



Town Council Special Meeting
Tuesday, February 11, 2025, 2:00 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. Join the live broadcast available by computer or phone: <https://us02web.zoom.us/j/82918442465> (Telephone: 1-719-359-4580; Webinar ID: 829 1844 2465).

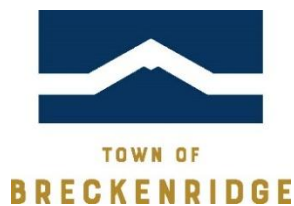
If you will need special assistance in order to attend any of the Town's public meetings, please notify the Town Clerk's Office at (970) 547-3127, at least 72 hours in advance of the meeting.

I. CALL TO ORDER, ROLL CALL

II. NEW BUSINESS

- A. APPROVAL OF SETTLEMENT AGREEMENT WITH P8E, SFL PARCEL 6 LLC

III. ADJOURN



Memo

To: Town Council
From: Keely Ambrose, Town Attorney
Shannon Haynes, Town Manager
Date: February 7, 2025 (for February 11, 2025)
Subject: Approval of Settlement Agreement with P8E SFL PARCEL 6 LLC

Town Council Goals (Check all that apply)

- | | |
|--|--|
| ☐ More Boots & Bikes, Less Cars | ☐ Leading Environmental Stewardship |
| ☐ Deliver a Balanced Year-Round Economy | ☐ Hometown Feel & Authentic Character |
| ☒ Organizational Need | |

Summary

As Council is aware, there has been an ongoing dispute over the Town's calculation and application of a subdivision development fee for open space to a parcel of real property known as Parcel 6, one of the 7 parcels subject to a recently entered development agreement between the Town and Gondola Lots, LLC. Gondola Lots LLC has assigned a partial interest in the Development Agreement to P8E SFL Parcel 6 LLC, which is the contract purchaser of Lot 6.

Staff has diligently pursued a resolution to the dispute and is ready to present the settlement agreement for Council's approval. The settlement represents a carefully negotiated resolution that provides for certainty in the delivery of public benefits related to the development agreement and the subdivision, preserves important elements of the Town Code, and avoids costly litigation.

Staff Recommendation

Staff recommends that the Council approve the Settlement Agreement as presented.

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“**Agreement**”) made and entered into this 7th day of February, 2025 (“**Effective Date**”), by and between the TOWN OF BRECKENRIDGE, COLORADO, a Colorado home rule municipality (the “**Town**”), and P8E SFL PARCEL 6 LLC, a Colorado limited liability company (“**Applicant**”). The Town and Applicant may collectively be referred to as the “**Parties**” and each individually as a “**Party**.”

WHEREAS, the Town is a Colorado home rule municipality in Summit County, Colorado; and

WHEREAS, pursuant to that certain Partial Assignment of Development Agreement dated April 29, 2024, Applicant is the assignee of Gondola Properties, LLC, a Colorado limited liability company, as to certain rights under that certain Development Agreement by and between the Town of Breckenridge, a Colorado municipal corporation; Assignor, BGV Entrada Partners, a Colorado limited liability company, and Vail Summit Resorts, Inc., a Colorado corporation, and LC Breckenridge Holdco, LLC, a Delaware limited liability company, dated May 23, 2024 and recorded in the real property records of the Summit County Clerk and Recorder (the “**Records**”) at Reception No. 1331127 (the “**Development Agreement**”); and

WHEREAS, Applicant is the contract purchaser of certain real property in the Town described in Exhibit A (“**Parcel 6**”); and

WHEREAS, on June 12, 2024 the Town approved Subdivision Class A Permit PL-2024-0115 (the “**Subdivision**”) to establish Parcel 6 as a legal, conveyable parcel, as depicted in the subdivision plat attached hereto as Exhibit B (the “**Plat**”); and

WHEREAS, the Town has the authority to enact and has enacted a provision in the Breckenridge Town Code (“**Code**”), Section 9-2-4-13, regarding the dedication of open space in connection with subdivision, which provision includes the calculation of a fee-in-lieu (“**Fee-in-Lieu**”) in the event the property being subdivided does not have land appropriate for open space; and

WHEREAS, certain disputes arose between Applicant and the Town concerning the interpretation of the Development Agreement and the application and calculation of the Fee-in-Lieu owed in connection with the recording of the Plat under Section 9-2-4-13 of the Code and Condition 9 of the Subdivision; and

WHEREAS, on October 7, 2024, Applicant delivered a Notice of Default under the Development Agreement pertaining the application of the Fee-in-Lieu to Parcel 6 (“**Notice of Default**”); and

WHEREAS, Applicant has not yet paid the Fee-in-Lieu; and

WHEREAS, the Town has not yet signed the Plat or recorded the Plat in the Records; and

WHEREAS, the Development Agreement contemplates that Parcel 6 will ultimately be developed with fourteen (14) residential homesites; and

WHEREAS, the Parties desire to resolve their disputes concerning the Fee-in-Lieu and all claims raised in the Notice of Default (the “**Fee-in-Lieu Matters**”), and provide for payment of the Fee-in-Lieu and the signing and recording of the Plat in the Records, and to clarify the timing of a third-party payment under the Development (without in any way modifying the terms of the Development Agreement); and

WHEREAS, the Town acknowledges that it has the authority to enter into this Agreement and that the provisions set forth herein do not constitute an improper delegation or the Town’s legislative, quasi-judicial, or administrative authority; and

WHEREAS, without admitting any liability by any party to any other party, the Parties now desire to settle, compromise, and resolve the Fee-in-Lieu Matters on the terms set forth below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Recitals. The foregoing recitals are incorporated by this reference.
2. Signing and Recording of Plat. The Town shall sign the Plat and record the Plat in the Records on the Effective Date.
3. Payment of Fee-in-Lieu. In complete satisfaction of its obligations in connection with the Subdivision under Section 9-2-4-13 of the Code and Condition 9 of the Subdivision, which satisfaction shall be effective as of Applicant’s establishment of the Letter of Credit as set forth in Section 4, Applicant shall pay to the Town, and the Town shall accept, a cash contribution in the total amount of two million dollars (\$2,000,000.00), disbursed as follows:
 - a. For the first two lots located within or upon Parcel 6, upon the closed sale of each lot, Applicant shall pay the Town 1.25% of the sale price as reflected on the deed (the payment for each lot being an “**Increment Payment**.”)
 - b. For the next 5 lots located within or upon Parcel 6, upon the closed sale of each lot, Applicant shall pay the Town 2.5% of the sale price as reflected on the deed (also to be known as an “**Increment Payment**.”)
 - c. Applicant shall pay the remainder of the two million dollars (\$2,000,000.00) left after the deduction of each Increment Payment upon the earlier to occur of January 1, 2028; or
 - d. the closed sale of the eighth residential homesite located on or within Parcel 6.
4. Establishment of Letter of Credit. In order to secure Applicant’s performance of Section 3 above, within thirty (30) days of the Effective Date, Applicant shall open an irrevocable

Letter of Credit at an accredited bank in the amount of two million dollars (\$2,000,000), with each of the following terms and conditions formally incorporated (“**Letter of Credit**”):

- a. An expiration date no earlier than January 31, 2028;
- b. The Town as beneficiary;
- c. The full amount of the Letter of Credit to be released to Town upon Town’s submittal of an affidavit signed by the Town manager averring that the Town has not received the Fee-in-Lieu payment required under this Agreement; provided that Town shall deduct any Increment Payments received pursuant to subsection 3 above and the remainder of the Letter of Credit will be released to the Town.

5. Payment to the Sol Center. The Parties acknowledge that Section 2.6 of the Development Agreement requires a two-million-dollar (\$2,000,000.00) payment to the Family and Intercultural Resource Center (“**FIRC**”) for use toward the Sol Center within a “reasonable time” following FIRC’s written request. Without altering any obligation set forth in the Development Agreement, the Parties desire to further clarify that timing as follows: Applicant shall pay or shall cause to be paid to FIRC, in cash, the two million dollars (\$2,000,000.00) owed under Section 2.6 of the Development Agreement no later than Friday, February 14, 2025.

6. Mutual Release. Upon the recording of the Plat in the Records, as set forth in Section 2 hereof, each Party shall be deemed to have waived and released any and all demands, liabilities, damages, claims, counterclaims, and causes of action, of whatever type or nature, it may have against the other Party in connection with the Fee-in-Lieu Matters.

7. Covenant not to Sue. The Parties agree and covenant they will not sue or assert any federal or state cause of action, at law or in equity, against the other Party in connection with the Fee-in-Lieu Matters.

8. No Admissions. This Agreement is made as a compromise to avoid the time and expense of protracted litigation and to resolve the Fee-in-Lieu Matters. None of the Parties to this Agreement admits liability of any sort, nor have any of the Parties made any agreements or promises to do or omit to do anything or act except as set forth herein.

9. Voluntary Agreement. The Parties acknowledge that they have read this Agreement, have had the assistance of legal counsel, and understand all of its terms, and that this Agreement is executed voluntarily, without duress, and with full knowledge of its legal significance.

10. Authority. The individuals executing this Agreement on behalf of the Parties represent and warrant that they have the authority to execute this document and bind the Party for which they are signing.

11. Counterparts. This Agreement may be signed in counterparts and, when each party has signed one counterpart hereof, it shall be a binding and enforceable agreement.

12. Complete Agreement. This Agreement, with all Exhibits, contains the entire, integrated agreement between the Parties regarding the subject matter discussed herein and supersedes all prior agreements and representations, written or verbal, except that in no event shall this Agreement be construed as altering the terms of the Development Agreement. This Agreement may not be modified in any manner, nor may any rights provided for herein be waived, except by an instrument in writing signed by the party to be charged in such modification or waiver.

13. Severability. In the event that any provision of this Agreement is determined to be void, illegal, or unenforceable, all remaining provisions shall remain and in effect and shall be construed to effectuate, as nearly as possible, the original intentions of the Parties based on the entire Agreement, including the invalidated provision.

14. Binding Upon Successors. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns and shall run with the land.

15. Colorado Law; Venue; Remedies. This Agreement shall be construed in accordance with and governed by the laws of the State of Colorado. In the event of litigation to enforce this Agreement, the exclusive venue shall be in Summit County District Court, and each party will bear their own costs and attorney fees.

16. Town Council Approval. Under Colorado law, this Agreement is subject to approval by the Town Council of the Town of Breckenridge at a public meeting. This Agreement is not effective until the Town Council has so approved. Applicant may execute this Agreement prior to the meeting at which the Council approves it; however the Mayor and Town Clerk will not execute this Agreement until such approval occurs.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date of the last signature set forth below:

TOWN OF BRECKENRIDGE, COLORADO,

By: _____
Kelly Owens, Mayor

Attest: _____
Helen Cospolich, Town Clerk

P8E SFL PARCEL 6 LLC, a Colorado limited liability company

By: _____
Graham Frank, Manager

EXHIBIT A

Parcel 6

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 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 COURSES AND DISTANCES:

N64°53'28"E, 1314.46 FEET, THENCE DEPARTING SAID SOUTH LINE THE FOLLOWING THIRTEEN (13) COURSES AND DISTANCES:

1. N63°34'17"E, 140.75 FEET
2. N67°07'17"E, 148.56 FEET
3. N56°49'36"E, 25.65 FEET
4. S20°17'11"E, 65.49 FEET
5. 186.20 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 200.00 FEET, A CENTRAL ANGLE OF 53°20'36" AND A CHORD WHICH BEARS S06°22'08"W, 179.55 FEET.
6. S33°04'47"W, 45.55 FEET
7. S16°15'16"E, 343.70 FEET
8. S04°00'43"E, 86.48 FEET
9. S36°33'26"E, 132.68 FEET
10. S78°51'48"W, 172.09 FEET
11. N78°33'09"W, 673.06 FEET
12. N12°32'17"W, 219.71 FEET
13. N39°22'25"E, 750.61 FEET TO A POINT ON THE EAST LINE OF SAID TRACT C.

THENCE ALONG SAID EAST LINE S26°36'04"E, 255.59 FEET BACK TO THE POINT OF BEGINNING.

DESCRIBED PARCEL CONTAINING 581,717.53 SQUARE FEET OR 13.3544 ACRES OF LAND, MORE OR LESS.

EXHIBIT B

Plat