

RESOLUTION NO. 6

SERIES 2011

A RESOLUTION AUTHORIZING THE DEFERRAL OF PLANT INVESTMENT FEES
PURSUANT TO SECTION 12-4-9 OF THE BRECKENRIDGE TOWN CODE
(Peak 7 Development Company, LLC—Lot 1, Peak 7 Subdivision)

WHEREAS, Peak 7 Development Company, LLC, a Colorado limited liability company ("**Developer**") is developing a phased development at the base of Peak 7 pursuant to Development Permit No. 2006014 ("**Project**"); and

WHEREAS, Developer is the owner of the following real property located in the Town of Breckenridge, Colorado:

Lot 1, Peak 7 Subdivision according to the Plat recorded December 15, 2006, at Reception No. 841906, County of Summit, State of Colorado; also known as 1979 and 2065 Ski Hill Road, Breckenridge, Colorado 80424 ("**Property**")

; and

WHEREAS, Developer intends to construct a resort project known as The Grand Lodge on Peak 7 ("**Project**") on the Property; and

WHEREAS, as defined by the Town's Development Code, the Project will consist of 232 residential condominium units, two commercial units, and common amenities such as a swimming pool; and

WHEREAS, the Project will be located in two separate buildings, the North Building and the South Building; and

WHEREAS, the South Building was constructed in three phases and is complete; and

WHEREAS, the North Building will be constructed in two phases, denominated as "Phase Four" and "Phase Five"; and

WHEREAS, Developer intends to apply for a building permit for the entire North Building on or about February 1, 2011, but wishes to defer payment of the water Plant Investment Fees ("**PIFs**") on Phase Five; and

WHEREAS, pursuant to Section 12-4-3 of the Breckenridge Town Code payment of the PIFs are normally due at the time of the issuance of a building permit; and

WHEREAS, Developer has requested the Town to defer payment of the PIFs for Phase Five of the Project upon certain terms and conditions; and

WHEREAS, Developer and the Town entered into that Agreement dated April 25, 2007 providing for the deferral of the payment of the PIFs that were due to the Town in connection with the construction of the South Building ("**Prior Agreement**"); and

WHEREAS, all payments due to the Town under the Prior Agreement were timely made by Developer, and the Prior Agreement has been fully complied with and terminated; and

WHEREAS, as part of the Prior Agreement Developer contributed the sum of \$25,000.00 to the Town's Riverwalk Center improvement project as a substantial public benefit for the Town entering into the Prior Agreement; and

WHEREAS, the Town Council finds, determines and declares that the Project satisfies the requirements of Section 12-4-9 of the Breckenridge Town Code, and that the Developer's request to defer payment of the PIFs for Phase Five of the North Building should be granted, subject to certain terms and conditions; and

WHEREAS, a proposed "Second PIF Deferral 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 ("**Second Agreement**"); and

WHEREAS, the Town Council has reviewed the proposed Second 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 Second Agreement; and

WHEREAS, Rule 6.1(b) of the Council Procedures and Rules of Order provides that a resolution may be used to approve a contract.

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

Section 1. The proposed "Second PIF Deferral Agreement" with Peak 7 Development Company, LLC, a Colorado limited liability company (Exhibit "A" hereto) is approved; and the Town Manager is hereby authorized, empowered, and directed to execute such agreement for and on behalf of the Town of Breckenridge.

Section 2. Minor changes to or amendments of the approved agreement may be made by the Town Manager if the Town Attorney certifies in writing that the proposed changes or amendments do not substantially affect the consideration to be received or paid by the Town pursuant to the approved agreement, or the essential elements of the approved agreement.

Section 3. This resolution shall become effective upon its adoption.

RESOLUTION APPROVED AND ADOPTED this 8th day of March, 2011.

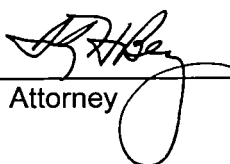
ATTEST:

TOWN OF BRECKENRIDGE

Mary Jean Loufek, CMC, Town Clerk

John G. Warner, Mayor

APPROVED IN FORM



Town Attorney

3/8/11

Date

SECOND PIF DEFERRAL AGREEMENT

THIS SECOND PIF DEFERRAL AGREEMENT ("**Second Agreement**") is dated _____, 2011 and is between the Town of Breckenridge, a Colorado municipal corporation ("**Town**"), and Peak 7, LLC, a Colorado limited liability company ("**Peak 7**").

RECITALS:

This Second Agreement is entered into on the basis of the following facts, understandings, and intentions of the parties:

(a) Peak 7 is the owner of the following real property located in the Town of Breckenridge, Colorado:

Lot 1, Peak 7 Subdivision according to the Plat recorded December 15, 2006, at Reception No. 841906, County of Summit, State of Colorado; also known as 1979 and 2065 Ski Hill Road, Breckenridge, Colorado 80424 ("**Property**").

(b) Peak 7 intends to construct a resort project known as The Grand Lodge on Peak 7 ("**Project**") on the Property. As defined by the Town's Development Code, the Project will consist of 232 residential condominium units, two commercial units, and common amenities such as a swimming pool.

(c) The Project will be located in two separate buildings, the North Building and the South Building.

(d) The South Building was constructed in three phases and is complete.

(e) The North Building will be constructed in two phases, denominated as "Phase Four" and "Phase Five."

(f) Peak 7 intends to apply for a building permit for the entire North Building on or about February 1, 2011, but wishes to defer payment of the water Plant Investment Fees ("**PIFs**") on Phase Five.

(g) Pursuant to Section 12-4-3 of the Breckenridge Town Code payment of the PIFs are normally due at the time of the issuance of a building permit.

(h) Peak 7 has requested the Town to defer payment of the PIFs for Phase Five of the Project upon certain terms and conditions.

(i) Peak 7 and the Town entered into that Agreement dated April 25, 2007 providing for the deferral of the payment of the PIFs that were due to the Town in connection with the construction of the South Building ("**Prior Agreement**"). All payments due to the Town under the Prior Agreement were timely made by Peak 7, and the Prior Agreement has been fully complied with and terminated.

(j) As part of the Prior Agreement Peak 7 contributed the sum of \$25,000.00 to the Town's Riverwalk Center improvement project as a substantial public benefit for the Town entering into the Prior Agreement.

(k) The Town has agreed to defer a portion the payment of such PIFs upon certain terms and conditions.

NOW, THEREFORE, the parties agree as follows:

1. Phase Four PIFs. The PIFs that are due to the Town for the Phase Four of the Project shall be paid by Peak 7 to the Town in full without demand on or before March 15, 2011.

2. Phase Five PIFs. The PIFs that are due to the Town for Phase Five of the Project shall be paid to the Town in full without demand on the earlier of: (i) the issuance of a Certificate of Occupancy for Phase Four, or (ii) December 15, 2012 ("**Deferred PIFs**").

3. Actual PIF Calculations. The actual sum due to the Town for the PIFs for the North Building shall be determined pursuant to the Town's Water Ordinance based on final construction drawings, and any approved changes to the Project, and shall be computed at the then-current rate as of the date of payment.

4. Substantial Public Benefit. The \$25,000.00 previously contributed by Peak 7 to the Town's Riverwalk Center improvement project pursuant to the Prior Agreement will act as the substantial public benefit for this Second Agreement. No further substantial public benefit is required in connection with this Second Agreement. However, the amount paid as a substantial public benefit for the Prior Agreement and this Second Agreement is not intended to act as the substantial public benefit for any other agreement.

5. Security for Payment of PIFs. As security for the payment of the Deferred PIFs, at the time that the PIFs for Phase Four of the Project are paid Peak 7 shall deliver to the Town an Irrevocable Letter of Credit in the sum of \$181,789.13. The Letter of Credit shall be due on December 20, 2012. The Letter of Credit shall be subject to the approval of the Town Attorney.

5. Personal Obligation of Peak 7. Notwithstanding the posting of the Letter of Credit, Peak 7 shall be personally liable for any amounts due in connection with the payment of the Deferred PIFs or under the terms of this Second Agreement.

6. Burden and Benefit to Run with Land and Successors. The deferral of the payment of water PIFs for Phase Five of the Project as provided in this Second Agreement is both a benefit and burden to the Property. This Second Agreement shall run with the Property and be binding upon Peak 7, its heirs, successors, and assigns.

7. Attorneys Fees and Costs. In the event of any dispute arising under this Second Agreement, the prevailing party shall be entitled to recover its costs, including reasonable attorneys' fees.

8. Default. In the event of any default by Peak 7 under the terms of this Second Agreement the Town may, in addition to any other remedies available to it under Colorado law, withhold issuance of a Building Permit or a Certificate of Occupancy for any units in the North Building for which a Building Permit or Certificate of Occupancy has not yet been issued by the Town.

9. Recording. This Second Agreement may be recorded in the real property records of Summit County, Colorado.

10. Reimbursement of Town's Attorney's Fees. Peak 7 shall reimburse the Town for its attorney's fees incurred in connection with the drafting of this Second Agreement and the approving resolution.

TOWN OF BRECKENRIDGE

PEAK 7, LLC

By: _____
Timothy J. Gagen

By: _____
Michael C. Millisor, Member

Attest: _____
Mary Jean Loufek, CMC, Town Clerk

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this ___ day of _____, 2011, by Timothy J. Gagen, Town Manager, and Mary Jean Loufek, 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 instrument was acknowledged before me this ___ day of _____ 2011 by Michael C. Millisor, as a Member of Peak 7, LLC, a Colorado limited liability company.

Witness my hand and official seal.
My commission expires: _____

Notary Public