

## Attachment #2

### AGREEMENT REGARDING GENERATION OF REVENUE FOR PARKING AND TRANSIT RELATED TO SKI AREA ACTIVITIES

This Agreement ("Agreement") dated August 25, 2015, is between **Vail Summit Resorts, Inc. ("VSRI")** and the **Town of Breckenridge**, a Colorado home rule municipality (the "**Town**"). VSRI and the Town are collectively referred to herein as the parties.

#### RECITALS

WHEREAS, the Town has been considering whether to refer to Town voters at the November 3, 2015 election a new tax on admissions to ski areas located within the Town. VSRI opposes the adoption and implementation of an admissions tax on ski areas located within the Town. The parties now enter into this Agreement for purposes of resolving this dispute.

WHEREAS, on August 25, 2015 at its regularly scheduled Town Council meeting, the Breckenridge Town Council adopted the Resolution attached hereto as Exhibit A (the "**Resolution**").

WHEREAS, the ballot measure described therein (the "**Ballot Measure**") will be voted on by registered voters in the Town on November 3, 2015.

WHEREAS, the Town and VSRI hereby agree that resolution of the dispute in this manner guaranteeing a revenue source for the parking and transit needs of the Town and VSRI, their visitors and residents, and obviating the need for a lengthy and costly dispute which could involve litigation, is in the best interests of both parties.

#### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated and enforceable as part of this Agreement, and the mutual promises and covenants contained in this Agreement, the Town and VSRI agree as follows:

##### **1. Covenants of the Town**

A. The Town agrees that the purpose of the Resolution is to impose an excise tax of 4.5% on the price paid for single and multi-day ski lift tickets purchased for use at Breckenridge Ski Resort (the "**Tax**").

B. The Town agrees that the Tax does not apply to Season Passes, any ski lift ticket not specifically sold to provide the right of entry solely to Breckenridge Ski Resort (i.e. lift ticket products sold for access to another mountain resort or for use at multiple mountain resorts), any passes or lift tickets sold for summer activities, or any other items or activities besides those lift tickets intended for ski lift use during the winter ski season solely at Breckenridge Ski Resort.

“Season Passes” include all lift ticket products that provide access to the ski resort for the majority of the ski season.

C. The Town agrees that the Tax will only apply to ski lift tickets sold on or after July 1, 2016.

D. The Town agrees that this Agreement shall become null and void if any amendment to the Ballot Measure or any New Tax is approved by the Town Council or by Town voters at any time. A “New Tax” shall mean any Town tax which is applicable to the right or privilege to access, use or participate in activities at the Breckenridge Ski Resort or any Town tax that applies solely to Breckenridge Ski Resort.

E. The Town acknowledges, that, if the Ballot Measure is approved by voters, it will adopt an ordinance formally enacting the Tax and setting forth procedures for implementation, including collection, remittance, and enforcement of the Tax. Given that VSRI is the only business within the Town to which such Tax will be applicable, the Town agrees that, in designing implementation procedures for the Tax, it will work in good faith with VSRI to design procedures that minimize disruption and administrative burden to VSRI and its customers to the extent feasible.

F. The Town acknowledges and agrees that information regarding specific lift ticket sales and revenue of VSRI or its related entities is a trade secret and confidential financial information not subject to public disclosure under section 24-72-204(3)(a)(IV) of the Colorado Open Records Act. The Town agrees not to release such information to the public or to any Town employee or auditor who does not have a direct use for such information in carrying out their duties. The Town further agrees to immediately notify VSRI of any public request for such information.

## **2. Covenants of VSRI**

A. VSRI agrees not to file or cause another person to file any legal challenge to the Resolution or the Ballot Measure, to participate in any way in such a challenge, or to campaign in any way against the adoption of the Ballot Measure, including providing funding to any effort to challenge or oppose the Resolution or the Ballot Measure. The prohibition of this paragraph shall include any challenge to the legality of the Tax or the authority of the Town to impose the Tax, but this shall not prohibit VSRI from challenging, bringing suit against, or otherwise questioning the Town on administrative matters such as the implementation or calculation of the Tax or enforcement of this Agreement. Nor shall the prohibitions of this paragraph apply to any subsequent effort by the Town or any other party to amend the Tax or Ballot Measure or propose a New Tax in any way.

B. Revenue guarantee:

i. VSRI agrees that so long as the Tax is in effect, if the total Tax collection in any given twelve month period between July 1 – June 30 is less than the Base Amount

(defined below), VSRI will pay to the Town by July 31 of the next fiscal year any difference between the total amount collected during that previous year and the Base Amount (the “**Shortfall Amount**”).

ii. The “Base Amount” for the period July 1, 2016 to June 30, 2017 shall be \$3,500,000. Each year after June 30, 2017, the Base Amount shall be adjusted according to the year-over-year change in the consumer price index for the Denver-Boulder-Greeley Consumer Price Index, but in no event shall the annual Base Amount increase be less than one percent (1%) or more than four percent (4%).

iii. To the extent that the total Tax collected by VSRI and remitted to the Town in any single year exceeds the Base Amount, that excess amount shall be deducted from the next annual Shortfall Amount that would otherwise be owed by VSRI to the Town pursuant to this Agreement. Such excess amounts may be carried forward and applied to subsequent Shortfall Amounts for up to two subsequent years, after which the credit for such excess amounts shall expire. Such excess amounts may also be combined and applied against the Shortfall Amount in addition to any other Shortfall Amounts carried forward.

C. VSRI will not reduce or otherwise change the current level of transportation services provided to guests of Breckenridge Ski Resort in response to the adoption and implementation of the Ballot Measure without agreement from the Town. VSRI agrees that while general market conditions or other factors may warrant a change in transportation services at a future date, VSRI will consult with the Town and work collaboratively with the Town to ensure that the parties’ transportation services function in a mutually beneficial manner to provide a high level of service for VSRI’s guests and the Town’s residents.

### **3. Public statements prior to November 3, 2015**

VSRI and the Town agree that they will work in good faith to craft a communication plan and written public statements regarding the Tax and Ballot Measure. VSRI agrees that it will not make any statements that could reasonable be viewed as opposing the Ballot Measure or encouraging others to oppose the Ballot Measure. The parties shall not be bound by this paragraph after November 3, 2015.

### **4. Effective Date and Term**

This Agreement shall be effective upon signature of both parties, and shall continue in perpetuity so long as the Ballot Measure is approved by voters at the November 3, 2015 election or until the Ballot Measure is amended or repealed. In the event that any substantive provision of the Ballot Measure is amended or repealed or any New Tax is approved as referenced in Paragraph 1.D., this Agreement shall be null and void and VSRI shall have no future obligation to make any payment to the Town for a Shortfall Amount.

**5. Authority**

Each party represents and warrants that it has all inherent legal authority requisite to entering into this Agreement, has taken all action necessary to authorize the execution of this Agreement and to perform and satisfy the transactions and obligations contained herein, and has duly authorized the signatories to execute and deliver this Agreement on its behalf. A party shall have the right, in its discretion, to either temporarily suspend or permanently terminate the Agreement if there is any valid dispute as to the legal authority of the other Party or the person signing this Agreement on behalf of the other party to enter into this Agreement.

**6. Breach and Termination**

A. Breach:

In the event that either party believes that the other has breached any requirement of this Agreement, such non-breaching party shall give written notice to the breaching party of such breach. The breaching party shall have 30 days to cure such breach, or such longer time as may be required if the nature of the breach is such that it cannot be cured within 30 days, and if such party does so, no breach shall be deemed to have occurred.

B. Termination for breach:

If a breach is not cured as described in Paragraph 6.A. above, the non-breaching party may terminate this Agreement by giving written notice to the other party of such termination.

**7. Enforcement**

The parties agree that this Agreement may be enforced in law or in equity for specific performance, injunctive, or other appropriate relief, including actual damages required under this Agreement (notwithstanding termination of the Agreement), as may be available according to the laws and statutes of the State of Colorado; provided, however, the parties agree to and hereby release any claims for incidental, indirect, special, consequential, or punitive damages.

**8. Force Majeure**

Neither party shall be liable for delay or failure to perform hereunder, despite best efforts to perform, if such delay or failure is the result of *force majeure*, and any time limit expressed in this Agreement shall be extended for the period of any delay resulting from any *force majeure*. Timely notices of the occurrence and the end of such delay shall be provided by the party asserting *force majeure* to the other party. "*Force majeure*" shall mean causes beyond the reasonable control of a party such as, but not limited to, adverse weather conditions, acts of God or the public enemy, strikes, work stoppages, unavailability of or delay in receiving labor or materials, faults by contractors, subcontractors, utility companies or third parties, fire or other casualty, or action of government authorities other than the Town. For purposes of this paragraph, low snowfall does not constitute "adverse weather conditions".

**9. Entire Agreement**

This Agreement, including the exhibits which are hereby incorporated into this Agreement by reference, constitutes the entire agreement of the parties. The parties agree there have been no representations, oral or written, other than those contained herein and that the various promises and covenants contained herein are mutually agreed upon and are in consideration for one another.

**9. Amendment**

This Agreement may be amended, modified, or changed, in whole or in part, only by written agreement executed by the parties in the same manner as this Agreement.

**10. Notice**

To the Town: Town of Breckenridge  
150 Ski Hill Road  
PO Box 168  
Breckenridge, CO 80424  
Attn: Town Manager

with copy to: Town of Breckenridge  
150 Ski Hill Road  
PO Box 168  
Breckenridge, CO 80424  
Attn: Town Attorney

To VSRI: Vail Summit Resorts, Inc.  
c/o Vail Resorts Management Company  
390 Interlocken Crescent  
Broomfield, CO 80021  
Attention: Chief Operating Officer

with copy to: Vail Summit Resorts, Inc.  
c/o Vail Resorts Management Company  
390 Interlocken Crescent  
Broomfield, CO 80021  
Attention: Legal Department  
Legalnotices@vailresorts.com

with copy to: Brownstein Hyatt Farber Schreck LLP  
410 17<sup>th</sup> St., Suite 2200  
Denver, CO 80202  
Attention: Jason Dunn or Carolynne White

The persons or addresses set forth above may be changed at any time by written notice.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above set forth.

TOWN:

TOWN OF BRECKENRIDGE,

By: [Signature]

Name: John Warner

Title: Mayor

ATTEST:

[Signature]  
Helen Cospolich  
Town Clerk



VSRI:

VAIL SUMMIT RESORTS, INC.,  
a Colorado corporation

By: [Signature]

Name: Patricia A Campbell

Title: President Mt. Division