

RESOLUTION NO. 32

SERIES 1998

A RESOLUTION APPROVING A REVOCABLE LICENSE AGREEMENT WITH VAIL SUMMIT RESORTS, INC. d/b/a BRECKENRIDGE SKI RESORT, INC.

WHEREAS, the Town of Breckenridge is willing to enter into a Revocable License Agreement with Vail Summit Resorts, Inc. d/b/a Breckenridge Ski Resort, Inc., a copy of which is marked Exhibit "A", attached hereto and incorporated herein by reference ("Agreement"); and

WHEREAS, the Town Council of the Town of Breckenridge has reviewed the proposed Agreement, and finds and determines that it would be in the best interests of the Town and its residents for the Town to enter into the proposed Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO, as follows:


Section 1. The proposed Revocable License Agreement between the Town and Vail Summit Resorts, Inc. d/b/a Breckenridge Ski Resort, Inc. (Exhibit "A" hereto) is approved; and the Town Manager and Town Clerk are hereby authorized, empowered and directed to execute such Agreement for and on behalf of the Town of Breckenridge.

Section 2. This Resolution shall become effective upon its adoption.

RESOLUTION APPROVED AND ADOPTED THIS 22ND DAY OF SEPTEMBER, 1998.

TOWN OF BRECKENRIDGE

ATTEST:


Mary Jean Loufek, CMC, Town Clerk

By 
Stephen C. West, Mayor

APPROVED IN FORM


Town Attorney

9/22/98
date

REVOCABLE LICENSE AGREEMENT

THIS REVOCABLE LICENSE AGREEMENT ("Agreement") is made and entered into at Breckenridge, Colorado this _____ day of _____, 1998, by and between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation ("Town") and VAIL SUMMIT RESORTS, INC. d/b/a BRECKENRIDGE SKI RESORT, INC., a Colorado corporation ("Licensee").

RECITALS

A. Town is the owner of the following real property located within the Town of Breckenridge, County of Summit and State of Colorado, to wit:

The F & D Placer, U.S.M.S. No. 16786

("Town's Property").

B. Licensee desires to obtain a revocable license across a portion of Town's Property for use as a ski run for Licensee's ski area ("Breckenridge Ski Area").

C. The Town has agreed to grant Licensee a personal privilege to use a portion of the Town's Property, all in accordance with, and subject to, the terms, conditions and limitations of this Agreement.

NOW, THEREFORE, it is agreed as follows:

1. **Grant Of License.** The Town hereby grants to the Licensee the non-exclusive personal privilege and permission to enter upon the following portion of the Town's Property, to wit:

See the attached Exhibit "A" which is incorporated herein by reference

("Licensed Premises")

for the limited purpose(s) set forth in the Paragraph of this Agreement entitled "Limited Scope Of License." The license herein granted shall be subject to all existing easements, if any, located on the Licensed Premises.

2. **Term.** This Agreement and the license granted to Licensee hereunder shall commence as of the date of this Agreement and shall continue from time to time until terminated in accordance with the terms of this Agreement; provided, however, that Licensee's use of the Licensed Premises shall commence each year on the date that the Breckenridge Ski Area opens for the ski season and shall end on the date that the Breckenridge Ski Area closes for the ski season.

3. **Consideration.** The consideration to be paid by the Licensee to the Town for the privilege granted by this Agreement shall be \$100.00, receipt of which is hereby acknowledged by the Town. Licensee shall further reimburse Town for Town's reasonable attorney's fees incurred in the preparation of this Agreement.

4. **No Interest In Land.** Licensee understands, acknowledges and agrees that this Agreement does not create an interest or estate in Licensee's favor of the Town's Property, including the Licensed Premises. The Town retains legal possession of the full boundaries of Town's Property, including the Licensed Premises, and this Agreement merely grants to the Licensee the personal privilege to use the Licensed Premises in strict accordance with the terms of this Agreement.

This Agreement shall in no event be construed to create an assignment coupled with an interest in favor of the Licensee. Licensee shall expend any time, money or labor at Licensee's own risk and peril.

5. **Limited Scope Of License.** The license granted to the Licensee is limited in scope to use for the construction and operation of a ski run (including snowmaking improvements if authorized by subsequent Development Permit issued by Town) in connection with Licensee's operation of the Breckenridge Ski Area. Licensee shall not have the right to alter or change the Licensee's use of the Licensed Premises.

6. **Use Of Licensed Premises By Others.** Licensee may permit Licensee's employees, business invitees (customers), and contractors to use the Licensed Premises. The Town may permit use of the Licensed Premises by the general public so long as such use does not unreasonably interfere with Licensee's use of the License Premises for the purposes set forth in Paragraph 5 of this Agreement.

7. **Transferability Of License.** The license granted to the Licensee by this Agreement may be transferred to subsequent owner(s) of the Breckenridge Ski Area; provided, however, that such subsequent owner(s) shall be required to assume in writing all of Licensee's obligations hereunder (in a form acceptable to Town) and such subsequent owner(s) shall acquire nothing more than the personal privilege herein granted to Licensee. Further, once this Agreement has been properly assumed the rights of any subsequent owner(s) shall be subject to termination in accordance with the Paragraph of this Agreement entitled "Revocation."

8. **Insurance.** Licensee shall obtain and maintain at all times during the term hereof, at Licensee's sole cost, a policy or policies of comprehensive general liability insurance with limits of coverage of not less than \$150,000 for injuries, damages or losses sustained by any one person in any single occurrence, and not less than \$600,000 for injuries, damages, or losses to two or more persons in a single occurrence. The Town shall be named as an additional insured on all such policies and Licensee shall furnish the Town with certificates evidencing such policy or policies prior to the execution of this Agreement. Notwithstanding anything contained herein to the contrary,

9. **Compliance With Law.** In connection with Licensee's use of the Licensed Premises Licensee shall at all times comply with the duties and requirements imposed upon a ski area operator by the Ski Safety Act of 1979, Article 44 of Title 33, C.R.S., as from time to time amended throughout the term of this Agreement.

10. **Default.** In the event either party materially defaults in the performance of any of the material covenants or agreements to be kept, done or performed by such party under this Agreement, the non-defaulting party shall notify the defaulting party in writing of the nature of such default. Within five (5) days following receipt of such notice the defaulting party shall correct such default; or, in the event of a default not capable of being corrected within five (5) days, the defaulting party shall commence correcting the default within five (5) days of receipt of notification thereof and thereafter correct the default with due diligence. If the defaulting party fails to correct the default as provided above, the non-defaulting party, without further notice, shall have the right to declare that this Agreement is terminated effective upon such date as the non-defaulting party shall designate. The rights and remedies provided for herein may be exercised singly or in combination.

11. **Revocation; Termination.** This Agreement and the license herein granted to Licensee is fully revocable and terminable by the Town in accordance with the following terms and conditions:

a. **Transfer Of Property.** This Agreement and the license herein granted to Licensee shall automatically terminate, without notice to Licensee, upon the transfer of the Breckenridge Ski Area unless the subsequent owner(s) of the Breckenridge Ski Area assumes all of Licensee's obligations hereunder as provided in the Paragraph of this Agreement entitled "Transferability Of License."

b. **Termination Upon Notice To Licensee.** This Agreement and the license herein granted to Licensee shall terminate 90 days after written notification of revocation is provided by the Town to Licensee at Licensee's address. The 90 day notice provision shall conclusively be deemed to be reasonable. Such notice may be given at any time by the Town when, in the Town's sole discretion, it is determined that termination is necessary for the public safety or welfare or is necessary to the Town's right to unrestricted use of Town's Property or the Licensed Premises.

c. **Termination Upon Notice To Town.** This Agreement and the license herein granted to Licensee shall terminate 90 days after written notification of revocation is provided by the Licensee to Town at Town's address. The 90 day notice provision shall conclusively be deemed to be reasonable. Such notice may be given at any time by the Licensee when, in the Licensee's sole discretion, it is determined by Licensee that it no longer desires to use the Licensed Premises for the limited purpose(s) set forth in this Agreement.

d. **Termination Upon Default.** This Agreement and the license herein granted to Licensee may be terminated by either party upon the material default of the other party in the performance of the material covenants or agreements of this Agreement as provided in the Paragraph of this Agreement entitled "Default."

e. **Recording Of Notice Of Town Termination.** Upon termination and revocation of this Agreement the Town may cause to be recorded with the Clerk and Recorder of Summit County, Colorado a written Notice of Termination.

f. **No Compensation To Licensee.** In the event of termination and revocation of this Agreement, Licensee shall not be entitled to receive a refund of any portion of the consideration paid for this Agreement, nor shall Licensee be compensated for any improvements which must be removed from the Licensed Premises, but Licensee shall be given reasonable opportunity and time to remove such improvements.

g. **Restoration of Licensed Premises.** Upon termination of this License, Licensee shall restore the Licensed Premises to the same condition as existed prior to the commencement of Licensee's use of the Licensed Premises pursuant to this Agreement, normal wear and tear and casualty loss excepted.

12. **Construction And Maintenance Of Improvements.** During the term of this Agreement Licensee shall, at Licensee's sole expense, maintain Licensee's improvements which are constructed on the Licensed Premises in good and safe condition. Further, the plans and specifications for such improvements shall be reviewed and approved by the Town Engineer prior to construction, such approval not to be unreasonably withheld or delayed.

13. **Licensee's Waiver Of Claims Against Town.** As a part of the consideration received by Town for this Agreement, Licensee hereby waives any and all claims which Licensee may or might hereafter have or acquire against Town for loss or damage to the Licensee's improvements located or to be located in or on the Licensed Premises, except to the extent caused by the negligence of the Town, its employees and agents.

14. **Mechanic's Liens.** Licensee shall not allow any mechanics' or similar liens to be filed against the Licensed Premises arising from any work done by Licensee in or on the Licensed Premises, and Licensee shall indemnify and hold Town harmless with respect thereto, including any attorney's fees incurred by Town in connection with any such lien or claim. If any mechanics' or other liens shall be created or filed against the Licensed Premises by reason or labor performed or materials furnished for the Licensee, the Licensee shall within ten (10) days thereafter, at the Licensee's own cost and expense, cause such lien or liens to be satisfied and discharged of record, together with any Notices of Intention that may have been filed. Failure to do so shall constitute a default under this Agreement.

15. **Indemnification.** The Licensee agrees to indemnify, defend and save the Town harmless from any claim, loss or damage to any person or property (including reasonable attorney's fees) which is caused, in whole or in part, by the use of the Licensed Premises by the Licensee or any other person pursuant to this Agreement; provided, however, Licensee shall not be required to indemnify Town from claims, losses or damages arising to the extent caused through the negligence of Town, its employees and agents.

16. **Notices.** Any notice required or permitted under this Agreement 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:

Town Manager
P. O. Box 168
Breckenridge, CO 80424

If To The Licensee:

Breckenridge Ski Resort
P.O. Box 1058
Breckenridge, CO 80424
Attn: Rick Sramek

Notices mailed in accordance with the provisions of this Paragraph shall be deemed to have been given upon mailing. Notices personally delivered shall have been deemed to have been given upon delivery. Either party may provide another address for the giving of notices pursuant to this Agreement.

- 17. **Attorney's Fees.** If any action is brought in a court of law by either party to this Agreement concerning the enforcement, interpretation or construction of this Agreement, the prevailing party, either at trial or upon appeal, shall be entitled to reasonable attorney's fees as well as costs, including expert witness fees, incurred in the prosecution or defense of such action.
- 18. **Waiver.** The failure of either party to exercise any of its rights under this Agreement shall not be a waiver of those rights. A party waives only those rights specified in writing and signed by the party waiving its rights.
- 19. **Governmental Immunity.** The parties hereto understand and agree that the Town is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., from time to time amended, or any other law or limitation otherwise available to Town, its officers, or its employees.
- 20. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the parties and supersedes any prior agreement or understanding relating to the subject matter of this Agreement.
- 21. **Modification.** This Agreement may be modified or amended only by a duly authorized written instrument executed by the parties hereto.
- 22. **Paragraph Headings.** Paragraph headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Agreement.
- 23. **Terminology.** Wherever applicable, the pronouns in this Agreement designating the masculine or neuter genders shall equally apply to the feminine, neuter and masculine genders. Furthermore, where applicable within this Agreement, the singular shall include the plural, and the plural shall include the singular.
- 24. **Town's Authority.** This Agreement is executed by the Town pursuant to the authority provided by Resolution No. 32, Series 1998, adopted September 22, 1998.

TOWN OF BRECKENRIDGE, COLORADO,
a Colorado municipal corporation

(AFFIX TOWN
SEAL HERE)

By _____
Gary Martinez, Town Manager

ATTEST:

Mary Jean Loufek, CMC, Town Clerk

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this _____ day of _____, 199____, by Gary Martinez, Town Manager, and Mary Jean Loufek, CMC, Town Clerk, of the Town of Breckenridge, a Colorado municipal corporation.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

LICENSEE:

VAIL SUMMIT RESORTS, INC.
d/b/a Breckenridge Ski Resort, Inc.,
a Colorado corporation

By _____

Title: _____

(AFFIX CORPORATE
SEAL HERE)

ATTEST:

Ingrid Keiser,
Its Secretary

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this ____ day of _____, 1998, by

_____, as
_____, and Ingrid Keiser, as Secretary, of Vail Summit Resorts, Inc. d/b/a Breckenridge Ski
Resort, Inc., a Colorado corporation.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public