plan application(s) in the Gondola Lot Master Plan boundaries and the Town's conditional obligations set forth in Section 5.2 shall continue to apply in connection with its consideration of such site plan application. The Parcel 1 Improvements will be implemented by Applicant in stages and shall be substantially completed either upon the issuance of a final certificate of occupancy for all improvements on Parcel 4 or within six (6) years from the Effective Date, whichever is ~~later~~earlier.

## ARTICLE 6 PARCEL 2

**6.1** With respect to Parcel 2, any Development Application shall comply with the following terms:

(a) Applicant and the Town will make available to Parcel 2 Density sufficient to construct employee housing beyond that required by the Town Code as follows:

(i) Applicant will provide up to 7.8 SFEs of Density; and

(ii) The Town will provide up to 13.9 SFEs of Density upon or before issuance of a building permit for the employee housing contemplated for Parcel 2.

(iii) A separate Density Transfer Covenant shall be required to transfer the Town-supplied Density.

(b) Applicant shall cause to be constructed ~~forty-eight~~forty-eight (48) bedrooms of employee housing in eight (8), ~~six-plex-dorm-style~~six-plex dorm-style units with each bedroom to include its own bathroom, or in such other format as Applicant and the Town may in writing agree upon, per Absolute Policy 24/Social Community, and shall provide an executed covenant consistent with Policy 24 and the Town's Administrative Housing Rules and Regulations as follows:

(i) Minimum Lease Term: When rental of an affordable workforce housing unit is authorized, ~~all rental contracts shall be at least three consecutive months in duration~~the master lessor shall be authorized to set the length of the lease, provided that no unit shall be used as an Accommodation Unit, as that term is defined under the Town Code. Any such tenancy approved by the Town shall be to a person meeting the definition of a Qualified Occupant under the Town Code. Unrelated roommates must all be Qualified Occupants ~~and must all be included as tenants on the lease;~~

(ii) The Town will establish a maximum rental rate for each rental unit based on factors including the market conditions, the type of development and/or the AMI targets as further specified below;

(iii) Rental units shall not be used for or be eligible for ~~Short-Term~~Short-Term Rental as defined in Title 4 of the Town Code.;

(iv) All Town and Applicant provided Density will be limited to approximately 85% of a 60% Area Median Income (“AMI”) studio unit rental rates per bedroom for dormitory style units as specified in the Summit County Housing Authority 2023 Summit County Area Median Income (AMI) Table as baseline rents. This equates to \$989.40 per bedroom per month as of the Effective Date. Rents shall include electric, gas, water, sewer, trash, and snow removal costs.

(v) Beginning from the Effective Date, initial rates will escalate at 2.0% annually until construction is completed and the improvements on Parcel 2 receive a final certificate of occupancy, at which point annual rents will escalate at 3.0% annually in perpetuity; and

(vi) ~~To the extent practicable, any~~ Any owner/master ~~lessee~~ lessor of the provided employee housing on Parcel 2 will ~~be obligated to~~ offer any seasonal vacancy to local community ~~non-profit~~ non-profit organizations for use pending availability and subject to the owner/master lessor’s reasonable discretion.

(c) To facilitate a safe Park Avenue crossing for winter recreational parking lot users, upon the issuance of a final certificate of occupancy for the improvements contemplated on Parcel 2, Applicant shall provide ~~an~~ electric shuttle connection from the contemplated Parcel 2 parking area to the BreckConnect Gondola and/or Breckenridge Station transit center on Watson Avenue when the parking lot is open to winter recreational visitors. Subject to CDOT review and approval, no later than two years after the Town’s ~~or~~ and CDOT’s approval of the same, ~~whichever is later,~~ Applicant shall install Park Avenue/French Street pedestrian improvements, such as at-grade crosswalk striping, push buttons, signage, pedestrian refuge islands, or barriers in Park Avenue to the extent permitted by the Town, CDOT, and any other applicable regulatory entity.

(d) Subject to CDOT approval, Applicant will complete a roundabout at the intersection of North French Street and Park Avenue and prior to the issuance of a final certificate of occupancy for the employee housing contemplated in Section 6.1(b), or, if Applicant is unable to complete the roundabout prior to the issuance of such certificate of occupancy, Applicant shall post a completion bond in an amount sufficient to guarantee the roundabout’s completion. Notwithstanding any provision to the contrary in this Agreement, the Parties acknowledge and agree that Applicant’s obligation to complete the roundabout contemplated in this Section shall not be considered a public benefit and shall be eligible for an award of positive points.

(e) ~~(d)~~ Stormwater facilities and practices will be designed, constructed, and/or implemented pursuant to the standards set forth in Chapter 6 of the Town’s Engineering Design and Construction Specifications.

6.2 Upon and from Applicant's submission of a Development Application or Applications consistent with the provisions of Section 6.1, the Town covenants and agrees that the Town shall:

(a) Permit the Density transfers contemplated in Section 6.1(a) in excess of the existing Gondola Lot Master Plan Density and underlying Guidelines without the assignment of negative points under any Relative Policy or the failure of any Absolute Policy; arising from such transfers at the time of master plan amendment and/or site plan review, or the need to amend the underlying Guidelines to accomplish such transfers.

(b) Acknowledge and agree that the 400 winter recreational parking spaces on Parcel 2 (or other proposed and approved amount) will count towards the overall 1,560 total parking space requirement of ~~section~~Section 1.G of the Parking Agreement.

(c) In recognition of the historical and proposed vehicle parking, consistent with the Parking Agreement, grant waivers from Absolute Policy 2/Land Use District Guidelines and Relative Policy 2/Land Use District Guidelines for the parking lot use.

(d) ~~Grant a waiver from~~Not award negative points under Relative Policy 5/ Architectural Compatibility ~~to allow for the~~(Town Code Sections 9-1-19-5R.A and 9-1-19-5R.B) for use of modular construction of the building(s) and the use of non-natural materials to reduce maintenance and increase longevity of the building(s), provided that fiber cement siding is used on building elevations and windows are trimmed in natural wood as allowed by Relative Policy 5.

(e) Grant a waiver from Relative Policy 7/Site and Environmental Design and its multiple subsections, including, but not limited to: Site Design and Grading for site disturbance associated with constructing ~~the~~a parking lot and employee housing building(s) into the hillside; under Retaining Walls for the use of retaining walls and for walls that exceed four ~~feet~~(4') feet in height; and Site Buffering ~~due to Applicant's, and from Relative Policy 22/Landscaping relating to the tree buffer adjacent to Park Avenue, to accommodate the~~ effort to preserve the trees along Park Avenue and provide revegetation ~~as illustrated on the~~efforts consistent with conceptual plan prepared by DTJ Design and reviewed by the Town Council on December 12, 2023 (the "**Parcel 2 Concept Plan**" attached hereto as Exhibit 10), ~~provided that the~~ The Parcel 2 Concept Plan, or a plan substantially similar thereto, shall be incorporated into the design of Parcel 2 in order for these waivers to become effective.

(f) Grant waivers from Absolute Policy 22/Landscaping subsection B.8. requiring ~~six (6%) percent~~ six (6%) percent of the interior area of a parking lot to be landscaped and Section ~~9-3-9J~~9-3-9J of the ~~Off-Street~~Off-Street Parking Standards requiring landscaping equal to twenty-five (25) feet per parking stall based on the nature of the recreation skier parking lot use and needed snowplowing operations.

(g) Grant a waiver from ~~any negative points under~~ Relative Policy ~~22/Landscaping relating and the tree buffer adjacent to Park Avenue~~13/Snow Storage, provided that Applicant ~~shall complete tree preservation and revegetation efforts~~

~~consistent with the Parcel 2 Concept Plan, or another plan substantially similar thereto~~ accommodates snow storage at a minimum ten (10) percent of the plowable area.

(h) With considerations for public safety, grant waivers for up to two private accesses on Woods Drive, private accesses radius and geometry, private accesses spacing, road slope connections for private accesses, private accesses cross-slopes, and design to accommodate a 30' bus shuttle service to serve the winter recreational visitor parking spaces on the site. These waivers are from the Engineering Process and Regulations, Chapter 5 of the Engineering Design Standards and Construction Specifications (Sections 5.10.2.1 and 5.10.2.2 for up to two accesses; 5.10.7.2 and Table 5.11 for the driveway/private access radius; 5.10.8.2 for the access geometry; 5.10.8.1 for the cross-slopes; and 5.10.5 and Table 5.10 for spacing); Off-Street Parking Regulations (Section 9-3-9.A compliance with codes); and associated Absolute Policies 16/Internal Circulation, 17/External Circulation, 18/Parking, and 26/Infrastructure of the Town Code.

~~(h) Grant a waiver from Relative Policy 13/Snow Storage.~~

~~(i) For the multiple accesses, turning radius, and spacing needed to provide for the residential use, vehicle parking, and contemplated shuttle services, grant waivers from the Engineering Process and Regulations, Chapter 5 of the Engineering Design Standards and Construction Specifications (sections 5.10.2.1; 5.10.2.2; 5.10.7.2; Table 5.11; 5.10.8.2; and 5.10.5) Off Street Parking Regulations (section 9-3-9.A), and associated Absolute Policies 16/Internal, 17/External Circulation, 18/Parking, and 26/Infrastructure of the Town Code.~~

(i) ~~(j)~~ Permit a limited amount of Dark Sky compliant lighting to be provided on-site for pedestrian safety and waivers from Absolute Policy 46/Exterior Lighting, Title 9, Chapter 12 Exterior Lighting Regulations, and Title 9, Chapter 3 of the Town Code as ~~over-lighting~~over-lighting the site is discouraged. Timers, motion sensors, or other devices are encouraged to keep the lighting at a minimum for safety.

(j) ~~(k)~~ Acknowledge that the construction and maintenance of an overpass or underpass traversing Park Avenue is unnecessary based upon the proposed residential uses and limited use of the winter recreational parking lot, and provision of shuttle service and other improvements as set forth in Section 6.1(c).

(k) ~~(l)~~ To the extent Applicant is required to install barriers in or adjacent to Park Avenue as contemplated in Section 6.1(c), grant a waiver from Absolute Policy 47/Fences, Gates and Gateway Entrance Monuments.

## ARTICLE 7 PARCEL 3

7.1 With respect to Parcel 3, any Development Application shall comply with the following terms:

(a) If the Town identifies any wetland impacts beyond those identified in that certain The Gold Rush Lots Wetland Technical Report prepared by Alpine Ecological Resources dated October 26, 2023 (attached hereto as Exhibit 11, the “**Wetlands Report**”), the impacted wetland area shall be replaced at a rate of 2:1 through an in-lieu fee program assumed by Applicant substantially similar to the Colorado Western Slope In-Lieu Fee Program identified in the Wetlands Report.

(b) No certificate of occupancy for any improvements on Parcel 3 shall be issued until a certificate of occupancy is issued for the employee housing contemplated on Parcel 2, as more particularly set forth in ARTICLE 6.

**7.2** Upon and from Applicant’s submission of a Development Application or Applications consistent with the provisions of Section 7.1, the Town covenants and agrees that the Town shall:

(a) Acknowledge that the impact to the wetlands on Parcel 3 is as reflected in the Wetlands Report and the mitigation proposed therein is sufficient to grant the waivers set forth in this Section 7.2.

(b) Grant waivers from Town Code Section ~~10-2-4-3~~10-2-4-3 Setbacks of the Engineering Process and Regulations, Section 7.6.1 Setbacks of the Engineering Design Standards and Construction Specifications, and Title 10 of the Engineering Process and Regulations regarding mitigation for the limited purposed of site grading, drainage and water quality improvements.

(c) Grant ~~a waiver~~waivers from Policy 7/R Site and Environmental Design and all its subsections, ~~provided that Applicant endeavors and from Relative Policy 22/Landscaping relating to the tree buffer adjacent to Park Avenue, to accommodate the effort~~ to preserve the trees along Park Avenue and provide revegetation ~~as shown on the~~efforts consistent with conceptual plan prepared by DTJ Design and reviewed and approved by the Town Council on November 14, 2003 (the “**Parcel 3 Concept Plan**”), or a plan substantially similar thereto.

(d) If the Town identifies any wetland impacts beyond those identified in the Report and Applicant mitigates the newly identified impacts consistent with Section 7.1(a), the Town shall grant any needed waivers from any Engineering Process and Regulations and Engineering Design Standards and Construction Specifications, and the Town Code policies related to such impacts and replacement, including but not limited to Absolute Policy 31/Water Quality.

(e) ~~Grant a waiver~~With considerations for public safety, grant waivers for multiple private accesses on Woods Drive, private accesses spacing, road slope connections for private accesses, and private accesses cross-slopes. These waivers are from the Engineering Process and Regulations, Chapter 5 of the Engineering Design Standards and Construction Specifications (sections Sections 5.10.2.1; and 5.10.2.2 for the multiple accesses; 5.10.5; and Table 5.10 for spacing; and 5.10.8.1), Off-Street for the cross-slopes); Off-Street Parking Regulations (~~section 9-3-9.A~~),Section 9-3-9.A

[compliance with codes and 9-3-9.F for grades](#)); and the corresponding Absolute Town Code Policies 16/Internal Circulation, 17/External Circulation, 18/Parking, and 26/Infrastructure, ~~for multiple accesses on Woods Drive, driveway spacing, and driveway cross-slope.~~

(f) Grant a waiver from the Engineering Process and Regulations, Chapter 5 of the Engineering Design Standards and Construction Specifications (~~section~~[Section 5.10.1](#)), ~~Off-Street~~[Off-Street](#) Parking Regulations (~~section 9-3-9~~[Section 9-3-9.A](#)), and the corresponding Absolute Development Code Policies 16/Internal Circulation, 17/External Circulation, 18/Parking, and 26/Infrastructure, allowing more than four units to be served by a private access, provided that Applicant shall construct and maintain any such access in perpetuity.

~~(g) Grant a waiver from any negative points under Relative Policy 7/Site Design or Relative Policy 22/Landscaping relating to the tree buffer adjacent to Park Avenue at the time of master plan amendment and/or site plan review to accommodate the effort to preserve the trees along Park Avenue and provide revegetation efforts consistent with the Parcel 3 Concept Plan, provided that the Parcel 3 Concept Plan, or a plan substantially similar thereto, be implemented.~~

~~(g)~~ [\(g\)](#) ~~(h)~~ To the extent Applicant is required to install barriers in or adjacent to Park Avenue as contemplated in Section 6.1(c), grant a waiver from Absolute Policy 47/Fences, Gates and Gateway Entrance Monuments.

~~(h)~~ [\(h\)](#) Provide for the Parcel 3's subdivision into duplex lots or footprint lots in accordance with the Town's Subdivision Standards.

## ARTICLE 8 PARCEL 4

8.1 With respect to Parcel 4, any Development Application shall comply with the following terms:

(a) The Peak 7 & 8 Master Plan shall be amended to transfer Density into the master plan and assign additional Density to Parcel 4, in excess of the Density currently allowed by the master plan and underlying Guidelines, without the assignment of negative points under any Relative Policy or failure of any Absolute Policy, or the need to modify the underlying Guidelines, as follows: up to 74.2 SFES shall be transferred to the Peak 7 & 8 Master Plan from the Gondola Lot Master Plan for Parcel 4 and ~~fifty-eight~~[fifty-eight](#) (58) SFES, including up to two (2) SFES to be used as commercial SFES, will be transferred from the Gondola Lot Master Plan to the Peak 7 & 8 Master Plan. The Town acknowledges and agrees that such ~~fifty-eight~~[fifty-eight](#) (58) SFE transfer is reflected in the now-existing versions of the Gondola Lot Master Plan and the Peak 7 & 8 Master Plan, but no Density Transfer Covenant was ever entered into or recorded.

(b) Prior to the issuance of a final certificate of occupancy for any building(s) on Parcel 4, Applicant shall make space available to the BOEC. Notwithstanding any provision to the contrary in this Agreement, the Parties acknowledge and agree that Applicant's obligation to make space available to the BOEC as contemplated in this Section shall not be considered a public benefit and shall be eligible for an award of positive points.

(c) ~~(b)~~ In addition to the parking spaces required to be provided by the Peak 7 & 8 Master Plan at the time of site plan review, Applicant shall provide, and reserve in perpetuity, up to ~~thirty-five~~thirty-five (35) parking spaces for VSRI on-site ~~administration~~ employees and six (6) oversized/ADA parking stalls for use by the BOEC ~~will be included in a proposed parking garage~~. The VSRI parking spaces may not be used by the general public or for any other use but for parking for on-site VSRI employees and the BOEC parking spaces may not be used by the general public or for any other use other than parking for BOEC activities. The provisions of this Section ~~8.1(b)~~8.1(b) shall be included in the Peak 7 & 8 Master Plan.

(d) ~~(e)~~ Building Height

(i) The maximum height of any building proposed for Parcel 4 shall not exceed the elevation of the existing east cross gable of One Ski Hill Place, as specified in the Peak 7 & 8 Master Plan and its attachments. This maximum height will serve as an "Absolute" policy under the Town Code.

(ii) Relative Policy 6 "Building Height" shall apply to the Town's review of a site plan application. Pursuant to the Peak 7 & 8 Master Plan, for the purpose for assessing or awarding points under Relative Policy 6 the heights of the buildings to be constructed on Parcel 4 shall be evaluated against the height requirements of the Town Code and the recommended heights for Land Use District 39 as they were in effect on February 26, 2013.

(iii) Pursuant to the Peak 7 & 8 Master Plan, the height of buildings at the Peak 8 base area only (including Parcel 4) are to be measured "to the proposed finished grade elevation at the exterior wall below," and not to natural grade, which generally does not exist in the area, provided that such proposed finished grades shall not include artificial appearing berming or fill. Artificial appearing berming or fill is characterized by excessive rise and steep grades in the vicinity of building foundations. (Emphasis added.) The height of the building on Parcel 4 shall be established in accordance with the Town Code and Land Use District 39 of the Guidelines, in effect on the Effective Date, provided, however, that the Town and Applicant shall establish a method for determining the finished grades above which heights shall be measured in order to account for the lack of natural grades and the anticipated filling of the lowered and generally flat grades currently existing at the Peak 8 base area.

(e) ~~(d)~~ Employee housing will be provided subject to the following terms:

(i) Applicant shall comply with Absolute Policy 24/Employee Housing and will relinquish any rights to provide such housing in connection with the development of Parcel 4 upon any different terms that may have been identified in any earlier agreement or approval.

(ii) If Parcel 7 has been annexed into the Town, Applicant shall cause all required employee housing to be provided on Parcel 7 ~~if Parcel 7 has been annexed into the Town at the time the obligation to construct such employee housing is due~~ prior to the issuance of a certificate of occupancy for Parcel 4, unless it is not feasible to construct all required units on Parcel 7, in which case Applicant shall provide the balance of any required units through any alternative means permitted under the Town Code. If Parcel 7 has not been annexed into the Town ~~at such time,~~ Applicant's obligation to provide employee housing under the Town Code shall remain unchanged, and it shall be Applicant's responsibility to provide the required employee housing through any alternative means permitted under the Town Code. In no event shall Applicant provide employee housing required for Parcel 4 through conversion of housing units in Breckenridge Terrace.

~~(f)~~ (f) Upon issuance of the final certificate of occupancy for all buildings on Parcel 4 Applicant shall deliver to the Town documentation sufficient to demonstrate that any right of access to Parcel 4 via Saw Mill Run Road has been abandoned.

**8.2** Upon and from Applicant's submission of a Development Application or Applications consistent with the provisions of Section 8.1, the Town covenants and agrees that the Town shall:

(a) Grant a waiver from Absolute and Relative Policy 3/Density for the underground parking area square footage.

(b) Permit amendment of the Peak 7 & 8 Master Plan that reflects that maximizing the buffer distance to Parcel 4's eastern property line is more important than designing any building to step down to the east, provided that the eastern edge of a building's footprint may not be located any further to the east than that shown on the DTJ Design plans reviewed and approved by the Town Council during the November 14, 2023 work session (the "**Parcel 4 Concept Plan**").

(c) Not assign negative points under Relative Policy 7/Site and Environmental Design – Retaining Walls, in recognition that the site has been previously disturbed and that retaining walls will be used in an effort to retain slopes as called for by Policy 7.

(d) Grant waivers from the Engineering Process and Regulations, Chapter 5 of the Engineering Design Standards and Construction Specifications (~~sections~~ Sections 5.10.2.1 and 5.10.2.2), ~~Off-Street~~ Off-Street Parking Regulations (~~section 9-3-9.A~~ Section 9-3-9A), and corresponding Development Code Absolute Policies 16/Internal Circulation, 17/External Circulation, 18/Parking, 26/Infrastructure for

two (2) accesses onto Parcel 4 – for deliveries/loading and for public/guests, and for loading area backout movements onto Ski Hill Road.

(e) Acknowledge and agree that constructing the required employee housing on Parcel 7 or otherwise off-site will reduce vehicle trips up/down Ski Hill Road meeting Absolute Policy 24/Social Community subsection F.1.a.(iv).

(f) Acknowledge and agree that outdoor heated sidewalks, pools/spas impacts, etc. will be minimized to the extent practicable but that Applicant cannot mitigate all required impacts on-site due to elevation, current technology, and roof design/size. The Town shall allow off-site mitigation of the Renewable Energy Mitigation Program (“REMP”) upon the following terms:

(i) REMP mitigation will be provided via a three-step approach: (1-) solar ~~on-site~~on-site; (2-) off-site within the Town on properties controlled by Applicant; and (3-) fee in lieu based on the current REMP policy and calculator if offset energy is not provided prior to Certificate of Occupancy for Parcel 4. Applicant consents to the Town’s review and approval of all mitigation via the applicable development review process(es). Applicant may submit, and the Town will process, an application meeting Town Code requirements for off-site solar mitigation improvements for credit to the Town for review and approval upon execution of this Development Agreement due to the construction lead time for Parcel 4 credit.

(ii) Applicant will provide a third-party analysis, in a form acceptable to the Town, of the required amount of solar offset.

(iii) The Town staff shall determine the extent of emergency egress and pedestrian circulation safety to be exempt from REMP and Absolute and Relative Policy 33/Energy Conservation during site plan review.

(g) Issue, upon application for the same, such permit(s) as may be required by the Town to allow one or more Applicant-provided temporary structures accommodating VSRI’s administration functions necessary or appropriate for the operation of the Breckenridge Ski Resort, as well as Applicant’s pre-operation functions on Parcel 4, to be placed on Parcel 4, or other location(s) suitable to the Town and VSRI ~~or~~and Applicant, and maintained in such location(s) until Applicant constructs guest services spaces for VSRI’s use and occupancy; provided, however, that all approved temporary structures shall be removed by Applicant ~~not~~no later than ~~the first to occur of: (i) the end of sixty (60) days after the issuance of any final certificate of occupancy for all structures on Parcel 4.~~ sixty (60) days after the issuance of any final certificate of occupancy for all structures on Parcel 4. The Town shall also grant such waivers including, without limitation, from Absolute Policy 36/Temporary Structures as may be necessary to effectuate the terms of this section.

(h) ~~The~~Allow the parking garage contemplated on Parcel 4 ~~may~~to be used as temporary construction parking while the on-site building(s) is under construction.

(i) Permit Condominium, Condominium/Hotel, and/or Hotel/Lodging/Inn uses, and Timeshare Interests, whether by way of whole or fractional ownership, as those capitalized terms are defined in Section 9-1-5 of the Town Code, and associated commercial, guest services facilities, and other amenities.

**8.3** Following Final, Non-Appealable Approval of the Development Application(s) contemplated under Section ~~8.1~~**8.1** and prior to issuance of the final certificate of occupancy for the improvements on Parcel 4, Applicant shall enter into such agreement as the Town reasonably may require that provides for the following:

(a) At the end of the first year after issuance of the final certificate of occupancy and every year thereafter for the first five (5) years after issuance of such final certificate of occupancy, Applicant will provide a trip report to the Town. Trips will be defined as the number of trips into the garage anticipated to be constructed on Parcel 4 plus the number of trips out of that garage on a daily basis.

(b) If during any single calendar month of each of such five (5) years the number of trips exceeds an average of 1,600 trips per day, for every 100 trips in excess of 1,600, Applicant will acquire and transfer one additional electric shuttle van to the Breckenridge Mountain Master Association (“BMMA”). Until such time as the threshold described in the preceding sentence has been reached the residents and guests of the anticipated development shall have access to the transportation (van) system operated by the BMMA in the same manner as is provided to other properties located within the boundaries of the BMMA. A letter from the BMMA confirming the same shall be provided to the Town.

**8.4** If the Annexation has not been approved at or before the time the obligation to provide employee housing under Absolute Policy 24/Social Community in connection with the development of Parcel 4 is due, the Town shall allow Applicant to transfer up to 15.0 SFEs for employee housing mitigation to other properties within the Town to satisfy the employee housing mitigation requirements. Nothing in this Section 8.4 shall be construed as limiting the alternative means of delivering employee housing to satisfy Absolute Policy 24/Social Community as permitted under the Town Code.

## **ARTICLE 9 PARCEL 5**

**9.1** With respect to Parcel 5, any Development Application shall comply with the following terms:

(a) The Peak 7 & 8 Master Plan shall be amended to create a Parcel 5 Planning Area, allow single-family residential uses, and assign Density to this area without the assignment of any negative points under any Relative Policy or the failure of an Absolute Policy, or the need to modify the underlying Guidelines;

(b) Applicant shall construct and maintain a-private ~~driveway~~driveways on Parcel 5 serving the two homesites from Four O’Clock Run Road;

(c) Applicant shall include a plat note on the final plat indicating that the future homes on the lots will be limited to a total of 7,500 square feet of Density per lot;

(d) Applicant shall include a plat note on the final plat stating that a Plant Investment Fee (“PIF”) equal to 1.25 of the ~~in-Town~~in-Town PIF rate shall be assessed at the time of building permit for each single-family residence.

(e) Applicant shall cause BMMA shuttles to serve each completed home.

**9.2** Upon and from Applicant’s submission of a Development Application or Applications consistent with the provisions of Section 9.1, the Town covenants and agrees that the Town shall:

(a) Allow for the transfer of Density contemplated in Section ~~8.1(a)~~8.1(a) without the assignment of negative points under any Relative Policy or the failure of an Absolute Policy and ~~recognize~~acknowledge that no modification of the underlying Guidelines is necessary.

~~(b) Recognize that, pursuant to Ordinance No. 29, Series 2021 and Ordinance No. 28, Series 2022, the two homesite proposed for Parcel 5 meet the definition of a Resort Property as defined in Ordinance No. 28, Series 2022.~~

~~(b)~~ ~~(c)~~ Grant ~~a waiver~~waivers allowing the private ~~driveway’s~~driveways’ grade/~~slope~~ to exceed, up to a maximum grade/~~slope~~ of ten (10) percent, the requirements set forth in Engineering Process and Regulations, Chapter 5 of the Engineering Design Standards and Construction Specifications (~~section~~Section 5.10.8.1), Off-Street Parking Regulations (~~section~~Sections 9-3-9.A and 9-3-9.F), and corresponding Development Code Absolute Development Code Policies 16/Internal Circulation, 17/External Circulation, 18/Parking and 26/Infrastructure.

~~(c)~~ ~~(d)~~ Grant relief from the Subdivision Standards Sections ~~9-2-4-5C~~9-2-4-5C.2 and ~~9-2-4-5C~~9-2-4-5C.7.b.4 related to the depth and widths of lots and shape of disturbance envelopes.

## ARTICLE 10 PARCEL 6

**10.1** With respect to Parcel 6, any Development Application shall comply with the following terms:

(a) The Peak 7 & 8 Master Plan shall be amended to create a new Parcel 6 Planning Area, allow the single-family residential uses, and assign Density to this area without the assignment of negative points under any Relative Policy or the failure of an Absolute Policy, and no modification of the underlying Guidelines is necessary.

(b) Each proposed single-family lot on Parcel 6 shall be a minimum of .60 acres.

(c) Applicant shall include a plat note indicating that the future single-family homes will be limited to 7,500 square feet of Density.

(d) Applicant shall include a plat note stating that a PIF equal to 1.25 of the in-Town PIF rate shall be assessed at the time of building permit for each single-family residence.

(e) Applicant shall cause BMMA shuttles to serve completed homes on Parcel 6.

**10.2** Upon and from Applicant's submission of a Development Application or Applications consistent with the provisions of Section 10.1, the Town covenants and agrees that the Town shall:

(a) Allow for the transfer of Density contemplated in Section ~~10.1(a)~~10.1(a) without the assignment of negative points under any Relative Policy or the failure of an Absolute Policy and ~~recognize~~acknowledge that no modification of the underlying Guidelines is necessary.

(b) Grant waivers from the Engineering Process and Regulations, Chapter 5 of the Engineering Design Standards and Construction Specifications (~~section~~Section 5.6.3.2), Off-Street Parking Regulations (~~section 9-3-9~~Section 9-3-9.A), and corresponding Development Code Absolute Policies 16/Internal Circulation, 17/External Circulation, 18/Parking, and 26/Infrastructure that requires the Engineering Regulations to be met for the length of the Timber Trail Drive extension and grade during the subdivision review process, on the condition that all International Fire Code requirements are met and an emergency turn-around, fire hydrants, and the future homes are equipped with individual automatic sprinkler systems (via a plat note on the subdivision plat) will be provided, as previously allowed for the Timber Trail subdivision. The maximum grade shall be 6.5% unless a greater grade is reviewed and approved by the Town.

(c) ~~For~~Grant waivers for the private driveways' ~~grade(s)/slope(s)~~grades during the subdivision and site plan review processes, ~~grant waivers~~ from the Engineering Process and Regulations, Chapter 5 of the Engineering Design Standards and Construction Specifications (~~section~~Section 5.10.8.1), ~~Off-Street~~Off-Street Parking Regulations (~~section 9-3-9~~Sections 9-3-9.A and 9-3-9.F), and corresponding Development Code Absolute Policies 16/Internal Circulation, 17/External Circulation, 18/Parking, and 26/Infrastructure that requires the Engineering regulations to be met.;

(d) Grant waivers from the Engineering Process and Regulations, Chapter 5 of the Engineering Design Standards and Construction Specifications (~~section~~Section 5.10.1), ~~Off-Street~~Off-Street Parking Regulations (~~section 9-3-9~~Section 9-3-9.A), and corresponding Development Code Absolute Policies 16/Internal Circulation, 17/External Circulation, 18/Parking, and 26/Infrastructure allowing at two private ~~access~~accesses to serve more than four (4) lots as

applicable during the subdivision and site plan review processes, provided that Applicant shall construct and maintain any such ~~access~~accesses in perpetuity.

(e) Grant waivers from the Subdivision Standards Sections ~~9-2-4-59-2-4-5.C.2.~~, ~~9-2-4-59-2-4-5.C.3.~~ and ~~9-2-4-59-2-4-5.C.7.b.4~~ related to the depth and width of lots and shape of disturbance envelopes.

~~(f) Confirm that Parcel 6 will remain in Zone 3 of Ordinance No. 28, Series 2022.~~

## ARTICLE 11 PARCEL 7

**11.1** Development Upon Annexation. If the Annexation is approved, Applicant or BGV Entrada shall be entitled to submit Development Applications for the development of employee housing on Parcel 7, subject to the terms of any annexation and development agreement executed by the Town and BGV Entrada with respect to Parcel 7. To provide for that development, the Town authorizes the following, subject to the execution of any required Density Transfer Covenant: The transfer of up to fifteen (15) SFEs from the Gondola Lot Master Plan to Parcel 7, which shall in addition to the existing 14.2 SFEs on Parcel 7 as allowed by Land Use District 5, result in a total of up to 29.2 SFEs on Parcel 7.

**11.2** If the Annexation is not successful, Applicant is authorized, upon written notice to the Town, to transfer up to fifteen (15) SFEs from the Gondola Lot Master Plan to another property in the Town suitable to Applicant and VSRI for the purpose of providing deed restricted workforce housing. Compliance with Section ~~1.6(b)~~1.6(b) shall be determined from the date the written notice required under this Section 11.2 is delivered to the Town.

**11.3** If the Annexation has not been approved within one (1) year of the Effective Date, this Agreement shall terminate and be of no further force and effect with respect to Parcel 7 alone.

**11.4** If any additional employee housing square footage is built upon Parcel 7 beyond that which is required for Parcel 4 compliance with Absolute Policy 24/Social Community, such additional square footage shall not be eligible to satisfy employee housing requirements for future developments.

## ARTICLE 12 VESTED PROPERTY RIGHTS

**12.1** Establishment of Vested Property Rights. This Agreement shall constitute a Site Specific Development Plan. All of Applicants' and Landowners' rights, and the Town's obligations, under this Agreement shall be Vested Property Rights. Applicant and Landowners shall have a Vested Property Right to undertake and complete development and use of the Properties as provided in this Agreement, and the Vested Property Rights will be effective against any other governmental entities and their respective governing bodies that subsequently obtain or assert jurisdiction over the Properties or any portion thereof. The rights and obligations under this Agreement shall vest in Applicant and Landowners, which terms, by their definitions,

include successors, and assigns. The Vested Property Rights described in this Agreement shall constitute benefits and burdens to the land and shall run with title to the land.

**12.2 Rights Which are Vested.** By way of illustration, the Vested Property Rights include, but are not limited to, the following:

(a) Processing of Applications. The right to submit and for the Town to process Development Applications in accordance with the procedures and upon such terms set forth in this Agreement, or to the extent not addressed herein, the procedures set forth in the Town Code (as the same was in effect on the Effective Date). In the event that any amendment to the Town Code approved after the Effective Date creates generally applicable submittal requirements, procedural requirements, or approval criteria which conflict with or are in addition to the terms and conditions of this Agreement, Applicant may choose whether the Town Code or the terms of this Agreement will apply to the Development Application.-

(b) Use and Development Standards. The right to be protected against the Town or any citizen initiating any action to apply any less-favorable use and development standards to any Property or the Project, including, but not limited to, any reduction in the maximum allowed Density, the development intensity allowed under that Density, or total area of the Project. In the event that any amendment to the Town Code approved after the Effective Date creates generally applicable use or development standards that conflict with or are in addition to the terms and conditions of this Agreement, Applicant, and ~~5~~VSRI, in the event the affected Property is owned by VSRI, may choose whether the Town Code or the terms of this Agreement will apply to the affected Property or Properties, or the Project.

(c) Uniformity of Requirements. The right to continue and complete development of the Properties with conditions, standards, dedications, and requirements that are no more onerous than those then being imposed by the Town on other properties within the Town's municipal boundaries on a reasonably uniform and consistent basis, except to the extent such conditions, standards, dedications, and requirements conflict with the terms and conditions of this Agreement, in which case the terms and conditions of this Agreement shall control except as otherwise set forth herein.

**12.3 Term.** In recognition of the complexity of the development contemplated by this Agreement, the time required to complete development, and the possible impact of economic cycles and varying market conditions during the course of development, the Town has concluded and hereby agrees that the Vested Property Rights, including those identified in Section 12.1 of this Agreement, shall continue and have a duration until **SEVEN (7) YEARS** from the Effective Date (the "**Term**"). The rights and obligations set forth in this Agreement shall survive the termination of the Term, the effect of which shall be limited to eliminating the protections set forth in the Vested Property Rights Act.

**12.4 Compliance with General Regulations.** The establishment of the rights vested under this Agreement shall not preclude the application of Town regulations of general applicability including, but not limited to, the application of local improvement districts,

building, fire, plumbing, engineering, electrical and mechanical codes, or the application of regional, state or federal regulations, as all of the foregoing exist on the Effective Date or may be enacted or amended after the date hereof, except as otherwise provided herein, as against the Properties and the Project. Landowners do not waive their rights to oppose adoption of any such regulations.

### ARTICLE 13 DEFAULT AND REMEDIES

**13.1** Default by the Town. A “breach” or “default” by the Town Council or the Town under this Agreement will be defined as the Town Council’s or the Town’s failure to fulfill or perform any express material obligation of the Town Council or the Town stated in this Agreement. Consistent with Sections 105(1)(a) and (b) of the Vested Property Rights Act, the Parties acknowledge and expressly intend that the Vested Property Rights preclude any zoning or land use action by a local government or pursuant to any initiated measure which would materially alter, impair, prevent, diminish, impose a moratorium on development, or otherwise delay the development of the Project or the use of the Properties as set forth in this Agreement, except that such rights may be divested only (a) with the consent of the owner of the affected portion of the Properties; or (b) upon the discovery of natural or manmade hazards on, or in the immediate vicinity of, the Properties, which hazards could not have been reasonably discovered at the time of approval of this Agreement, and which hazards, if uncorrected, would pose a serious threat to the public health, safety and welfare. Such natural or manmade hazards may include, but are not limited to, acts of God or other *force majeure*, or failure(s) of Town utilities necessary to serve the Properties or Project. Accordingly, subject to the exceptions listed in clauses (a) and (b) above, any of the foregoing zoning or land use actions by the Town Council or the Town would impermissibly divest Applicant and/or Landowners of the benefits of the Vested Property Rights, would constitute a breach or default under the Vested Property Rights Act and would entitle Landowners to the specific and limited remedies set forth herein.

(a) No Responsibility or Remedy. The Town shall not be responsible for and Applicant and Landowners shall have no remedy against the Town if development of the Property is prevented or delayed for reasons beyond the control of the Town.

(b) No Personal Responsibility. No official or employee of the Town shall be personally responsible for any actual or alleged breach of this Agreement by the Town.

~~**13.2** Obligation to Provide Notice and Opportunity to Cure. If a Party defaults in the performance of its obligations under this Agreement, the Party(ies) asserting the default will deliver notice of the asserted default to the Party alleged to be in default, with copies to any other non-defaulting Parties. The Party alleged to be in default will have sixty (60) days from and after receipt of the notice to cure the default without liability for the default. If the default is not of a type which can be cured within such period and the Party alleged to be in default gives written notice to the Party(ies) who asserted the default within such 60 day period that it is actively and diligently pursuing a cure, the Party alleged to be in default will have a reasonable period of time given the nature of the default following the end of the 60-day period to cure the default, provided that the Party alleged to be in default is at all times within the additional time period actively and~~

~~diligently pursuing the cure. Notwithstanding the foregoing cure period, the Party asserting that the Town Council and/or the Town is in default will have the right to include a claim for breach of this Agreement and/or of the Vested Property Rights Act in any claim brought under C.R.C.P. 106(a)(4) if the Party reasonably believes that failure to include such claim could jeopardize the Party's ability to exercise its remedies under this Agreement or under the Vested Property Rights Act at a later date. Any claim for breach of this Agreement or the Vested Property Rights Act that is brought before the expiration of the applicable cure period will not be prosecuted by the Party asserting such claim until expiration of the applicable cure period, and will be dismissed by the Party if the default is cured in accordance with this Section 13.2.~~

13.2 ~~13.3~~ Remedies.

(a) Generally. Except to the extent this Agreement expressly states otherwise, the Party asserting the default will have the right to pursue and be entitled to enforce specific performance of the defaulting Party's obligations under this Agreement, which will be the sole remedy under this Agreement; provided, however, if there is a final judicial determination that a Party is in default under this Agreement but the court determines specific performance is not available or will not be granted as a remedy for such default: (i) Applicant or Landowners will be entitled to the contingent remedy described in Section ~~13.3(e)~~13.2(c); and (ii) if Applicant or Landowners are determined in a final judicial judgment to have failed to abide by the terms of this Agreement, the Town Council and the Town will be entitled such remedies as may be available at law or in equity, subject to the limitations set forth in Section ~~(b)~~13.2(b), and, additionally, to enforce the forfeiture of the Vested Property Rights.

(b) Vested Property Rights; Mutual Waivers. Although the Vested Property Rights Act provides for the payment of certain monetary damages upon a deprivation, impairment, violation or other divestment of the Vested Property Rights, the Town desires not to be subject to liability for monetary damages pursuant to the Vested Property Rights Act as a remedy for breach or default with respect to the Vested Property Rights. Accordingly, Applicants and Landowners hereby knowingly, intentionally, voluntarily and irrevocably waive, for themselves and for their successors and assigns, any remedial right they may have pursuant to Section 105(1)(c) of the Vested Property Rights Act to be paid money damages as just compensation upon a deprivation, impairment, violation or other divestment of the Vested Property Rights; and the Town Council hereby knowingly, intentionally, voluntarily and irrevocably waives, for itself and for its successors and assigns, any right the Town Council or the Town may have pursuant to Section 105(1)(c) of the Vested Property Rights Act to pay money damages to Landowners and/or their successor(s) and assign(s) as just compensation upon a deprivation, impairment, violation or other divestment of the Vested Property Rights. The Parties have executed and entered into the foregoing mutual waivers with the express intent that such waivers will be mutually binding and enforceable as to each of them and their respective successors and assigns, having been given in consideration of the mutual benefits accruing to each of them as a result of such mutual waivers and otherwise accruing to each of them pursuant to this Agreement, and with the intent and mutual understanding that the effect of such mutual waivers will be that the Town Council and

the Town are precluded from divesting, depriving, impairing or violating the Vested Property Rights under any circumstances other than those stated in Section 13.1.

(c) Contingent Remedy. Only if, notwithstanding the foregoing mutual waivers and the Parties' express intent as to the enforceability and remedial effect of such waivers, it is judicially determined that the terms and conditions (either in whole or in part) set forth in this ARTICLE 13 will not be enforced against the Town Council and the Town as written, Applicant and/or Landowners will be entitled to pursue and be awarded just compensation pursuant to Section 105(1)(c) of the Vested Property Rights Act to the extent the Town Council or the Town takes any action which has the effect of divesting, depriving, impairing or violating the Vested Property Rights and such action constitutes a compensable action under the Vested Property Rights Act.

## **ARTICLE 14 RESPONSIBILITIES OF THE TOWN**

**14.1** Processing of Applications. The Town shall process all applications received in connection with the development of the Project, in accordance with the Town Code and any other applicable laws, ordinances, and regulations.

**14.2** Infrastructure Permit. The Town shall, upon Applicant's request at any point following the approval of any Development Application contemplated in this Agreement, issue to Applicant at least one infrastructure permit for the Property subject to the Development Application approval that will allow for infrastructure and site work related to the approved Development Application, including deep utilities, grading, construction of storm water management systems, and mass excavation, to commence prior to issuance of a building permit, subject to approval by the Town Engineering Department. Each property with an approved Development Permit, as that term is defined in Section ~~9-1-5~~9-1-5 of the Town Code, may be issued an infrastructure permit.

**14.3** Building Permits. The Town shall issue all necessary building permits for the Project, in accordance with the Town Code and any other applicable laws, ordinances, and regulations.

**14.4** Consent. The Town will not unreasonably withhold its consent or approval when such consent or approval is required hereunder.

## **ARTICLE 15 MANDATORY PROVISIONS**

Pursuant to Section ~~9-9-12~~9-9-12 of the Town Code, the following mandatory provisions shall apply:

~~**15.1** Except for a development agreement to extend vested property rights pursuant to section 9-1-17-11 of the Town Code and, except as provided in Section 24-68-105, Colorado Revised Statutes, the execution of the development agreement shall not preclude the current or future application of Municipal, State or Federal ordinances, laws, rules or regulations to the real~~

~~property which is the subject of the development agreement (collectively, “Laws”), including, but not limited to, Building, Fire, Plumbing, Engineering, Electrical and Mechanical Codes, and the town's Development Code, subdivision ordinance and other land use laws, as the same may be in effect from time to time throughout the term of the development agreement. Any development of the real property which is the subject of the development agreement shall be done in compliance with the then current laws of the town. The Parties acknowledge and agree that this Agreement is a development agreement to extend vested property rights pursuant to Section 9-1-17-11 of the Town Code and Section 24-68-105 of the Colorado Revised Statutes and that the exception set forth in Section 9-9-12A therefore applies.~~

15.1 ~~15.2~~ ~~As set forth in Section 16.14, nothing~~Nothing in the agreement shall preclude or otherwise limit the lawful authority of the ~~town~~Town to adopt or amend any Town law, including, but not limited to, the ~~town's~~Town's: 1) Development Code, 2) land use guidelines, 3) master plan, and 4) subdivision ordinance. ~~The Parties acknowledge and agree that the remedies set forth in Section 13.3 do not contravene this Section 15.2.~~

~~15.3 This Agreement shall run with the title to the land and be binding upon the owners, heirs, successors and assigns, as set forth in Section 16.11.~~

~~15.4 As set forth in Section 13. 2, prior to any action against the Town for breach of this Agreement, the applicant shall give the town a sixty (60) day written notice of any claim by the applicant of a breach or default by the town, and the town shall have the opportunity to cure such alleged default within such time period.~~

15.2 Successors and Assigns; Binding Effect; Recording.

(a) Recording. Within five (5) business days of the Effective Date, the Parties shall deliver original copies of their signature pages and the signature pages of any lienholder or lender on their respective Property to the Town. This Agreement shall be recorded in the Records as against every Property and Parcel 7.

(b) Successors and Assigns of Applicant. Applicant may, in its sole discretion, assign its rights and obligations under this Agreement in whole and in part. Upon any such assignment and delivery of written notice to the Town along with a copy of the instrument of assignment, Applicant shall be released from its obligations and responsibilities hereunder to the extent so assigned and the Town shall recognize the rights and obligations of such assignee as so assigned.

(c) Successors and Assigns of Landowner. This Agreement shall be binding upon and inure to the benefit of Landowners and their respective successors and assigns. For avoidance of doubt, the Agreement shall run with the title to the land and benefit and burden the Properties. Any Party bound by obligations of Landowner in this Agreement shall be released from its obligations and responsibilities hereunder upon the valid conveyance of its interest herein to its successor pursuant to the terms and conditions of such conveyance, if any.

15.3 ~~15.3~~ If a Party defaults in the performance of its obligations under this Agreement, the Party(ies) asserting the default will deliver notice of the asserted default to the Party alleged to be in default, with copies to any other non-defaulting Parties. The Party alleged to be in default will have sixty (60) days from and after receipt of the notice to cure the default without liability for the default. If the default is not of a type which can be cured within such period and the Party alleged to be in default gives written notice to the Party(ies) who asserted the default within such 60-day period that it is actively and diligently pursuing a cure, the Party alleged to be in default will have a reasonable period of time given the nature of the default following the end of the 60-day period to cure the default, provided that the Party alleged to be in default is at all times within the additional time period actively and diligently pursuing the cure. Notwithstanding the foregoing cure period, the Party asserting that the Town Council and/or the Town is in default will have the right to include a claim for breach of this Agreement and/or of the Vested Property Rights Act in any claim brought under C.R.C.P. 106(a)(4) if the Party reasonably believes that failure to include such claim could jeopardize the Party's ability to exercise its remedies under this Agreement or under the Vested Property Rights Act at a later date. Any claim for breach of this Agreement or the Vested Property Rights Act that is brought before the expiration of the applicable cure period will not be prosecuted by the Party asserting such claim until expiration of the applicable cure period, and will be dismissed by the Party if the default is cured in accordance with this Section 15.3.

15.4 ~~15.5~~ The Town shall not be responsible for and Applicant shall have no remedy against the Town if development of the real property which is the subject of this Agreement is prevented or delayed for reasons beyond the control of the Town.

15.5 ~~15.6~~ Actual development of the real property which is the subject of this Agreement shall require the issuance of such other and further permits and approvals by the Town as may be required from time to time by applicable Town ordinances.

15.6 ~~15.7~~ No official or employee of the Town shall be personally responsible for any actual or alleged breach of this Agreement by the Town.

15.7 ~~15.8~~ Applicant shall agree to indemnify and hold the Town, its officers, employees, insurers, and self-insurance pool, harmless from and against all liability, claims, and demands, on account of injury, loss, or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the negligence or intentional act or omission of Applicant, any subcontractor of Applicant, or any officer, employee, representative, or agent of Applicant or of any subcontractor of Applicant, or which arise out of any workers' compensation claim of any employee of Applicant, or of any employee of any subcontractor of Applicant; except to the extent such liability, claim or demand arises through the negligence or intentional act or omission of the Town, its officers, employees, or agents. Applicant agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims, or demands at the sole expense of Applicant. Applicant also agrees to bear all other costs and expenses related thereto, including court costs and attorney fees.

**15.8** ~~15.9 As set forth in Section 16.6, if~~ any provision of this Agreement shall be invalid, illegal or unenforceable, it shall not affect or impair the validity, legality or enforceability of the remaining provisions of the agreement.

**15.9** ~~15.10~~ In connection with an application for a development permit to develop the real property that is the subject of this Agreement the application shall not receive an award of positive points under the ~~DevelopmentTown~~ Code for any commitment offered to the Town by ~~the applicant~~Applicant pursuant to Section ~~9-9-49-9-4~~, or any other obligation or requirement of ~~the applicant~~Applicant under ~~the development agreement~~this Agreement.

## ARTICLE 16 MISCELLANEOUS

**16.1** Amendments. This Agreement may be amended or terminated only with the prior written consent and approval of the Town, Applicant, and the Landowner of the Property(ies) or portion of the Property(ies) to which the amendment applies, following public notice and public hearings as required for Development Agreements.

**16.2** Notices. In order to be deemed delivered and effective, any notice required or permitted pursuant to this Agreement must be in writing, and must be given either personally or by registered or certified mail, return receipt requested, in either case to the applicable Party(ies) at their addresses set forth below:

If to the Town:

Town of Breckenridge  
Shannon Haynes, Town Manager  
150 Ski Hill Road, P.O. Box 168  
Breckenridge, CO 80424  
shannonh@townofbreckenridge.com

With a required copy to:

Kirsten J. Crawford  
Town Attorney, Town of Breckenridge  
150 Ski Hill Road, P.O. Box 168  
Breckenridge, CO 80424  
kirstenc@townofbreckenridge.com

If to ~~BGV~~Gondola Properties:

Gondola Properties LLC  
c/o Breckenridge Grand Vacations  
100 South Main Street, P.O. Box 6879  
Breckenridge, Colorado 80424  
Attention: ~~BGV-CONTACT~~Graham Frank, Chief Development Officer

With a required copy to:

Otten, Johnson, Robinson, Neff & Ragonetti, P.C.  
950 Seventeenth Street, Suite 1600  
Denver, Colorado 80202  
Attention: Andrew L.W. Peters  
apeters@ottenjohnson.com

If to BGV Entrada:

BGV Partners Entrada, LLC  
c/o Breckenridge Grand Vacations  
100 South Main Street, P.O. Box 6879  
Breckenridge, Colorado 80424  
Attention: Graham Frank, Chief Development Officer

With a required copy to:

Otten, Johnson, Robinson, Neff & Ragonetti, P.C.  
950 Seventeenth Street, Suite 1600  
Denver, Colorado 80202  
Attention: Andrew L.W. Peters  
~~apeters@ottenjohnson.com~~  
apeters@ottenjohnson.com

If to VSRI:

~~INFORMATION~~

Vail Resorts, Inc.  
390 Interlocken Crescent #100  
Broomfield, CO 80021  
Attention: Legal Department  
legalnotices@vailresorts.com

If to LC Breckenridge:

~~INFORMATION~~

LC Breckenridge  
c/o Leste  
1450 Brickell Avenue, Suite 2600  
Miami, Florida 33131  
Attention: Jordan Suppan  
Jordan.Suppan@leste.com

With required copy to:

Carlton Fields  
2 Miami Central  
700 NW 1st Avenue, Suite 1200  
Miami, Florida 33136-4118  
Attention: Matthew H Jacobson  
MJacobson@carltonfields.com

Notices will be deemed delivered and effective as follows: (i) if given personally, when delivered to the Party to whom it is addressed; or (ii) if given by registered or certified mail, on the first to occur of (A) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (B) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. Any Party may at any time, by giving notice as provided in this Section, designate additional persons to whom notices or communications will be given, and designate any other address in substitution of the address to which such notice or communication will be given.

**16.3** Entire Agreement. This Agreement constitutes the entire and final understanding between the Parties with respect to the subject matter hereof. This Agreement supersedes all prior agreements and understandings between the Parties relating to the subject matter hereof, which shall be of no further force and effect. For the avoidance of doubt, the Parking Agreement is not an agreement or understanding subject to this Section ~~15.3~~16.3 and remains in full force and effect.

**16.4** No Implied Representations. No representations, warranties, or certifications, express or implied, shall exist as between the Parties except as stated herein.

**16.5** Waivers and Modifications in Writing. No waivers or modifications hereof shall be made or deemed to have been made unless in writing executed by the Party to be bound thereby.

~~**16.6** Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, it shall not affect or impair the validity, legality or enforceability of the remaining provisions of the Agreement.~~

**16.6** ~~**16.7**~~ Conflict with Other Provisions of the Town Code. In the event any provision of this Agreement or the application thereof conflicts with any provision of the Town Code, this Agreement shall control the determination of the rights and obligations of the Parties with

respect to such conflicting matter. When adopted by the Town pursuant to ordinance, this Agreement shall be deemed to be an amendment of any such conflicting provision of the Town Code with respect to the subject matter thereof.

~~16.7~~ ~~16.8~~ Adoption of Agreement Deemed to be a Legislative and Administrative Act; Referendum. As set forth in and expressly authorized by Section 104(2) of the Vested Property Rights Act, this Agreement and the Vested Property Rights conferred hereby are adopted as a legislative act pursuant to such authority conferred upon the Town Council by the Vested Property Rights Act. If and to the extent the Vested Property Rights Act subjects the Town Council's establishment of the Vested Property Rights pursuant to this Agreement to referendum, and any referendum succeeds in overturning the Town Council's establishment of the Vested Property Rights pursuant to this Agreement, such result will not be construed as overturning, negating or otherwise affecting the Council's approval of this Agreement.

~~16.8~~ ~~16.9~~ Covenant of General Cooperation. The Parties covenant and agree to cooperate in good faith with one another in the performance of their respective rights and obligations hereunder in order that each may reasonably realize their respective benefits hereunder. The Parties further agree to cooperate in good faith with one another in the event of any third-party legal action, initiative, or referendum challenging the approval(s) of any Development Application contemplated in this Agreement.

~~16.9~~ ~~16.10~~ No Third-Party Beneficiaries. Except as otherwise provided herein, none of the terms, conditions, or covenants contained in this Agreement shall be deemed to be for the benefit of any person not a Party hereto, and no such person shall be entitled to rely hereon in any manner.

~~16.11~~ Successors and Assigns; Binding Effect; Recording.

~~(a) Recording. Within five (5) business days of the Effective Date, the Parties shall deliver original copies of their signature pages and the signature pages of any lienholder or lender on their respective Property to the Town. This Agreement shall be recorded in the Records as against every Property and Parcel 7.~~

~~(b) Successors and Assigns of Applicant. Applicant may, in its sole discretion, assign its rights and obligations under this Agreement in whole and in part. Upon any such assignment and delivery of written notice to the Town along with a copy of the instrument of assignment, Applicant shall be released from its obligations and responsibilities hereunder to the extent so assigned and the Town shall recognize the rights and obligations of such assignee as so assigned.~~

~~(c) Successors and Assigns of Landowner. This Agreement shall be binding upon and inure to the benefit of Landowners and their respective successors and assigns. For avoidance of doubt, the Agreement shall run with the title to the land and benefit and burden the Properties. Any Party bound by obligations of Landowner in this Agreement shall be released from its obligations and responsibilities hereunder upon the valid~~

~~conveyance of its interest herein to its successor pursuant to the terms and conditions of such conveyance, if any.~~

16.10 ~~16.12~~ Counterparts; Electronic Delivery. This Agreement may be executed in multiple counterparts, each of which will be deemed to be an original and all of which taken together will constitute one and the same agreement. Executed copies hereof may be delivered by telecopier or e-mail (pdf) and upon receipt will be deemed originals and binding upon the Parties, regardless of whether originals are delivered thereafter.

16.11 ~~16.13~~ Headings for Convenience. All headings and captions used herein are for convenience only and are of no meaning in the interpretation or effect of this Agreement.

~~16.14 Town Law. Nothing in the agreement shall preclude or otherwise limit the lawful authority of the Town to adopt or amend any Town law, including, but not limited to, the Town's: 1) Development Code, 2) Guidelines, 3) master plan, and 4) Subdivision Standards.~~

16.12 ~~16.15~~ Applicable Law. This Agreement shall be interpreted and enforced according to the laws of the State of Colorado.

16.13 ~~16.16~~ Venue and Choice of Law; Waiver of Right to Jury Trial; Construction. Venue will be in the district court for the State of Colorado, Summit County, Colorado. To reduce the cost of and to expedite the resolution of disputes under this Agreement, each Party hereby waives any and all right to request a jury trial in any civil action relating primarily to the enforcement of this Agreement. In the event of ambiguity in this Agreement, any rule of construction which favors a Party's interpretation as a non-drafting party will not apply, and the ambiguous provision will be interpreted as though no specific party was the drafter.

[SIGNATURE PAGES TO FOLLOW]



GONDOLA PROPERTIES, LLC,  
a Colorado limited liability company

By: Michael A. Dudick, Member

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ = )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by Michael A. Dudick as Member of GONDOLA PROPERTIES, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public



VAIL SUMMIT RESORTS, INC.  
a Colorado corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ = \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by \_\_\_\_\_ as \_\_\_\_\_ of the VAIL SUMMIT RESORTS, INC., a Colorado corporation.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

LC BRECKENRIDGE HOLDCO, LLC  
a Colorado limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ = \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by \_\_\_\_\_ as \_\_\_\_\_ of the LC BRECKENRIDGE HOLDCO, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Exhibit 1  
[Parcel 1 Legal Description]

LOT 4, GONDOLA LOTS, FILING NO. 2 - AMENDED, ACCORDING TO THE PLAT  
THEREOF RECORDED OCTOBER 25, 2023 UNDER RECEPTION NO. 1319752, COUNTY  
OF SUMMIT, STATE OF COLORADO.

Exhibit 2  
[Parcel 2 Legal Description]

LOT 1B, BLOCK 4, A RESUBDIVISION OF LOT 1, BLOCK 4, PARKWAY CENTER  
SUBDIVISION FILING NO. 1 AMENDED & TRACT Q, SHOCK HILL SUBDIVISION,  
ACCORDING TO THE PLAT FILED NOVEMBER 30, 2005 UNDER RECEPTION NO.  
807735 COUNTY OF SUMMIT, STATE OF COLORADO.

Exhibit 3  
[Parcel 3 Legal Description]

LOT 1 AND LOT 3, GONDOLA LOTS, FILING NO. 1 - AMENDED, ACCORDING TO THE  
PLAT THEREOF RECORDED OCTOBER 25, 2023 UNDER RECEPTION NO. 1319751,  
COUNTY OF SUMMIT, STATE OF COLORADO.

Exhibit 4  
[Parcel 4 Legal Description]

Exhibit 5

LOT 4, FOURTH RESUBDIVISION THE REMAINDER OF TRACT C, PEAK 8  
SUBDIVISION FILING NO. 1, ACCORDING TO THE PLAT THEREOF RECORDED  
DECEMBER 20, 2018 UNDER RECEPTION NO. 1187721,COUNTY OF SUMMIT, STATE  
OF COLORADO.

[Exhibit 5](#)  
[Parcel 5 Legal Description]

Exhibit 6

A PARCEL OF LAND LOCATED IN A PORTION OF THE REMAINDER OF TRACT C, PEAK 8 SUBDIVISION FILING No. 1 IN SECTION 1, T7S, R78W AND SECTION 36, T6S, R78W OF THE 6th P.M., SUMMIT COUNTY, COLORADO.

SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 4, PEAK 8 SUBDIVISION FILING No. 1, RECORDED IN THE OFFICE OF THE SUMMIT COUNTY CLERK AND RECORDER UNDER RECEPTION No. 1187721, THENCE ALONG THE EAST LINE OF SAID REMAINDER OF TRACT C S05°36'59"W, 348.85 FEET, THENCE ALONG THE FOLLOWING THREE (3) COURSES AND DISTANCES:

1. S81°32'31"W, 37.65 FEET S81°32'31"W, 37.65 FEET

2. N22°54'12"W, 407.45 FEET N22°54'12"W, 407.45 FEET

3. S84°23'01"E, 231.06 FEET BACK TO THE POINT OF BEGINNING. S84°23'01"E, 231.06 FEET BACK TO THE POINT OF BEGINNING.

Exhibit 6  
[Parcel 6 Legal Description]

A PARCEL OF LAND LOCATED IN A PORTION OF THE REMAINDER OF TRACT C, PEAK 8 SUBDIVISION FILING No. 1, A PORTION OF THE ADA PLACER (MS 13744) AND A PORTION OF THE TYRA PLACER (MS 13343), IN SECTION 1, T7S, R78W AND SECTION 36, T6S, R78W OF THE 6th P.M., SUMMIT COUNTY, COLORADO.

SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF TRACT C, PEAK 8 SUBDIVISION FILING No. 1, RECORDED IN THE OFFICE OF THE SUMMIT COUNTY CLERK AND RECORDER UNDER RECEPTION No. 1187721, THENCE ALONG THE SOUTH LINE OF TIMBER TRAIL SUB. RECORDED UNDER REC. No. 730224 AND FILED IN THE OFFICE OF THE SUMMIT COUNTY CLERK AND RECORDER THE FOLLOWING THREE (3) COURSES AND DISTANCES:

1. N63°32'19"E, 141.01 FEET N63°32'19"E, 141.01 FEET

2. N67°05'19"E, 148.45 FEET N67°05'19"E, 148.45 FEET

3. N56°47'38"E, 25.66 FEET, N56°47'38"E, 25.66 FEET,

THENCE DEPARTING SAID SOUTH LINE THE FOLLOWING TEN (10) COURSES AND DISTANCES:

1. S20°08'31"E, 66.15 FEET S20°08'31"E, 66.15 FEET

2. 185.78 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 200.00 FEET, 185.78 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 200.00 FEET, A CENTRAL ANGLE OF 53°13'18" AND A CHORD WHICH BEARS S06°28'08"W, 179.17 FEET.

3. S33°04'47"W, 45.55 FEET S33°04'47"W, 45.55 FEET

4. S16°15'16"E, 343.70 FEET S16°15'16"E, 343.70 FEET

5. S04°00'43"E, 86.48 FEET S04°00'43"E, 86.48 FEET

6. S36°33'26"E, 132.68 FEET S36°33'26"E, 132.68 FEET

7. S78°51'48"W, 172.09 FEET S78°51'48"W, 172.09 FEET

8. N78°33'09"W, 673.06 FEET N78°33'09"W, 673.06 FEET

9. N12°32'17"W, 219.71 FEET N12°32'17"W, 219.71 FEET

10. N39°22'25"E, 750.61 FEET TO A POINT ON THE EAST LINE OF SAID TRACT C. N39°22'25"E, 750.61 FEET TO A POINT ON THE EAST LINE OF SAID TRACT C.

THENCE ALONG SAID EAST LINE S26°38'02"E, 255.76 FEET BACK TO THE POINT OF BEGINNING.

Exhibit 7  
[Parcel 7 Legal Description]

Exhibit 8

TRACT A2, A REPLAT OF LOTS A1, B1 AND C, ENTRADA AT BRECKENRIDGE,  
ACCORDING TO THE PLAT FILED JULY 24, 2017 UNDER RECEPTION NO. 1146781,  
COUNTY OF SUMMIT, STATE OF COLORADO.

Exhibit 8  
[Form Density Transfer Covenant]

**DENSITY TRANSFER AGREEMENT AND COVENANT**

This Density Transfer Agreement And Covenant (“**Agreement**”) is made and entered into at Breckenridge, Colorado this \_\_\_ day of \_\_\_\_\_, 2024, by and between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation (“**Town**”), and (“**XXXX**”).

RECITALS

A. WHEREAS, \_\_\_\_\_ is the owner of real property located in the Town of Breckenridge, Summit County, Colorado more particularly described on **Exhibit “A”**, which real property is hereafter referred to in this Agreement as the “**Sending Parcel**”.

B. WHEREAS, \_\_\_\_\_ is the owner of real property located in the Town of Breckenridge, Summit County, Colorado more particularly described on **Exhibit “B”**, which real property is hereafter referred to in this Agreement as the “**Receiving Site**”.

C. WHEREAS, pursuant to the Development Agreement between the Town and \_\_\_\_\_ dated \_\_\_\_\_ and recorded \_\_\_\_\_ at Reception No. \_\_\_\_\_ of the real property records of the Clerk and Recorder of Summit County, Colorado (“**Development Agreement**”) \_\_\_\_\_ is authorized, without further approval from the Town, to transfer density from the Sending Parcel to the Receiving Site; and

D. WHEREAS, this Agreement is executed and recorded in the real property records of the Clerk and Recorder of Summit County, Colorado to effectuate and memorialize the density transfer described in this Agreement.

NOW, THEREFORE, in consideration of the promises and covenants contained herein, the parties agree as follows:

1. Town and \_\_\_\_\_ hereby agree that XXXX (XX) SFEs of the density heretofore allocated to the Sending Parcel shall be and hereby are transferred to the Receiving Site. As used in this Agreement, “**SFE**” means a single-family equivalent of density as defined from time to time in the Town’s land use regulations.

2. \_\_\_\_\_ acknowledges and agrees that following the transfer of the XXX (XX) SFEs of density to the Receiving Site as described in Section 1, above, there shall remain XXX (XX) SFEs of density upon the Sending Parcel.

3. Town and \_\_\_\_\_ further acknowledge and agree that following the transfer of XXX (XX) SFEs of density to the Receiving Site as described in Section 1, above, the Receiving Site shall then have a total of XXX (XX) SFEs of residential and commercial density, which density may only be used in connection with a development approved by Town pursuant to the Town’s applicable land use ordinances, policies, and codes. Nothing in this Agreement shall constitute a site specific development plan for the development of the Sending Parcel or the Receiving Site, nor shall this Agreement give rise to the creation of any vested rights with

respect to the development of the Sending Parcel or the Receiving Site (without limiting ARTICLE 12 of the Development Agreement).

4. The agreements and covenants contained in this Agreement shall: (i) run with the land; (ii) burden the Sending Parcel and benefit the Receiving Site; and (iii) be binding upon the Town and XXXX and their successors and assigns, and all persons who hereafter acquire any interest in either the Sending Parcel or the Receiving Site.

5. This Agreement shall be recorded in the real property records of the Clerk and Recorder of Summit County, Colorado, to place prospective purchasers and other interested parties on notice as to the terms, conditions, and limitations contained herein.

6. This Agreement and the exhibits hereto represent the entire understanding between the parties with respect to the subject matter of this Agreement.

7. This Agreement may be executed in several counterparts and/or signature pages and all counterparts and signature pages so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties are not signatories to the original or the same counterpart or signature page.

IN WITNESS WHEREOF, the parties hereto have executed this Density Transfer Agreement And Covenant effective as of date above.

[SIGNATURE AND ACKNOWLEDGEMENT PAGES FOLLOW]





Exhibit “A” [to Ex. 8 Form Density Transfer Covenant]

**Legal Description of the Sending Parcel**

Exhibit “B” [to Ex. 8 Form Density Transfer Covenant]

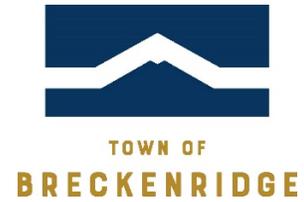
**Legal Description of the Receiving Site**

Exhibit 9  
[Parcel 1 Concept Plan]

Exhibit 10  
[Parcel 2 Concept Plan]

Exhibit 11  
[Wetlands Report]

<b>Summary report:</b>	
<b>Litera Compare for Word 11.4.0.74 Document comparison done on 3/6/2024 9:22:39 PM</b>	
<b>Style name:</b> Default Style	
<b>Intelligent Table Comparison:</b> Active	
<b>Original DMS:</b> dm://DENVER01/2977527/19	
<b>Modified DMS:</b> dm://DENVER01/2977527/36	
<b>Changes:</b>	
Add	513
Delete	303
<del>Move From</del>	16
Move To	16
Table Insert	1
<del>Table Delete</del>	0
Table moves to	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>849</b>



# Memo

To: Breckenridge Town Council  
From: Mark Truckey, Community Development Director  
Date: February 28, 2024 for March 12 Council Meeting  
Subject: Re-Adoption of the Town's Three Mile Annexation Plan

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Attached is a resolution adopting the Town's Comprehensive Plan, along with the Town's Land Use Guidelines, as the Town's annexation plan. The Colorado Revised Statutes related to annexations require that all annexations be planned in a manner consistent with an annexation plan for the three-mile area surrounding the Town. The Town's Comprehensive Plan and Land Use Guidelines serve as the Town's annexation plan and must be current within one year of any annexation.

This is largely a housekeeping matter, as no changes to the Comprehensive Plan or Land Use Guidelines are proposed with this action.

RESOLUTION NO. \_\_\_\_\_

SERIES 2024

A RESOLUTION ADOPTING THE TOWN OF BRECKENRIDGE COMPREHENSIVE PLAN AND LAND USE GUIDELINES AS THE TOWN'S ANNEXATION PLAN PURSUANT TO SECTION 31-12-105(1)(e), C.R.S.

WHEREAS, Section 31-12-105(1)(e), C.R.S., requires that prior to completion of any annexation a municipality shall have in place a plan for the area proposed to be annexed describing certain matters described in such statute; and

WHEREAS, Section 31-12-105(1)(e), C.R.S., further requires that the annexation plan be updated at least once annually; and

WHEREAS, the Town Council finds and determines that the Town of Breckenridge Comprehensive Plan and the Town's Land Use Guidelines together satisfy the requirements of an annexation plan under Section 31-12-105(1)(e), C.R.S., and should serve as the Town's annexation plan required by such statute; and

WHEREAS, in *Town of Erie v. Town of Frederick*, 251 P.3d 500 (Colo. App. 2010) the Colorado Court of Appeals held that a municipality's comprehensive plan can serve as the municipality's annexation plan required by under Section 31-12-105(1)(e), C.R.S., so long as the comprehensive plan (and related documents) contain all of the information required of an annexation plan; and

WHEREAS, the Town Council finds and determines that the Town of Breckenridge Comprehensive Plan and the Town's Land Use Guidelines together contain all of the information required of an annexation plan.

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

Section 1. The Town of Breckenridge Comprehensive Plan, with the accompanying maps, plats, charts, and descriptive matter, as amended, together with the Town of Breckenridge Land Use Guidelines, are adopted as the Town's Annexation Plan pursuant to Section 31-12-105(1)(e), C.R.S.

Section 2. This resolution is effective upon adoption.

RESOLUTION APPROVED AND ADOPTED THIS 12TH DAY OF MARCH, 2024.

TOWN OF BRECKENRIDGE

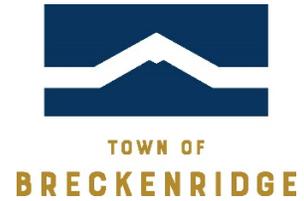
By: \_\_\_\_\_/s/\_\_\_\_\_  
Kelly Owens, Mayor Pro Tem

ATTEST:

\_\_\_\_\_/s/\_\_\_\_\_  
Helen Cospolich  
Town Clerk

APPROVED IN FORM

\_\_\_\_\_/s/\_\_\_\_\_  
Town Attorney                      date



# Memo

To: Breckenridge Town Council Members  
From: Mark Truckey, Director of Community Development  
Date: March 6, 2024  
Subject: Planning Commission Decisions of the March 5, 2024 Meeting

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***DECISIONS FROM THE PLANNING COMMISSION MEETING, March 5, 2024:***

**CLASS A APPLICATIONS:** None.

**CLASS B APPLICATIONS:** None.

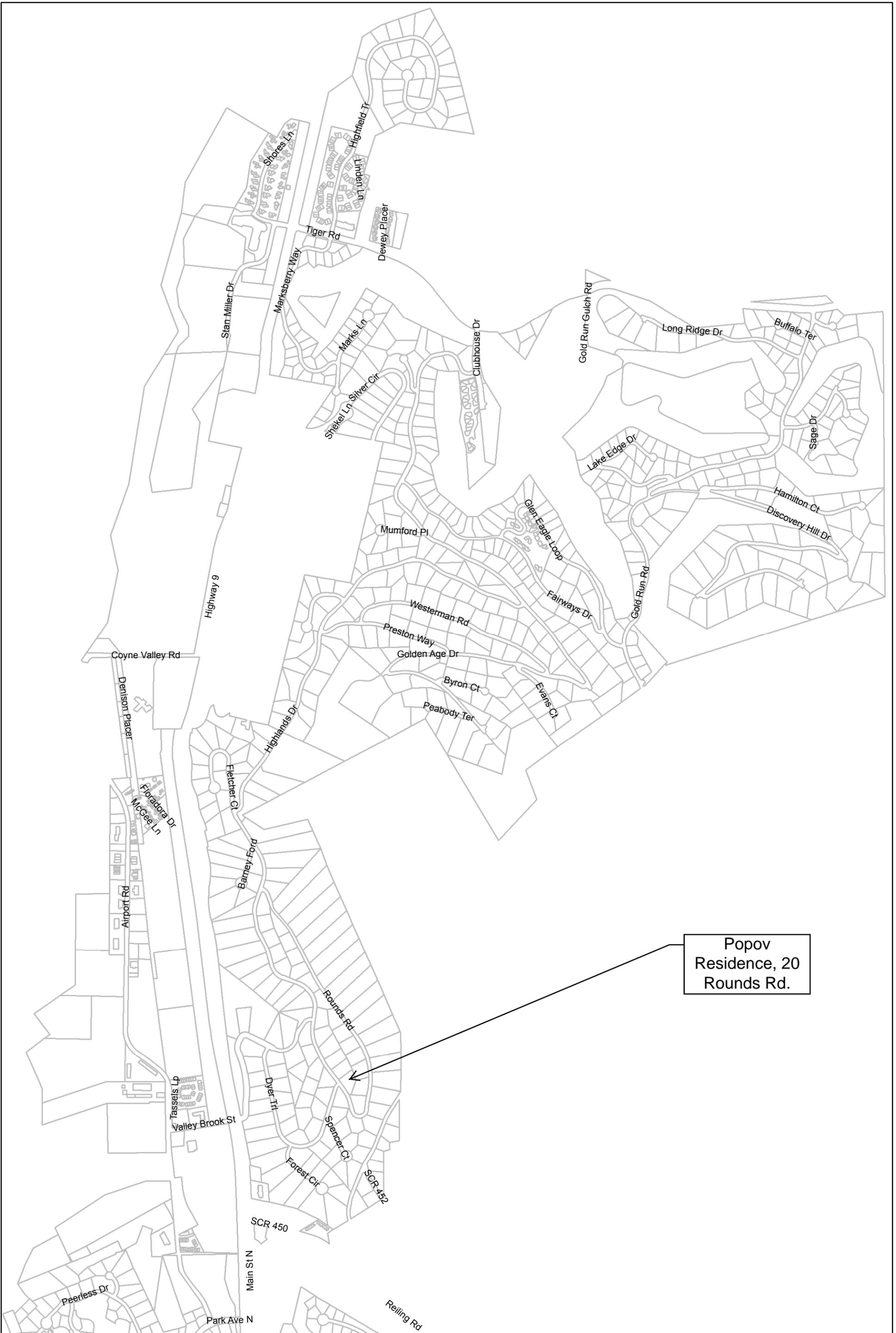
**CLASS C APPLICATIONS:**

1. Popov Residence, 20 Rounds Rd., PL-2024-0024

A proposal to construct a new single family residence with 5,999 sq. ft. of density, 6 bedrooms, 5.5 bathrooms, and a 3+ vehicle garage. *Called up and approved.*

**TOWN PROJECT HEARINGS:** None.

**OTHER:** None.



Popov  
Residence, 20  
Rounds Rd.

## PLANNING COMMISSION MEETING

The meeting was called to order at 5:32 pm by Chair Leas.

### ROLL CALL

Mike Giller	Mark Leas	Allen Frechter	Susan Propper
Ethan Guerra	Steve Gerard	Elaine Gort	

### APPROVAL OF MINUTES

With the below changes, February 20, 2024 Planning Commission Minutes were approved.

Page 8 of packet, page 6 of minutes, Steve Gerard stated, “as well as historic buildings we’re” change to “were” not “we’re.”

### APPROVAL OF AGENDA

With no changes, the March 5, 2024 Planning Commission Agenda was approved.

### PUBLIC COMMENT ON HISTORIC PRESERVATION ISSUES:

- No comment

### CONSENT CALENDAR:

1. Popov Residence (EM), 20 Rounds Rd., PL-2024-0024

Mr. Gerard made a motion to call up the Popov Residence project, seconded by Ms. Propper. The motion passed 7 to 0 and the project was called up.

Ms. Muncy gave a short presentation of the project, a proposed new single-family residence of 5,999 sq. ft. with 6 bedrooms, and 5.5 bathrooms.

Mr. Frechter: No questions.

Ms. Gort: No questions.

Mr. Gerard: I do not favor these long driveways when there is an alternative of a shorter option. This one seemed unique for the reason I will refer to as “cutting” if you look at the middle third of the driveway they are proposing to cut into 6-8 ft of hillside where there might be less site-disturbance if there were a retaining wall. It looks like a 6 ft section of the hillside will be scraped. If you review 7R, retaining walls in Section C. retaining walls are preferred rather than a cut. (Ms. Muncy: Some of this is necessary to get the correct grade for the driveway. The property owner is trying to minimize the use of retaining walls and the site disturbance of the driveway.) I am troubled by wanting to shave off the hillside instead of a retaining wall, which will contribute to runoff. 7R Section A. says minimize site disturbance rather than cutting they should have some retaining walls. Is there a policy or anything we can look at that says they should not have to put in a retaining wall? (Mr. Kulick: There is nothing that says they must have retaining walls; they are only recommended. This applicant has been on the other end of the circumstance where this Commission has assigned negative points to retaining walls when they are excessive for the driveway. I think the cut and fill language in the code was intended to prevent benching sites for the home itself not necessarily for a driveway installation. The majority of impacts from this project are from the subdivision itself and the homesite. We have assigned a fairly substantial negative four points to this project recognizing that the driveway could be built differently but that they have minimized the use of retaining walls.)

- Mr. Leas: You are saying that the negative points assigned considers the site disturbance from the driveway? (Mr. Kulick: Yes, and Staff would not recommend additional points for this project.)
- Mr. Gerard: I would not recommend additional points. I would recommend a retaining wall. I think this is cost Engineering and they would rather have the hillside erode than build a retaining wall.
- Mr. Giller: This driveway is cut on both sides, 2-3 ft and 3-4 ft on either side. It is a large trench to stay at the 8 percent grade. This is an odd design and will look less appealing when it is completed. (Ms. Muncy: This design is trying to solve several issues: they are forced to enter the site on the right side because of the steep slope, they are attempting to minimize the curvature and length of the driveway, and avoid previously planted trees.)
- Mr. Guerra: I concur with the staff that it does meet the 7R requirements. I try to reduce rock walls if possible, they stand out visibility wise and they are problematic when trying to plow. I would prefer to see this driveway with grading set back, visually, rather than a large rock retaining wall. I think we are over the top on erosion control measures. On big projects it can be an issue but less so on smaller projects like this home. I understand that others have problems with the long driveways but I think the visual impact here is less than a rock wall.
- Mr. Giller: Can Ms. Muncy speak to the revegetation requirements? (Ms. Muncy: They are proposing some additional landscaping above the driveway and the area will be required to be revegetated with a new layer of topsoil and native seed mix.) There is a 2:1 slope max.
- Ms. Propper: No comments.
- Mr. Frechter: I went and looked at the site. There is a steep berm from the road so I think the driveway will have little visibility from the roadway. It will be a bobsled run coming down the driveway in the winter but that is the owner's issue.
- Ms. Gort: No comments.
- Mr. Gerard: We have a conflict here with the code saying we should recommend retaining walls rather than cuts.
- Mr. Guerra: No additional comments.
- Mr. Giller: No additional comments.
- Ms. Propper: No additional comments.
- Mr. Leas: No additional comments.

Andy Stabile, Allen Guerra Architecture, Applicant: This is a very tricky site. We had several versions of the driveway to show the HOA and this was the version that was most agreeable. We had to contour that way to make the slope. Both sides of the argument were discussed here; we tried to minimize the amount of retaining wall from a visual perspective so we did end up grading back a bit. If it is the Commission's request we could add some additional retaining walls to reduce the overall site disturbance. This was less of a money-savings decision and more of a visual decision.

The project was opened for public comment. There were no comments and the comment period was closed.

Ms. Gort made a motion to approve the project with the attached findings and conditions, seconded by Mr. Gerard. The motion passed 7 to 0 and the project was approved.

#### **OTHER MATTERS:**

1. Town Council Summary

**ADJOURNMENT:**

The meeting was adjourned at 6:13 pm.

---

Mark Leas, 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.*

### March 2024

<b>Tuesday, March 12th, 2024</b>	<b>Council Chambers</b>	<b>First Meeting of the Month</b>	<b>3:00 pm / 7:00 pm</b>
<b>Tuesday, March 26th, 2024</b>	<b>Council Chambers</b>	<b>Second Meeting of the Month</b>	<b>3:00 pm / 7:00 pm</b>

### April 2024

<b>Tuesday, April 9th, 2024</b>	<b>Council Chambers</b>	<b>First Meeting of the Month</b>	<b>3:00 pm / 7:00 pm</b>
<b>Tuesday, April 23rd, 2024</b>	<b>Council Chambers</b>	<b>Second Meeting of the Month</b>	<b>3:00 pm / 7:00 pm</b>

### Other Meetings

March 12th, 2024	Board of County Commissioners Meeting Workforce Housing Committee	9:00am / 1:30pm 10:30am
March 13th, 2024	Breckenridge History Summit Combined Housing Authority	Noon 2:00pm
March 14th, 2024	Upper Blue Sanitation District	5:30pm
March 15th, 2024	Breck Create	3:30pm
March 18th, 2024	Social Equity Advisory Commission Summit Combined Housing Authority	7:30am 1:00pm
March 19th, 2024	Board of County Commissioners Meeting Liquor & Marijuana Licensing Authority Planning Commission Meeting	9:00am 9:00am 5:30pm
March 21st, 2024	QQ - Quality and Quantity - Water District	10:00am
March 25th, 2024	Open Space & Trails Meeting	5:30pm
March 26th, 2024	Board of County Commissioners Meeting	9:00am / 1:30pm
March 28th, 2024	Summit Stage Transit Board Meeting Breckenridge Tourism Office Board Meeting NWCCOG Board Meeting RW&B Board Meeting Breck Create	8:15am 8:30am 10:00am 3:00pm 3:30pm
April 2nd, 2024	Board of County Commissioners Meeting Planning Commission Meeting	9:00am 5:30pm
April 3rd, 2024	Breckenridge Events Committee Childcare Advisory Committee	9:00am 3:00pm
April 11th, 2024	Upper Blue Sanitation District	5:30pm
April 9th, 2024	Board of County Commissioners Meeting Workforce Housing Committee	9:00am / 1:30pm 10:30am



## 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.*

April 10th, 2024	Breckenridge History	Noon
April 15th, 2024	Social Equity Advisory Commission	7:30am
	Summit Combined Housing Authority	9:00am
April 16th, 2024	Board of County Commissioners Meeting	9:00am
	Liquor & Marijuana Licensing Authority	9:00am
	Planning Commission Meeting	5:30pm
April 22nd, 2024	Open Space & Trails Meeting	5:30pm
April 23rd, 2024	Board of County Commissioners Meeting	9:00am / 1:30pm
April 25th, 2024	Summit Stage Transit Board Meeting	8:15am
	Breckenridge Tourism Office Board Meeting	8:30am
	NWCCOG Board Meeting	10:00am
	RW&B Board Meeting	3:00pm
May 7th, 2024	Board of County Commissioners Meeting	9:00am
	Planning Commission Meeting	5:30pm
May 1st, 2024	Police Advisory Committee	7:30am
	Breckenridge Events Committee	9:00am
	Childcare Advisory Committee	10:00am
	I-70 Coalition	11:30am
June 13th, 2024	QQ - Quality and Quantity - Water District	10:00am
June 27th, 2024	Breck Create	3:30pm
TBD	Tourism Overlay District Advisory Committee Meeting	10:30am
	Transit Advisory Council Meeting	8:00am
	Water Task Force Meeting	9:30am