

**RESOLUTION NO. 7**  
**Series of 2018**

**A RESOLUTION APPROVING A LEASE AGREEMENT BETWEEN THE TOWN OF VAIL AND  
THE COLORADO SNOWSPORTS MUSEUM AND HALL OF FAME; AND SETTING FORTH  
DETAILS IN REGARD THERETO**

WHEREAS, the Town of Vail (the "Town"), in the County of Eagle and State of Colorado, United States of America, is a home rule municipal corporation duly organized and existing under the laws of the State of Colorado and the Town Charter (the "Charter");

WHEREAS, the members of the Town Council of the Town (the "Council") have been duly elected and qualified;

WHEREAS, the Town owns property commonly referred to as the Vail Village Transit Center;

WHEREAS, The Colorado Snowsports Museum and Hall of Fame (the "Museum") has rented space within the Transit Center from the Town since 1989 and is currently completing major capital improvements and upgrades to the leased premises; ; and

WHEREAS, the Town and the Museum desire to enter into a new Lease Agreement (the "Lease") outlining the obligations of both parties.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF VAIL, COLORADO THAT:

Section 1. The Council hereby approves the Lease in substantially the same form attached hereto as **Exhibit A** and in a form approved by the Town Attorney.

Section 2. This Resolution shall take effect immediately upon its passage.

INTRODUCED, PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Vail held this 16<sup>th</sup> day of January, 2018.

\_\_\_\_\_  
Dave Chapin  
Town Mayor

ATTEST:

\_\_\_\_\_  
Patty McKenny,  
Town Clerk

## GROUND LEASE

This GROUND LEASE is made between the Town of Vail, a Colorado municipal corporation (the "Town") and The Colorado Snowsports Museum and Hall of Fame, a Colorado nonprofit organization ("Lessee").

### **ARTICLE 1 – LEASED PREMISE**

A. Lease. In consideration of the rents, covenants and agreements herein contained, the Town demises and leases to Lessee, and Lessee rents from the Town, the property commonly referred to as 231 S. Frontage Road E, Vail, Colorado, as more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Premise").

B. Suitability. As of the date of execution of this Lease, Lessee has inspected the physical condition of the Premise and receives the Premise in "as is" condition. The Town makes no representations or warranties with respect to the condition of the Premise or its fitness or availability for any particular use, and the Town shall not be liable to Lessee for any latent or patent defect on the Premise.

C. Termination of Prior Lease. The Lease between the Town and Lessee dated May 20, 2014, is hereby terminated and replaced with this Lease.

### **ARTICLE 2 – TERM AND RENT**

A. Term. This Lease shall commence on September 1, 2017, and shall terminate on August 31, 2027. Lessee shall have the option to extend the term of this Lease for an additional 15 year term, terminating on August 31, 2042. Lessee shall exercise this option by providing the Town notice if its intent to renew no later than 180 days prior to August 31, 2027.

B. Rent. Annual rent is currently waived at the Town Manager's discretion, and Lessee also currently receives one silver parking pass, two blue parking passes, and access to a shared storage area. The current rent waiver, parking pass allocation and storage area use will be reviewed annually by the Town. Rent may be imposed at the Town Manager's discretion at any time. In addition, any parking pass allocation and storage area use may be modified or revoked at any time at the discretion of the Town Manager. The 2017 value of the rent waiver is One Hundred Thousand Twenty-five Dollars (\$125,000) and shall be increased each year of this Lease by two percent (2%).

### **ARTICLE 3 – USE OF PREMISE AND MAINTENANCE**

A. General Use. Lessee shall use and occupy the Premise for the operation of a museum, which may also include the sale of incidental related merchandise, so long as such use conforms with regulations of all authorities affecting the Premise, and Lessee will not do, or permit to be done, anything which is contrary to any legal or insurable requirement or which constitutes a nuisance. Lessee may erect signage consistent with its use of the Premise, if such signage has received all necessary approvals pursuant to the Town's sign code and is maintained in good repair. Lessee shall comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the Premise. The Town specifically acknowledges and agrees that the current use of Premise complies with all Town regulations affecting the Premise.

B. General Maintenance. Lessee shall be responsible for all maintenance of the Leased and Licensed Premises, including without limitation the following:

a. Interior Maintenance.

- i. Ensuring all lights and doors are operating properly and repairing the same in a prompt manner, including replacing all light bulbs.
- ii. Replacing batteries in all smoke, fire and CO detectors, as needed, but at a minimum on a yearly basis.
- iii. Painting or staining the interior elements of the building as needed, and ensuring that any scratches or dents in the paint or walls are properly repaired.
- iv. Repairing and maintaining floors and shampooing any carpets as needed and repairing and cleaning any marks in a prompt manner.
- v. Ensuring that all restroom facilities are operating properly and properly stocked with the necessary supplies, and repairing the same in a prompt manner.
- vi. Providing regular and consistent cleaning of the facility; including daily or hourly services as needed.
- vii. Ensuring proper and regular trash disposal within the facility and trash removal from the facility.
- vii. Maintaining signs, murals, temporary displays or exhibits, plan elements, structures and other improvements to a level of quality consistent with that of an internationally recognized educational exhibit in a resort community.

b. Exterior Maintenance.

- i. Maintaining signs, murals, temporary displays or exhibits and other improvements to a level of quality consistent with that of an internationally recognized educational exhibit in a resort community.
- ii. Cleaning exterior surfaces as needed.
- iii. Painting or staining the exterior of buildings as needed, and ensuring that any scratches or dents in the walls are properly repaired.
- v. Clearing litter from the Leased Premises on a daily basis.

c. Annual Review. On an annual basis, the Town will meet with Lessee to discuss the maintenance and operation of the Leased Premises, compliance with this Agreement, any potential capital expenditures and projects and any other matters concerning Vail Transportation Center.

C. Capital Maintenance.

a. The Town and Lessee shall be responsible for capital maintenance as set forth in **Exhibit B-1**. Capital maintenance is performed to extend the useful life of assets or replace assets, at intervals other than annually, and is of a significant value, including without limitation the following:

- i. Interior Capital Maintenance: system and system component and equipment replacements including mechanical, electrical, lighting, security and elevators; flooring replacement; replacement of structural components; and remodels of bathrooms, kitchens and storage rooms.

ii. Exterior Capital Maintenance: roof replacement; window replacement; and replacement of walkways, bridges and parking lots.

b. Lessee shall maintain a log of capital maintenance activities which satisfy its obligations under this Lease.

c. In its maintenance activities, the Town shall use its best efforts to avoid interference with Lessee's use of the Leased Premises and the Licensed Premises, and shall restore any part of the Leased Premises or Licensed Premises damaged by the Town during such activities.

d. Inspection. Lessee shall permit the Town and its agents to enter the Premise at reasonable times and upon reasonable notice, for the purpose of inspecting the Premise.

e. Utilities. Lessee shall pay a flat monthly rate for sewer, water, gas, electricity. Lessee shall also be responsible for cable/data/internet/satellite/telephone service, equipment and repairs if such services are determined to be necessary by Lessee.

#### **ARTICLE 4 – IMPROVEMENTS**

A. Additional Improvements. Lessee shall not, without first obtaining the written consent of Town, make any alterations, additions, or improvements, in, to or about the Premise.

B. Liens. Lessee shall not suffer or permit any mechanic's liens or claims to be filed against the Premise by reason of work, labor, service or materials supplied or claimed to have been supplied to Lessee. Nothing in this Lease shall be construed as constituting the consent or request of the Town, expressed or implied, to any contractor, subcontractor, laborer or material supplies for the performance of any labor or the furnishing of any materials for any specific improvement or repair of or to the Premise. Nothing in this Lease shall be construed as giving Lessee any right to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any mechanic's liens or claims against the Town's interest in the Premise. If any such mechanic's lien or claims are filed against the Premise as a result of Lessee's breach of this Article 5(C), Lessee shall cause the same to be discharged of record within thirty (30) days. If Lessee fails to discharge such mechanic's lien or claim within such period, then, in addition to any other right or remedy of the Town, the Town may discharge the same either by paying the amount due or by procuring the discharge of such lien. Lessee shall not be required to pay or discharge any mechanic's lien or claims if Lessee in good faith proceeds to contest the same by appropriate proceedings; provided, however, that Lessee shall give notice in writing to the Town of its intention to contest the validity of such lien or claim.

#### **ARTICLE 5 – INDEMNIFICATION**

Lessee agrees to indemnify and hold harmless the Town and its officers, insurers, volunteers, representative, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Lease or the Premise, unless caused by the negligence of the Town.

## ARTICLE 6 – INSURANCE

A. Coverages. Lessee covenants and agrees that from the date hereof Lessee will procure and maintain throughout the term, at its sole cost and expense, all of the following insurance:

1. Comprehensive broad form general public liability insurance in common use for commercial structures with extended coverage endorsement protecting the Town and Lessee and covering the Premise, common areas, and parking areas and sidewalks located adjacent to the Premise and Lessee's use thereof against claims for personal injury, death and property damage occurring upon, in or about the Premise, such insurance to afford protection to the limit of not less than two million dollars (\$2,000,000) combined single limit. The insurance coverage required under this Section shall, in addition, extend to any liability of Lessee arising out of the indemnities provided for in Article 6.
2. Workers' compensation insurance covering all employees, in the amounts required by law.
3. Fire and extended coverage insurance covering the Premise for injury or damage by the elements, or through any other cause, and all alterations, extensions, and improvements thereto and on the Premise and replacements thereof, including all appurtenances, whether on the Premise or extending beyond the boundaries thereof, against loss or damage by fire and the risks contemplated within the extended and malicious mischief (as such endorsements may customarily be written in Colorado from time to time), in an amount not less than the full actual replacement cost of the Premise, common areas, and appurtenances, and sufficient to prevent the Town or Lessee from becoming a co-insurer of any partial loss.
4. Rental value insurance, covering loss or damage by fire with extended coverage.
5. Business interruption insurance and/or loss of "rental value" insurance.
6. During the course of any construction or repair of improvements on the Premise initiated by Lessee, "Builders Risk Insurance."

B. Form. All policies shall be issued by solvent and responsible insurance companies licensed to do business in the State of Colorado with a general policy holder's rating of not less than "A" and a financial rating of "AAA", as rated in the most current available "Bests" Insurance Reports, and qualified to write such policies in the State of Colorado. Each policy shall be issued in the names of the Town and Lessee, and their designees. All policies shall be for the mutual and joint benefit and protection of the Town and Lessee. All policies or certificates thereof shall be delivered to the Town upon execution of this Lease and thereafter within thirty (30) days prior to the expiration of each policy. If any policy expires or terminates, renewal or additional policies shall be procured and maintained by Lessee. All such policies of insurance shall contain provisions stating that the company writing said policy will give the Town at least thirty (30) days advance written notice of any cancellation, lapse or reduction in

coverage amounts, and that the insurer waives the right of subrogation against the Town and against the Town's agents and representatives. All public liability, property damage and other casualty policies shall be written as primary policies which do not contribute to and are not in excess of coverage which the Town may carry.

C. Default. Lessee's failure to provide and keep in force any of the insurance policies required by this Article shall be a material default of this Lease, entitling the Town to exercise any or all of the remedies provided in this Lease in the event of Lessee's default.

D. No waiver. Lessee's insurance shall not be construed as any waiver or modification of the Town's rights under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

#### **ARTICLE 7 – TERMINATION**

Termination by Town upon Notice. Notwithstanding any other provision of this Lease, the Town may terminate this Lease pursuant to Article 8 below, or may terminate this Lease without cause, by providing Lessee with a minimum of one year prior written notice. Provided, however, if the Town terminates this Lease without cause prior to December 31, 2026, the Town shall reimburse the Lessee for the depreciated cost (over ten years) of the actual capital cost of the major renovation described in Article 2(A) above, minus 1) the cost of museum exhibits; and 2) the Town's financial contribution to the major renovation (five hundred thousand dollars - \$500,000).

#### **ARTICLE 8 – BREACH**

A. If Lessee fails to perform any of its obligations under this Lease, the Town shall provide Lessee with written notice of the breach. Lessee shall have 15 days after the date of the notice to cure the breach. If a longer period is reasonably required to cure the breach and the cure is promptly begun, such cure period shall be extended for as long as the cure is being diligently undertaken to completion, as determined by the Town.

B. If Lessee fails to cure the breach within 15 days after the date of the notice or a cure is not diligently being undertaken, the Town may, in its sole discretion, cure the breach after a reasonable attempt to schedule the cure around Lessee's schedule. If the Town chooses to cure the breach, Lessee shall be liable for the costs and fees that the Town expends to cure the breach, including any costs resulting from the work of Town employees. Lessee's liability for costs and fees associated with curing a breach shall survive the termination of this Lease.

C. In addition to curing a breach by Lessee, the Town may, in its sole discretion, terminate this Lease as a result of Lessee's failure to cure the breach; provided that such termination shall be approved by the Vail Town Council at a public meeting. If the Town chooses to terminate this Lease under this subsection, it shall give BFAG 30 days' written notice.

## ARTICLE 9 - SURRENDER OF PREMISE

Upon the expiration or termination of the Lease term, Lessee shall peaceably and quietly leave and surrender the Premise in the same condition as it exists on the date of the execution of this Lease, except as modified by mutual consent of the parties.

## ARTICLE 10 – MISCELLANEOUS

A. Entire Agreement. This instrument, along with any exhibits and attachments hereto, constitute the entire agreement between the Town and Lessee relative to the Premise, and this Lease may be altered, amended, waived or revoked only by an instrument in writing signed by both the Town and Lessee. The Town and Lessee agree hereby that any and all prior or contemporaneous oral agreements between and among themselves and their agents or representatives relative to the leasing of the Premise are merged in or revoked by this Lease.

B. Severability. If any provision of this Lease is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

C. Governing Law and Venue. This Lease shall be governed and construed in accordance with the laws of the State of Colorado, and any legal action arising out of this Lease shall be brought in Eagle County, Colorado.

D. Notices. All notices required to be given by either party to the other shall be in writing. All notices shall be sent by United States mail, postage prepaid, addressed to the parties at the addresses set forth below, or at such other addresses as the parties may designate in writing. Notice shall be deemed to have been delivered on the date personally served or two (2) days subsequent to the date that said notice was deposited with the United States Postal Service.

To the Town: Town of Vail  
75 S. Frontage Rd.  
Vail, CO 81657

To Lessee: The Colorado Snowsports Museum and Hall of Fame  
231 S. Frontage Rd. E.  
Vail, CO 81657

E. Successors. This Lease shall inure to the benefit of and be binding upon the Town and Lessee and their respective heirs, successors, representatives, administrators, executors and devisees; provided that Lessee shall not assign this Lease or sublet the Premise or any part thereof. Any attempted assignment or subletting shall be deemed void and of no effect.

F. Assignment and Subletting. Lessee shall not assign this Lease or sublet any portion of the Premise without prior written consent of the Town. Any such assignment or subletting without consent shall be void and, at the option of the Town, may terminate this Lease.

G. Inspection of Records. Town shall have the right, upon reasonable notice to inspect the records of Lessee, including the financial records of Lessee so long as said inspection is reasonably related to a business or municipal purpose of Town pursuant to the terms of this Lease.

H. Attorney Fees and Costs. In case suit should be brought for recovery of the Premise, or for any sum due hereunder, or because of any act which may arise out of the possession of the Premise, the Town shall be entitled to all costs incurred in connection with such action, including reasonable attorney fees.

I. No Waiver. No failure of any party to enforce any term of this Lease shall be deemed to be a waiver of any other term of this Lease.

J. Subordination. This Lease is and shall be subordinated to all existing and future liens and encumbrances against the property.

K. No Joint Venture. Notwithstanding any provision hereof, the Town shall never be a joint venture in any private entity or activity which participates in this Lease, and the Town shall never be liable or responsible for any debt or obligation of any participant in this Lease.

L. Governmental Immunity. Nothing herein shall be construed as a waiver of any protections or immunities the Town may have under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended.

M. No Third-Party Beneficiaries. Except as expressly provided herein, there are no intended third-party beneficiaries to this Lease.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

TOWN OF VAIL, COLORADO

\_\_\_\_\_  
Greg Clifton, Town Manager

ATTEST:

\_\_\_\_\_  
Patty McKenny, Town Clerk



THE COLORADO SNOWSPORTS MUSEUM AND  
HALL OF FAME

By: Susan Jossen

STATE OF COLORADO )

COUNTY OF Eagle )

) ss.  
)

Subscribed and sworn to before me this 11<sup>th</sup> day of January, 2018, by  
Susie Jossen as EXECUTIVE of The Colorado Snowsports Museum and Hall of Fame  
Director

[SEAL]

Patty Bierle-Mckenny  
Notary Public

PATTY BIERLE-MCKENNY  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 19944002530  
MY COMMISSION EXPIRES MAY 11, 2018