

ORDINANCE NO. 16

Series 2016

AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH
CHRISTIE HEIGHTS PARTNERSHIP, a California general partnership
(Extended Vested Property Rights – Cucumber Creek Estates)

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

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

A. Christie Heights Partnership, a California general partnership ("**Developer**"), is the owner of the real property described as follows:

Tract B, Christie Heights Subdivision Filing No. 2, according to the plat thereof recorded January 31, 2001 under Reception No. 644114 of the records of the Clerk and Recorder of Summit County, Colorado ("**Tract B**")

B. Pursuant to Development Permit #2016-040 ("**Master Plan Permit**") the Town has approved a Master Plan for Cucumber Creek Estates as a site specific development plan for Tract B.

C. Pursuant to the Development Agreement for Extended Vesting dated February 28, 2012 and recorded October 1, 2012 under Reception No. 1004271 of the records of the Clerk and Recorder of Summit County, Colorado ("**Original Agreement**"), the vested property rights period for Development Permit #1998-3-3 for a subdivision plan for Tract B ("**Subdivision Permit**") will expire on January 9, 2021. As used in this ordinance, the term "vested property rights period" shall have the meaning, purpose, and effect afforded such term in the Breckenridge Development Code, including, but not limited to, Section 9-1-17-11 and Section 9-1-19-39A, "Policy 39 (Absolute) Master Plan."

D. Paragraph K of Section 9-1-17-11 of the Breckenridge Development Code authorizes the Town Council to enter into an agreement with a land owner to provide for a vested property rights period of more than three (3) years.

E. As the result of: the approval of the Master Plan Permit; the Developer's need to develop a new subdivision plan for Tract B that is as sensitive as possible to the Town's adjacent Cucumber Gulch open space; the continued desire of the Developer to delay development; and the continued desire of the Town to have its lease of Tract B for trails continue for as long as possible, adding five (5) additional years to the current vested property rights period is reasonable.

F. No additional commitments, as encouraged to be made in connection with an application for a development agreement in accordance with Section 9-9-4 of the Breckenridge Town Code, are required by the Town because the extension of the vested property rights will encourage the Developer to delay development and, therefore, the lease of Tract B to the Town for trails is more likely to extend for a longer period of time.

G. The procedures to be used to review and approve a development agreement are provided in Chapter 9 of Title 9 of the Breckenridge Town Code.

H. The Town Council has received a completed application and all required submittals for a development agreement.

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

J. The Town Council has reviewed the proposed Development Agreement.

K. The Town Council had a preliminary discussion of application and the proposed Development Agreement as required by Section 9-9-10(A) of the Breckenridge Town Code.

L. The Town Council determined that the Developer's request for a development agreement need not be referred to the Breckenridge Planning Commission for its review and

recommendation.

M. The Town Council finds and determines that the approval of the Development Agreement is warranted in light of all relevant circumstances.

N. The requirements of Chapter 9 of Title 9 of the Breckenridge Town Code have substantially been met in connection with the approval of the Development Agreement and the adoption of this ordinance.

Section 2. Approval of Development Agreement. The Development Agreement between the Town and Christie Heights Partnership, a California general partnership, is approved, and the Town Manager is authorized, empowered, and directed to execute such Agreement for and on behalf of the Town of Breckenridge.

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

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

Section 5. Authority. The Town Council finds, determines, and declares that it has the power to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.

Section 6. Effective Date. 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 24th day of May, 2016.

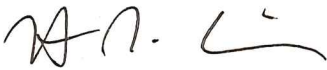
This ordinance was published in full on the Town of Breckenridge website on May 25, May 26, May 27, May 28 and May 29, 2016.

A public hearing on this ordinance was held on June 14, 2016.

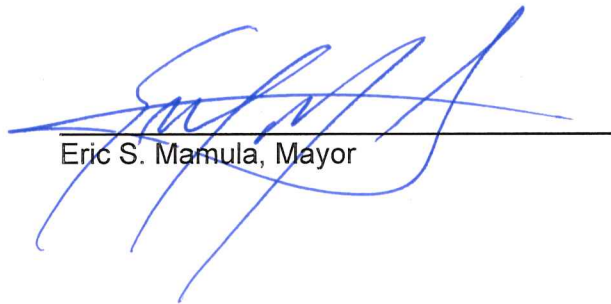
READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED IN FULL ON THE TOWN'S WEBSITE this 14th day of June, 2016. A copy of this Ordinance is available for inspection in the office of the Town Clerk.

ATTEST:

TOWN OF BRECKENRIDGE

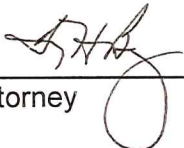


Helen Cospolich, Town Clerk



Eric S. Mamula, Mayor

APPROVED IN FORM



Town Attorney

6/14/16
Date

This Ordinance was published on the Town of Breckenridge website on June 15, June 16, June 17, June 18 and June 19, 2016. This ordinance shall become effective on July 19, 2016.



1119421

Kathleen Neel - Summit County Recorder

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

DEVELOPMENT AGREEMENT
FOR
EXTENDED VESTING
OF
DEVELOPMENT PERMIT #2016-040
FOR
CUCUMBER CREEK ESTATES

This Development Agreement for Extended Vesting of Development Permit #2016-040 for Cucumber Creek Estates ("Agreement") is made as of the 19th day of July, 2016 between the TOWN OF BRECKENRIDGE, a municipal corporation of the State of Colorado, (the "Town") and CHRISTIE HEIGHTS PARTNERSHIP, a California general partnership (the "Developer").

Recitals

A. Developer is the owner of the real property described as follows:

TRACT B, CHRISTIE HEIGHTS SUBDIVISION FILING NO. 2, ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 31, 2001 UNDER RECEPTION NO. 644114, SUMMIT COUNTY, COLORADO

("Tract B").

B. Pursuant to Development Permit #2016-040 ("Master Plan Permit"), the Town has approved a Master Plan for Cucumber Creek Estates as a site specific development plan for Tract B.

C. Pursuant to the Development Agreement for Extended Vesting dated February 28, 2012 and recorded October 1, 2012 under Reception No. 1004271, Summit County, Colorado ("Original Agreement"), the vested property rights period for Development Permit # 1998-3-3 for a subdivision plan for Tract B ("Subdivision Permit") will expire on January 9, 2021. As used in this Agreement, the term "vested property rights period" shall have the meaning, purpose and effect afforded such term in the Breckenridge Development Code, including, but not limited to, Section 9-1-17-11 and Policy 39 of Section 9-1-19.

D. Paragraph K of Section 9-1-17-11 of the Breckenridge Development Code authorizes the Town Council to enter into an agreement with a land owner to provide for a vested property rights period of more than three (3) years.

E. As the result of: the approval of the Master Plan Permit; Developer's need to develop a new subdivision plan for Tract B that is as sensitive as possible to the Town's adjacent Cucumber Gulch open space; the continued desire of the Developer to delay development; and the continued desire of the Town to have its lease of Tract B for trails continue for as long as possible, adding five (5) additional years to the current vested property rights period is reasonable.

F. No additional commitments, as encouraged to be made in connection with an application for a development agreement in accordance with Section 9-9-4 of the Breckenridge Town Code, are required by the Town because the extension of the vested property rights will encourage the Developer to delay development and, therefore, the lease of Tract B to the Town for trails is more likely to extend for a longer period of time.

G. The Town Council has received a completed application and all required submittals for a development agreement, had a preliminary discussion 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 Subsection 9-9-10:C of the Breckenridge Town Code, has approved this Agreement by non-emergency ordinance.

Agreement

1. The Town acknowledges and agrees that it has determined that circumstances warrant an expansion of the vested rights to include the Master Plan Permit and an extension of the vested property rights period by five (5) additional years because of Developer's need to develop a new subdivision plan for Tract B, the continued desire of the Developer to delay development, and the continued desire of the Town to have its lease of Tract B for trails continue for as long as possible.

2. The Town acknowledges and agrees that the Master Plan Permit constitutes a site specific development plan and that it is hereby designated as a site specific development plan.

3. Pursuant to its authority under paragraph K of Section 9-1-17-11 of the Breckenridge Development Code, the Town Council, on behalf of the Town, agrees that the vested property rights period provided for in the Original Permit shall be expanded to include the Master Plan Permit, including any amendments thereto, and shall be extended to January 9, 2026.

4. Except as provided in Section 24-68-105, C.R.S. and except as specifically provided for herein or in the Permit, the execution of this Agreement shall not preclude the current or future application of municipal, state or federal ordinances, laws, rules or regulations to Tract B (collectively, "laws"), including, but not limited to, building, fire, plumbing, engineering, electrical and mechanical codes, and the Town's Development Code, Subdivision Standards and other land use laws, as the same may be in effect from time to time throughout the term of this Agreement. Except to the extent the Town otherwise specifically agrees, any development of Tract B which is the subject of this Agreement shall be done in compliance with the then-current laws of the Town.

5. Nothing in this 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: (i) Development Code, (ii) Master Plan, (iii) Land Use Guidelines and (iv) Subdivision Standards.

6. This Agreement shall run with title to the land and be binding upon and inure to the benefit of Developer, its successors and assigns.

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

8. The Town shall not be responsible for and the Developer shall have no remedy against the Town if development of Tract B is prevented or delayed for reasons beyond the control of the Town.

9. Actual development of Tract B 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.

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

11. The Developer agrees 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 Developer; any subcontractor of Developer, or any officer, employee, representative, or agent of Developer or of any subcontractor of Developer, or which arise out of any worker's compensation claim of any employee of Developer, or of any employee of any subcontractor of Developer; except to the extent such liability, claim or demand arises through the negligence or intentional act or omission of Town, its officers, employees, or agents. Developer 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 the Developer. Developer also agrees to bear all other costs and expenses related thereto, including court costs and attorney's fees.

12. 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.

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

14. No waiver of any provision of this Agreement shall be deemed or constitute a waiver of any other provision, nor shall it be deemed to constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both Town and Developer; nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The Town's failure to exercise any right under this Agreement shall not constitute the approval of any wrongful act by the Developer or the acceptance of any improvements.

15. This Agreement shall be recorded in the office of the Clerk and Recorder of Summit County, Colorado.

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

17. Personal jurisdiction and venue for any civil action commenced by either party to this Agreement shall be deemed to be proper only if such action is commenced in District Court of Summit County, Colorado. The Developer expressly waives its right to bring such action in or to remove such action to any other court, whether state or federal.

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

If To The Town:

Rick Holman, Town Manager
Town of Breckenridge
P.O. Box 168
Breckenridge, CO 80424

With A Copy (which shall not constitute notice to the Town) to:

Timothy H. Berry, Esq.
Town Attorney
P.O. Box 2
Leadville, CO 80461

If To The Developer:

Timothy J. Casey
Christie Heights Partnership
P.O. Box 2340
Breckenridge, CO 80424

With A Copy (which shall not constitute notice) to:

Stephen C. West, Esq.
West Brown Huntley PC
P.O. Box 588
Breckenridge, CO 80424

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

19. This Agreement constitutes the entire agreement and understanding between the parties relating to the subject matter of this Agreement and supersedes any prior agreement or understanding relating to such subject matter.

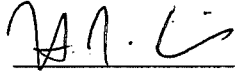
20. This Agreement shall be interpreted in accordance with the laws of the State of Colorado.

[Separate Signature Pages Follow]



TOWN OF BRECKENRIDGE,
a municipal corporation
of the State of Colorado

Attest:



Helen Cospolich, Town Clerk

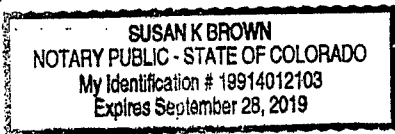
By: 

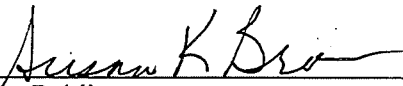
Rick Holman, Town Manager

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

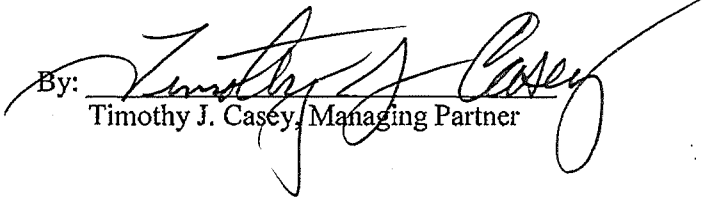
The foregoing was acknowledged before me this 18th day of August, 2016 by Rick Holman as Town Manager and Helen Cospolich, of the Town of Breckenridge, a Colorado municipal corporation of the State of Colorado.

Witness my hand and official seal,
My commission expires: 9/28/19




Notary Public

CHRISTIE HEIGHTS PARTNERSHIP,
a California general partnership


By: 
Timothy J. Casey, Managing Partner

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

1. The foregoing was acknowledged before me this 18TH day of AUGUST, 2016 by Timothy J. Casey, Managing Partner of Christie Heights Partnership, a California general partnership.

Witness my hand and official seal.
My commission expires: 8/15/20

PATRICIA A. BUTLER
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 19924009288
MY COMMISSION EXPIRES 08/15/20


Notary Public

LAW OFFICES
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STEPHEN C. WEST
FELICE F. HUNTLEY
ROBERT N. GREGORY

D. WAYNE BROWN
Retired

JILL D. BLOCK
Paralegal

April 27, 2016

VIA EMAIL (chrisk@townofbreckenridge.com)

Chris Kulick
Department of Community Development
Town of Breckenridge
150 Ski Hill Road
Breckenridge, CO 80424

Re: Development Agreement for Expansion of Extending Vesting to
Master Plan of Cucumber Creek Estates and for Extension of the Vesting

Dear Chris:

In connection with Application No. PL-2016-040 for approval of a master plan ("Master Plan") for Tract B, Christie Heights Subdivision Filing No. 2 ("Tract B"), Christie Heights Partnership is requesting that the current extended vesting for the subdivision plan for Tract B, as provided for in the Development Agreement for Extended Vesting dated February 28, 2012 and recorded October 1, 2012 under Reception No. 1004271 ("Agreement"), be expanded to include the Master Plan after it is approved and also be extended for an additional 5 years to January 9, 2026.

The reasons for additional extended vesting include allowing time for the preparation and approval of a new subdivision plan for Tract B that is as sensitive as possible to its proximity to Cucumber Gulch, the current willingness of the Partnership to continue to delay development, and the benefits to the Town of continuing to have available the trails within Tract B for as long as possible by relieving pressure on the Partnership to develop.

The purpose of this letter is to serve as the required application for a development agreement to authorize the application of the current extended vesting to the Master Plan and the extension of the vesting period provided for in the Agreement from January 9, 2021 to January 9, 2026.

The Partnership is asking that the commitments provided for in Section 9-9-4 of the Town Code in connection with an application for a development agreement be waived in recognition of

Chris Kulick
Department of Community Development
Town of Breckenridge
April 27, 2016
Page 2

the anticipated extended period of use of Tract B under the lease between the Partnership and the Town.

Based on the foregoing, the Partnership respectfully requests that this letter be considered as the formal application for consideration of the proposed Development Agreement attached. Because the proposed Development Agreement is filed in connection with the pending Application a separate application fee has not been included with this letter. The remainder of the submittal requirements of Section 9-9-9 of the Town Code are complied with as follows: Subsection A will be satisfied by the delivery to the Town Attorney of a commitment for title insurance showing ownership of Tract B to be in the name of the Partnership; Subsections B and C are not applicable because the Partnership is the owner of Tract B; Subsections D and E are satisfied by this letter and the attached Development Agreement; Subsection F is satisfied with the submittal of the proposed Development Agreement itself.

If any additional information or documentation is needed, please do not hesitate to let me know. Otherwise, I hope that this matter can be scheduled for the Town Council's work session on May 24, 2016 and presumably then for a first reading of an ordinance to approve the Development Agreement that evening.

We look forward to working with Tim Berry, the Town Council and you on the approval of the Development Agreement. Thanks.

Respectfully,



Stephen C. West
Attorney and Agent for
Christie Heights Partnership

c: Timothy J. Berry, Esq. (w/enc. via email)
Timothy J. Casey (w/enc. via email)

1070.40