

ORDINANCE NO. 23

Series 2021

AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH
ZACHARY DAVID HIMMELMAN AND TARYN ELIZABETH POWER
(63 Bridge Street)

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. Zachary David Himmelman and Taryn Elizabeth Power (collectively, the "**Owner**") own the following described real property in the Town of Breckenridge, Summit County, Colorado:

LOT 29A, BLOCK 5, RESUBDIVISION PLAT OF LOT 29, BLOCK 5,
WELLINGTON 2, FILING NO. 1, RECORDED MAY 25, 2007 AT RECEPTION
NO. 856372 OF THE RECORDS OF THE CLERK AND RECORDER OF
SUMMIT COUNTY, COLORADO;

also known as 63 Bridge Street, Breckenridge, Colorado 80424

("Property").

B. The Owner proposes to construct a 484 square foot bonus room addition above the existing garage located on the Property. Such work is referred to in this ordinance as the "**Project**." The improvements to be constructed pursuant to the Project are referred to as the "**Unit**." The Unit is considered a "Bonus Room" under the Wellington Neighborhood Master Plan.

C. A duplex residence is currently located on the Property. Owner owns one of the duplex units as described above.

D. There is not sufficient density remaining on the Property to allow for the construction of the Project. Therefore, a development agreement is necessary in order to authorize the Project.

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

F. The Town Council has received a completed application and all required submittals for a development agreement; had a preliminary discussion of such application and submittals; and determined that it should commence proceedings for the approval of the Development Agreement.

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

H. As the commitment proposed by the Owner in connection with the Development Agreement, the Owner will execute and deliver to the Town a Restrictive Covenant and Agreement ("**Restrictive Covenant**"). The Restrictive Covenant shall provide that the Unit shall be rented to and occupied only by a Qualified Occupant for a monthly rental (including utilities) that does not exceed eighty percent (80%) of the Area Median Income (AMI) for Breckenridge, Colorado (or if not available, for the Area Median Income for Summit County, Colorado) most recently available immediately prior to such Unit being rented. Such proposed commitment is found and determined by the Town Council to be adequate.

I. The approval of the proposed Development Agreement is warranted in light of all relevant circumstances.

J. 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. The requirements of such Chapter have substantially been met or waived in connection with the approval of the proposed Development Agreement and the adoption of this ordinance.

Section 2. Approval of Development Agreement. The Development Agreement between the Town, Zachary David Himmelman and Taryn Elizabeth Power (**Exhibit "A"** hereto), 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 shall 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 shall be published by the Town Clerk one time in a newspaper of general circulation in the Town within fourteen days after the adoption of this ordinance. Such notice shall satisfy the requirement of Section 24-68-103, C.R.S.

Section 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 13th day of July, 2021.

This ordinance was published in full on the Town of Breckenridge website on July 16, July 17, July 18, July 19 and July 20, 2021.

A public hearing on this ordinance was held on July 27, 2021.

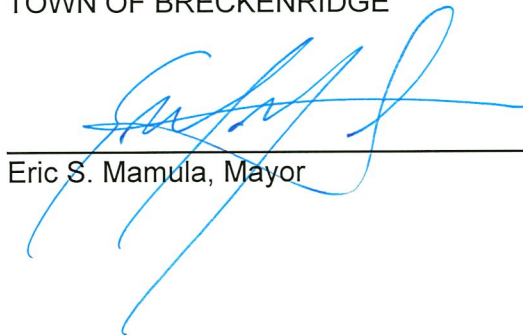
READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED IN FULL ON THE
TOWN'S WEBSITE this 27th day of July, 2021. A copy of this Ordinance is available for
inspection in the office of the Town Clerk.

ATTEST:

TOWN OF BRECKENRIDGE



Helen Cospolich, CMC, Town Clerk



Eric S. Mamula, Mayor

APPROVED IN FORM



Town Attorney

7/27/21

Date

This Ordinance was published on the Town of Breckenridge website on July 29, July 30, July 31, August 1 and August 2, 2021. This ordinance shall become effective on September 1, 2021.



1276591

Kathleen Neel - Summit County Recorder

DEVELOPMENT AGREEMENT

This Development Agreement (“**Agreement**”) is made as of the 1st day of September, 2021 (“**Effective Date**”) between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation (the “**Town**”), and ZACHARY DAVID HIMMELMAN and TARYN ELIZABETH POWER (collectively, the “**Owner**”). The Town and the Owner are sometimes collectively referred to in this Agreement as the “**Parties**,” and individually by name or as a “**Party**.”

Recitals

A. The Owner owns the following described real property in the Town of Breckenridge, Summit County, Colorado:

LOT 29A, BLOCK 5, RESUBDIVISION PLAT OF LOT 29, BLOCK 5, WELLINGTON 2, FILING NO, 1, RECORDED MAY 25, 2007 AT RECEPTION NO. 856372 OF THE RECORDS OF THE CLERK AND RECORDER OF SUMMIT COUNTY, COLORADO;

also known as 63 Bridge Street, Breckenridge, Colorado 80424 (“**Property**”).

B. The Owner proposes to construct a 484 square feet bonus room addition above the existing garage located on the Property. Such work is referred to in this Agreement as the “**Project**.” The improvements to be constructed pursuant to the Project are referred to as the “**Unit**.” The Unit is considered a “Bonus Room” under the Wellington Neighborhood Master Plan.

C. A duplex residence is currently located on the Property. Owner owns one of the duplex units as described above.

D. There is not sufficient density remaining on the Property to allow for the construction of the Project. Therefore, a development agreement is necessary in order to authorize the Project.

E. Pursuant to Chapter 9 of Title 9 the Breckenridge Town Code the Town Council has the authority to enter into a development agreement.

F. The commitment proposed by the Owner in connection with this Agreement is set forth hereafter and is found and determined by the Town Council to be adequate.

G. The Town Council has received a completed application and all required submittals for a development agreement; had a preliminary discussion of such application and submittals; determined that it should commence proceedings for the approval of this Agreement; and, in

accordance with the procedures set forth in Section 9-9-10(C) of the Breckenridge Town Code, has approved this Agreement by non-emergency ordinance.

Agreement

1. Subject to the provisions of this Agreement, the Town's Planning Commission¹ is hereby authorized to review and approve the Owner's Development Permit Application for the Project ("**Development Permit Application**"), subject to compliance with all other applicable development policies of the Town.

2. So long as the Development Permit Application is not materially amended prior to the Planning Commission's final decision, the following provisions of the following policies of the Town's Development Code² shall not be applied to the Development Permit Application:

- A. Section 9-1-19-2A, "Policy 2 (Absolute) Land Use Guidelines";
- B. Section 9-1-19-4R, "Policy 3 (Relative) Density/Intensity;" and
- C. Section 9-1-19-4R, "Policy 4 (Relative) Mass.

3. In consideration of the Owner's commitments as described in Section 5 of this Agreement, the Town agrees to provide, at no cost to the Owner, the 180 square feet of density required for the Project. For avoidance of doubt, no negative points shall be assessed against the Development Permit Application under either Section 9-1-19-3R, "Policy 3 (Relative) Density/Intensity" or Section 9-1-19-4R, "Policy 4 (Relative) Mass," of the Breckenridge Town Code with respect to the 180 square feet of density to be provided by the Town for the Project.

4. Except as specifically provided in Section 2, above, all other requirements of the Development Code shall be applied to the Development Permit Application in accordance with the Planning Commission's normal process for evaluating an application for a development permit.

5. As the commitment encouraged to be made in connection with a Development Permit Application for a development agreement pursuant to Section 9-9-4 of the Breckenridge Town Code, prior to the issuance of a certificate of occupancy for the Project the Owner shall execute and deliver to the Town a Restrictive Covenant and Agreement in substantially the form that is marked Exhibit "A", attached hereto, and incorporated herein by reference ("**Restrictive Covenant**"). The Restrictive Covenant shall provide that the Unit shall be rented to and occupied only by a Qualified Occupant for a monthly rental (including utilities) that does not exceed eighty percent (80%) of the Area Median Income (AMI) for Breckenridge, Colorado (or if not

¹ The term "Planning Commission" as used in this Agreement includes the Town Council of the Town of Breckenridge, if the decision of the Planning Commission on the Development Permit Application is "called up" by the Town Council pursuant to Section 9-1-18-5 of the Development Code. In the event of a call up, the Town Council shall make the final decision on the Development Permit Application.

² Chapter 1 of Title 9 of the Breckenridge Town Code

available, for the Area Median Income for Summit County, Colorado) most recently available immediately prior to such Unit being rented.

6. The Project shall not be considered to be an Accessory Dwelling Unit under the Development Code.

7. An additional parking space is not required for the Project under the Town's Off-Street Parking Ordinance³ or the Wellington Neighborhood Master Plan that is applicable to the Property.

8. The Town agrees to waive the following fees in connection with the Project (i) the application fee for this Agreement; (ii) the application fee for the Development Permit; (iii) all building permit (and inspection) fees; and (iv) the Plant Investment Fee (PIF).

9. Notwithstanding anything to the contrary contained in the Amended and Restated Phase II Wellington Neighborhood Employee Housing Restrictive Covenant and Agreement dated March 25, 2014, and recorded May 23, 2014, at Reception No. 1055483 of the records of the Clerk and Recorder of Summit County, Colorado, as amended, the Town agrees that when the Owner sells the Property an amount equal to fifty percent (50%) of the cost of constructing the Project, or Fifty Thousand Dollars (\$50,000.00), whichever amount is less, may be added to the maximum amount for which the Property may be sold. No interest shall be allowed on such amount. The Owner agrees to submit verification acceptable to the Town of the actual amount spent to construct the Project.

10. The term of this Agreement shall commence on the Effective Date and shall end, subject to earlier termination in the event of a breach of this Agreement, eighteen (18) months from the Effective Date unless prior to such date the Development Permit Application has finally been approved by the Town, and the development permit for the work on the Property has been executed and signed by the Owner.

11. Except as provided in Section 24-68-105, C.R.S. and except as specifically provided for herein, the execution of this Agreement shall not preclude the current or future Development Permit Application of municipal, state, or federal ordinances, laws, rules, or regulations to the Property (collectively, "laws"), including, but not limited to, building, fire, plumbing, engineering, electrical, and mechanical codes, and the Town's Development Code, Subdivision Standards⁴, 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 the Property shall be done in compliance with the then-current laws of the Town.

12. 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)

³ Chapter 3 of Title 9 of the Breckenridge Town Code

⁴ Chapter 2 of Title 9 of the Breckenridge Town Code

Development Code, (ii) Comprehensive Plan, (iii) Land Use Guidelines, and (iv) Subdivision Standards.

13. This Agreement shall run with the title to the Property and be binding upon the Owner and Owner's successors and assigns.

14. Prior to any action against The Town for breach of this Agreement, the Owner shall give the Town a sixty (60) day written notice of any claim 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. The Town shall not be responsible for, and the Owner shall have any remedy against the Town if the Project is prevented or delayed for reasons beyond the control of the Town.

16. The Owner not shall commence work on its Project until Owner obtains such other and further Town permits and approvals as may be required from time to time by applicable Town ordinances.

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

18. The Owner 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 the Owner; any subcontractor of the Owner, or any officer, employee, representative, or agent of the Owner or of any subcontractor of the Owner, or which arise out of any worker's compensation claim of any employee of the Owner, or of any employee of any subcontractor of the Owner; 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. The Owner agrees to investigate, handle, respond to, and provide defense for and defend against, any such liability, claims, or demands at the sole expense of the Owner. The Owner also agrees to bear all other costs and expenses related thereto, including court costs and attorney's fees.

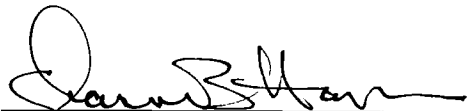
19. If any provision of this Agreement shall be invalid, illegal, or unenforceable, it shall not affect or impair the validity, legality, or enforceability of the remaining provisions of the Agreement.

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

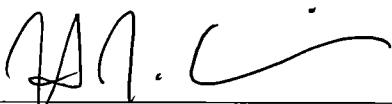
26. This Agreement shall be interpreted in accordance with the laws of the State of Colorado without regard to principles of conflicts of laws.

27. 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.

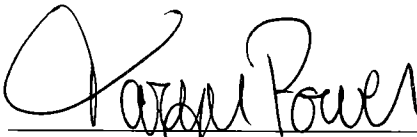
TOWN OF BRECKENRIDGE, a Colorado municipal corporation

By: 
~~Rick G. Holman, Town Manager~~
Shannon B. Haynes, Acting Town Manager

ATTEST:


Helen Cospolich, CMC, Town Clerk


Zachary David Himmelman


Taryn Elizabeth Power

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing was acknowledged before me this 18th day of November, 2021 by ~~Rick G. Holman~~, as the ~~Town Manager~~, and Helen Cospolich, CMC, as the Town Clerk, of the Town of Breckenridge, a Colorado municipal corporation.

Shannon B. Haynes Acting Town Manager
Witness my hand and official seal.

My commission expires: June 2, 2025

DONIELLE JOY YORK
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20214021448
MY COMMISSION EXPIRES JUNE 2, 2025

Donnell Youll
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing was acknowledged before me this 16th day of November, 2021, by Zachary David Himmelman and Taryn Elizabeth Power.

Witness my hand and official seal.

My commission expires: 4/15/2023

TARA M. OLSON
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID #19974020130
MY COMMISSION EXPIRES 04/05/2023

Taram Olson
Notary Public

EXHIBIT "A"

RESTRICTIVE COVENANT AND AGREEMENT
(Wellington Phase 2 Bonus Room)

THIS RESTRICTIVE COVENANT AND AGREEMENT ("Restrictive Covenant") dated _____, is between ZACHARY DAVID HIMMELMAN and TARYN ELIZABETH POWER (collectively, the "Owner") and the TOWN OF BRECKENRIDGE, a Colorado municipal corporation ("Town").

Recitals

- A. Owner owns the real property situate described in Section 1 of this Restrictive Covenant.
- B. Owner requested the Town to issue a development permit for the development of a 484 square foot Bonus Room above the existing garage located on the Property.
- C. Town issued to Owner Development Permit No. _____ ("Development Permit").
- D. As a condition of the Development Agreement, the Owner agreed to rent the Bonus Room to a Qualified Occupant at an affordable rent, and to accept other specific amendments to the Amended and Restated Phase II Wellington Neighborhood Employee Housing Restrictive Covenant and Agreement dated March 25, 2014 and recorded in Summit County, Colorado on May 23, 2014.
- E. It was a condition of the Development Permit that the Owner create a valid and enforceable covenant running with the land to insure the Bonus Room is rented to a qualified occupant at an affordable rent. The Amended and Restated Phase II Wellington Neighborhood Employee Housing Restrictive Covenant and Agreement dated March 25, 2014 and recorded on May 23, 2015 at reception # 1055483 remains in full force and effect except as specifically amended in the Restrictive Covenant.
- E. Owner declares and covenants that the regulatory and restrictive covenants contained in this Restrictive Covenant are covenants running with the land and are binding upon the Owner and all subsequent owners of the real property described in Section 1 unless this Restrictive Covenant is released and terminated by the Town.

NOW, THEREFORE, in consideration of the issuance of the Development Permit, and other good and valuable consideration, the sufficiency of which is hereby acknowledged by Owner, the Owner and the Town agree as follows:

1. Property Subject To Covenant. This Restrictive Covenant applies to the following real property located in Summit County, Colorado:

Lot 29A, BLOCK 5, RESUBDIVISION PLAT OF LOT 29, BLOCK 5, WELLINGTON 2, FILING NO. 1 RECORDED MAY 25, 2007 AT RECEPTION NO. 856372 OF THE RECORDS OF THE CLERK AND RECORDED OF SUMMIT COUNTY, COLORADO; ALSO KNOWN AS 63 BRIDGE STREET, BRECKENRIDGE, COLORADO 80424

2. Definitions. As used in this Restrictive Covenant:

"Bonus Room" means the approximately 483 square foot bonus room to be constructed above the existing garage located on the Property pursuant to the Development Agreement.

"Original Covenant" means the Amended and Restated Phase II Wellington Neighborhood Employee Housing Restrictive Covenant and Agreement dated March 25, 2014 and recorded on May 23, 2014 in Summit County at Reception #1055482

"Property" means the real property described in Section 1 of this Restrictive Covenant.

"Qualified Occupant" means a person 18 years of age or older who, during the entire period of his or her occupancy of the Bonus Room, earns his or her living working for a business located in and serving in Summit County, Colorado at least 30 hours per week, together with such person's spouse and minor children, if any.

"Short Term Rental" means any rental, lease, or occupancy of the Bonus Room for a term of less than three (3) consecutive months.

3. Occupancy Restriction. Except as provided in Section 6, the Bonus Room shall be rented to and used and occupied only by a Qualified Occupant. The Bonus Room may not be left vacant for a period of thirty (30) or more consecutive days (as reasonably determined by the Town). The Town, may, in its sole and absolute discretion, and in addition to any other remedies, require that the Bonus Room be offered for rent. Short term rental of the Bonus Room is prohibited.

4. Rent Restriction. The Bonus Room will be rented for a monthly rental amount (including utilities) that does not exceed eighty percent (80%) of the Area Median Income (AMI) for Breckenridge, Colorado (or if not available, for the Area Median Income for Summit County, Colorado) most recently available immediately prior to the Bonus Room being rented. The maximum allowable monthly rent will be based on the Summit County Housing Authority Area Median Income/Rent calculation for a studio unit.

5. Resale Restrictions. The Resale Restrictions outlined in the Section 5 of the Original Covenant are amended to allow the Owner to increase the Maximum Allowed Sale Price by an amount equal to 50% of the costs incurred to construct the Bonus Room, but not to exceed

\$50,000. In calculating the amount only the Owner's actual out-of-pocket costs and expenses for labor and material shall be eligible for inclusion.

6. Exceptions. It is not a violation of this Restrictive Covenant if the Bonus Room is occupied or used by:

- (i) A person age fifty five (55) years or older who works at paid employment in Summit County, Colorado for a business located in and serving Summit County at least fifteen (15) hours per week on a year-round basis during the entire period of his or her ownership or occupancy of the Bonus Room, together with such person's spouse and minor children;
- (ii) A person age sixty two (62) years or older who is no longer a Qualified Occupant because he or she no longer works the required number of hours as described in the Original Covenant if such person occupied the Bonus Room as a Qualified Occupant for a minimum of seven (7) consecutive years prior to ceasing to be a Qualified Occupant
- (iii) a person otherwise authorized to occupy the Bonus Room pursuant to this Restrictive Covenant who becomes disabled after commencing lawful occupancy of the Bonus Room such that he or she cannot work the required number of hours each week required by this Restrictive Covenant; provided, that such person is permitted to occupy the Bonus only for a maximum period of 1 year following the commencement of such person's disability unless a longer period of occupancy is authorized by the Town.

7. Maximum Resale Price. In addition to the resale restrictions established for the Property in Section 5A of the Original Covenant which remains in full force and effect the Owner shall be responsible for ensuring that at the Transfer of his or her Property, the Bonus Room is clean, the appliances are in working order, and that there are no health or safety violations. Prior to the sale of the Property the Town is authorized to take necessary actions and incur necessary expenses for bringing the Bonus Room into saleable condition. Such actions and expenses include, but are not limited to, cleaning the Bonus Room and making necessary repairs to or replacement of appliances and/ fixtures, such as windows, doors, cabinets, countertops, carpets, flooring and lighting fixtures, and/or correcting any health or safety violations. Expenses incurred by the Town to bring the Bonus Room into a saleable condition shall be itemized and documented by the Town and deducted from Owner's proceeds at the transfer of the Property.

8. Records; Inspection; Monitoring.

A. The Town may examine, inspect and copy the Owner's records concerning the use and occupancy of the Bonus Room upon reasonable advance notice. The Town may enter the Bonus Room to determine compliance with this Restrictive Covenant, but the Town will first attempt to secure the permission of any occupant of the Bonus Room before making entry. The Town's rights under this subsection may also be exercised by the Town's authorized agent.

B. The Owner will submit to the Town any information, document or certificate regarding the occupancy and use of the Bonus Room which the Town reasonably deems to be necessary to confirm the Owner's compliance with the provisions of this Restrictive Covenant.

9. Default; Notice. If the Owner fails to comply with this Restrictive Covenant, the Town may inform the Owner by written notice of such failure and provide the Owner a period of time to correct such failure. If the failure is not corrected to the satisfaction of the Town within the specified time, which will be at least 30 days after the date the Town mails the written notice to the Owner, or within such further time as the Town determines is necessary to correct the violation (but not to exceed any limitation set by applicable law), the Town may without further notice declare a default under this Restrictive Covenant effective on the date of such declaration of default. The Town may then proceed to enforce this Restrictive Covenant.

10. Equitable Relief. The Town may specifically enforce this Restrictive Covenant. The Town may obtain from any court of competent jurisdiction a temporary restraining order, preliminary injunction and permanent injunction to obtain specific performance. Any equitable relief provided for in this Section may be sought singly or in combination with such legal remedies as the Town may be entitled to, either pursuant to the provisions of this Restrictive Covenant or under the laws of the State of Colorado.

11. Liquidated Damages. The Owner acknowledges that the unavailability of adequate employee housing within the Town of Breckenridge requires the expenditure of additional Town funds to provide required governmental services and thereby results in an economic loss to the Town. The Town and the Owner further recognize the delays, expense and unique difficulties involved in proving in a legal proceeding the actual loss suffered by the Town in such circumstance. Accordingly, instead of requiring such proof, Town and Owner agree that Owner shall pay to Town the sum of \$100 per day for each day in which the Bonus Room is not used in strict compliance with the provisions of Section 3 or Section 4 of this Restrictive Covenant. Such amount is agreed to be a reasonable estimate of the actual damages which the Town will suffer in the event of a violation of Section 3 or Section 4 of this Restrictive Covenant. The provisions of this Section 11 do not apply to any violation of this Restrictive Covenant other than a violation of Section 3 or Section 4. The liquidated damages shall commence as of the date on which the Bonus Room is first used in violation of Section 3 or Section 4 of this Restrictive Covenant, and not on the date when the Town learns of such violation or on the date when the Town gives notice of default as provided in Section 9. Further, the total amount of liquidated damages payable to the Town under this Section may not exceed the then-current value of the Property. The liquidated damages provided for in this Section 11 may be collected personally from the Owner by the Town, either singly or in combination with an action for equitable enforcement of this Restrictive Covenant as provided in Section 10 of this Restrictive Covenant. Town may, in its discretion, waive the liquidated damages as provided herein and recover any actual damages suffered by Town as a result of a breach of this Restrictive Agreement.

12. Town Authority To Enforce. The restrictions, covenants and limitations created by this Restrictive Covenant are only for the benefit of the Town. Only the Town may enforce this Restrictive Covenant.

13. Enforcement in Municipal Court. In addition to such other methods of enforcement as may be available to Town, the Town may enforce this Restrictive Covenant by bringing an appropriate action in the Breckenridge Municipal Court or other court of competent jurisdiction.

14. Waiver; Termination; Modification Of Covenant. The restrictions, covenants and limitations of this Restrictive Covenant may be waived, terminated or modified only with the written consent of both the Town and the person who owns the Property on the date of the waiver, termination or modification. No waiver, modification, or termination will be effective until the proper instrument is executed and recorded in the office of the Clerk and Recorder of Summit County, Colorado. The Town may also terminate this instrument by recording a release in recordable form without the signature of the owner of the Property. For convenience, such instrument may run to "the owner or owners and parties interested" in the Property.

15. Statute of Limitations. Owner hereby waives the benefit of and agrees not to assert in any action brought by the Town to enforce this Restrictive Covenant any applicable statute of limitation, including, but not limited to, the provisions of §38-41-119, C.R.S. If any statute of limitation may lawfully be asserted by Owner in connection with an action brought by the Town to enforce the terms of this Restrictive Covenant, each and every day during which any violation of this Restrictive Covenant occurs is to be deemed to be a separate breach of this Restrictive Covenant for the purposes of determining the commencement of the applicable statute of limitations period.

16. No Conflicting Agreement. Owner warrants to the Town that the execution and delivery of this Restrictive Covenant does not violate any existing agreement concerning the Property. Owner will not execute any agreement concerning the Property with provisions contradictory to, or in opposition to, the provisions of this Restrictive Covenant. In any event, the provisions of this Restrictive Covenant are paramount and controlling, and supersede any conflicting provision of any other agreement concerning the Property.

17. Attorney's Fees. If any action is brought in a court of law by either party concerning the enforcement, interpretation or construction of this Restrictive Covenant, the prevailing party, either at trial or upon appeal, is entitled to reasonable attorney's fees, as well as costs, including expert witness's fees, incurred in the prosecution or defense of such action.

18. Notices. All notices provided for or required under this Restrictive Covenant must be in writing, signed by the party giving the notice, and will be deemed properly given when actually received or 2 days after mailed, postage prepaid, certified, return receipt requested, addressed to the parties hereto at their addresses appearing on the signature pages. Each party, by written notice to the other party, may specify any other address for the receipt of such instruments or communications. A notice to any owner of the Property subsequent to the Owner may be sent to the address to which tax notices are sent according to the records of the Summit County Treasurer.

19. Recording And Filing; Covenant Running With The Land.

A. This Restrictive Covenant is to be recorded in the real property records of Summit County, Colorado.

B. The Owner agrees that all of the requirements of the State of Colorado which must be satisfied for the provisions of this Restrictive Covenant to constitute a restrictive covenant running with the land are deemed to be fully satisfied. All requirements of privity of estate are intended to be satisfied, or in the alternative, an equitable servitude is created to insure that these restrictions run with the land. During the term of this Restrictive Covenant, each and every contract, deed or other instrument executed relating to the Property will expressly provide that such contract, deed or instrument is subject to this Restrictive Covenant. However, the covenants contained in this Restrictive Covenant survive and will continue to be effective as to successors and assigns of all or any portion of the Property regardless of whether such contract, deed or other instrument provides that it is subject to this Restrictive Covenant.

20. Applicable Law. This Restrictive Covenant is to be interpreted in accordance with the laws of the State of Colorado without regard to its choice of law rules.

21. Vesting and Term. The Town's rights under this Restrictive Covenant vest upon the execution of this Restrictive Covenant. This Restrictive Covenant will remain in full force and effect in perpetuity unless it is terminated in accordance with Section 14.

22. Section Headings. Section headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Restrictive Covenant.

23. Terminology. Wherever applicable, the pronouns in this Restrictive Covenant apply to all genders. Wherever applicable within this Agreement, the singular includes the plural, and the plural includes the singular.

24. Severability. If any provision of this Restrictive Covenant is finally determined to be invalid, illegal or unenforceable, such determination does not affect the remaining provisions of this Restrictive Covenant.

25. Entire Agreement. This Restrictive Covenant constitutes the entire agreement and understanding between the parties relating to the subject matter of this Restrictive Covenant, and supersedes any prior agreement or understanding relating thereto.

26. Binding Effect. This Restrictive Covenant is binding upon, and inures to the benefit of parties, and their respective heirs, successors, assigns, legal representatives, and personal representatives, and all subsequent owners of the Property, or any interest therein.

Zachary David Himmelman

Taryn Elizabeth Power

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By: _____
Rick G. Holman, Town Manager

ATTEST:

Helen Cospolich, CMC, Town
Clerk

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing was acknowledged before me this _____ day of _____,
2021 by Rick G. Holman, as the Town Manager, and Helen Cospolich, CMC, as the Town Clerk,
of the Town of Breckenridge, a Colorado municipal corporation.

Witness my hand and official seal.

My commission expires: _____

Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing was acknowledged before me this _____ day of _____, 2021, by Zachary David Himmelman and Taryn Elizabeth Power.

Witness my hand and official seal.

My commission expires: _____

Notary Public