



# Keystone Town Council Agenda

The Keystone Town Council will have a Regular Meeting on September 24, 2024, at 3:00 p.m. at 1628 Sts. John Rd, Keystone, CO 80435.

- I. CALL TO ORDER, ROLL CALL
- II. APPROVAL OF AGENDA
- III. TOWN COUNCIL MEMBER VACANCY
  - A. COUNCIL MEMBER VACANCY INTERVIEWS
    1. Interview of Applicant Kaili Warren
    2. Interview of Applicant Jeff Herynk  
***Applicant withdrew from consideration.***
    3. Interview of Applicant Jon Hagenow
  - B. NOMINATION OF CANDIDATES AND VOTING
  - C. Resolution 2024-64, A Resolution of Town Council of the Town of Keystone, Colorado, Appointing an Individual to Fill a Councilmember Vacancy on Town Council
  - D. OATH OF OFFICE
- IV. COMMUNICATIONS TO COUNCIL
  - A. *Public Comment (Pursuant to Resolution 2024-18, comment is limited to non-agenda items only; 3-minute time limit please)*
- V. DISCUSSION
  - A. DISCUSSION OF NICOTINE CESSATION EFFORTS IN SUMMIT COUNTY
  - B. DISCUSSION OF QUASI-JUDICIAL HEARINGS PROCEDURES
  - C. DISCUSSION OF REVISED BYLAWS
  - D. DISCUSSION OF ELECTRONIC PARTICIPATION AND FULLY REMOTE MEETING POLICY
  - E. DISCUSSION OF TOWN FINANCIALS
- VI. CONSENT
  - A. FIRST READING OF ORDINANCES

1. Ordinance 2024-11, An Ordinance of Town Council of the Town of Keystone, Colorado, Creating a Process for Establishing Boards and Commissions

B. RESOLUTIONS

1. Resolution 2024-65, A Resolution of Town Council of the Town of Keystone, Colorado, Approving a Site Plan Improvements Agreement (“SPIA”) For Camber Townhomes, Located at 0624 Montezuma Road

C. MEETING MINUTES

1. September 10, 2024 – Meeting Minutes

D. EXCUSED ABSENCES – NONE

E. OTHER

1. Accounts Payable List
2. TOK24-11 Class 2 Review for a Conditional Use Permit (CUP) for a Short-Term Rental (STR) located at 31 River Overlook Court

VII. NEW BUSINESS

A. LIQUOR LICENSING AUTHORITY MATTERS

1. New Liquor License Application for Ski-to-Tee, LLC, dba, Ski-To-Tee, Located at 100 Dercum Square Unit E3, By John Keith, Applicant Owner/Operator

B. CONSIDERATION OF ORDINANCES (SECOND READING/PUBLIC HEARING) -- NONE

C. RESOLUTIONS -- NONE

D. OTHER - NONE

VIII. PLANNING MATTERS

IX. REPORT OF TOWN MANAGER AND STAFF

X. REPORT OF MAYOR AND COUNCIL

XI. OTHER MATTERS (Town Manager/Mayor/Councilmember may bring up items on other matters that are not on the agenda)

XII. SCHEDULED MEETINGS

XIII. EXECUTIVE SESSION

Executive Session pursuant to C.R.S. Section 24-6-402(4)(b) and (4)(e)(I) to receive legal advice concerning a negotiation of a contract for law enforcement services as well as to determine positions relative to the negotiation of the contract for law

enforcement services, develop strategies for such negotiations, and instruct negotiators accordingly.

#### XIV. ADJOURNMENT

# TOWN OF KEYSTONE, COLORADO

## STAFF REPORT

TO: Mayor & Town Councilmembers  
THROUGH: John Crone, Town Manager  
Jennifer Madsen, Town Attorney  
FROM: Madeleine Sielu, Town Clerk  
DATE: September 24, 2024 – Council Meeting  
SUBJECT: Interviews, Selection, and Appointment of Vacancy for  
Town Councilmember

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### **Executive Summary:**

On August 12, 2024, Sarah Keel submitted her resignation from the Keystone Town Council. The Town Council discussed the vacancy at its next regular meeting on August 13, 2024. Town Council decided to open an appointment process to fill the vacancy. Interviews, selection, and appointment of a new Councilmember to fill the vacancy were scheduled for September 24, 2024.

### **Background:**

Town Council discussed the vacancy at its regular meeting on August 13, 2024, and decided to open an appointment process to fill the vacancy. Interested candidates were given an opportunity to submit applications to the Keystone Town Clerk until September 13, 2024. Notice was posted on the Town website, the Town's Nextdoor and Facebook pages, and in the Summit Daily twice daily for two weeks. Candidates were directed to submit a letter of interest to the Town Clerk and were notified that interviews were scheduled to take place on Tuesday, September 24, 2024.

The Town Clerk received four submissions for the vacancy. One of the submitters withdrew their submission for consideration. The Town Clerk verified with the Summit County Clerk and Recorder, that the remaining three applicants were registered electors



of the Town at the time of appointment (September 24, 2024), as is indicated as a qualification in the Keystone Town Charter Section 2.6 (a). Additionally, applicants were asked to attest that they met the eligibility requirements outlined in the Town Charter Section 2.6 (a), which read “I verify that I am eligible to hold Town Elective Office, and at the time of appointment (September 24, 2024), I will be a Primary Resident as defined by the laws of the State of Colorado and registered elector of the Town. Additionally, I verify that at the time of appointment, I will have had Primary Residency, as residency is defined in C.R.S. 31-10-201(3) within the boundaries of the Town for at least one year immediately preceding appointment.”

All three applicants were identified as registered electors within the Town of Keystone and returned the signed attestation. These forms are included for reference as attachments, along with the applicants’ letters of interest.

Town Council will hold an interview with each of three applicants at this afternoon’s meeting in the following order: beginning with Kaili Warren, then Jeff Herynk, then Jon Hagenow. Interviews are expected to take approximately a half hour per candidate.

Following completion of the interviews, Town Council will have the opportunity to discuss the candidates’ interviews. Council will have the opportunity to nominate any of the applicants for appointment and then will use paper ballots to vote for one of the nominated candidates. Following selection, Town Council will formally appoint the selected candidate Resolution, and the candidate will be sworn in as a member of Town Council and participate in the remaining items of the meeting.

### **Suggested Motions:**

#### **NOMINATIONS:**

I move to nominate the following individuals for Town Council.... (any of the applicants may be nominated. For an applicant to be an option on the paper ballots they must be nominated). Following nominations, the Town Council may complete a voting process on paper ballots.

FOR APPOINTMENT:

I move to approve Resolution 2024-64, a Resolution Of Town Council Of The Town Of Keystone, Colorado Appointing An Individual To Fill A Councilmember Vacancy On Town Council and appointing \_\_\_\_\_ as Councilmember.

**Attachments:**

- Kaili Warren Application Materials
- Jeff Herynk Application Materials
- Jon Hagenow Application Materials
- Resolution 2024-64, A Resolution of Town Council of The Town of Keystone, Colorado Appointing an Individual to Fill a Councilmember Vacancy on Town Council
- Oath of Office

Attachment A - Application Materials for Town Council Vacancy - September 24, 2024- Kaili Warren

## Town Council Vacancy

K M <keystonemanager1@gmail.com>

Thu 9/12/2024 2:40 PM

To: Clerk <clerk@keystoneco.gov>

Hello, Town Council members and neighbors!

My name is Kaili Warren, and I am writing to formally express my interest in the open town council seat. I have a deep passion for supporting the culture and future of Keystone, a place that has been a fundamental part of my entire life. This dedication to Keystone drives me to want to serve on the council. I would be honored to be a voice and advocate for our community!

A little bit about me: I was born and raised in Boulder, CO. I started coming here in kindergarten with my elementary school on weekends for ski school. After that, my family bought a condo in the Dakota Lodge before it was built, and I visited nearly every weekend through college. I met my husband here in 2006, and we moved to Summit County permanently in 2012. We relocated to LPV in 2014, and our family purchased 287 Razor in 2016. We got married on top of Dercum Mountain in 2017, and we are now raising two small children here!

I studied psychology and sociology at CU Boulder and am now working on an early childhood education certificate. I currently teach at Wildflower Nature School in Silverthorne. I previously worked for Vail Resorts in multiple departments before becoming the GM and Buyer for a store in River Run for nearly a decade.

I have seen Keystone from many different perspectives and witnessed its transformation through many phases over the last 30 years. I want to ensure that it remains a welcoming and sustainable place for residents and visitors alike. Recognizing that there is much work to be done, I am committed to pursuing what is best for our town. I am excited about the future of Keystone and the potential it holds!

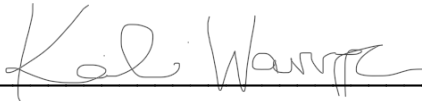
I look forward to talking more about this opportunity, and I appreciate your time and consideration!

Sincerely,

Kaili Warren

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I verify that I am eligible to hold Town Elective Office, and at the time of appointment (September 24, 2024), I will be a Primary Resident as defined by the laws of the State of Colorado and registered elector of the Town. Additionally, I verify that at the time of appointment, I will have had Primary Residency, as residency is defined in C.R.S. 31-10-201(3) within the boundaries of the Town for at least one year immediately preceding appointment.



\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Attachment B - Application Materials for Town Council Vacancy - September 24, 2024- Jeff Herynk

Town of Keystone  
1628 Saint John Road  
Keystone CO 80435

To Whom it may Concern,

I understand that there is a vacancy on the Town Council of Keystone. This is my letter of interest to be appointed to fill this vacancy.

I moved to Summit County in August of 1995. I have lived here in the county since, except for two years in Frasier and two years in Lakewood.

I would very much appreciate your considering me to fill the position on the town council.

I look forward to answering any questions you may have.

Regards,

Jeff Herynk

I verify that I am eligible to hold Town Elective Office, and at the time of appointment (September 24, 2024), I will be a Primary Resident as defined by the laws of the State of Colorado and registered elector of the Town. Additionally, I verify that at the time of appointment, I will have had Primary Residency, as residency is defined in C.R.S. 31-10-201(3) within the boundaries of the Town for at least one year immediately preceding appointment.

  
\_\_\_\_\_  
Signature

09/18/2024  
\_\_\_\_\_  
Date



Attachment C - Application Materials for Town Council Vacancy - September 24, 2024 - Jon Hagenow

August 24, 2024

Dear Keystone Town Council,

Subject: Keystone Town Council Member Vacancy

I am writing with great excitement to express my desire to join the Keystone Town Council and contribute meaningfully to our growing community. My passion for being part of positive change has not diminished since the recent town council election. I have a deep-seated commitment to serve and give back to our community.

I am fully qualified legally to hold the position and work full time in Summit County. I believe that my qualifications, desire to give back, and professional growth reflect the type of person I am and the kind of council member I aspire to be.

I have continuously sought opportunities to serve our town and work towards its improvement. My involvement in the Planning Commission and citizen-led efforts to enhance postal delivery are examples of my commitment to our town. While I have enjoyed my time on the Planning Commission, I acknowledge this is a position I would need to step down from should I serve on town council.

One aspect that I believe distinguishes my candidacy is my diverse lived experience. I have rented in both employee housing and private accommodations during my time in Keystone, which has given me a unique connection with the thousands of people who call Keystone home. Even if, unlike us, these people do not plan to call Keystone home for more than a season or two. The workforce is the backbone of our community, and I am committed to representing their experiences, challenges, perspectives, and goals. I would strive to represent the often underrepresented youthful and working class of our community. While it may be impossible to fully represent everyone, I am determined to do so in a thoughtful and constructive manner.

My goals and positions remain unchanged since my initial run for this office. An opportunity which I am very thankful for in allowing me to gain exposure with our community and the electorate. Like every member of this council, I am passionate about improving Keystone.

We share a commitment to increasing the safety of our town. This involves not only security and police presence but also the development of safe and efficient ways to navigate the town.

Although I no longer work for Keystone or Vail Resorts, I understand the importance of a strong partnership with Keystone Resort. Vail Resorts should not be viewed as an adversary but rather as our community's strongest private partner, capable of making a significant impact on our town. My former employment with Vail Resorts in the Keystone market allows me to bring a unique, recent experience to the council. I want to emphasize that community interests come first with regards to all private partners, Vail Resorts included.

While Keystone was designed from the outset as a resort community, I believe our focus must be on smart, sustainable growth. Serving on the council would allow me to be part of the decision-making body responsible for ensuring our community's long-term success.

Like many members of our community, I grew up elsewhere but have been fortunate to find Keystone, perhaps by chance or by a higher power, and have chosen to make it my home.

I am excited about the opportunity to serve on the council. I hope to be able to answer questions you may have and further communicate my passion and dedication to our community in the September interview.

**Best Regards,**  
**Jonathan Hagenow**  
Gateway Lodge

I verify that I am eligible to hold Town Elective Office, and at the time of appointment (September 24, 2024), I will be a Primary Resident as defined by the laws of the State of Colorado and registered elector of the Town. Additionally, I verify that at the time of appointment, I will have had Primary Residency, as residency is defined in C.R.S. 31-10-201(3) within the boundaries of the Town for at least one year immediately preceding appointment.

*Jon Hagenow*

Signature

09.18.2024

Date

**TOWN OF KEYSTONE  
Summit County, Colorado**

**RESOLUTION 2024-64**

**A RESOLUTION OF TOWN COUNCIL OF THE TOWN OF KEYSTONE, COLORADO  
APPOINTING AN INDIVIDUAL TO FILL A COUNCILMEMBER VACANCY ON TOWN  
COUNCIL**

WHEREAS, according to the Town of Keystone Charter § 2.7, the Town Council has the authority to decide the process to fill the vacancy of a councilmember position. There are two options for filling the vacancy: (1) Town Council can fill the vacancy by appointment of a person to the vacant councilmember position OR (2) by holding a special election; and

WHEREAS, on August 12, 2024, Councilmember Sarah Keel submitted her resignation effective immediately and such resignation created a vacancy on Town Council; and

WHEREAS, on August 13, 2024, at the regular meeting, Town Council directed staff to prepare applications for an appointment process to fill the vacancy on Town Council; and

WHEREAS, at its regular meeting on September 24, 2024, Town Council interviewed applicants for the appointment to Town Council; and

WHEREAS, following interviews, Town Council completed a nomination and voting process to select and appoint the individual to fill the vacancy; and

WHEREAS, Town Council desires to fill the vacancy of the councilmember position on Town Council by appointment.

**Now, Therefore, be it Resolved by the Town Council of the Town of Keystone, Colorado, that:**

Section 1. The Town Council appoints \_\_\_\_\_ to serve as a Councilmember on Town Council until the next regular election in April 2026 and until such time as a successor is elected and duly qualified.

Section 2. Effective Date. This Resolution shall take effect upon its approval by the Town Council.

**ADOPTED** by a vote of \_\_ in favor and \_\_ against, this \_\_\_\_\_ day of \_\_\_\_\_,  
**2024.**

By: \_\_\_\_\_  
Kenneth D. Riley, Mayor

ATTEST:

Approved as to Form:

By: \_\_\_\_\_  
Town Clerk

By: \_\_\_\_\_  
Town Attorney



The Town of Keystone

State of Colorado

County of Summit

I, \_\_\_\_\_, do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of Colorado, and the Charter and Ordinances of the Town of Keystone, and that I will faithfully perform the duties of a Councilmember for the Town of Keystone to the best of my skill and ability.

\_\_\_\_\_

\_\_\_\_\_, Town Councilmember, Town of Keystone, Colorado

\_\_\_\_\_

Madeleine Sielu, Town Clerk, Town of Keystone, Colorado

Subscribed and sworn before me this 24th day of September A.D. 2024.

# TOWN OF KEYSTONE, COLORADO

## STAFF REPORT

TO: Mayor & Town Councilmembers  
THROUGH: John Crone, Town Manager  
FROM: Jennifer Madsen, Town Attorney  
DATE: September 24, 2024  
SUBJECT: Discussion of quasi-judicial role

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### **Executive Summary:**

Discussion of process for quasi-judicial hearings and the quasi-judicial role.

### **Background:**

The Town Council serves in various capacities when making decisions. One of its primary roles is that of a legislative body, responsible for establishing policies and regulations that apply broadly across the town, such as when passing an ordinance. At other times, the Council assumes a “quasi-judicial” role, where it applies these established rules or criteria to specific individuals or properties. Quasi-judicial matters typically include land use decisions, liquor licenses, and similar issues. In this capacity, the Council essentially acts as a judge, necessitating a process that is both court-like and judicial in nature. In these quasi-judicial proceedings, the Town is required to uphold due process.

The key elements of due process include providing proper notice, holding a hearing, and ensuring that the decision is based on the record, all of which must be conducted by a fair and impartial decision-maker. A fair and transparent hearing is critical to reaching a sound decision and ensuring compliance with due process requirements. Additionally, the manner in which the hearing is conducted, and the conduct of Council members during the proceedings, fosters trust and confidence in the decision-making



process. This also minimizes the risk of the decision being challenged or overturned. In the event of a legal challenge, the initial hearing before the Council becomes “the hearing.” A reviewing judge does not retry the case but rather evaluates whether the Council’s decision should be upheld or overturned based on the following factors:

- The procedures that were followed;
- The evidence that was considered; and
- The rationale for the decision.

Quasi-judicial decisions are rarely overturned because a judge disagrees with the outcome. Instead, they are typically overturned because the decision was arbitrary, or the Council—either collectively or through individual actions—failed to provide fundamental fairness to one or more participants.

A presentation on quasi-judicial hearings will be held on Tuesday.

# TOWN OF KEYSTONE, COLORADO

## STAFF REPORT

TO: Mayor & Town Councilmembers  
THROUGH: John Crone, Town Manager  
FROM: Jennifer Madsen, Town Attorney  
DATE: September 24, 2024  
SUBJECT: Discussion of revised bylaws

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### **Executive Summary:**

At the August 27 and September 10 meetings, Town Council discussed consideration of a policy related to electronic participation by members of Town Council at work sessions and regular meetings. Town Council reviewed the revised bylaws on the September 10 meeting. Additional revisions were requested, and Town Council asked that the revised Bylaws be placed on the September 24 agenda for further discussion.

### **Background:**

Town Council adopted bylaws on April 9, 2024. The adopted Town Council bylaws did not address electronic participation in meetings by members of Town Council.

Electronic participation by members of Town Council was discussed at the September 10 meeting and edits were proposed in the Town Council Bylaws.

Drafts revisions to the Town Council Bylaws dated September 24 are provided for Council's consideration and discussion.

### **Attachment:**

- DRAFT Town Council Bylaws and Procedure 2024\_9\_24 (redline)
- DRAFT Town Council Bylaws and Procedure 2024\_9\_24

**TOWN OF KEYSTONE, COLORADO**

**TOWN COUNCIL BYLAWS**

<b>DATE OF POLICY/REVISIONS:</b>	Original Enactment: April 8, 2024 Resolution No. 2024-32
<b>SCHEDULED REVIEW AND REVISION:</b>	As deemed necessary or desired by the Town Council or upon recommendation of the Town Manager or Town Attorney.
<b>ATTACHMENT(S):</b>	None
<b>AUTHORITY/REFERENCE(S):</b>	Keystone Charter, Section 3.8.  Titles 29 and 31, C.R.S., and the Colorado Open Meetings Law, C.R.S. §§ 24-6-401 <i>et seq.</i> , as interpreted by the Colorado appellate courts.

## TOWN COUNCIL BYLAWS

**These Bylaws** are intended to direct and assist the Town Council for the Town of Keystone, Colorado, in the conduct of meetings and the conduct of public business. These Bylaws and Procedures shall be interpreted consistently with the Keystone Home Rule Charter (“Charter”) and, in the event of a conflict between these Bylaws and Procedures and the Charter, the Charter shall govern and control.

References to “Councilmember,” “Councilmembers,” or “Town Council” shall include the Mayor unless the context provides otherwise.

### I. Legislative Body & Officers

#### 1.1 Town Council

The Town Council is the legislative and governing body of the Town.

#### 1.2 Mayor – Presiding Officer

The Mayor shall be the Presiding Officer at all meetings of the Town Council. The Mayor is a member of the Town Council. The role of Presiding Officer may be assigned to another member of the Town Council in accordance with the Rules of Order.

#### 1.3 Mayor Pro Tem

The Town Council shall elect one of its members to serve as Mayor Pro Tem in accordance with the Keystone Home Rule Charter. The process for nomination and election of the Mayor Pro Tem shall be determined by the Town Council which process may be established by Resolution.

#### 1.4 Temporary Chair

- a. In the event of the absence, conflict of interest, or disability of both the Mayor and Mayor Pro Tem that would prevent them from attending any meeting of the Town Council, the Town Clerk shall call such meeting to order and shall call the roll. The Town Council shall then proceed to elect, by a majority vote of those present, a Councilmember to serve as the Temporary Chairperson for the meeting.
- b. The Temporary Chairperson shall serve as Presiding Officer until the arrival or the resolution of the conflict of interest of the Mayor or Mayor Pro Tem at which time the Temporary Chair shall relinquish the chair upon conclusion of the agenda item or other business then before the Town Council.

## **Town Council Meetings.**

### 2.1 Regular Meetings

- a. The Town Council shall meet regularly at least once each month at a day and hour and place to be fixed by the Rules of Order of each Town Council adopted by Resolution. The intent is that the Town Council will conduct in person meetings, unless circumstances necessitate another form of meeting. The procedures for in person meetings and the circumstances necessitating another form of meeting shall be defined by the Rules of Order of the Town Council. (Charter § 3.1)
- b. For ease of administration, an approved schedule of meeting dates, times, and places for regular meetings may be administratively considered and approved for each calendar year by the Town Council. The Town Council reserves the authority to modify or adjust any previously approved meeting schedule or to change meeting days or times as may be needed for convenience or to accommodate holidays, anticipated lack of quorum, and other events or circumstances.
- c. When a regular meeting must be cancelled due to unforeseen or unanticipated circumstances, such as but not limited to emergency, adverse weather conditions, absence of quorum, or failure to post any required public notice, the Mayor, or the Mayor Pro Tem in the Mayor's absence, is authorized to instruct staff to cancel the regular meeting and the Mayor may reschedule the meeting to another date and time. The Town Clerk shall prepare a notice of the meeting cancellation and the rescheduled meeting and shall cause the notice to be delivered through reasonable and customary means, including by posting notice on public entry doors of the Keystone Center and posting on the Town's Website.

### 2.2 Special Meetings

- a. Special meetings of the Town Council shall be called by the Town Clerk on the oral request of two (2) or more members of Town Council with at least twenty-four (24) hours' notice to each member of the Town Council and to the public, delivered in accordance with the Rules of Order of the Town Council and the requirements of this Charter and the Colorado Open Meetings Law. (Charter § 3.2)
- b. No business shall be conducted at a special meeting of the Town Council unless the business has been stated in the notice of such meeting; except that any business which may lawfully come before a regular meeting of the Town Council may be transacted at a special meeting if all members of the Town Council present consent thereto and all the Councilmembers absent file their written consent.
- c. Executive sessions may be held during any properly convened special meeting.

### 2.3 Emergency Meetings

- a. Emergency meetings of the Town Council shall be called by the Town Clerk on the oral request of two (2) or more members of Town Council with less than twenty-four (24) hours' notice. An emergency meeting may be called in the event of an immediate danger or threat to the public health, welfare, peace, safety or property for the purpose of preservation or protection of the public health, welfare, peace, safety or property. Unless it is impractical, all members of the Town Council shall be notified of such meeting and such meeting may be held if a Quorum consents. Maximum practical notice, including posted notice, shall be given to the public stating the purpose, time, place and manner of any such meeting. (Charter § 3.3)
- b. Any business which may lawfully come before a regular meeting of the Town Council may be transacted at an emergency meeting.
- c. Due to the emergency nature of the meeting, no Quorum of the Town Council is required although a Quorum is strongly desired wherever practicable. Where a Quorum does not attend the emergency meeting, the action of the Town Council at the emergency meeting will need to be ratified by the Town Council at the next meeting at which a Quorum is in attendance.

### 2.4 Study or Work Sessions

- a. The Town Council may hold study or work sessions as deemed necessary or desirable. Study or work sessions shall be called in the same manner as a Special Meeting or called by the Town Manager in consultation with the Town Clerk.
- b. No legally binding or formal action shall be taken at any such session. The Council may provide general administrative direction to the Town Manager by simple concurrence or consensus of the members of the Town Council.
- c. A study or work session shall *customarily* be limited to the presentation of information to the Town Council and to Town Council's discussion of such information. Public comment upon matters under study or discussion shall not be typically entertained except upon concurrence of the Council members in attendance. No Quorum shall be required at any study or work session.
- d. Executive sessions shall not be conducted during a study or work session.

### 2.5 Quorum

Where a quorum is required by these Bylaws, a majority of the members of the Town Council in office shall constitute a quorum for the transaction of business at all Town

Council meetings. In the absence of a Quorum, a meeting may be rescheduled to a later date and time as permitted by Town Council's adopted Rules of Order.

#### 2.6 Meetings to be Public

All meetings of the Town Council shall be open to the public except as permitted by law. At Town Council meetings, members of the public shall have a reasonable opportunity to be heard except for those meetings that are designated as study or work sessions. In compliance with the Colorado Open Meetings Law, the Town Clerk shall keep a record of the proceedings of each meeting. The intent is that, when feasible, Town Council will allow for a remote meeting option for the public's attendance and participation at open meetings. (Charter § 3.5) The Town Council may adopt a remote meeting policy to further define the public's attendance and participation through the remote meeting option.

#### 2.7 Meeting Notice

The Town Council shall adopt a Resolution that establishes public notice and posting requirements in accordance with the Colorado Open Meetings Law including designating the Town official site for posting the agenda at least 24 hours in advance of the public meeting (except for emergency meetings as governed by Charter § 3.3) and such designation shall be deemed automatically readopted at the Town Council's first regular meeting of each calendar year unless otherwise determined by the Town Council. (Charter § 3.10)

#### 2.8 Town Council Attendance and Absences

- a. All Town Councilmembers are expected to attend all regular, special, work and study session meetings unless excused from attendance in accordance with this section. Councilmembers are expected to attend Town Council meetings in person unless a different form of attendance is authorized or in person attendance is excused. (Charter § 3.9)
- b. Three (3) or more unexcused absences by a member of the Town Council in any one (1) calendar year shall constitute grounds for sanctions or removal.
- c. Excused Absences.

The Presiding Officer shall excuse an absence of the Mayor or any Councilmember from all or any portion of a meeting where:

- (i) The Mayor or Councilmember contacted the Mayor, Town Manager, or Town Clerk *in advance* of the meeting regarding the reason for the absence; *and*
- (ii) The reason for the absence is due to ~~vacations scheduled well in advance of a meeting or~~ circumstances that were unforeseeable or unavoidable, such as but not limited to, emergency, illness, ~~or~~ last-minute familial obligations. An

excuse shall not be granted where the Mayor or Councilmember's absence is due to the person's desire to attend other meetings or functions unless the person's attendance at the meeting or function was: (i) requested or directed by the Town Council; or (ii) undertaken in the Councilmember's appointed role as Town Council representative to a board, commission, or body.

- (iii) An absence may not be excused if the Councilmember has been absent for more than two (2) consecutive regular meetings due to a vacation.
- (iv) If a Councilmember is absent for both a work or study session on the same date, that absence is only counted as one and not two absences.
- (v) If advance notice is provided, an excused absence may be ratified by Town Council on the consent agenda.

The Presiding Officer may excuse an absence of any Councilmember from a meeting or a portion of a meeting *subsequent to* the meeting where:

- (i) The Councilmember's requested excuse was due to circumstances that were unforeseeable or unavoidable, such as but not limited to, accident, emergency, illness, or last-minute familial obligations; and
- (ii) The circumstances surrounding the excuse did not permit the Councilmember to timely contact the Mayor, Town Manager, or Town Clerk prior to the meeting as provided by paragraph (B) above.

~~(ii) Members of Town Council are permitted three (3) excused absences as a result of electronic participation in a Town Council meeting. Electronic participation as a result of the reasons identified in paragraph 2.8.c.ii are not counted toward this limitation. In each calendar year, Members of Town Council may be permitted more than three excused absences for good cause. The limitation on the number of permitted excused absences is effective beginning January 1, 2025. Electronic participation and attendance by a member of Town Council is considered to be an excused absence.~~

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- d. The Presiding Officer's decision regarding the recognition or denial of any absence shall be subject to appeal as provided by the Rules of Order.

2.9 Town Attorney



Unless otherwise excused by the Town Council, the Town Attorney or the Town Attorney's designated representative is expected to attend all regular, special, or emergency meetings of the Town Council and attend such other meetings and sessions of the Town Council as the Town Council may request. The Town Attorney may attend meetings by a remote meeting option.

2.10 Town Clerk, Written Minutes, and Official Record

- a. The Town Clerk, or the Town Clerk's designated representative, shall attend and shall keep written minutes of each regular or special meeting of the Town Council. Written meeting minutes may be a brief and concise summary or synopsis of actions taken by the Town Council, the titles of ordinances and resolutions considered, votes taken, and other action items and general topics of discussion. Meeting minutes need not record what was said during the meeting.
- b. The minutes shall record how each Councilmember voted on each question, except that where the vote was unanimous it shall only be necessary for the minutes to so state.
- c. The official record of a Town Council meeting shall be the Town's electronic recording of the meeting, if any, and in the absence of an electronic recording or in the event of recording equipment malfunction, the official record shall be the written meeting minutes.
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- e. Minutes of a previous meeting will not be read provided each member of Town Council has been provided access to a copy of the minutes in advance of the meeting at which the minutes are to be approved. Written minutes shall be initially set for approval on a consent agenda. Any Councilmember may request that the minutes be removed from the consent agenda for full discussion and consideration of proposed amendments or revisions by the Town Council prior to any motion for approval. Every Councilmember may, at the member's option, vote to approve or reject the minutes of any meeting notwithstanding such member's absence from the meeting.
- f. At any time prior to the Town Clerk's certification of the minutes as approved by the Town Council, the Town Clerk may change the minutes to

correct spelling or typographical errors, provided that such change does not alter the substance or meaning of the minutes.

- g. The Clerk of the meeting at which the minutes are approved shall sign the approved minutes.

#### 2.11 Agenda and Order of Business

- a. A regular meeting of the Town Council will have an established order of business generally along the following guidelines which may be modified by the Presiding Officer in accordance with the Rules of Order:

- Call to Order, Roll Call
- Approval of Agenda
- Recognitions, proclamations, and appointments
- Communications to Council
- Consent agenda (handling of routine business)

- B. Resolutions
- C. Approval of Town Council Minutes
- D. Excused Absences

Discussion Business

- A. Consideration of Ordinances (second reading/public hearing)

- B. Resolutions
- C. Other

- 7. Planning Matters
- 8. Reports

- 10. Adjournment

#### 2.12 Setting Agendas

The Mayor and the Town Manager have the task of setting the meeting agendas for regular and special meetings and for work sessions of the Town Council. In addition, two members of the Town Council may request that the Town Manager place an item on a meeting agenda.

#### 2.13 Requesting Future Agenda Items

Any Councilmember, the Town Manager, or the Town Attorney may request that the Town Council formally consider any Town business or other matter of public interest at a future meeting by raising the request with the Town Council during any **regular** meeting. Upon confirmation by a consensus of the Town Council that the Town Council desires to entertain consideration or review of the proposed business or matter, the Presiding Officer shall instruct the Town staff to set the matter on the next available agenda or on the agenda of a specific meeting.

2.14 Adjournment of Regular Meetings by 9:00 p.m.

A Town Council regular meeting shall customarily adjourn at or before 9:00 p.m. Extending a regular meeting beyond 9:00 p.m. shall require approval of a motion to suspend the required adjournment requirement. A motion may propose to limit the agenda matters to be considered after 9:00 p.m. and/or set a later time for adjournment.

As an express condition of adjournment, the Town Council shall formally move to continue or postpone all agenda items that will not be considered following adjournment in accordance with the Rules of Order.

**Meeting Procedures.**

3.1 Parliamentary Rules/Rules of Order

a. Bob's Rules of Order for Colorado Local Governments (Peak Nine Press 2023) shall be the parliamentary rules of order for meetings of the Town Council ("Rules of Order").

b. The following additional rules shall be incorporated into the Rules of Order:

A Councilmember shall not engage in the review or transmission of electronic mail or other forms of digital communications or be connected to the Internet during any quasi-judicial matter.

2. Addressing the Town Council – Time Limitations.

(i) Councilmember's access to the floor when addressing the Town Council shall be limited in time as provided by the Rules of Order;

(ii) Guests, presenters, and speakers invited to present to the Town Council shall be limited in time as established or directed by the Presiding Officer; and

(iii) For all other persons wishing to address the Town Council (other than public hearings, see V. below), such persons shall be limited to three (3) minutes for any presentation unless the Presiding Officer establishes a different time limitation applicable to all such persons wishing to address the Town Council.

c. Voting Methods.

A simultaneous voice vote or show of hands shall generally be used provided that an announcement is made regarding the result of the vote, including identification of Councilmember(s) voting on the non-prevailing side.

The Presiding Officer may direct a vote to be made by roll call. A roll call vote by voice shall be *required* for:

- (i) All ordinances on final reading;
- (ii) Any resolution appropriating or borrowing money;
- (iii) Any resolution pertaining to new or existing taxes;
- (iv) Any action concerning an initiative or referendum petition; and
- (v) Conveyance of interests in real property.

Manner of Roll Call. When roll call voting is used, the roll call vote shall be taken in alphabetical order in a rotating manner, as follows: on the first roll call vote for the meeting, the Town Clerk will begin with the first Councilmember's name on the list; on the second vote, the Town Clerk will begin with the second Councilmember's name on the list and end with the first Councilmember name on the list, and continue to rotate the order in this manner. Such rotation will continue without interruption from meeting to meeting.

### 3.2 Meeting Decorum

- a. For regular and special meetings, each Councilmember shall be addressed as Mr./Ms. (last name) or Councilmember (last name); the Mayor shall be addressed as Mr./Ms. Mayor or Mayor (last name); Town staff, citizens, consultants, contractors shall be addressed as Mr./Ms. (last name). A less formal recognition of Councilmembers and others shall be acceptable for study or work sessions and executive sessions.
- b. At any regular or special meeting of the Town Council, any member of the public desiring to address the Town Council shall first secure the permission of, and be recognized by, the Presiding Officer.
- c. Each person addressing the Town Council shall be asked to provide his or her name and address for the record. All comments shall be addressed to the Presiding Officer and to the Town Council as a body and not to any particular Councilmember thereof or to other members of the audience.
- d. Actions which unreasonably disrupt a meeting shall be out of order. "Disrupt" shall mean evidently intended or designed to prevent, or reasonably preventing, the Town Council from conducting business. Disruptive actions may include, but not limited to: (i) constant or consistent shouting following the Presiding Officer's request to speak in a conversational voice; (ii) the use of horns, bells, or other sources of unwanted and unnecessary sound or noise; (iii) repeated speaking or interruption of the meeting without first obtaining the floor or without being acknowledged by the Presiding Officer; or (iv) threats of harm or violence. Refusal to heed requests to cease disruption may subject the person to removal from the meeting.

- e. The use of amplified sound or noise in any meeting shall not be permitted unless approved by the Presiding Officer as a necessary part of a presentation by a speaker. The Town's use of methods to amplify the voices of the Councilmembers shall be permitted.
- f. To prevent obstructing the view and hearing of persons attending a meeting, posters, banners, signs, or other forms to display shall be permitted in meeting rooms provided that such items or materials are placed against and along the side perimeter walls of the room in a manner not to interfere with access or the safety of attendees. No posters, banners, signs, or other forms to display shall be located behind the Town Council dais. The Presiding Officer may designate the appropriate location(s) for posters, banners, signs, or other forms to display.

#### **Procedure for Passage of Ordinances (Charter § 6.5)**

The procedure for the passage of an Ordinance, other than an Emergency Ordinance, shall be as follows:

- a. Introduction (first reading) of the Ordinance at any regular or special meeting and vote by the Town Council in accordance with the voting requirements established by the Charter to move the proposed legislation forward to the second reading. Introduction and first reading of the Ordinance may be by placement on the Town Council's consent agenda for such meeting.
- b. If the Ordinance is passed upon first reading, publicizing by title only and in accordance with the requirements, methods, and procedures for publicizing Ordinances as adopted by the Town Council by Ordinance.
- c. Consideration of the Ordinance on second reading at a meeting not earlier than six (6) days after the first reading.
- d. Public hearing on the Ordinance (See V. Below).
- e. Roll call vote of the Town Council on the Ordinance following the public hearing.
- f. Any ordinance may be amended before final passage by a roll call of the Town Council.
- g. After final passage, the Town Clerk shall publicize the Ordinance by title only with the statement that the full text is available for public inspection and acquisition in the office of the Town Clerk. Whenever possible, publicizing shall be within ten (10) days after final passage.
- h. Unless a later date is specified in the text of the Ordinance, an Ordinance other than an Emergency Ordinance shall take effect and be enforced thirty (30) days after final publication.

### **Public Hearings – Procedures.**

Public hearings required by law shall be conducted in general accordance with the following procedures. Deviations from these procedures that do not substantially affect the fairness and outcome of the hearing shall be permitted with or without approval of the Town Council.

- a. Town Clerk shall read the title or subject matter of the item into the record.
- b. The Presiding Officer, in the order indicated, will:

Declare the public hearing open;

Announce the public hearing procedures (if such procedures were not previously explained to the audience in a prior hearing during the same meeting);

Establish, when determined to be necessary, reasonable time limits for the presentation to the Town Council of public comments and testimony during the hearing. Where no other time limits are established:

- (i) Town staff or Town consultants shall not be limited except as directed by the Presiding Officer;
- (ii) An applicant, permittee, or petitioner (or their representative) whose property or other legal rights are the subject of determination during the public hearing shall not be subject to time limitations provided that the applicant, permittee, or petitioner avoids redundant and duplicative testimony or presentation of evidence;
- (iii) Scheduled speakers invited to present information to the Town Council shall not be subject to time limitations except as directed by the Presiding Officer; and
- (iv) All other persons shall be limited to three (3) minutes;

Ask for an introductory presentation by the Town Administration, if appropriate;

Ask for the applicant's, permittee's, or petitioner's presentation, if appropriate;

Provide opportunity for public presentation by those who are in favor of the matter, opposed to the matter, or who may have general questions regarding the pending matter.

Any person speaking or presenting any information at the hearing may be questioned by the Town Council and, with the consent of the Presiding Officer, by the Town Administration.

The Presiding Officer will ask, at times during the hearing determined by the Presiding Officer, if any member of Town Council has any questions of, or desires any additional information from, anyone who has spoken or has presented information during the hearing. If such is the case, a member of Town Council may direct the question and/or request through the Presiding Officer to such individual and the response will be limited to the answer of the question, as stated.

- c. Cross-examination of persons providing testimony or evidence shall not be permitted.
- d. The Presiding Officer may, on his/her own initiative or at the request of a Councilmember or the applicant, permittee, or petitioner, afford the applicant, permittee, or petitioner an opportunity to rebut or address statements or testimony presented by the general public or Town Administration. Rebuttal shall be limited only to subjects and matters raised during the hearing and is not intended to provide an opportunity for the applicant, permittee, or petitioner to present new evidence or information not offered during the main presentation. The Presiding Officer may, in the Officer's discretion, provide an opportunity for the general public to address issues, information, or matters newly raised during a rebuttal.
- e. Following questions from Town Council, the Presiding Officer will declare the public hearing closed and the matter will be remanded to the Town Council for consideration.
- f. Upon the closure of the public hearing, the Town Council will seek to avoid additional questioning of any hearing participant except as may be found necessary by the Presiding Officer to quickly clarify a factual question or resolve a factual matter of dispute between members of the Town Council. No additional unsolicited testimony shall be entertained or accepted by the Town Council. The public hearing may only be reopened for good cause shown by a majority vote of the quorum present and only for the sole purpose of receiving specifically identified and focused testimony. In the event a public hearing is reopened, all persons in attendance shall be provided an opportunity to provide testimony regarding the specifically identified matter for which the hearing was reopened.
- g. The Town Council may, with leave of the Presiding Officer, request legal advice or direction from the Town Attorney at any time.

## **VI. Amendments.**

These Bylaws may be amended by a majority vote of Councilmembers present at a Town Council meeting at which a quorum exists. Any proposed amendments shall be submitted in writing to each member of Town Council at least two (2) weeks in advance of the Town Council meeting at which such amendments are to be considered.

ADOPTED BY THE TOWN COUNCIL THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2024.

# TOWN OF KEYSTONE, COLORADO

## TOWN COUNCIL BYLAWS

<b>DATE OF POLICY/REVISIONS:</b>	<b>Original Enactment: April 8, 2024 Resolution No. 2024-32</b>
<b>SCHEDULED REVIEW AND REVISION:</b>	<b>As deemed necessary or desired by the Town Council or upon recommendation of the Town Manager or Town Attorney.</b>
<b>ATTACHMENT(S):</b>	<b>None</b>
<b>AUTHORITY/REFERENCE(S):</b>	<b>Keystone Charter, Section 3.8.  Titles 29 and 31, C.R.S., and the Colorado Open Meetings Law, C.R.S. §§ 24-6-401 <i>et seq.</i>, as interpreted by the Colorado appellate courts.</b>



## TOWN COUNCIL BYLAWS

**These Bylaws** are intended to direct and assist the Town Council for the Town of Keystone, Colorado, in the conduct of meetings and the conduct of public business. These Bylaws and Procedures shall be interpreted consistently with the Keystone Home Rule Charter (“Charter”) and, in the event of a conflict between these Bylaws and Procedures and the Charter, the Charter shall govern and control.

References to “Councilmember,” “Councilmembers,” or “Town Council” shall include the Mayor unless the context provides otherwise.

### I. Legislative Body & Officers

#### 1.1 Town Council

The Town Council is the legislative and governing body of the Town.

#### 1.2 Mayor – Presiding Officer

The Mayor shall be the Presiding Officer at all meetings of the Town Council. The Mayor is a member of the Town Council. The role of Presiding Officer may be assigned to another member of the Town Council in accordance with the Rules of Order.

#### 1.3 Mayor Pro Tem

The Town Council shall elect one of its members to serve as Mayor Pro Tem in accordance with the Keystone Home Rule Charter. The process for nomination and election of the Mayor Pro Tem shall be determined by the Town Council which process may be established by Resolution.

#### 1.4 Temporary Chair

- a. In the event of the absence, conflict of interest, or disability of both the Mayor and Mayor Pro Tem that would prevent them from attending any meeting of the Town Council, the Town Clerk shall call such meeting to order and shall call the roll. The Town Council shall then proceed to elect, by a majority vote of those present, a Councilmember to serve as the Temporary Chairperson for the meeting.
- b. The Temporary Chairperson shall serve as Presiding Officer until the arrival or the resolution of the conflict of interest of the Mayor or Mayor Pro Tem at which time the Temporary Chair shall relinquish the chair upon conclusion of the agenda item or other business then before the Town Council.

## II. **Town Council Meetings.**

### 2.1 Regular Meetings

- a. The Town Council shall meet regularly at least once each month at a day and hour and place to be fixed by the Rules of Order of each Town Council adopted by Resolution. The intent is that the Town Council will conduct in person meetings, unless circumstances necessitate another form of meeting. The procedures for in person meetings and the circumstances necessitating another form of meeting shall be defined by the Rules of Order of the Town Council. (Charter § 3.1)
- b. For ease of administration, an approved schedule of meeting dates, times, and places for regular meetings may be administratively considered and approved for each calendar year by the Town Council. The Town Council reserves the authority to modify or adjust any previously approved meeting schedule or to change meeting days or times as may be needed for convenience or to accommodate holidays, anticipated lack of quorum, and other events or circumstances.
- c. When a regular meeting must be cancelled due to unforeseen or unanticipated circumstances, such as but not limited to emergency, adverse weather conditions, absence of quorum, or failure to post any required public notice, the Mayor, or the Mayor Pro Tem in the Mayor's absence, is authorized to instruct staff to cancel the regular meeting and the Mayor may reschedule the meeting to another date and time. The Town Clerk shall prepare a notice of the meeting cancellation and the rescheduled meeting and shall cause the notice to be delivered through reasonable and customary means, including by posting notice on public entry doors of the Keystone Center and posting on the Town's Website.

### 2.2 Special Meetings

- a. Special meetings of the Town Council shall be called by the Town Clerk on the oral request of two (2) or more members of Town Council with at least twenty-four (24) hours' notice to each member of the Town Council and to the public, delivered in accordance with the Rules of Order of the Town Council and the requirements of this Charter and the Colorado Open Meetings Law. (Charter § 3.2)
- b. No business shall be conducted at a special meeting of the Town Council unless the business has been stated in the notice of such meeting; except that any business which may lawfully come before a regular meeting of the Town Council may be transacted at a special meeting if all members of the Town Council present consent thereto and all the Councilmembers absent file their written consent.
- c. Executive sessions may be held during any properly convened special meeting.

### 2.3 Emergency Meetings

- a. Emergency meetings of the Town Council shall be called by the Town Clerk on the oral request of two (2) or more members of Town Council with less than twenty-four (24) hours' notice. An emergency meeting may be called in the event of an immediate danger or threat to the public health, welfare, peace, safety or property for the purpose of preservation or protection of the public health, welfare, peace, safety or property. Unless it is impractical, all members of the Town Council shall be notified of such meeting and such meeting may be held if a Quorum consents. Maximum practical notice, including posted notice, shall be given to the public stating the purpose, time, place and manner of any such meeting. (Charter § 3.3)
- b. Any business which may lawfully come before a regular meeting of the Town Council may be transacted at an emergency meeting.
- c. Due to the emergency nature of the meeting, no Quorum of the Town Council is required although a Quorum is strongly desired wherever practicable. Where a Quorum does not attend the emergency meeting, the action of the Town Council at the emergency meeting will need to be ratified by the Town Council at the next meeting at which a Quorum is in attendance.

### 2.4 Study or Work Sessions

- a. The Town Council may hold study or work sessions as deemed necessary or desirable. Study or work sessions shall be called in the same manner as a Special Meeting or called by the Town Manager in consultation with the Town Clerk.
- b. No legally binding or formal action shall be taken at any such session. The Council may provide general administrative direction to the Town Manager by simple concurrence or consensus of the members of the Town Council.
- c. A study or work session shall *customarily* be limited to the presentation of information to the Town Council and to Town Council's discussion of such information. Public comment upon matters under study or discussion shall not be typically entertained except upon concurrence of the Council members in attendance. No Quorum shall be required at any study or work session.
- d. Executive sessions shall not be conducted during a study or work session.

### 2.5 Quorum

Where a quorum is required by these Bylaws, a majority of the members of the Town Council in office shall constitute a quorum for the transaction of business at all Town

Council meetings. In the absence of a Quorum, a meeting may be rescheduled to a later date and time as permitted by Town Council's adopted Rules of Order.

## 2.6 Meetings to be Public

All meetings of the Town Council shall be open to the public except as permitted by law. At Town Council meetings, members of the public shall have a reasonable opportunity to be heard except for those meetings that are designated as study or work sessions. In compliance with the Colorado Open Meetings Law, the Town Clerk shall keep a record of the proceedings of each meeting. The intent is that, when feasible, Town Council will allow for a remote meeting option for the public's attendance and participation at open meetings. (Charter § 3.5) The Town Council may adopt a remote meeting policy to further define the public's attendance and participation through the remote meeting option.

## 2.7 Meeting Notice

The Town Council shall adopt a Resolution that establishes public notice and posting requirements in accordance with the Colorado Open Meetings Law including designating the Town official site for posting the agenda at least 24 hours in advance of the public meeting (except for emergency meetings as governed by Charter § 3.3) and such designation shall be deemed automatically readopted at the Town Council's first regular meeting of each calendar year unless otherwise determined by the Town Council. (Charter § 3.10)

## 2.8 Town Council Attendance and Absences

- a. All Town Councilmembers are expected to attend all regular, special, work and study session meetings unless excused from attendance in accordance with this section. Councilmembers are expected to attend Town Council meetings in person unless a different form of attendance is authorized or in person attendance is excused. (Charter § 3.9)
- b. Three (3) or more unexcused absences by a member of the Town Council in any one (1) calendar year shall constitute grounds for sanctions or removal.
- c. Excused Absences.
  1. The Presiding Officer shall excuse an absence of the Mayor or any Councilmember from all or any portion of a meeting where:
    - (i) The Mayor or Councilmember contacted the Mayor, Town Manager, or Town Clerk *in advance* of the meeting regarding the reason for the absence; *and*
    - (ii) The reason for the absence is due to circumstances that were unforeseeable or unavoidable, such as but not limited to, emergency, illness, or last-minute familial obligations. An excuse shall not be granted where the Mayor or

Councilmember's absence is due to the person's desire to attend other meetings or functions unless the person's attendance at the meeting or function was: (i) requested or directed by the Town Council; or (ii) undertaken in the Councilmember's appointed role as Town Council representative to a board, commission, or body.

- (iii) An absence may not be excused if the Councilmember has been absent for more than two (2) consecutive regular meetings due to a vacation.
  - (iv) If a Councilmember is absent for both a work or study session on the same date, that absence is only counted as one and not two absences.
  - (v) If advance notice is provided, an excused absence may be ratified by Town Council on the consent agenda.
2. The Presiding Officer may excuse an absence of any Councilmember from a meeting or a portion of a meeting *subsequent to* the meeting where:
- (i) The Councilmember's requested excuse was due to circumstances that were unforeseeable or unavoidable, such as but not limited to, accident, emergency, illness, or last-minute familial obligations; and
  - (ii) The circumstances surrounding the excuse did not permit the Councilmember to timely contact the Mayor, Town Manager, or Town Clerk prior to the meeting as provided by paragraph (B) above.
3. Members of Town Council are permitted three (3) excused absences as a result of electronic participation in a Town Council meeting. Electronic participation as a result of the reasons identified in paragraph 2.8.c.ii are not counted toward this limitation. The limitation on the number of permitted excused absences is effective beginning January 1, 2025.
- d. The Presiding Officer's decision regarding the recognition or denial of any absence shall be subject to appeal as provided by the Rules of Order.

## 2.9 Town Attorney

Unless otherwise excused by the Town Council, the Town Attorney or the Town Attorney's designated representative is expected to attend all regular, special, or emergency meetings of the Town Council and attend such other meetings and sessions of the Town Council as the Town Council may request. The Town Attorney may attend meetings by a remote meeting option.

2.10 Town Clerk, Written Minutes, and Official Record

- a. The Town Clerk, or the Town Clerk's designated representative, shall attend and shall keep written minutes of each regular or special meeting of the Town Council. Written meeting minutes may be a brief and concise summary or synopsis of actions taken by the Town Council, the titles of ordinances and resolutions considered, votes taken, and other action items and general topics of discussion. Meeting minutes need not record what was said during the meeting.
- b. The minutes shall record how each Councilmember voted on each question, except that where the vote was unanimous it shall only be necessary for the minutes to so state.
- c. The official record of a Town Council meeting shall be the Town's electronic recording of the meeting, if any, and in the absence of an electronic recording or in the event of recording equipment malfunction, the official record shall be the written meeting minutes.
- d. A Councilmember shall have the privilege of having his or her statement on any subject then under consideration by the Town Council entered into the written minutes. Such request must be made before the Presiding Officer puts the question to a vote and must be accompanied by the statement, "For the Record," to alert the Town Clerk of the need to include such remarks in the written minutes. A Councilmember's lengthy statement for the record is strongly encouraged to be submitted to the Town Clerk in writing prior to the meeting. At the Town Clerk's discretion, unwritten lengthy oral statements may be summarized in the written minutes with attribution to the speaker.
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- f. At any time prior to the Town Clerk's certification of the minutes as approved by the Town Council, the Town Clerk may change the minutes to correct spelling or typographical errors, provided that such change does not alter the substance or meaning of the minutes.
- g. The Clerk of the meeting at which the minutes are approved shall sign the approved minutes.

## 2.11 Agenda and Order of Business

- a. A regular meeting of the Town Council will have an established order of business generally along the following guidelines which may be modified by the Presiding Officer in accordance with the Rules of Order:
  1. Call to Order, Roll Call
  2. Approval of Agenda
  3. Recognitions, proclamations, and appointments
  4. Communications to Council
  5. Consent agenda (handling of routine business)
    - A. First Reading of Ordinances
    - B. Resolutions
    - C. Approval of Town Council Minutes
    - D. Excused Absences
  6. Discussion Business
    - A. Consideration of Ordinances (second reading/public hearing)
    - B. Resolutions
    - C. Other
  7. Planning Matters
  8. Reports
  9. Other Matters
  10. Adjournment

## 2.12 Setting Agendas

The Mayor and the Town Manager have the task of setting the meeting agendas for regular and special meetings and for work sessions of the Town Council. In addition, two members of the Town Council may request that the Town Manager place an item on a meeting agenda.

## 2.13 Requesting Future Agenda Items

Any Councilmember, the Town Manager, or the Town Attorney may request that the Town Council formally consider any Town business or other matter of public interest at a future meeting by raising the request with the Town Council during any **regular** meeting. Upon confirmation by a consensus of the Town Council that the Town Council desires to entertain consideration or review of the proposed business or matter, the Presiding Officer shall instruct the Town staff to set the matter on the next available agenda or on the agenda of a specific meeting.

## 2.14 Adjournment of Regular Meetings by 9:00 p.m.

A Town Council regular meeting shall customarily adjourn at or before 9:00 p.m. Extending a regular meeting beyond 9:00 p.m. shall require approval of a motion to

suspend the required adjournment requirement. A motion may propose to limit the agenda matters to be considered after 9:00 p.m. and/or set a later time for adjournment.

As an express condition of adjournment, the Town Council shall formally move to continue or postpone all agenda items that will not be considered following adjournment in accordance with the Rules of Order.

### III. Meeting Procedures.

#### 3.1 Parliamentary Rules/Rules of Order

- a. Bob's Rules of Order for Colorado Local Governments (Peak Nine Press 2023) shall be the parliamentary rules of order for meetings of the Town Council ("Rules of Order").
- b. The following additional rules shall be incorporated into the Rules of Order:
  1. A Councilmember shall not engage in the review or transmission of electronic mail or other forms of digital communications or be connected to the Internet during any quasi-judicial matter.
  2. Addressing the Town Council – Time Limitations.
    - (i) Councilmember's access to the floor when addressing the Town Council shall be limited in time as provided by the Rules of Order;
    - (ii) Guests, presenters, and speakers invited to present to the Town Council shall be limited in time as established or directed by the Presiding Officer; and
    - (iii) For all other persons wishing to address the Town Council (other than public hearings, see V. below), such persons shall be limited to three (3) minutes for any presentation unless the Presiding Officer establishes a different time limitation applicable to all such persons wishing to address the Town Council.
- c. Voting Methods.
  1. A simultaneous voice vote or show of hands shall generally be used provided that an announcement is made regarding the result of the vote, including identification of Councilmember(s) voting on the non-prevailing side.
  2. The Presiding Officer may direct a vote to be made by roll call. A roll call vote by voice shall be *required* for:
    - (i) All ordinances on final reading;



- (ii) Any resolution appropriating or borrowing money;
  - (iii) Any resolution pertaining to new or existing taxes;
  - (iv) Any action concerning an initiative or referendum petition;  
and
  - (v) Conveyance of interests in real property.
3. Manner of Roll Call. When roll call voting is used, the roll call vote shall be taken in alphabetical order in a rotating manner, as follows: on the first roll call vote for the meeting, the Town Clerk will begin with the first Councilmember's name on the list; on the second vote, the Town Clerk will begin with the second Councilmember's name on the list and end with the first Councilmember name on the list, and continue to rotate the order in this manner. Such rotation will continue without interruption from meeting to meeting.

### 3.2 Meeting Decorum

- a. For regular and special meetings, each Councilmember shall be addressed as Mr./Ms. (last name) or Councilmember (last name); the Mayor shall be addressed as Mr./Ms. Mayor or Mayor (last name); Town staff, citizens, consultants, contractors shall be addressed as Mr./Ms. (last name). A less formal recognition of Councilmembers and others shall be acceptable for study or work sessions and executive sessions.
- b. At any regular or special meeting of the Town Council, any member of the public desiring to address the Town Council shall first secure the permission of, and be recognized by, the Presiding Officer.
- c. Each person addressing the Town Council shall be asked to provide his or her name and address for the record. All comments shall be addressed to the Presiding Officer and to the Town Council as a body and not to any particular Councilmember thereof or to other members of the audience.
- d. Actions which unreasonably disrupt a meeting shall be out of order. "Disrupt" shall mean evidently intended or designed to prevent, or reasonably preventing, the Town Council from conducting business. Disruptive actions may include, but not limited to: (i) constant or consistent shouting following the Presiding Officer's request to speak in a conversational voice; (ii) the use of horns, bells, or other sources of unwanted and unnecessary sound or noise; (iii) repeated speaking or interruption of the meeting without first obtaining the floor or without being acknowledged by the Presiding Officer; or (iv) threats of harm or violence. Refusal to heed requests to cease disruption may subject the person to removal from the meeting.
- e. The use of amplified sound or noise in any meeting shall not be permitted unless approved by the Presiding Officer as a necessary part of a presentation by a speaker. The Town's use of methods to amplify the voices of the Councilmembers shall be permitted.

- f. To prevent obstructing the view and hearing of persons attending a meeting, posters, banners, signs, or other forms to display shall be permitted in meeting rooms provided that such items or materials are placed against and along the side perimeter walls of the room in a manner not to interfere with access or the safety of attendees. No posters, banners, signs, or other forms to display shall be located behind the Town Council dais. The Presiding Officer may designate the appropriate location(s) for posters, banners, signs, or other forms to display.

#### IV. **Procedure for Passage of Ordinances (Charter § 6.5)**

The procedure for the passage of an Ordinance, other than an Emergency Ordinance, shall be as follows:

- a. Introduction (first reading) of the Ordinance at any regular or special meeting and vote by the Town Council in accordance with the voting requirements established by the Charter to move the proposed legislation forward to the second reading. Introduction and first reading of the Ordinance may be by placement on the Town Council's consent agenda for such meeting.
- b. If the Ordinance is passed upon first reading, publicizing by title only and in accordance with the requirements, methods, and procedures for publicizing Ordinances as adopted by the Town Council by Ordinance.
- c. Consideration of the Ordinance on second reading at a meeting not earlier than six (6) days after the first reading.
- d. Public hearing on the Ordinance (See V. Below).
- e. Roll call vote of the Town Council on the Ordinance following the public hearing.
- f. Any ordinance may be amended before final passage by a roll call of the Town Council.
- g. After final passage, the Town Clerk shall publicize the Ordinance by title only with the statement that the full text is available for public inspection and acquisition in the office of the Town Clerk. Whenever possible, publicizing shall be within ten (10) days after final passage.
- h. Unless a later date is specified in the text of the Ordinance, an Ordinance other than an Emergency Ordinance shall take effect and be enforced thirty (30) days after final publication.

#### V. **Public Hearings – Procedures.**

Public hearings required by law shall be conducted in general accordance with the following procedures. Deviations from these procedures that do not substantially affect

the fairness and outcome of the hearing shall be permitted with or without approval of the Town Council.

- a. Town Clerk shall read the title or subject matter of the item into the record.
- b. The Presiding Officer, in the order indicated, will:
  1. Declare the public hearing open;
  2. Announce the public hearing procedures (if such procedures were not previously explained to the audience in a prior hearing during the same meeting);
  3. Establish, when determined to be necessary, reasonable time limits for the presentation to the Town Council of public comments and testimony during the hearing. Where no other time limits are established:
    - (i) Town staff or Town consultants shall not be limited except as directed by the Presiding Officer;
    - (ii) An applicant, permittee, or petitioner (or their representative) whose property or other legal rights are the subject of determination during the public hearing shall not be subject to time limitations provided that the applicant, permittee, or petitioner avoids redundant and duplicative testimony or presentation of evidence;
    - (iii) Scheduled speakers invited to present information to the Town Council shall not be subject to time limitations except as directed by the Presiding Officer; and
    - (iv) All other persons shall be limited to three (3) minutes;
  4. Ask for an introductory presentation by the Town Administration, if appropriate;
  5. Ask for the applicant's, permittee's, or petitioner's presentation, if appropriate;
  6. Provide opportunity for public presentation by those who are in favor of the matter, opposed to the matter, or who may have general questions regarding the pending matter.
  7. Any person speaking or presenting any information at the hearing may be questioned by the Town Council and, with the consent of the Presiding Officer, by the Town Administration.
  8. The Presiding Officer will ask, at times during the hearing determined by the Presiding Officer, if any member of Town Council has any questions of, or desires any additional information from, anyone who has spoken or

has presented information during the hearing. If such is the case, a member of Town Council may direct the question and/or request through the Presiding Officer to such individual and the response will be limited to the answer of the question, as stated.

- c. Cross-examination of persons providing testimony or evidence shall not be permitted.
- d. The Presiding Officer may, on his/her own initiative or at the request of a Councilmember or the applicant, permittee, or petitioner, afford the applicant, permittee, or petitioner an opportunity to rebut or address statements or testimony presented by the general public or Town Administration. Rebuttal shall be limited only to subjects and matters raised during the hearing and is not intended to provide an opportunity for the applicant, permittee, or petitioner to present new evidence or information not offered during the main presentation. The Presiding Officer may, in the Officer's discretion, provide an opportunity for the general public to address issues, information, or matters newly raised during a rebuttal.
- e. Following questions from Town Council, the Presiding Officer will declare the public hearing closed and the matter will be remanded to the Town Council for consideration.
- f. Upon the closure of the public hearing, the Town Council will seek to avoid additional questioning of any hearing participant except as may be found necessary by the Presiding Officer to quickly clarify a factual question or resolve a factual matter of dispute between members of the Town Council. No additional unsolicited testimony shall be entertained or accepted by the Town Council. The public hearing may only be reopened for good cause shown by a majority vote of the quorum present and only for the sole purpose of receiving specifically identified and focused testimony. In the event a public hearing is reopened, all persons in attendance shall be provided an opportunity to provide testimony regarding the specifically identified matter for which the hearing was reopened.
- g. The Town Council may, with leave of the Presiding Officer, request legal advice or direction from the Town Attorney at any time.

## **VI. Amendments.**

These Bylaws may be amended by a majority vote of Councilmembers present at a Town Council meeting at which a quorum exists. Any proposed amendments shall be submitted in writing to each member of Town Council at least two (2) weeks in advance of the Town Council meeting at which such amendments are to be considered.

ADOPTED BY THE TOWN COUNCIL THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2024.

# TOWN OF KEYSTONE, COLORADO

## STAFF REPORT

TO: Mayor & Town Councilmembers  
THROUGH: John Crone, Town Manager  
FROM: Jennifer Madsen, Town Attorney  
DATE: September 24, 2024  
SUBJECT: Discussion of electronic participation and fully remote meeting policy

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### **Executive Summary:**

At the September 10 meeting, the Town Council initiated discussion of a policy related to electronic participation by members of Town Council at work sessions and regular meetings. Town Council provided some input on an electronic participation and fully remote meeting policy.

### **Background:**

Town Council adopted bylaws on April 9, 2024. The adopted Town Council bylaws did not specifically address electronic participation in meetings by members of Town Council. Town Council is considering revisions to the bylaws to address electronic participation at meetings of the Town Council.

With the use of a video-conferencing platform for Town Council meetings, it is recommended that Town Council consider a policy related to electronic participation at in-person meetings and fully remote meetings. A draft Electronic Participation and Fully Remote Meeting policy is provided for Town Council's review and consideration. Based on Town Council's comments at the September 10 meeting, edits were made to this draft policy. A redline draft is provided to demonstrate the changes. Other communities have adopted similar electronic meeting policies to provide a process on electronic

participation and to be able to continue Town Council business during emergency situations.

Here is a summary of the Electronic Participation and Fully Remote draft policy:

- Town Council may conduct a fully remote (all participating electronically) during an emergency. Emergency is defined in the policy.
- The Town Manager has the discretion as to whether any quasi-judicial hearings are placed on the agenda for fully remote meetings.
- Except in emergencies, Town Council and the Planning and Zoning Commission meet in person.
- Members of Town Council may electronically participate in in-person meetings as outlined in the policy and as highlighted here: the bylaws permit electronic participation; only three members can participate electronically at any one meeting; the communication must be clear and uninterrupted; and no voting on quasi-judicial matters.

**Attachment:**

- DRAFT Electronic Participation and Fully Remote Meeting
- DRAFT Electronic Participation and Fully Remote Meeting (redline)

## TOWN OF KEYSTONE, COLORADO

### ELECTRONIC PARTICIPATION AND FULLY REMOTE MEETINGS

#### I. Purposes.

With advancements in communication equipment, meeting participation through electronic means such as web-based meetings and voice or videoconferencing has become more popular within many local governments. However, virtual or other electronic participation has inherent limitations because such participation may make more difficult a member's ability to fully view documentary information presented during meetings, to fully evaluate a speaker's non-verbal language in assessing veracity or credibility, and to fully observe nonverbal explanations (e.g., pointing at graphs and charts) during a speaker's presentation or testimony.

The purposes of this Town Council Policy are:

- A. although not preferable, to specify the circumstances under which an individual member of Town Council or member of a Town Board may participate in Town Council or Board meetings, respectively, by other electronic means; and
- B. to recognize that, in rare circumstances, such as during or following natural disasters, severe weather events or public health emergencies, the conditions under which all members of Town Council or members of a Board may participate in regular, special, and emergency meetings and executive sessions by t electronic means should necessarily be expanded to ensure that the Town government can continue to function to the extent possible to protect the public health, safety and welfare, while still ensuring transparency and protecting the procedural due process and other rights of the public, applicants, and interested persons; and
- C. to authorize the Town Manager to adopt administrative procedures that set a process for holding certain quasi-judicial hearings to allow some or all evidence, including public hearing comment, to be submitted in advance of the hearing date and time, such evidence to be made part of the record before the determining body, and to authorize the Town Manager to determine the selection of matters to be heard in such manner.

#### II. Applicability.

This Policy shall be applicable to the Town Council and to Boards, as such term is defined in Section III.

#### III. Definitions.

"Board" shall mean the following board, commission, or committee of the Town of Keystone:

- Planning and Zoning Commission
- Trails and Open Space Advisory Board
- Business Advisory Board
- Other boards, commissions and committees formed by Town Council

"Board member" shall mean all members of the particular Board of the Town subject to this Policy.

“Member of Town Council” shall mean the Mayor or other Councilmember of the Town Council of the Town of Keystone.

“Electronic participation” or “electronically participate” shall mean participating in a meeting by web-based video or audio-conferencing platform as determined by the Town Clerk or by telephone.

“Emergency” shall mean a public health or other emergency caused by epidemic, pandemic, or other natural or other physical disaster that renders it unsafe to physically meet or travel to physically meet in a public setting as determined by the Mayor or the Town Manager.

“Fully remote meeting” shall mean a meeting held entirely by electronic participation.

“Hybrid meeting” shall mean a meeting held by a combination of both in-person and electronic participation.

“In-person” shall mean participating in a meeting by being physically present at the designated meeting location.

“Meeting” shall mean a regular, special, work session or study session meeting of the Town Council or meeting of a Town Board that is required to be an “open meeting” under the Colorado Open Meetings law.

#### **IV. Statement of Policy.**

##### **A. Times of Emergency - Fully Remote Meetings of Town Council and Boards.**

This Section IV(A) applies to Town Council and Boards. During times of emergency, a meeting of the Town Council or any Board may be, but is not required to be, held as a fully remote electronic meeting as follows:

1. Open Meetings. The Town Clerk or the Town Clerk’s designee shall take reasonable and practical measures to ensure that:
  - a. Each fully remote meeting is open to the public at all times; and
  - b. Information is provided to enable the public to electronically participate such that the public is always reasonably able to hear comments and testimony but, unless a quasi-judicial hearing is taking place in accordance with Section IV(A)(4) or there is an applicable legal requirement otherwise, it is not necessary to provide a means for the public to speak and, in the case of a video-conference fully remote meeting, it is not necessary to provide a means for the public to view the meeting; and
  - c. Each fully remote meeting provides Town staff and the public a reasonable opportunity to provide comments, which may include requiring the public to provide written comments/questions to the Town Clerk or the Town Clerk’s designee prior to the start of the meeting, except during public hearings for which public comment shall be taken at the time of the hearing; and



- d. All members of Town Council or Board members can clearly and without interruption hear one another or otherwise communicate with one another and can hear or read all discussion and testimony in a manner designed to provide maximum notice and participation; and
  - e. All votes are conducted by roll call.
2. Notice of Fully Remote Meetings. Notice of fully remote meetings, including instructions on how the public may electronically attend the meeting, shall be provided in accordance with the Town's then-effective resolution designating the location for posting public notices whenever possible. If the nature of the emergency precludes the Town from so posting, the Town will use all reasonable efforts to provide notice to the public of its fully remote meeting, including whenever possible, posting such notice on the Town's web site and Town-maintained social media pages, providing notice to other local news channels, if available.
3. Executive Sessions. As permitted by Colorado law, participation during an executive session held during a fully remote meeting shall be available only after each participating member of Town Council or Board member affirms on the record that each such member of Town Council or Board member is participating in a secure and confidential manner in a location where no other persons can hear the content of the executive session and such participant shall not record or transmit the executive session. In addition, participants in an executive session shall endeavor to keep the camera setting on during the executive session when the session is conducted on a video-conferencing platform.
4. Quasi-judicial matters. The Town Manager has discretion to determine that any quasi-judicial hearing shall not be placed on the agenda of a fully remote meeting and such administrative decision is final. This Policy creates no right in favor of any party to have a quasi-judicial matter heard at a fully remote meeting. The Town may, however, in its sole discretion, allow such quasi-judicial hearing in accordance with the requirements of this Section IV(A)(4).
- a. No public hearings on quasi-judicial matters shall be held and no votes on quasi-judicial actions shall be taken during a fully remote meeting except:
    - i. if, due to emergency or other reasons, the Town is generally holding public meetings as fully remote meetings; and
    - ii. if such quasi-judicial matters heard during fully remote meetings provide the ability for interested members of the public to reasonably participate in the hearing; and
    - iii. in accordance with the following:
      - A. The applicant in the quasi-judicial matter must make a written request for the matter to be heard during a fully remote meeting on a form provided by the Town Clerk or the Town

Clerk's designee, acknowledging that holding a quasi-judicial hearing at a fully remote meeting presents certain legal risks and involves an area of legal uncertainty, and agreeing that moving forward with a quasi-judicial hearing at a fully remote meeting shall be at the applicant's own risk. Applicants requesting determinations on quasi-judicial matters during fully remote meetings shall agree in writing to hold harmless, defend and indemnify the Town for any costs, damages or claims, including costs of defense, in any action that alleges that holding such hearing during a fully remote meeting was improper, unauthorized, or otherwise denied the applicant rights attendant to a public hearing.

B. Upon receipt of a written request, the Town Manager or the Town Manager's designee shall (1) determine whether the Town has the capability to hold the particular type of hearing at a fully remote meeting, (2) determine what available platform, format or procedure for the fully remote meeting is most appropriate for the type of hearing, and (3) set date(s) for the hearing(s).

C. The platform, format or procedure chosen by the Town Manager or the Town Manager's designee shall ensure that the entire body, the applicant, and the public all have the ability to view or listen to the hearing in real time and that interested parties may provide input and ask questions when appropriate, which may be before or at the hearing. If documents or presentations are to be viewed, the platform format or process shall similarly either allow the entire body, the applicant and interested parties the ability to view the documents or presentation either before or during the presentation in real time, or references shall be made during the hearing on the record to page numbers and documents that had otherwise been publicly posted in advance of the hearing such that all participants are clear as to what documents/pages are being viewed/discussed.

D. In the posted notice of the hearing and at the outset of the hearing, the Mayor or presiding officer shall describe the hearing procedure, including how testimony and public comment has been or will be received.

E. Applicants for determinations on quasi-judicial matters shall, by participation therein, be deemed to have additionally agreed to the procedure to be followed for the hearing(s) as set forth in the Town-Manager promulgated administrative directive, including requirements on timing for submission of documents, responding to requests and questions received, etc.

F. Interested parties other than the applicant who desire to introduce documents shall be informed by notice (as described

in subsection IV(A)(4)(b)) of the methods by which such documents may be introduced at the hearing.

G. If documents are introduced at the hearing that make it difficult for the public, the applicant, or the electronically participating members of Town Council or Board members to view and/or review, the hearing may, in the discretion of the Town Council or Board, be continued to a date certain to allow for such viewing/reviews.

H. If at any time the Town Manager or the Town Manager's designee determines it is not possible or prudent to hold or continue the hearing at a fully remote meeting, whether due to technical issues or an inability to do so while meeting all legal requirements, the hearing shall be vacated and the matter will be continued until in-person meetings can be held. Such decision to vacate a hearing shall be a final administrative decision of the Town Manager or the Town Manager's designee.

- b. Notice Requirements for Quasi-Judicial Hearings Held During Fully Remote Meetings.
- i. The required notice(s) for the quasi-judicial hearing and the agenda for the fully remote meeting at which the hearing will be held shall each include information about how the hearing will be conducted and how the public can provide comment, access and observe, and, if available, electronically participate in the hearing.
  - ii. If notice as required by the Town of Keystone Ordinances and Municipal Code or otherwise by law has already been provided for a quasi-judicial hearing originally planned to be held in person, additional notice shall be given as to reasonably inform interested persons that such hearing will instead be held at a fully remote meeting. The date of issuance of any additional notice that addresses only the platform to be used for the meeting (*i.e.*, a fully remote meeting rather than an in-person meeting) shall not be considered for purposes of determining timeframes for publishing, posting or issuing public hearing notice requirements under the town of Keystone Ordinances and Municipal Code.
  - iii. The notice shall advise how and when relevant documents will be made available, and how any interested party may review a paper copy if unable to access the documents available online, and that and how the Town will reasonably accommodate interested parties who lack necessary viewing equipment or the ability to access viewing equipment.
  - iv. Interested parties will be encouraged and notified about the methodology by which to submit written comments or

documents for introduction in advance of the hearing and that such comments or documents will be made a part of the record of the hearing.

- c. Record. The Town Clerk shall ensure that all equipment used for the hearing is adequate and functional for allowing clear communication among the participants and for creating a record of the hearing as required by law, provided, however, the Town shall not be responsible for resolving any technical difficulties incurred by any person participating in the hearing.
  - d. Technical problems. If any person informs the Town Clerk or the body during the hearing of technical issues precluding participation as otherwise available under this Policy or the Town Manager-promulgated administrative directive authorized hereunder, such information will be forthwith transmitted to the Mayor or presiding officer who shall make a determination whether to continue the hearing to a future date certain. The Mayor, chairperson or presiding officer has discretion to determine whether to adjourn the hearing to a future date certain if the electronic participation results in interference in the meeting process; e.g., where the telephone or electronic connection is repeatedly lost, the quality of the connection is unduly noisy, or a participant is unable to hear other speakers using a normal speaking voice amplified to a level suitable for the meeting audience electronically participating.
5. Effect of Electronic Participation During Fully Remote Meetings. Electronic participation during fully remote meetings shall constitute actual attendance for purposes of establishing a quorum for the meeting and for action on all matters at such meeting.

**B. Meetings of Town Council and Town Boards Held Not During Emergency.**

1. In the absence of any emergency, the format of meetings of Town Council and Planning and Zoning Commission shall be in-person.
2. Electronic participation at an in-person meeting of Town Council and Planning and Zoning Commission shall be in accordance with Section IV(C) below.
3. Unless directed otherwise by Town Council, Town Boards, Commissions and Committee may choose the format of their meetings.

**C. Electronic Participation in In-Person Meetings.**

1. This Section IV(C) applies to in-person meetings of the Town Council and Planning and Zoning Commission. This Section IV(C) also applies to other boards, commissions, and committees if the Town Council directs that these meeting rules apply to such group. In addition, the board, commission, and committees may adopt a policy following these rules. For purposes of this Section IV(c), the term "Member" shall mean a member of Town Council,

member of the Planning and Zoning Commission, or member of a Town Board that is required to follow these procedures.

2. A Member may electronically participate in an in-person meeting of the Town Council or such Board only as follows:
  - a. The Town Council Bylaws or Board Bylaws, whichever are applicable, permit a Member's electronic participation at a meeting.
  - b. Electronic participation is intended to be an infrequent or occasional substitution for physical attendance. Telephone participation is only permitted in rare circumstances that necessitate participation of the Member by telephone. Telephone participation should only be permitted if technical problems prevent the Member from participating on the video-platform and the Member's participation in the meeting is desired for quorum or a particular meeting agenda item such as the adoption of an emergency ordinance.
  - c. The Town Council may, by majority vote of a quorum present, declare a Member's repeated use of electronic participation excessive and deny a Member's privilege to electronically participate for a specific meeting or meetings. Such declaration by the Town Council shall only be made when the Member seeking to electronically participate is afforded advance notice and the opportunity to participate in the Town Council's discussion regarding excessive use and the continuation of such electronic participation by the Member. Provided that the Member is provided notice of the date and time of the planned Council discussion, the Member's inability to be available to participate in the discussion shall not preclude the Town Council's authority to discuss and decide whether such Member's use of electronic participation is excessive.
  - d. Electronic participation must permit clear, uninterrupted, and two-way communication for the participating Member.
  - e. Up to three Members may electronically participate only if the electronic conferencing system permits clear, uninterrupted, and two-way communication for all participating members of Town Council or Board members. If more than three Members desire to electronically participate during the same meeting, the first three member of Town Council or Board members who arrange for electronic participation with the Town Clerk or Recording secretary, respectively, as set forth in Section IV(C)(3)(b) shall be allowed to electronically participate.
  - f. A Member may neither electronically participate in nor vote on a quasi-judicial matter at a public hearing; however, the Member may maintain the electronic or telephonic connection and monitor or listen to the hearing.
  - g. As permitted by Colorado law, electronic participation during an executive session is available to a Member. Participation during an executive session shall be available only after each electronically

participating Member affirms on the record that each person is participating in a secure and confidential manner in a location where no other persons can hear the content of the executive session and such participant shall not record or transmit the executive session. Electronic participants in an executive session shall endeavor to keep the camera setting on during the executive session.

- h. The Mayor, chairperson or presiding officer may discontinue electronic participation by one or more Members during a meeting where the electronic participation results in delays or interference in the meeting process; *e.g.*, where the telephone or electronic connection is repeatedly lost, the quality of the connection is unduly noisy, or a participating Member is unable to hear speakers using a normal speaking voice amplified to a level suitable for the meeting audience in attendance.
3. To arrange to electronically participate, a Member shall:
    - a. In the case of a member of Town Council, contact the Mayor, *or* Town Clerk, and in the case of a member of a Town Board, contact both the chairperson or presiding officer *and* Recording Secretary in advance of the meeting regarding the reason for the physical absence.
    - b. Contact the Town Clerk or the Town Clerk's designee or the Recording Secretary to arrange for electronic participation and provide a telephone number and any special calling instructions needed to facilitate the telephone or other electronic contact as may be required by the Town Clerk or the Recording Secretary. All Members shall endeavor to advise the Town Clerk or the Recording Secretary, respectively, of intent to electronically participate at the earliest possible time and not less than five (5) hours prior to the requested electronic participation. Late requests to electronically participate may be summarily denied by the Town Clerk or the Recording Secretary due to an inability to arrange for electronic participation.
    - c. Be available through the designated web conferencing or similar portal as determined by the Town Clerk or the Recording Secretary not less than ten minutes prior to the scheduled time of the meeting.
    - d. The Town shall endeavor to initiate the web conferencing or similar contact not more than 10 minutes prior to the scheduled time of the meeting. In the event of disconnection during a meeting, the Town Clerk or the Town Clerk's designee or the recording Secretary shall make one attempt to re-initiate the connection unless the Mayor, chairperson or presiding officer instructs the Town Clerk or the Town Clerk's designee or the Recording Secretary to discontinue the electronic participation in accordance with Section IV(C)(2)(h).

4.

D. Administrative Directive on Quasi-Judicial Hearings with Advance Introduction of Evidence.

1. Town Council hereby authorizes the Town Manager to adopt an administrative procedures, as needed, that sets an optional process for holding certain quasi-judicial hearings to be held by Town Council and the Planning and Zoning Commission, which process may allow some or all evidence, including public hearing comment, to be submitted in advance of the hearing date and time and be made part of the record before the determining body.
2. Town Council also authorizes the Town Manager to set forth the criteria for and to determine the selection of matters to be heard in accordance with such directive. The Town Manager may informally consult with the Town Council in advance on whether a particular matter shall be held in accordance with such directive.
3. Such procedures may be implemented regardless of whether a meeting is held as a fully remote meeting in accordance with Section (IV)(A) of this Policy.

**V. Reasonable Accommodations.**

The Town shall provide reasonable accommodation and shall waive or modify provisions of this Policy to provide disabled member of Town Council or Board members or members of the public full and equal access to Council or Board meetings.

This Policy was approved by Town Council on \_\_\_ day of \_\_\_\_\_, 2024, through Resolution No. \_\_\_\_\_.

## TOWN OF KEYSTONE, COLORADO

### TELEPHONIC/ELECTRONIC PARTICIPATION AND FULLY REMOTE MEETINGS

#### I. Purposes.

With advancements in communication equipment, meeting participation through ~~telephonic or other~~ electronic means such as web-based meetings and voice or videoconferencing has become more popular within many local governments. However, ~~telephonic~~, virtual or other electronic participation has inherent limitations because such participation may make more difficult a member's ability to fully view documentary information presented during meetings, to fully evaluate a speaker's non-verbal language in assessing veracity or credibility, and to fully observe nonverbal explanations (e.g., pointing at graphs and charts) during a speaker's presentation or testimony.

The purposes of this Town Council Policy are:

- A. although not preferable, to specify the circumstances under which an individual member of Town Council or member of a Town Board may participate in Town Council or Board meetings, respectively, by ~~telephone or other~~ electronic means; and
- B. to recognize that, in rare circumstances, such as during or following natural disasters, severe weather events or public health emergencies, the conditions under which all members of Town Council or members of a Board may participate in regular, special, and emergency meetings and executive sessions by ~~telephone or other~~ electronic means should necessarily be expanded to ensure that the Town government can continue to function to the extent possible to protect the public health, safety and welfare, while still ensuring transparency and protecting the procedural due process and other rights of the public, applicants, and interested persons; and
- C. to authorize the Town Manager to adopt ~~an administrative directive procedures~~ that ~~sets~~ a process for holding certain quasi-judicial hearings to allow some or all evidence, including public hearing comment, to be submitted in advance of the hearing date and time, such evidence to be made part of the record before the determining body, and to authorize the Town Manager to determine the selection of matters to be heard in such manner.

#### II. Applicability.

This Policy shall be applicable to the Town Council and to Boards, as such term is defined in Section III.

#### III. Definitions.

"Board" shall mean the following board, commission, or committee of the Town of Keystone:

- Planning and Zoning Commission
- Trails and Open Space Advisory Board
- ~~Business Advisory Board~~
- Other boards, commissions and committees formed by Town Council



“Board member” shall mean all members of the particular Board of the Town subject to this Policy.

“Member of Town Council” shall mean the Mayor or other Councilmember of the Town Council of the Town of Keystone.

“Electronic participation” or “electronically participate” shall mean participating in a meeting by ~~telephone or another~~ web-based video or audio-conferencing platform as determined by the Town Clerk or by telephone.

“Emergency” shall mean a public health or other emergency caused by epidemic, pandemic, or other natural or other physical disaster that renders it unsafe to physically meet or travel to physically meet in a public setting as determined by the Mayor or the Town Manager.

“Fully remote meeting” shall mean a meeting held entirely by electronic participation.

“Hybrid meeting” shall mean a meeting held by a combination of both in-person and electronic participation.

“In-person” shall mean participating in a meeting by being physically present at the designated meeting location.

“Meeting” shall mean a regular, special, work session or study session meeting of the Town Council or meeting of a Town Board that is required to be an “open meeting” under the Colorado Open Meetings law.

#### **IV. Statement of Policy.**

##### **A. Times of Emergency - Fully Remote Meetings of Town Council and Boards.**

This Section IV(A) applies to Town Council and Boards. During times of emergency, a meeting of the Town Council or any Board may be, but is not required to be, held as a fully remote electronic meeting as follows:

1. Open Meetings. The Town Clerk or the Town Clerk’s designee shall take reasonable and practical measures to ensure that:
  - a. Each fully remote meeting is open to the public at all times; and
  - b. Information is provided to enable the public to electronically participate such that the public is always reasonably able to hear comments and testimony but, unless a quasi-judicial hearing is taking place in accordance with Section IV(A)(4) or there is an applicable legal requirement otherwise, it is not necessary to provide a means for the public to speak and, in the case of a video-conference fully remote meeting, it is not necessary to provide a means for the public to view the meeting; and
  - c. Each fully remote meeting provides Town staff and the public a reasonable opportunity to provide comments, which may include requiring the public to provide written comments/questions to the Town

Clerk or the Town Clerk's designee prior to the start of the meeting, except during public hearings for which public comment shall be taken at the time of the hearing; and

- d. All members of Town Council or Board members can clearly and without interruption hear one another or otherwise communicate with one another and can hear or read all discussion and testimony in a manner designed to provide maximum notice and participation; and
  - e. All votes are conducted by roll call.
2. Notice of Fully Remote Meetings. Notice of fully remote meetings, including instructions on how the public may electronically attend the meeting, shall be provided in accordance with the Town's then-effective resolution designating the location for posting public notices whenever possible. If the nature of the emergency precludes the Town from so posting, the Town will use all reasonable efforts to provide notice to the public of its fully remote meeting, including whenever possible, posting such notice on the Town's web site and Town-maintained social media pages, providing notice to other local news channels, if available~~the local newspaper, and any local radio station and local television station that has filed a written request with the Town Clerk and has provided a telephone number for emergency notification.~~
  3. Executive Sessions. As permitted by Colorado law. ~~P~~participation during an executive session held during a fully remote meeting shall be available only after each participating member of Town Council or Board member affirms on the record that each such member of Town Council or Board member is participating in a secure and confidential manner in a location where no other persons can hear the content of the executive session and such participant shall not record or transmit the executive session. In addition, participants in an executive session shall endeavor to keep the camera setting on during the executive session when the session is conducted on a video-conferencing platform.
  4. Quasi-judicial matters. The Town Manager has discretion to determine that any quasi-judicial ~~matter~~ hearing shall not be placed on the agenda of a fully remote meeting and such administrative decision is final. This Policy creates no right in favor of any party to have a quasi-judicial matter heard at a fully remote meeting. The Town may, however, in its sole discretion, allow such quasi-judicial hearing in accordance with the requirements of this Section IV(A)(4).
    - a. No public hearings on quasi-judicial matters shall be held and no votes on quasi-judicial actions shall be taken during a fully remote meeting except:
      - i. if, due to emergency or other reasons, the Town is generally holding public meetings as fully remote meetings; and
      - ii. if such quasi-judicial matters heard during fully remote meetings provide the ability for interested members of the public to reasonably participate in the hearing; and

iii. in accordance with the following:

A. The applicant in the quasi-judicial matter must make a written request for the matter to be heard during a fully remote meeting on a form provided by the Town Clerk or the Town Clerk's designee, acknowledging that holding a quasi-judicial hearing at a fully remote meeting presents certain legal risks and involves an area of legal uncertainty, and agreeing that moving forward with a quasi-judicial hearing at a fully remote meeting shall be at the applicant's own risk. Applicants requesting determinations on quasi-judicial matters during fully remote meetings shall agree in writing to hold harmless, defend and indemnify the Town for any costs, damages or claims, including costs of defense, in any action that alleges that holding such hearing during a fully remote meeting was improper, unauthorized, or otherwise denied the applicant rights attendant to a public hearing.

B. Upon receipt of a written request, the Town Manager or the Town Manager's designee shall (1) determine whether the Town has the capability to hold the particular type of hearing at a fully remote meeting, (2) determine what available platform, format or procedure for the fully remote meeting is most appropriate for the type of hearing, and (3) set date(s) for the hearing(s).

C. The platform, format or procedure chosen by the Town Manager or the Town Manager's designee shall ensure that the entire ~~Town Council or Board~~ body, the applicant, and the public all have the ability to view or listen to the hearing in real time and that interested parties may provide input and ask questions when appropriate, which may be before or at the hearing. If documents or presentations are to be viewed, the platform format or process shall similarly either allow the entire ~~Town Council or Board~~ body, the applicant and interested parties the ability to view the documents or presentation either before or during the presentation in real time, or references shall be made during the hearing on the record to page numbers and documents that had otherwise been publicly posted in advance of the hearing such that all participants are clear as to what documents/pages are being viewed/discussed.

D. In the posted notice of the hearing and at the outset of the hearing, the Mayor or presiding officer shall describe the hearing procedure, including how testimony and public comment has been or will be received.

E. Applicants for determinations on quasi-judicial matters shall, by participation therein, be deemed to have additionally agreed to the procedure to be followed for the hearing(s) as set forth in the Town-Manager promulgated administrative directive,

including requirements on timing for submission of documents, responding to requests and questions received, etc.

F. Interested parties other than the applicant who desire to introduce documents shall be informed by notice (as described in subsection IV(A)(4)(b)) of the methods by which such documents may be introduced at the hearing.

G. If documents are introduced at the hearing that make it difficult for the public, the applicant, or the electronically participating members of Town Council or Board members to view and/or review, the hearing may, in the discretion of the Town Council or Board, be continued to a date certain to allow for such viewing/reviews.

H. If at any time the Town Manager or the Town Manager's designee determines it is not possible or prudent to hold or continue the hearing at a fully remote meeting, whether due to technical issues or an inability to do so while meeting all legal requirements, the hearing shall be vacated and the matter will be continued until in-person meetings can be held. Such decision to vacate a hearing shall be a final administrative decision of the Town Manager or the Town Manager's designee.

- b. Notice Requirements for Quasi-Judicial Hearings Held During Fully Remote Meetings.
- i. The required notice(s) for the quasi-judicial hearing and the agenda for the fully remote meeting at which the hearing will be held shall each include information about how the hearing will be conducted and how the public can provide comment, access and observe, and, if available, electronically participate in the hearing.
  - ii. If notice as required by the Town of Keystone Ordinances and Municipal Code or otherwise by law has already been provided for a quasi-judicial hearing originally planned to be held in person, additional notice shall be given as to reasonably inform interested persons that such hearing will instead be held at a fully remote meeting. The date of issuance of any additional notice that addresses only the platform to be used for the meeting (*i.e.*, a fully remote meeting rather than an in-person meeting) shall not be considered for purposes of determining timeframes for publishing, posting or issuing public hearing notice requirements under the own of Keystone Ordinances and Municipal Code.
  - iii. The notice shall advise how and when relevant documents will be made available, and how any interested party may review a paper copy if unable to access the documents available online, and that and how the Town will reasonably accommodate

interested parties who lack necessary viewing equipment or the ability to access viewing equipment.

- iv. Interested parties will be encouraged and notified about the methodology by which to submit written comments or documents for introduction in advance of the hearing and that such comments or documents will be made a part of the record of the hearing.
  - c. Record. The Town Clerk shall ensure that all equipment used for the hearing is adequate and functional for allowing clear communication among the participants and for creating a record of the hearing as required by law, provided, however, the Town shall not be responsible for resolving any technical difficulties incurred by any person participating in the hearing.
  - d. Technical problems. If any person informs the Town Clerk or the ~~Council or Board~~body during the hearing of technical issues precluding participation as otherwise available under this Policy or the Town Manager-promulgated administrative directive authorized hereunder, such information will be forthwith transmitted to the Mayor or presiding officer who shall make a determination whether to continue the hearing to a future date certain. The Mayor, chairperson or presiding officer has discretion to determine whether to adjourn the hearing to a future date certain if the electronic participation results in interference in the meeting process; e.g., where the telephone or electronic connection is repeatedly lost, the quality of the connection is unduly noisy, or a participant is unable to hear other speakers using a normal speaking voice amplified to a level suitable for the meeting audience electronically participating.
5. Effect of Electronic Participation During Fully Remote Meetings. Electronic participation during fully remote meetings shall constitute actual attendance for purposes of establishing a quorum for the meeting and for action on all matters at such meeting.

B. Meetings of Town Council and Town Boards Held Not During Emergency.

1. In the absence of any emergency, the format of meetings of Town Council and Planning and Zoning Commission~~and Town Boards~~ shall be in-person.
2. Electronic participation at an in-person meeting of Town Council and Planning and Zoning Commission~~and Town Boards~~ shall be in accordance with Section IV(C) below.
3. Unless directed otherwise by Town Council, Town Boards, Commissions and Committee may choose the format of their meetings.

C. Electronic Participation in In-Person Meetings.

1. This Section IV(C) applies to in-person meetings of the Town Council and Planning and Zoning Commission and Boards. This Section IV(C) also applies to other boards, commissions, and committees if the Town Council directs that these meeting rules apply to such group. In addition, the board, commission, and committees may adopt a policy following these rules. For purposes of this Section IV(c), the term "Member" shall mean a member of Town Council, member of the Planning and Zoning Commission, or member of a Town Board that is required to follow these procedures.
2. A ~~m~~Member of Town Council or Board member may electronically participate in an in-person meeting of the Town Council or such Board only as follows:
  - a. ~~The Town Council Bylaws or Board Bylaws, whichever are applicable, permit a Member's electronic participation at a meeting. Electronic participation shall be made available to a member of Town Council or Board member when such member of Town Council or Board member's absence would otherwise constitute an excused absence.~~
  - b. Electronic participation is intended to be an infrequent or occasional substitution for physical attendance. Telephone participation is only permitted in rare circumstances that necessitate participation of the Member by telephone. Telephone participation should only be permitted if technical problems prevent the Member from participating on the video-platform and the Member's participation in the meeting is desired for quorum or a particular meeting agenda item such as the adoption of an emergency ordinance.
  - c. The Town Council ~~or relevant Board~~ may, by majority vote of a quorum present, declare a ~~m~~Member of Town Council's or Board member's repeated use of electronic participation excessive and deny a ~~m~~Member of Town Council's or Board member's privilege to electronically participate for a specific meeting or meetings. Such declaration by the ~~member of Town Council or Board~~ shall only be made when the ~~m~~Member of Town Council or Board member seeking to electronically participate is afforded advance notice and the opportunity to participate in the Town Council's ~~or Board's~~ discussion regarding excessive use and the continuation of such electronic participation by the ~~M~~member of Town Council or Board member. Provided that the ~~M~~member of Town Council or Board member is provided notice of the date and time of the planned Council ~~or Board~~ discussion, the ~~M~~member of Town Council's or Board member's inability to be available to participate in the discussion shall not preclude the Town Council's ~~or Board's~~ authority to discuss and decide whether such ~~m~~Member of Town Council's or Board member's use of electronic participation is excessive.
  - d. Electronic participation must permit clear, uninterrupted, and two-way communication for the participating ~~M~~member of Town Council or Board members.

- e. Up to three ~~M~~members of Town Council or Board members may electronically participate only if the ~~telephone or other~~ electronic conferencing system permits clear, uninterrupted, and two-way communication for all participating members of Town Council or Board members. If more than three ~~M~~members of Town Council or Board members desire to electronically participate during the same meeting, the first three member of Town Council or Board members who arrange for electronic participation with the Town Clerk or Recording secretary, respectively, as set forth in Section IV(C)(3)(b) shall be allowed to electronically participate.
  - f. A ~~M~~member of Town Council or Board member may neither electronically participate in nor vote on a quasi-judicial matter at a public hearing; however, the ~~M~~member of Town Council or Board member may maintain the electronic or telephonic connection and monitor or listen to the hearing.
  - g. As permitted by Colorado law, Eelectronic participation during an executive session ~~shall is not be~~ available to a ~~M~~member of Town Council or Board member. Participation during an executive session shall be available only after each electronically participating Member affirms on the record that each person is participating in a secure and confidential manner in a location where no other persons can hear the content of the executive session and such participant shall not record or transmit the executive session. Electronic participants in an executive session shall endeavor to keep the camera setting on during the executive session. A member of Town Council may arrange to listen to a taped recording of a Town Council executive session held in such member's absence by making arrangements with the Town Clerk to listen at the Town Hall during normal business hours.
  - h. The Mayor, chairperson or presiding officer may discontinue electronic participation by one or more ~~m~~Members of Town Council or Board members during a meeting where the electronic participation results in delays or interference in the meeting process; e.g., where the telephone or electronic connection is repeatedly lost, the quality of the connection is unduly noisy, or a participating ~~m~~Member of Town Council or Board member is unable to hear speakers using a normal speaking voice amplified to a level suitable for the meeting audience in attendance.
3. To arrange to electronically participate, a ~~M~~member of Town Council or Board member shall:
- a. In the case of a member of Town Council, contact the Mayor, or Town Clerk, and in the case of a ~~member of a Town Board~~Board member, contact both the chairperson or presiding officer and Recording Secretary in advance of the meeting regarding the reason for the physical absence.
  - b. Contact the Town Clerk or the Town Clerk's designee or the Recording Secretary to arrange for electronic participation and provide a telephone



number and any special calling instructions needed to facilitate the telephone or other electronic contact as may be required by the Town Clerk or the Recording Secretary. All ~~Members of Town Council or Board members~~ shall endeavor to advise the Town Clerk or the Recording Secretary, respectively, of intent to electronically participate at the earliest possible time and not less than five (5) hours prior to the requested electronic participation. Late requests to electronically participate may be summarily denied by the ~~member of Town Council~~ Town Clerk or the Recording Secretary due to an inability to arrange for electronic participation.

- c. Be available ~~at the designated telephone number or~~ through the designated web conferencing or similar portal as determined by the Town Clerk or the Recording Secretary not less than ten minutes prior to the scheduled time of the meeting.

- d. The Town shall endeavor to initiate the ~~telephone or~~ web conferencing or similar contact not more than 10 minutes prior to the scheduled time of the meeting. In the event of disconnection during a meeting, the Town Clerk or the Town Clerk's designee or the recording Secretary shall make one attempt to re-initiate the connection unless the Mayor, chairperson or presiding officer instructs the Town Clerk or the Town Clerk's designee or the Recording Secretary to discontinue the electronic participation in accordance with Section IV(C)(2)(h).

~~d.~~

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- 4. ~~Effect of Electronic Participation. Electronic participation shall constitute actual attendance for purposes of establishing a quorum for the meeting and for action on all administrative and legislative matters at such meeting. Electronic participation is defined as an "Excused Absence" under the Town Council bylaws. Executive session(s) and action(s) on quasi-judicial matters at such meeting requires a quorum of member of Town Council or Board members being physically present at the start of such executive session or quasi-judicial hearing (and electronically participating member of Town Council or Board members may not participate in either as set forth in Sections IV(C)(2)(f) and (g)).~~

D. Administrative Directive on Quasi-Judicial Hearings with Advance Introduction of Evidence.

1. Town Council hereby authorizes the Town Manager to adopt an administrative ~~procedures as needed directive~~ that sets an optional process for holding certain quasi-judicial hearings to be held by Town Council and the Planning and Zoning Commission Boards, which process may allow some or all evidence, including public hearing comment, to be submitted in advance of the hearing date and time and be made part of the record before the determining body.
2. Town Council also authorizes the Town Manager to set forth the criteria for and to determine the selection of matters to be heard in accordance with such directive. The Town Manager may informally consult with the Town Council in



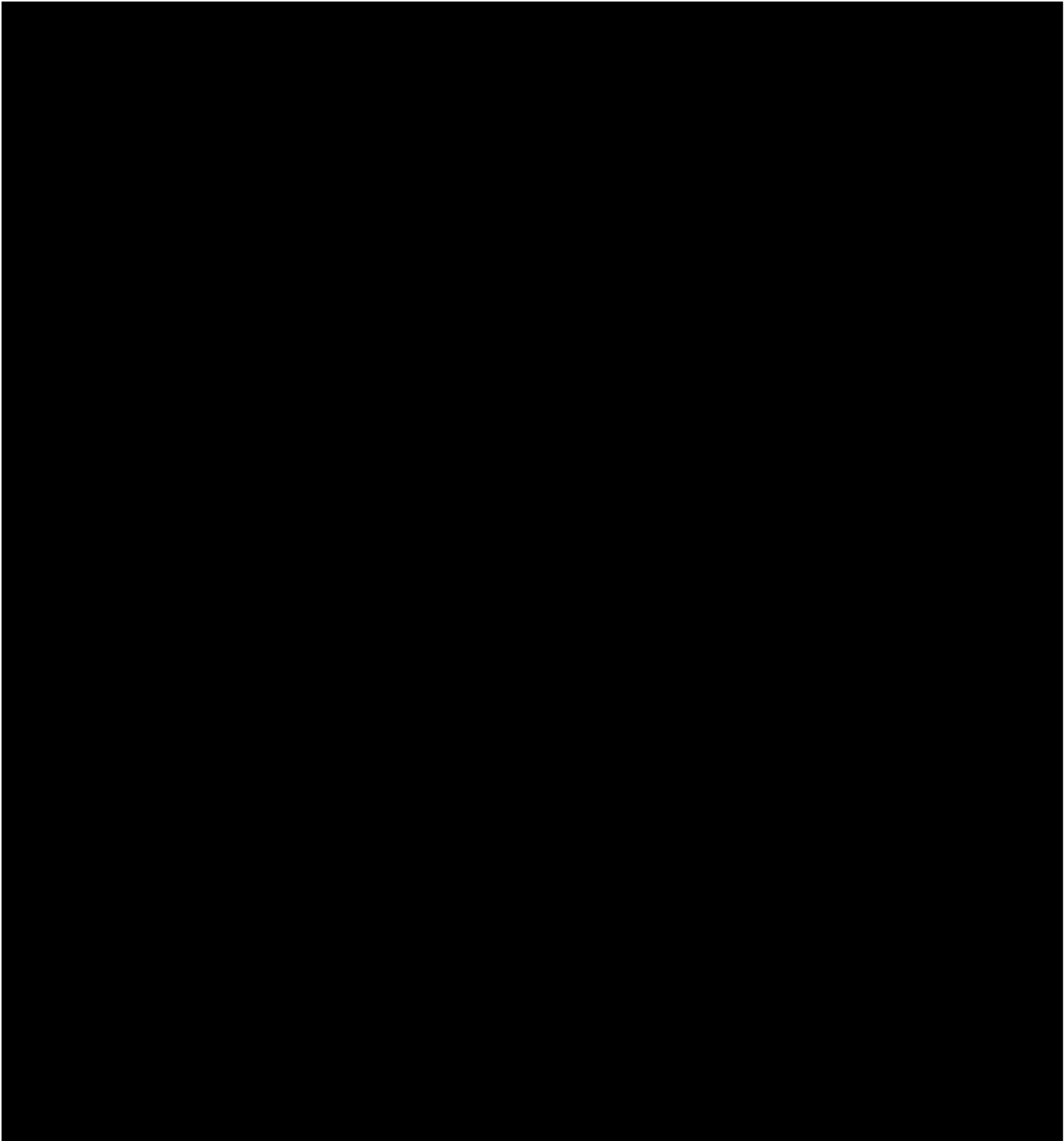
advance on whether a particular matter shall be held in accordance with such directive.

3. Such ~~directive-procedures~~ may be implemented regardless of whether a meeting is held as a fully remote meeting in accordance with Section (IV)(A) of this Policy

**V. Reasonable Accommodations.**

The Town shall provide reasonable accommodation and shall waive or modify provisions of this Policy to provide disabled member of Town Council or Board members or members of the public full and equal access to Council or Board meetings.

This Policy was approved by Town Council on \_\_\_ day of \_\_\_\_\_, 2024, through Resolution No. \_\_\_\_\_.



	F	G	H	I	J	K	L	M
1	<b>Town of Keystone</b>							
2	<b>Statement of Financial Position</b>		Printed: 9/19/24					
3	<b>As of Date Indicated</b>							
4			<i>Preliminary - Subject to Change</i>					
5								
6	<b>August 31, 2024</b>		<b>General</b>	<b>Capital</b>	<b>Housing</b>	<b>Conserv</b>	<b>All Funds</b>	
7			<b>Fund</b>	<b>Fund</b>	<b>Fund</b>	<b>Trust Fund</b>	<b>Combined</b>	
8	<b>ASSETS</b>							
9	Investment Acct - Colotrust		705,353	0	0	0	705,353	
12	Operating - FirstBank		324,344				324,344	
13	Pooled Cash		0	0	0	0	0	
18								
19	Total Cash in Bank		1,029,697	0	0	0	1,029,697	
20								
21	Sales Tax Receivable		415,309				415,309	
22	Other Tax Receivable		2,250				2,250	
23	Accounts Receivable		0	0	0	0	0	
28	Interfund & Other Receivables		0				0	
29	Prepaid Expenses		0				0	
30	Office Space Security Deposit		4,900				4,900	
31								
32	<b>TOTAL ASSETS</b>		<b>1,452,156</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1,452,156</b>	
33								
34	<b>LIABILITIES, DEFERRED INFLOWS AND FUND EQUITY</b>							
35	Accounts Payable		535,806	0	0	0	535,806	
41	Payroll Liabilities		3,680	0	0	0	3,680	
47	Wages Payable		0				0	
48	Due to Summit County (Sales Tax Advance)		0				0	
49	Misc Liabilities		0				0	
50	Clearing Account		(2,000)				(2,000)	
51								
52	<b>TOTAL LIABILITIES</b>		<b>537,486</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>537,486</b>	
53								
54	<b>DEFERRED INFLOWS</b>							
55	Deferred Revenue		0				0	
56								
57	<b>TOTAL DEFERRED INFLOWS</b>		<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	
58								
59	<b>FUND EQUITY</b>							
60	Invested in Capital Assets, Net		0				0	
61	Amount to be Provided for Debt Repayment		0				0	
62	Beg Fund Balance - General Fund		0				0	
63	Beg Fund Balance - Capital Improv Fund			0			0	
64	Beg Fund Balance - Workforce Housing				0		0	
65	Beg Fund Balance - Conservation Trust					0	0	
66	Current Surplus (Deficit)		914,671	0	0	0	914,671	
67	<b>TOTAL FUND EQUITY</b>		<b>914,671</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>914,671</b>	
68								
69	<b>TOTAL LIABILITIES, DEFERRED INFLOWS</b>							
70	<b>AND FUND EQUITY</b>		<b>1,452,156</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1,452,156</b>	
71	No assurance provided on these financial statements; substantially all disclosures required by GAAP omitted.		=	=	=	=	=	

	E	F	H	I	J	K	L	M	N	
2	<b>Town of Keystone</b>								Printed: 9/19/24	
3	<b>Statement of Revenues, Expenses and Changes in Fund Balance</b>								<i>Preliminary</i>	
4	<b>Actual, Budget and Forecast for the Periods Indicated</b>									
5	<b>Modified Accrual Basis</b>		<b>2024 ANNUAL</b>			<b>2024 From Inception (2/8/2024)</b>		<b>2025</b>		
6						<b>7 Months</b>	<b>7 Months</b>			
7		<b>Approved</b>		<b>Variance</b>		<b>Ended</b>	<b>Ended</b>	<b>Variance</b>	<b>Placeholder</b>	
8		<b>2024</b>	<b>2024</b>	<b>Favorable</b>		<b>8/31/24</b>	<b>8/31/24</b>	<b>Favorable</b>	<b>2025</b>	
9		<b>Budget</b>	<b>Forecast</b>	<b>(Unfavor)</b>		<b>Actual</b>	<b>Budget</b>	<b>(Unfavor)</b>	<b>Budget</b>	
10	<b>GENERAL FUND</b>									
11	<b>Revenues</b>									
12	<b>Sales Tax (2 mo estimated)</b>		2,614,224	2,614,224	0	1,649,682	1,616,162	33,520	3,323,383	
13	<b>Other Tax Revenue</b>					-				
14	Highway Users Tax Fund		48,627	48,627	0	0	0	0	66,612	
15	Cigarette Tax		5,092	5,092	(0)	4,437	1,004	3,433	7,115	
16	Nicotine Tax		59,628	59,628	0	0	0	0	83,315	
17	Road and Bridges Tax		91,684	91,684	(0)	76,812	76,812	(0)	103,774	
18	Specific Ownership Tax		25,348	25,348	0	0	0	0	34,723	
19	Auto Ownership Tax		9,970	9,970	0	0	0	0	13,657	
20	Other Tax Revenue		0	0	0	0	0	0		
22	<b>Total Other Tax Revenue</b>		240,348	240,349	1	81,249	77,816	3,433	309,196	
23	<b>Fees</b>									
24	Building Permits		203,203	203,203	0	32,507	101,600	(69,093)	362,282	
25	Franchise Fees		0	0	0	0	0	0		
27			203,203	203,203	0	32,507	101,600	(69,093)	362,282	
28	<b>Licenses</b>									
29	Business Licenses				0	0	0	0	34,723	
30	Short Term Rentals		541,732	541,732	(0)	1,790	0	1,790	547,150	
31	Liquor Licenses			5,250	5,250	2,575	0	2,575	0	
33			541,732	546,982	5,250	4,365	0	4,365	581,873	
34	<b>Fines</b>									
35	Municipal Court Fines				0	0	0	0	0	
36	Code Enforcement Fines				0	0	0	0		
38			0	0	0	0	0	0	0	
39	<b>Other Income</b>									
40	Grants			20,136	20,136	20,136	0	20,136		
41	Interest on Taxes				0	0	0	0		
42	Interest on Investments			10,000	10,000	5,354	0	5,354		
43	Admin Miscellaneous Income				0	0	0	0		
45			0	30,136	30,136	25,490	0	25,490	0	
47	<b>Total Revenue</b>		3,599,507	3,634,894	35,387	1,793,293	1,795,578	(2,286)	4,576,734	
49	<b>Expenditures</b>									
50	<b>Employee Benefits &amp; Taxes</b>									
51	401 A Match		44,414	44,414	0	16,924	28,263	11,339	60,000	
52	457 Match		16,655	16,655	0	2,035	10,599	8,564	130,000	
53	Flexible Spending Account (FSA)		5,774	5,774	0	900	3,674	2,774	6,500	
54	Wellness Reimbursement		12,158	12,158	0	0	7,737	7,737	9,600	
55	Health Insurance Premiums		79,834	79,834	0	35,050	50,803	15,753	0	
56	Health Ins Employee Contributions			(11,641)	11,641	(5,599)	0	5,599	0	
57	Workers Comp Insurance Premiums		11,381	11,381	0	9,216	7,242	(1,973)	0	
58	Payroll Taxes		18,543	18,543	0	6,509	11,800	5,291	900	
63	<b>Total Employee Benefits &amp; Taxes</b>		188,759	177,118	11,641	65,035	120,119	55,084	207,000	

	E	F	H	I	J	K	L	M	N	
2	<b>Town of Keystone</b>						Printed: 9/19/24			
3	<b>Statement of Revenues, Expenses and Changes in Fund Balance</b>						<i>Preliminary</i>			
4	<b>Actual, Budget and Forecast for the Periods Indicated</b>									
5	<b>Modified Accrual Basis</b>		<b>2024 ANNUAL</b>			<b>2024 From Inception (2/8/2024)</b>		<b>2025</b>		
6						<b>7 Months</b>	<b>7 Months</b>			
7			<b>Approved</b>	<b>Variance</b>		<b>Ended</b>	<b>Ended</b>	<b>Variance</b>	<b>Placeholder</b>	
8			<b>2024</b>	<b>2024</b>	<b>Favorable</b>	<b>8/31/24</b>	<b>8/31/24</b>	<b>Favorable</b>	<b>2025</b>	
9			<b>Budget</b>	<b>Forecast</b>	<b>(Unfavor)</b>	<b>Actual</b>	<b>Budget</b>	<b>(Unfavor)</b>	<b>Budget</b>	
64	<b>General Expenditures All Departments</b>									
65	Telephone	2,830	2,830	0		1,482	2,030	548	3,168	
66	Office Lease	50,700	50,700	0		31,300	31,100	(200)	196,158	
67	Office Building Maintenance	3,700	3,700	0		1,350	2,700	1,350	3,504	
68	Office Supplies	3,754	3,754	0		3,416	2,254	(1,162)	4,203	
69	Prof Services/Membership Fees	10,429	10,429	0		14,916	10,429	(4,487)	10,742	
70	Dues and Subscriptions	7,936	6,802	1,134		513	4,710	4,197	7,006	
71	Training	6,802	6,802	0		3,003	0	(3,003)	14,011	
72	Travel/Meals/Ldging	6,802	6,802	0		6,007	4,500	(1,507)	14,011	
73	Uniforms/Clothing	1,700	1,700	0		110	1,200	1,090	1,751	
74	Insurance	5,000	5,000	0		2,328	5,000	2,672	70,056	
75	Bank and Misc Fees	0	90	(90)		50	0	(50)	0	
76	IT/Technology	68,016	68,016	0		24,950	35,704	10,754	93,409	
77	Website	6,802	6,802	0		542	4,082	3,540	7,006	
78	Equipment Repairs/Leases	5,526	5,526	0		0	3,318	3,318	7,589	
79										
80	<b>Total Gen Exp All Departments</b>	<b>179,996</b>	<b>178,952</b>	<b>1,044</b>		<b>89,968</b>	<b>107,027</b>	<b>17,059</b>	<b>432,616</b>	
81										
82	<b>Mayor and Town Council</b>									
83	Mayor Wages	11,000	11,000	0		6,323	7,000	677	12,000	
84	Council Wages	33,000	33,000	0		18,760	21,000	2,240	36,000	
85	Cell Phone AllowTown Council	5,775	5,775	0		3,338	3,675	337	6,300	
86										
87		<b>49,775</b>	<b>49,775</b>	<b>0</b>		<b>28,421</b>	<b>31,675</b>	<b>3,254</b>	<b>54,300</b>	
88										
89	Misc Expense Town Council	1,251	3,409	(2,158)		2,510	799	(1,711)	1,401	
90	<b>Total Mayor and Town Council</b>	<b>51,026</b>	<b>53,184</b>	<b>(2,158)</b>		<b>30,931</b>	<b>32,474</b>	<b>1,543</b>	<b>55,701</b>	
91										
92	<b>Administration Services</b>									
93	Town Manager Wages	127,530	127,530	0		44,425	70,850	26,425	175,141	
94	Town Clerk Wages	95,047	95,047	0		56,015	59,715	3,700	106,411	
95	Office Clerk Wages	58,333	58,333	0		23,076	35,001	11,925	65,308	
96	Cell Phone Administration	2,250	2,250	0		958	1,350	392	0	
97	Keystone Housing Administration	15,000	15,000	0		6,500	9,000	2,500	0	
98										
99		<b>298,160</b>	<b>298,160</b>	<b>0</b>		<b>130,974</b>	<b>175,916</b>	<b>44,942</b>	<b>346,860</b>	
100	Postage	2,607	2,607	0		0	1,566	1,566	2,919	
101	Printing	7,300	7,300	0		502	4,380	3,878	8,173	
102	Community Engagement	8,502	8,502	0		0	1,000	1,000	8,757	
103	Local Travel	2,607	2,607	0		102	1,659	1,557	2,919	
104	Elections	12,000	12,000	0		0	0	0	0	
105	Town Attorney Contract	90,688	90,688	0		101,770	60,000	(41,770)	93,409	
106	Smoking Cessation (from Nicotine Tax)	59,628	59,628	0		0	33,125	33,125	83,315	
108	Payroll Contract (Paylocity)	4,950	4,950	0		2,933	3,150	217	5,099	
109	Accounting Contract (M&W)	63,494	63,494	0		35,713	35,000	(713)	64,958	
110	Annual Audit Contract	0	0	0		0	0	0	19,266	
111	Short Term Rental Contract Support	116,761	116,761	0		70,625	116,761	46,136	120,264	
112	Miscellaneous Administrative Expense	0	10	(10)		10	0	(10)		
113										
114	<b>Total Administrative Services</b>	<b>666,697</b>	<b>666,707</b>	<b>(9)</b>		<b>342,630</b>	<b>432,557</b>	<b>89,927</b>	<b>755,938</b>	
115										
116	<b>Community Development</b>									
117	Comm Dev Director Wages	124,431	124,431	0		67,377	76,431	9,054	148,320	
118	Planner2 Wages	60,489	60,489	0		0	30,244	30,244	93,409	
119	Cell Phone Comm Dev	1,350	1,350	0		363	750	387	1,800	
120	Keystone Housing Incentive Comm	9,500	9,500	0		2,750	5,500	2,750	6,300	
121										
122		<b>195,770</b>	<b>195,770</b>	<b>0</b>		<b>70,490</b>	<b>112,925</b>	<b>42,435</b>	<b>249,829</b>	
123	Building Permit/Inspections	162,562	162,562	0		0	81,280	81,280	289,826	
124	GIS	9,069	9,069	0		0	5,442	5,442	9,341	
125	Professional Services (Contracted)	11,336	11,336	0		0	6,804	6,804	11,676	
126	Planning Supplies/Printing	5,668	5,668	0		535	3,286	2,751	5,838	
127	Local Travel	2,834	2,834	0		0	1,806	1,806	5,838	
128	Communications	2,721	2,721	0		0	1,510	1,510	2,802	
129	Miscellaneous Comm Dev Expense	0	0	0		0	0	0		
130										
131	<b>Total Community Develop</b>	<b>389,960</b>	<b>389,960</b>	<b>0</b>		<b>71,025</b>	<b>213,053</b>	<b>142,028</b>	<b>575,149</b>	

	E	F	H	I	J	K	L	M	N	
2	<b>Town of Keystone</b>						Printed: 9/19/24			
3	<b>Statement of Revenues, Expenses and Changes in Fund Balance</b>						<i>Preliminary</i>			
4	<b>Actual, Budget and Forecast for the Periods Indicated</b>									
5	<b>Modified Accrual Basis</b>		<b>2024 ANNUAL</b>			<b>2024 From Inception (2/8/2024)</b>		<b>2025</b>		
6						<b>7 Months</b>	<b>7 Months</b>			
7		<b>Approved</b>		<b>Variance</b>		<b>Ended</b>	<b>Ended</b>	<b>Variance</b>	<b>Placeholder</b>	
8		<b>2024</b>	<b>2024</b>	<b>Favorable</b>		<b>8/31/24</b>	<b>8/31/24</b>	<b>Favorable</b>	<b>2025</b>	
9		<b>Budget</b>	<b>Forecast</b>	<b>(Unfavor)</b>		<b>Actual</b>	<b>Budget</b>	<b>(Unfavor)</b>	<b>Budget</b>	
132										
133	<b>Public Works</b>									
134	Public Works Director Wages	45,344	45,344	0	0	15,115	15,115		93,409	
135	Cell Phone Public Works	450	450	0	0	150	150		900	
136	Keystone Housing Public Works	3,000	3,000	0	0	1,000	1,000		6,000	
137										
138		48,794	48,794	0	0	16,265	16,265		100,309	
139	Communications	2,721	2,721	0	0	1,821	1,821		2,802	
140	Engineer Consultant	5,668	5,668	0	0	1,890	1,890		11,676	
141	Planning and Printing Supplies	2,834	2,834	0	0	567	567		5,838	
142	<b>Road Maint/Snow Plowing Contracts</b>									
143	Loveland Pass Village	0	0	0	0	0	0		35,028	
144	Keystone Roads- Currently County M	0	0	0	0	0	0		81,733	
145	Roads not County Maintained	0	66	(66)	66	0	(66)		166,968	
146	Asphalt Crack Seal	0	0	0	0	0	0		16,697	
147	Noxious Weed Control	0	0	0	0	0	0		17,514	
148	Other Maintenance	0	302	(302)	302	0	(302)		40,866	
149	Total Road Maintenance/Snow Plowin	0	368	(368)	368	0	(368)		358,806	
150										
151	Signage	0	0	0	0	0	0		11,676	
152	Engineering Services	0	0	0	0	0	0		21,855	
153	Miscellaneous Public Works Expense	0	130	(130)	130	0	(130)			
154										
155	<b>Total Public Works Expenses</b>	<b>60,017</b>	<b>60,515</b>	<b>(498)</b>	<b>498</b>	<b>20,542</b>	<b>20,043</b>		<b>512,962</b>	
156										
157	<b>Public Safety</b>									
168	Miscellaneous Public Safety Exp	0	85,708	(85,708)	37,509	0	(37,509)			
169										
170	<b>Total Public Safety Expenses</b>	<b>0</b>	<b>85,708</b>	<b>(85,708)</b>	<b>40,801</b>	<b>0</b>	<b>(40,801)</b>		<b>686,974</b>	
171										
172	<b>Municipal Court</b>									
173	Judge	0	0	0	0	0	0		7,589	
174	Prosecutor	0	0	0	0	0	0		11,209	
175	Miscellaneous Exp Municipal Cout	0	0	0	0	0	0		584	
177										
178	<b>Total Court Expenses</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>		<b>19,382</b>	
179										
180	<b>Total Operating Expenditures</b>	<b>1,536,455</b>	<b>1,612,143</b>	<b>(75,689)</b>	<b>640,888</b>	<b>925,772</b>	<b>284,885</b>		<b>3,245,722</b>	
181										
182	<b>Total Revenue (from above)</b>	<b>3,599,507</b>	<b>3,634,894</b>	<b>35,387</b>	<b>1,793,293</b>	<b>1,795,578</b>	<b>(2,286)</b>		<b>4,576,734</b>	
183										
184	<b>Operating Surplus (Deficit)</b>	<b>2,063,053</b>	<b>2,022,751</b>	<b>(40,302)</b>	<b>1,152,405</b>	<b>869,806</b>	<b>282,599</b>		<b>1,331,012</b>	
186										
187	<b>Other Sources (Uses)</b>									
188	Transfer to Capital Improvement	(900,000)	(886,800)	13,200	(237,734)	(390,400)	152,666		(200,000)	
189	Transfer fr Workforce Housing	0	27,500	27,500	0	0	0			
190	Transfer fr Conservation Trust	0	0	0	0	0	0			
191	Summit County Adv - Sales Tax	0	1,400,000	1,400,000	1,400,000	1,400,000	0			
192	Summit County Adv - Repayment	0	(1,400,000)	(1,400,000)	(1,400,000)	(1,200,000)	(200,000)			
193										
194	<b>Total Other Sources (Uses)</b>	<b>(900,000)</b>	<b>(859,300)</b>	<b>40,700</b>	<b>(237,734)</b>	<b>(190,400)</b>	<b>(47,334)</b>		<b>(200,000)</b>	
195										
196	<b>Beginning Fund Balance - General</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>		<b>1,163,451</b>	
197										
198	<b>Ending Fund Balance - General</b>	<b>1,163,053</b>	<b>1,163,451</b>	<b>398</b>	<b>914,671</b>	<b>679,406</b>	<b>235,265</b>		<b>2,294,463</b>	
199		=	=	=	=	=	=			
200	<b>Components of General Fund Bal</b>									
201	TABOR Restricted Funds	46,094	48,364		19,227	27,773			97,372	
202	Unrestricted Funds	1,116,959	1,115,087		895,444	651,633			2,197,091	
203		1,163,053	1,163,451		914,671	679,406			2,294,463	
204										

	E	F	H	I	J	K	L	M	N	
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5	Modified Accrual Basis									
6	2024 ANNUAL			2024 From Inception (2/8/2024)			2025			
7	Approved		Variance		7 Months		7 Months		Placeholder	
8	2024		Favorable		Ended		Ended		2025	
9	Budget		(Unfavor)		8/31/24		8/31/24		Budget	
205	RESTRICTED FUNDS									
206	CAPITAL IMPROVEMENTS									
207	Revenue and Other Financing Sources									
208	Contribution from General Fund		900,000		886,800		13,200		237,734	
209									390,400	
210	Total Revenues		900,000		886,800		13,200		237,734	
211									390,400	
212									(152,666)	
213	Capital and Non-Routine Projects								200,000	
214	Repayment for Incorporation Costs		180,000		180,000		0		148,013	
215	Summit County fee for Cash advance		5,000		5,000		0		228,750	
216	Office Set Up-Furniture, Supplies and		41,500		41,500		0		80,737	
217	Facility Modifications		50,000		50,000		0		0	
218	Staff Hiring Expense		5,000		5,000		0		5,000	
219	Start Up Consultant Support (Clerk/Cd		32,500		32,500		0		4,456	
220	IT-Infrastructure/Software/Computers/		109,900		109,900		0		32,500	
221	Website		15,000		15,000		0		33,612	
222	Town Signage		30,000		30,000		0		15,000	
223	Interim Town Manager (\$150/hr, 10 w		60,000		67,900		(7,900)		30,000	
224	Engineering Assessment Town Mainta		40,000		40,000		0		30,000	
225	Flood Plain Plan		20,000		20,000		0		0	
226	Trails and Open Space Master Plan		30,000		30,000		0		0	
227	Comprehensive Use Plan								100,000	
228	2 Police Vehicles and equipment		260,000		260,000		0		0	
229	Total Capital and Non-Routine Exp		878,900		886,800		(7,900)		237,734	
230									444,150	
231	Surplus after other sources / uses		21,100		0		21,100		206,416	
232									110,500	
233	FUND BALANCE - Beginning Capital		0		0		0		0	
234	FUND BALANCE - Ending Capital		21,100		0		21,100		21,100	
235									110,600	
236	Workforce Housing Fund									
237	Revenue and Other Financing Sources									
238	Revenue		788,210		947,656		159,446		0	
239	Interest Income								0	
240	Total Revenues		788,210		947,656		159,446		0	
241									0	
242	Expenditures									
243	Housing Authority Fees		52,064		52,064		(0)		0	
244	Transfer to General Fund		0		27,500		(27,500)		0	
245									0	
246	Total Expenditures		52,064		79,564		(27,500)		0	
247									58,929	
248	Surplus after other sources (uses)		736,146		868,092		131,946		0	
249									0	
250	Fund bal - Beginning Housing Fund		0		0		0		0	
251	Fund bal - Ending Housing Fund		736,146		868,092		131,946		0	
252									0	
253	Conservation Trust Fund									
254	Revenue and Other Financing Sources									
255	Conservation Trust Revenue		12,920		12,920		0		0	
256	Interest Income								0	
257	Total Revenues		12,920		12,920		0		0	
258									12,920	
259	Expenditures									
260	Conservation Trust Expenses		0		0		0		0	
261	Transfer to General Fund		0		0		0		0	
262									0	
263	Total Expenditures		0		0		0		0	
264									0	
265	Surplus after other sources / uses		12,920		12,920		0		0	
266									12,920	
267	Fund bal - Begin Cons Trust Fnd		0		0		0		0	
268	Fund bal - Ending Cons Trust Fnd		12,920		12,920		0		0	
269									25,840	

# TOWN OF KEYSTONE, COLORADO

## STAFF REPORT

TO: Mayor & Town Councilmembers  
THROUGH: John Crone, Town Manager  
FROM: Jennifer Madsen, Town Attorney  
DATE: September 24, 2024  
SUBJECT: [FIRST READING] Ordinance 2024-O-11 An Ordinance of the Town Council of the Town of Keystone, Creating a Process for Establishing Boards and Commissions

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### **Executive Summary:**

Article IX of the Keystone Home Rule Charter provides that Town Council has the authority to create and disband boards, commissions, and committees and confer powers and duties through Resolution or Ordinance. Ordinance 2024-O-11 provides a process for creating boards and commissions and creates a Trails and Open Space Advisory Board and a Business Advisory Board.

### **Recommendation:**

Staff recommends that Council approve Ordinance 2024-O-11 on first reading.

### **Background:**

Towns establish boards, commissions, task forces, and committees to provide guidance to governing bodies on a wide range of policy issues.

The Town Council can create standing advisory boards and commissions, as well as “ad hoc” advisory committees, for limited periods to address specific issues. These boards and commissions can enhance local government decision-making by studying issues, plans, and policies, while also providing opportunities for broader community involvement and outreach.



For long-term boards and commissions, it is recommended that the Town Council establish them through the adoption of an ordinance. This ordinance may address topics such as:

- **Creation of the Board/Commission/Committee:** The ordinance should outline the advisory body's purpose and scope, clearly defining its authority and expectations.
- **Membership:** The ordinance should specify who is eligible to participate. It should also define the size of the body and confirm that Town Council appoints its members.
- **Term Limits:** The Town Council may wish to set term limits for members of advisory bodies.
- **Vacancies:** The process for filling vacancies should be clearly defined.
- **Removal:** The ordinance should include a procedure for removing members.
- **Meetings and Bylaws:** The ordinance may set requirements for meetings and bylaws governing the advisory body. Town boards and commissions are considered "local public bodies" for purposes of the Colorado Open Meetings Law and, as such, any Town boards and commissions must follow the open meetings law requirements related to public meetings and posting notice.

Ordinance 2024-O-11 addresses the key issues above for the process of formation of boards and commissions. It should be noted that as directed Ordinance 2024-O-11 provides for term limits for members of the advisory boards; however, Town Council has the option to waive term limits by adopting a resolution. One other notable revision from the draft is that Ordinance 2024-O-11 provides for a removal process. Town Council has the authority to remove members of boards and commission, and the ordinance

provides a few examples of the grounds for removal. In addition, the ordinance creates a Trails and Open Space Advisory Board and a Business Advisory Board.

The Trails and Open Space Advisory Board is a permanent board; meaning that the Board is in existence until such time as Town Council acts to suspend or to disband the board. Ordinance 2024-O-11 provides that its membership is five regular members. The membership qualifications are Town resident or property owner. The purpose of the Trails and Open Space Advisory Board is to serve in an advisory capacity related to matters affecting trails, open space, recreation, and parks.

Town Council also provided direction for consideration of a Business Advisory Board. Ordinance 2024-O-11 provides that this board is also a permanent board with five members. The qualifications for membership are business owners in the Town of Keystone, employees of business owners, or members of the Town of Keystone community with business experience. The purpose of the Business Advisory Board is explained to research and evaluate matters with may have an impact on the business community and provide input and potential Town municipal legislation. In addition, the Business Advisory Board may advise Town Council on the business community's needs.

**Alternatives:**

Town Council may provide alternative direction on boards and commissions.

**Financial Considerations:**

There are no financial considerations applicable to this ordinance.

**Previous Council Actions:**

The Town Attorney discussed this ordinance with Town Council at the August 13 and September 10 work sessions.

**Next Steps:**

If Council approves this Ordinance on first reading, it will be scheduled for second reading and public hearing on October 8.

**Suggested Motions:**

Because this ordinance is on the Consent Agenda, a motion to approve the consent agenda will approve this ordinance.

**Attachment:**

- Ordinance 2024-O-11 An Ordinance of the Town Council of the Town of Keystone, Creating a Process for Establishing Boards and Commissions

**TOWN OF KEYSTONE  
ORDINANCE NO. 2024-O-11**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF  
KEYSTONE, COLORADO, CREATING A PROCESS FOR  
ESTABLISHING BOARDS AND COMMISSIONS**

WHEREAS, the Town of Keystone (“Town” or “Keystone”) is a home rule municipal corporation created pursuant to Article XX of the Colorado Constitution; and

WHEREAS, pursuant to Article IX of the Town of Keystone Home Rule Charter, the Town Council has the authority to create boards and commissions; and

WHEREAS, the Town Council has a need for forming certain boards and commissions to study matters in greater detail and to sit in an advisory capacity to the Council; and

WHEREAS, the Town Council desires to adopt a process for forming these boards and commissions to create consistency and transparency in the formation and business of these boards and commissions.

**THE TOWN COUNCIL OF THE TOWN OF KEYSTONE, COLORADO,  
ORDAINS:**

Section 1. The foregoing recitals are hereby affirmed and incorporated herein by this reference as findings of the Town Council.

Section 2. Town Council adopts the following requirements related to formation of boards and commissions set forth in Article IX of the Keystone Home Rule Charter:

**BOARDS AND COMMISSIONS**

**I. Purpose**

In accordance with Article IX of the Keystone Home Rule Charter, Town Council has the authority to create boards, commissions, and committees by resolution or by ordinance. These regulations govern the Town boards, commissions, and committees. The provisions of these regulations are not applicable to any committees or task forces established by Town employees.

## **II. Formation of Boards and Commissions**

Town Council may form boards, commissions, and committees for the purpose of studying, making recommendations, and advising Town Council on particular subject matters. These bodies can be created for any duration, as determined by Town Council, and must be formed through an ordinance or resolution. The establishing ordinance or resolution must specify the following details:

1. The subject matter or focus of the board, commission, or committee;
2. The number and qualifications of members and whether there are alternate members, non-voting advisory members, or liaison members;
3. The expected duration of its existence; and
4. Any other relevant information to facilitate the organization and functioning of the board, commission, or committee.

## **III. Membership**

The following governs the qualifications, appointment, and conduct of members of the boards, commissions, and committees of the Town.

### **A. Qualifications.**

1. In the establishing ordinance or resolution, Town Council shall determine the residency requirements of the membership of a board, commission or committee. The intent is that boards, commissions, and committees are representative of the entire Keystone community.
2. Full-time Town employees may not serve on a board, commission, or committee related to their work functions.

3. Town Councilmembers and the Mayor shall only sit as advisory members or liaison members on a board, commission, committee unless Town Council is designated as serving the role and purpose of a particular board, commission, or committee.
4. No person shall be a member of more than one board, commission or committee at any one time.
5. No person shall serve more than two consecutive terms on any board, commission or committee; provided that if a person is appointed to fill an unexpired term of another person, that term shall not be considered a term for the purpose of this limitation if the time remaining in the term at the time of the appointment is one year or less. Through the adoption of a resolution, the Town Council may waive this limitation of terms.
6. Town Council may provide for alternate member positions on the board, commission, or committee.
7. Town Council may provide for non-voting advisory members on a board, commission, or committee.

B. Appointments.

1. Town Council shall appoint the members of the boards, commissions and committees.
2. Town Council shall make appointments to fill vacancies on the boards, commissions, and committees to fill unexpired terms.
3. Each appointment shall be for a term of three years unless the appointment is to fill a vacancy. The initial terms of members of newly created boards, commissions and committees shall be staggered and shall be for either one, two, or three years.

C. Removal.

Board, commission, and committee members serve at the pleasure of Town Council and may be removed by resolution of the Town Council with or without cause and with or without notice and hearing, at the sole discretion of Town Council. Removal by the Town Council shall customarily be imposed where the Town Council finds a member engaged in any of the following:

1. Failure to comply with applicable statutes, ordinances, resolutions or laws;
2. Continuing obstructive, offensive, argumentative or disrespectful behavior that diminishes the effectiveness of the board, commission or committee's ability to conduct business and/or to make recommendations to the Town Council;
3. Unexcused absences which, in the opinion of the majority of the board, commission or committee, render the member unable to be an effective participant on the board, commission or committee; or
4. Disclosure of confidential information of the board, commission or committee, including disclosure of preliminary drafts of reports and work product, as defined in the Colorado Open Records Act, as may be amended from time to time.

**IV. Organization**

The following provisions shall govern the organizational structure of the public boards, commissions and committees.

A. Meetings.

1. All meetings of any board, commission or committee must comply with the Colorado Open Meetings Law.
2. Board, commission and committee members may be entitled to a meeting stipend for meeting attendance in an amount established by resolution of the Town Council. A member of any board, commission or committee may additionally receive reimbursement of reasonable expenses related to the functions of the board, commission or committee to the extent provided by resolution.

B. Bylaws and Rules of Procedure.

1. Each board, commission or committee shall promulgate such bylaws for its conduct of business and meetings. A copy of the adopted bylaws shall be delivered to Town Council.
2. The bylaws and rules of procedure must be consistent with Colorado law.
3. Town Council shall have the right to establish, amend, alter, or modify the bylaws or rules of procedure of any board, commission, or committee.

**V. Trails and Open Space Advisory Board**

A. Town Council recognizes the importance of trails and open space in the Town. Pursuant to the authority vested in Town Council, there is established a Trails and Open Space Advisory Board for the purpose of advising Town Council on matters effecting parks, open space, trails and other recreation in the Town. The Trails and Open Space Advisory Board is expected to exist until such time as Town Council acts to suspend or disband the advisory board.

B. Membership.

1. The Trails and Open Space Advisory Board shall consist of five regular members.
2. The members of the Trails and Open Space Advisory Board shall be property owners or residents of the Town of Keystone.
3. Town Council may appoint one of its members to sit in a liaison position and a non-voting member of the Trails and Open Space Advisory Board.

C. Purpose.

The purpose of the Trails and Open Space Advisory Board is in the following areas of responsibility:



1. Advisory matters. Town Council may ask the Trails and Open Space Advisory Board to research and evaluate Town issues which may have an impact on trails, parks, open space, and other recreation areas. The Trails and Open Space Advisory Board may also be asked to advise Town Council on the acquisition, planning, development, maintenance, and use of trails, parks, open space, and other recreation areas.
2. The Trails and Open Space Advisory Board is to promote and encourage the development, public awareness and proper use of trails, parks, open space, and other recreation areas.
3. The Trails and Open Space Advisory Board is to perform such other functions associated with trails, parks, open spaces, and other recreation areas as Town Council may direct.
4. The Town Council, as an elected body, shall continue to exercise, in its sole discretion, all authority on the priority of and allocation of Town funds to proposed park, open space, trail or recreation projects and plans, and nothing contained herein shall restrict the Town Council from taking any action related to parks, open space, trails or recreation projects, including but not limited to the expenditure of monies, acquisition or disposition of lands, approval of projects or the adoption of policies.

## **VI. Business Advisory Board**

- A. Town Council recognizes that the economic vitality of the Town is served and dependent upon a vibrant business and commercial environment. The Town Council further recognizes that the business community may be directly impacted by many of the legislative acts promulgated by Town Council. Pursuant to the authority vested in Town Council, there is established a Business Advisory Board for the purposes of advising the Town Council on the economic and business impact of legislative and regulatory actions and on the business community's needs. The Business Advisory Board is expected to exist until such time as Town Council acts to suspend or disband the advisory board.
- B. Membership.
  1. The Business Advisory Board shall consist of five regular members.

2. The members of the Business Advisory Board shall be business owners or employees of business owners in the Town of Keystone or members of the Town of Keystone community with business experience.
3. Town Council may appoint one of its members to sit in a liaison position and a non-voting member of the Business Advisory Board.

C. Purpose.

The purpose of the Business Advisory Board is in the following areas of responsibility:

1. Municipal Code Review. The Business Advisory Board may, upon the request of Town Council, review any adopted or proposed municipal legislation.
2. Advisory matters. Town Council may ask the Business Advisory Board to research and evaluate Town issues which may have an impact on the business community. The Business Advisory Board may advise Town Council on the Town of Keystone's business community's needs.

Section 3. Severability. Should any one or more sections or provisions of this Ordinance be judicially determined invalid or unenforceable, such judgment shall not affect, impair, or invalidate the remaining provisions of this Ordinance, the intention being that the various sections and provisions are severable.

Section 4. Codification. This ordinance may be codified and numbered for purposes of codification without the need for further approval by the Town Council.

Section 5. Effective Date. This ordinance shall take effect thirty (30) days after publication.

INTRODUCED, READ AND PASSED AS AN ORDINANCE, ON FIRST READING, AT A REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF KEYSTONE, COLORADO, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2024.

---

Kenneth D. Riley, Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Town Attorney

READ, PASSED AND ADOPTED WITH A ROLL CALL VOTE OF \_\_\_ IN FAVOR AND \_\_\_ OPPOSED ON SECOND READING, AT A REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF KEYSTONE, COLORADO, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2024.

\_\_\_\_\_  
Kenneth D. Riley, Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Town Attorney

# TOWN OF KEYSTONE, COLORADO

## STAFF REPORT

TO: Mayor & Town Councilmembers  
THROUGH: John Crone, Town Manager  
Jennifer Madsen, Town Attorney  
FROM: Lindsay Hirsh, Community Development Director  
DATE: September 24, 2024 – Council Meeting  
SUBJECT: Resolution 2024-65, A Resolution of Town Council of the  
Town of Keystone, Colorado, Approving a Site Plan  
Improvements Agreement (“SPIA”) for Camber Townhomes,  
Located at 0624 Montezuma Road

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### **Executive Summary:**

The Class 4 Site Plan for the 14-unit townhome project was approved by the Town’s Planning and Zoning Commission on June 27, 2024. The project is in the first stages of development, including clearing, grading, and initiating utility work. As per the Town of Keystone Land Use Code, a financial guarantee is required for the subject improvements.

### **Recommendation:**

Approve the Site Plan Improvements Agreement per the attached Resolution.

### **Background:**

The purpose of this site plan improvements agreement is to ensure that all improvements are financed, constructed and maintained. The intent is to provide for continued fiscal and legal responsibility for such improvements until the entire project is deemed complete and responsibility for the continued maintenance of such improvements has been properly assumed by the relevant successors in interest, such as a homeowner’s association. Site improvements are the responsibility of the developer. All improvements shall be designed and constructed according to applicable designs, specifications and

standards as approved by the Town having jurisdiction over the property to be developed. The developer shall assume all responsibility for the financing, construction and initial maintenance of all improvements internal or external to the proposed development. Site plan improvements Agreements are required by the Town of Keystone Land Use Code. This site plan improvements agreement is consistent with the requirements set forth in the Town of Keystone Land Use Code.

The subject property was approved for a 14-unit Townhome project by the Town Planning and Zoning Commission on June 27, 2024. The project is in the first stages of development, including clearing, grading, and initiating utility work. As such a financial guarantee needs to be provided for the proposed infrastructure improvements as listed in Exhibit A of the SPIA (attached). The improvements as listed in Exhibit A are private improvements, and include site preparation improvements, access and parking surface improvements, and utilities infrastructure (including water, sewer, stormwater, electric and gas). Maintenance of the private improvements will be the responsibility of the development's Homeowners' Association. Utility providers will have access to utility infrastructure via easements on the property.

### **Financial Considerations:**

There are no Town financial considerations applicable to the subject application. Once the agreement is signed, it will be accompanied by a cash bond or letter of credit held by the Town for a period of at least two years to ensure that the improvements have been adequately installed and constructed.

### **Previous Council Actions:**

None.

### **Suggested Motions:**

To APPROVE:

I move to APPROVE Resolution 2024-65, A Resolution of Town Council of the Town of Keystone, Colorado, Approving a Site Plan Improvements Agreement ("SPIA") for Camber Townhomes, Located at 0624 Montezuma Road

To DENY:

I move to DENY Resolution 2024-65, A Resolution of Town Council of the Town of Keystone, Colorado, Approving a Subdivision Improvements Agreement (“SPIA”) for Camber Townhomes, Located at 0624 Montezuma Road

**Attachments:**

- Resolution 2024-65, A Resolution of Town Council of the Town of Keystone, Colorado, Approving a Site Plan Improvements Agreement (“SPIA”) for Camber Townhomes, Located at 0624 Montezuma Road
- Attachment A – Site Plan Improvements Agreement for Camber Townhomes, Located at 0624 Montezuma Road

**TOWN OF KEYSTONE  
Summit County, Colorado**

**RESOLUTION 2024-65**

**A RESOLUTION OF TOWN COUNCIL OF THE TOWN OF KEYSTONE, COLORADO,  
APPROVING A SITE PLAN IMPROVEMENTS AGREEMENT (“SPIA”) FOR CAMBER  
TOWNHOMES, LOCATED AT 0624 MONTEZUMA ROAD**

WHEREAS, the Town of Keystone (“Town”) is a home rule municipality governed by the Keystone Home Rule Charter; and

WHEREAS, per the Town’s Land Use Code, the Town of Keystone is required to have a Site Plan Improvements Agreement for these types of developments; and

WHEREAS, the Town Council finds it in the best interest of the Town to execute the Site Plan Improvements Agreement to secure the approved improvements associated with the development.

**Now, Therefore, be it Resolved by the Town Council of the Town of Keystone, Colorado, that:**

Section 1. Town Council approves the Site Plan Improvement Agreement in substantially the form that is attached as Attachment A. The Town Manager is authorized to execute the agreement and is authorized to make any non-material changes in consultation with the Town Attorney.

Section 2. Effective Date. This Resolution shall take effect upon its approval by the Town Council.

**ADOPTED by a vote of \_\_ in favor and \_\_ against, this \_\_\_\_\_ day of \_\_\_\_\_, 2024.**

By: \_\_\_\_\_  
Kenneth D. Riley, Mayor

ATTEST:

Approved as to Form:

By: \_\_\_\_\_  
Town Clerk

By: \_\_\_\_\_  
Town Attorney

**SITE PLAN IMPROVEMENTS AGREEMENT  
FOR  
DEVELOPMENT  
SPECIFIC TO**

**CAMBER TOWNHOMES, TOK24-002**

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**THIS AGREEMENT** is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, between 624 Montezuma Rd, LLC ("Owner/Developer"), whose address is 2700 S. Broadway Ste. 200, Englewood, CO 80113, and the Town Council of the Town of Keystone ("Town"), whose address is 1628 Saints John Road, Keystone, Colorado 80435, Attention: Community Development Department and Town Review Authority.

**I. GENERAL**

1.1 Owner/Developer has submitted a site plan application for the property located at 624 Montezuma Road, Keystone, Colorado and received the Town's site plan approval dated June 27, 2024 (hereafter referred to as the "Site Plan").

1.2 Certain site plan improvements and other easements are required by the Keystone Community Development Department for the benefit of owners within and adjacent to a site plan area or are required by the Town to properly address access, drainage, traffic, landscaping, road improvements, grading, and erosion control. The site plan improvements and easements required for this Site Plan are listed on Exhibit A, which is attached hereto and incorporated herein, and may hereafter be referred to as the "Site Plan Improvements" or "Improvements".

1.3 This Agreement will provide for the completion of the Site Plan Improvements on Owner/Developer's project, and will serve to protect the Town from the cost of completing such Site Plan Improvements.

1.4 This Agreement is not executed for the benefit of third parties including, but not limited to, material, laborers or others providing work, services or material for the Site Plan Improvements.

**II. CONSTRUCTION OF IMPROVEMENTS**

2.1 Agreement to Construct Improvements and Grant Easements. Subject to and in accordance with the terms and provisions of this Agreement, Owner/Developer agrees to cause the Improvements to be constructed and completed, together with the easement(s) granted to the Town at Owner/Developer's expense, in accordance with the provisions of this Agreement. Such compliance shall be determined by the Keystone Community Development Department.

2.2 Building and Grading Permits/Certificates of Occupancy. Building permits and grading permits for the site shall not be issued until this Agreement is fully executed. Certificates of Occupancy shall not be issued until easements have been granted and the Improvements have been completed, or security for completion of the Improvements is provided to the Town, as provided for herein.

2.3 Construction Standards. The Improvements shall be constructed in accordance with this Agreement, the approved Site Plan, and the Town's resolutions, regulations, standards and specifications. Prior to the initiation of construction of any Improvements listed in Exhibit A, construction drawings or plans for such Improvements must be submitted to the Town Review Authority through the Town's review process, including the payment of required fees.



2.4 Completion Date. The Site Plan Improvements shall be completed within the time limits set forth on the attached Exhibit A ("Completion Date"). The Completion Date may only be extended for good cause, as determined by and approved by the Town in writing.

2.5 Warranties of Owner/Developer. Owner/Developer warrants that the Improvements will be installed in a good, workmanlike manner in compliance with the construction drawings or plans and requirements of this Agreement, and shall be substantially free of defects in materials and workmanship. Items constructed within the Town right-of-way shall be warranted for a period of two years following the issuance of the first Certificate of Occupancy for any building on the site.

2.6 Maintenance Prior to End of Warranty Period. Until the end of the warranty period, Owner/Developer shall, at Owner/Developer's expense, make all needed repairs or replacements to the Improvements. Owner/Developer may assign its obligations for ordinary repairs and maintenance of the Improvements, but the Owner/Developer shall remain obligated to the Town for the proper performance of such repairs and maintenance.

2.7 Title to Subdivision Improvements. Improvements constructed in the public right-of-way shall be owned by the Town, except that the maintenance of curb and gutter, cross-pans and pavement (or other roadway surface) within the access to the site shall remain with the Owner/Developer.

### **III. SECURITY FOR COMPLETION OF IMPROVEMENTS**

3.1 Deposit of Security for Owner/Developer Obligations. To secure the performance of the obligations of Owner/Developer under this Agreement to complete the Improvements, Owner/Developer shall deposit with the Town an irrevocable letter of credit with provisions as hereinafter set forth, or a cash deposit or other financial guarantee deemed adequate by the Town ("Security"). The Security shall be deposited after approval of the Site Plan and shall be 115% of the estimated cost to construct the Improvements which the Owner/Developer is required to construct. Such estimated cost shall be reasonably determined by the Town in its sole discretion. No conveyance or transfer of title to any lot, lots, tract or tracts of land within the Site Plan shall be made, nor any Certificates of Occupancy or building permits issue, unless (a) the approved Security has been deposited with the Town or (b) all improvements have been completed and a deposit in the amount of 15 percent of the estimated cost of said Improvements has been made with the Town ("Guaranty"). The Guaranty shall be retained by the Town until satisfaction of Owner/Developer's obligations under this Agreement or earlier release by the Town.

3.2 Provisions for Letter of Credit. If an irrevocable letter of credit is provided as Security, such letter for credit shall be in an amount equal to 115% of the estimated cost to construct the Improvements, as determined by the Town in its sole discretion. The letter of credit shall be issued from \_\_\_\_\_, or such other bank as shall be approved by the Town; shall have an expiration date no earlier than two years after its date of issue; and shall provide that it may be drawn upon from time to time by the Town in such amount or amounts as the Town may designate as justified, such amounts not to exceed, in the aggregate, the amount of the letter of credit. Draws under any such letter of credit shall be by a certificate signed by the Mayor or Mayor Pro Tem of the Town Council of the Town of Keystone stating that the Town is entitled to draw the specified amount under the terms of this Agreement.

3.3 Certificate of Occupancy. Until the Improvements are completed or secured for the site in compliance with the Town approved Site Plan, and all necessary easements have been granted, the Town is under no obligation to issue a Certificate of Occupancy for any building on the site, nor shall the Owner/Developer make application for said Certificate of Occupancy.

3.4 Recording Agreement. After approval of this Agreement by the Town, this Agreement may, at the option and expense of the Town, be recorded in the office of the Clerk and Recorder of Summit County. Upon issuance of a Certificate of Occupancy and satisfactory completion of Improvements for any building on this site, except with respect to warranties described herein, the Town shall deliver to Owner/Developer (if requested by

Owner/Developer) a recordable executed document which shall release all property (within the applicable phase, if a multi-phased Site Plan Application) within the Site Plan Application from any further effect of this Agreement.

#### **IV. ACCEPTANCE OF IMPROVEMENTS.**

4.1 Preliminary/Partial Acceptance. Upon the satisfactory completion of any of the specific Site Plan Improvement work items listed in Exhibit A, Owner/Developer shall be entitled to obtain preliminary acceptance thereof by the Town ("Preliminary Acceptance") in accordance with the following provisions.

a) Upon such partial completion, Owner/Developer shall give written notice to the Town Review Authority requesting an inspection of the completed Site Plan Improvements ("Preliminary Inspection Notice"). The Town shall inspect the completed Site Plan Improvements within fourteen days after receipt by the Town Review Authority of the Preliminary Inspection Notice and, if the Town Review Authority finds that the specified improvements have been completed substantially in accordance with the Site Plan and the other requirements of this Agreement, the Town Review Authority shall issue a letter evidencing Preliminary Acceptance within fourteen days after the inspection. The Town's duty to inspect within fourteen days shall be extended, if necessary, due to weather or winter conditions causing inspection to be impractical or impossible.

b) If, upon inspection of the completed Site Plan Improvements, the Town Review Authority finds that the specified improvements have not been completed substantially in accordance with the Site Plan and the other requirements of this Agreement, the Town Review Authority shall issue a written notice of noncompliance within fourteen days after the inspection specifying the respects in which the improvements have not been completed substantially in accordance with the Site Plan and the other requirements of this Agreement. Owner/Developer shall thereupon take such action as is necessary to cure any noncompliance and, upon curing the same, shall give a new Preliminary Inspection Notice to the Town Review Authority. Upon the giving of such a new Preliminary Inspection Notice, the foregoing provisions of this Section 4.1 shall apply.

c) Length of Guarantee Period: In order to ensure that successful, stable plant establishment is achieved, all landscape planting shall be subject to a guarantee period of two years from the date installation is completed except, where planting, seeding, or revegetation is done on 3.33:1 or greater slopes, the initial guarantee period shall be three years.

4.2 Partial Release of Security. At the time of Preliminary Acceptance of any specific completed work items listed in Exhibit A, the Town shall issue a written release of the Security provided in Section 3.1. The amount to be released for the completed Site Plan Improvements shall be the total amount of the Security for each completed work item, provided sufficient amounts exist on deposit for completion of the remaining incomplete Site Plan Improvements. An Owner/Developer guaranty in the amount of 15% of the total cost of such work items that have been preliminarily accepted ("Guaranty") shall remain on deposit with the Town until satisfaction of the Owner/Developer's obligations under this Agreement.

a) Prior to the release of any financial guarantee for landscape improvements, the Town must determine that revegetation of the site is essentially free from weeds as identified by the Town as invasive, noxious or otherwise nuisance weed species.

4.3 Final Acceptance. Upon final completion of the Site Plan Improvements, Owner/Developer shall be entitled to obtain final acceptance thereof by the Town ("Final Acceptance") in accordance with the following provisions.

a) No later than 60 days prior to the expiration of the warranty period for any phase of the Site Plan Improvements, Owner/Developer shall give written notice to the Town Review Authority requesting a final inspection of such phase of the Site Plan Improvements ("Final Inspection Notice"). The Town shall inspect such phase of the Site Plan Improvements within fourteen days after receipt by the Town Review Authority of the Final Inspection Notice and, if the Town Review Authority finds that the phase of the Site Plan Improvements is substantially free of defects in materials and workmanship and has been repaired and maintained as and to the extent

## Attachment A

required in this Agreement, the Town Review Authority shall issue a letter evidencing Final Acceptance of the phase of the Site Plan Improvements. Again, the Town may extend the inspection period due to weather and seasonal snow conditions.

b) If, upon final inspection of a phase of the Site Plan Improvements, the Town Review Authority finds that the phase of the Site Plan Improvements is not substantially free of defects in materials and workmanship or has not been repaired and maintained as required under this Agreement, the Town Review Authority shall issue a written notice of noncompliance within fourteen days after the final inspection specifying the respects in which the Site Plan Improvements are not substantially free of defects in materials and workmanship or have not been repaired and maintained as required under this Agreement. Owner/Developer shall thereupon take such action as is necessary to cure any noncompliance and, upon curing the same, shall give a new Final Inspection Notice to the Town Review Authority. Upon the giving of such new Final Inspection Notice, the foregoing provisions of this Section 4.4 shall apply.

c) At the time of Final Acceptance of the Site Plan Improvements, Owner/Developer shall be entitled to a release of the Guaranty for that phase. The release shall be in writing, signed by the Town Review Authority.

## V. DEFAULTS AND REMEDIES

5.1 Default by the Owner/Developer. A default by Owner/Developer shall exist after notice and an opportunity to cure as hereinafter provided if (a) Owner/Developer fails to cure any noncompliance specified in any written notice of noncompliance within a reasonable time after receipt of the notice of noncompliance; and (b) Owner/Developer otherwise breaches or fails to comply with any obligation of Owner/Developer under this Agreement. Notice of Default as to Improvements must be given prior to expiration of the warranty period for such phase of the Improvements as hereinafter provided.

5.2 Notice of Default. In the event a default by Owner/Developer is believed to exist, the Town shall give written notice thereof to Owner/Developer, specifying the default and specifying a reasonable time within which Owner/Developer shall be required to cure the default.

5.3 Remedies of Town. If Owner/Developer fails to cure such default within the time specified by the Town, the Town shall be entitled to (a) make a draw on the Security for the amount reasonably determined by the Town to be necessary to cure the default in a manner consistent with the approved Site Plans up to the amount of the Security; and (b) sue the Owner/Developer for recovery of any amount necessary to cure the default over and above the amount available under the Security, including court costs, witness fees and reasonable attorneys' fees. The Town, any contractor under the Town, or any such successor Owner/Developer, their agents, subcontractors and employees shall have the non-exclusive right to enter upon the site for the purpose of completing the Site Plan Improvements.

## VI. MISCELLANEOUS

6.1 Indemnifications. Owner/Developer shall indemnify and save harmless the Town from (a) any and all suits, actions, claims, judgments, obligations, or liabilities of every nature and description which arise from an event or occurrence prior to the date of Final Acceptance and which are caused by, arise from or on account of the construction and installation of the Improvements; and (b) any and all suits, actions, claims, or judgments which arise from an event or occurrence prior to the date of the Final Acceptance and which are asserted by or on behalf of contractors or subcontractors working in the Site Plan Application Area, lot owners in the Site Plan Application area, or third parties claiming injuries resulting from defective Improvements constructed by Owner/Developer. This indemnification shall not apply to claims arising from the negligent acts or omissions of Town. Owner/Developer shall pay any and all judgments rendered against the Town on account of any such suit, action, or claim, together with all reasonable expenses and attorneys' fees incurred by the Town defending such suit, action or claim. The Town shall, within fifteen (15) days after being served with any claim, suit, or action, provide Owner/Developer with a copy of the complaint. The Owner/Developer may provide proper legal representation for

Attachment A

the Town in said action, in which case the Owner/Developer shall not be responsible for any additional legal fees incurred by the Town. The Town agrees that the Owner/Developer may also, on its own behalf, become a party to any such action and the Town agrees to execute any documents as may be necessary to allow the Owner/Developer to be a party.

6.2 Insurance. Owner/Developer shall require that all contractors engaged in the construction of the Improvements maintain Worker's Compensation insurance. Before proceeding with the construction of Improvements, Owner/Developer shall provide the Town Review Authority with written evidence of property damage insurance and bodily injury insurance in an amount of not less than Nine Hundred Ninety Thousand Dollars (\$990,000) each, or such other maximum amount of liability as may be specified in the Colorado Governmental Immunity Act, and protecting the Town against any and all claims for damages to persons or property resulting from construction and/or installation of any Improvements pursuant to this Agreement. The policy shall provide that the Town shall be notified at least thirty (30) days in advance of any reduction in coverage, termination, or cancellation of the policy. Such notice shall be sent by certified mail to the Town Review Authority, return receipt requested. Owner/Developer agrees that any contractors engaged by or for Owner/Developer to construct the Improvements shall maintain public liability coverage in limits not less than those described above.

6.3 No Third Party Beneficiaries. No persons or entity, other than a party to this Agreement shall have any right of action under this Agreement, including, but not limited to, lenders, lot or home buyers and materialmen, laborers or others providing work, services, or materials for the Improvements.

6.4 Assignability. Owner/Developer may convey or transfer title or interest in the Site without the written consent of the Town and a grantee or transferee of Owner/Developer shall not be obligated to fulfill any of the obligations of Owner/Developer under this Agreement unless such grantee or transferee is the successor or assignee of Owner/Developer in its capacity as Owner/Developer of the Site Plan. Owner/Developer may assign its rights and obligations under this Agreement to a party who is the successor or assignee of Owner/Developer in its capacity as Owner/Developer of the Site Plan Application without the consent of the Town; provided, however, that (a) Owner/Developer provides prior notification to the Town of the assignment and of the name and address of the successor Owner/Developer; and (b) the successor Owner/Developer assumes the obligations of Owner/Developer under this Agreement. Unless otherwise agreed in writing by Town and in spite of any assignment, Owner/Developer shall remain liable for performance of the obligations of Owner/Developer under this Agreement.

6.5 No Automatic Further Approvals. Execution of this Agreement by the Town shall not be construed as a representation or warranty that Owner/Developer is entitled to any other approvals required from the Town, if any, before Owner/Developer is entitled to commence development of the Improvements or to transfer ownership of property in the Site Plan Application.

6.6 Notices. All notices, consents or other instruments or communications provided for under this Agreement shall be in writing, signed by the party giving the same, and shall be deemed properly given and received (a) when actually delivered and received personally, by messenger service, or by fax or telecopy delivery; (b) on the next business day after deposit for delivery in an overnight courier service such as Federal Express; or (c) three (3) business days after the deposit in the United States mail, by registered or certified mail with return receipt requested. All such notices or other instruments shall be transmitted with delivery or postage charges prepaid, addressed to the party at the address below for that party or to such other address as such party may designate by written notice to the other party.

If to Owner/Developer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to the Town:

Town of Keystone  
ATTN: Community Development Department  
1628 Saints John Road  
Keystone, CO 80435

## Attachment A

6.7 Further Assurances. At any time, and from time to time, upon request of either party, the other party agrees to make, execute and deliver or cause to be made, executed and delivered to the requesting party any and all further instruments, certificates and documents consistent with the provisions of this Agreement as may, in the reasonable opinion of the requesting party, be necessary or desirable in order to effectuate, complete or perfect the right of the parties under this Agreement.

6.8 Binding Effect. Subject to Section 5.4 above, this Agreement shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

6.9 Headings for Convenience. All headings and captions used herein are for convenience only, and are of no meaning in the interpretation or effect of this Agreement.

6.10 No Implied Waivers. The failure by a party to enforce any provision of this Agreement or the waiver of any specific requirement of this Agreement shall not be construed as a general waiver of this Agreement or any provision herein nor shall such action act to stop the party from subsequently enforcing this Agreement according to its terms.

6.11 Severability. If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, it shall not affect the validity of this Agreement as a whole, or any part thereof, other than the part declared to be invalid and there shall be substituted for the affected provision, a valid and enforceable provision as similar as possible to the affected provision.

6.12 No Waiver of Sovereign Immunity. Nothing contained in this Agreement shall constitute a waiver of the sovereign immunity of the Town under applicable state law.

6.13 Consent to Jurisdiction and Venue. Personal jurisdiction and venue for any civil action commenced by either party to this Agreement with respect to this Agreement or a letter of credit shall be proper only if such action is commenced in the District Court for Summit County, Colorado. Owner/Developer expressly waives the right to bring such action in or to remove such action to any other court, whether state or federal.

6.14 Agent/Employee. The Owner/Developer is not an agent or employee of the Town.

6.15 Entire Agreement. This Agreement, and any agreement or document referred to herein, constitutes the entire understanding between the parties with respect to the subject matter hereof and all other prior understandings or agreements shall be deemed merged in this Agreement.

Signature Page to Follow

Attachment A

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the day and year above written.

\_\_\_\_\_  
(Name of Owner/Developer)

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF COLORADO )

) ss.

COUNTY OF SUMMIT )

The foregoing was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_,

by \_\_\_\_\_ as \_\_\_\_\_,

of \_\_\_\_\_.

Witness my hand and official seal:

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

TOWN COUNCIL  
OF THE TOWN OF KEYSTONE

By: \_\_\_\_\_  
John Crone, Town Manager

## EXHIBIT A

## CAMBER TOWNHOMES INFRASTRUCTURE IMPROVEMENTS

ITEM NO.	ITEM	UNIT	QUANTITY	UNIT COST	TOTAL COST
1	CLEARING & GRUBBING	ACRE	1.3	\$14,500.00	\$18,850.00
2	UNCLASSIFIED EXCAVATION	CY	6000	\$16.00	\$96,000.00
3	TOPSOIL	CY	2100	\$19.60	\$41,160.00
4	EROSION LOG TYPE 1	LF	675	\$4.00	\$2,700.00
5	VEHICLE TRACKING PAD	EACH	1	\$3,500.00	\$3,500.00
6	SEEDING (NATIVE) (HYDRAULIC)	ACRE	1.3	\$5,000.00	\$6,500.00
7	AGGREGATE BASE COURSE (CLASS 6)	TON	430	\$40.00	\$17,200.00
8	HOT MIX ASPHALT (GRADING SX) (75) (PG 58-34)	TON	320	\$135.00	\$43,200.00
9	T-TOP PAVEMENT JOINT	EACH	1	\$2,000.00	\$2,000.00
10	PRECAST TYPE 13 INLET	EACH	3	\$6,000.00	\$18,000.00
11	PRECAST STORMWATER DRYWELL	EACH	4	\$9,000.00	\$36,000.00
12	12" HDPE STORM PIPE	LF	360	\$90.00	\$32,400.00
13	BURIED ELECTRIC LINE (XCEL CONTRACT)	LF	1000	\$156.00	\$156,000.00
14	SWITCH GEAR	EACH	1	PER XCEL CONTRACT	
15	ELECTRIC TRANSFORMER	EACH	2	PER XCEL CONTRACT	
16	PRECAST SANITARY SEWER MANHOLE	EACH	2	\$8,500.00	\$17,000.00
17	8" SEWER MAIN (PVC)	LF	200	\$250.00	\$50,000.00
18	GAS LINE (SIZE & MATERIAL TBD)	LF	300	PER XCEL CONTRACT	
				Total:	\$540,510.00

<b>LOC Required (115% of Estimated Costs)</b>	<b>\$621,586.50</b>
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# Keystone Town Council Minutes

A Regular Meeting of the Keystone Town Council was held on September 10, 2024, at 7:00 p.m. at 1628 Sts. John Rd, Keystone, CO 80435. Full and timely notice of this meeting had been posted and a quorum of the body was present.

## **I. CALL TO ORDER, ROLL CALL**

Mayor Riley called the meeting to order at 7:00 p.m. The roll was called, and it was found there were present and participating at that time the following members: Councilmember Gretchen Davis, Councilmember Carol Kerr, Councilmember Dan Sullivan, Councilmember Valerie Thisted, and Mayor Riley. The following member was absent: Councilmember Aaron Parmet (excused).

## **II. APPROVAL OF AGENDA**

Mayor Riley presented the agenda and noted that the Liquor Licensing Authority Matter has been rescheduled to the meeting on September 24, 2024.

Councilmember Davis moved to approve the agenda as presented. Councilmember Sullivan seconded. The motion passed unanimously, and the agenda was approved.

## **III. COMMUNICATIONS TO COUNCIL**

Mayor Riley opened the floor for public comment. Patty Banks spoke regarding a meeting with residents in Loveland Pass Village and encouraged in person participation at public meetings. Seeing no further members of the public wishing to speak, Mayor Riley closed the floor for public comment.

## **IV. CONSENT AGENDA**



- A. FIRST READING OF ORDINANCES – NONE**
- B. RESOLUTIONS – NONE**
- C. MEETING MINUTES**
  - 1. August 27, 2024 – Meeting Minutes**
- D. EXCUSED ABSENCES – NONE**
- E. OTHER – NONE**

Mayor Riley read the consent agenda into the record.

Councilmember Davis moved to approve the consent agenda. Councilmember Sullivan seconded. The motion passed unanimously, and the consent agenda was approved as presented.

**V. DISCUSSION**

**A. LIQUOR LICENSING AUTHORITY MATTERS**

- 1. New Liquor License Application for Ski-to-Tee, LLC, dba, Ski-To-Tee, Located at 100 Dercum Square Unit E3, By John Keith, Applicant Owner/Operator**  
*(Rescheduled to the Council Meeting on September 24, 2024)*

This item was rescheduled to the Council Meeting on September 24, 2024.

**B. CONSIDERATION OF ORDINANCES (SECOND READING/PUBLIC HEARING)**

- 1. Ordinance 2024-O-09, An Ordinance of Town Council of the Town of Keystone, Colorado, Amending the Town Liquor Code and Ordinance 2024-O-03**

Mayor Riley read the title of Ordinance 2024-O-09, An Ordinance of Town Council of the Town of Keystone, Colorado, Amending the Town Liquor Code and Ordinance 2024-O-03 and opened the public hearing.

Mayor Riley recognized Town Manager John Crone, Town Attorney

Jennifer Madsen, and Town Clerk Madeleine Sielu to present the item.

Mayor Riley opened the floor for public comment. Seeing no members of the public wishing to speak, Mayor Riley closed the floor for public comment.

Councilmember Sullivan moved to approve Ordinance 2024-O-09.

Councilmember Davis seconded.

On roll call, the result was:

Ayes: Councilmember Davis, Councilmember Kerr, Councilmember Sullivan, Councilmember Thisted, Mayor Riley (5)

Nays: (0)

Abstain: (0)

Absent: Councilmember Parmet (1)

The motion passed and Ordinance 2024-O-09 was adopted.

## **C. RESOLUTIONS**

### **1. Resolution 2024-61, A Resolution of Town Council of the Town of Keystone, Colorado, Approving a Subdivision Improvements Agreement (“SIA”) for Ina’s Way Residences Subdivision, Located at 96 River Run Road**

Mayor Riley recognized Town Manager John Crone and Community Development Director Lindsay Hirsh to introduce Resolution 2024-61, Approving a Subdivision Improvements Agreement (“SIA”) for Ina’s Way Residences Subdivision, Located at 96 River Run Road.

Councilmember Kerr moved to approve Resolution 2024-61.

Councilmember Davis seconded.

On roll call, the result was:

Ayes: Councilmember Davis, Councilmember Kerr, Councilmember Sullivan, Councilmember Thisted, Mayor Riley (5)

Nays: (0)

Abstain: (0)

Absent: Councilmember Parmet (1)

The motion passed, and Resolution 2024-61 was approved.

**2. Resolution 2024-62, A Resolution of Town Council of the Town of Keystone, Colorado, Approving an Intergovernmental Agreement with Summit County Regarding Liquor Code Regulation and Enforcement at River Course Grill**

Mayor Riley recognized Town Manager John Crone, Town Attorney Jennifer Madsen, and Town Clerk Madeleine Sielu to present Resolution 2024-62, Approving an Intergovernmental Agreement with Summit County Regarding Liquor Code Regulation and Enforcement at River Course Grill.

Mayor Riley moved to approve Resolution 2024-62, with an amendment to paragraph 1.b. that provides that the County retains the ability to enforce all laws and regulations, other than the Colorado Liquor Code, on the Golf Course Optional Premises that is located within the County's jurisdiction. Councilmember Sullivan seconded.

On roll call, the result was:

Ayes: Councilmember Davis, Councilmember Kerr, Councilmember Sullivan, Councilmember Thisted, Mayor Riley (5)

Nays: (0)

Abstain: (0)

Absent: Councilmember Parmet (1)

The motion passed, and Resolution 2024-62 was adopted as amended.

**3. Resolution 2024-63, A Resolution of Town Council of the Town of Keystone, Colorado, Approving an Intergovernmental Agreement with Summit County Regarding Liquor Code Regulation and Enforcement at Mountain House Lodge**

Mayor Riley recognized Town Manager John Crone, Town Attorney Jennifer Madsen, and Town Clerk Madeleine Sielu to present

Resolution 2024-63, Approving an Intergovernmental Agreement with Summit County Regarding Liquor Code Regulation and Enforcement at Mountain House Lodge.

Mayor Riley moved to approve Resolution 2024-63, with an amendment to paragraph 1.b. that provides that the Town retains the ability to enforce all laws and regulations, other than the Colorado Liquor Code, on the Optional Premises that is located within the Town's jurisdiction.

On roll call, the result was:

Ayes: Councilmember Davis, Councilmember Kerr, Councilmember Sullivan, Councilmember Thisted, Mayor Riley (5)

Nays: (0)

Abstain: (0)

Absent: Councilmember Parmet (1)

The motion passed, and Resolution 2024-63 was adopted as amended.

**D. OTHER - None**

**VI. PLANNING MATTERS**

**VII. REPORT OF TOWN MANAGER AND STAFF**

Town Manager John Crone provided an update on recent Homeowner's Association meetings attended by himself and members of Town Council. He attended a recent Mayors, Managers and Commissioners meeting where the issue of the school board's ballot issue was discussed. He attended a Transit Advisory Board meeting where bus service to Keystone in the winter was discussed. Summit County is beginning to expand its micro transit options in Dillon Valley & Peak 7. Town representatives are contributing to this conversation to advocate for expansion of micro transit options in Keystone. Benefits costs are estimated to go up 13.5% in the upcoming year. He has continued discussions with Dillon and the Summit County Sheriff's Office regarding law enforcement. The Town successfully launched the Short-Term Rental licensing renewal process, and it is going well.

## **VIII. REPORT OF MAYOR AND COUNCIL**

Councilmember Thisted shared a concern for discussions of fire prevention methods.

Councilmember Kerr shared that the Chamber of Commerce was interested in hosting a Keystone specific business mixer this fall.

Mayor Riley reported on his meeting with the other Summit County Mayors and Managers and community members from Loveland Pass Village. The meeting with Vail Resorts and the Town of Keystone has been postponed until the new General Manager is on board.

## **IX. OTHER MATTERS**

Councilmember Kerr expressed an interest in future discussions regarding regulations that would require AirBnb and VRBO to remove listings that aren't in compliance with the Town's Short-Term Rental code.

## **X. SCHEDULED MEETINGS**

## **XI. EXECUTIVE SESSION**

## **XII. ADJOURNMENT**

Seeing no further business to conduct, Mayor Riley adjourned the meeting at 8:08 p.m.

**Town of Keystone**  
**Accounts Payable List**

**Period: August 24 through September 20, 2024**

**Payables processed for the period indicated above:**

<b>PAYEEES</b>	<b>AMOUNT</b>	<b>DESCRIPTION</b>	<b>REVIEWED, APPROVED BY</b>
Abell, Gabrielle	98.22	reimbursement mileage	M. Sielu, J. Crone
Blue Vector AI LLC	55,000.00	short term rental software	M. Sielu, J. Crone
CEBT	7,148.32	health insurance premium Sep	E.Cox, J. Crone
Employers Council Services Inc	1,215.00	payroll, human resources consultant	M. Sielu, J. Crone
FirstBank Credit Card Center	2,234.95	p-card charges thru Sept	M. Sielu, J. Crone
Kerr, Carol	440.15	reimbursement CAST meeting	M. Sielu, J. Crone
Keystone Policy Center	4,900.00	Office Lease Oct	J. Crone
Marchetti & Weaver	6,170.89	Accounting Jul	J. Crone
Paylocity	414.78	payroll processing	E.Cox, J Crone
Riley, Kenneth	802.58	reimbursement CAST meeting	M. Sielu, J. Crone
Rocky Mountain Reserve	75.00	FSA funding	E.Cox, J Crone
SeaGrizzly, LLC	493.00	telephone provider Sep	M. Sielu, J. Crone
Staples Contract & Commercial LLC	320.17	office supplies	M. Sielu, J. Crone
Summit County Government	460,539.06	sales tax advance payment	J. Crone
Verticomm (All Copy Products)	1,842.00	IT Managed Service Provider	M. Sielu, J. Crone
Widner Juran LLP	9,777.98	legal services Jul	J. Crone

**Total Payables** 551,472.10

**Payrolls processed during the period indicated:**

		<b>Paydate</b>
Payroll Wages (Net pay)	39,518.83	9/6 & 9/20
Payroll Taxes & Liability Payments	9,915.75	9/6 & 9/20
CRA Contributions	7,426.10	9/6 & 9/20

**Total Payroll** 56,860.68

**TOTAL ACCOUNTS PAYABLE** 608,332.78

9/19/2024 0:00

**Acronym Table**

CAST	Colorado Association of Ski Towns
CEBT	Colorado Employee Benefits Trust
CIRSA	Colorado Intergovernmental Risk Sharing Agency
CMCA	Colorado Municipal Clerk Association
CML	Colorado Municipal League
CRA	Colorado Retirement Association
FSA	Flexible Spending Account
NWCCOG	NorthWest Colodao Council of Governments
SIPA	Statewide Internet Portal Authority
STR	Short Term Rental
WC	Workers Compensation

# TOWN OF KEYSTONE, COLORADO

## STAFF REPORT

TO: Mayor & Town Councilmembers  
THROUGH: John Crone, Town Manager  
Jennifer Madsen, Town Attorney  
FROM: Lindsay Hirsh, Community Development Director  
DATE: September 24, 2024 - Council Meeting  
SUBJECT: [Consent] TOK24-011: Class 2 Review for a Conditional Use Permit (CUP) for a Short-Term Rental (STR) located at 31 River Overlook Court

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### **Executive Summary:**

The subject Conditional Use Permit (CUP) application request is for a maximum of 23 guests and 6 outdoor parking spaces located at 31 River Overlook Court as identified in the attached Vicinity Map (Attachment A). Per the applicant's narrative (Attachment B), Section 3821.05A: Criteria for Review for Conditional Use Permit, of the Town's Development Code states that a Class 2 administrative conditional use permit application shall be required for any proposed short-term vacation rental in the Short-Term Rental (STR) Resort Overlay Zone which proposes an occupancy of 20 or more people or outdoor parking of 6 or more vehicles. The subject property was granted a CUP in August of 2019 by the County for 23 quests and 6 outdoor parking spaces. Per the Development Code, CUP's for STR's are only valid for a maximum period of five (5) years and as such, the applicant is requesting a renewal. Town Staff has verified that no complaints/violations have been reported/documented associated with the subject property. The Elk Crossing HOA is opposed to the request and has requested that the CUP be denied (Attachment C).

[The application materials are available at this link.](#)

**Recommendation:**

The Community Development Director has approved the Class 2 Site Plan application for the subject STR/CUP application request for a maximum of 23 guests and 6 outdoor parking spaces located at 31 River Overlook Court. With the exception of further review of the public comment letters (Attachment C), the Community Development Director has not identified any reason for Council's review (and call up) of that decision.

**Background:**

Per the Town's Development Code, a Class 2 administrative conditional use permit application shall be required for any proposed short-term vacation rental in the STR Resort Overlay Zone which proposes an occupancy of 20 or more people or outdoor parking of 6 or more vehicles.

The conditional use permit application shall be reviewed in the context of the property and neighborhood to consider whether the types of uses in the neighborhood, the home size, lot size and distance to neighboring properties can potentially enable these properties to accommodate higher occupancies, higher number of nights rented as an STR, and/or additional cars parked on site.

Per the County's Assessor's data, the subject property has a 8,951 square foot single family residence. The lot is 0.9660 acres in size. As stated above, the subject property was granted a CUP in August of 2019 by the County for 23 quests and 6 outdoor parking spaces.

Town Staff has verified that no complaints/violations have been reported/documentated associated with the subject property. The Elk Crossing HOA is opposed to the request and has requested that the CUP be denied (Attachment C).

On June 11, 2024, the Town adopted Ordinance No. 2024-O-07 that adopted the Town's Short-Term rental Regulations. In the evaluation of this application the following are applicable:



- *Maximum Occupancy:* Maximum occupancy at any time may not exceed the following: For a single-family residence – two (2) persons per bedroom plus four (4) additional occupants; or 1 person per 200 square feet of living area, whichever allows for a greater occupancy. Properties requesting occupancy in excess of 19 must first obtain a Class 2 Conditional Use Permit as required by the Town Land Use Code. Based on the submitted information and assessor data, the subject 8,951 square foot (living area) residence has eight (8) bedrooms. Based on the bedroom count the residence could allow 20 guests. Based on the square footage (living area) the residence could allow up to 44 guests.
- *Parking:* A minimum of one (1) parking space is required per unit, up to a maximum of five (5) vehicles permitted to be parked outdoors on any property. The Ordinance also states that a property owner may request an increase in the maximum number of allowed parking spaces through a Conditional Use Permit if the proposed parking meets all applicable regulations and criteria, and is found to be consistent with neighborhood character, including location and visual buffering from adjacent properties.

*Violations:* The Town's Ordinance states that the issuance of a license is expressly contingent upon the licensee maintaining compliance with all the requirements set forth in the STR Regulations. If at any time a licensee fails to maintain such compliance, the licensee shall be in violation of the regulations and staff would investigate the claims and initiate the enforcement/fine process and potentially resulting in the revocation of the permit. In addition, it should be noted that CUP may only operate as long as the property owner has an STR license? In other words, if the property and the license is suspended/revoked, then they could not continue to operate the STR (even with the CUP).

## **Criteria for Decision:**

1. The proposed use and occupancy of the STR property does not exceed the applicable building and fire code requirements for maximum occupancy of the structure, and protects the public health, safety and welfare.
2. The existing services and infrastructure (e.g., water supply, sewage disposal capacity, access, on-site parking spaces) can support the proposed use and occupancy of the property, or the applicant has obligated himself/herself to provide the necessary services and infrastructure in sufficient time to serve the proposed use.
3. The proposed operation of the STR will ensure preservation of the residential character of the neighborhood where it is located. The amount of traffic and noise from lodging guests will not result in significant adverse impacts to the adjacent neighborhood.
4. There is adequate separation and buffering of the STR use from adjacent residences and public rights-of-way to mitigate potential impacts on the surrounding neighborhood, including traffic, additional parking and noise. Standards for demonstrating adequate separation and buffering include but are not limited to: orientation of the STR unit on the property away from nearby residential structures; linear separation from other residential structures; separation from other structures by an intervening right-of-way; topographic features such as rock formations or grade differences; and mature vegetation or fencing.
5. There is not a history of STR complaints on the property, if an STR was already in existence on the property, the owner has adequately addressed the conditions that lead to the complaints, to the satisfaction of the Review Authority.
6. The property is in compliance with all other applicable laws, rules and regulations, including but not limited to standards concerning driveways and parking areas as found in Chapters 3 and 5 of this Code.

Based on a review of the application materials and research of the previous approval, Staff believes that the above listed criteria have been met. Specifically, the proposed use and occupancy of the STR property does not exceed the applicable building and fire code requirements for maximum occupancy of the structure. The existing services and infrastructure can support the proposed use and occupancy of the property. Based on research of the previous STR permit/license, there were no documented complaints associated with the subject use/property. Based on a lack of documented complaints, it appears that the proposed operation of the STR does not negatively impact the preservation of the residential character of the neighborhood where it is located. Based on a lack of documented complaints, staff believes that the amount of traffic and noise from lodging guests did not result in significant adverse impacts to the adjacent neighborhood. There is adequate separation and buffering of the STR use from adjacent residences and public rights-of-way to mitigate potential impacts on the surrounding neighborhood, including traffic, additional parking and noise. There is not a history of STR complaints on the property. The property is in compliance with all other applicable laws, rules and regulations, including but not limited to standards concerning driveways and parking areas as found in Chapters 3 and 5 of this Code.

### **Alternatives:**

If there is interest by Council to understand further details of the subject case, then Council will need to remove the item from the Consent Agenda and then vote on pulling the item. If a majority of Council members vote to pull the item off the agenda, staff will be available to answer any questions.

### **Financial Considerations:**

There are no Town financial considerations applicable to the subject application.

### **Previous Council Actions:**

None



**Attachment A**

**Vicinity Map**



## Attachment B

### **Project Narrative for Conditional Use Permit Renewal – 31 River Overlook Ct, Keystone, CO**

**Property Address:**

31 River Overlook Ct, Keystone, CO 80435

**Property Owner:**

Zach Lemaster

**Applicant:**

Thomas Barry , Hosting from the Heart (HFTH)

**Application Purpose:**

Renewal of the existing Conditional Use Permit for a short-term rental (STR) accommodating 23 guests. This permit renewal seeks to continue the existing operations under the same conditions that have been in place for the past five years, with no changes to guest capacity, property layout, or operational procedures.

#### **1. Description of the Development**

The property at 31 River Overlook Ct has been operating as a short-term rental (STR) accommodating up to 23 guests under a Conditional Use Permit issued five years ago. This application seeks to renew the permit with no changes to the current operation, guest capacity, or physical layout of the property. The STR has consistently met all local regulations, providing a high standard of hospitality while maintaining the character and integrity of the surrounding neighborhood.

#### **2. Development Goals**

The primary goal of this renewal is to maintain the current use of the property as an STR without making any alterations to the existing guest capacity or property layout. The property has been successfully operating as an STR, contributing positively to the local economy and providing guests with a luxurious and comfortable stay in Keystone. Hosting from the Heart (HFTH) will continue to manage the property with the same level of excellence and attention to detail.

#### **3. Total Development Area**



The total development area remains unchanged from the previous application. The property comprises one residential unit used solely for short-term rental purposes. The total area of the property and the STR unit is consistent with the original application, and no additional development or land use changes are proposed.

#### **4. Land Use**

The land use of the property will continue as a short-term rental (STR). No additional land uses are proposed, and the property will remain in its current residential use, consistent with local zoning and land use regulations. The property will continue to serve as a high-end rental accommodating up to 23 guests.

#### **5. Residential Units**

The property contains one residential unit, which is used for short-term rental purposes. There are no changes proposed to the number of residential units on the property. The unit has been designed and maintained to provide maximum comfort and amenities for guests, in line with the standards expected of a luxury rental.

#### **6. Floor Area**

There are no changes to the floor area of the residential unit from the previous application. The property's layout and floor area remain consistent, with no expansions, modifications, or additional construction proposed.

#### **7. Open Space & Trails**

The commitments to open space and trails made in the previous application remain in place. The property continues to preserve the natural features of the surrounding area, contributing to the aesthetic and environmental integrity of Keystone. No changes to the open space or trails are proposed in this renewal application.

#### **8. Methods of Operation**

Hosting from the Heart (HFTH) manages the property with a focus on providing exceptional guest experiences while maintaining strict adherence to local regulations and community standards. The methods of operation include:

- **Check-In Process:** Guests are provided with detailed instructions for self-check-in, including a secure code for keyless entry. This allows for flexible check-in times and ensures guest convenience.
- **Guest Communication:** HFTH maintains a 24/7 guest communication line, ensuring that any issues or questions are promptly addressed. Guests are informed of local regulations, noise ordinances, and neighborhood expectations upon booking and again during check-in.
- **Maintenance Protocols:** The property undergoes regular maintenance checks to ensure all amenities are in perfect working order. A local maintenance team is on standby to address any urgent issues that may arise during a guest's stay. Regular inspections are conducted to maintain the property's high standards.
- **Housekeeping:** Professional cleaning services are employed between guest stays to ensure the property is immaculate and ready for new arrivals. Housekeeping also follows a strict checklist to ensure all safety measures, such as smoke detectors and fire extinguishers, are functioning properly.
- **Compliance:** The property is managed in compliance with all local regulations, including noise ordinances, occupancy limits, and waste management protocols. HFTH ensures that the property operates in a way that is respectful of the surrounding community and environment.

## 9. Hours of Operation

Guest services are available 24/7 to ensure that any issues or needs are promptly addressed. This round-the-clock availability is a key component of HFTH's commitment to providing excellent hospitality and ensuring a seamless guest experience.

## 10. Impact on Adjacent Properties

The STR at 31 River Overlook Ct has operated without incident for the past five years. There have been no significant impacts on adjacent properties. The property is managed in a way that minimizes noise and disruption, with clear guidelines provided to guests regarding acceptable behavior and noise levels. HFTH has a zero-tolerance



policy for parties or large gatherings that could disturb neighbors, and this policy has been strictly enforced.

### 11. Proposed Time Limits for Use

The application seeks a five-year renewal of the Conditional Use Permit, allowing the property to continue operating as an STR under the same conditions as the previous permit. This time frame is consistent with the original permit and allows for periodic review to ensure continued compliance with local regulations.

### 12. Confirmation of No Changes

HFTH confirms that there have been no changes to the operation, guest capacity, or property layout since the previous Conditional Use Permit was issued. The property continues to be managed with the same level of care and attention to detail, ensuring that it remains a positive addition to the Keystone community.

Re: Master Plan Conformance Statement for Conditional Use Permit Renewal  
Property Address: 31 River Overlook Ct, Keystone, CO 80435

Dear Community Development Department,

I am writing to provide a Master Plan Conformance Statement as part of the renewal application for the Conditional Use Permit (CUP) for the short-term rental (STR) located at 31 River Overlook Ct, Keystone, CO. This statement outlines how the continued use of the property as an STR aligns with the goals and policies set forth in the Snake River Master Plan.

## **Compliance with the Snake River Master Plan**

### **1. Alignment with Tourism Goals**

The Snake River Master Plan emphasizes the importance of fostering tourism as a key component of the local economy. The operation of the STR at 31 River Overlook Ct directly supports this goal by providing high-quality accommodations that attract visitors to Keystone. By offering a luxury rental experience, the property enhances the attractiveness of the area as a destination, contributing to the overall tourism strategy of the Snake River Basin.

### **2. Economic Development**

The STR at 31 River Overlook Ct plays a role in local economic development by driving spending in the area. Guests who stay at the property contribute to the local economy by dining at restaurants, shopping at local stores, and participating in recreational activities. The STR also supports local employment, including housekeeping, maintenance, and property management services provided by Hosting from the Heart (HFTH). This continued economic contribution aligns with the Master Plan's goals for sustainable and balanced economic growth.

### **3. Property Upkeep and Maintenance**

The Snake River Master Plan prioritizes the upkeep and maintenance of properties within the area to preserve the natural beauty and environmental integrity of the region. HFTH ensures that the STR is meticulously maintained, with regular upkeep that not only meets but exceeds local standards. This includes landscaping, exterior maintenance, and adherence to environmental guidelines, such as proper waste management and water conservation practices. The commitment to maintaining the property aligns with the Master Plan's objectives to protect the character and quality of the Snake River Basin.

#### **4. Community Impact**

The operation of the STR has been conducted with consideration for the surrounding community. HFTH has implemented strict guest policies that minimize any potential disruptions to neighbors, including guidelines on noise levels and occupancy limits. The STR has operated for five years without incident, demonstrating compliance with community standards and respect for the residential nature of the neighborhood. This careful management supports the Master Plan's vision of maintaining a harmonious balance between residential living and tourism-related activities.

#### **Conclusion**

The continued operation of the short-term rental at 31 River Overlook Ct is consistent with the goals and policies of the Snake River Master Plan. By supporting tourism, contributing to economic development, ensuring property upkeep, and minimizing community impact, the STR aligns with the broader objectives of the Keystone community. We respectfully request that the Conditional Use Permit be renewed so that this property can continue to contribute positively to the area.

Please review this conformance statement and provide any feedback or additional requirements necessary for the completion of this application. We appreciate your consideration and are committed to continuing our responsible stewardship of the property in line with the community's values.

Sincerely,

Thomas Barry

Hosting from the Heart (HFTH)



## **Criteria for Decisions Statement**

**Property Address:** 31 River Overlook Ct, Keystone, CO 80435

**Applicant:** Thomas Barry, Hosting from the Heart (HFTH)

**Date:** August 14, 2024

### **Re: Criteria for Decisions – Section 3821.05 of the Town of Keystone Land Use and Development Code**

This statement outlines how the short-term rental (STR) at 31 River Overlook Ct meets the required criteria for decision as set forth in Section 3821.05 of the Town of Keystone Land Use and Development Code.

#### **1. Conformance with Master Plan**

The STR is in conformance with the Snake River Master Plan by supporting the goals of local tourism, economic development, and the preservation of community character. The operation of this rental aligns with the Master Plan's objectives to promote high-quality, visitor-oriented accommodations while ensuring the maintenance of residential neighborhood integrity.

#### **2. Compatibility with Surrounding Uses**

The STR is compatible with the surrounding residential uses and is permitted within the current zoning district. The property has been managed in a manner that minimizes any potential conflicts with neighboring properties, ensuring that its use does not detract from the residential character of the area.

#### **3. Adequacy of Infrastructure**

The property is adequately served by existing public infrastructure, including water, sewer, and road access. No additional infrastructure is required to support the continued operation of the STR. The existing utilities are sufficient to meet the needs of the property without placing undue strain on public services.

#### **4. Impact on Public Health, Safety, and Welfare**

The STR operates in a manner that protects public health, safety, and welfare. The property is equipped with all necessary safety features, including smoke detectors, fire extinguishers, and compliant exterior lighting. The operation of the STR adheres to all

relevant safety regulations and community standards, ensuring a secure and comfortable environment for both guests and neighboring residents.

## **5. Minimization of Adverse Impacts**

The management of the STR at 31 River Overlook Ct includes measures to minimize adverse impacts on the surrounding community. This includes strict policies on noise control, guest behavior, and occupancy limits, which have been effective in preventing disturbances to neighboring properties. The property's landscaping and exterior lighting are designed to blend with the natural environment, further reducing any visual or environmental impact.

## **6. Consistency with Zoning Requirements**

The STR is consistent with the zoning requirements of the area. The property meets all applicable standards, including those related to building setbacks, parking, and lot coverage. There are no variances or exceptions required for the continued use of the property as a short-term rental.

## **Conclusion**

The short-term rental at 31 River Overlook Ct meets all the required criteria for decision under Section 3821.05 of the Town of Keystone Land Use and Development Code. The continued operation of this property as an STR aligns with the goals and policies of the Keystone community and complies with all applicable zoning and development standards. We respectfully request approval of the Conditional Use Permit renewal based on this demonstrated compliance.

Please review this statement and confirm that all criteria are met. Thank you for your consideration.

# **Statement on Compliance with Criteria for Conditional Use Permit Renewal**

**Property Address:** 31 River Overlook Ct, Keystone, CO 80435

**Applicant:** Thomas Barry, Hosting from the Heart (HFTH)

**Date:** August 9, 2024

## **Re: Compliance with Criteria for Conditional Use Permit – Section 3821.05**

This statement addresses the compliance of the short-term rental (STR) at 31 River Overlook Ct with the criteria set forth in Section 3821.05 of the Summit County Land Use and Development Code.

### **1. Master Plan Conformance**

The STR aligns with the Snake River Master Plan by supporting local tourism, economic development, and property maintenance. The use is consistent with community goals and contributes positively to the local economy.

### **2. Compatibility with Surrounding Area**

The STR is located in a residential area where such use is permitted. The property has operated for five years without negatively impacting neighboring properties, and management practices ensure ongoing compatibility with the community.

### **3. Traffic and Parking**

The property provides sufficient on-site parking and generates minimal traffic, ensuring no congestion or hazards in the area.

### **4. Environmental and Community Impact**

The STR operates without causing undue noise, dust, or odor. HFTH maintains the property to high standards, ensuring it does not detract from the privacy or well-being of adjacent property owners.

### **5. Public Utilities and Services**

The property is fully serviced by existing public utilities, and its use does not place undue stress on these services. The STR also complies with all county development standards, ensuring public health, safety, and welfare.

### **6. Wildlife and Natural Resources**



The STR is managed with sensitivity to the local environment, with no adverse effects on wildlife or natural resources.

## Conclusion

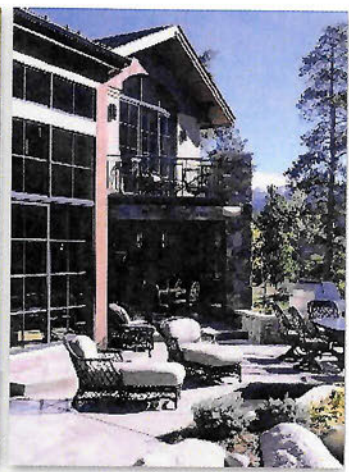
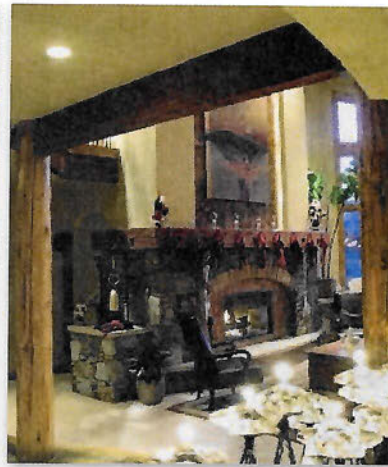
The STR at 31 River Overlook Ct meets all criteria for Conditional Use Permit renewal under Section 3821.05. The property's continued operation supports community goals and maintains a high standard of compliance with local regulations. We respectfully request renewal of the permit for another five-year term.

Please review and confirm that all criteria are met. Thank you for your attention.

Sincerely,

Thomas Barry

Hosting from the Heart (HFTH)



### MAIN LEVEL

#### Believe

Walk out patio door with King Bed,  
Bath with Tub/Shower

#### Invent

Queen Bed with west facing window  
seat, Bath with shower

### MID LEVEL

#### Dance

Shares west facing deck, Queen Bed,  
Bath/Tub w/Shower

#### Adventure

Shares west facing deck with Dance,  
Full Bed, Bath with Shower

### UPPER LEVEL WEST WING

#### Imagine

Views of golf course and Lodge room,  
King Bed, Bath with Shower

#### Inspire

Deck Overlooking Snake River, Queen  
Bed, Bath with shower

#### Create

Private Deck with Pines and River,  
Queen Bed, Bath Tub w/Shower

### UPPER LEVEL, EAST WING

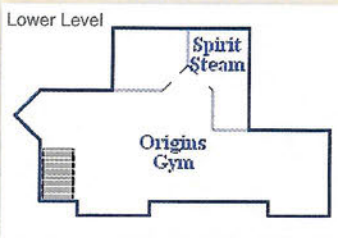
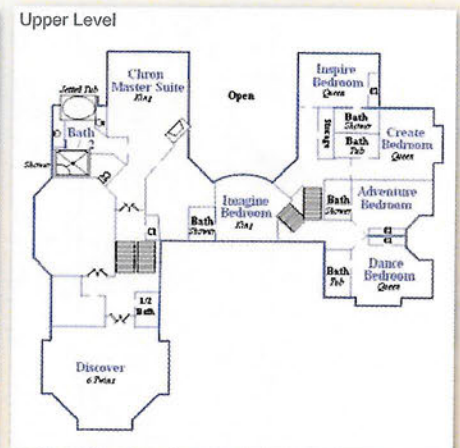
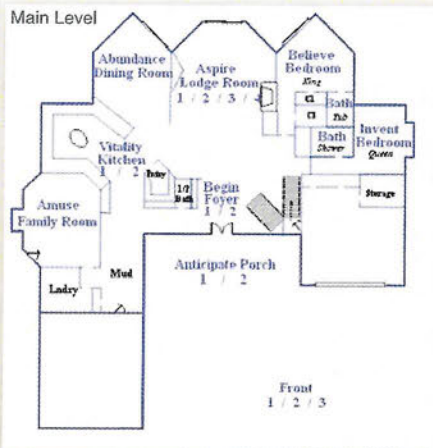
#### Chiron

King Bed, Overlooking Snake River,  
Bath with Jetted tub/Double Shower,  
Fireplace, Walk-in Closet

### MID LEVEL EAST WING

#### Discover

Six Twin Beds or Round Table







THIRD LEVEL EAST WING

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**Attachment C**  
**Public Comments**

**From:** Town of Keystone <[no-reply@co.colorado.gov](mailto:no-reply@co.colorado.gov)>  
**Sent:** Monday, September 16, 2024 10:23 AM  
**To:** Maddy Sielu <[msielu@keystoneco.gov](mailto:msielu@keystoneco.gov)>  
**Subject:** Webform submission from: Contact Us > Rows > Cards Content

Submitted on Monday, September 16, 2024 Submitted by: Anonymous Submitted values are: \*Your Name\* Bruce Williams \*Your Email\* [bkw@gbpllc.com](mailto:bkw@gbpllc.com) [1] \*Subject\* 31 River Overlook STR CUP \*Message\* Hello Mr. Hirsh, I am a homeowner in the Elk Crossing HOA and I wish to offer my thoughts concerning the CUP filing for 31 River Overlook. I suspect I may be outside the official comment period as I believe that period may have ended on September 12th. If so, I apologize for my lateness, somehow sending you my thoughts slipped off my to-do list. Late or not, I do wish to share my thoughts. I would like to suggest the CUP which would create a waiver to exist standard regulations to allow greater than standard occupancy to be denied. Elk Crossing was originally intended as a neighborhood of owner occupied free standing single family homes. Although most of the homes have 4 or more bedrooms, during our 15+ years of owning on Elk Crossing the usual pattern has been very low density occupancy with most homes occupied by couples or small families with occasional full occupancy on weekends or weeks, when the owners were hosting family or guests. With approximately 25 homes (and over half being part time vacation homes), other than short term renters, the occupancy in the neighborhood might be 20 or fewer people. It is a very pleasant, safe and quiet neighborhood. With the growth in STR and the notion of investment home where the percentage of owner occupied days is low (or zero) compared to STR occupied days the neighborhood is changing. There are currently at least 4 homes where the rationale for owning appears to be rental income and when they are fully occupied that can represent 80+ people with perspectives different than those of occupying owners and their hosted families and guests. Rejecting the CUP will not address what I consider the larger concern, but it will prevent the enlargement of that concern, while the neighborhood and hopefully the Town of Keystone consider the issue of trying to maintain the originally intended character of several of the neighborhoods of free standing single family homes found within the Town of Keystone. For your information, I am a retired Texas voter and legal resident. I bought my home at 0374 Elk Crossing Lane during August of 2008. Since that time my wife and I have typically visited Summit county for a 6 week winter stay (to experience cold weather and ski) and a 18 week summer stay (to enjoy the

cool weather and golf almost daily). Other than 4 or 5 weeks when we have family or friends as guests, my wife and I are the only occupants of our home. I appreciate the efforts that allowed the creation of the Town of Keystone and thank you for your considerations and thoughts. Best regards, Bruce Williams 0374 Elk Crossing Town of Keystone 713 899-2880  
[1] <mailto:bkw@gbpllc.com>

Hi Lindsay,

As a homeowner and full time resident of Elk Crossing, I do not support approval for the CUP in Elk Crossing. I do not support any CUP's for any single family homes located in neighborhoods in Keystone. These neighborhoods were never developed nor did anyone ever envision these homes sleeping 23 people. These CUP's do not benefit the HOA's, the town or the community. They only benefit the owners/companies who are in the business of seeking rental income. I fear that if Keystone does not adopt STR neighborhood zones, you will see fewer full time residents which means fewer registered voters, fewer people to serve on town council/mayor, fewer people who will volunteer to serve on committees/commissions. Keystone will become a town of renters and visitors.

Thank you for listening.

Steve Martin

0242 Elk Crossing Lane

September 5, 2024

Lindsay Hirsh  
Town of Keystone  
Community Development Director

Dear Mr. Hirsh,

The HOA Board for Elk Crossing has recently become aware of:

**TOK24-011: 31 River Overlook STR CUP: Class 2 Review – Conditional Use Permit (“CUP”) for a Short-Term Rental Request to accommodate up to 23 guests.**

The Board opposes approval of this Conditional Use Permit. The Elk Crossing sub-division was established in 1989 as a residential neighborhood of free-standing single-family homes. We currently have 24 single-family homes with 3 unbuilt lots, and there are currently 7 STR licenses within our community. The most recent home that sold in Elk Crossing was purchased by an LLC to be used solely as a full-time rental.

As noted in 3821.05: Criteria for Review for Conditional Use Permit, Sect. B, #3 and #4, we feel approval of this CUP will not ensure the preservation of the residential character of the neighborhood. This rental property is in close proximity to other rentals such that the guest capacity could be at 60+ people. This creates traffic, parking and noise issues with this many allowed guests in such a close proximity. As per HOA documents parking is restricted to driveways and the county roads within Elk Crossing are posted as No Parking.

The Board is encouraging homeowners to report STR violations so that they may be documented and capture violations that are occurring.

We want to preserve the original single-family residential character of Elk Crossing in which it was originally established and not become a community of investment properties for short-term rentals (with high-capacity guests allowed) with no ties to the HOA, Town of Keystone or the community.

Thank you for your consideration.

ECHOA Board Members  
Steve Martin, President

# TOWN OF KEYSTONE, COLORADO

## STAFF REPORT

TO: Mayor & Town Councilmembers  
THROUGH: John Crone, Town Manager  
Jennifer Madsen, Town Attorney  
FROM: Madeleine Sielu, Town Clerk  
DATE: September 24, 2024 – Liquor Licensing Authority  
SUBJECT: New Liquor License Application for Ski-To-Tee, LLC, dba,  
Ski-To-Tee, Located at 100 Dercum Square Unit E3, By  
John Keith, Applicant Owner/Operator

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### **Executive Summary:**

As the Local Licensing Authority for Liquor Licensing per Ordinance 2024-O-03, Town Council maintains purview over the review of new liquor license applications. On June 25, 2024, John Keith as Owner/Operator of a business located within the Town limits of Keystone, located at 100 Dercum Square Unit E3, is seeking approval of his application for a Tavern Liquor License.

The Applying entity is Ski-To-Tee, LLC dba Ski-To-Tee. In accordance with C.R.S. § 44-3-311, the Notice of Public Hearing was properly noticed and posted. A representative of the applying entity has been provided a Follow Up Findings Report via email and was requested to be present at this evening's meeting. Consideration of a liquor license application is a quasi-judicial decision for the Local Licensing Authority.

### **Results of Investigation:**

As relevant to this liquor application, a "tavern" means "an establishment serving alcohol beverages in which the principal business is the sale of alcohol beverages at retail for

consumption of the premises and where sandwiches and light snacks are available for consumption on the premises.” C.R.S. § 44-3-103(57).

In accordance with C.R.S. § 44-3-312 and 44-3-313, and the Keystone Town Liquor Code, Town Staff have conducted an investigation of the statutory criteria for the issuance of a new liquor license of the class proposed by the application.

The results of such investigation are as follows

1. Neither this location nor any location is within 250 feet from any public or parochial school or the principal campus of any college, university or seminary, in conformance with C.R.S. § 44-3-313(1)(d)(III).
2. The applicant is entitled to possession of the premises by virtue of a lease. A fully executed lease for the proposed premise, in the applying entity’s name, has been supplied as a part of the application.
3. Verified by the Town Community Development Department, the zoning of the proposed premises permits the sale of alcoholic beverages, and the unit is free of building violations.
4. Neither this location nor any location within 500 feet, have been denied an application for the same class of license within the past two years, on the grounds that the reasonable requirements of the neighborhood and the desires of the adult inhabitants were satisfied by existing outlets.
5. Liquor licensed establishments in the Town as of today’s date, are as follows:
  - a. Total Number of Liquor Licenses Issued by the Town of Keystone: 26
    - i. On-Premise Consumption Licenses: 24
    - ii. Off-Premise Consumption Licenses: 2
  - b. Hotel & Restaurant Licenses: 15
  - c. Tavern Licenses: 4
  - d. Beer & Wine Licenses: 0
  - e. Fermented Malt Beverage & Wine Licenses: 0
  - f. Brewpub Licenses: 1
  - g. Distillery Pub Licenses: 0
  - h. Optional Premise Licenses: 2

6. A petition concerning the proposed premises was submitted, with 28 signatures of people in support of the license, who assert that they are either an adult resident in Summit County, or the adult owner or manager of a business within the Town.
7. All State and local application and license fees have been submitted.
8. The Statewide and Nationwide criminal background of the Applicant and finds the Applicant to be of good moral character.

### **Consideration of the Local Licensing Authority**

In reviewing this liquor application, the following must be shown:

- (1) Notice of the hearing was posted in a conspicuous place on the premises visible to the public and published in a newspaper of general circulation not less than 10 days before the hearing.
- (2) Within the two years before the date of this application, no application has been denied in the same location or within 500 feet for a retail liquor license on the basis that the requirements of the neighborhood and the desires of the adult inhabitants are already satisfied by existing outlets.
- (3) The use of the premises for a retail liquor licensed establishment is permissible under the zoning classification.
- (4) The proposed business is not located within 500 feet of a school as measured by the most direct route of pedestrian access.
- (5) The applicant has lawful possession of the premises.
- (6) There does not exist an unlawful multiple ownership of licenses or interests by the applicant.

[These criteria have been reviewed, considered, and addressed by the results of investigation above.]

The Local License Authority will also need to consider the following criteria and consideration of this criteria may be based on information submitted by the Town Clerk, the applicant's documentation, and testimony and information presented at the public hearing:



- (7) The applicant is of good moral character.
- (8) The premises are suitable based on the plans.
- (9) There is a *need and desire* for an additional outlet as measured by reasonable requirements of the neighborhood, desires of adult inhabitants of the neighborhood, and number, type and availability of existing outlets.
- (10) Existing liquor licenses of same class are inadequate to serve the “thirst needs” of the neighborhood.

**Recommendation:**

Staff has no concerns with the issuance of the liquor license based on the Staff’s review.

**Alternatives:**

If Town Council, acting as the Local Licensing Authority has alternate findings following the public hearing, they could deny the application. These findings would need to align with the statutory criteria for the issuance of a new liquor license of the class proposed by the application.

**Financial Considerations:**

N/A

**Previous Council Actions:**

N/A

**Next Steps:**

If approved, the Town Clerk would forward the license on to the State of Colorado’s Liquor Enforcement Division for review and approval at the state level.

**Suggested Motions:**

GRANT

I move to GRANT the application for a new Tavern Liquor License for Ski-To-Tee doing business as Ski-To-Tee, located at 100 Dercum Square Unit E3 based on the reasons

stated in Resolution 2024-01 of the Liquor License Authority and to approve Resolution 2024-01.

DENY

I move to DENY the application for a new Tavern Liquor License for Ski-To-Tee, LLC, doing business as Ski-To-Tee, located at 100 Dercum Square Unit E3 and ask the Authority's attorney to draft written findings and conclusions and an order for consideration and final action at a meeting to be held within 30 days.

**Attachment:**

- License Application
- Liquor License Authority Resolution 2024-01

# Colorado Liquor Retail License Application

\* Note that the Division will not accept cash  Paid by Check  Paid Online Date Uploaded to Movelt

New License  New-Concurrent  Transfer of Ownership  State Property Only  Master file

- All answers must be printed in black ink or typewritten
- Applicant must check the appropriate box(es)
- Applicant should obtain a copy of the Colorado Liquor and Beer Code: [SBG.Colorado.gov/Liquor](http://SBG.Colorado.gov/Liquor)

Applicant is applying as a/an  Individual  Limited Liability Company  Association or Other  
 Corporation  Partnership (includes Limited Liability and Husband and Wife Partnerships)

Applicant Name If an LLC, name of LLC; if partnership, at least 2 partner's names; if corporation, name of corporation

SKE-TO-TEE, LLC

FEIN Number  State Sales Tax Number

Trade Name of Establishment (DBA)  Business Telephone

SKE-TO-TEE 970-485-1540

Address of Premises (specify exact location of premises, include suite/unit numbers)  
100 DERUM SQUARE UNIT E3

City  County  State  ZIP Code

KEYSTONE SUMMIT CO 80435

Mailing Address (Number and Street)  City or Town  State  ZIP Code

400 NORTH PARK AVENUE #12B BRECKENRIDGE CO 80429

Email Address

johnnykeith247@gmail.com

If the premises currently has a liquor or beer license, you **must** answer the following questions.

Present Trade Name of Establishment (DBA)

Present State License Number  Present Class of License  Present Expiration Date

**Section A Nonrefundable application fees\***

- Application Fee for New License .....\$1,100.00
- Application Fee for New License with Concurrent Review .....\$1,200.00
- Application Fee for Transfer.....\$1,100.00

**Section B Liquor License Fees\***

- Add Optional Premises to H & R .....\$100.00 X  Total
- Add Sidewalk Service Area.....\$75.00
- Arts License (City).....\$308.75
- Arts License (County).....\$308.75
- Beer and Wine License (City).....\$351.25
- Beer and Wine License (County).....\$436.25
- Brew Pub License (City).....\$750.00
- Brew Pub License (County).....\$750.00
- Campus Liquor Complex (City) .....\$500.00
- Campus Liquor Complex (County) .....\$500.00
- Campus Liquor Complex (State).....\$500.00
- Club License (City) .....\$308.75
- Club License (County).....\$308.75
- Distillery Pub License (City).....\$750.00
- Distillery Pub License (County) .....\$750.00
- Hotel and Restaurant License (City).....\$500.00
- Hotel and Restaurant License (County) .....\$500.00
- Hotel and Restaurant License with one optional premises (City).....\$600.00
- Hotel and Restaurant License with one optional premises (County).....\$600.00

**Section B Liquor License Fees\* (Continued)**

<input type="checkbox"/>	Liquor-Licensed Drugstore (City).....	\$227.50
<input type="checkbox"/>	Liquor-Licensed Drugstore (County).....	\$312.50
<input type="checkbox"/>	Lodging & Entertainment - L&E (City) .....	\$500.00
<input type="checkbox"/>	Lodging & Entertainment - L&E (County).....	\$500.00
<input type="checkbox"/>	Manager Registration - H & R .....	\$30.00
<input checked="" type="checkbox"/>	Manager Registration - Tavern .....	\$30.00
<input type="checkbox"/>	Manager Registration - Lodging & Entertainment .....	\$30.00
<input type="checkbox"/>	Manager Registration - Campus Liquor Complex .....	\$30.00
<input type="checkbox"/>	Optional Premises License (City) .....	\$500.00
<input type="checkbox"/>	Optional Premises License (County).....	\$500.00
<input type="checkbox"/>	Racetrack License (City) .....	\$500.00
<input type="checkbox"/>	Racetrack License (County) .....	\$500.00
<input type="checkbox"/>	Resort Complex License (City).....	\$500.00
<input type="checkbox"/>	Resort Complex License (County).....	\$500.00
<input type="checkbox"/>	Related Facility - Campus Liquor Complex (City).....	\$160.00
<input type="checkbox"/>	Related Facility - Campus Liquor Complex (County) .....	\$160.00
<input type="checkbox"/>	Related Facility - Campus Liquor Complex (State) .....	\$160.00
<input type="checkbox"/>	Retail Gaming Tavern License (City).....	\$500.00
<input type="checkbox"/>	Retail Gaming Tavern License (County).....	\$500.00
<input type="checkbox"/>	Retail Liquor Store License - Additional (City).....	\$227.50
<input type="checkbox"/>	Retail Liquor Store License - Additional (County).....	\$312.50
<input type="checkbox"/>	Retail Liquor Store (City).....	\$227.50

**Section B Liquor License Fees\* (Continued)**

- Retail Liquor Store (County).....\$312.50
- Tavern License (City).....\$500.00
- Tavern License (County).....\$500.00
- Vintners Restaurant License (City).....\$750.00
- Vintners Restaurant License (County).....\$750.00

**Questions? Visit: [SBG.Colorado.gov/Liquor](http://SBG.Colorado.gov/Liquor) for more information**

Do not write in this space - For Department of Revenue use only

**Liability Information**

License Account Number

Liability Date

License Issued Through (Expiration Date)

Total

\$

# Application Documents Checklist and Worksheet

**Instructions:** This checklist should be utilized to assist applicants with filing all required documents for licensure. All documents must be properly signed and correspond with the name of the applicant exactly. All documents must be typed or legibly printed. Upon final State approval the license will be mailed to the local licensing authority. Application fees are nonrefundable.

**Questions? Visit:** [SBG.Colorado.gov/Liquor](http://SBG.Colorado.gov/Liquor) for more information

**Items submitted, please check all appropriate boxes completed or documents submitted**

## I. Applicant information

Applicant Name: Ski-To-Tree, LLC

- Applicant/Licensee identified
- State sales tax license number listed or applied for at time of application
- License type or other transaction identified
- Return originals to local authority (additional items may be required by the local licensing authority)
- All sections of the application need to be completed
- Master file applicants must include the Application for Master File form DR 8415 and applicable fees to this Retail License Application

## II. Diagram of the premises

- No larger than 8½" X 11"
- Dimensions included (does not have to be to scale). Exterior areas should show type of control (fences, walls, entry/exit points, etc.)
- Separate diagram for each floor (if multiple levels)
- Return originals to local authority (additional items may be required by the local licensing authority)
- Kitchen - identified if Hotel and Restaurant
- Bold/Outlined Licensed Premises

## III. Proof of property possession (One Year Needed)

- Deed in name of the applicant (or) (matching Applicant Name provided on page 1) date stamped / filed with County Clerk
- Lease in the name of the applicant (or) (matching Applicant Name provided on page 1)
- Lease assignment in the name of the applicant with proper consent from the landlord and acceptance by the applicant
- Other agreement if not deed or lease. (matching Applicant Name provided on page 1)



#### IV. Background information (DR 8404-I) and financial documents

- Complete DR 8404-I for each principal (individuals with more than 10% ownership, officers, directors, partners, members)
- Fingerprints taken and submitted to the appropriate Local Licensing Authority through an approved State Vendor. Master File applicants submit results to the State

**Do not complete fingerprint cards prior to submitting your application.**

The Vendors are as follows:

##### **IdentoGO**

Appointment Scheduling Website: <https://uenroll.identogo.com/workflows/25YQHT>

Phone: 844-539-5539 (toll-free)

IdentoGO FAQs: <https://www.colorado.gov/pacific/cbi/identification-faqs>

State Liquor Code for Identogo: 25YQHT

##### **Colorado Fingerprinting**

Appointment Scheduling Website: <http://www.coloradofingerprinting.com/cabs/>

Phone: 720-292-2722 833-224-2227 (toll free)

State Liquor Code for Colorado Fingerprinting: C030LIQI

Purchase agreement, stock transfer agreement, and/or authorization to transfer license

List of all notes and loans (Copies to also be attached)

#### V. Sole proprietor/husband and wife partnership (if applicable)

Form DR 4679 Lawful Presence Affidavit

Copy of State issued Driver's License or Colorado Identification Card for each applicant

#### VI. Corporate applicant information (if applicable)

Certificate of Incorporation

Certificate of Good Standing

Certificate of Authorization if foreign corporation (out of state applicants only)

#### VII. Partnership applicant information (if applicable)

Partnership Agreement (general or limited).

Certificate of Good Standing

#### VIII. Limited Liability Company applicant information (if applicable)

Copy of articles of organization

Certificate of Good Standing

Copy of Operating Agreement (if applicable)

Certificate of Authority if foreign LLC (out of state applicants only)

#### IX. Manager registration for Hotel and Restaurant, Tavern, Lodging & Entertainment, and Campus Liquor Complex licenses when included with this application

\$30.00 fee

If owner is managing, no fee required



1. Is the applicant (including any of the partners if a partnership; members or managers if a limited liability company; or officers, stockholders or directors if a corporation) or managers under the age of twenty-one years?.....  Yes  No

2. Has the applicant (including any of the partners if a partnership; members or managers if a limited liability company; or officers, stockholders or directors if a corporation) or managers ever (in Colorado or any other state):

a. Been denied an alcohol beverage license?.....  Yes  No

b. Had an alcohol beverage license suspended or revoked?.....  Yes  No

c. Had interest in another entity that had an alcohol beverage license suspended or revoked?.....  Yes  No

If you answered yes to a, b or c above, explain in detail on a separate sheet.

3. Has a liquor license application (same license class), that was located within 500 feet of the proposed premises, been denied within the preceding two years?.....  Yes  No

If "yes", explain in detail.

4. Are the premises to be licensed within 500 feet, of any public or private school that meets compulsory education requirements of Colorado law, or the principal campus of any college, university or seminary?.....  Yes  No

or

Waiver by local ordinance?  Yes  No

Other

5. Is your Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 1500 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of greater than (>) 10,0000? **NOTE:** The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS.....  Yes  No

6. Is your Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 3000 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of less than (<) 10,000? **NOTE:** The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS.....  Yes  No

For additional Retail Liquor Store only.

a. Was your Retail Liquor Store License issued on or before January 1, 2016?....  Yes  No

b. Are you a Colorado resident?.....  Yes  No

7. Has a liquor or beer license ever been issued to the applicant (including any of the partners, if a partnership; members or manager if a Limited Liability Company; or officers, stockholders or directors if a corporation)? If yes, identify the name of the business and list any **current** financial interest in said business including any loans to or from a licensee.....  Yes  No

8. Does the applicant, as listed on line 2 of this application, **have legal possession of the premises by ownership, lease or other arrangement?**.....  Yes  No

Ownership  Lease  Other (Explain in detail)

a. If leased, list name of landlord and tenant, and date of expiration, **exactly** as they appear on the lease:

Landlord	Tenant	Expires
VAIL SUMMIT RESORTS, INC.	SKE-TO-TSE, LLC	4/30/2026

b. Is a percentage of alcohol sales included as compensation to the landlord? If yes, complete question on page 9.....  Yes  No

c. Attach a diagram that designates the area to be licensed in black bold outline (including dimensions) which shows the bars, brewery, walls, partitions, entrances, exits and what each room shall be utilized for in this business. This diagram should be no larger than 8½" X 11".

9. Who, besides the owners listed in this application (including persons, firms, partnerships, corporations, limited liability companies) will loan or give money, inventory, furniture or equipment to or for use in this business; or who will receive money from this business? Attach a separate sheet if necessary.

Last Name VAIL RESORTS, INC.		First Name	
Date of Birth (MM/DD/YY)	FEIN or SSN Number	Interest/Percentage SEE ATTACHED LEASE	
Last Name		First Name	
Date of Birth (MM/DD/YY)	FEIN or SSN Number	Interest/Percentage	
Last Name		First Name	
Date of Birth (MM/DD/YY)	FEIN or SSN Number	Interest/Percentage	

Attach copies of all notes and security instruments and any written agreement or details of any oral agreement, by which any person (including partnerships, corporations, limited liability companies, etc.) will share in the profit or gross proceeds of this establishment, and any agreement relating to the business which is contingent or conditional in any way by volume, profit, sales, giving of advice or consultation.

10. Optional Premises or Hotel and Restaurant Licenses with Optional Premises:

Has a local ordinance or resolution authorizing optional premises been adopted?....  Yes  No

Number of additional Optional Premise areas requested. (See license fee chart)

For the addition of a Sidewalk Service Area per Regulation 47-302(A)(4), include a diagram of the service area and documentation received from the local governing body authorizing use of the sidewalk. Documentation may include but is not limited to a statement of use, permit, easement, or other legal permissions.

11. Liquor Licensed Drugstore (LLDS) applicants, answer the following:

a. Is there a pharmacy, licensed by the Colorado Board of Pharmacy, located within the applicant's LLDS premise?.....  Yes  No

If "yes" a copy of license must be attached.

**12. Club Liquor License applicants answer the following: Attach a copy of applicable documentation**

a. Is the applicant organization operated solely for a national, social, fraternal, patriotic, political or athletic purpose and not for pecuniary gain?.....  Yes  No

b. Is the applicant organization a regularly chartered branch, lodge or chapter of a national organization which is operated solely for the object of a patriotic or fraternal organization or society, but not for pecuniary gain?.....  Yes  No

c. How long has the club been incorporated?.....

d. Has applicant occupied an establishment for three years (three years required) that was operated solely for the reasons stated above?.....  Yes  No

**13. Brew-Pub, Distillery Pub or Vintner's Restaurant applicants answer the following:**

a. Has the applicant received or applied for a Federal Permit? (Copy of permit or application must be attached).....  Yes  No

**14. Campus Liquor Complex applicants answer the following:**

a. Is the applicant an institution of higher education?.....  Yes  No

b. Is the applicant a person who contracts with the institution of higher education to provide food services?.....  Yes  No

**If "yes" please provide a copy of the contract with the institution of higher education to provide food services.**

**15. For all on-premises applicants.**

a. For all Liquor Licensed Drugstores (LLDS) the Permitted Manager must also submit an Manager Permit Application - DR 8000 and fingerprints.

Last Name of Manager

First Name of Manager

**16. Does this manager act as the manager of, or have a financial interest in, any other liquor licensed establishment in the State of Colorado? If yes, provide name, type of license and account number.....**  Yes  No

Name

Type of License

Account Number

**17. Related Facility - Campus Liquor Complex applicants answer the following:**

- a. Is the related facility located within the boundaries of the Campus Liquor Complex?**.....  Yes  No

If yes, please provide a map of the geographical location within the Campus Liquor Complex.

If no, this license type is not available for issues outside the geographical location of the Campus Liquor Complex.

**b. Designated Manager for Related Facility - Campus Liquor Complex**

Last Name of Manager

First Name of Manager

**18. Tax Information.**

- a. Has the applicant, including its manager, partners, officer, directors, stockholders, members (LLC), managing members (LLC), or any other person with a 10% or greater financial interest in the applicant, been found in final order of a tax agency to be delinquent in the payment of any state or local taxes, penalties, or interest related to a business?**.....  Yes  No

- b. Has the applicant, including its manager, partners, officer, directors, stockholders, members (LLC), managing members (LLC), or any other person with a 10% or greater financial interest in the applicant failed to pay any fees or surcharges imposed pursuant to section 44-3-503, C.R.S.?**.....  Yes  No

If applicant is a corporation, partnership, association or limited liability company, applicant must list all **Officers, Directors, General Partners, and Managing Members**. In addition, applicant must list any stockholders, partners, or members with **ownership of 10% or more in the applicant**. All persons listed below must also attach form DR 8404-I (Individual History Record), and make an appointment with an approved State Vendor through their website. See application checklist, Section IV, for details.

Name	Date of Birth (MM/DD/YY)
<input type="text"/>	<input type="text"/>

Street Address
<input type="text"/>

City	State	ZIP Code	Position	%Owned
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Name	Date of Birth (MM/DD/YY)
<input type="text"/>	<input type="text"/>

Street Address
<input type="text"/>

City	State	ZIP Code	Position	%Owned
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Name	Date of Birth (MM/DD/YY)
<input type="text"/>	<input type="text"/>

Street Address
<input type="text"/>

City	State	ZIP Code	Position	%Owned
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Name	Date of Birth (MM/DD/YY)
<input type="text"/>	<input type="text"/>

Street Address
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City	State	ZIP Code	Position	%Owned
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Name	Date of Birth (MM/DD/YY)
<input type="text"/>	<input type="text"/>

Street Address
<input type="text"/>

City	State	ZIP Code	Position	%Owned
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>



\*\* If applicant is owned 100% by a parent company, please list the designated principal officer on above.

\*\* Corporations - the President, Vice-President, Secretary and Treasurer must be accounted for above (Include ownership percentage if applicable)

\*\* If total ownership percentage disclosed here does not total 100%, applicant must check this box:

Applicant affirms that no individual other than these disclosed herein owns 10% or more of the applicant and does not have financial interest in a prohibited liquor license pursuant to Article 3 or 5, C.R.S.

### Oath Of Applicant

I declare under penalty of perjury in the second degree that this application and all attachments are true, correct, and complete to the best of my knowledge. I also acknowledge that it is my responsibility and the responsibility of my agents and employees to comply with the provisions of the Colorado Liquor or Beer and Wine Code which affect my license.

Printed Name

JOHN KEITH

Title

MEMBER

Authorized Signature

*John Keith*

Date (MM/DD/YY)

07/25/2024

### Report and Approval of Local Licensing Authority (City/County)

Date application filed with local authority

11/0023

Date of local authority hearing (for new license applicants; cannot be less than 30 days from date of application)

For Transfer Applications Only - Is the license being transferred valid?.....  Yes  No

The Local Licensing Authority Hereby Affirms that each person required to file DR 8404-I (Individual History Record) or a DR 8000 (Manager Permit) has been:

Fingerprinted

Subject to background investigation, including NCIC/CCIC check for outstanding warrants

That the local authority has conducted, or intends to conduct, an inspection of the proposed premises to ensure that the applicant is in compliance with and aware of, liquor code provisions affecting their class of license

(Check One)

Date of inspection or anticipated date

Will conduct inspection upon approval of state licensing authority

Is the Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 1,500 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of > 10,000? .....  Yes  No

Is the Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 3,000 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of < 10,000? .....  Yes  No

**NOTE:** The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS.

Does the Liquor-Licensed Drugstore (LLDS) have at least twenty percent (20%) of the applicant's gross annual income derived from the sale of food, during the prior twelve (12) month period? .....  Yes  No

The foregoing application has been examined; and the premises, business to be conducted, and character of the applicant are satisfactory. We do report that such license, if granted, will meet the reasonable requirements of the neighborhood and the desires of the adult inhabitants, and will comply with the provisions of Title 44, Article 4 or 3, C.R.S., and Liquor Rules. **Therefore, this application is approved.**

Local Licensing Authority for

Meystone

Telephone Number

970-450-3500 x1

Town, City  
 County

Printed Name

Kenneth D. Biley, Chair of Licensing Auth.

Signature

Title

Mayor / Chair

Date (MM/DD/YY)

Printed Name

Madeleine Sielu

Signature

Title

Town clerk

Date (MM/DD/YY)



## Tax Check Authorization, Waiver, and Request to Release Information

I, JOHN KEITH

am signing this Tax Check Authorization, Waiver and Request to Release Information (hereinafter "Waiver") on behalf of

(the "Applicant/Licensee")

SKI - TO - TEE, LLC

to permit the Colorado Department of Revenue and any other state or local taxing authority to release information and documentation that may otherwise be confidential, as provided below. If I am signing this Waiver for someone other than myself, including on behalf of a business entity, I certify that I have the authority to execute this Waiver on behalf of the Applicant/Licensee.

The Executive Director of the Colorado Department of Revenue is the State Licensing Authority, and oversees the Colorado Liquor Enforcement Division as his or her agents, clerks, and employees. The information and documentation obtained pursuant to this Waiver may be used in connection with the Applicant/Licensee's liquor license application and ongoing licensure by the state and local licensing authorities. The Colorado Liquor Code, section 44-3-101. et seq. ("Liquor Code"), and the Colorado Liquor Rules, 1 CCR 203-2 ("Liquor Rules"), require compliance with certain tax obligations, and set forth the investigative, disciplinary and licensure actions the state and local licensing authorities may take for violations of the Liquor Code and Liquor Rules, including failure to meet tax reporting and payment obligations.

The Waiver is made pursuant to section 39-21-113(4), C.R.S., and any other law, regulation, resolution or ordinance concerning the confidentiality of tax information, or any document, report or return filed in connection with state or local taxes. This Waiver shall be valid until the expiration or revocation of a license, or until both the state and local licensing authorities take final action to approve or deny any application(s) for the renewal of the license, whichever is later. Applicant/Licensee agrees to execute a new waiver for each subsequent licensing period in connection with the renewal of any license, if requested.

By signing below, Applicant/Licensee requests that the Colorado Department of Revenue and any other state or local taxing authority or agency in the possession of tax documents or information, release information and documentation to the Colorado Liquor Enforcement Division, and is duly authorized employees, to act as the Applicant's/Licensee's duly authorized representative under section 39-21-113(4), C.R.S., solely to allow the state and local licensing authorities, and their duly authorized employees, to investigate compliance with the Liquor Code and Liquor Rules. Applicant/Licensee authorizes the state and local licensing authorities, their duly authorized employees, and their legal representatives, to use the information and documentation obtained using this Waiver in any administrative or judicial action regarding the application or license.

Name (Individual/Business)

SKE-TO-TEE, LLC

Social Security Number/Tax Identification Number

[REDACTED]

Home Phone Number

Business/Work Phone Number

970-485-1540

Street Address

100 DEERUN SQUARE UNIT E3

City

KEYSTONE

State

CO

ZIP Code

80435

Printed name of person signing on behalf of the Applicant/Licensee

JOHN KEITH

Applicant/Licensee's Signature (Signature authorizing the disclosure of confidential tax information)

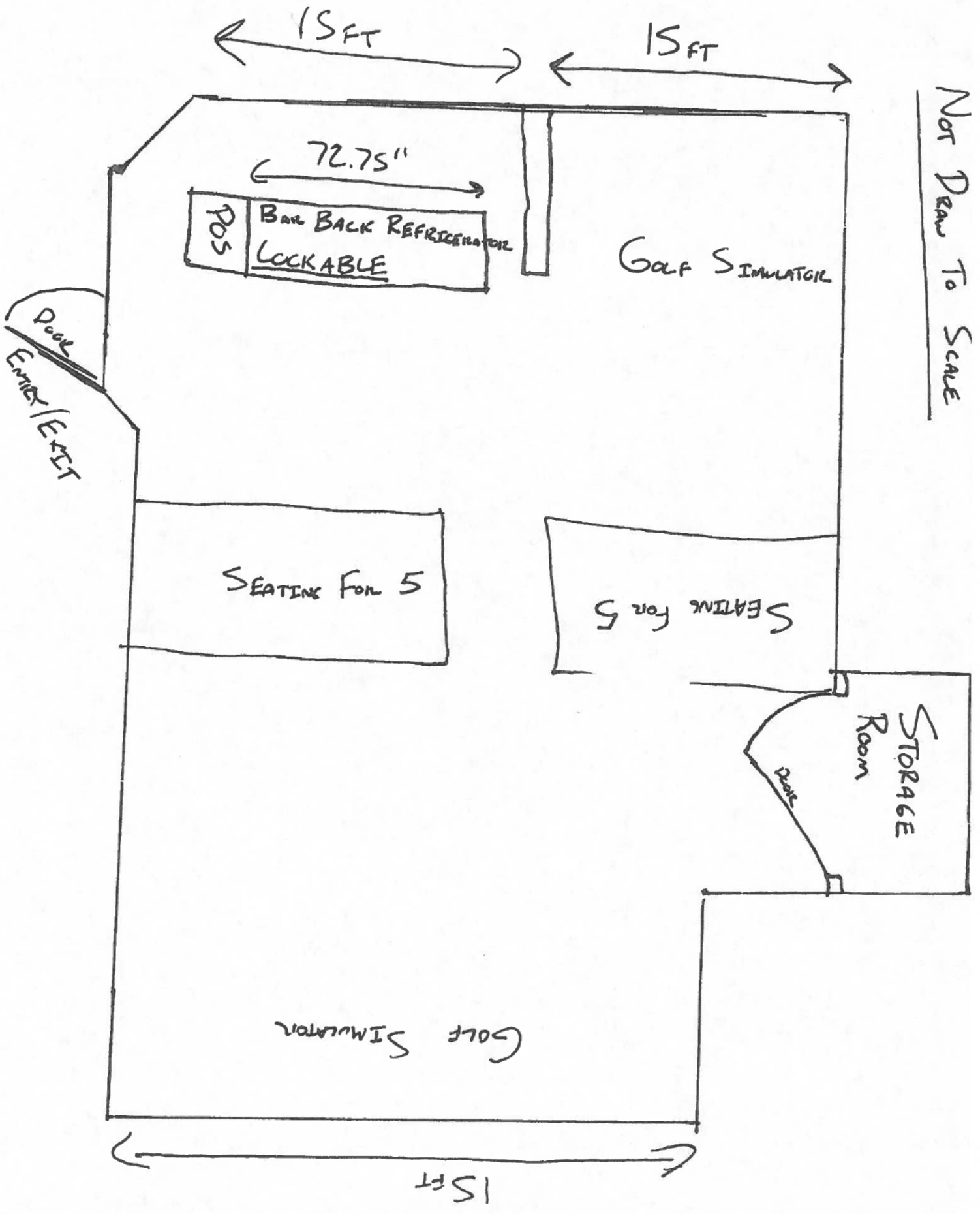
*John Keith*

Date Signed

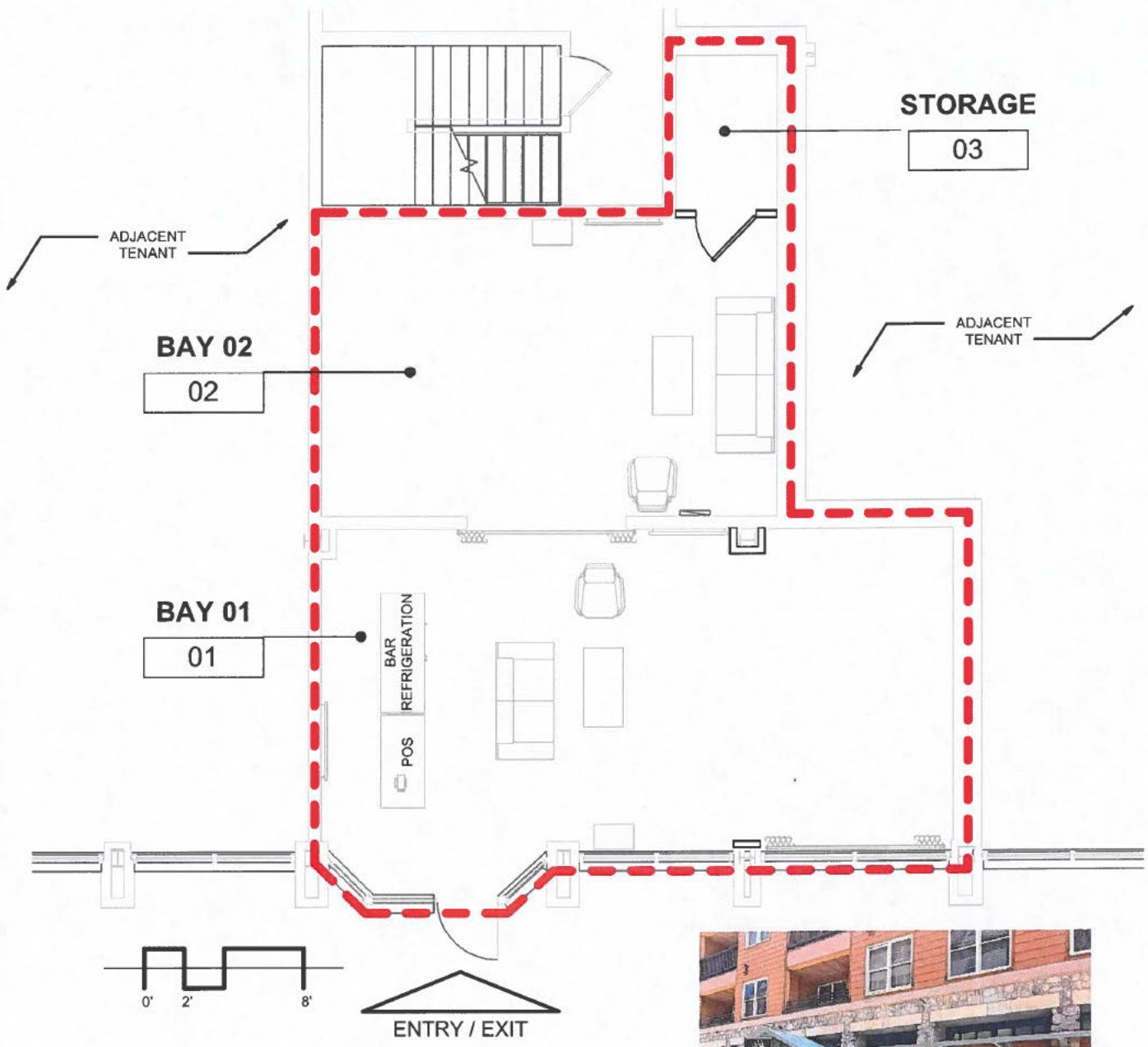
7/25/2024

**Privacy Act Statement**

Providing your Social Security Number is voluntary and no right, benefit or privilege provided by law will be denied as a result of refusal to disclose it. § 7 of Privacy Act, 5 USCS § 552a (note).



NOT DRAW TO SCALE



--- PROPERTY / TENANT LICENSED PREMISES



EXTERIOR ENTRY VIEW



**BAR REFRIGERATOR:**

Model:  
Avantco UBB-72G-HC 73" Black Counter Height Narrow Glass Door Back Bar Refrigerator with LED Lighting\*  
(Lockable Doors)

\* or owner approved equal

**Overall Dimensions:**

Width 72 3/4 inches  
Depth 24 7/16 inches  
Height 36 inches  
Capacity 21.6 cu. ft.

**Interior Dimensions:**

Width 60 1/8 inches  
Depth 18 1/2 inches  
Height 30 1/2 inches



**Z E H R E N**  
AND ASSOCIATES, INC.  
ARCHITECTURE • PLANNING • INTERIORS  
LANDSCAPE ARCHITECTURE  
P.O. Box 1976 - Avon, Colorado 81620  
(970) 949-0257 FAX (970) 949-1080  
101 El Paseo - Santa Barbara, CA 93101  
(805) 963-6890 FAX (805) 963-8102

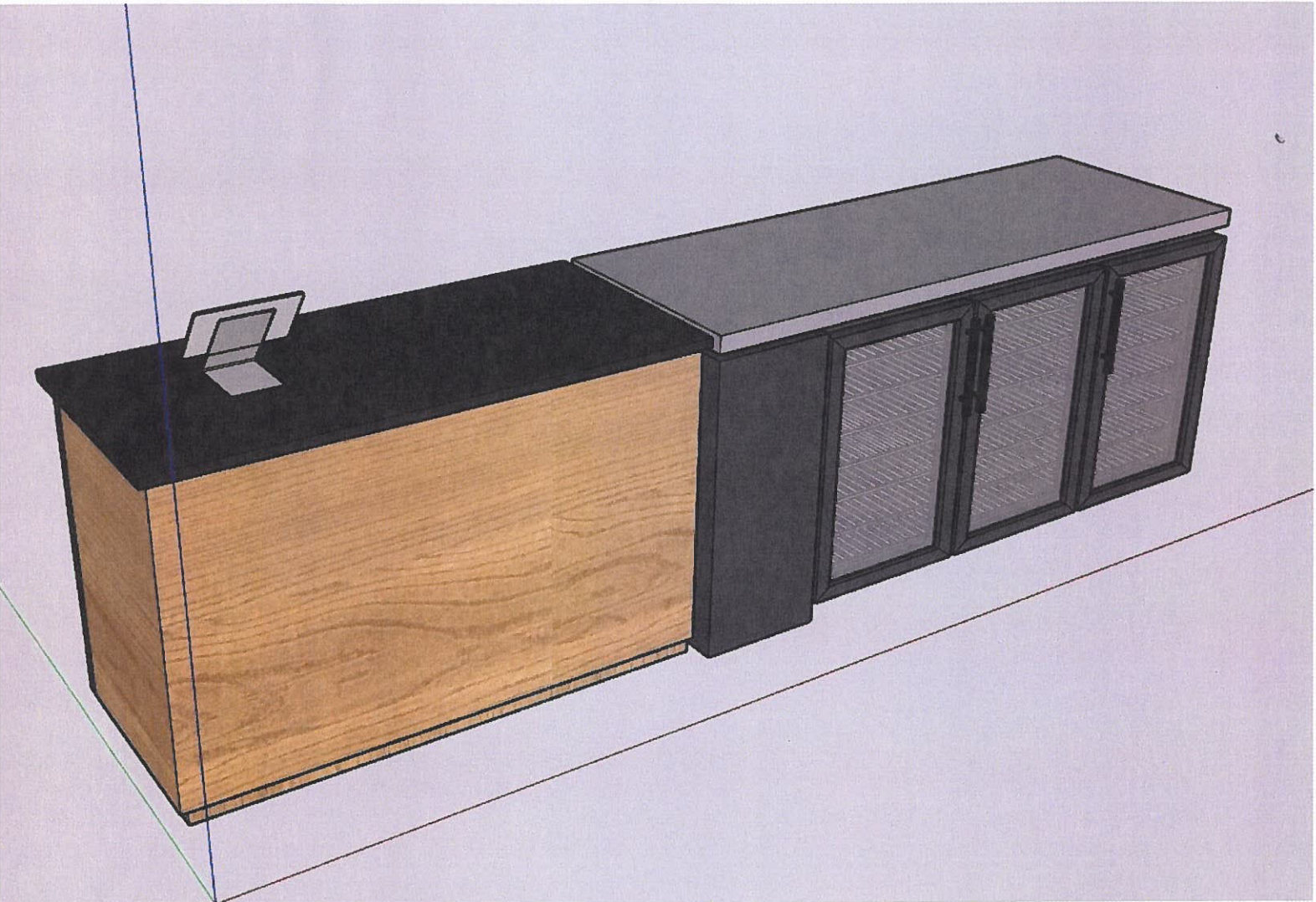
PROJECT NAME: SKI TO TEE TENANT IMPROVEMENT  
PROJECT NO: 233060.00  
100 Dercum Square Buffalo Lodge (Unit E-3)  
Keystone, CO 80435  
DRAWING TITLE: FLOOR PLAN  
SCALE: 1/8" = 1'-0"  
DATE: 7/29/2024 5:04:30 PM

DRAWN BY: LH  
CHECKED BY:  
ISSUE:

SHEET:

**A1.12**





**1) Describe the nature of the proposed establishment and the target market (i.e. restaurant, tavern, live music, sports bar, families, college students). Please attach a food and drink menu for the BLA.**

Ski-To Tee, LLC primary business will be to offer indoor golf in Keystone, CO which will utilize state of the art golf simulators. A golf simulator is an indoor system that uses advanced technology, including sensors, cameras, and projectors, to replicate the experience of playing golf on real courses by tracking the player’s swing and ball flight in a virtual environment. Our target market are local golf enthusiasts and tourists who are traveling to Keystone, CO primarily to visit Keystone’s Ski area. We will offer leagues, tournaments, and retail bookings online or at our POS. Customers will be able to book and manage their appointments online.

**SKI-TO-TEE MENU**

**Alcoholic Drink Menu:**

<b>Beer</b>	<b>Hard Seltzers</b>	<b>Canned Cocktail</b>
Breckenridge Brewery Avalanche Ale: \$6	Topo Chico Pineapple: \$6	Long Drink: \$8
Breckenridge Brewery Vanilla Porter: \$6	Topo Chico Strawberry: \$6	Cutwater Spicy Bloody Mary: \$8
Breckenridge Brewery Nitro Irish Stout: \$6	Top Chico Tropical Mango: \$6	Cutwater Lime Margarita: \$8
Breckenridge Brewery Juice Drop Hazy IPA: \$6	Topo Chico Lemon Lime: \$6	Cutwater Vodka Transfusion: \$8

**Non-Alcoholic Drink Menu**

Water	Sports Drinks	Seltzers
Canned Re-Usable Water: \$4	Gatorade: \$4	Waterloo: \$4
Liquid Death: \$4	Gatorade \$4	Waterloo: \$4

**Food Menu**

Sandwiches	Chips	Snacks + Candy
Boar's Head Head Grab n Go Handcrafted Ever Roast Chicken Cheddar Sandwich:	Boulder Canyon BBQ Chips: \$4	Skinny Pop: \$4

\$10.00		
Boar's Head Grab n Go Handcrafted Ovengold Provolone Sandwich \$10.00	Boulder Canyon Regular Chips: \$4	Snickers, Kit Kat, Reese's Peanut Butter Cups: \$4

**2) What are the proposed hours and days of operation for this establishment?**

The hours of operation for public access are as follows:

**Standard Hours of Operation:**

Monday: 10AM-8PM

Tuesday: 10AM-8PM

Wednesday: 10AM- 8PM

Thursday: 10AM- 8PM

Friday: 10AM- 10PM

Saturday: 10AM-10PM

Sunday 10AM-8PM

Additionally, we will have a Membership program which will allow members to access the facility during the following hours during a 6 digit pin code which will be provided during their online booking process. This pin code is only valid for the day and time of their booking. All beverages (alcoholic and non-alcoholic) and food will be stored, locked, and secured according to Standard Operating Procedures outlined in Question #12 below.

**Membership Hours:**

Monday: 6AM-10AM, 8PM-10PM

Tuesday: 6AM-10AM, 8PM-10PM

Wednesday: 6AM-10AM

Thursday: 6AM-10AM, 8PM-10PM

Friday: 6AM-10AM

Saturday: 6AM-10AM

Sunday: 6AM-10AM, 8PM-10PM

Peak Season: Given our proximity to Keystone Resort we will hold the above hours during the peak months from November-March each year but our hours of operation are likely to be minimized based on the traffic at the ski resort from March-October each season.

**3) What is the seating capacity of this establishment?**

The seating capacity will be a total of 10 people. But these people are not sitting at a bar, high top, or table. They are seated in either the sofas (2 sofas) or swivel chairs.

**4) Have you applied for an "occupation load" for the interior and exterior space from the Fire Department?**

Yes

**5) Do you have an emergency plan for your business (exit locations, fire suppression etc.)?**

Yes

**6) How many individuals will be employed at this proposed establishment and how many will be full-time vs part time?**

One Full Time Manager: Brendan Koning

Two Part Time Employees : Will be Hired in October

**7) Describe each owner's past training and experience in the sale and service of alcohol, including any special or certified training received.**

John Keith (Sole Owner) has worked in the food business before without alcohol sales. He was the proprietor of a food truck headquartered in Shelby Township, MI called Crepe Day-Twah. The food truck did not sell alcohol directly but catered and had sales totaling over \$500,000 in the three years of operation with no violation of any food safety protocols. The business under his management provided safe and reliable food service for automotive plants, manufacturing businesses, fairs, festivals, and public events. John and his manager (Brendan Koning) are scheduled to participate in a state approved and mandated Alcohol Service Training course <https://tomreganconsulting.com/> .

**8) Describe your proposed Registered Manager or Manager of Record's past training and experience in the sale and service of alcohol, including any special or certified training received.**

Brendan Koning is currently the event coordinator for both golf courses in Keystone, CO (Keystone Ranch and Keystone River Courses) and he works daily with Food and Beverage



staff to make events happen safely and successfully. While he is not directly serving alcohol in his current position, he is familiar with the sales and management process involved with employees and liquor sales because of his proximity to these processes in his current role. Additionally, Brendan will complete the Responsible Vendor Training through <https://tomreganconsulting.com>.

**9) Beside state-approved Responsible Vendor training classes which are a condition of city licensure, what other types of training are proposed for the employees in the safe and legal sale and service of alcohol beverages?**

Our team takes responsible service seriously and to ensure proper training and education Ski-To-Tee, LLC mandates and will pay for education of our staff at the beginning of each calendar year. Each year our manager will schedule and pay for training for our small staff through <https://sbg.colorado.gov/approved-responsible-vendors-training>.

We will also host staff meetings where we discuss service procedures and review our operating procedures. All employees upon hiring and onboarding will receive a copy of our written alcohol policy and will sign it as a part of their onboarding process.

**10) What policies and procedures do you have in place to determine a patron's level of intoxication?**

Ski-To-Tee LLC and our management has a comprehensive policy in place to monitor and assess patrons' levels of intoxication, which includes the following:

1. **Staff Training:** All staff members are trained and certified through a recognized responsible alcohol service program, such as the ones provided through the LED Approved Vendors List found at <https://sbg.colorado.gov/approved-responsible-vendors-training>. This training equips staff with skills to recognize signs of intoxication, including slurred speech, impaired coordination, erratic behavior, and glassy or bloodshot eyes.
2. **Observation and Communication:** Staff are trained to observe and engage with patrons regularly to assess their level of intoxication. We encourage open communication among staff members to monitor patrons throughout their visit.
3. **Use of Standardized Signs and Symptoms:** We utilize a checklist of standardized signs and symptoms of intoxication, including physical and behavioral indicators. This helps staff make consistent and objective assessments.

## 11) What policies and procedures do you have in place to refuse service to a patron?

Ski-To-Tee LLC and our management has clear policies and procedures to refuse service to intoxicated patrons, ensuring the safety and well-being of all guests:

1. **Intervention Guidelines:** Staff members are instructed to follow specific intervention guidelines when dealing with intoxicated patrons. This includes politely and discreetly informing the patron that service will be refused, explaining the reasons, and offering non-alcoholic alternatives.
2. **Escalation Protocol:** If a patron becomes confrontational or uncooperative, non management staff are trained to involve a manager to handle the situation. The manager may also decide to arrange safe transportation for the patron, such as calling a taxi or ride-share service.
3. **Documentation:** We will maintain a log of incidents where service is refused, documenting the patron's behavior, the staff member's observations, and the actions taken. This helps in maintaining a consistent approach and provides a record for any potential legal or regulatory inquiries.
4. **Communication with Security:** In cases where a patron's behavior poses a risk to themselves or others, we coordinate with security personnel to ensure the situation is handled safely and appropriately, including escorting the patron off the premises if necessary.

12) Describe any other types of training or operating procedures that employees will be following in the day to day operations of this proposed establishment.

### **Management Training and Standard Operating Procedures**

#### 1. Opening and Closing Procedures:

- Managers are responsible for ensuring that the business entrance and exit are securely opened and locked each day. This includes checking that all doors and windows are secured before leaving and that the security systems are activated.
- Managers are responsible for **locking the bar back refrigerator** which is going to be the following model with sliding doors: Avantco UBB-72S-HC.
- Manager will be responsible for locking the key for the refrigerator in the safe in the back storage room to ensure that the bar refrigerator remains locked after hours and during membership hours and no unauthorized person/(s) or members will have access to alcohol in our facility.
- Managers must ensure that the cameras are functioning at the beginning and end of each shift.

## 2. Inventory Management:

- Managers must oversee the ordering and inventorying of all alcoholic and non-alcoholic beverages, as well as food items. They utilize an inventory system integrated with our POS (Point of Sale) system, which assists in accurate tracking and accounting.
- Specific vendors are designated for the delivery of alcoholic beverages, with scheduled deliveries to ensure consistency and compliance with state regulations. Managers are responsible for verifying the quantities and types of beverages received against purchase orders.
- All alcoholic beverages are stored in a locked refrigeration unit near the POS station. The key to this unit is stored securely near the POS workstation and is supervised and monitored at all times to prevent unauthorized access.

## 3. Food Service Compliance:

- Food delivery is managed by a specific vendor to ensure compliance with minimum food service requirements. Managers must verify that food supplies are adequate and in accordance with health regulations.
- In the event that the establishment runs out of food, managers are trained to cease the service of alcoholic beverages immediately. This is to comply with regulations that require food to be available whenever alcohol is served.

## **Employee Training and Standard Operating Procedures**

### 1. Responsible Alcohol Service:

- All employees are required to complete training programs, such as TIPS (Training for Intervention Procedures), focusing on responsible alcohol service. This training covers the identification of intoxicated patrons, legal drinking age verification, and proper methods for refusing service.

### 2. Safe Storage and Handling:

- Employees are trained in the safe handling and storage of alcoholic beverages. This includes understanding the importance of keeping the storage area locked and ensuring that only authorized personnel have access to the key.
- Staff must regularly check the refrigeration unit's temperature and ensure that all beverages are stored properly.

### 3. Delivery and Inventory Procedures:

- Employees assist in receiving deliveries, checking the accuracy of delivered items against invoices, and ensuring that all items are stored correctly.
- They are also trained to assist in inventory checks, including counting and recording stock levels, and reporting any discrepancies to management immediately.

### 4. Food and Alcohol Compliance:

- Employees are trained on the procedure to follow if the establishment runs out of food. They are instructed to notify management and cease the service of alcohol until food availability is restored.
- Staff are educated on the importance of maintaining compliance with food service regulations, including hygiene and safe handling practices.

### **13) What methods will be used in checking identification for the proper age of patrons (at the door, at the bar, etc.) and how will underage patrons be identified so as not to be served alcohol (hand stamp, wrist band, etc.)?**

Identification and underage patrons will be done according to the state approved vendor training guidelines.

#### **Types of Accepted Identification:**

1. Any state issued, Canadian, Mexican or US territory issued driver's license;
2. Military ID; Passport;
3. State- Issued ID with Photo;
4. Alien Registration Card;
5. A valid employment card w/photo and DOB issued by immigration & Naturalization Service

#### **Questions and statements are Management and Staff are trained to ask when Alcohol Service is Requested:**

1. Please provide me with your ID
2. Does the face on the ID photo match the person buying alcohol?
3. Is the license expired, or is there evidence of tampering?
4. Is the license format valid in the issuing state? Licenses using out-dated formats are often red flags for a fake
5. Validate other security details. Ghost images, UV images, state seals, and other security features are present on virtually every modern license
6. If the person is under 21 years of age or does not present our management or staff with a valid form of identification, they will not be served.

**14) What types of entertainment will be offered, if any, at this establishment (i.e. music, pool, dance floor etc.)?**

Golf Simulator Leagues, Tournaments, and Contests.

**15) Do you plan to have any exterior amplified sound?**

No

**16) What types of security, if any, will be provided at this establishment?**

We will have a 24 hour video surveillance camera system and our landlord, Vail Resorts has 24 video surveillance of the exterior and interior of the premises. Both of these systems will provide cloud based storage which will allow us to rewind and playback our security footage .

**17) What time will your kitchen close each night? Describe your food plans after your kitchen**

There is no kitchen, and all food items will be ordered, supplied, and delivered directly to our establishment by a licensed distributor. All items requiring refrigeration (sandwiches, alcoholic beverages, and nonalcoholic beverages) will be stored in a locked refrigeration unit. All other items will be displayed on top of the counter (chips, snacks candy).

**18) What is the estimated ratio of food to alcohol sales at this establishment?**

Projected Annual Alcohol Sales: \$30,000

Food Sales: \$10,000

Ratio 3:1

**19) If you have an outside patio, what additional means of control (added staff, fencing, sightline, etc.) will you employ?**

N/A

**20) If you plan on hosting a "private party", what extra measures will you take regarding security, staffing, and control of noise and alcohol service? A "private party" is described**

**as, "an event where there is a single contact person who represents group of people who are gathering for social and/or business reasons, then event continues after 10PM, there will be both underage and of-age people present, and there will be enough people to constitute an occupancy capacity of 75% or greater."**

Events at Ski-To-Tee will not go past 10PM because this is our latest operating hours.

However, in the event that we host a private event where there is a single contact person and it is subject to our occupancy limits, we will make sure that all guests at the private event are checked in, sign our waiver of liability, and our requested ID. If they are Identified and are of-age (21 years or older) they will receive a Pink Wristband. Anyone who requests an alcoholic beverage from our staff or manager after their check in will be asked to show their Pink Wristband. If they do not have a Pink Wristband, we will ask them for their Identification. If they do not have Identification, they will not be served nor receive a pink wristband.

Our occupancy limit is going to be determined shortly through the fire department but will likely remain a low number.



**Articles of Organization for a Limited Liability Company**  
filed pursuant to § 7-90-301 and § 7-80-204 of the Colorado Revised Statutes (C.R.S.)

**The domestic entity name of the limited liability company is** Ski-To-Tee, LLC

**The principal office street address is** 100 Dercum Square  
Unit 3  
Keystone CO 80435  
US

**The principal office mailing address is** 400 North Park Avenue  
#12B  
Breckenridge Colorado CO 80424  
US

**The name of the registered agent is** John Gregroy Keith

**The registered agent's street address is** 100 Dercum Square  
Unit 3  
Keystone CO 80424  
US

**The registered agent's mailing address is** 400 North Park Avenue  
#12B  
Breckenridge Colorado CO 80424  
US

The person above has agreed to be appointed as the registered agent for this entity.

**The management of the limited liability company is vested in** Members

There is at least one member of the limited liability company.

**Person(s) forming the limited liability company**

John Gregory Keith  
400 North Park Avenue  
#12B  
Breckenridge Colorado CO 80424  
US

Causing this document to be delivered to the Secretary of State for filing shall constitute the affirmation or acknowledgment of each individual causing such delivery, under penalties of perjury, that the document is the individual's act and deed, or that the individual in good faith believes the document is the act and deed of the person on whose behalf the individual is causing the document to be delivered for filing, taken in conformity with the requirements of part 3 of article 90 of title 7, C.R.S., and, if applicable, the constituent documents, and the organic statutes, and that the individual in good faith believes the facts stated in the document are true and the document complies with the requirements of that Part, the constituent documents, and the organic statutes.

This perjury notice applies to each individual who causes this document to be delivered to the Secretary of State, whether or not

**Name(s) and address(es) of the individual(s) causing the document to be delivered for filing**

John Gregory Keith  
400 North Park Avenue  
#12B  
Breckenridge Colorado CO 80424  
US



OFFICE OF THE SECRETARY OF STATE  
OF THE STATE OF COLORADO

**CERTIFICATE OF FACT OF GOOD STANDING**

I, Jena Griswold, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office,

Ski-To-Tee, LLC

is a

Limited Liability Company

formed or registered on 02/03/2024 under the law of Colorado, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 20241153624 .

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 07/23/2024 that have been posted, and by documents delivered to this office electronically through 07/25/2024 @ 10:40:01 .

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this official certificate at Denver, Colorado on 07/25/2024 @ 10:40:01 in accordance with applicable law. This certificate is assigned Confirmation Number 16240348 .



*Jena Griswold*

Secretary of State of the State of Colorado

\*\*\*\*\*End of Certificate\*\*\*\*\*

Notice: A certificate issued electronically from the Colorado Secretary of State's website is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Validate a Certificate page of the Secretary of State's website, <https://www.coloradosos.gov/biz/CertificateSearchCriteria.do> entering the certificate's confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our website, <https://www.coloradosos.gov> click "Businesses, trademarks, trade names" and select "Frequently Asked Questions."

**Limited Liability Company Agreement of Ski-To-Tee, LLC**  
**A Single Member Limited Liability Company**

This Limited Liability Company Agreement ("Agreement") of Ski-To-Tee, LLC, ("Company"), is executed and agreed to, for good and valuable consideration, by the undersigned members (individually, "Member" or collectively, "Members").

**I. Formation.**

- (a) **State of Formation.** This Agreement is for Ski-To-Tee, LLC, a member-managed Colorado limited liability company formed under and pursuant to Colorado law.
- (b) **Operating Agreement Controls.** To the extent that the rights or obligations of the Member, or the Company under provisions of this Agreement differ from what they would be under Colorado law absent such a provision, this Agreement, to the extent permitted under Colorado law, shall control.
- (c) **Primary Business Address.** The location of the primary place of business of the Company is:  
  
100 Dercum Square Unit #3, Keystone, Colorado 80435, or such other location as shall be selected from time to time by the Member.  
  
The Company's mailing address is:  
  
400 North Park Avenue, #12B, Breckenridge, Colorado 80424
- (d) **Registered Agent and Office.** The Company's initial agent ("Agent") for service of process is John G Keith. The Agent's registered office is 400 North Park Avenue, #12B, Breckenridge, Colorado 80424. The Company may change its registered office, its registered agent, or both, upon filing a statement with the Colorado Secretary of State.
- (e) **No State Law Partnership.** No provisions of this Agreement shall be deemed or construed to constitute a partnership (including, without limitation, a limited partnership) or joint venture, or any Member a partner or joint venturer of or with any other Member, for any purposes other than state tax purposes.

**II. Purposes and Powers.**

- (a) **Purpose.** The Company is created for the following business purpose:  
  
Ski-To-Tee, LLC will operate retail golf simulators and provide small food and beverage services.
- (b) **Powers.** The Company shall have all of the powers of a limited liability company set forth under Colorado law.
- (c) **Duration.** The Company's term shall commence upon the filing of an articles of organization and all other such necessary materials with the state of Colorado. The Company will operate until terminated as outlined in this Agreement unless:
  - (i) The Member vote unanimously to dissolve the Company;
  - (ii) No Member of the Company exists, unless the business of the Company is continued in a manner permitted by Colorado law;

- (iv) A judicial decree is entered that dissolves the Company; or
- (v) Any other event results in the dissolution of the Company under federal or Colorado law.

### III. Member.

- (a) **Member.** The sole member of Ski-To-Tee, LLC at the time of adoption of this Agreement is John Gregory Keith.
- (b) **Initial Contribution.** The Member shall make an initial contribution to the company. The initial contributions shall be as described in Attachment A, "Initial Contributions of the Member."

No Member shall be entitled to interest on their initial contribution. Except as expressly provided by this Agreement, or as required by law, no Member shall have any right to demand or receive the return of their initial contribution.

- (c) **Limited Liability of the Members.** Except as otherwise provided for in this Agreement or otherwise required by Colorado law, no Member shall be personally liable for any acts, debts, liabilities or obligations of the Company beyond their respective initial contribution. The Member shall look solely to the Company property for the return of their initial contribution, or value thereof, and if the Company property remaining after payment or discharge of the debts, liabilities or obligations of the Company is insufficient to return such initial contributions, or value thereof, no Member shall have any recourse against any other Member, if any other Member exists, except as is expressly provided for by this Agreement.
- (d) **Creation or Substitution of New Members.** Any Member may assign in whole or in part its membership interest only with the prior written consent of all Members.
  - (i) **Entire transfer.** If a Member transfers all of its membership interest, the transferee shall be admitted to the Company as a substitute Member upon its execution of an instrument signifying its Agreement to be bound by the terms and conditions of this Agreement. Such admission shall be deemed effective immediately upon the transfer, and, simultaneously, the transferor Member shall cease to be a Member of the Company and shall have no further rights or obligations under this Agreement.
  - (ii) **Partial transfer.** If a Member transfers only a portion of its Membership Interest, the transferee shall be admitted to the Company as an additional Member upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement.
  - (iii) **Voting.** Whether a substitute Member or an additional Member, absent the written consent of all existing Members of the Company, the transferee shall be a limited Member and possess only the percentage of the monetary rights of the transferor Member that was transferred without any voting power as a Member in the Company.
- (e) **Member Voting.**
  - (i) **Voting power.** In the event that the Company has multiple Members simultaneously, the Company's Members shall each have voting power equal to its share of Membership Interest in the Company.
- (f) **Member's Duties.** The Member shall cause the Company to do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory),

and franchises. The Member also shall cause the Company to:

- (i) Maintain its own books, records, accounts, financial statements, stationery, invoices, checks, and other limited liability company documents and bank accounts separate from any other person;
- (ii) At all times hold itself out as being a legal entity separate from the Member and any other person and conduct its business in its own name;
- (iii) File its own tax returns, if any, as may be required under applicable law, and pay any taxes required to be paid under applicable law;
- (iv) Not commingle its assets with assets of the Member or any other person, and separately identify, maintain, and segregate all Company assets;
- (v) Pay its own liabilities only out of its own funds, except with respect to organizational expenses;
- (vi) Maintain an arm's length relationship with the Member, and, with respect to all business transactions entered into by the Company with the Member, require that the terms and conditions of such transactions (including the terms relating to the amounts paid thereunder) are the same as would be generally available in comparable business transactions if such transactions were with a person that was not a Member;
- (vii) Pay the salaries of its own employees, if any, out of its own funds and maintain a sufficient number of employees in light of its contemplated business operations;
- (viii) Allocate fairly and reasonably any overhead for shared office space;
- (ix) Not pledge its assets for the benefit of any other person or make any loans or advances to any person;
- (x) Correct any known misunderstanding regarding its separate identity;
- (xi) Maintain adequate capital in light of its contemplated business purposes;
- (xii) Cause the Member to meet or act pursuant to written consent and keep minutes of such meetings and actions and observe all other Colorado limited liability company formalities;
- (xiii) Make any permitted investments directly or through brokers engaged and paid by the Company or its agents;
- (xiv) Not require any obligations or securities of the Member; and
- (xv) Observe all other limited liability formalities.

Failure of the Member to comply with any of the foregoing covenants shall not affect the status of the Company as a separate legal entity or the limited liability of the Member.

**(g) Fiduciary Duties of the Members.**

- (i) **Loyalty and Care.** Except to the extent otherwise provided herein, the Member shall have a fiduciary duty of loyalty and care similar to that of members of limited liability

companies organized under the laws of Colorado.

- (ii) **Competition with the Company.** The Member shall refrain from dealing with the Company in the conduct of the Company's business as or on behalf of a party having an interest adverse to the Company. The Member shall refrain from competing with the Company in the conduct of the Company's business.
- (iii) **Duties Only to the Company.** The Member's fiduciary duties of loyalty and care are to the Company and not to any future Members. The Member shall owe fiduciary duties of disclosure, good faith, and fair dealing to the Company, but shall owe no such duties to the officers and to the other Members. A Member who so performs their duties shall not have any liability by reason of being or having been a Member.
- (iv) **Reliance on Reports.** In discharging the Member's duties, the Member is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by any of the following:
  1. One or more other Members, in the event that the Company has multiple Members or employees of the Company whom the Member reasonably believes to be reliable and competent in the matters presented.
  2. Legal counsel, public accountants, or other persons as to matters the Member reasonably believes are within the persons' professional or expert competence.
  3. In the event that the Company has multiple Members, a committee of Members of which the affected Member is not a participant, if the Member reasonably believes the committee merits confidence.

#### **IV. Accounting and Distributions.**

- (a) **Fiscal Year.** The Company's fiscal year shall end on the last day of December.
- (b) **Distributions.** Distributions shall be issued on a quarterly basis, based upon the Company's fiscal year. The distribution shall not exceed the remaining net cash of the Company after making appropriate provisions for the Company's ongoing and anticipatable liabilities and expenses. Each Member shall receive a percentage of the overall distribution that matches that Member's percentage of membership interest in the Company.

#### **V. Tax Treatment Election.**

- (a) **Tax Designation.** The Company has or will file with the Internal Revenue Service for treatment as a S-Corporation.

#### **VI. Dissolution.**

- (a) **Limits on Dissolution.** The Company shall have a perpetual existence, and shall be dissolved, and its affairs shall be wound up only upon the provisions established above.

Notwithstanding any other provision of this Agreement, the bankruptcy of any Member shall not cause such Member to cease to be a Member of the Company and upon the occurrence of such an event, the business of the Company shall continue without dissolution.



Each Member waives any right that it may have to agree in writing to dissolve the Company upon the bankruptcy of any Member or the occurrence of any event that causes any Member to cease to be a Member of the Company.

- (b) **Winding Up.** Upon the occurrence of any event specified in the earlier "Duration" section above, the Company shall continue solely for the purpose of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors. The Member, or in the event of multiple Members, one or more Members, selected by the remaining Members, shall be responsible for overseeing the winding up and liquidation of the Company, shall take full account of the liabilities of the Company and its assets, shall either cause its assets to be distributed as provided under this Agreement or sold, and if sold as promptly as is consistent with obtaining the fair market value thereof, shall cause the proceeds therefrom, to the extent sufficient therefor, to be applied and distributed as provided under this Agreement.
- (c) **Distributions in Kind.** Any non-cash asset distributed to one or more Members in liquidation of the Company shall first be valued at its fair market value (net of any liability secured by such asset that such Member assumes or takes subject to) to determine the profits or losses that would have resulted if such asset were sold for such value, such profit or loss shall then be allocated as provided under this Agreement. The fair market value of such asset shall be determined by the Members or, if any Member objects, by an independent appraiser (any such appraiser must be recognized as an expert in valuing the type of asset involved) approved by the Members.
- (d) **Termination.** The Company shall terminate when (i) all of the assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company, shall have been distributed to the Member in the manner provided for under this Agreement and (ii) the Company's registration with Colorado shall have been canceled in the manner required by Colorado law.
- (e) **Accounting.** Within a reasonable time after complete liquidation, the Company shall furnish the Members with a statement which shall set forth the assets and liabilities of the Company as at the date of dissolution and the proceeds and expenses of the disposition thereof.
- (f) **Limitations on Payments Made in Dissolution.** Except as otherwise specifically provided in this Agreement, each Member shall only be entitled to look solely to the assets of the Company for the return of its initial contribution and shall have no recourse for its initial contribution and /or share of profits (upon dissolution or otherwise) against any other Member, if any other such Member exists.
- (g) **Notice to Colorado Authorities.** Upon the winding up of the Company, the Member with the highest percentage of membership interest in the Company shall be responsible for the filing of all appropriate notices of dissolution with Colorado and any other appropriate state or federal authorities or agencies as may be required by law.

## **VII. Exculpation and Indemnification.**

- (a) No Member, employee, or agent of the Company and no employee, agent, or affiliate of a Member (collectively, the "Covered Persons") shall be liable to the Company or any other person who has an interest in or claim against the Company for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that a Covered Person shall be liable for any such loss, damage or claim incurred by reason of such Covered Person's gross negligence or willful misconduct.

- (b) To the fullest extent permitted by applicable law, a Covered Person shall be entitled to indemnification from the Company for any loss, damage, or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement. Expenses, including legal fees, incurred by a Covered Person defending any claim, demand, action, suit, or proceeding shall be paid by the Company. The Covered Person shall be liable to repay such amount if it is determined that the Covered Person is not entitled to be indemnified as authorized in this Agreement. No Covered Person shall be entitled to be indemnified in respect of any loss, damage, or claim incurred by such Covered Person by reason of such Covered Person's gross negligence or willful misconduct with respect to such acts or omissions. Any indemnity under this Agreement shall be provided out of and to the extent of Company assets only.
- (c) A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any person as to matters the Covered Person reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, or any other facts pertinent to the existence and amount of assets from which distributions to the Member might properly be paid.
- (d) To the extent that, at law or in equity, a Covered Person has duties (including fiduciary duties) and liabilities relating thereto to the Company or to any other Covered Person, a Covered Person acting under this Agreement shall not be liable to the Company or to any other Covered Person for its good faith reliance on the provisions of this Agreement. The provisions of the Agreement, to the extent that they restrict the duties and liabilities of a Covered Person otherwise existing at law or in equity, are agreed by the Member to replace such other duties and liabilities of such Covered Person.
- (e) The foregoing provisions of this article shall survive any termination of this Agreement.

#### **VIII. Insurance.**

The Company shall have the power to purchase and maintain insurance, including insurance on behalf of any Covered Person against any liability asserted against such person and incurred by such Covered Person in any such capacity, or arising out of such Covered Person's status as an agent of the Company, whether or not the Company would have the power to indemnify such person against such liability under the provisions of Article VII or under applicable law.

#### **IX. General Provisions.**

- (a) **Notices.** All notices, offers or other communications required or permitted to be given pursuant to this Agreement shall be in writing and may be personally served or sent by United States mail and shall be deemed to have been given when delivered in person or three business days after deposit in United States mail, registered or certified, postage prepaid, and properly addressed, by or to the appropriate party.
- (b) **Number of Days.** In computing the number of days (other than business days) for purposes of this Agreement, all days shall be counted, including Saturdays, Sundays and holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday or holiday on which national banks are or may elect to be closed, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or such holiday.
- (c) **Execution of Counterparts.** This Agreement may be executed in any number of counterparts,

each of which shall be an original, and all of which shall together constitute one and the same instrument.

- (d) **Severability.** The provisions of this Agreement are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part.
- (e) **Headings.** The Article and Section headings in this Agreement are for convenience, and they form no part of this Agreement and shall not affect its interpretation.
- (f) **Controlling Law.** This Agreement shall be governed by and construed in all respects in accordance with the laws of Colorado (without regard to conflicts of law principles thereof).
- (g) **Application of State Law.** Any matter not specifically covered by a provision of this Agreement shall be governed by the applicable provisions of Colorado law.
- (h) **Amendment.** This Agreement may be amended only by written consent of the Member. Upon obtaining the approval of any such amendment, supplement, or restatement as to the Certificate, the Company shall cause a Certificate of Amendment or Amended and Restated Certificate to be prepared, executed, and filed in accordance with Colorado law.
- (i) **Entire Agreement.** This Agreement contains the entire understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, inducements or conditions, express or implied, oral or written, except as herein contained.

IN WITNESS WHEREOF, the Member has executed and agreed to this Limited Liability Company Operating Agreement, which shall be effective as of February 03, 2024.

By: John Keith  
John Gregory Keith

Date: 02/07/2024



Attachment A  
Initial Contributions of the Member

The initial contributions of the Member of Ski-To-Tee, LLC are as follows:

John Gregory Keith  
Contribution:  
Cash: \$200,000.00



## AUTHORIZATION AND CONSENT TO RELEASE INFORMATION

Name: JOHN KEITH

Date of Birth: [REDACTED]

I do hereby authorize a review and full disclosure of all records specified below, or any part thereof, concerning myself, by and to ANY duly authorized employee of the Town of Keystone, whether said records are of public, private, or confidential nature.

The intent of this authorization is to give my consent for full and complete disclosure of records of complaint, arrest, trial, and/or convictions for alleged or actual violations of the law, including criminal, civil and/or traffic records wheresoever located.

I understand that all information obtained by a personal history background investigation which is developed directly or indirectly, in whole or in part, upon this release authorization will be considered in determining my suitability for licensing by the Town of Keystone and by the Town of Keystone Local Licensing Authority and will be run on an annual basis. I further authorize the Town of Keystone and its Local Licensing Authority to discuss, in a public forum, any and all findings regarding my moral, criminal, and character qualifications. I understand that any information or records obtained by the Town may become public records available upon request by the public.

I agree to indemnify and hold harmless the person to whom this request is presented and his agents, employees, from and against all claims, damages, losses and expenses, including reasonable attorney's fees, arising out of or by reason of complying with this request.

A photocopy of this signed authorization form or a copy will be considered valid as an original hereof.

Applicant's Signature:

A handwritten signature in black ink that reads "John Keith".

Date: 09/01/2024

## Individual History Record

To be completed by the following persons, as applicable: sole proprietors; general partners regardless of percentage ownership, and limited partners owning 10% or more of the partnership; all principal officers of a corporation, all directors of a corporation, and any stockholder of a corporation owning 10% or more of the outstanding stock; managing members or officers of a limited liability company, and members owning 10% or more of the company; and any intended registered manager of Hotel and Restaurant, Tavern and Lodging and Entertainment class of retail license

**Notice:** This individual history record requires information that is necessary for the licensing investigation or inquiry. All questions must be answered in their entirety or the license application may be delayed or denied. If a question is not applicable, please indicate so by "N/A". **Any deliberate misrepresentation or material omission may jeopardize the license application.** (Please attach a separate sheet if necessary to enable you to answer questions completely)

Name of Business

Ski-To-Tee, LLC

Home Phone Number

None

Cellular Number

970-485-1540

Your Full Name (last, first, middle)

Keith, John, Gregory

List any other names you have used

None

Mailing address (if different from residence)

400 North Park Avenue #12B Breckenridge, CO 80424

Email Address

johnnykeith247@gmail.com

1. List current residence address. Include any previous addresses within the last five years. (Attach separate sheet if necessary)

Current Street and Number

Current City, State, ZIP

Breckenridge, CO 80424

From:

12/5/2018

To:

8/1/24

Previous Street and Number

Previous City, State, ZIP

From:

To:

**Individual History Record (Continued)**

**2. List all employment within the last five years. Include any self-employment. (Attach separate sheet if necessary)**

Name of Employer or Business  
 Sycamore Brokerage LLC

Address (Street, Number, City, State, ZIP)  
 100 Saint Paul St. #200, Denver, CO 80206

Position Held  
 Broker Associate

From: 1/14/21 To: 8/1/24

Name of Employer or Business  
 Keller Williams Top of the Rockies

Address (Street, Number, City, State, ZIP)  
 605 E Main St Box 4802, Frisco, CO 80443

Position Held  
 Broker Associate

From: 05/30/2020 To: 01/13/2021

Name of Employer or Business  
 Bayou Waterfowl Gear LLC

Address (Street, Number, City, State, ZIP)  
 373 Gold Flake Ct, Breckenridge, CO 80424

Position Held  
 Owner (Self Employed)

From: 02/01/2019 To: 05/29/2020

**3. List the name(s) of relatives working in or holding a financial interest in the Colorado alcohol beverage industry.**

Name of Relative None	Relationship to You:
Position Held	Name of Licensee
Name of Relative	Relationship to You:
Position Held	Name of Licensee

**Individual History Record (Continued)**

Name of Relative

Relationship to You:

Position Held

Name of Licensee

Name of Relative

Relationship to You:

Position Held

Name of Licensee

4. Have you ever applied for, held, or had an interest in a Colorado Liquor or Beer License, or loaned money, furniture, fixtures, equipment or inventory to any licensee? .....  Yes  No

(If yes, answer in detail.)

5. Have you ever received a violation notice, suspension, or revocation for a liquor law violation, or have you applied for or been denied a liquor or beer license anywhere in the United States?.....  Yes  No

(If yes, answer in detail.)

6. Have you ever been convicted of a crime or received a suspended sentence, deferred sentence, or forfeited bail for any offense in criminal or military court or do you have any charges pending?.....  Yes  No

(If yes, answer in detail.)

7. Are you currently under probation (supervised or unsupervised), parole, or completing the requirements of a deferred sentence?.....  Yes  No

(If yes, answer in detail.)

Individual History Record (Continued)

8. Have you ever had any professional license suspended, revoked, or denied?....  Yes  No

(If yes, answer in detail.)

[Empty box for detail answer]

Personal and Financial Information

Unless otherwise provided by law, the personal information required in this section will be treated as confidential. The personal information required in this section is solely for identification purposes.

Date of Birth [Redacted] Social Security Number [Redacted] Place of Birth [Redacted]

U.S. Citizen  Yes  No If Naturalized, state where [Redacted] When [Redacted]

Name of District Court [Redacted] Naturalization Certificate Number [Redacted] Date of Certification [Redacted]

If an Alien, Give Alien's Registration Card Number [Redacted] Permanent Residence Card Number [Redacted]

Height 5 Weight 9 Hair Color Brown Eye Color Brown Gender Male

Do you have a current Driver's License/ID? If so, give number and state. ....  Yes  No

Driver's License Number [Redacted] Driver's License State Colorado

Financial Information

9. Total purchase price or investment being made by the applying entity, corporation, partnership, limited liability company, other..... 0

10. List the total amount of the personal investment, made by the person listed on page 1 in this business including any notes, loans, cash, services or equipment, operating capital, stock purchases or fees paid..... 200000

NOTE: If corporate investment only, please skip to and complete question 12
NOTE: Question 10 should reflect the total of questions 11 and 13



**Personal and Financial Information (Continued)**

**11. Provide details of the personal investment described in question 10. You must account for all of the sources of this investment. (Attach a separate sheet if needed)**

Type: Cash, Services or Equipment	Account Type
Services	Credit Line
Bank Name	Amount
UBS Wealth Management	\$75,000
Type: Cash, Services or Equipment	Account Type
Services	Credit Line
Bank Name	Amount
UBS Wealth Management	\$5,000
Type: Cash, Services or Equipment	Account Type
Equipment	Credit Line
Bank Name	Amount
UBS Wealth Management	\$5,000
Type: Cash, Services or Equipment	Account Type
Equipment	Credit Line
Bank Name	Amount
UBS Wealth Management	\$55,000

**12. Provide details of the corporate investment described in question 9. You must account for all of the sources of this investment. (Attach a separate sheet if needed)**

Type: Cash, Services or Equipment	Loans	Account Type
Bank Name	Amount	
Type: Cash, Services or Equipment	Loans	Account Type
Bank Name	Amount	
Type: Cash, Services or Equipment	Loans	Account Type
Bank Name	Amount	

**13. Loan Information (Attach copies of all notes or loans)**

Name of Lender	Address
Term	Security
Amount	

**Personal and Financial Information (Continued)**

Name of Lender

Address

Term

Security

Amount

Name of Lender

Address

Term

Security

Amount

Name of Lender

Address

Term

Security

Amount

**Oath of Applicant**

I declare under penalty of perjury that this application and all attachments are true, correct, and complete to the best of my knowledge.

Authorized Signature

Print Signature

Title

Date (MM/DD/YY)





## AUTHORIZATION AND CONSENT TO RELEASE INFORMATION

Name: Brendan Koning

Date of Birth: [REDACTED]

I do hereby authorize a review and full disclosure of all records specified below, or any part thereof, concerning myself, by and to ANY duly authorized employee of the Town of Keystone, whether said records are of public, private, or confidential nature.

The intent of this authorization is to give my consent for full and complete disclosure of records of complaint, arrest, trial, and/or convictions for alleged or actual violations of the law, including criminal, civil and/or traffic records wheresoever located.

I understand that all information obtained by a personal history background investigation which is developed directly or indirectly, in whole or in part, upon this release authorization will be considered in determining my suitability for licensing by the Town of Keystone and by the Town of Keystone Local Licensing Authority and will be run on an annual basis. I further authorize the Town of Keystone and its Local Licensing Authority to discuss, in a public forum, any and all findings regarding my moral, criminal, and character qualifications. I understand that any information or records obtained by the Town may become public records available upon request by the public.

I agree to indemnify and hold harmless the person to whom this request is presented and his agents, employees, from and against all claims, damages, losses and expenses, including reasonable attorney's fees, arising out of or by reason of complying with this request.

A photocopy of this signed authorization form or a copy will be considered valid as an original hereof.

Applicant's Signature:

A handwritten signature in cursive script, appearing to read "Brendan Koning".

Date: 8/5/24

## Individual History Record

To be completed by the following persons, as applicable: sole proprietors; general partners regardless of percentage ownership, and limited partners owning 10% or more of the partnership; all principal officers of a corporation, all directors of a corporation, and any stockholder of a corporation owning 10% or more of the outstanding stock; managing members or officers of a limited liability company, and members owning 10% or more of the company; and any intended registered manager of Hotel and Restaurant, Tavern and Lodging and Entertainment class of retail license

**Notice:** This individual history record requires information that is necessary for the licensing investigation or inquiry. All questions must be answered in their entirety or the license application may be delayed or denied. If a question is not applicable, please indicate so by "N/A". **Any deliberate misrepresentation or material omission may jeopardize the license application.** (Please attach a separate sheet if necessary to enable you to answer questions completely)

Name of Business

Ski to Tee

Home Phone Number

Cellular Number

970 409 0228

Your Full Name (last, first, middle)

Brendan Thomas Koning

List any other names you have used

Mailing address (if different from residence)

Silverthorne Colorado 80498

Email Address

brendan@brendankoning.com

1. List current residence address. Include any previous addresses within the last five years. (Attach separate sheet if necessary)

Current Street and Number

Current City, State, ZIP

Silverthorne CO 80498

From:

To:

2019

Current

Previous Street and Number

Previous City, State, ZIP

From:

To:

**Individual History Record (Continued)**

2. List all employment within the last five years. Include any self-employment. (Attach separate sheet if necessary)

Name of Employer or Business

Cornerstone Real Estate

Address (Street, Number, City, State, ZIP)

202 S Ridge St

Position Held

Realtor

From:

2019

To:

Current

Name of Employer or Business

Vail Resorts

Address (Street, Number, City, State, ZIP)

21996 US 6 Keystone CO 80435

Position Held

Group and Tournament Coordinator @ Keystone Ranch and River Golf Courses

From:

2013

To:

current

Name of Employer or Business

Address (Street, Number, City, State, ZIP)

Position Held

From:

To:

3. List the name(s) of relatives working in or holding a financial interest in the Colorado alcohol beverage industry.

Name of Relative

Relationship to You:

Position Held

Name of Licensee

Name of Relative

Relationship to You:

Position Held

Name of Licensee

**Individual History Record (Continued)**

Name of Relative

Relationship to You:

Position Held

Name of Licensee

Name of Relative

Relationship to You:

Position Held

Name of Licensee

4. Have you ever applied for, held, or had an interest in a Colorado Liquor or Beer License, or loaned money, furniture, fixtures, equipment or inventory to any licensee? .....  Yes  No

(If yes, answer in detail.)

5. Have you ever received a violation notice, suspension, or revocation for a liquor law violation, or have you applied for or been denied a liquor or beer license anywhere in the United States?.....  Yes  No

(If yes, answer in detail.)

6. Have you ever been convicted of a crime or received a suspended sentence, deferred sentence, or forfeited bail for any offense in criminal or military court or do you have any charges pending?.....  Yes  No

(If yes, answer in detail.)

7. Are you currently under probation (supervised or unsupervised), parole, or completing the requirements of a deferred sentence?.....  Yes  No

(If yes, answer in detail.)

**Individual History Record (Continued)**

8. Have you ever had any professional license suspended, revoked, or denied?.....  Yes  No

(If yes, answer in detail.)

**Personal and Financial Information**

Unless otherwise provided by law, the personal information required in this section will be treated as confidential. The personal information required in this section is solely for identification purposes.

Date of Birth [REDACTED]	Social Security Number [REDACTED]	Place of Birth [REDACTED]
-----------------------------	--------------------------------------	------------------------------

U.S. Citizen <input checked="" type="radio"/> Yes <input type="radio"/> No	If Naturalized, state where [REDACTED]	When [REDACTED]
--	---	--------------------

Name of District Court [REDACTED]	Naturalization Certificate Number [REDACTED]	Date of Certification [REDACTED]
--------------------------------------	---	-------------------------------------

If an Alien, Give Alien's Registration Card Number [REDACTED]	Permanent Residence Card Number [REDACTED]
--	---

Height 5	Weight 6	Hair Color brown	Eye Color blue	Gender male
-------------	-------------	---------------------	-------------------	----------------

Do you have a current Driver's License/ID? If so, give number and state. ....  Yes  No

Driver's License Number [REDACTED]	Driver's License State Colorado
---------------------------------------	------------------------------------

**Financial Information**

9. Total purchase price or investment being made by the applying entity, corporation, partnership, limited liability company, other..... [REDACTED]

10. List the total amount of the **personal** investment, made by the person listed on page 1 in this business including any notes, loans, cash, services or equipment, operating capital, stock purchases or fees paid..... [REDACTED]

**NOTE: If corporate investment only, please skip to and complete question 12**

**NOTE: Question 10 should reflect the total of questions 11 and 13**

**Personal and Financial Information (Continued)**

**11. Provide details of the personal investment described in question 10. You must account for all of the sources of this investment. (Attach a separate sheet if needed)**

Type: Cash, Services or Equipment	Account Type
Bank Name	Amount
Type: Cash, Services or Equipment	Account Type
Bank Name	Amount
Type: Cash, Services or Equipment	Account Type
Bank Name	Amount
Type: Cash, Services or Equipment	Account Type
Bank Name	Amount

**12. Provide details of the corporate investment described in question 9. You must account for all of the sources of this investment. (Attach a separate sheet if needed)**

Type: Cash, Services or Equipment	Loans	Account Type
Bank Name	Amount	
Type: Cash, Services or Equipment	Loans	Account Type
Bank Name	Amount	
Type: Cash, Services or Equipment	Loans	Account Type
Bank Name	Amount	

**13. Loan Information (Attach copies of all notes or loans)**

Name of Lender	Address
Term	Amount
Security	

**RETAIL LEASE**  
**RIVER RUN VILLAGE**  
**BUFFALO LODGE BUILDING**  
**UNIT E-3**

SUMMARY

- A. Tenant: Ski-to-Tee, LLC
- B. Term:
- Initial Term: Approximately one (1) year and eight (8) months, commencing on September 1, 2024 (the "Commencement Date") and ending on April 30, 2026. Rent commences on the sooner of Tenant opening for business or November 1, 2024 (the "Rent Commencement Date").
- Options(s): A single three (3) year option, with prior notice required at least six (6) months prior but not more than twelve (12) months.
- C. Premises:
- Unit: Unit E-3.
- Building: Buffalo Lodge Building of River Run Village.
- Size: Approximately 969 rentable square feet, as mutually agreed by the parties.
- D. Rent:

Period	Rent Per Square Foot	Annual Rent	Monthly Rent
For the Initial Term:			
9/1/2024* to 8/30/2025	\$24.00*	\$23,256*	\$1,938.00*
9/1/2025 to 4/30/2026	\$27.00	\$26,163.00	\$2,180.25
*Per the terms of Section 3(a) below, Tenant's obligation to pay Minimum Rent for such period shall be abated until the Rent Commencement Date.			
For the Option Period, if applicable:			

5/1/2026 to 4/30/2027	\$30.00	\$29,070.00	\$2,422.50
5/1/2027 to 4/30/2028	\$33.00	\$31,977.00	\$2,664.75
5/1/2028 to 4/30/2029	\$33.99	\$32,936.31	\$2,744.69

Percentage Rent:

Commencing the sooner of Tenant opening for business or November 1, 2024, 7.5% of Gross Sales over a natural breakpoint. The natural breakpoint shall be calculated for each applicable Lease Year by determining the total amount of Minimum Rent payable during the applicable Lease Year and dividing such amount by 7.5%. Percent rent abatement until the first full year.

E. Trade Name:

Ski-to-Tee

F. Use of Premises:

Subject to any existing exclusive use rights, the Premises shall be used and occupied by Tenant solely as a sports recreation concept of high quality, suitable for a first-class, prestigious ski resort. Activities, snacks, beverages, and retail approved by Landlord.

G. Security Deposit:

\$5,000 due upon execution of this Lease

H. Guarantor:

Principal to provide a personal guarantee.



**RETAIL LEASE**

**BY AND BETWEEN**

VAIL SUMMIT RESORTS, INC.  
AS LANDLORD

**and**

Ski-to-Tee, LLC, a Colorado limited liability company  
AS TENANT

**WITH RESPECT TO A PORTION OF THE  
BUFFALO LODGE BUILDING, RIVER RUN VILLAGE**

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## RETAIL LEASE

THIS RETAIL LEASE (this "**Lease**"), made effective the 9.00 day of February, 2024 (the "**Effective Date**"), is by and between Vail Summit Resorts, Inc. ("**Landlord**"), and Ski-To-Tee, LLC dba Ski-to-Tee ("**Tenant**").

For and in consideration of the rents, covenants and agreements herein contained, Landlord and Tenant hereby agree as follows:

### 1. **PREMISES.**

(a) **Demise of Premises.** Landlord hereby leases to Tenant, and Tenant hereby rents from Landlord, the interior floor space in the units or portions thereof set forth in the Lease Summary above, in the building commonly known by the name set forth in the Lease Summary above (the "**Building**"), consisting of approximately the number of rentable square feet set forth in the Lease Summary above, as generally depicted on Exhibit A attached hereto (the "**Premises**"). The Building, including units not owned by Landlord, if any, and all facilities and areas serving the Building (as such facilities and areas may be designated from time to time by Landlord or any other owner of the Building) are hereinafter referred to as the "**Center**." The Premises are a part of the Center. The Premises are leased on the terms and conditions set forth in this Lease. Tenant acknowledges that Exhibit A is attached hereto solely for the purpose of identifying the Premises, and Landlord has made no representation or covenant, and nothing in this Lease shall be deemed or construed to be a representation or covenant, as to the dimensions of or the square foot area contained in the Premises. For the purposes of calculating Minimum Rent and any other amount based on the square footage of the Premises hereunder, the parties agree the Premises contains the square footage set forth in the Lease Summary above.

(b) **Exterior Walls and Roof.** Landlord shall have the exclusive right to use all or any part of the roof and exterior side and rear walls of the Premises for any purpose, including, but not limited to, erecting signs or other structures on or over all or any part of the same, erecting scaffolds and other aids to the construction and installation of the same, and installing, maintaining, using, repairing and replacing pipes, ducts, conduits, wires leading through, to or from the Premises and serving other parts of the Center in locations which do not prevent Tenant's use of the Premises. Tenant shall have no right whatsoever in the exterior of exterior walls or the roof of the Premises.

(c) **Relocation.** Landlord reserves the right to relocate the Premises to other space comparable to the original Premises in size and tenant finish. Landlord will give Tenant at least 45-days' prior written notice of Landlord's exercise of this right of relocation, and designate in such notice a proposed effective date for such relocation. Landlord shall pay the reasonable costs of moving Tenant's fixtures, furniture and equipment to the new Premises, and any other reasonable business expense incurred in connection with such relocation up to a maximum of

\$15,000, this shall include the costs of any improvements to the Premises. Prior to the relocation, but effective upon the date the actual relocation is completed, Landlord and Tenant will execute an amendment to this Lease deleting the description of the original Premises and inserting a description of the new Premises.

2. TERM.

(a) **Initial Term.** The initial Term of this Lease shall be for the approximate period set forth in the Lease Summary above, commencing on the Commencement Date and ending at noon in the time zone in which the Premises is located on the ending date set forth in the Lease Summary above, unless sooner terminated or extended as provided herein (the “**Initial Term**”).

(b) **Lease Year.** As used in this Lease, the term “**Lease Year**” shall mean:

(i) For the first Lease Year, the period begins on the Commencement Date of September 1, 2024, and ends on August 30, 2025.

(ii) For the second Lease year, which shall be a partial Lease Year, the period begins on September 1, 2025, and ends on *April 30, 2026*.

(iii) For each Lease Year thereafter, the consecutive 12-month period beginning on the next day following the expiration of the preceding Lease Year.

If the Term of this Lease shall end prior to the last day of a Lease Year, the final Lease Year hereunder shall be deemed to end on the day the Term of this Lease ends.

3. RENT.

(a) **Minimum Rent.** Tenant covenants and agrees to pay to Landlord minimum rent for the Premises in amounts set forth in the Lease Summary above (“**Minimum Rent**”).

(i) Payment of Minimum Rent. Minimum Rent shall be payable in monthly installments, in advance, on the first day of each calendar month during the Term of this Lease. Minimum Rent shall be apportioned for any fraction of a month at the beginning and end of the Term of this Lease. This Lease shall be construed as though the covenants between Landlord and Tenant are independent, and not dependent. Every installment of Minimum Rent, Percentage Rent, and Additional Rent, and other monetary obligations due and payable under this Lease shall be payable without notice, demand, setoff or deduction, in lawful money of the United States of America, at Landlord’s address for notices specified below, or at such address or addresses as Landlord may from time to time designate in writing. Landlord reserves the right to apply all payments received from Tenant to amounts owed by Tenant in such order as Landlord may determine in its sole and absolute discretion.

(ii) **Abatement of Rent.** Landlord has agreed to abate Tenant's obligation to pay Minimum Rent and Tenant's Proportionate Share of Taxes, Association Dues and Assessments, and Operating Costs until the earlier to occur of (a) November 1, 2024, or (b) the date on which Tenant opens for the conduct of business in the Premises (such earlier date, the "Rent Commencement Date"). Tenant will still be responsible for the payment of personal property taxes and utilities. The total amount of abated Minimum Rent and Taxes, Association Dues and Assessments and Operating Costs under this Lease is referred to as the "Abated Amount". Tenant acknowledges that any default by Tenant under this Lease will cause Landlord to incur costs not contemplated hereunder, the exact amount of such costs being extremely difficult and impracticable to ascertain, therefore, should any Event of Default occur, then the total unamortized sum of such Abated Amount (amortized on a straight line basis over the Initial Term) shall become immediately due and payable by Tenant to Landlord; provided, however, Tenant acknowledges and agrees that nothing in this Section is intended to limit any other remedies available to Landlord at law or in equity under applicable law in connection with a default by Tenant under this Lease.

(b) **Percentage Rent.** In addition to Minimum Rent, during the Term Tenant shall pay Landlord percentage rent at the applicable rate(s) set forth in the Lease Summary above ("**Percentage Rent**"). Once Tenant's annual Gross Sales for any Lease Year or portion thereof exceeds the applicable breakpoint, Percentage Rent shall be due at Landlord's address for notice specified in Section 32 on or before the 20<sup>th</sup> day of the following calendar month and each calendar month thereafter, through the end of the applicable Lease Year, which obligation shall survive the termination of the Lease as to the last month(s) of the Term, as applicable. The natural breakpoint shall not be reduced on account of any Minimum Rent abatements, and shall be based upon the amount of Minimum Rent that would otherwise have been payable during such abatement period.

(i) **Gross Sales.** As used in this Lease, the term "**Gross Sales**" shall mean the entire amount of the price charged, whether wholly or partly for cash or on credit or in exchange for goods or services, for all merchandise sold and all charges made for services performed or for the extension of credit in, at or from any part of the Premises or through the use of the Premises, by Tenant or anyone acting on Tenant's behalf or under a sublease, license or concession from Tenant, including, without limiting the generality of the foregoing, the amount allowed for any "trade in", the retail price of any merchandise delivered on redemption of trading stamps or discount coupons or the like, all deposits not refunded to purchasers and all orders taken in or from the Premises or which Tenant would in the normal course of its operations credit or attribute to its business in the Premises, even though such order may be filled elsewhere or taken elsewhere and filled at the Premises, without deduction in any case for uncollected or uncollectible credit accounts; there shall also be included in "Gross Sales" all amounts received by Tenant from or on account of all mechanical or other vending devices placed in the Premises by Tenant or under authority from Tenant, other than such devices which are installed in portions of the Premises not open to the public for the convenience of Tenant's Employees. Gross Sales shall include (1) sales

derived from mail, catalogue, internet, computer, other electronic methods, facsimile, telephone and from all orders taken, originated, received or accepted at the Premises regardless of whether delivery or performance thereof is from elsewhere, including but not limited to telephone and internet sales and catering services and orders filled, delivered or fulfilled from the Premises even though payment is made elsewhere, (2) all deposits not refunded to purchasers, (3) the entire amount of the actual sales price and all other receipts for sales and services by Tenant, any other occupant of the Premises or otherwise in, at, upon or from the Premises, (4) the value of goods received by Tenant or any other occupant of the Premises in exchange for allowing another person or entity to display, advertise, promote, sell or give away products or services or trade names or logos in the Premises, (5) the value of gift or merchandise certificates or cards which have been redeemed for merchandise at the Premises (provided, however, that the initial sale of such gift or merchandise certificates or cards shall not be included in Gross Sales), (6) all deposits not refunded to customers, (7) all amounts received by Tenant in respect of claims for loss of or damage to stock-in-trade in excess of the original cost of same, (8) all amounts received under insurance policies in respect of loss of business sales or profits (other than amounts received by Landlord for losses or damages arising from an occurrence for which Landlord is entitled to receive compensation from its insurers for loss of Minimum Rent or Percentage Rent arising from the same occurrence) and (9) access or similar fees, commissions or other consideration received by Tenant, other occupants of the Premises and their respective affiliates under any promotional agreements. Every transaction on a deferred payment basis shall be treated as a sale for the full price at the time such transaction is entered into, irrespective of the time for payment. Gross Sales shall not include the amount of any freight or shipping costs collected by Tenant, any cash or credit refund in fact made upon sales from the Premises where the merchandise sold or some part thereof is returned by the purchaser and accepted by Tenant, exchanges and transfers of merchandise between stores of Tenant, where made solely for the convenient operation of Tenant's business and not having the effect of consummating a sale made or which would have been made at the Premises, returns to shippers or manufacturers, interest on charge accounts or revolving credit accounts, or the amount of any sales or excise taxes directly on sales from the Premises, where such taxes are both added to the selling price (or absorbed therein) and paid to the taxing authorities by Tenant (but not by any vendor of Tenant). No other taxes, costs or fees, including without limitation, any income, franchise or excess profit tax, shall be excluded from Gross Sales. Tenant shall not divert, redirect, or otherwise manage the business or sales of Tenant or any other occupant of the Premises so as to attempt to (or actually) minimize, avoid or evade the payment of Percentage Rent, the reporting of Gross Sales, or the payment of any other amounts based thereon under this Lease. If Tenant's Gross Sales are required to be reported on any federal, state or municipal sales tax return or any other similar form of return, and Gross Sales as so reported on any of such returns shall exceed the Gross Sales as reported by Tenant, as herein provided, then the Gross Sales shall be taken at the highest figure so reported. If any government authority shall increase the Gross Sales reported by Tenant on any such tax return, after audit, for any period for which such sales have been reported, then Tenant shall notify Landlord promptly of such increase and shall promptly pay any additional Percentage Rent or other amounts due.

(c) **Additional Rent.** In addition to any Minimum Rent and Percentage Rent, Tenant shall pay Landlord those charges, with respect to Taxes, Association Dues and Assessments and Operating Costs, determined pursuant to Section 5 below, and such other sums as are required by the terms of this Lease to be paid by Tenant. Any such charges or sums shall be deemed to be additional rent (collectively with all other amounts to be paid as additional rent under this Lease, "**Additional Rent**") and shall be payable in the manner provided for the payment of Minimum Rent (unless otherwise provided in Section 5 or unless such charges are specific to the Premises, in which case Tenant will be billed as those charges are incurred) and shall be recoverable as rent, and Landlord shall have all rights against Tenant for default in payment thereof as are available to Landlord with respect to the non-payment of Minimum Rent.

(d) **Provisions Generally Applicable to Rent.** Any Minimum Rent, Percentage Rent and Additional Rent shall be paid without notice (except as may be otherwise provided in Section 5 with respect to Additional Rent determined pursuant thereto), demand, set off or deduction, in lawful money of the United States of America, at the address of Landlord set forth in Section 32 or at such other place as Landlord may from time to time designate in writing; provided, however, that Tenant shall have a 5-day grace period to pay arrearages of Minimum Rent prior to any late charge assessment by Landlord. Tenant is solely responsible to promptly pay any and all wiring fees associated with any payment by Tenant pursuant to this Lease. All sums payable by Tenant under or pursuant to this Lease, other than Minimum Rent pursuant to Section 3(a), shall be in addition to and not a part of or in lieu of Minimum Rent. Tenant acknowledges that late payment by Tenant to Landlord of Minimum Rent, Percentage Rent, Additional Rent or other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Accordingly, Landlord shall be entitled to assess a late fee for any overdue payment in the amount equal to 5% of the overdue amount, or the amount of \$200, whichever is greater. The parties agree that such late charges represent a fair and reasonable estimate of the cost that Landlord will incur by reason of the late payment by Tenant and acceptance of such late charges by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

#### 4. USE OF PREMISES; CONDUCT OF BUSINESS.

(a) **Permitted Use.** The Premises may be used and occupied by Tenant under the trade name set forth in the Lease Summary above, and, subject to any existing exclusive use rights, solely for the permitted use set forth in the Lease Summary above (the "**Permitted Use**"), in all cases only in compliance with the Governing Documents. This Lease does not grant any exclusive use rights to Tenant and in no event shall this Lease grant any exclusive use rights with respect to the Building or with respect to any merchandise or services currently or in the future sold or provided at the Premises. Tenant may not use the name Keystone or any other trademarked name owned by Landlord or its affiliates, without the prior written consent of Landlord. Storage for



items related to the above Permitted Uses that are actually intended to be used at or sold from the Premises shall be allowed on the Premises, but shall not be visible from the exterior of the Premises or from any retail sales area of the Premises. Any change in the Trade Name shall first be approved by Landlord in writing.

(b) **Condition and Operations.** Operations in the Premises shall be, at all times and in all respects, first-class and high quality, suitable for a first-class, prestigious ski resort the (“**Use Standard**”). The foregoing shall apply to, without limitation, the furniture, carpeting, counter tops, drapes, furnishings, indoor and outdoor signage and displays, cleanliness and upkeep in the Premises and the management, presentation and operation of the Premises in general. At all times during which the Premises are open for business, Tenant shall have a sufficient number of employees and a sufficient stock of merchandise upon the Premises to serve adequately the patrons thereof, and shall employ its best efforts to produce the greatest possible dollar volume of sales from the Premises within the terms and provisions of this Lease at all times during which the Premises are open for business. Tenant shall keep the Premises in a neat, clean, safe and sanitary condition at all times. Tenant acknowledges and agrees that the Building and the Common Areas are located within the portion of the resort operated by Landlord and Landlord’s affiliates that is frequented by resorts guests and customers. Accordingly, in addition to the foregoing obligations set forth in this subsection, Tenant agrees that it will at all times and in all respects cause Tenant’s principals, agents and employees to adhere to the highest standards, appropriate for a first-class resort, including but not limited to the attire, appearance and behavior of Tenant’s principals, agents and employees when in the Premises or the Common Areas, and that Tenant shall provide and first-class service at all times. Additionally, Tenant agrees that it shall at all times act as an “ambassador” of the resort, by adhering to the standards of the resort operated by Landlord or its affiliates. Tenant further agrees that it shall not use or suffer or permit all or any part of the Premises to be used in any illegal, unethical, obscene or offensive manner. No animals shall be allowed on the Premises except for service animals. Tenant acknowledges that the Building is part of a first-class ski resort and that much of the Premises will be (and is intended to be) visible from public areas of the Building and from public sidewalks and, therefore, Tenant acknowledges that its obligations with respect to the appearance and condition of the Premises and Tenant’s principals, agents and employees are material obligations of Tenant under this Lease.

(c) **Other Premises.** Tenant shall not use or permit the Premises or the Common Areas to be used (whether by Tenant’s Employees, servants, agents, representatives, contractors, suppliers, invitees, customers or any other person claiming the right to use the same through or under Tenant) in any manner that shall interfere with or disturb the use and enjoyment of any part of the Building, the Center or any other building near the Building by any owner, tenant or occupant thereof or any of their respective employees, servants, agents, representatives, contractors, suppliers, invitees and customers or any other person, whether on account of noise, trash, odors, intoxicated patrons or otherwise. Without limiting the generality of the foregoing, Tenant understands that portions of the Building, the Center and other buildings near the Building

are used primarily for commercial as well as residential purposes and therefore Tenant agrees that its covenants contained in the previous sentence are material obligations of Tenant under this Lease and are an essential part of the consideration for Landlord entering into this Lease. Tenant acknowledges and agrees that Landlord has made no representations or warranties, and Tenant in entering into this Lease is not relying on any representations or warranties, as to any improvements to the Center that may be made in the future or that may otherwise be part of the Center (including with respect to any additional buildings that may be added to or that may otherwise be part of the Center) or as to any particular tenants or stores that may exist or be open and operating at any time in the Center. Without the prior written consent of Landlord, Tenant shall not solicit business in the Common Areas or any part of the Center (including the Building) other than within the Premises, including without limitation by doing any of the following outside of the Premises: (i) displaying goods or other free-standing displays; (ii) distributing handbills, advertising materials, or samples; or (iii) otherwise approaching potential customers in the resort to solicit sales. No music or noise from the Premises shall be audible outside the Premises.

(d) **Compliance with Law and Applicable Regulations.** Tenant, at its expense, shall comply with all Governing Documents applicable to the Premises and/or Tenant's use or occupancy thereof. Tenant shall use the Premises in a careful, safe and proper manner and shall not use or permit the Premises to be used for any purposes prohibited by any Governing Documents or other rules and regulations applicable to the Premises or the Building, including any federal, state, county or municipal law, ordinance, rule, regulation or code applicable to the Premises or the Building. Tenant shall neither do nor permit to be done any act or thing upon the Premises which shall or might subject Landlord to any liability or responsibility for injury to any person or persons or for damage to property by reason of any business or operation carried on at, from or upon or near the Premises. In the event that any authorized agent shall hereafter at any time, contend or declare by notice, violation, order or in any other manner whatsoever that the Premises are being used for a purpose which is a violation of any permit, certificate of occupancy, statute, ordinance or other requirement of law applicable to the Building, the Center or the Premises, or if Landlord, or the Association gives notice of Tenant's violation of any rules or regulations applicable to the Premises, the Center or the Building, Tenant shall cure such violation within 2 days of such notice (or such shorter period of time as may be required in such notice or by law).

(e) **Operating Days and Hours.** Tenant shall continuously operate in the entire Premises fully stocked and staffed and shall maintain minimum operating days and hours as designated by Landlord. Any closures or any reduction in days or hours shall be prohibited without the prior written consent of Landlord. Tenant may, at its option, extend its operating days and hours in accordance with applicable laws, rules and regulations, upon providing advance written notice to Landlord of the same; provided that Tenant shall pay for any costs incurred by Landlord related to such Tenant extended hours. In the event that Tenant elects to close its operations in accordance with the requirements of this Section, Tenant must give written notice to Landlord of such election at least one week in advance of such closure. Tenant understands and acknowledges

that the days and hours during which all or any part of the Premises are open for business shall be subject to all applicable laws and all Governing Documents. Nothing contained in this Lease shall be deemed a representation of the hours during which other tenants of the Center may be required or permitted to be open for business and Landlord, or other owners or the Association may have the right to permit other tenants to operate during different hours from the hours during which Tenant is required or permitted to be open for business. Tenant acknowledges that it has received copies of and has had the opportunity to review the Governing Documents. Whether or not open for business, Tenant shall keep the Premises' show windows or areas and any permitted signs illuminated during such hours as Landlord may reasonably designate; provided however, that such windows and signs shall not be illuminated during such hours (when the Premises are not open for business) as Landlord may reasonably designate. Nothing contained in this Lease shall be deemed a representation of the hours during which other tenants of the Center may be required or permitted to be open for business and the Landlord, or other owners of commercial condominium units in the Center, if any, and the Association shall have the right to permit other tenants of the Center to operate during hours different from the hours during which Tenant is required or permitted to be open for business.

(i) **“Governing Documents”** shall mean all declarations, requirements, rules and regulations governing the Center, the Building or the Premises as they may exist from time to time, including without limitation all laws or codes promulgated by any governmental or quasi-governmental authority having jurisdiction over the Premises, Landlord, Association, or Neighbourhood.

(f) **Closure Fee.** If Tenant fails to open for business to the public by the Opening Deadline, or thereafter fails to continue to open and operate as and when required by this Lease, unless expressly permitted to close by the terms of this Lease, then Tenant shall pay to Landlord, upon demand, liquidated damages in an amount equal to the greater of (x) \$100 and (y) an amount equal to 1 day of Minimum Rent, per day for each day such violation continues (the **“Closure Fee”**); provided, however, that the Closure Fee shall not apply if the Premises should be closed and the business of Tenant temporarily discontinued therein on account of remodeling or renovation that has been approved in advance, in writing, by Landlord, and which is completed within the time frame specified by Landlord in Landlord's written approval of the remodeling or renovation closure. Tenant acknowledges and agrees that if it breaches its obligations under this Lease by failing to open and continuously operate as required by this Lease, Landlord shall be deprived of an important benefit under this Lease and will suffer damages in an amount which is not readily ascertainable, and that the Closure Fee is a reasonable and equitable determination of the actual damages Landlord shall suffer as a result of Tenant's breach of such obligations, and shall not be deemed a penalty; provided that such Closure Fee shall not limit Landlord's other remedies hereunder.

(g) **Radius Restriction.** Excluding any other locations leased from Landlord, if during the Term hereof Tenant, or any affiliate of Tenant, directly or indirectly operates, manages or has any interest whatsoever in any other store or business operated for the purpose or business similar to or in competition with all or part of the business permitted under Section 4(a) hereof within a radius of five miles of the Building, it will injure Landlord's ability and right to receive Percentage Rent (such ability and right being a major consideration of this Lease). Accordingly, if Tenant or any affiliate of Tenant operates, manages or has such interest in any such store or business within such radius, 100% of all sales made from any such other store or business shall be included in the computation of Gross Sales for the purpose of determining Percentage Rent under this Lease as though said Gross Sales had actually been made at, in or from the Premises. Landlord shall have all rights of inspection of books and records with respect to such stores or business as it has with respect to the Premises; and Tenant shall furnish to Landlord such reports with respect to Gross Sales from such other store or business as it is herein required to furnish with respect to the Premises. If Tenant does not furnish such reports to Landlord within 10 days of Landlord's request, then Gross Sales from such other store or business shall be deemed to be equal to the amount of annual Minimum Rent then in effect under this Lease. For the purposes of this paragraph, an "affiliate" of Tenant shall mean (i) any parent, subsidiary, franchisor, or franchisee of Tenant or the guarantor of this Lease (if any); (ii) any person, firm, corporation or other entity having an interest in any of the above parties; or (iii) any other person, firm or corporation controlling or controlled by Tenant or any of the above parties.

(h) **Signs and Advertising.**

(i) **Signs.** Tenant shall not install, place, inscribe, paint or otherwise attach and shall not permit any sign, advertisement, notice, marquee or awning on any part of the outside of the Premises (including any portion of the Premises fronting on any interior corridor or lobby) or on any part of the inside of the Premises which is visible from outside of the Premises or on any part of the Building (including the outside walls and the roof), without the prior written consent of Landlord in each instance. Any permitted sign shall comply with all applicable laws, matters of record, and Governing Documents, including without limitation all requirements of the Keystone PUD Sign Program, the Neighbourhood Company, Keystone Neighbourhood Company Design Review Board, the Building Association, or the Village Merchants' Association. Tenant shall, at its own expense, maintain in first class condition all permitted signs and shall, on the expiration or termination of this Lease, and at its own expense, remove all such permitted signs and repair any damage caused by such removal. Landlord shall have the right to remove all non-permitted signs without notice to Tenant and at the expense of Tenant. Tenant's obligation under this subsection shall survive the expiration or termination of this Lease. Tenant shall not install, use or permit on or about the Premises any advertising medium that may be heard or seen outside the Premises, such as flashing lights, searchlights, loudspeakers, phonographs or radios, without the prior written consent of Landlord in each instance. During the last 90 days of the Term Landlord shall have the right to place "For Rent" or similar signs upon the Premises.

(ii) **Advertising.** All of Tenant's advertising and marketing efforts in respect to the Premises shall be truthful and tasteful, in keeping with the general nature and image that Landlord seeks to portray from time to time. Landlord shall have the right to prohibit any advertising by Tenant which, in Landlord's reasonable opinion, is not suitable for a prestigious ski resort, is offensive, or which tends to impair the reputation of the Premises, the Building or the Center or their desirability as a location for stores, offices and lodging facilities, and upon notice from Landlord, Tenant shall refrain from or discontinue such advertising or marketing efforts. Tenant shall, at its expense, promote and advertise its business from the Premises in an up-to-date, professional manner, and in a manner designed specifically to attract customers to River Run who are living in, visiting, or working in the market area principally served by River Run. Tenant shall endeavor to promote the name and any logo or emblem of River Run in Tenant's promotions or advertising. Tenant hereby is granted for the Term of this Lease a limited, royalty-free right and license to use the name and any logo or emblem of River Run in Tenant's promotions and advertising. Tenant acknowledges and agrees that such names, logos and emblems are the sole and exclusive property of Landlord and that Tenant will not acquire any rights thereto despite such promotion and advertising. Tenant has no right to use, in any way, any present or future name, logo or emblem of or relating to the resort complex general known as The Keystone Resort or any real estate developments or projects (other than River Run) that are or may be situated within the same (including, without limitation, the names, logos or emblems of The Neighbourhoods at Keystone), or any variations or combinations thereof. Tenant acknowledges and agrees that such names, logos and emblems are the sole and exclusive property of Landlord or third parties and that Tenant will not acquire any rights thereto under any circumstances.

(i) **Hazardous Materials.** Tenant shall not knowingly or unknowingly cause or permit any Hazardous Material to be brought upon, transported through, used, stored, generated, discharged, leaked, or disposed of on, in or about the Premises or the Building without obtaining Landlord's prior written consent, and without limiting the foregoing in all events Hazardous Materials shall be brought upon, transported, used, kept or stored only in such amounts and to such extent as necessary for Tenant to operate its business for the Permitted Use and in accordance with usual and customary business operations and all products and manufacturers' instructions and recommendations. Without limiting the foregoing, Tenant shall comply with all applicable environmental laws and permitting requirements impacting the operations of Tenant on the Premises, and shall immediately report to Landlord any release of Hazardous Materials in the Premises or otherwise by Tenant or its agents, employees or contractors. Copies of any permits for Hazardous Materials must be delivered to Landlord before any Hazardous Material is brought in, on or about the Center. If the Premises, the Building, the Center, any land other than the Building, the atmosphere, or any water or waterway (including groundwater) become contaminated in any manner as a result of any breach of the foregoing covenants or any act or omission of Tenant or any of its agents, employees or contractors, Tenant shall indemnify, defend and hold harmless Landlord, its parent corporations, subsidiaries, insurance companies, affiliates, and their respective contractors, agents, employees, partners, officers, directors, shareholders and

mortgagees, if any, from any and all claims, demands, actions, damages, fines, judgments, penalties, costs (including attorneys', consultants' and experts' fees) liabilities, losses and expenses (including, without limitation, diminution in value of the Premises or the Building and damages arising from any adverse impact on marketing space in the Building arising as a result of such contamination). This indemnification includes, without limitation, any and all costs incurred due to investigation of the site or any cleanup, removal or restoration mandated by federal, state or local agency or political subdivision. Without limitation of the foregoing, if Tenant causes or permits the presence of any Hazardous Material on, in or about the Premises, the Building or the Center that results in contamination, Tenant, at its sole expense, shall complete all required clean up, removal and remediation to return the Premises, the Building and the Center to the condition existing prior to the introduction of any such Hazardous Material(s) to the Premises, the Building or the Center. Tenant shall first obtain Landlord's approval for any such remedial action. Notwithstanding the foregoing, nothing herein contained shall be held to indemnify Landlord from liability or to create any liability on Tenant for Hazardous Materials contamination resulting from Landlord's ownership, use or operation, or the use or operation by other tenants in, on or under the Building or the Center. Within three days of receipt, Tenant shall send to Landlord a copy of any notice, order, inspection report, or other documents issued by a governmental authority relevant to compliance by Tenant, the Premises, the Building, or the Center with applicable laws. As used in this Lease, "**Hazardous Material(s)**" shall mean any hazardous, toxic or radioactive substance, material, matter or waste which is or becomes regulated by any federal, state or local law, ordinance, order, rule, regulation, code or any other governmental restriction or requirement, and shall include asbestos, petroleum products and the terms "**Hazardous Substance**" and "**Hazardous Waste**" as defined in the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9601 *et seq.*, ("**CERCLA**"), and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901 *et seq.* ("**RCRA**").

(j) **Remedies.** If Tenant breaches any of the foregoing covenants contained in this Section 4, Landlord shall have all remedies in this Lease provided for with respect to an Event of Default by Tenant and shall, in addition, have the right to have any such breach enjoined or Tenant's performance of any such covenant specifically enforced, as the case may be.

## 5. TAXES AND OPERATING COSTS.

(a) **Tenant's Obligation.** Subject to the terms of subsection (b), Tenant shall promptly pay with Minimum Rent, on the first day of each month of each calendar year during the Term, all Taxes, Association Dues and Assessments and Operating Costs, whether separately assessed or charged directly to Landlord or Tenant, or determined solely against or with respect to the Premises, provided however, that Tenant will have a 5-day grace period to pay arrearages of taxes and operating costs prior to any late charge assessment by Landlord. If such Taxes, Association Dues and Assessments and Operating Costs are billed to Landlord, Tenant shall promptly pay Landlord for the amount Landlord paid therefor upon Landlord's notification to Tenant of such

payment. To the extent that Taxes, Association Dues and Assessments and Operating Costs are not separately assessed as a cost directly attributable to the Premises but are based on Tenant's pro rata share of the Building such costs shall be determined based on Tenant's Proportionate Share.

(b) **Estimated Payments and Adjustment.** During the Term, Tenant shall pay to Landlord each month, concurrently with payments of Minimum Rent under Section 3(a), one twelfth (1/12th) of Landlord's estimate of Tenant's Proportionate Share of Taxes, Association Dues and Assessments and Operating Costs for that year. Landlord may, from time to time, re-estimate Tenant's Proportionate Share of Taxes, Association Dues and Assessments or Operating Costs, and thereafter adjust Tenant's monthly installments accordingly, and any underpayment by Tenant for the period in question shall be paid by Tenant to Landlord upon demand. After the end of each Landlord fiscal year (as determined by Landlord) the total of Landlord's actual Taxes, Association Dues and Assessments and Operating Costs for such year shall be determined by Landlord and upon notice of such actual amount, Tenant's Proportionate Share paid for such period shall immediately, upon such determination, be adjusted by credit by Landlord to Tenant of any excess, or payment by Tenant to Landlord of any deficiency. Notwithstanding the foregoing, if Landlord is required by any applicable laws, the Association or any other taxing authority to pay any Taxes, Association Dues and Assessments or Operating Costs in advance, then Tenant shall pay Tenant's Proportionate Share of such amount to Landlord upon demand.

(c) **Definitions.** As used in this Lease:

(i) **"Taxes"** shall mean all general and special real estate taxes, assessments, general and special assessments for improvements or otherwise, special district or improvement district assessments, water charges, sewer charges, vault charges, fuel and environmental fees and taxes, and other ad valorem taxes, rates, levies and assessments levied, assessed, charged, imposed, or made a lien upon or with respect to the Premises, the Building or the Center, by any governmental or quasi-governmental authority, or the Association, and all taxes specifically levied, assessed, charged, imposed, or made a lien in lieu of any such taxes. If due to a future change in the method of taxation, any franchise, income, profit or other tax or license fee shall be levied, assessed, charged, imposed, or made a lien in whole or in part in substitution for or in lieu of any amount which would otherwise constitute a part of Taxes, or if there shall be levied against Landlord, the Premises, the Building, or the Center, a tax or license fee measured by gross rents, such franchise, income, profit or other tax or license fee shall be deemed to be a real estate tax and part of Taxes for the purposes hereof. The taxes described in this subsection (c)(i) shall also include all of Landlord's expenses, including, but not limited to, attorneys' fees, incurred by Landlord in any effort to minimize Taxes, whether by contesting proposed increases in assessments or by any other means or procedure appropriate in the circumstances. In no event shall any net income tax payable by Landlord be included in Taxes unless such net income tax is in whole or in part in substitution for or in lieu of a tax or charge that is or would be included in Taxes.

(ii) “**Association Dues and Assessments**” shall mean all dues, costs, charges and expenses payable to any Association that are attributable to the ownership, management, maintenance and/or repair of the Premises, the Building or the Center (as the case may be), which may include, without limitation, any of the categories outlined under Operating Costs below.

(iii) “**Operating Costs**” shall mean all costs, charges and expenses payable by Landlord that are attributable to the ownership, operation, management, maintenance and repair of the Premises, the Building or the Center (as the case may be), which include, but are not limited to, any and all annual or special assessments levied by the Association and any and all dues, assessments, costs, charges and expenses payable to any Association that are attributable to the ownership, management, maintenance and/or repair of the Premises, the Building or the Center (as the case may be), including but not limited to assessments for capital expense reserves, any and all operating and cleaning services, trash removal, snow removal, repairs and maintenance of the area adjacent to the Building, including sidewalks, malls, decks, stairs, grounds, curbs, loading areas, private streets and alleys, access roads, lighting facilities, hallways, restrooms, covered and uncovered parking areas, as well as security and security patrol, fire protection, signs and the reasonable cost and expense of replacement and maintenance of landscaping and shrubbery, as needed, and insurance. If Landlord pays or incurs any Operating Costs which include other property owned by Landlord, Landlord shall conclusively allocate to in a reasonably equitable manner, a portion of such costs. Operating Costs shall not include any costs, charges or expenses included in Taxes or any renting commissions or costs of painting or decorating any other tenant’s space.

(iv) “**Tenant’s Proportionate Share**” shall mean the percentage of Taxes, Association Dues and Assessments, and Operating Costs allocated to the Premises, as determined by Landlord in a reasonably equitable manner. Generally, when such costs are attributable to the Building, such percentage shall be determined by using a fraction, the numerator of which shall be the square footage of the Premises and the denominator of which shall be the total leasable square footage of the Building, and when such costs are attributable to the Center, the numerator of which shall be the square footage of the Premises and the denominator of which shall be the total leasable square footage of the Center.

(d) **Review of Taxes, Association Dues and Assessments; Operating Costs Determination.** If Tenant wishes to dispute Landlord’s determination of actual Taxes, Association Dues and Assessments and Operating Costs for any calendar year or the calculation of any Additional Rent due under this Section 5, Tenant shall give Landlord written notice of such dispute within three months after receipt of notice from Landlord of the matter giving rise to the dispute. If Tenant does not give Landlord such notice within such time, Tenant shall have waived its right to dispute such determination or calculation. In the event Tenant disputes any such determination or calculation, Tenant shall have the right to inspect Landlord’s accounting records at Landlord’s accounting office and if, after such inspection, Tenant still disputes such



determination or calculation, a certification as to the proper amount made by mutually acceptable independent certified public accountants shall be final and conclusive. Tenant agrees to pay the cost of such certification unless it is determined that Landlord's original certification was in error (in Landlord's favor) by more than 5% of the proposed Additional Rent charge to Tenant, in which case Landlord shall pay for such costs in an amount up to \$3,500. Notwithstanding the pendency of any dispute hereunder, Tenant shall make payments based upon Landlord's determination or calculation until such determination or calculation has been established hereunder to be incorrect.

(e) **Proration for Partial Calendar Year.** If the Term of this Lease commences after the beginning of or expires before the end of a calendar month, any amount payable by Tenant under this Section 5 with respect to that calendar year shall be adjusted proportionately on a daily basis, and the obligation to pay such amount shall survive the expiration or earlier termination of this Lease.

(f) **Tenant's Personal Property Taxes.** Tenant shall pay before delinquency any and all taxes, assessments, license taxes, fees and other charges levied, assessed or imposed and which become payable during the Term of this Lease upon Tenant's operations at, occupancy of or conduct of business at the Premises or upon Tenant's leasehold improvements, equipment, inventory, furniture, appliances, trade fixtures and any other personal property of any kind installed or located at the Premises. If the taxing authorities fail to render a separate tax bill with respect to any or all of such property, Landlord shall reasonably allocate to such property a portion of such taxes. Tenant shall pay such amount to Landlord promptly upon receipt of a written statement of such allocation.

(g) **Conference Center Fee.** This provision shall relate to the conference center consisting of existing meeting space and facilities in Keystone, Colorado (the "**Conference Center**"). Tenant's obligations in this subsection shall commence on the Commencement Date, regardless of whether Tenant's obligation to pay Percentage Rent or Operating Costs may commence at a later date.

(i) Tenant shall pay to Landlord, for transmittal to Keystone Conference Services, Inc., a Colorado corporation, a conference center fee (the "**Fee**") equal to 5.9% of the gross sales price of such merchandise, goods and services as are or may be subject to sales tax under Colorado law (subject to the provisions of this Section below). The Fee shall constitute a charge in addition to the rent paid by Tenant and any other amounts due to Landlord from Tenant under this Lease. The Fee shall be payable monthly by Tenant on the same date that Tenant furnishes Landlord with accurate and exact copies of all sales tax reports, as required hereunder.

(ii) Tenant acknowledges that the obligation of Tenant to pay the Fee is a material part of the consideration payable by Tenant hereunder, and that the Fee is deemed Additional Rent under this Lease. Accordingly, if Tenant does not pay the Fee in full on or before

the date due, Tenant shall be deemed in default, and Landlord shall be entitled to exercise all rights and remedies available hereunder.

(h) **Keystone Neighbourhood Company Sales Assessment.** Tenant's obligations in this subsection shall commence on the Commencement Date, regardless of whether Tenant's obligation to pay Percentage Rent or Operating Costs may commence at a later date.

(i) Pursuant to the Governing Documents, Landlord must:

(1) Pay to the Neighbourhood Company an assessment (the "**Sales Assessment**") on all sales ("**Taxable Sales from the Premises**") of goods and services made from the Premises that are subject to the Colorado Emergency Retail Sales Tax Act of 1935, Colorado Revised Statutes, 1973, Title 39, Article 26 (as the same may be amended or replaced from time to time, together with all regulations promulgated thereunder, the "**Colorado Sales Tax Act**"); and

(2) Deliver to the Neighbourhood Company true and complete copies of all written reports, returns, statements, records and declarations including all supplements and amendments thereto that are made or provided to the State of Colorado in connection with all Taxable Sales from the Premises.

(ii) The current rate of the Sales Assessment is 0.5% of the amount of all Taxable Sales from the Premises. The Neighbourhood Company may raise the rate of the Sales Assessment up to a rate of 6% of the amount of all Taxable Sales from the Premises.

(iii) Tenant shall pay to Landlord, as Additional Rent, any and all amounts due from Landlord to the Neighbourhood Company as a Sales Assessment with respect to all Taxable Sales from the Premises each time and at such times as Tenant is required to pay tax to the State of Colorado under the Colorado Sales Tax Act.

(iv) Tenant shall deliver to Landlord and to the Neighbourhood Company, as Landlord directs, true and complete copies of all reports that are made or provided to the State of Colorado in connection with Taxable Sales from the Premises each time and at such times as Tenant is required to deliver the same to the State of Colorado under the Colorado Sales Tax Act.

(v) Notwithstanding the foregoing, Tenant's transfer(s) of any "Site" or "Time Share Estate" shall be subject to those charges set forth in Section 6.06 of the Declaration of Covenants, Conditions and Restrictions for The Neighbourhoods at Keystone.

(i) **Village Merchant's Association.** Tenant shall become a member of and maintain membership in the Village Merchants' Association, an association of merchants and other tenants of River Run. Tenant shall abide by all bylaws, rules, regulations, decisions and directives of the

Village Merchants' Association that are not in conflict with this Lease, or in any manner detrimental to Landlord. Tenant agrees to contribute \$1,000 per Lease Year (or a pro rata portion thereof for any period of less than a Lease Year) during the Term to the Village Merchants' Association (the "Merchants' Association Fee"). Landlord and Tenant agree that the Merchants' Association Fee shall not be included as part of Operating Costs. Landlord may (without being obligated to do so) institute any legal proceedings in its own name to enforce the rights of the Village Merchants' Association. All of the foregoing shall continue to bind Tenant regardless of whether Landlord is contributing funds to the Village Merchants' Association.

6. TENANT'S WORK.

(a) **Tenant's Work.** Tenant shall perform certain work on the Premises as specified on Exhibit B attached hereto ("Tenant's Work"). As part of the Tenant's Work, Tenant shall perform any work within the Premises as necessary to make the Premises consistent with a first-class, prestigious ski resort town, and any work performed by Tenant in the Premises shall be performed in accordance with the guidelines and restrictions set forth in Section 7 below. Tenant agrees to hire a general contractor for Tenant's Work, which shall be subject to the reasonable approval of Landlord. Tenant shall be responsible for obtaining all applicable approvals and permits necessary for the completion of Tenant's Work and Tenant's occupancy of the Premises, including, without limitation, a health department permit (if applicable), a building permit, a certificate of occupancy, and approval of the Association if necessary. If Tenant fails to obtain a health department permit (if applicable), a building permit, a certificate of occupancy and all required Association approvals prior to opening, Landlord shall be entitled to terminate this Lease, effective immediately upon notice to Tenant. Tenant shall commence Tenant's Work no later than 10 days after Landlord's delivery of the Premises to Tenant, and thereafter diligently prosecute the same to completion. Tenant shall complete Tenant's Work and open the Premises for business to the public no later than November 1, 2024 (the "Opening Deadline"). Without limiting any other remedies of Landlord pursuant to this Lease, at law, or in equity, if Tenant fails to so open by the Opening Deadline, Landlord shall have the right, effective immediately upon written notice to Tenant, to terminate the Lease.

(b) **Tenant Allowance.**

(i) Landlord shall reimburse up to \$10,000 USD toward the cost of Tenant's Work (the "Tenant Allowance"). The Tenant Allowance shall only be used for payment of hard costs consisting of architect, design and engineering, the actual cost of construction of the Tenant Work, including, without limitation, the cost of labor and materials, testing and inspection costs, trash removal costs, and contractors' fees and general conditions and permit and license fees relating to construction of the Tenant Work, and shall not be used for soft costs such as legal fees,

moving expenses, insurance, purchase and installation of telecommunications equipment and data cabling or purchasing and installing furniture and equipment or other items of personal property, including but not limited to artwork equipment or as mutually agreed upon by Landlord and Tenant. Notwithstanding anything contained in this lease to the contrary, no more than ten (10%) percent of the Construction Payment may be used for architectural, engineering, space planning, expediter and inspection fees, fees for all municipal and other permits, licenses and approvals and other so-called "soft costs" (all of the foregoing being herein referred to as the "Soft Costs"), and then only to the extent that same are directly related to Tenant's Work (as opposed to being related to furniture, furnishings or other non-"hard cost" items, none of which shall be paid for, or reimbursed by Landlord). As further clarification, reimbursement will not be made on any removable equipment, furniture, signage, or branded fixtures. Generic improvements that will stay in the space, including work to the storefront, flooring, electrical, plumbing, lighting, millwork and shelving will be reimbursed. Prior to the Effective Date, Tenant shall provide evidence reasonably acceptable to Landlord that Tenant has sufficient committed, available funds to pay the full costs of completion of Tenant's Work in excess of the Tenant Allowance, and shall provide evidence ratifying and reaffirming such ability from time to time upon request by Landlord

(ii) Upon Tenant's written request to Landlord, Landlord shall pay such sum to Tenant within 45 days after the later to occur of the following: (A) after Tenant has submitted the necessary invoices to Landlord no later than November 20, 2024; and (B) Tenant has delivered to Landlord a written request for such payment, accompanied by the following documents, materials and information: (1) a complete list of the names, addresses, telephone numbers and contract amounts for all contractors, subcontractors, vendors or suppliers providing materials or labor for Tenant's Work; (2) all mechanics' lien releases or other lien releases on account of Tenant's Work, which are notarized, unconditional and in recordable form or in such form as Landlord shall have approved; (3) a copy of the final as-built plans and specifications for the Premises; and (4) a detailed walk-through has occurred with the Landlord to verify the completion of all work as pursuant to the as-built plans. Notwithstanding anything in this Lease to the contrary, Landlord shall have the right (but not the obligation) to pay the Tenant Allowance directly to Tenant's general contractor, to Tenant's general contractor in the form of a joint check with Tenant, and/or to Tenant's subcontractors, suppliers or vendors used for Tenant's Work in the form of a joint check with the general contractor. If Tenant fails to open by the Opening Deadline set forth in subsection (b) above, or if Tenant is otherwise in default under this Lease, then in addition to all its other rights and remedies under this Lease, at law and in equity, and regardless of whether such default is subsequently cured, Landlord shall have the right (but not the obligation), in its sole and absolute discretion, (I) to elect to not pay all or any unpaid portion of the Tenant Allowance to Tenant, and (II) to perform or cause to be performed, all or any portion of Tenant's Work (the "**Landlord TI Work**"), including without limitation the right in Landlord's sole and absolute discretion to select the contractors to perform Tenant's Work, contract directly with such contractors, and pay such contractors directly. All such Landlord TI Work shall be provided without representation or warranty by Landlord or its affiliates, and Landlord expressly disclaims

any warranty of merchantability, habitability, workmanship, fitness for a particular purpose, or any other express or implied warranty. Landlord shall have no obligation to select the lowest-costing contractors, methods, or materials or otherwise complete any such work at the lowest possible cost, it being acknowledged and agreed that completion of such work as quickly as possible is the highest priority of the parties. Tenant promptly upon demand shall either (at Landlord's election in its sole discretion) pay for directly or reimburse Landlord for, any and all hard and soft costs for the Landlord TI Work, including, without limitation, the cost of labor and materials, trash removal costs, project management fees, design fees, allocated overhead and staffing costs, insurance costs, taxes, inspections, contractors' fees, general conditions and permit and license fees relating to the construction and performance of Tenant's Work, whether incurred by or payable to Landlord or any affiliated or third party (the "**Landlord TI Costs**"); provided, however, the Tenant Allowance may be applied as a credit against any such obligations. No portion of the Tenant Allowance shall be paid until the Landlord TI Work has been fully completed. Thereafter, any portion of the Tenant Allowance remaining after being applied to the Landlord TI Costs may be paid to Tenant in accordance with the terms of the Lease. Tenant shall be solely responsible for the prompt payment or reimbursement of any and all Landlord TI Costs in excess of the Tenant Allowance.

(iii) Notwithstanding anything contained herein to the contrary, Landlord shall not be required to pay the Tenant Allowance unless Tenant requests disbursement of the Tenant Allowance by delivering to Landlord written request therefore together with reasonable documentation evidencing the requirements set forth above have been satisfied no later than November 20, 2024, in all events by the termination of the calendar year 2024 and Landlord shall be under no obligation, and shall have no liability for, any payment of the Tenant Allowance subsequent to the termination of the calendar year 2024, which deadline shall not be subject to extension notwithstanding any cure period or any other provision to the contrary in this Lease, it being understood by Tenant that under all circumstances Landlord must have 30 days prior to the end of the calendar year to conduct a walk-through, review, process, and pay approved requests for disbursement of all tenant improvement allowances, and without exception any payment of the Tenant Allowance cannot be paid by Landlord after the end of the calendar year 2024. Landlord makes no representation or warranty that the Tenant Allowance is sufficient to pay the cost of the Tenant's Work. Tenant shall pay the amount of any excess of the cost of the Tenant's Work over the Tenant Allowance. Landlord and Tenant acknowledge Tenant's Work shall constitute the property of Landlord to the extent that Tenant performs such Tenant's Work using the proceeds of the Tenant Allowance, subject, nevertheless, to Tenant's rights to use such Tenant's Work as part of the Premises during the Term in accordance with the terms of this Lease.

(c) **Early Access to Premises.** With the prior written consent of Landlord, Tenant may enter upon the Premises prior to the Commencement Date for the purpose of performing Tenant's Work. If Tenant enters the Premises prior to the Commencement Date, with the prior written consent of Landlord, the early entry will be at Tenant's sole risk and subject to all the terms and

provisions of this Lease as though the Commencement Date had occurred, except for the payment of Minimum Rent and Percentage Rent. Tenant hereby agrees to indemnify, defend and hold Landlord harmless against any injury, loss or damage which may occur to any person or any property as a result of any of Tenant's Work or installations made in the Premises, the same being at Tenant's sole risk. Prior to any early entry by Tenant, Tenant shall provide Landlord with proof of insurance coverages described in this Lease (including without limitation Landlord named as an additional insured) and Tenant shall pay the utility expenses for the Premises commencing with such early entry. Landlord may impose additional conditions on Tenant's early entry that Landlord, in its reasonable discretion, deems appropriate and Landlord will further have the right to require that Tenant execute an early entry agreement containing those conditions prior to Tenant's early entry. Any delay to the Substantial Completion of Landlord's Work caused by such early access to the Premises by Tenant, shall be an automatic Tenant Delay.

## 7. ALTERATIONS.

(a) **Alterations to the Premises.** No work shall be performed or improvements or alterations to the Premises made by Tenant, including Tenant's Work, without first obtaining the prior, written consent of Landlord to any such work, improvements or alterations. Tenant understands that such consent will be conditioned upon compliance with Landlord's requirements as in effect at the time permission is requested, which requirements will include, but not be limited to, Landlord's approval of plans, specifications, contractors, insurance and hours of construction and design. Landlord may condition its approval on certain revisions or other requirements, and if Landlord does so, Tenant will be obligated to incorporate such revisions or requirements into its leasehold improvements. Approval of any improvements or work plans by Landlord shall not constitute the assumption of any responsibility by Landlord for their accuracy, sufficiency, or compliance with applicable codes, regulations, rules or design standards and Tenant shall be solely responsible for obtaining any other approvals necessary and ensuring that the design of all alterations strictly complies with the requirements of all applicable laws and matters of record. Tenant represents and warrants that any work performed by Tenant shall be in full compliance with all applicable laws, including without limitation the Americans with Disabilities Act and local building codes, and the Governing Documents. Prior to the commencement of Tenant's Work, Tenant agrees to (i) post a letter of credit at the request of Landlord for the amount requested by, in a form, and from a bank acceptable to Landlord; (ii) on request, deliver to Landlord certificates issued by applicable insurance companies evidencing that workers compensation, public liability and property damage insurance, all in amounts, with companies and on forms satisfactory to Landlord are in full force and effect and maintained by all contractors and subcontractors engaged by Tenant to perform such work; and (iii) provide Landlord with written proof of a building permit and any other necessary documentation requested by Landlord. All alterations to the Premises, including without limitation Tenant's Work shall be performed in a good and workmanlike manner and diligently to completion, and shall comply with all applicable laws and matters of record

(b) **Part of Premises.** Any and all alterations, additions, fixtures or improvements now or hereafter situated in or upon the Premises, whether constructed by, for or at the expense of Landlord or Tenant, including all paneling, partitions and the like, are and shall be and become a part of the Premises and Tenant shall have only a leasehold interest therein, subject to Section 20 and all of the terms and conditions of this Lease. No substitutions by Tenant of any of the improvements will be allowed without the written consent of Landlord.

(c) **Renovation of Premises.** In the event Tenant occupies the Premises for a period of 10 years or longer, then at least every 10 years, upon the request of Landlord, Tenant shall renovate, remodel or refurbish all or any portion of the interior of the Premises so that the furnishings, furniture, floorings, wall fixtures and coverings, equipment and other appurtenances in the Premises shall be consistent with a first-class, prestigious ski resort town. Landlord, in its reasonable discretion shall determine the specific requirements of any such requested renovation, refurbishing or remodeling and such work shall be done in accordance with plans and specifications approved by Landlord in writing prior to the commencement of any such work. Any and all such work shall be done at Tenant's sole cost and expense, including, but not limited to, the costs of creating the plans and specifications, all construction, material and labor expenses and the cost of any and all required permits and inspections.

(d) **Plans and Warranties.** Tenant shall cause as-built plans, specifications and surveys for all alterations to be delivered to Landlord within 60 days of completion. Tenant shall also require its contractors to warrant their work, in writing, for not less than one year from and after completion against defects in workmanship, materials, and equipment, and Tenant shall ensure that such warranties are assignable to and assigned to Landlord upon Landlord's request such that Landlord shall be entitled to enforce all warranties. Tenant shall further require that all contractors waive any and all claims for damages against Landlord. In addition, Tenant shall require its contractors to be jointly and severally responsible with Tenant for securing the Premises during the performance of alterations at all times prior to completion of the alterations in question, and shall require its contractors to remove all materials, personnel, tools and supplies from the Building immediately upon completion of the alterations.

8. **QUIET ENJOYMENT.** Landlord covenants and agrees with Tenant that in partial consideration for Tenant paying Minimum Rent, Percentage Rent and Additional Rent hereunder and observing and performing all the terms, covenants and conditions of this Lease on Tenant's part to be observed and performed, Tenant shall peaceably and quietly enjoy the Premises without interruption by Landlord or any person or persons claiming by, through or under Landlord, subject, nevertheless, to the terms and conditions of this Lease, and to the underlying declarations, leases, mortgages and other matters herein mentioned, including without limitation the Governing Documents, and all matters of record.

9. ACCEPTANCE OF PREMISES. Tenant's possession of the Premises shall be conclusive evidence of Tenant's acceptance that the Premises and the Building are in good and satisfactory condition. Tenant acknowledges that Tenant has inspected the Premises and accepts the Premises in an "as is, with all faults" condition and that Landlord shall be obligated for no work or improvements in the Premises, Building or Center unless otherwise specified herein. Tenant agrees that no representations respecting the condition of the Premises or the existence or non-existence of Hazardous Materials in, on or about the Premises, no warranties or guarantees, expressed or implied, with respect to workmanship or any defects in material, and no promise to decorate, alter, repair or improve the Premises either before or after the execution hereof, have been made by Landlord or its agents to Tenant. Landlord shall not be responsible for performing any upgrades to the Building or the Premises which are required as a result of governmental code regulations due to Tenant's Work or alterations as more specifically described in Section 6 and Section 7 or due to Tenant's use of the Premises; in such event, Tenant shall be solely responsible for the expense and completion of the requisite upgrades, which shall be performed in accordance with the requirements set forth in Section 7.

10. ACCESS TO PREMISES.

(a) **Tenant's Rights.** By the grant of this Lease, Tenant and its business invitees, employees, customers, and licensees have the nonexclusive right to use during the Term of this Lease, in common with Landlord, other tenants and occupants of the Building and others, those portions of the Center designated by the condominium map and declaration and by the Association from time to time as common areas of the Building (the "**Common Areas**"), subject to the terms and conditions of this Lease and the Governing Documents. Tenant's business invitees, customers, and licensees shall use the Common Areas only for the purposes and only in the manner intended and in compliance with the terms and conditions referred to above. Tenant and its employees, servants, agents, representatives, contractors and suppliers (collectively "**Tenant's Employees**") shall use only those parts of the Common Areas specially designated by Landlord for their use ("**Restricted Common Areas**"). The Restricted Common Areas shall be used only at the times and for the purposes designated by the Landlord and in compliance with the terms and conditions referred to above. The obligations of Tenant to so use the Common Areas and Restricted Common Areas and to require Tenant's officers, employees, agents, invitees, licensees and customers to do the same are material obligations of Tenant hereunder and Landlord shall have the right, in addition to all other rights and remedies available to Landlord for breach of this Lease, to deny access to the Premises and the Center to any person who fails to abide by the limitations on the use of the Common Areas, including the limitation on Tenant's Employees to use only the Restricted Common Areas. Tenant shall not interfere with Landlord's or other permitted users' rights to use any part of the Common Areas.

(b) **Landlord's Right of Entry.** Except for emergency situations, in which case Landlord and its agents may enter the Premises without prior notice to Tenant, Landlord and its



agents shall have the right to enter the Premises at any time upon reasonable advance notice to Tenant during business hours (or other reasonable hours), to examine the Premises, to show the Premises to prospective purchasers, mortgagees, lessors or lessees, and to make and perform such decorations, cleaning, maintenance, repairs, alterations, improvements or additions as Landlord may be required to perform under this Lease or as Landlord may deem necessary or desirable for the safety, improvement or preservation of the Premises or of other portions of the Center or the Building owned or controlled by Landlord, and Landlord shall be allowed to bring upon the Premises all necessary materials, supplies and equipment, without the same constituting an eviction of Tenant in whole or in part or entitling Tenant to any abatement of rent or damages, by reason of inconvenience, annoyance, disturbance, loss or interruption of business, or otherwise, and without the same affecting Tenant's obligations under this Lease in any manner whatsoever. If Tenant shall not be personally present to permit an entry into the Premises, at any time when for any reason an entry therein shall be necessary or permissible, Landlord or Landlord's agents may enter the Premises by use of a master key, or may forcibly enter the Premises, without rendering Landlord or its agents liable therefor (provided that during such entry, Landlord and its agents shall accord reasonable care to Tenant's property), and without in any manner affecting the obligations and covenants of this Lease except as otherwise provided in this Lease. Nothing contained in this Lease, however, shall be deemed or construed to impose upon Landlord any obligation, responsibility or liability whatsoever, for the care, supervision or repair of the Center, or any part thereof, other than as expressly provided in this Lease. Landlord shall have the right from time to time to install, maintain, use, repair and replace utility lines, unexposed pipes, ducts, conduits and wires in and through the Premises upon giving at least 24-hours' notice (which notice may be written or oral) to Tenant during business hours. If an excavation or remodeling shall be made upon land adjacent to the Building or area adjacent to the Premises or any part thereof or shall be authorized to be made, Tenant shall afford to the person causing or authorized to cause such excavation and remodeling, a license to enter upon the Premises for the purpose of doing such work as such person shall deem necessary to preserve the Building or any part thereof from injury or damage and to support any part thereof by proper foundations without any claim for damages or indemnity against Landlord or diminution or abatement of rent and without the same constituting an eviction of Tenant in whole or in part.

(c) **Tenant Removal of Personal Property.** If during the Term of this Lease Tenant shall have removed all or substantially all of Tenant's property from the Premises for purposes other than cleaning, maintenance, repair and/or redecoration of the Premises or for a duration of 48 hours or more without Landlord's prior written approval, the same shall be deemed an automatic Event of Default pursuant to this Lease, and Landlord may pursue any and all remedies available to it under the law or pursuant to this Lease. Additionally, Landlord may immediately enter and alter, renovate and redecorate the Premises without incurring liability to Tenant for any compensation or damages, and such acts shall not entitle Tenant to any elimination or abatement of rent and shall not have the effect of terminating this Lease or making this Lease void or voidable by Tenant.

11. MAINTENANCE AND REPAIRS.

(a) **Tenant's Obligations.**

(i) Tenant shall be responsible for the repair and maintenance of all fixtures, equipment and systems that solely serve the Premises, including windows, plate glass, doors, storefronts, plumbing, pipes (including grease trap lines), electrical wiring, conduits, lighting, signs, plants, trees and planters, and Tenant shall maintain all of its furniture, furnishings and decorations in, on or about the Premises in first-class condition and shall, at its sole cost and expense, perform such maintenance, redecorating and remodeling and make such repairs, restorations and replacements of such items as may be necessary to maintain the Premises in attractive first-class condition. Tenant will promptly do all work falling within the aforementioned required responsibilities of Tenant to have the Premises comply with all governmental, quasi-governmental, insurance, and Association requirements applicable and sought to be enforced at any time during the Term.

(ii) Tenant shall be responsible for the installation, maintenance, repair and replacement of air conditioning, heating and ventilation systems within and specifically for the Premises, including all components such as air handling units, air distribution systems, motors, controls, grilles, thermostats, filters and all other components. Tenant shall contract with an HVAC maintenance contractor (on a contract form reasonable acceptable to Landlord) who shall inspect not less than semi-annually and service as required those portions of the HVAC system located within the Premises at Tenant's sole cost and expense. No work shall be done on the HVAC system except by a professional HVAC maintenance contractor. Any modifications, relocations, adjustments or renovations of the HVAC system shall be done only by such approved HVAC professionals, and with the prior written approval of Landlord.

(iii) Tenant shall comply with all provisions of Section 7 of this Lease in connection with the repairs, restorations and replacements required under this Section 11. There shall be no abatement of rent or allowance to Tenant for a diminution of rental value and no liability on the part of Landlord, by any reason of inconvenience, annoyance, disturbance or loss or interruption of business, or otherwise, arising from Landlord, Tenant or others making any repairs, restorations, replacements, alterations, additions or improvements in or to any portion of the Building, the Center or the Premises, or in or to fixtures, appurtenances or equipment thereof or other tenants failing to make repairs. Landlord agrees to exercise reasonable care to prevent interruptions to Tenant's operation while performing maintenance and repairs on the Premises, provided Landlord shall have no obligation to pay for overtime labor.

(iv) If Tenant fails to perform any required maintenance or make any repairs, restorations or replacements required by this Lease, Landlord may (but without any obligation to

do so) perform such maintenance or make such repairs, restorations or replacements at the expense of Tenant and such expense, with interest, shall be due as Additional Rent.

(b) **Association's Obligations.** The Association shall be responsible for keeping or causing to be kept the foundations, roof and structural portions of the Building and the exterior walls of the Premises, the Common Areas of the Building, and the Association property, including any easements granted to the Association, in good repair and condition except for damage thereto due to the acts or omissions of Tenant, its agents, employees or invitees, in which case such repair or maintenance will be the sole responsibility of Tenant. The Association shall be responsible for the repair and maintenance of all structural portions of the Premises, other than those portions installed by Tenant, including basic plumbing, air conditioning and heating and electrical systems, (unless only serving the Premises, in which case such repair or maintenance shall be Tenant's sole responsibility) unless the condition requiring such repair or maintenance is caused in part or in whole by the act, neglect, fault or omission of Tenant, its agents, servants, employees, licensees, contractors or invitees, in which case Tenant shall perform such maintenance and repairs. Landlord shall not be responsible for any repairs, replacements or maintenance that are the Association's responsibility.

(c) **Landlord's Obligations.** Landlord or the Association shall keep or cause to be kept in good repair, order and condition, consistent with good industry practice for properties similar in size, nature and age to the Center, the structural components of the Center, to the extent the same are owned or controlled solely by Landlord or, if not owned or controlled solely by Landlord, to the extent that the entity owning or controlling the same allows Landlord. Tenant acknowledges that:

(i) Landlord owns the commercial space in the Center and an undivided interest in the Common Areas, but does not control the Common Areas; and

(ii) Landlord's rights and obligations with respect to the Common Areas are specified in, and limited by, the Governing Documents.

Landlord shall have the right to install and maintain in the Premises whatever equipment is reasonable, useful, or necessary for the use and convenience of the Premises, the Building, or the Center, or other tenants, occupants or owners of the various portions thereof, and Tenant shall have no claim against Landlord in respect thereof on the condition that the same do not materially interfere with Tenant's quiet enjoyment of the Premises. Landlord shall not be obligated to perform any maintenance or make any repairs, replacements, or improvements of any kind in or to the Premises or the Building, or to any equipment, goods, facilities or fixtures therein, except as specifically provided in this subsection (c). Unless expressly provided for in this Lease, Tenant waives the right to make repairs at Landlord's expense. The terms of this Section shall not

apply in the case of damage or destruction by fire or other casualty, condemnation, or eminent domain, in which event the obligations of Landlord shall be controlled by Sections 13 and 14.

(d) Operational Requirements. Tenant further covenants and agrees that it will, at its sole cost and expense:

(i) Keep all trash, refuse, rubbish and recycling, shall be kept in covered receptacles, which receptacles shall be located within the Premises until removed by Tenant. Tenant may remove (i) such trash and/or recycling to a Landlord designated area which shall be accessed through the path of travel designated by Landlord. All wet garbage shall be double bagged, placed same in containers that prevent the escape of vapors or odors and transport same in sealed, watertight, rubber or plastic industrial-type containers having rubber wheels and bumpers.

(ii) As soon as practicable and in any event within twenty-four (24) hours after any exterior or interior glass (including mirrors) is broken or cracked, including any so-called "bulls eye" break in the glass, replace such glass with glass of the same kind and quality, and repair or replace the frames for such glass if reasonably necessary, and if Tenant fails to do so within a reasonable period of time (not to exceed 3 business days) following its receipt of notice from Landlord, Landlord may perform such work on Tenant's behalf, and Tenant shall pay all actual and documented third party out-of-pocket costs and expenses incurred by Landlord in so doing.

(iii) Subject to the terms hereof, Tenant shall have the right to sell, serve or otherwise allow the consumption of beer, wine and liquor in, on or from the Premises for on-Premises (and if allowed by Requirements, as an ancillary and de minimis element of Tenant's business only, off-Premises) consumption. Tenant shall obtain all licenses, together with all other permits or approvals under applicable laws (collectively, the "Liquor Licenses") as may be required to permit Tenant to sell beer, wine and liquor from the Premises for on-Premises consumption; provided, however, Tenant shall not sell beer, wine and/or liquor from the Premises during any time that applicable state laws or regulations prohibit same. Without limiting the foregoing, at no cost or expense to Landlord, promptly following Tenant's request therefor, Landlord will reasonably cooperate with Tenant, at no cost or liability to Landlord, in completing such, forms and documentation that may be necessary in order for Tenant to obtain the Liquor Licenses. Provided that Tenant (i) obtains and maintains the Liquor Licenses as aforesaid, (ii) complies with all applicable state laws with respect to the sale of beer, wine and liquor, and (iii) complies with all provisions of this Lease applicable thereto, Tenant shall have the right to sell beer, wine and liquor from the Premises for on-Premises (and if allowed by Requirements, as an ancillary and de minimis element of Tenant's business only, off-Premises)) consumption. Without limiting the provisions hereof, Tenant shall maintain with a responsible and qualified insurance company reasonably approved by Landlord, and otherwise in compliance with the terms hereof, plus additional coverage of at least \$1,000,000 per occurrence or such higher limits as Landlord

may from time to time reasonably request (but not more than once each three (3) years), the broadest available so-called legal liquor liability insurance (sometimes also known as "dram shop" insurance) policy or policies, on a broad form policy (providing the coverage afforded by the then most current ISO policy), which shall insure Tenant and Landlord (disclosed and undisclosed), and all those claiming by, through or under Landlord, adequately in Landlord's reasonable judgment, against any and all claims, demands or actions that may arise out of or result from the sale of beer, wine and liquor in, on and from the Premises. All such insurance shall comply with all of the requirements of this Lease.

(e) **Neighbourhood Company Obligations.** The Neighbourhood Company shall maintain all common elements, improvements and landscaping as provided in The Declaration of Covenants, Conditions and Restrictions for the Neighbourhoods at Keystone, as amended from time to time.]

## 12. MECHANIC'S LIENS.

(a) **No Mechanic's Liens.** Tenant shall pay or cause to be paid all costs for work done by it or caused to be done by it in or to the Premises and Tenant shall keep the Premises, including any improvements, additions or other construction made by or for Tenant or at Tenant's direction in or to the Premises or against any equipment or fixtures installed by Tenant therein, free and clear of all mechanic's or materialmen's liens and other liens on account of work done for Tenant or persons claiming under it. Should any such liens, or recorded notices, lis pendens, or other documents related to a lien or potential lien, be filed or recorded against the Premises, the Building, the Center, or any part thereof, or any action affecting the title thereto be commenced, Tenant shall give Landlord written notice thereof. Tenant shall cause such liens, lis pendens, or other documents to be removed of record, or any such action to be dismissed, within 5 days of Tenant obtaining notice or knowledge thereof, except that if Tenant shall desire to contest any claim of lien, it shall, if consented to by Landlord in its sole and absolute discretion, furnish Landlord with security satisfactory to Landlord of at least 150% of the amount of the claim (and at Landlord's discretion, a bond covering such lien, plus estimated costs and interest, or otherwise Tenant may consent such claim of lien only if it complies with procedures under applicable law to cause the lien or other documents to be removed of record and the Premises, the Building and the Center to have record title free and clear of such claim of lien, related documentation, or action, as applicable. Without limiting Tenant's obligations above, if a final judgment establishing the validity or existence of a lien for any amount is entered, or if payment must otherwise be made to avoid foreclosure of the Premises, the Building, or the Center, Tenant shall pay and satisfy the same at once. In the event of Tenant's failure to release of record any such lien or other documents, or cause such action to be dismissed, within the aforesaid period, Landlord may remove said lien by paying the full amount thereof, and irrespective of the fact that Tenant may contest the propriety or the amount thereof, and Tenant, upon demand, shall pay Landlord the amount so paid by Landlord in connection with the discharge of said lien, together with interest thereon at the Default

Rate, including reasonable attorney's fees, which amounts are due and payable in full to Landlord as Additional Rent on the first day of the next following month. Nothing contained in this Lease shall be construed as consent on the part of Landlord to subject Landlord's estate in the Premises to any lien or liability under the lien laws of the state in which the Premises is located. Tenant's obligation to observe and perform any of the provisions of this subsection (a) shall survive the expiration of the Lease or the earlier termination of this Lease.

(b) **Personal Property Liens.** Tenant shall not create or suffer to be created a lien against any alterations made to the Premises by or for Tenant or at Tenant's direction in or to the Premises or against any equipment or fixtures installed by Tenant in the Premises. Any security interest created or suffered in violation of the foregoing shall be an automatic Event of Default pursuant to this Lease for which Landlord shall have each and every remedy provides for by this Lease or applicable law, including without limitation the right of Landlord to pay any underlying claim at the expense of Tenant. Upon demand, Tenant shall pay Landlord all amounts expended or incurred by Landlord in connection with the investigation, negotiation, release or discharge of any such lien, together with interest at the Default Rate, and including Landlord's reasonable attorneys' fees and all of its out-of-pocket expenses.

(c) **Landlord's Rights.** At least 30 days prior to the commencement of any work in or to the Premises, including without limitation Tenant's Work, by or for Tenant or anyone claiming under Tenant, Tenant shall notify Landlord of the proposed work and the names and addresses of the persons supplying labor and materials for the proposed work so that Landlord may avail itself of the provisions of statutes such as Colorado Revised Statutes Section 38-22-105(2), in the form attached hereto as Exhibit D or in any other form as elected by Landlord in its sole discretion. During and prior to any such work on the Premises, Landlord and its agents shall have the right to go upon and inspect the Premises at all reasonable times, and shall have the right to post and keep posted thereon notices provide for or allowed under applicable law, such as those provided for by Colorado Revised Statutes Section 38-22-105(2), or to take any further action which Landlord may deem to be proper for the protection of Landlord's interest in the Premises.

(d) **Contractors.** Tenant shall not, at any time, either directly or indirectly, use any contractors or labor or materials in connection with any alterations to the Premises, including without limitation Tenant's Work, or otherwise, if the use of such contractors, labor or materials would create any work stoppage, picketing, labor disruption or any other difficulty with other contractors or labor engaged at the Center. Tenant shall immediately stop any work or other activity if Landlord shall notify Tenant that continuing the same would violate the provisions of this Section.

13. CASUALTY AND OBSOLESCENCE.

(a) **Casualty.**

(i) If the Center or the Premises shall be partially or totally damaged or destroyed by fire or other casualty (and if this Lease shall not be terminated as in this Article 13 hereinafter provided), (i) Landlord shall diligently repair the damage to the core and shell of the Premises (not including the alterations or installations made by Tenant or Tenant's personal property or equipment) (herein called "**Landlord's Restoration Work**") to substantially the same or better condition than existed prior to the casualty, and (ii) Tenant shall repair the damage to the, alterations or installations made by Tenant or Tenant's personal property or equipment (collectively, "**Tenant's Restoration Work**"), which Tenant Restoration Work shall be performed diligently and in a workmanlike manner after Tenant is given access to the Premises following substantial completion of Landlord's Restoration Work. The Tenant Restoration Work shall be deemed to constitute Alterations for the purposes of hereof. Tenant shall be solely responsible for (a) the amount of any deductible under the policy insuring the Alterations and (b) the amount, if any, by which the cost of the Tenant Restoration Work exceeds the available insurance proceeds therefor (i.e., Tenant shall not be entitled to any reimbursement from Landlord or Landlord's insurer if the cost of the Tenant Restoration Work exceeds the available insurance proceeds).

(ii) If all or part of the Premises shall be damaged or destroyed or rendered completely or partially untenable on account of fire or other casualty, the Minimum Rent and the Additional Rent hereunder shall be abated in the proportion that the untenable area of the Premises bears to the total area of the Premises, for the period from the date of the damage or destruction to the date on which Landlord's Restoration Work shall be substantially completed.

(iii) If the Center shall be totally or materially damaged or destroyed by fire or other casualty, or if the Center shall be so damaged or destroyed by fire or other casualty (whether or not the Premises are damaged or destroyed) that its repair or restoration requires more than one hundred eighty (180) days or the expenditure of more than twenty-five (25%) percent of the full insurable value of the Building immediately prior to the casualty (as estimated in any such case by a reputable contractor, registered architect or licensed professional engineer designated by Landlord), then in such case Landlord may terminate this Lease by giving Tenant notice to such effect within one hundred eighty (180) days after the date of the casualty. In addition, if the Center or the Premises shall be substantially damaged or destroyed by fire or other cause at any time during the last two years of the term of this Lease, then either Landlord or Tenant may cancel this Lease upon written notice to the other party given within sixty (60) days after such damage or destruction. If this Lease is not terminated pursuant to the preceding sentence, Landlord shall perform Landlord's Restoration Work and Tenant shall perform Tenant's Restoration Work pursuant to this Article 13 and Tenant shall be entitled to any rent abatement Tenant may be entitled to pursuant to Section 13(a)(ii) above.

(iv) Tenant shall not be entitled to terminate this Lease and Landlord shall have no liability to Tenant for inconvenience, loss of business or annoyance arising from any repair or restoration of any portion of the Premises or of the Building pursuant to this Article 13.

(v) Notwithstanding anything to the contrary contained herein, if Landlord or any mortgagee shall be unable to collect all of the insurance proceeds (including rent insurance proceeds) applicable to damage or destruction of the Premises or the Center by reason of any negligence or misconduct on the part of Tenant or any person or entity acting by, through or under Tenant including, without limitation, Tenant's agents, employees, contractors, successors or assigns, then, without prejudice to any other remedies which may be available against Tenant, (i) there shall be no abatement of rent, and (ii) Landlord shall have no obligation to restore the Premises, except to the extent of insurance proceeds made available to Landlord by any such mortgagee of the building project.

(vi) Landlord (including anyone acting by or through Landlord) shall not be liable for any injury or damage to persons or property or interruption of Tenant's business resulting from fire or other casualty, any damage caused by other tenants or persons in the Building or by construction of any private, public or quasi-public work, any latent defect in the Premises or Center, or any other circumstance or condition outside the reasonable control of Landlord. In no event shall the Landlord (including anyone acting by or through Landlord) be responsible or liable for the bursting of pipes; any unforeseeable loss or damage by adjacent tenants; any injury or damage to persons or property resulting from unknown fire, explosion, falling plaster, steam, gas, electricity, electrical or electronic emanations or disturbance, water, rain, snow or leaks from any part of the Center or from the pipes or caused by dampness, vandalism or malicious mischief, provided Landlord shall be responsible for the repair of any of the foregoing to the extent caused by or due to the negligence or willful misconduct of Landlord, its agents, servants or employees, and then only after (i) notice to the Landlord of the condition claimed in writing and (ii) the expiration of a reasonable time after such notice has been received by Landlord and without Landlord having taken all reasonable and practicable means to cure or correct such conditions; and pending such cure or correction by Landlord, Tenant shall take all reasonably prudent temporary measures and safeguards to prevent any injury, loss or damage to persons or property. No penalty shall accrue for delays which may arise by reason of adjustment of fire insurance on the part of Landlord or Tenant, or Force Majeure, in connection with any repair or restoration of any portion of the Premises or of the Center. Landlord shall use reasonable efforts to minimize interference with Tenant's use and occupancy of the Premises during the performance of any such repair or restoration, provided, however, Landlord shall have no obligation to employ contractors or labor at overtime or other premium pay rates or to incur any other overtime costs or additional expenses whatsoever. Nothing in this Section 13(a)(vi) shall affect any right of Landlord to be indemnified by Tenant as otherwise set forth herein or otherwise for payments made to compensate for losses of third parties.

(b) **Obsolescence.** If Landlord or the Association shall at any time determine that the Building is obsolete and shall adopt a plan to reconstruct and renovate the Building or a plan to sell the Building, Landlord shall give Tenant written notice thereof. Upon giving such notice, Landlord shall have the option to terminate this Lease by giving written notice of termination to



Tenant within 30 days after it gives Tenant notice of Landlord's determination. If Landlord shall not so terminate this Lease, this Lease shall continue in full force and effect and, if any reconstruction and renovation of the Building shall render all or a part of the Premises untenable, the Minimum Rent due hereunder shall be proportionately abated during the period of untenability as shall be certified by Landlord's architect. Any such abatement of Minimum Rent shall be in the amount equal to the proportion thereof that the Rentable Area of the Premises rendered untenable bears to the Premises Rentable Area (as the same may change over time as the reconstruction and renovation proceeds). If Landlord elects to terminate this Lease, this Lease shall terminate as of the day any reconstruction or renovation in the Premises shall commence or the date on which the sale of the Building shall be closed, as the case may be. Thereupon, Tenant shall surrender to Landlord the Premises and all interest therein under this Lease and Landlord may reenter and take possession of the Premises and remove Tenant therefrom. Tenant shall pay Minimum Rent, Percentage Rent, and Additional Rent, duly apportioned as of the date of such termination of this Lease, and Landlord and Tenant shall be free and discharged from all obligations arising hereunder after the date of such termination.

14. EMINENT DOMAIN.

(a) **Definitions.**

(i) A "**Taking**" shall mean the taking of all or any portion of the Premises, Building or Center as a result of the exercise of the power of eminent domain or condemnation for public or quasi-public use or the sale of all or part of such property under the threat of condemnation.

(ii) A "**Substantial Taking**" shall mean a Taking of so much of the Premises, Building or Center that the Premises cannot thereafter be reasonably used by Tenant for carrying on, at substantially the same level or scope, the business previously conducted by Tenant on the Premises, or a Taking of so much of the Building or the Center so as to render, in Landlord's judgment, the Building unsuitable for the uses previously conducted there.

(iii) An "**Insubstantial Taking**" shall mean a Taking such that the Premises can subsequently continue to be used by Tenant for carrying on, at substantially the same level or scope, the business previously conducted by Tenant on the Premises and such that the portion of the Building remaining after the Taking remains, in Landlord's judgment, suitable for the uses previously conducted therein.

(b) **Termination on Substantial Taking.** If there is a Substantial Taking, the Term of this Lease shall expire on the date of vesting of title pursuant to such Taking. In the event of termination of this Lease under the provisions of this Section 14(b), Landlord may refund to Tenant such amounts of Minimum Rent and Additional Rent paid by Tenant as may be applicable to the

period subsequent to the date of termination of this Lease; or, at Landlord's option, Landlord may apply such amounts to any unsatisfied obligation of Tenant to Landlord.

(c) **Restoration on Insubstantial Taking.** If there is an Insubstantial Taking, this Lease shall continue in full force and effect, and Landlord shall cause the Premises to be restored as near as may be reasonably possible to the condition of the Premises prior to the Taking, excluding Tenant's Work. Within 15 days after Landlord has substantially completed its repair and reconstruction work, Tenant shall commence to repair and reconstruct that portion of the Premises for which it is responsible under Section 11 or any other provision of this Lease, including repair and reconstruction of any of Tenant's Work affected by the Taking, and prosecute the same diligently to completion. Following the date of the Insubstantial Taking, Minimum Rent shall be reduced as appropriate to reflect the reduced rentable area. Notwithstanding the foregoing, in no event shall Landlord be required to make any restoration, repairs or replacements to or of any of Tenant's Work, or Tenant's other alterations, leasehold improvements, fixtures, equipment, furniture, furnishings and personal property.

(d) **Right to Award.** The total award, compensation, damages or consideration received or receivable as a result of a Taking (the "**Award**") shall be paid to and be the property of Landlord, whether the Award shall be made as compensation for diminution of the value of the leasehold or the fee of the Premises or otherwise, and Tenant hereby assigns to Landlord, all of Tenant's right, title and interest in and to any such Award. Tenant covenants and agrees to execute, immediately upon demand by Landlord, such documents as may be necessary to facilitate collection by Landlord of any such Award. Without limiting the foregoing, Tenant shall have the right to claim and recover from the condemning authority, but not from Landlord, such compensation as may be recoverable by Tenant on account of any and all damage to Tenant's business by reason of the Taking or on account of any of Tenant's moving expenses, to the extent that such compensation does not reduce the Award to which Landlord is entitled.

Tenant acknowledges that the foregoing provisions are a material part of the consideration of this Lease.

15. ASSIGNMENT AND SUBLETTING.

(a) **Requirements for Landlord's Consent.** Tenant shall not assign, convey, mortgage, hypothecate or encumber this Lease or any interest herein or sublet all or any part of the Premises, or suffer or permit the Premises or any part thereof to be used by others (any and all of which hereinafter shall be referred to as a "**transfer**"), at any time during the Term hereof without the prior written consent of Landlord in each instance. Landlord shall not unreasonably withhold its consent to any proposed transfer provided such transfer complies with all of the provisions of this Lease. Any attempted transfer without Landlord's prior written consent shall be void, shall confer no rights upon any third person and any assignee, subtenant, licensee, concessionaire or

other transferee is hereby notified that such a transfer is of no force and effect without the prior written consent of Landlord, which may be withheld at Landlord's absolute discretion.

(b) **“Transfer” Explained.** Without limiting the generality of the provisions of Section 15(a) above, **“transfer”** shall be deemed to include the following:

(i) If Tenant is a corporation: any merger, dissolution, consolidation or other reorganization of Tenant, or any sale, transfer, pledge or other disposition of the corporate stock or voting securities of Tenant which results in a change in the voting control of such corporation or which, taken with all such prior transfers, involves more than 10% of the voting securities of such corporation.

(ii) If Tenant is a partnership, limited liability company, or joint venture: any merger, dissolution, consolidation or other reorganization of Tenant, or any sale, transfer, pledge or other disposition of the ownership interests of Tenant which results in a change in the voting control of such entity or which, taken with all such prior transfers, involves more than 10% of the ownership interests of such entity.

(iii) Any change of the parties in control of Tenant by any means whatsoever, and any changes, direct or indirect, in the ownership and control of any entities that may directly or indirectly own or control Tenant.

(iv) The granting of a concession or license to operate in or use in any manner any portion of the Premises.

(v) Any transfer, assignment or sale by operation of law and any involuntary assignment of this Lease or any interest of Tenant herein or any interest of Tenant in the Premises.

(c) **Conditions of Consent.** Without limiting Landlord's absolute discretion to grant or withhold its consent to a transfer, the parties agree that: Tenant shall pay to Landlord all of Landlord's actual expenses and attorney's fees incurred in conjunction with the review and documentation of said transfer, which amount shall not be less than \$1,000 per approved assignment.

(d) If Landlord shall give its consent to any assignment of this lease or to any sublease, Tenant shall in consideration therefor, pay to Landlord, as additional rent:

(i) in the case of an assignment, an amount equal to 50% of all sums and other consideration (collectively, the "**Assignment Consideration**") payable to Tenant by the assignee for or by reason of such assignment (including, but not limited to (x) sums payable for the sale of Tenant's fixtures, leasehold improvements, equipment, furniture, furnishings or other personal property, less (y) in the case of a sale thereof, the then fair market value thereof) and less the

expenses, to the extent reasonable (such expenses being hereinafter referred to as the "**Assignment Expenses**") paid by Tenant for alteration costs (or contributions in lieu thereof), and brokerage commissions in connection with such assignment; and

(ii) in the case of a sublease, an amount equal to 50% of of all rents, additional rents, charges and other consideration (collectively, the "**Subletting Consideration**") payable under the sublease to, or on behalf of, Tenant by, or on behalf of, the subtenant, to the extent such amounts, in the aggregate, exceed any Minimum Rent, Percentage Rent and Additional Rent accruing during the term of the sublease in respect of the subleased space (at the rate per square foot payable by Tenant hereunder) pursuant to the terms hereof (including, but not limited to (x) sums payable for the sale or rental of Tenant's fixtures, leasehold improvements, equipment, furniture or other personal property, less (y) in the case of the sale thereof, the then fair market value thereof) and less the expenses, to the extent reasonable (such expenses being hereinafter referred to as the "**Subletting Expenses**") paid by Tenant for alteration costs (or contributions in lieu thereof), and brokerage commissions in connection with such subletting.

The sums payable under subsection 15.10(d)(i) shall be paid prior to the effective date of the assignment in question, such payment being a condition precedent to the effectiveness of Landlord's consent to such assignment, and the sums payable under subsection 15.10(d)(ii) shall be paid to Landlord as and when the Subletting Consideration is payable by the subtenant, as the case may be. Together with Tenant's execution and delivery of such assignment or sublease, as the case may be, Tenant shall deliver to Landlord a statement of the Assignment Consideration and the Assignment Expenses, or the Subletting Consideration and the Subletting Expenses, as the case may be, certified as true, complete and correct by an officer or principal of Tenant.

Any transfer to which Landlord's consent is sought, shall be subject to all terms and conditions of this Lease, and Landlord shall not be required to consent to such transfer, and any such transfer shall not be effective or deemed valid unless, at the time of such transfer:

- (i) Each assignee or sublessee shall agree, in a written agreement satisfactory to Landlord, to assume and abide by all of the terms and provisions of this Lease, including those which govern the Permitted Use as of the date of the Lease;
- (ii) Each assignee or sublessee has submitted a current financial statement, audited by a certified public accountant, showing a net worth and working capital in amounts determined by Landlord to be sufficient to assure the future performance by such assignee or sublessee of Tenant's obligations hereunder;

- (iii) Each assignee or sublessee has submitted, in writing, evidence satisfactory to Landlord of substantial retailing experience in retail stores of comparable size located in the Building and of similar situation and in the sale of merchandise and services permitted under Section 4(a) of this Lease;
- (iv) The business reputation of each assignee or sublessee shall meet or exceed generally acceptable commercial standards;
- (v) The use of the Premises by each assignee or sublessee shall not violate, or create any potential violation of applicable laws, codes or ordinances, nor violate any other agreements affecting the Premises, Landlord or other tenants in the Building.
- (vi) In Landlord's reasonable judgment the proposed assignee or subtenant is engaged in a business and the Premises, or the relevant part thereof, will be used in a manner which (i) is in keeping with the then standards of the Building, and (ii) will not violate any negative covenant as to use contained in any other lease of space in the Building, Landlord agreeing to advise Tenant of any such negative covenants promptly upon request;
- (vii) neither (i) the proposed assignee or sublessee nor (ii) any person that, directly or indirectly, controls, is controlled by, or is under common control with, the proposed assignee or sublessee or any person who controls the proposed assignee or sublessee, is then an occupant or tenant of any part of the Building;
- (viii) the proposed assignee or sublessee (or an affiliate thereof) is not a person with whom Landlord is then, or shall have been during the previous six (6) month period, negotiating to lease space in the Building;
- (ix) the proposed assignment agreement or sublease agreement, as the case may be, shall be in form reasonably satisfactory to Landlord and shall comply with the applicable provisions of this Article;
- (x) Tenant shall not have advertised or publicized to the public in any way the availability of the Premises without prior notice to, and approval by, Landlord, which approval shall not be unreasonably withheld or delayed, nor shall any advertisement state the name (as distinguished from the address) of the Building or the proposed rental.

(e) **Right of Recapture.** If Tenant at any time desires to assign all or any part of its interest in this Lease, or sublease all or any part of the Premises, it shall first notify Landlord in writing, and offer Landlord the right to recapture any part of the Premises which Tenant desires to assign or sublease. Tenant's notice to Landlord shall specify (i) the name and business of the proposed assignee or sublessee, (ii) the amount and location of the space affected, (iii) the proposed effective date and duration of the subletting or assignment, and (iv) the proposed rental to be paid to Tenant by such sublessee or assignee. Landlord, upon receipt of such notice, shall have the option, to be exercised within 30 days from the date of the receipt of such notice, to exercise its right of recapture as set forth in this Section by providing written notice of such election to Tenant, in which event Landlord and Tenant shall execute a termination of this Lease or an amendment to the Lease adjusting the area of the Premises accordingly, as applicable. If Landlord does not exercise its recapture right within 30 days from the date of the receipt of notice from Tenant, Landlord shall be deemed to have elected not to recapture the Premises, and Tenant may proceed with the proposed assignment or sublease, subject to all terms and conditions of this Section 15 (including the requirement that Landlord consent to a transfer).

(f) **Right of First Refusal.** In the event Tenant, at any time, desires to transfer its interest in this Lease in connection with a sale of its business, and receives a bona fide written offer that Tenant is willing to accept, then, prior to accepting the offer, Tenant shall notify Landlord of such facts and shall deliver to Landlord a copy of the offer and Landlord shall have the right to acquire Tenant's interest in this Lease and all of Tenant's other assets subject to the offer on substantially the same terms and conditions in the offer. In all events, Landlord shall have a period of 30 days from Landlord's receipt of Tenant's notice and a copy of the offer during which to decide whether Landlord will elect to exercise its right of first refusal. Landlord shall exercise its right of first refusal, if at all, by written notice to Tenant of Landlord's election to exercise such right. If Landlord exercises such right, the closing of the transfer to Landlord of Tenant's interest in this Lease shall occur on the date specified in the offer or the first business day occurring 7 days after the date of Landlord's notice of exercise, whichever is later. Landlord may require Tenant to transfer this Lease to a nominee, affiliate, designee or assignee of Landlord. Any such transfer shall not release Tenant from primary liability hereunder. If Landlord does not exercise its right of first refusal in any instance, Tenant shall, subject to the other provisions of this Section 15, be free to transfer its interest in this Lease only to the party making the offer to Tenant and only for the price and upon the terms and conditions specified in the offer. If Tenant shall not make such transfer within 30 days after the end of the 30-day period referred to above, Tenant shall be required to comply with all provisions hereof (and first offer to transfer its interest hereunder to Landlord) prior to any transfer of this Lease.

(g) **Transfer Documents.** Each transfer to which Landlord has consented to by an instrument in writing shall be executed by the transferor and the transferee in each instance with one copy of such written instrument so executed delivered to Landlord. In Landlord's sole and absolute discretion, such instrument or summary thereof may be recorded in the real property

records of the county in which the Premises are located. Tenant shall reimburse Landlord for Landlord's expense and attorneys' fees incurred in connection with the review and documentation of any transfer for which Landlord's consent is requested; provided, however, Tenant is excused from reimbursing Landlord for any such expenses if the Lease is transferred to an affiliate of Landlord as a result of Landlord's exercise of its right of first refusal as set forth above.

(h) **Reservation of Rights.** If any transfer shall occur, with or without Landlord's prior written consent, Landlord may, after default by Tenant, collect rent from the assignee, subtenant or other transferee, and apply the net amount collected to the rent herein reserved, but no such transfer or collection shall be deemed a waiver of the provisions of this Section 15, or the acceptance of the assignee, subtenant or other transferee as the tenant hereof, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant contained in this Lease. The consent by Landlord to a transfer shall not relieve Tenant from primary liability hereunder or from the obligation to obtain the express consent in writing of Landlord to any further transfer.

(i) **Imposition of Rights and Liabilities.** All rights and liabilities herein given to or imposed upon the respective parties hereto shall bind and inure to the respective heirs, successors, administrators, executors and assigns of the parties and if Tenant is more than one person, they shall be bound jointly and severally by this Lease except that no rights shall inure to the benefit of any assignee or subtenant of Tenant unless the assignment or sublease was approved by Landlord in writing as provided in this Section 15.

(j) **Assignment by Landlord.** Landlord, at any time and from time to time, may make an assignment of its interest in this Lease and, in the event of such assignment, Landlord and its successors and assigns (other than the assignee of Landlord's interest in this Lease) shall be released from any and all liability thereafter accruing hereunder.

(k) Tenant shall indemnify, defend and hold Landlord harmless from and against any and all losses, liabilities, damages, costs and expenses (including reasonable counsel fees) resulting from any claims that may be made against Landlord by the proposed assignee or subtenant or by any brokers or other persons claiming a commission or similar compensation in connection with any proposed assignment or sublease, whether or not Landlord consents thereto or exercises any of Landlord's rights under this Article 15.

(l) Any assignment or transfer, whether or not Landlord's consent is required under this Article, shall be made only if, and shall not be effective until, the assignee shall execute, acknowledge and deliver to Landlord an agreement, in form and substance reasonably satisfactory to Landlord, whereby the assignee shall assume all of the obligations of this lease on the part of Tenant to be performed or observed and whereby the assignee shall agree that the provisions contained in this Article 15 shall, notwithstanding such assignment or transfer, continue to be binding upon it in respect of all future assignments and transfers. The original named Tenant

covenants that, notwithstanding any assignment or transfer, whether or not in violation of the provisions of this lease, and notwithstanding the acceptance of Minimum Rent and/or Additional Rent by Landlord from an assignee, transferee, or any other party, the original named Tenant and any and all assignees shall remain jointly and severally liable for the payment of the Minimum Rent and Additional Rent and for the other obligations of this lease on the part of Tenant to be performed or observed.

#### INSURANCE.

(m) **Tenant's Insurance.** At all times during the Term, Tenant shall carry and maintain, at Tenant's sole cost and expense, the following insurance, in the amounts specified below or such other amounts as Landlord shall from time to time reasonably request, with insurance companies and on forms satisfactory to Landlord:

(i) Commercial general liability insurance, written on an occurrence basis, including coverage for bodily injury, property damage, including loss of use therefrom, death and personal injury and contractual liability and liquor liability coverage with limits of not less than \$1,000,000 each occurrence and \$2,000,000 in the aggregate for bodily injury and property damage. Such insurance shall be endorsed to provide coverage for the negligent acts of contractors and subcontractors (Owner's Protective Liability).

(ii) Umbrella Liability Insurance. Tenant shall also carry an umbrella liability insurance policy with a limit of not less than \$1,000,000. This umbrella policy shall provide excess coverage over the underlying commercial general liability insurance and shall be in effect at all times during the term of this agreement.

(iii) Workers' compensation insurance in accordance with applicable workers' compensation laws (including without limitation Colorado Revised Statutes §§ 8.14.4-101, et seq., as amended). If any services to be performed in Tenant's business operations are subcontracted, Tenant shall require the subcontractor to provide workers' compensation insurance for its employees to be engaged in such services. Tenant's workers' compensation insurance shall also include Employers Liability coverage with minimum limits of \$1,000,000 each employee, each accident or illness.

(iv) Property insurance covering the Premises and all leasehold improvements, fixtures, equipment, trade fixtures, appliances, inventory, merchandise, furniture, furnishings, wall covering, floor covering, carpeting, drapes, and all other personal property from time to time in, on or upon the Premises, in an amount not less than their full replacement cost without deduction for depreciation from time to time during the Term of this Lease, and providing protection against business interruption (including inability to pay rent), any other peril included within the classification "fire and extended coverage," together with insurance against sprinkler damage,



vandalism and malicious mischief. Any policy proceeds shall be used for the repair or replacement of the property damaged or destroyed.

(v) Comprehensive automobile liability insurance with limits of not less than \$1,000,000 combined bodily injury and property damage if Tenant operates owned, hired, or non-owned vehicles that are parked or operated within the Center.

(vi) Business interruption insurance.

(vii) *Plate glass insurance coverage covering all plate glass within the Premises.*

(viii) such other insurance in such amounts as Landlord may reasonably require from time to time.

(n) **Additional Insureds.** All policies of insurance provided for in this Section 16 shall name Landlord and such other persons, firms and entities as Landlord specifies from time to time, as additional insureds. Executed copies of such policies or the certificates or the declarations pages thereof or therefore, whichever is requested by Landlord, shall be delivered to Landlord prior to Tenant's occupancy of the Premises and thereafter for successive renewal policies at least 30 days prior to the expiration of the term of each such policy. Tenant or Tenant's insurance company must provide for all policies 30-days' written notice to Landlord of policy cancellation or amendments. All liability policies shall be written as primary policies until exhausted, not contributing with and not in addition to coverage that Landlord may carry.

(o) All insurance required to be carried by Tenant (i) shall contain a provision that (x) no act or omission of Tenant shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained, and (y) such insurance shall be noncancellable and/or no material change in coverage shall be made thereto unless the Insured Parties receive 30 days' prior notice of the same, by certified mail, return receipt requested, and (ii) shall be effected under valid and enforceable policies issued by reputable insurers permitted to do business in the State of where the Premises is located and rated in Best's Insurance Guide, or any successor thereto as having a "Best's Rating" of "A-" or better and a "Financial Size Category" of at least "X" or better or, if such ratings are not then in effect, the equivalent thereof or such other financial rating as Landlord may at any time consider appropriate

(p) **Compliance.** Tenant shall provide a safety program for all its employees with respect to the operation of its business in the Premises and shall comply with the Occupational Safety and Health Act (29 U.S.C. 651 *et seq* and all rules and regulations promulgated thereunder. Furthermore, Tenant shall not at any time carry any stock of betterments, goods, wares or merchandise, or do or suffer or permit anything to be done in or about the Premises that is hazardous or that in any manner will violate, suspend, void, make inoperative or tend to increase the rate of any policies of insurance of any kind at any time carried upon the Premises, the Center

or the Building or the fixtures and property therein. Any increase in the cost of any such insurance attributable to Tenant's activities in or about the Premises or Tenant's failure to perform and observe its obligations and covenants under this Lease shall be borne by Tenant and payable to Landlord from time to time, on demand, whether or not Landlord shall have consented to such activities. Tenant at its sole cost and expense shall comply with all rules, orders, regulations and requirements of the insurance underwriters having jurisdiction over the Premises, the Center or the Building. If Tenant installs any electrical equipment, Tenant shall, subject to Section 7 and the other applicable provisions of this Lease, at Tenant's own expense, make whatever changes are necessary to comply with the requirements of the insurance underwriters and governmental authorities having jurisdiction over the Premises.

(q) **Waiver of Subrogation.** Notwithstanding anything contained in this Lease to the contrary, but in addition to any other releases and waivers given by Tenant elsewhere in this Lease, Tenant on its own behalf, and on behalf of all parties claiming by, through, or under Tenant, releases and discharges the Landlord Released Parties from all claims and liabilities arising from or caused by any casualty or hazard covered or required hereunder to be covered in whole or in part by insurance including, in connection with property on or activities conducted in, on or about the Premises to the extent of such insurance coverage or required coverage, and waives on behalf of the respective insurers any right of subrogation which might otherwise exist in or accrue to any person on account thereof.

(r) **Tenant's Actions.** Tenant will not do or suffer to be done anything that will contravene Landlord's or the Association's insurance policies or prevent Landlord or the Association from procuring such policies in amounts and companies selected by Landlord or such Association. If anything done, omitted to be done or suffered to be done by Tenant in, upon or about the Premises shall cause the rates of any insurance effected or carried by Landlord or the Association on the Premises or other property to be increased beyond the regular rate from time to time applicable to the Premises for the purpose permitted under this Lease, or such other property for the use or uses made thereof, Tenant will pay the amount of such increase promptly upon Landlord's demand and Landlord shall have the right to correct any such condition at Tenant's expense. In the event that this Lease so permits and Tenant engages in the preparation of food or packaged foods or engages in the use, sale or storage of flammable or combustible material, Tenant shall install chemical extinguishing devices (such as Ansul) approved by Underwriters Laboratories and other such authorities and the installation thereof must be approved by the appropriate local authority or agency. Tenant shall keep such devices under service as required by such organizations. If gas is used in the Premises, Tenant shall install gas cut-off devices (manual and automatic).

16. INDEMNITY.

(a) **Tenant's Breach.** Tenant shall indemnify and hold the Premises and Landlord, its parent corporations, subsidiaries, insurance companies, affiliates, the Association, and their respective officers, directors, shareholders, servants, agents and employees (the "**Landlord Released Parties**") free, clear and harmless from any and all demands, claims, causes of action, damages, liabilities, losses, costs, charges, penalties, obligations, judgments, fines and expenses (including, without limitation, attorneys' fees and costs and experts' fees) of any kind whatsoever, in connection with, arising out of or by reason of, any breach, violation or nonperformance by Tenant, or its agents, servants, employees, licensees, or invitees, of any covenant or provision of this Lease or any law, ordinance, rule, regulation or order. The failure of Tenant to carry appropriate insurance as required by this Lease will not relieve Tenant of its indemnification obligations contained in this Section.

(b) **Injury to Person or Property.** Tenant covenants and agrees that the Landlord Released Parties shall not at any time or to any extent whatsoever be liable, responsible or in any way accountable for any loss, injury, death or damage to persons or property (including any improvements, betterments, goods, wares or merchandise, and including without limitation any illness or infection related to the COVID-19 pandemic or otherwise) or otherwise which at any time may arise in connection with the Premises or be suffered or sustained by Tenant, Tenant's Employees, invitees or customers or by any other person rightfully at the Premises for any purpose whatsoever, whether such loss, injury, death or damage shall be caused by or in any way result from or arise out of (i) any act, omission or negligence of Tenant, Tenant's Employees or invitees or of any occupant, subtenant, visitor or user of any portion of the Premises, (ii) any interference with or obstruction of deliveries to the Premises by any person (iii) any loss or destruction to furniture, inventory, valuables, files or any other property kept or stored on or about the Premises, (iv) injury done or caused by fire, wind, water, rain or other natural element, including the leak or flow of water, rain or snow from or into part of the Building or from the roof, street, subsurface or from any other place or by dampness; (v) any defect, breakage, leakage, obstruction or other failure of plumbing, heating or air conditioning equipment, electric wiring or installation thereof, gas, water, and steam pipes, appliances, sprinklers, wires, lighting fixtures, stairs, porches, railings or walks, (vi) broken glass, (vii) explosion, steam, electricity or gas, (viii) the backing up of any sewer pipe or downspout, (ix) the bursting, leaking or running of any tank, tub, washstand, water closet, waste pipe, drain or any other pipe or tank in, upon or about the Premises, (x) the escape of steam or hot water, (xi) water, snow or ice upon the Premises, (xii) the falling of any fixture, plaster or stucco, (xiii) damage to or loss by theft or otherwise of property of Tenant or others, (xiv) acts or omissions of persons in Premises, other tenants in the Building, occupants of nearby properties or any other person, (xv) any act or omission of owners or occupants of adjacent or contiguous property, or (xvi) any other matter or thing whether such damage or injury results from conditions arising upon the Premises, other portions of the Building, the Center, or other sources, unless resulting from the gross negligence or willful misconduct of Landlord, its officers, directors,

agents, servants or employees. Tenant shall forever indemnify, defend, hold and save the Landlord Released Parties free and harmless of, from and against any and all demands, claims, causes of action, liabilities, losses, damages or judgments on account of any of the foregoing, provided that this indemnity shall not extend to damages resulting from the gross negligence or willful misconduct of Landlord, its officers, directors, agents, servants or employees. The foregoing obligation to indemnify shall include indemnification to the Landlord Released Parties for all costs, expenses and liabilities (including, without limitation, attorneys' fees and costs and experts' fees) incurred by Landlord and/or the Released Parties in investigating and resisting any of the matters covered hereby. Unless such damage or injury shall result or arise because of the gross negligence or willful misconduct of Landlord, its officers, directors, agents, servants or employees, Tenant hereby waives all claims against the Landlord Released Parties for damages to furnishings, fixtures, Tenant's improvements and betterments, goods, wares, merchandise or other property in, upon and about the Premises, for injuries to or death of persons in or about the Premises, and for loss of income or goodwill.

17. RECORDS, REPORTS, AND ACCOUNTING.

(a) **Statement of Gross Sales.** Tenant shall submit to Landlord on or before the 20th day of the month a written statement certified by an executive officer or partner of Tenant (or the individuals comprising Tenant if Tenant is not a corporation, partnership or other similar entity) showing in reasonable detail the Gross Sales for the sales conducted in the Premises for the preceding month and a copy of Tenant's Colorado Department of Revenue Sales Tax Return, as well as a copy of any civic assessment returns or similar returns that may be required under the Governing Documents. Each statement of Gross Sales submitted by Tenant shall become binding upon Landlord three years after delivery thereof to Landlord unless within such three year period Landlord shall cause a special audit as provided below to be commenced.

(b) **Landlord's Right of Inspection.** The acceptance by Landlord of payments of Percentage Rent or any other amounts based on Gross Sales under this Lease shall be without prejudice to Landlord's right to examine Tenant's books and records of its Gross Sales and inventories of merchandise on the Premises in order to verify the amount of Tenant's Gross Sales. Landlord shall have the right during business hours to examine and audit such books and records preserved by Tenant. Within 3 years after receipt of any statement furnished Landlord by Tenant, and upon 10-days' prior written notice to Tenant, Landlord may cause a special audit to be made of Tenant's business affairs and records relating to the Premises for the period covered by such statement. Except as provided below, the cost of such audit shall be paid by Landlord. Any such special audit performed by a certified public accountant selected by Landlord shall be binding upon the parties. If such audit shall determine that there has been a deficiency in the payment of Percentage Rent or other amounts due under this Lease, then such deficiency shall become immediately due and payable with interest at the Default Rate from the date when such payment should have been made. If such deficiency is in excess of 5% of the Percentage Rent or other

amounts due under this Lease theretofore computed and paid by Tenant for the period covered by the audit, Tenant shall also pay to Landlord the cost of the audit in addition to the Percentage Rent and any other amounts due.

18. UTILITIES.

(a) **Provision of Utilities.** Subject to actions taken by any utility company or any governmental or quasi-governmental authority or to any other cause beyond the control of Landlord, and except to the extent it is the obligation of the Association, Landlord hereby agrees to allow Tenant to hook up to the utilities currently provided to the Premises, at Tenant's sole cost and expense; provided, however, that Tenant must obtain Landlord's prior written approval of Tenant's proposed location and method of installation if such hook-up will involve any new lines. Tenant shall have the right, upon Landlord's prior written approval, to install, at Tenant's sole cost and expense, modifications to the standard or commonly prevailing utility service line hook ups to provide for metering Tenant's utility use separate from the utility usage of the rest of the Building. Tenant covenants and agrees that, at all times, its use of electric current shall never exceed the capacity of the feeders to the Building or the risers or wiring installation thereof. In connection therewith, Tenant expressly agrees that all installations, alterations and additions of and to the electrical distribution system within the Premises shall be subject to Landlord's prior approval in each instance (which approval shall not be unreasonably withheld or delayed).

(b) **Payment of Utilities.** Tenant shall be solely responsible for prompt payment of any and all costs, fees, charges and expenses for utilities and service to or for the Premises, whether billed directly to Tenant or Landlord, including, but not limited to, gas, electric, water, sewer, telephone, and data, and shall indemnify and hold the Landlord Released Parties harmless from and against any claim, demand, liability, loss, cost, charge, fee, expense or damage with respect thereto. If the Premises are not separately metered for any such utilities or services, Tenant shall pay its equitable share, whether billed by Landlord or the Association, as determined by Landlord it is reasonable discretion.

(c) **Landlord's Rights.** Upon the occurrence of an Event of Default, Landlord reserves the right, in addition to all other rights and remedies available to Landlord, to cut off and discontinue, without notice or liability to Tenant, any utilities or services provided in accordance with this Section 19. The Landlord Released Parties shall not be liable to Tenant in damages or otherwise if any utilities or services, whether or not furnished by Landlord hereunder, are interrupted or terminated because of repairs, installation or improvements, or any cause beyond Landlord's reasonable control, nor shall any such termination relieve Tenant of any of its obligations under this Lease.

19. END OF TERM. Upon the expiration or other termination of the Term of this Lease, Tenant shall promptly quit and surrender to Landlord the Premises, broom clean, in good order

and first-class condition, ordinary wear excepted, and deliver all keys relating to the Premises, Upon the expiration or other termination of this Lease, Tenant shall quit and surrender the Premises and Tenant shall remove all of Tenant's Property and Tenant's Specialty Alterations (as hereinafter defined). If Tenant is not then in default hereunder and does not then owe any amounts to Landlord pursuant to this Lease, Tenant may remove from the Premises any trade fixtures, equipment and movable furniture stored therein and owned by Tenant, whether or not such trade fixtures or equipment are fastened to the Premises, provided however, that under no circumstance shall any trade fixture or equipment be removed without Landlord's written consent if: (a) such fixture or equipment was paid for in whole or in part by Landlord or by any allowance paid or credited to Tenant by Landlord, or is used in the operation of the Building, the Premises, or any improvements which are part of the Building or Premises, (b) the removal of such fixture or equipment will render inoperable or hazardous any mechanical or other operating system of the Premises or the Building, or result in significant or extensive damage to the Premises, Building or improvements or (c) Tenant is in default under this Lease. Whether or not Tenant is in default hereunder, Tenant shall remove such alterations, additions, improvements, trade fixtures, equipment and furniture as Landlord shall require. Tenant shall fully repair any damage occasioned by the removal of any trade fixtures, equipment, furniture, alterations, additions and improvements. All trade fixtures, equipment, furniture, inventory, effects, alterations, additions and improvements not so removed shall conclusively be deemed to have been abandoned and may be appropriated, sold, stored, destroyed or otherwise disposed of by Landlord without notice to Tenant or any other person and without obligation to account therefor; and Tenant shall pay Landlord all expenses incurred in connection with any such action of Landlord, including, but not limited to, the cost of repairing any damage to the Building or Premises caused by removal of such property. Tenant's obligation to observe and perform this covenant shall survive the expiration or other termination of this Lease. "Specialty Alterations" shall mean alterations which are not standard retail installations such as reinforcement of floors, slab penetrations, vaults or safes, water features, and other alterations of a similar character, or would otherwise create material cost to demolish as compared to typical retail installations.

20. HOLDOVER. Should Tenant or any assignee, subtenant or other transferee of or from Tenant, or any other person or entity claiming by, through, or under Tenant, remain or continue to be in possession of the Premises or any part thereof after the end of the Term or other termination of this Lease, at Landlord's option Tenant shall be deemed to be illegally retaining possession or shall be deemed to be a month to month tenant of the Premises on all the terms and conditions of this Lease except that the monthly Minimum Rent shall be an amount equal to the greater of 150% of the then-current market value of monthly Minimum Rent or 150% of the monthly Minimum Rent in effect immediately prior to the expiration or termination of the Term for the first 30 days of such holdover, and 200% thereafter. In the event of any unauthorized holding over, Tenant shall (i) indemnify the Landlord Released Parties against all demands and liability by or to any person or entity to whom Landlord may have leased all or any part of the Premises effective after the end of the Term or other termination of this Lease and (ii) be liable to Landlord for any payment

or rent concession which Landlord may be required to make to any tenant obtained by Landlord for all or any part of the Premises (a "New Tenant") in order to induce such New Tenant not to terminate its lease by reason of the holding-over by Tenant. Nothing contained in this Lease shall be construed to limit Landlord's right to obtain possession of the Premises upon termination of this Lease by unlawful detainer proceedings or otherwise in the event that Landlord does not exercise its option to treat the continued possession by Tenant as a month to month tenancy. If Tenant has an option to extend the Term of this Lease, Landlord may, but shall not be required to, elect to treat any holding over as an exercise of that option by Tenant.

21. SUBORDINATION, AND ATTORNMENT.

(a) This Lease is subject and subordinate to all applicable federal, state, county, municipal and Association laws, ordinances, codes, orders, rules and regulations, permits and certificates of occupancy and to all covenants, conditions, declarations, encroachments, restrictions, reservations, rights, rights of way and easements and all conditions, renewals, extensions, modifications, consolidations and replacements thereof (except to the extent any such item shall expressly provide that this Lease is superior thereto), now or hereafter affecting or placed, charged or enforced against all or any portion of the Building or Center or any interest of Landlord therein or Landlord's interest in this Lease and the leasehold estate thereby created. Tenant shall, upon request of Landlord, subordinate this Lease and Tenant's rights hereunder to any ground or underlying lease, mortgage, indenture, deed of trust or other encumbrance, together with any conditions, renewals, extensions, modifications, consolidations and replacements thereof, now or hereafter affecting or placed, charged or enforced against all or any portion of the Building or Center or any interest of Landlord therein or Landlord's interest in this Lease and the leasehold estate thereby created. Tenant shall execute, acknowledge and deliver to Landlord, at any time and from time to time, upon demand by Landlord, such documents as may be requested by Landlord, or any ground or underlying lessor, lessee or any mortgagee, to confirm or effectuate any subordination hereunder.

(b) Tenant agrees that in the event that any holder of any mortgage, indenture, deed of trust, lease or other encumbrance encumbering any part of the Building becomes mortgagee in possession of the Premises, Tenant will pay to such mortgagee all rents subsequently payable hereunder. Further, Tenant agrees that in the event any proceedings are brought for the foreclosure of any mortgage, deed of trust, or indenture to which this Lease is subject and subordinate, or Landlord's interest herein is conveyed in lieu of foreclosure, or any such ground or underlying lease is terminated, Tenant will attorn to the purchaser at any such foreclosure sale or under any conveyance in lieu of foreclosure, or to the holder of any ground lease or underlying lease, as the case may be, and will recognize such purchaser or holder as its landlord under this Lease. Any attornment pursuant to this Section shall occur automatically, but Tenant shall on request by and without cost to Landlord or any mortgagee, purchaser, or holder, execute, acknowledge and deliver any instruments evidencing such attornment.

(c) Tenant's failure to execute instruments or certificates provided for in this Section within 10 days after the mailing by Landlord of a written request shall be an automatic Event of Default under this Lease. If Tenant shall fail or refuse to execute, acknowledge and deliver any document required by this Section within 10 days after written demand therefor, Landlord, its successors and assigns shall be entitled to execute, acknowledge and deliver any and all such documents for and on behalf of Tenant as attorney in fact for Tenant. Tenant hereby constitutes and irrevocably appoints Landlord, its successors and assigns as Tenant's attorney in fact to execute, acknowledge and deliver any and all documents described in this Section for and on behalf of Tenant, as provided in this Section; provided, however, that Landlord's execution of the same shall not cure any default of Tenant or relieve Tenant of any of its obligations set forth in this Section.

22. STATEMENT OF PERFORMANCE. Tenant shall within 10 days after Landlord's request therefor, deliver to Landlord a statement in recordable form certifying to Landlord and/or any person or entity specified by Landlord that this Lease is in full force and effect, that this Lease is unmodified, or if modified, stating any such modifications, the current rent and any abatements due to Tenant, the security deposit under the lease, that there are no defenses or offsets to the Lease by Tenant, or stating such defenses or offsets as are claimed by Tenant, that Landlord is not in default hereunder, or specifying any defaults by Landlord that Tenant alleges, and specifying the date to which rent has been paid, and specifying any further information about this Lease or the Premises that Landlord may reasonably request. Tenant understands that prospective purchasers, mortgagees or lessors of the Center, the Building or the Premises will rely on such certificates. Tenant's obligation to deliver such certificates within 10 days as described above is a material obligation of Tenant hereunder.

23. GOVERNING DOCUMENTS. Tenant shall comply with the Rules and Regulations attached hereto as Exhibit E and Landlord may from time to time amend modify, delete or add new and additional reasonable rules and regulations for the use, safety, cleanliness and care of the Premises, the Center, the Building and parking areas provided for Tenant's use, if any, and the comfort, quiet and convenience of occupants of the Center and the Building. Such new or modified rules and regulations shall be effective upon notice to Tenant from Landlord thereof. Tenant and its servants, employees, agents, licensees, invitees and visitors shall at all times observe faithfully, and comply strictly with, the Governing Documents, as they may be modified or amended from time to time. In the event of Tenant's breach of any requirements or rules or regulations, Landlord shall have all remedies in this Lease provided for in the event of default by Tenant and shall, in addition, have any remedies available at law or in equity, including the right to enjoin any breach of such rules and regulations. No provision of this Lease shall be construed to impose upon Landlord any duty or obligation to enforce the rules and regulations or terms, covenants or conditions in any other lease, against any other tenant or person and Landlord shall not be liable to Tenant for violation of such rules, regulations, terms, covenants or conditions by any other tenant, its servants, employees, agents, visitors or licensees or any other person. In the event of



any conflict between the provisions of this Lease and the rules and regulations of the Association, the rules and regulations of the Association shall govern.

24. **SECURITY DEPOSIT.** Tenant shall place on execution hereof and thereafter keep on deposit with Landlord a security deposit in the amount set forth in the Lease Summary above. Such security deposit shall be held by Landlord and, at Landlord's option, commingled with other funds, without liability for interest, as security for the payment by Tenant of the rent and any other sums due under this Lease and for the faithful performance of all the terms, conditions and covenants of this Lease. If at any time Tenant shall be in default in the performance of any provision of this Lease, Landlord may, but shall not be required to, use such deposit, or so much thereof as necessary, in payment of any rent or any other sums due under this Lease that are in default, in reimbursement of any expense incurred by Landlord and in payment of the damages incurred by Landlord by reason of Tenant's default, or at the option of Landlord, such deposit may be retained by Landlord as liquidated damages. In any such event, Tenant shall, within 5 days after written demand from Landlord, forthwith remit to Landlord a sufficient amount in cash to restore such deposit to its original amount. Landlord's rights hereunder shall be in addition to all its other rights and remedies. In the event such deposit has not been utilized as described above, such deposit, or as much thereof as has not been utilized for such purposes, shall be refunded to Tenant within 60 days following termination of the Lease, or surrender and acceptance of the Premises by Landlord, whichever occurs last, without interest. Landlord shall deliver the security deposit funds deposited by Tenant pursuant to this Section to the purchaser or assignee of Landlord's interest in the Premises in the event such interest be sold or assigned, and thereupon, Landlord shall be discharged from further liability with respect to such deposit. Notwithstanding the above provisions of this Section, if claims of Landlord exceed the deposit provided for in this Section, Tenant shall remain liable for the balance of such claim. Tenant shall not assign or encumber or attempt to assign or encumber the deposit provided for in this Lease except that Tenant may assign such deposit in the event of a permitted assignment of this Lease.

25. **DEFAULT.**

(a) **Tenant's Default.** The occurrence or existence of any one or more of the following events or circumstances shall constitute an "**Event of Default**" by Tenant:

(i) **Failure in Payment.** Tenant shall fail to pay when due any installment of Minimum Rent, Percentage Rent, Additional Rent, or any other sum payable by Tenant under the terms of this Lease.

(ii) **Failure in Performance.** If (A) event occurs which is specified in this Lease to constitute an automatic Event of Default, or (B) Tenant shall neglect or fail to perform or observe any of the other covenants contained in this Lease on Tenant's part to be performed or observed (except for the payment of any sum payable by Tenant under the terms of this Lease, which is

controlled by Section 26(a)(i) above) and Tenant shall fail to remedy such default within 10 days after Landlord shall have given to Tenant written notice specifying such neglect or failure (or within such period, if any, as may be reasonably required to cure such default if it is of such nature that it cannot be cured within such 10-day period, provided that Tenant commences to remedy such default within such 10-day period and proceeds with reasonable diligence thereafter to cure such default, but in no event shall the cure period extend longer than 45 days).

(iii) False Reports. Tenant submits a report required to be furnished hereunder which Landlord reasonably deems to be materially inaccurate, and Tenant, after being afforded an opportunity to cure Tenant's inaccurate report and provide Landlord a revised copy, fails to provide accurate materials within 30 days.

(iv) Attachment. This Lease or the Premises or any part thereof shall be taken upon execution or by other process of law directed against Tenant, or shall be taken upon or subject to any attachment at the instance of any creditor of or claimant against Tenant, and such attachment shall not be discharged or disposed of within 15 days after the levy thereof.

(v) Abandonment. Tenant shall vacate or abandon the Premises (which shall be defined to include, but not be limited to, any absence by Tenant from the Premises for five or more days while otherwise in default under this Lease) or lock the Premises so as to prevent the entry therein of Landlord or its representatives as permitted by the terms of this Lease.

(vi) Insolvency Filing. Tenant or any guarantor of Tenant's obligations hereunder shall (A) admit in writing its inability to pay its debts generally as they become due; (B) make an assignment of all or a substantial part of its property for the benefit of creditors; (C) apply for or consent to or acquiesce in the appointment of a receiver, trustee or liquidator of Tenant or such guarantor or of all or a substantial part of Tenant's or such guarantor's property or of the Premises or of Tenant's interest in this Lease; or (D) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization under any bankruptcy or insolvency law or an arrangement with creditors, or take advantage of any insolvency law or file an answer admitting the material allegations of a petition filed against Tenant or such guarantor in any bankruptcy, reorganization or insolvency proceedings.

(vii) Insolvency Adjudication. The entry of a court order, judgment or decree without the application, approval or consent of Tenant or any guarantor of Tenant's obligations under this Lease, as the case may be, approving a petition seeking reorganization of Tenant or such guarantor under any bankruptcy or insolvency law or appointing a receiver, trustee or liquidator of Tenant or such guarantor or of all or a substantial part of Tenant's or such guarantor's property or of the Premises or of Tenant's interest in this Lease, or adjudicating Tenant or such guarantor a bankrupt or insolvent, and such order, judgment or decree shall not be vacated, set aside or stayed within 30 days from the date of entry.

(viii) Failure to Open and Operate. Tenant fails to open the Premises for business to the public by the Opening Deadline or fails to open and operate as required pursuant to Section 4(e) more than one time during the Term, whether or not any such violation has been cured in accordance with this Section 26(a)(ii) above.

(ix) Affiliate Default. Tenant or any guarantor of Tenant's obligations under this Lease, or any affiliate of Tenant or such guarantor, shall have defaulted (after the expiration of all applicable notice and cure periods) in connection with any other agreement between it and Landlord or any of Landlord's affiliates.

(x) Repetition of Violation. Tenant's neglect or failure to perform or observe any particular covenant contained in this Lease on Tenant's part to be performed or observed when Landlord has previously provided written notice to Tenant of Tenant's failure to perform or observe such covenant, whether or not any such violation has been cured in accordance with Section 26(a)(ii) above.

(xi) if Guarantor shall fail to perform any of its obligations when due under the Guaranty of Lease from the Guarantor in favor of Landlord, guarantying the payment and performance by Tenant of its obligations under this Lease; or

(xii) if Guarantor or any assignor or this Lease generally does not, or is unable to, or admits in writing its inability to, pay its debts as they become due or is subject to the filing of a petition, case or proceeding in bankruptcy.

(b) **Landlord's Default**. Landlord shall in no event be charged with default in any of its obligations hereunder unless and until: Landlord shall have failed to perform such obligations within 30 days (or such additional time as is reasonably required to correct any such default) after written notice as set forth in Section 32 to Landlord by Tenant, specifically describing such failure.

26. **REMEDIES**. If an Event of Default by Tenant occurs, Landlord shall have the following rights and remedies, in addition to all other remedies at law or equity, and none of the following, whether or not exercised by Landlord, shall preclude the exercise of any other right or remedy whether set forth in this Lease, or existing at law or equity. Landlord shall have the right to enjoin any default or Event of Default and the right to invoke any other right or remedy for an Event of Default allowed at law or equity as if any other specific rights or remedies were specifically provided for in this Lease for any such Event of Default.

(a) **Termination**. Landlord shall have the right to terminate this Lease by giving Tenant notice in writing at any time. No act by or on behalf of Landlord such as entry on the Premises by Landlord to perform maintenance and repairs and efforts to relet the Premises, other than giving Tenant written notice of termination, shall terminate this Lease. If Landlord gives such notice, this Lease and the Term hereof as well as any right, title and interest of Tenant under

this Lease shall wholly cease and expire in the same manner and with the same force and effect (except as to Tenant's liability) on the date specified in such notice as if such date were the expiration date of the Term of this Lease without the necessity of re-entry or any other act on Landlord's part. Upon any termination of this Lease Tenant shall quit and surrender to Landlord the Premises as set forth in Section 20. If this Lease is terminated, Tenant shall remain liable to Landlord for all rent and other sums accrued and unpaid hereunder to the date of termination of this Lease and Landlord shall be entitled to recover from Tenant the worth at the time of the award of the amount by which the unpaid Rent and other sums for the balance of the Term exceeds the amount of such loss for the same period that Tenant proves could have been reasonably avoided. In addition, if this Lease is terminated, Tenant shall be liable to Landlord for all Landlord management and operational fees and costs (including attorneys' fees) incurred in connection with Landlord's termination of this Lease and efforts to recover rent and other sums.

No provision of this Lease shall limit or prejudice the right of Landlord to prove for and obtain as liquidated damages by reason of any termination of this Lease, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, such damages are to be proved, whether or not such amount be greater, equal to, or less than the amount referred to above.

(b) **Reentry.** Landlord may, without demand or notice, reenter and take possession of the Premises or any part thereof, and repossess the same as Landlord's former estate and expel Tenant and those claiming through or under Tenant, and remove the effects of any and all such persons (forcibly, if necessary) without being deemed guilty of any manner of trespass, without prejudice to any remedies for arrears of rent or preceding breach of covenants and without terminating this Lease or otherwise relieving Tenant of any obligation hereunder. Should Landlord elect to reenter as provided in this Section 27(b), or should Landlord take possession pursuant to legal proceedings or pursuant to any notice provided for by law, Landlord may, from time to time, without terminating this Lease, relet the Premises or any part thereof for such term or terms and at such rental or rentals, and upon such other conditions as Landlord may in its absolute discretion deem advisable, with the right to make alterations and repairs to the Premises. No such re-entry, repossession or re-letting of the Premises by Landlord shall be construed as an election on Landlord's part to terminate this Lease unless a written notice of termination is given to Tenant by Landlord. No such re-entry, repossession or re-letting of the Premises shall relieve Tenant of its liability and obligation under this Lease, all of which shall survive such re-entry, repossession or re-letting. Upon the occurrence of such reentry or repossession, Landlord shall be entitled to the highest amount of monthly Rent, including Percentage Rent and Additional Rent, which shall have been payable for any month period prior to such reentry or repossession, less the net proceeds, if any, of any re-letting of the Premises after deducting all of Landlord's expenses in connection with such re-letting, including, but without limitation, all repossession costs, brokerage commissions, legal expenses, attorneys' fees, expenses of employees, alteration costs and expenses in preparation for such reletting. Tenant shall pay such amount to Landlord on the days on which

the rent or any other sums due hereunder would have been payable hereunder if possession had not been retaken. In no event shall Tenant be entitled to receive the excess, if any, of net rent collected by Landlord as a result of such re-letting over the sums payable by Tenant to Landlord hereunder. Notwithstanding the foregoing, Landlord shall provide Tenant with an opportunity to remove any leased or consigned property so long as Tenant can provide Landlord with evidence of such lease(s) or consignment(s) prior to any removal(s). Landlord must further be present during any such permitted removal(s).

(c) **Payment on Account of Tenant.** If Tenant shall default in making any payment required to be made by Tenant (other than payments of rent) or any other Event of Default shall occur, Landlord may, but shall not be obligated to, make such payment or, on behalf of Tenant, expend such sum as may be necessary to perform such obligation. All sums so expended by Landlord with interest thereon at the Default Rate shall be repaid by Tenant to Landlord on demand. No such payment or expenditure by Landlord shall be deemed a waiver of Tenant's default nor shall it affect any other remedy of Landlord by reason of such default.

(d) **Default Interest.** In addition to any other fees due hereunder, if Tenant shall default in making payment of any rent or other sum due under this Lease, Landlord may charge and Tenant shall pay upon demand interest thereon at the Default Rate.

(e) **Rental Value for Period of Unlawful Detainer Action.** In any action of unlawful detainer commenced by Landlord against Tenant by reason of any default hereunder, the reasonable rental value of the Premises for the period of the unlawful detainer shall be deemed to be the highest amount of monthly Rent, including Percentage Rent and Additional Rent, which shall have been payable for any month period prior to such unlawful detainer action.

(f) **Inducement Recapture.** Landlord may, upon written notice to Tenant, require that Tenant pay to Landlord an amount equal to the following: all sums the payment of which may previously have been waived by Landlord, or which may have been paid by Landlord, pursuant to any agreement by Landlord to grant Tenant a rental abatement or other monetary inducement or concession, including any tenant finish allowance and all other payments made by Landlord to or on behalf of Tenant, together with interest on such amounts at the Default Rate, from the date or dates such amounts were paid by Landlord, or would have been due from Tenant but for the abatement, until finally paid or repaid.

Whenever Tenant shall be required to make payment to Landlord of any sum with interest, interest on such sum shall be computed from the date such sum is due until paid, at an interest rate equal to the lesser of 18% per annum or the maximum rate permitted by applicable law (the "**Default Rate**"). As used in this Lease the terms "reenter", "reentry", "take possession", "repossess" and "repossession" are not restricted to their technical legal meaning. For the purposes of this Section 27, the rent due for any calendar month after reentry or repossession of the Premises by

Landlord shall be deemed to be the highest monthly Rent, including Percentage Rent and Additional Rent, which shall have been payable for any month period prior to such re-entry or repossession. Tenant shall be responsible for payment of all reasonable costs and expenses, including, but not limited to, court costs and reasonable attorney's fees in any action taken by Landlord to enforce its rights or pursue its remedies under this Section. Tenant stipulates and agrees that the rights set forth in the above subsections are commercially reasonable. After a termination by Landlord for default by Tenant, the amount due as unpaid rent for the balance of the Term shall be deemed to include Percentage Rent for each month at the highest amount payable for any month prior to such termination.

27. TENANT'S PROPERTY.

(a) Tenant shall be responsible for and shall pay before delinquent all municipal, county, federal or state taxes whether enacted now or in the future coming due during or after the Term against Tenant's interest in this Lease or against personal property of any kind owned or placed in, upon or about the Premises by Tenant.

(b) To secure the performance of Tenant's obligations under this Lease Tenant hereby grants to Landlord a security interest in and an express contractual lien upon all of Tenant's equipment, furniture, furnishings, appliances, goods, trade fixtures, inventory, chattels and personal property, which will be brought upon the Premises by Tenant, and all after-acquired property, replacements and proceeds (the "**Security Interest**"). The Security Interest shall not include any inventory sold by Tenant on consignment; *i.e.*, inventory that has been partially paid for by Tenant's customer(s) but not yet recognized as a sale on Tenant's balance sheet. Landlord is authorized to prepare and file financing statements (including continuation statements and amendments, as applicable) covering the security described above (and Tenant hereby agrees to sign a separate security agreement if requested by Landlord, within 10 days of Landlord's request). Upon the occurrence of an Event of Default, any or all of Tenant's obligations to Landlord secured hereby shall, at Landlord's option, be immediately due and payable without notice or demand. In addition to all rights or remedies of Landlord under this Lease, at law, and in equity, including the right to judicial foreclosure, Landlord shall have all the rights and remedies of a secured party under the Uniform Commercial Code of the State of the state in which the Premises is located. Landlord's Security Interest shall be subordinate only to the lien or security interest of any lender taking or succeeding to a purchase money security interest thereon, and upon Tenant's written request, if no uncured default exists hereunder, Landlord shall execute an instrument on form reasonably acceptable to Landlord confirming such subordination. The Security Interest shall survive the termination of this Lease if such termination results from Tenant's default. The Security Interest and related lien are in addition to and cumulative of the Landlord's lien provided by the laws of the state in which the Premises is located.

28. NO IMPLIED SURRENDER OR WAIVER. The failure of Landlord to enforce any of the rules and regulations governing the Premises, Building or Center against Tenant shall not be deemed a waiver of any or all of such rules and regulations. The failure of either party to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this Lease or any rules and regulations governing the Premises, Building, or the Center shall not prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation. The receipt by Landlord of Minimum Rent, Percentage Rent, or Additional Rent with knowledge of the breach of any covenant of this Lease shall not be deemed a waiver of such breach. No provisions of this Lease shall be deemed to have been waived by Landlord unless such waiver is in writing signed by Landlord. No act or thing done by Landlord or Landlord's agents during the Term of this Lease shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept such surrender shall be valid unless in writing signed by Landlord. No employees of Landlord or of Landlord's agents shall have any power to accept the keys of the Premises prior to the termination of this Lease. The delivery of keys to any employee of Landlord, or of Landlord's agents, shall not operate as a termination of this Lease or a surrender of the Premises. All amounts tendered to Landlord in payment of Minimum Rent, Percentage Rent, or Additional Rent required by this Lease shall be deemed payments for the account of Tenant, and acceptance of payments from anyone other than Tenant shall not be deemed to operate as an attornment to Landlord by the payor or as a consent by Landlord to an assignment or subletting of this Lease or any portion thereof, or as a modification of any of the provisions of this Lease. No payment by Tenant, or receipt by Landlord, of a lesser amount than the Minimum Rent, Percentage Rent, or Additional Rent due hereunder, shall be deemed to be other than on account, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of Minimum Rent, Percentage Rent, or Additional Rent required by this Lease or pursue any other remedy available to Landlord. This Lease and the obligation of Tenant to pay Minimum Rent, Percentage Rent, and Additional Rent hereunder and perform all of the other covenants and agreements under this Lease to be performed by Tenant shall in no way be affected, impaired or excused because Landlord is unable to fulfill any of its obligations under this Lease, or to supply, or is delayed in supplying, any service, equipment, fixtures, or materials required to be supplied by Landlord, or is unable to make, or is delayed in making, any repairs, additions, alterations, or decorations required to be made by Landlord, if Landlord is prevented or delayed from doing so by reason of strike or labor troubles, government preemption or restrictions, or by reason of any rule, order or regulation of any department or subdivision of any government agency, or by reason of conditions which have been or are affected, either directly or indirectly, by war or other emergency, or by reason of any other cause or matter beyond Landlord's reasonable control, or when, in the judgment of Landlord, temporary interruption of such services is necessary by reason of accident, mechanical breakdown, or to make repairs, alterations, or improvements. Time is of the essence with respect to the performance of each of the covenants and agreements set forth in this Lease.

29. COSTS AND ATTORNEY FEES. In the event of litigation or arbitration arising out of or in connection with this Lease, the party prevailing in such action shall recover, in addition to all other remedies or damages, reasonable attorneys' fees and court costs and expenses (including without limitation experts' fees) incurred by such prevailing party in such suit or arbitration at the trial and appellate levels.

30. NO REPRESENTATIONS BY LANDLORD, ENTIRE AGREEMENT. Landlord and Landlord's agents have made no representations, warranties, agreements or promises with respect to the Premises, the Center or the Building except as expressly set forth in this Lease. Without in any way limiting the generality of the foregoing, Landlord and Landlord's agents have made no representations, warranties, agreements or promises with respect to the exact size of the Premises, the Building or the Center, any other tenants or types of tenants in the Center, the Building, or in any other space leased or offered for lease by Landlord or the terms of any other tenant's lease, if any. The entire contract of the parties is contained in this Lease, and there are no promises, agreements, representations, warranties, conditions or understandings, either oral or written, between them, other than as are expressly set forth in this Lease.

31. NOTICE AND BILLS. The mailing addresses of the parties are as follows:

Tenant: 400 North Park Avenue #12B  
Breckenridge, CO 80424

Landlord: Vail Summit Resorts, Inc.  
390 Interlocken Crescent, Suite 1000  
Broomfield, Colorado 80021  
Attention: Director of Commercial Leasing

w/copy by  
email to: LegalNotices@vailresorts.com

Any bill, statement, notice, demand or communication which Landlord may desire or be required to give to Tenant shall be in writing and shall be deemed sufficiently given or rendered if delivered personally to Tenant or any of its employees or agents, at the Premises, or sent to Tenant by nationally-recognized overnight courier (such as Federal Express) or certified or registered United States mail, postage prepaid, addressed to Tenant at the address of Tenant specified above, or, after commencement of the Term of this Lease, at the option of Landlord, at the Premises. Any notice, demand or communication by Tenant to Landlord shall be in writing and must be served by nationally-recognized overnight courier (such as Federal Express) or certified or registered United States mail, postage prepaid, addressed to Landlord at the address specified above. The time of the rendition of such bill or statement and of the giving of such notice, demand or communication



shall be deemed to be the time when it is personally delivered, one business day after being deposited with a nationally-recognized overnight courier for next-business-day delivery, or three days after being mailed per the above methods. Either party shall have the right to designate in writing, served as provided above, a different address to which any notice, demand or communication is to be mailed. Attorneys may give notices on behalf of their respective clients.

32. DEFINITION OF AND ACTIONS BY LANDLORD.

(a) **Definition.** The term “**Landlord**” as used in this Lease, so far as covenants or obligations on the part of Landlord are concerned, shall be limited to mean and include only the Landlord of the Premises at the time in question. In the event that the interest of the Landlord herein named in the Premises is transferred, whether by sale, lease or sublease, foreclosure, or otherwise, the named Landlord shall be and hereby is entirely freed and relieved of all covenants and obligations of Landlord hereunder, and it shall be deemed and construed without further agreement between the parties or their successors in interest, or between the parties and any such transferee that such transferee has assumed and agreed to carry out any and all covenants and obligations of the named Landlord and is the Landlord hereunder.

(b) **Actions by Landlord.** Actions taken or decisions made by Landlord under this Lease shall be binding upon the Landlord in its capacity as Landlord, but shall not be binding upon any entity affiliated with Landlord simply because of Landlord’s membership or interest therein. Accordingly, Landlord shall have no liability to Tenant for any actions or decisions by the Association or any entity affiliated with Landlord, even if any such actions or decisions are contrary to or less beneficial to Tenant than any action taken or decision made by Landlord.

(c) LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, THE LIABILITY OF LANDLORD (AND OF ANY SUCCESSOR LANDLORD) TO TENANT SHALL BE LIMITED TO THE INTEREST OF LANDLORD IN THE CENTER. TENANT SHALL LOOK SOLELY TO LANDLORD’S INTEREST IN THE CENTER FOR THE RECOVERY OF ANY JUDGMENT OR AWARD AGAINST LANDLORD. NEITHER LANDLORD NOR ANY LANDLORD RELATED PARTY SHALL BE PERSONALLY LIABLE FOR ANY JUDGMENT OR DEFICIENCY.

33. NO PARTNERSHIP. Notwithstanding anything contained in this Lease to the contrary, Landlord is not and shall not in any way or for any purpose become principal or partner of Tenant in the conduct of its business, or otherwise, or a joint venture or member of a joint enterprise with Tenant hereunder. The provisions relating to Tenant’s fixturation and other work on the interior and exterior of the Premises are included, among other reasons, to facilitate Landlord’s maintaining architectural control, minimum standards of design and aesthetic value.

34. NO USE OF TRADEMARK. Without first obtaining written authorization or a license from Landlord or its appropriate affiliate entity, Tenant shall not in any manner use Keystone's or any other of Landlord's or Landlord's partners', sublessor's, affiliates' or subsidiaries' River Run Village respective trademarks, servicemarks, trade names or trademarked logos in connection with the business conducted at the Premises or any goods sold or services performed in, at or from any part of the Premises by Tenant, its employees or anyone acting on either of their behalf, or otherwise.

35. PARKING. Tenant acknowledges and agrees that (a) Landlord has no obligation to provide parking facilities or spaces in or adjacent to the Building for use by Tenant's Employees and customers; and (b) any parking facilities located within or around the Center (including, without limitation, those facilities, if any, designated for use by Tenant's Employees or customers) may be on a paid-parking basis, despite any implication of law or industry practice to the contrary. Tenant agrees that it will not institute or participate in any ticket validation or similar type of rebate or subsidy to parking uses without first obtaining Landlord's prior written consent. Without limiting the grounds upon which Landlord would be reasonable in refusing its consent, Tenant agrees that if the parking operator is at arm's length with Landlord and objects to the system being proposed for any reason whatsoever, Landlord's refusal to grant consent will be deemed reasonable for these purposes.

36. EXHIBITS. All recitals set forth in this Lease and all exhibits attached to this Lease are hereby incorporated in and made a part of this Lease.

37. BROKERS. Landlord shall pay a real estate commission to Liv Sotheby ("Broker") pursuant to a separate agreement. Tenant hereby represents and warrants to Landlord that, other than Broker, Tenant's sole contact with Landlord or with the Premises has been made without the assistance of any broker or other third party. Tenant shall save and hold the Landlord Released Parties free, clear and harmless from any claim, cost or expense for or in connection with any claims for commissions or compensation claimed or asserted by any third party in connection with the transaction contemplated under this Lease, claiming to have dealt with Tenant.

38. COIN OPERATED/ATM MACHINES. Tenant shall not sell any merchandise from vending machines, or allow any coin or token operated vending, amusement, gaming or automatic teller machines within the Premises, without obtaining the prior written consent of Landlord.

39. RECORDATION; CONFIDENTIALITY. Neither this Lease nor any memorandum of this Lease may be recorded without Landlord's prior written consent, which may be withheld in Landlord's sole and absolute discretion. If Landlord elects to record this Lease or a memorandum of this Lease, Tenant shall execute such documents as Landlord may reasonably request to effect such recordation. Except as required by law, Tenant shall not disclose to any third parties the economic terms and conditions of this Lease.

40. **PERSONAL GUARANTY.** Concurrently with the execution of this Lease, John Keith, (collectively, jointly and severally, "**Guarantor**") as guarantor, shall execute and deliver to Landlord a personal guaranty in the form attached hereto as Exhibit C (the "**Guaranty**"), pursuant to which Guarantor agrees to guaranty all of Tenant's obligations under this Lease. The obligations of Guarantor shall be joint and several with each other and with any other present or future guarantor of the Lease. Landlord shall have the right to join one or all of any guarantors in any proceeding and to proceed against them in any order. At Landlord's option in its sole discretion, this Lease shall not be effective until Landlord has received the executed Guaranty from Guarantor. Any default under the Guaranty which is not cured within applicable notice and cure periods, if any, shall be an Event of Default by Tenant under this Lease.

41. **MISCELLANEOUS.**

(a) **Severability.** In the event that any clause or provision of this Lease is determined to be illegal, unenforceable or invalid, such clause or provision shall be stricken from and construed for all purposes not to constitute a part of this Lease, the remaining portion of this Lease shall nevertheless remain in full force and effect, and in lieu of each clause or provision that is illegal, unenforceable or invalid, there shall be added a clause or provision similar in terms to such illegal, unenforceable or invalid clause or provision as may be possible and which is legal, valid and enforceable.

(b) **Amendment.** Except as otherwise expressly provided in this Lease, no amendment, alteration, modification of or addition to this Lease shall be valid or binding unless expressed in writing and signed by the party or parties to be bound thereby.

(c) **Construction.** The titles or headings of the various paragraphs hereof are intended solely for convenience of reference and are not intended and shall not be deemed to modify, explain or place any construction upon any of the provisions of this Lease. The parties acknowledge and agree they have reviewed this Lease in its entirety and acknowledge and agree that the Lease has been freely negotiated by both parties and expressly waive any and all applicable common law and statutory rules of construction that any term or condition of this Lease should be construed against the Lease's drafter, and agree and affirm that the Lease and all terms and conditions thereof shall in all cases be construed as a whole, according to the fair meaning of the language used. Wherever in this Lease any item of Additional Rent is required to be paid "upon demand," or if no specific time period is stated as to when an item of Additional Rent is due and payable, such item of Additional Rent shall be due and payable within five days following demand or billing by Landlord. Unless otherwise expressly stated in this Lease to the contrary, wherever Landlord's consent or approval is required by this Lease, or something is to be satisfactory to Landlord, it shall be construed to mean that Landlord's prior written approval is required, and that such approval may be given or withheld in Landlord's sole and absolute discretion. In no event shall Tenant be entitled to make any claim for money damages, setoff, counterclaim, or defense

based on upon any claim or assertion by Tenant that Landlord has unreasonably withheld, conditioned, or delayed any consent or approval; provided, however, the foregoing shall not affect Tenant's right to maintain an action or proceeding to enforce any such provision or for specific performance, injunction, or declaratory judgment. The words "include" and "including" shall be construed as if followed by the phrase "without being limited to." The words "herein," "hereof," "hereby," "hereunder," and words of similar import shall be construed to refer to this Lease as a whole and not to any particular Section or subdivision of this Lease unless expressly so stated.

(d) **Binding Effect.** Except as otherwise expressly set forth in this Lease, the covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective heirs, distributees, executors, administrators, successors, and subject to Section 15, their assigns, and no other person or entity shall be deemed a third party beneficiary or otherwise have any right under this Lease except to the extent identified in this Lease. If there is more than one entity or person which or who are the Tenant under this Lease, the obligations imposed upon Tenant under this Lease shall be joint and several.

(e) **Survival.** Any and all warranties, provisions, rights and obligations of Landlord and Tenant described in this Lease and agreed to be performed subsequent to the termination of this Lease, or which could reasonably be construed to be intended to survive the expiration or termination of this Lease, shall survive the termination of this Lease.

(f) **Authority.** If Tenant is or will be an entity, the persons executing this Lease on behalf of Tenant hereby covenant and warrant that Tenant is duly organized and in good standing in its state of formation, and authorized to do business in the state where the Premises is located, that all franchise and corporate, partnership, or other entity taxes have been paid to date and all future forms, reports, fees and other documents necessary to comply with applicable laws will be filed when due, and the person signing this Lease on behalf of the entity is an officer or other authorized signatory of Tenant, and is duly authorized to sign and execute this Lease.

(g) **Governing Law.** This Lease shall be governed by and interpreted in accordance with the laws of the State of the state where the Premises is located.

(h) **Mediation.** **IN ANY JUDICIAL PROCEEDING PERMITTED BY THIS LEASE, INCLUDING ONE SEEKING INJUNCTIVE RELIEF OR ONE COMMENCED UNDER THE FORCIBLE ENTRY AND DETAINER LAWS OF THE STATE WHERE THE PREMISES IS LOCATED AND WITHOUT REGARD TO WHETHER AFTER ITS COMMENCEMENT THE PROCEEDING BECOMES A CIVIL ACTION BY RESTORATION OF POSSESSION OF THE PREMISES TO LANDLORD OR OTHERWISE, THE PARTIES WAIVE ALL RIGHT TO TRIAL BY JURY, WHETHER WITH RESPECT TO EVERY ISSUE OF FACT OR EVERY OTHER FINDING OR DETERMINATION THEREIN.** Exclusive jurisdiction and venue for any legal action under

this Lease is the State District Court or the U.S. District Court in whose County or District the Premises is located.

(i) **Waiver of Special Damages.** Notwithstanding anything contained in this Lease or under applicable Laws to the contrary, in no event shall Landlord be liable for lost profits or consequential, special or punitive damages. In no event shall Tenant have a right to terminate this Lease as a result of any default by Landlord, and Tenant's remedies shall be limited to actual damages.

(j) **COVID-19.** Tenant agrees that no circumstances related to SARS-CoV-2, the novel coronavirus that causes coronavirus disease 2019, or COVID-19 (including any epidemic, pandemic, state of emergency, government orders, government shutdowns, unavailability of labor or materials or reasonable substitutes therefor, or other causes beyond any party's reasonable control that relate thereto, but excluding financial reasons other than banking delays and closures where funds were otherwise available, the "**COVID-19 Pandemic**"), including any closures of, or restrictions of access to, the Premises or access thereto, or ceasing of operations by Landlord, its affiliates, or any other tenants or occupants, whether voluntary or pursuant to governmental request or order, shall give rise to any claims of constructive eviction, casualty, condemnation, impossibility, frustration of purpose, the right to exercise any other remedy of Tenant under the Lease, or default by Landlord under the Lease, all of which are hereby waived by Tenant. Without limiting the foregoing, Tenant agrees that it waives any claims or causes of action potentially arising out of or relating to any delays in the performance of any Landlord obligations under the Lease caused by the COVID-19 Pandemic. Tenant agrees to comply with any operational requests or operational plans implemented by Landlord with respect to the COVID-19 Pandemic, as the same may be updated from time to time, and to provide notice to Landlord and other reasonably requested information related thereto if any occupants of the Premises test positive or are presumptively positive for COVID-19; provided, however, Landlord's implementation or approval of plans, rules, procedures or guidelines related to the COVID-19 Pandemic shall not constitute a representation or warranty that any such plans, rules, procedures or guidelines are in compliance with any laws, rules, regulations, guidelines, or best practices, and Landlord shall have no responsibility or liability for the implementation or effectiveness of the same. Landlord makes no representations or warranties regarding the safety of the Premises or the use thereof. Tenant acknowledges that (i) the effects of COVID-19 are not fully known, (ii) Tenant is solely responsible for the physical and mental health and safety of Tenant's Employees and invitees, and (iii) Landlord disclaims all liability for the health and safety of Tenant's Employees and invitees and any effects of COVID-19 arising at any time. Landlord is not responsible for the safety of Tenant's personal property, or that of Tenant's Employees and invitees.

(k) **Public Use of Premises.** Nothing contained herein is intended to dedicate, grant, or reserve to the general public or the public at large or for any public purpose whatsoever, or to permit any member of the general public to acquire any right, by adverse possession, prescription,

grant, dedication or otherwise, to possess, use or occupy the Premises, or any portion thereof, said grant, dedication, reservation, or prescriptive rights being expressly denied.

(l) **Counterparts.** This Lease may be executed or delivered electronically, and in one or more counterparts, all of which together shall constitute but one and the same instrument with the same effect as originals.

(m) **No Offer.** The submission of this Lease by Landlord to Tenant is not an offer to lease and is not effective until execution and delivery by Landlord and Tenant.

(n) **Force Majeure.** Whenever and to the extent that either party hereto shall be unable to fulfill, or shall be delayed or restricted in the fulfillment of, any obligation under any provision of this Lease by reason of Force Majeure, such party shall, so long and to the extent that any such impediment exists, be relieved from the fulfillment of such obligation. As used herein, "Force Majeure" means an occurrence that is not caused by, or under the reasonable control of, the performing party, and occurs despite reasonable efforts to prevent, avoid, delay or mitigate the effect of that occurrence, including, without limitation, (i) acts of God, fire, flood, explosion or extraordinary and destructive weather conditions directly affecting the performing party; (ii) injunctions; (iii) restraint or acts of domestic government; (iv) COVID-19 or other pandemic or epidemic; or (v) terrorism, war, sabotage, vandalism, accident, civil disorder or riots occurring within the United States or directly affecting the performing party. Notwithstanding the foregoing, in no event shall Force Majeure excuse Tenant's obligation to pay rent hereunder, and in no event shall lack of funds be considered Force Majeure.

**[SIGNATURE PAGE IMMEDIATELY FOLLOWS]**

IN WITNESS WHEREOF, Landlord and Tenant have respectively executed this Lease as of the date first set forth above.

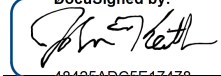
**LANDLORD:**

Vail Summit Resorts, Inc.

By:   
Name: Kerry Vanderweit  
Title: Sr. Director Commercial Leasing

**TENANT:**

Ski-To-Tee, LLC dba Ski-to-Tee,

By:   
Name: John Keith  
Title: Member

**EXHIBIT A**

**DEPICTION OF PREMISES**



## EXHIBIT B

### TENANT'S WORK

**TENANT'S WORK.** Tenant shall, at its sole cost and expense, perform the following work on the Premises:

All necessary interior and exterior modifications, including without limitation tenant fixtures, lights and storefront modifications, necessary to deliver a first class presentation, as approved by Landlord, including without limitation the following:

- **Storefront Modifications:** To enhance the exterior appearance and attract customer attention.
- **Lighting:** Installation or upgrade of interior and exterior lighting to meet first-class presentation standards.
- **Tenant Fixtures:** Installation of fixtures that are integral to the space and are not removable, such as built-in shelving and counters.
- **Flooring, Electrical, and Plumbing:** Necessary upgrades or installations to meet operational needs and aesthetic standards.
- **Millwork and Shelving:** Installation of permanent millwork and shelving units.
- **Signage:** All signage will be at Tenant's expense and must be permitted through the DRB and the county.

All of Tenant's Work shall be performed in accordance with the guidelines and restrictions set forth in Section 6 and Section 7 of the Lease.

For purposes of this Exhibit B, the date the Tenant's Work is "complete" shall mean the date that a Certificate of Completion and/or a Certificate of Inspection, if any, has been unconditionally issued by the appropriate governmental agency for Tenant's Work.

## EXHIBIT C

### GUARANTY

IN CONSIDERATION of the delivery of the Retail Lease on the 6th of February, 2024, by and between VAIL SUMMIT RESORTS, INC., a Colorado corporation (“**Landlord**”) and Ski-To-Tee, LLC dba Ski-To-Tee (“**Tenant**”), relating to Unit E-3 Buffalo Lodge Building, River Run Village (the “Lease”), the undersigned (“**Guarantor**”) hereby absolutely and unconditionally, jointly and severally, personally guarantees to Landlord, without deduction by reason of setoff, defense or counterclaim, its successors and assigns, the full and prompt performance and observance of all of the covenants, conditions and agreements to be performed and observed by Tenant, or Tenant’s successors and assigns, under the Lease, including, but not limited to payment of Minimum Rent, Percentage Rent, Additional Rent, and any and all other sums due to Landlord under the Lease.

1. If Tenant shall at any time default in the performance or observance of any of the terms, covenants or conditions in the Lease contained on Tenant’s part to be kept, performed or observed, Guarantor will promptly keep, perform and observe same, as the case may be, in the place and stead of Tenant, and further Guarantor shall indemnify, defend and hold Landlord harmless from and against any and all loss, damage, cost, expense, injury or liability Landlord may suffer or incur in connection with third party claims brought as a result of Guarantor’s performance of, or failure to perform, the terms, covenants or conditions in the Lease contained on Tenant’s part to be kept, performed or observed (collectively, the “**Guaranteed Obligations**”).
2. Guarantor expressly agrees that the validity of this Guaranty and the obligations of Guarantor hereunder shall not be terminated, affected or impaired by reason of the assertion by Landlord against Tenant of any of the rights or remedies reserved to Landlord pursuant to the provisions of the Lease, or by reason of the waiver by, or the failure of Landlord to enforce any of the terms, covenants, or conditions of the Lease, or the giving of any consent to any manner or thing relating to the Lease, or the granting of any indulgences or extension of time to Tenant, all of which may be given or done without notice to Guarantor.
3. Guarantor waives notice of all defaults and agrees that the waiver of any rights by Landlord against Tenant, arising out of defaults by Tenant or otherwise, shall not in any way modify or release the obligations of Guarantor. Guarantor further covenants and agrees that this Guaranty shall remain and continue in full force and effect as to any renewal, extension, amendment or modification of the Lease, regardless of whether Guarantor consents to or received notice thereof.
4. Guarantor further agrees that the liability under this Guaranty shall be primary, and that in any right of action which shall accrue to Landlord under the Lease, Landlord may, at its option, proceed against Guarantor and Tenant jointly or severally, or may proceed against Guarantor without having commenced any action or having obtained any judgment against Tenant, and

Guarantor hereby waives all right to assert or plead at any time any statute of limitations as relating to the Lease, the obligations of Guarantor hereunder and any and all surety or other defenses in the nature thereof. The obligations of Guarantor hereunder shall not be released by Landlord's receipt, application or release of any security given for the performance and observance of any covenant or condition in the Lease contained on Tenant's part to be performed or observed, regardless of whether Guarantor consents thereto or receives notice thereof. No assignment, sublease, or transfer of any of the Lease shall operate to extinguish or diminish the liability of Guarantor hereunder. This Guaranty shall apply to the Lease, any extension, renewal, modification or amendment thereof, and to any assignment, subletting or other tenancy thereunder, or to any holdover term following the term granted under the Lease or any extension or renewal thereof, regardless of whether Guarantor consents thereto or receives notice thereof.

5. The liability of Guarantor hereunder shall in no way be affected by: (a) the release or discharge of Tenant in any creditor's receivership, bankruptcy or other proceeding; (b) the impairment, limitation or modification of the liability of Tenant or the estate of Tenant in bankruptcy, or of any remedy for the enforcement of Tenant's liability under the Lease resulting from the operation of any present or future provision of the National Bankruptcy Act or other statute or from the decision in any court; (c) the rejection or disaffirmance of the Lease in any such proceedings; (d) the assignment or transfer of the Lease by Tenant; (e) any disability or other defense of Tenant; (f) the cessation from any cause whatsoever of the liability of Tenant; (g) the exercise by Landlord of any of its rights or remedies reserved under the Lease or by law; or (h) any termination of the Lease. Guarantor agrees that in the event Tenant shall become insolvent, or shall be adjudicated bankrupt, shall make an assignment for the benefit of creditors or file a petition for reorganization, arrangement, or similar relief under any present or future provision of the Bankruptcy Code, or if such petition filed by creditors of Tenant shall be approved by a court, or if Tenant shall seek a judicial readjustment of the rights of its creditors under any present or future federal or state law, or if a receiver of all or part of its property and assets is appointed by any state or federal court and in any such proceeding the Lease shall be terminated or rejected or the obligations of Tenant thereunder shall be modified, Guarantor agrees to immediately pay to Landlord or its successors or assigns: (a) an amount equal to all rent of whatever kind accrued to the date of such termination, rejection or modification, plus (b) the difference between the then cash value of the Rent (based on the highest amount of Minimum Rent plus Percentage Rent charged during any prior month of the Term), Additional Rent and other sums which would have been payable under the Lease for the unexpired portion of the Term of the Lease (the "**Term Amount**") and the then cash rental value of the premises for such unexpired portion of the Term (the "**Market Amount**"), to the extent the Term amount exceeds the Market Amount, plus (c) interest on the amounts designated in clauses (a) and (b) above at the rate of 18% per annum (or, if less, the highest rate permitted by applicable law) from the date of such termination, rejection or modification to the date of payment by Guarantor hereunder.
6. This Guaranty shall be governed by and construed in accordance with the laws of the State where the premises subject to the Lease are located.

7. No delay on the part of Landlord in exercising any right hereunder or under the Lease shall operate as a waiver of such right or of any other right of Landlord under the Lease or hereunder, nor shall any delay, omission or waiver on any one occasion be deemed a bar to a waiver of the same or any other right on any future occasion.
8. In the event that any clause or provision of this Guaranty is determined to be illegal, unenforceable or invalid, such clause or provision shall be stricken from and construed for all purposes not to constitute a part of this Guaranty, the remaining portion of this Guaranty shall nevertheless remain in full force and effect, and in lieu of each clause or provision that is illegal, unenforceable or invalid, there shall be added a clause or provision similar in terms to such illegal, unenforceable or invalid clause or provision as may be possible and which is legal, valid and enforceable.
9. Until all the covenants and conditions in the Lease on Tenant's part to be performed and observed, are fully performed and observed, Guarantor: (a) shall have no right of subrogation against Tenant by reason of any payments or performance by Guarantor hereunder; and (b) subordinates any liability or indebtedness of Tenant now or hereafter held by Guarantor to the obligations of Tenant to Landlord under the Lease.
10. Guarantor agrees to pay Landlord's reasonable out-of-pocket costs and expenses, including but not limited to legal fees and disbursements, incurred in any effort to collect or enforce any of the guaranteed obligations or this Guaranty, whether or not any lawsuit is filed, and in the representation of Landlord in any insolvency, bankruptcy, reorganization or similar proceeding relating to Tenant or Guarantor. Until paid to Landlord, such sums will bear interest from the date such costs and expenses are incurred at the rate of eighteen percent (18%) per annum (or, if less, the highest rate permitted by applicable law).
11. Any notice, demand or communication hereunder shall be in writing and shall be deemed sufficiently given or rendered if sent by nationally-recognized overnight courier (such as Federal Express) or certified or registered United States mail, postage prepaid, addressed at the address for Landlord specified in the Lease, or the address for Guarantor specified below its signature. The time of the giving of such notice, demand or communication shall be deemed to be the time when it is personally delivered, one business day after being deposited with a nationally-recognized overnight courier for next-business-day delivery, or three days after being mailed. Either party shall have the right to designate in writing, served as provided above, a different address to which any notice, demand or communication is to be mailed. If no address for Guarantor is filled in below, Guarantor's address shall be deemed to be the same as Tenant's address.
12. GUARANTOR AND LANDLORD (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS GUARANTY OR ANY RELATED

AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS GUARANTY, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. GUARANTOR AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST LANDLORD OR ANY OTHER PERSON INDEMNIFIED UNDER THIS AGREEMENT ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

**IN WITNESS WHEREOF**, the undersigned have executed this Guaranty as of the day and date written below.

GUARANTOR:

DocuSigned by:  
  
48425ADC5E17478...  
Name

373 Gold Flake Ct  
Breckenridge, CO 80424  
Address

Feb-06-2024  
Date

**EXHIBIT D**

**ADDITIONAL PROVISIONS**

Landlord's Rights

C.R.S. 38-22-105 (2) Such interest so owned or claimed shall be subject to any lien given by the provisions of this article, unless such owner or person within five days after obtaining notice of the erection, construction, alteration, removal, addition, repair, or other improvement, gives notice that his or Colorado Revised Statutes 2020 Page 208 of 631 Uncertified Printout her interests shall not be subject to any lien for the same by serving a written or printed notice to that effect, personally, upon all persons performing labor or furnishing laborers, materials, machinery, or other fixtures therefor, or within five days after such owner or person has obtained notice of the erection, construction, alteration, removal, addition, repair, or other improvement, or notice of the intended erection, construction, alteration, removal, addition, repair, or other improvement gives such notice by posting and keeping posted a written or printed notice in some conspicuous place upon said land or upon the building or other improvements situate thereon.

## EXHIBIT E

### RULES AND REGULATIONS

#### ASSOCIATION RULES

##### RULES AND REGULATIONS FOR THE NEIGHBOURHOODS AT KEYSTONE

The Keystone Neighbourhood Company, Inc. (the "Neighbourhood Company") has adopted these Rules and Regulations (these "Regulations") pursuant to the Declaration of Covenants, Conditions and Restrictions for The Neighbourhoods at Keystone (the "Neighbourhoods"), dated as of November 30, 1995, and recorded in the Clerk and Recorder's Office for Summit County, Colorado, on December 1, 1995, at Reception No. 504399, (as amended from time to time, the "Declaration"). All capitalized terms used herein and not otherwise defined shall have the meanings given them in the Declaration.

##### ARTICLE I GENERAL RULES AND REGULATIONS

###### 1.01 Neighbourhood Company Common Elements.

(a) No benches, chairs, tables or other personal property shall be placed on any of the Neighbourhood Company Common Elements, including, without limitation, the sidewalks, pathways, plazas and boardwalks, without the prior written consent of the Neighbourhood Company Executive Director (the "Executive Director").

(b) No bicycles, skateboards, scooters, strollers, wagons, skis, snowboards or other personal property shall be stored or parked on any of the Neighbourhood Company Common Elements, including, without limitation, the sidewalks, pathways, plazas and boardwalks, except in areas that are designated for those purposes by posted signage.

(c) No bicycles, skateboards, roller blades, skis or snowboards shall be used or operated on the boardwalks.

(d) Owners and their Guests shall comply with all directions and instructions set forth on all Neighbourhood Company signage.

(e) All persons using Neighbourhood Company Common Elements, including, without limitation, any streets, roads, sidewalks, pathways, plazas, boardwalks and recreational facilities, do so at their own risk and sole responsibility. The Neighbourhood Company does not assume responsibility for any occurrence, accident or injury as a result of or in connection with such use. No Owner shall make any claim against the Neighbourhood Company, its servants, agents or employees, for or on account of any loss or damage to life, limb or property sustained as a result of or in connection with any such use of any Neighbourhood Company Common Elements. Each Owner shall hold the Neighbourhood Company harmless from any and all claims, demands, suits, liabilities, obligations, costs and expenses, including, without limitation, attorneys' and consultants fees, asserted against or incurred by the

Neighbourhood Company as a result of or in connection with the use of any Neighbourhood Company Common Elements by such Owner or such Owner's Guests.

1.02 No Camping.

- (a) No camping shall be permitted anywhere within the Neighbourhoods.
- (b) No recreational vehicles shall be used for overnight lodging anywhere within the Neighbourhoods.

1.03 Animals.

No dogs, cats, birds, reptiles or other animals or pets of any kind are permitted to be kept, raised, bred or housed within the Neighbourhoods without prior written consent from the Colorado Division of Wildlife (modified March 2004).

ARTICLE II  
VEHICLE ACCESS AND PARKING

2.01 River Run.

(a) River Run village is a pedestrian village and, except as permitted in this Section 2.01, there shall be no vehicles of any type allowed in River Run village at any time.

(b) Within River Run village vehicles are permitted to travel on only the following streets and roads:

- (i) Ida Belle Drive;
- (ii) River Run Road;
- (iii) Dercum Drive;
- (iv) Dercum Square; and
- (v) Hunki Dori Drive.

(c) No vehicle may be parked on any road or street within River Run village, or anywhere else within River Run village, except in:

- (i) the designated short term parking spaces located on River Run Road adjacent to Black Bear Lodge and Arapahoe Lodge;



(ii) the condominium parking garages (which may be used only by residential condominium Owners and their Guests, unless the condominium declarations provide otherwise); and

(iii) the day skier parking lots operated by the Resort.

(d) In addition to the other Regulations set forth in this Article II, the use of moving vans, commercial delivery vehicles and trash removal vehicles within River Run village is subject to the following restrictions:

(i) No such vehicle may travel on Ida Belle Drive, Dercum Drive or Dercum Square.

(ii) No such vehicle may travel on any road or street located within River Run village between the hours of 11:00 a.m. and 2:00 p.m., or between the hours of 6:00 p.m. and 6:00 a.m.

(iii) No such vehicle consisting of a tractor-trailer or any other attached trailer shall make deliveries on any road except Hunki Dori Drive.

(iv) No such vehicle may be parked anywhere in River Run village, except in the loading zones located adjacent to Arapahoe Lodge and at the end of Hunki Dori Drive.

(v) No such vehicle may remain parked in River Run village overnight or for longer than is reasonably required to make its pick-up or delivery. In no event shall any such vehicle remain parked in River Run village for longer than 30 minutes.

(e) The regulations set forth in this paragraph 2.01 shall not apply to vehicles operated by or operated under the express authorization of the Neighbourhood Company such as snow removal vehicles, maintenance vehicles and trash removal vehicles.

## 2.02 Ski Tip Neighbourhood.

(a) No vehicle may be parked on any road or street within the Ski Tip Neighbourhood, or anywhere else within the Ski Tip Neighbourhood, except in:

(i) unit parking garages;

(ii) unit driveways; and

(iii) designated parking spaces.

(b) In addition to the other Regulations set forth in this Article II, the use of moving vans, commercial delivery vehicles and trash removal vehicles within the Ski Tip Neighbourhood is subject to the following restrictions:

(i) No such vehicle may travel on any road or street located within the Ski Tip Neighbourhood between the hours of 8:00 p.m. and 8:00 a.m.

(ii) No such vehicle may remain parked in the Ski Tip Neighbourhood overnight or for longer than is reasonably required to make its pick up or delivery. In no event shall any such vehicle remain parked in the Ski Tip Neighbourhood for longer than 30 minutes.

#### 2.03 Construction Vehicles.

Notwithstanding anything to the contrary contained herein, the provisions of Sections 2.01 and 2.02 shall not apply to construction or construction delivery vehicles.

#### 2.04 General Rules of the Road.

(a) No person shall drive a vehicle within the Neighbourhoods at a speed which is greater than is reasonable and prudent in light of existing conditions, and in no event greater than 25 miles per hour. No person shall drive a vehicle within the Neighbourhoods except on roadways designated for vehicular traffic.

(b) No person may drive any vehicle anywhere in the Neighbourhoods in a careless or imprudent manner, without due regard for the width, grade, curves, corner, pedestrian and vehicular traffic and use of the streets, or in any manner that endangers the safety of persons or property.

(c) No vehicle shall be driven to the left side of the center of any road in the Neighbourhoods.

(d) Vehicles must be driven in compliance with all instructions or directions of any traffic control devices and security personnel.

(e) Vehicles must always yield the right-of-way to pedestrians and bicycles.

(f) All bicycles must be operated in a safe manner, and in accordance with:

(i) all posted Neighbourhood Company signs;

(ii) the applicable provisions of this Article II; and

(iii) all directions given by traffic control devices and security

personnel.

(g) No person shall use any road within the Neighbourhoods for traveling on snowmobiles, skis, snowboards, toboggans, sleds or similar devices.

(h) No recreational vehicles may be parked anywhere within the Neighbourhoods.

### ARTICLE III

#### CONSTRUCTION AND ALTERATIONS

3.01 Construction Requirements. The Owner of each Site shall ensure that all construction activity that is performed on such Site is performed in accordance with the following requirements.

(a) Design Review Board.

All construction of new improvements and all alterations of the exteriors of existing improvements are controlled by and must be approved by the Design Review Board.

(b) Construction Vehicles, Access, Parking.

(i) The Owner or its general contractor must prepare and submit to the Executive Director an access plan relating to all proposed construction activity on any site. The access plan shall describe the proposed location of (A) access to the jobsite, (B) parking for construction vehicles and workers, (C) fencing and (D) all temporary structures including toilets and trash receptacles. In addition, the access plan shall include such other matters as the Executive Director may request. The access plan must be approved in writing by the Executive Director prior to the commencement of any construction on the Site. Following approval, all construction activities on the Site shall be conducted in accordance with the approved access plan. The Neighbourhood Company may require the revision of any access plan should the plan prove to be unworkable.

(c) Noise.

Each Owner shall use all reasonable efforts to minimize external noise resulting from its construction activity. Notwithstanding the foregoing, an Owner shall not be required to comply with the noise limits set forth in Article V of these Regulations during the following days and hours:

Monday through Saturday 7:00 a.m. to 9:00 p.m.

At all other times, each Owner shall ensure that the noise resulting from its construction activity shall not exceed the noise limits set forth in Article V of these Regulations.

(d) Protection of Property and Roads. An Owner's construction activity shall be limited to the Site or portion thereof for which the construction has been approved by the

Design Review Board, unless the Neighbourhood Company provides specific written authorization to the contrary. An Owner shall keep all roads free and clear of all materials, rubbish and debris resulting from such Owner's construction activity. An Owner shall cause any common ground, adjacent lots or roads damaged during its construction activity to be restored to the Neighbourhood Company's satisfaction promptly and, in any event, within thirty days after such damage occurs.

(e) Fencing. The Owner shall cause each jobsite to be fenced in accordance with the approved access plan.

(f) Temporary Structures. Temporary structures may be maintained on a jobsite in accordance with the access plan. All temporary structures erected on a jobsite shall be removed within thirty days after completion of the construction activity.

(g) Water Connections and Toilets. A temporary water connection and on-site enclosed chemical toilets must be available at all times when construction activity is taking place on a Site. Chemical toilets shall be located in accordance with the approved access plan.

(h) Blasting Restrictions. No blasting shall be performed on any Site without the Executive Director's prior consent. Blasting may be subject to certain restrictions, which shall be determined by the Executive Director in his or her sole and absolute discretion and which may vary from Site to Site.

(i) Construction Trash Disposal. Trash generated from construction activity shall be deposited in containers designated for such purpose as shown on the access plan. Trash shall then be removed from such trash receptacles by trash removal companies engaged by the Owner of the Site or its general contractor. All such containers and the Site and other areas on which the construction activity is taking place shall be kept in a clean and sanitary condition.

#### ARTICLE IV RETAIL OPERATIONS

##### 4.01 Retail Establishments.

This Article IV shall apply to all Commercial Space on which a "Retail Establishment" is operated. "Retail Establishment" means any businesses selling goods or services to the public, including but not limited to the restaurants and shops located within the Neighbourhoods and hotels or lodges which sell goods or services to the public or operate a restaurant.

##### 4.02 Deliveries.

All deliveries made to Retail Establishments must be made in compliance with Article II hereof.

#### 4.03 Operations.

##### (a) Minimum Hours of Operation.

Except as set forth in leases of Commercial Space dated prior to July 1, 1996, all Retail Establishments must remain open for business with the public during the following hours:

	<u>Ski Season</u>		<u>Other Seasons</u>	
Breakfast Restaurants	7 days	7:00 a.m.-3:00 p.m.	7 days	7:00 a.m.-3:00 p.m.
Lunch & Dinner Restaurants	7 days	11:00 a.m.-10:00 p.m. (mid-afternoon closure not to exceed three hours)	7 days	11:00 a.m.-10:00 p.m. (mid-afternoon closure not to exceed three hours)
All other Retail Establishments	7 days	8:30 a.m. - 9:30 p.m.	7 days	10:00 a.m. - 8:00 p.m.

##### (b) Limits on Hours of Operation.

No Retail Establishment may be open for business with the public before 6:00 a.m. or after 2:00 a.m.

#### 4.04 Retail Lighting and Signage.

##### (a) Design Review Board Approval; Certain Restrictions.

All Retail Establishment signage and display lighting must be approved by the Design Review Board. Exterior halogen lighting shall not be permitted.

(b) Additional Requirements. All Retail Establishment signage, display and interior lighting must:

- (i) remain lit from dusk to 12:00 a.m.;
- (ii) be turned off, except for security lighting, between the hours of 2:00 a.m. and 6:00 a.m.; and
- (iii) be operated by automatic timers.

#### 4.05 Grease Traps.

(a) General Maintenance. Each grease trap shall be maintained in good condition and repair.

(b) Cleaning. The Neighbourhood Company shall arrange for each grease trap to be cleaned at the Owner's expense.

ARTICLE V  
NOISE REGULATION

5.01 Noise Prohibited.

The making, creating or allowing of an excessive or an unusually loud noise at any location within the Neighbourhoods heard and measured in a manner hereinafter set forth shall be prohibited except when made under and in compliance with a permit issued pursuant to Section 5.05 hereof.

5.02 Definition.

An excessive or unusually loud noise shall be defined as follows:

- (a) Noise of any duration which exceeds the allowable noise limit by 15 decibels.
- (b) A noise, one minute or more in duration out of any ten minute period, which exceeds the allowable noise limit by 10 decibels.
- (c) A noise of five minutes in duration and a total of five minutes out of any ten minute period, which exceeds the allowable noise limit by 5 decibels.

5.03 Measurement of Noise.

For the purpose of determining and classifying any noise as excessive or unusually loud as declared to be prohibited by this section, the noise shall be measured on a decibel or sound level meter of standard design and quality operated on the A Weighting Scale.

- (a) If the noise source is located on private property, the noise shall be measured at or beyond the property line of the property on which the noise source is located.
- (b) If the noise source is located on public property or on Neighbourhood Company Common Elements, the noise shall be measured no closer than ten feet from the noise source.

5.04 Allowable Limits.

- (a) River Run Normal Limits. The following shall be the allowable noise limits for River Run village for the time periods specified:

60. (i) Maximum number of decibels permitted from 7:00 a.m. to noon:
70. (ii) Maximum number of decibels permitted from noon to midnight:
- a.m.: 50. (iii) Maximum number of decibels permitted from midnight to 7:00

(b) Ski Tip Normal Limits. The following shall be the allowable noise limits for the Ski Tip Neighbourhood for the time periods specified:

- p.m.: 60. (i) Maximum number of decibels permitted from 7:00 a.m. to 10:00
- a.m.: 50. (ii) Maximum number of decibels permitted from 10:00 p.m. to 7:00

#### 5.05 Permits.

Applications for a specified permit to exceed noise level designations or time periods in this section may be made to the Neighbourhood Company. The Executive Director of the Neighbourhood Company or his or her duly authorized representative may grant the relief as applied for if he or she finds one of the following:

- (a) That additional time is necessary for the applicant to alter or modify the activity or operation to comply with these regulations.
- (b) The activity, operation or noise source will be of temporary duration, and cannot be done in a manner that will comply with Section 5.01.
- (c) That no other reasonable alternative is available to the applicant.
- (d) That the permit is necessary for the community's cultural, historical or social benefit.

The Executive Director or his or her duly authorized representative may prescribe any conditions or requirements he or she deems necessary to minimize adverse effects upon the community or the surrounding neighborhood, including but not limited to, specific times or functions of the noise or location of the noise source. Any permit granted by the Executive Director or his or her duly authorized representative under this section shall contain all conditions upon which the permit has been granted and shall specify a reasonable time that the permit shall be effective.

#### 5.06 Exceptions.

The maximum permissible noise limits for the times specified in Section 5.04 and 5.05 above shall not apply to sound emitted from the following:

- (a) Any emergency alarm;
- (b) Any authorized emergency vehicle when responding to an emergency call or acting in time of an emergency;
- (c) Activities of a temporary duration permitted by law and for which a permit therefor has been granted by the Neighbourhood Company, including but not limited to parades and fireworks displays;
- (d) Any construction equipment operated upon a Site during the time period between the hours of 7:00 a.m. and 9:00 p.m. Monday through Saturday;
- (e) Any snow making, snow removal or maintenance equipment; and
- (f) Any licensed motor vehicles designated for and operated on any road right-of-way within The Neighbourhoods.

5.07 Amplified Sounds.

No person other than the Neighbourhood Company security personnel, law enforcement or governmental agencies shall install use, or operate within the Neighbourhoods a loud speaker or sound amplifying equipment in a fixed or moveable position or mounted upon any sound truck for the purposes of giving instructions, directions, talks, addresses, lectures, or transmits or projects music to any persons or assemblage of persons in or upon any street, sidewalk, park or place or property, except with the prior written consent of the Neighbourhood Company, and then in compliance with such conditions and restrictions as the Neighbourhood Company may impose. The sound emanating from sound amplifying equipment shall be limited in volume and intensity (a) for the time such sound is permitted under this Section 5.07 and, (b) at the decibels levels set forth in Section 5.04 of these Regulations.

ARTICLE VI

WASTE MANAGEMENT

6.01 Residential Trash Disposal.

Trash generated from residential units within the Neighbourhoods shall be deposited in designated trash receptacles located in the garages of condominiums or in outdoor trash structures approved by the Design Review Board. Trash shall then be removed from such receptacles by trash removal companies engaged by the condominium association. All such trash receptacles shall be kept in a clean and sanitary condition.



6.02 Commercial Trash Disposal.

(a) General. Trash, recyclables and grease generated from Commercial Space within the Neighbourhoods shall be deposited in separate containers provided by the Neighbourhood Company. Trash, recyclables and grease pickup shall be arranged by the Neighbourhood Company. The cost of such pickup shall be charged to each Owner.

(b) Main Pick Up. Trash and recyclable material shall be picked up from each Commercial Space once a day at approximately 8:00 p.m. The trash and recyclable material containers ready for pick up shall be placed outside (i) the service door of all restaurants, and (ii) the front door for all other Commercial Space.

(c) Additional Trash and Recyclable Pick Up. Additional trash and recyclable material pick ups shall be made from outside restaurant service doors at approximately 11:00 a.m. and approximately 3:00 p.m.

(d) Grease Pick Up. Grease, deposited into five gallon containers provided by the Neighbourhood Company and placed outside the restaurant's service doors, will be picked up at approximately 3:00 p.m. on Mondays and Thursdays.

(e) Placement Outside. Trash, recyclables and grease shall not be placed outside doors of Commercial Space more than thirty minutes before the scheduled pick up of such items.

6.03 Storage.

No trash or waste products shall be stored on Neighbourhood Company property except in areas designated by the Neighbourhood Company for such purposes.

6.04 Recycling.

The Neighbourhood Company is dedicated to conserving natural resources through waste reduction and recycling.

- (a) Reduce. Owners and Guests are strongly encouraged to:
- (i) purchase minimally packaged, non-toxic products;
  - (ii) buy only recyclable containers and avoid disposables;
  - (iii) properly dispose of chemical waste and paints;
  - (iv) avoid hazardous chemicals; and

(v) think about how they will properly dispose of a product and its packaging before they buy it.

(b) Recycle. Owners and Guests are strongly encouraged to deposit clean and sorted recyclables in area collection centers and eliminate contamination in the sorting process.

(c) Re-Use. Owners and Guests are strongly encouraged to consciously purchase products and packaging made from recycled materials to close the recycling loop while ensuring a continued market for certain recyclables.

## ARTICLE VII

### VIOLATIONS; REMEDIES

#### 7.01 Warning.

Upon the first occurrence of a violation of any Regulation, the violator and/or Owner of the Site on which the violation occurs will be notified of the violation and warned that if the violator does not cease or cure the violation, or if any further violation of that Regulation occurs, the violator and/or the Owner will be subject to, among other remedies, fines.

#### 7.02 Fines.

After a warning has been issued pursuant to Section 7.01 above, violators of any Regulation and the Owner of the Site on which a violation occurs are each punishable in any one calendar year by fines of \$100 or more for the first offense, \$250 or more for the second offense, and \$500 or more for each further offense. The amount of the fine imposed shall be determined by the Executive Director. Violators and Owners shall pay any fine imposed by this Section 7.02 within five days after notice of such fine is given.

#### 7.03 Other Remedies.

In addition to the remedies set forth in Section 7.02 above, the Neighbourhood Company shall have the following additional rights and remedies upon the occurrence of any violation hereunder (and after the warning described in Section 7.01 is given):

(a) Right to Cure. The Neighbourhood Company may, but is not obligated to, enter upon the applicable Site (if such entry is necessary) and cease or cure the violation at the Owner's cost and expense. If the Neighbourhood Company ceases or cures any such violation, the Owner shall pay to the Neighbourhood Company the amount of all costs incurred by the Neighbourhood Company in connection therewith, plus an administrative fee equal to 15 percent of all of such costs, within five days after the Owner receives a written invoice therefor from the Neighborhood Company.

(b) Right to Sue for Injunctive Relief. The Neighbourhood Company may sue the Owner and/or any violator to enjoin the violation.

(c) Right to Sue for Damages. The Neighbourhood Company may sue the Owner and/or any violator for all damages, losses, costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements incurred by the Neighbourhood Company as a result of the violation.

(d) Violations of Vehicle Access and Parking Regulations. Upon the violation of any provision of Article II hereunder, the Neighbourhood Company shall have the following additional rights and remedies without regard to whether a warning has been issued under Section 7.01 hereof:

(i) the Neighbourhood Company, through the Executive Director or other authorized agent, may deny or restrict access by the violating party to the Neighbourhoods; and

(ii) the Neighbourhood Company shall have the right to have any violating vehicle towed from The Neighbourhoods, at the vehicle owner's expense and, in such event, the violating party shall also pay to the Neighbourhood Company an administrative fee equal to \$25; and

(iii) the Neighbourhood Company shall have the right, through the Executive Director or other authorized agent, to issue citations and assess fines determined by the Executive Director or its Executive Board.

(e) Lien. The Neighbourhood Company shall have a lien against the Site and all of the Owner's other properties within The Neighbourhoods to secure payment of (a) any fee, charge, fine or other amount due from the Owner to the Neighbourhood Company under this regulation, (b) interest on any unpaid amounts at the rate of 18 percent per annum from the date due until paid, and (c) all costs and expenses of collecting any unpaid amounts, including, without limitation, reasonable attorneys' fees and disbursements. Any such lien may be foreclosed as a mortgage under the laws of the State of Colorado.

(f) Other Rights and Remedies. The Neighbourhood Company shall have all other rights and remedies available to it at law or in equity. All rights and remedies of the Neighbourhood Company shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy.

## ARTICLE VIII

### ADMINISTRATION

8.01 General. Except as specifically provided herein or otherwise determined by the Executive Board, the Executive Director has the authority to answer questions regarding, interpret and generally administer these Regulations.

8.02 Communication. All communication with and requests made to the Neighbourhood Company pursuant to these Regulations shall be in writing and shall be submitted to the Executive Director at P.O. Box 9251, Keystone, Colorado 80435. All communication from the Executive Director or the Executive Board pursuant hereto shall be in writing.

8.03 Requests for Consents, Approvals or Variances.

(a) Request. Requests for consents, approvals or variances hereunder shall be made to the Executive Director in accordance with Section 8.02.

(b) Review and Determination. Each such request shall be reviewed by the Executive Director and the Executive Director shall have the authority, in his or her sole discretion, to grant or deny such request, unless otherwise provided herein.

8.04 Submittals to Executive Board. Notwithstanding anything to the contrary contained herein, in any case where the Declaration or the Regulations so require, the Executive Director shall submit a matter to the Executive Board. In addition, the Executive Director, in his or her sole discretion, may elect to submit any matter regarding the Regulations, or the enforcement or interpretation thereof, to the Executive Board. Any matter submitted to the Executive Board shall be determined by resolution of the Executive Board.

8.05 Exemptions and Variances. The Executive Director shall have the authority to grant exemptions and variances to these Regulations from time to time in his or her discretion.

8.06 Appeals. Any determination made by the Executive Director may be appealed to the Executive Board which, in its sole discretion, may review, refuse to review, affirm or overturn the Executive Director's determination.

8.07 Amendments to Regulations. The Neighbourhood Company reserves the right to supplement, alter, amend, modify, repeal or revoke any of these Regulations by resolution of the Executive Board.



**EXHIBIT F**

**AFFIDAVIT AND NOTICE OF NON-RESPONSIBILITY**

AFFIDAVIT OF [INSERT NAME]

I, [Insert Name], having been duly sworn upon oath, state and affirm as follows:

- 1. I am over the age of 18 and have personal knowledge of the facts in this affidavit.
- 2. I am the [Title] of [Insert Tenant LLC Name] dba Ski-To-Tee.
- 3. In my role as [title], I am familiar with the construction of improvements in the Premises, located at Unit E-3 in the building commonly known as the "Buffalo Lodge Building of River Run Village" located at [Insert Physical Address] (the "Premises").
- 4. On or about \_\_\_\_\_, 20\_\_, I posted the Notice of Non-Responsibility attached hereto as Exhibit F in a conspicuous place on the exterior of the Premises as reflected in the photo of the Premises I took on or about said date, which is attached below as Exhibit 2.
- 5. [Omit for first affidavit; after work is done, sign again with this paragraph included] The Notice of Non-Responsibility remained posted from such date until completion of the construction of improvements in the Premises by the tenant on or about \_\_\_\_\_, 20\_\_, as reflected in the photo I took of the Premises on or about said date, which is attached hereto as Exhibit 3.

\_\_\_\_\_
Print Name: \_\_\_\_\_

STATE OF COLORADO )

)

COUNTY OF \_\_\_\_\_)

The foregoing instrument was subscribed and sworn before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_ NOTARY PUBLIC

OWNER'S NOTICE OF NON-RESPONSIBILITY

To Whom It May Concern:

1. You are hereby notified that the undersigned owner ("Owner"), whose address is 390 Interlocken Crescent, Suite 1000, Broomfield, Colorado 80021, Attn: Director of Commercial Leasing, is the legal owner in fee of the real property located in Keystone, Colorado, legally described as Unit E-3 in the Buffalo Lodge Building of River Run Village located in Keystone, Colorado, consisting of approximately 969 square feet, located in Summit County, Colorado (the "Property").

2. You are further notified that Ski-To-Tee, LLC dba Ski-to-Tee ("Tenant"), is in possession of that portion of the Property commonly referred to as "Unit E-3," in the building commonly known as the "Buffalo Lodge Building of River Run Village" located at 100 Dercum Square Unit 3 Keystone, CO 80435, as a tenant under a lease with Owner, but Tenant has no other right or claim to the Property.

3. Therefore, you are further notified that Owner will not be responsible or liable for any labor, laborers, skills, services, materials, tools, equipment, machinery, or other fixtures therefor, that have been, are being, or may in the future be, furnished or supplied to the Property with respect to the erection, construction, alteration, addition, removal, repair, or other improvement to the Property, or any part thereof, including without limitation designs, plans, plats, maps, specifications, drawings, estimates of costs, and surveys prepared by any architect, engineer, draftsman, and artisan, and Owner's interest in the Property shall not be subject to any lien for the same, including, without limitation, any improvements to the Property.

THIS NOTICE IS GIVEN PURSUANT TO  
COLORADO REVISED STATUTES  
SECTION 38-22-105

OWNER:

Vail Summit Resorts, Inc.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_



## Keystone, Colorado Liquor License Petition

The applicant, SKI-TO-TEE, LLC dba SKI-TO-TEE, submit the following petition for approval in connection with its liquor license application:

**To the Town of Keystone Local License Authority**

We the undersigned, being over the age of twenty-one, hereby support \_\_\_\_\_ application for a retail liquor license at \_\_\_\_\_, Keystone, Colorado.

	Signature	Printed Name	Place of Residence (Keystone/Summit/ Visitor)	Date of Birth	Date of Signing
1		Chelea Fiege	Summit	2/9/85	8/25/24
2		MARCO DEL BORDO	KEYSTONE	3/26/86	8/25/24
3		Kelly Stevens	Blue River	12/2/69	8/29/24
4		Lorena Escalante	Silverthorne	11/14/70	8/29/24
5		ASHLEY LEWIS	FRISCO	10/5/82	8/29/24
6		MAUREEN LATHROP	FRISCO	4/26/87	8/29/24
7		Joe Alvine	Frisco	1/18/88	8/27/24
8		JEFF SCRIBBINS	SUMMIT	5.30.72	8.29.24
9		LEIGH WEYLER	Summit	5.4.93	8.29.24
10		JENCHI ARAPPA	BRECK	5/7/89	8.29.24
11		Tyler Bruce	Dillon	11/17/89	8.29.24
12		CAMERON HESSLER	KEYSTONE	03/30/92	8/29/24
13		Graham Bates	Silverthorne	10/17/90	8.29.24
14		Carlos Ruiz	Dillon	23-10-78	8-29-24
15		LEXI EPLING	KEYSTONE	3.10.99	8.29.24
16		Alex Grieder	KEYSTONE	10.19.96	8.29.24
17		Zach Waters	Keystone	4.10.96	8.29.24
18		Naomi Waters	Keystone	10.10.2002	8.29.24
19		Perry Schattler	Keystone	2/21/82	8.29.24
20		Autumn McDonald	Summit Co.	11/29/87	8.29.24
21		Garrett Rodgers	Keystone	8/29/24	11/22/2000
22		Elizabeth Cum	Silverthorne	8/10/99	8/29/24
23		Brian Michael	Keystone	4/28/99	8/29/24
24		Robert Peterson	Keystone	7/31/98	8/29/24
25		Robert Peterson	Dillon	7/7/1954	8/29/24



# Keystone, Colorado Liquor License Petition

The applicant, \_\_\_\_\_ dba \_\_\_\_\_, submit the following  
petition for approval in connection with its liquor license application:

**To the Town of Keystone Local License Authority**

We the undersigned, being over the age of twenty-one, hereby support  
\_\_\_\_\_ application for a retail liquor license at  
\_\_\_\_\_, Keystone, Colorado.

	Signature	Printed Name	Place of Residence (Keystone/Summit/ Visitor)	Date of Birth	Date of Signing
1		Ashley Westbrook	Silverthorne	3/26/81	8/29/24
2		Scott Westbrook	Silverthorne	8/19/71	8/29/24
3		Matt Muir	Frisco	11/29/99	8/29/24
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**TOWN OF KEYSTONE**  
**Summit County, Colorado**

LIQUOR LICENSING AUTHORITY

Resolution 2024-01

WHEREAS, this matter comes on for a public hearing before the Keystone Liquor Licensing Authority, with respect to the application for a tavern license submitted by Ski-To-Tee, LLC dba Ski-To-Tee to be located at 100 Dercum Square Unit E3, Keystone, Colorado (the "Property").

WHEREAS, the Authority, having conducted the public hearing and considered the evidence and testimony, makes and enters the following findings and order on application for new license.

**Now, Therefore, be it Resolved by the Liquor License Authority of the Town of Keystone, Colorado, that:**

Section 1. The Liquor License Authority of the Town of Keystone, Colorado, enters the following findings:

FINDINGS

1. The referenced application for a tavern license was submitted by Ski-To-Tee, LLC dba Ski-To-Tee to be located at 100 Dercum Square Unit E3 Keystone, Colorado, hereinafter "Applicants." The Applicants have submitted a lease agreement for possession of the premises and issuance of a tavern license.

2. Pursuant to Colorado Revised Statutes Section 43-47-311, the Town received a complete application including payment of all fees and set the public hearing for September 10, 2024.

3. Pursuant to Colorado Revised Statutes Section 43-47-311, public notice of the hearing was published in the Summit Daily and posted in a clear and conspicuous location on the Property.

4. Pursuant to Colorado Revised Statutes Section 43-47-312, Town staff provided the Applicants with a copy of the Town's findings.

5. The public hearing was held at approximately 7:00 p.m. on September 10, 2024, at the Keystone town hall, 13133 E. Arapahoe Road, Centennial, Colorado. The Applicant was present at the hearing.

6. The Applicant's proposed location is in a zone district which allows tavern licensed establishments as a use by right subject to the Authority's approval.

7. There are no existing schools in the area of the Property, none of which is within five hundred (500) feet thereof.

8. A background check was conducted of the Applicant and there were no concerns reported by the Town Clerk.

9. The Applicant submitted a petition concerning the proposed premises with 28 signatures and these parties in interest desired issuance of a tavern license. No parties in interest, including businesses, opposed issuance of the license.

10. There are four tavern licensed establishments in the neighborhood. There is not an undue concentration of tavern licensed establishments in the area of the Applicants' proposed location.

11. Pursuant to Colorado Revised Statutes Section 43-47-311(5)(a), the Applicant, as parties in interest, presented testimony as to the desires of the adult inhabitants of the community, the reasonable requirements of the neighborhood and their training in operating a liquor licensed establishment.

12. Pursuant to Colorado Revised Statutes Section 43-47-311(5)(a), parties in interest, other than the Applicants, were permitted the opportunity to testify. The recording of the public hearing demonstrates the number of individuals, who testified in support of the issuance of a tavern license.

13. Based on the petition and any testimony in support, the Authority finds that the reasonable needs and desires of the community support issuance of a tavern license at the Applicants' proposed location.

Section 2. Based on the Findings, the Authority hereby orders that the application for a tavern license for Ski-To-Tee, LLC dba Ski-To-Tee to be located at 100 Dercum Square Unit E3, Keystone, Colorado be approved and issued.

DONE AND ENTERED by the Keystone Liquor Licensing Authority, as of the \_\_\_\_\_ day of September, 2024.

By: \_\_\_\_\_

Kenneth D. Riley, Chair

ATTEST:

Approved as to Form:

By: \_\_\_\_\_

Town Clerk

By: \_\_\_\_\_

Town Attorney