

**STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK**

COUNCIL BILL NUMBER: CB35

ORDINANCE NUMBER: 2021-35

TITLE: AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A SITE LEASE AGREEMENT, A LEASE PURCHASE AGREEMENT, AND RELATED DOCUMENTS IN CONNECTION WITH THE CONSTRUCTION OF CERTAIN PUBLIC IMPROVEMENTS OF THE CITY; APPROVING THE FORMS OF SUCH DOCUMENTS; AND PROVIDING FOR OTHER MATTERS RELATING THERETO.

WHEREAS, the City of Black Hawk, Colorado (the “City”) is a home rule municipal corporation duly organized and existing under the Constitution and the laws of the State of Colorado (the “State”) and its Home Rule Charter (the “Charter”); and

WHEREAS, the members of the City Council of the City, consisting of the Mayor and the Board of Aldermen (the “Council”) have been duly elected and qualified; and

WHEREAS, the City is authorized pursuant to Article VII Section 2 of the Charter to borrow money, pledge revenues and issue securities, in a form as authorized by ordinance, including but not limited to lease purchase agreements, long-term rental or lease agreements, installment purchase agreements, certificates of participation, and any other security authorized by statute for municipalities; and

WHEREAS, the City is authorized by Section 31-15-101(1)(d), Colorado Revised Statutes (“C.R.S.”), to acquire, hold, lease, and dispose of property, both real and personal; and

WHEREAS, the City is authorized by Section 31-15-713 (1)(c), C.R.S. to lease any real estate, together with any facilities thereon, owned by the City when deemed by the governing body to be in the best interest of the City; and

WHEREAS, the City is authorized by Section 31-15-801, C.R.S., to enter into rental or leasehold agreements in order to provide necessary land, buildings, equipment and other property for governmental or proprietary purposes; and

WHEREAS, the City is the owner of certain land (collectively, the “Site”), and the premises, buildings and improvements situated on the Site; and

WHEREAS, the Council has determined and now hereby determines that it is in the best interests of the City and its inhabitants to finance the construction of certain capital improvements for City purposes (the “Project”); and

WHEREAS, in order to finance the Project, the Council has determined and hereby determines that it is in the best interests of the City to lease certain property of the (the "Leased Property") to Key Government Finance, Inc. ("KGF") pursuant to a Site Lease Agreement (the "Site Lease"), and to lease such property back from KGF pursuant to the terms of a Lease Purchase Agreement (the "Lease"); and

WHEREAS, KGF will prepay all rental due under the Site Lease and the net proceeds from such rental payment received by the City will be used by the City to finance the Project; and

WHEREAS, pursuant to the Lease, and subject to the right of the City to annually terminate the Lease and other limitations as therein provided, the City will pay certain Rent (as defined in the Lease) in consideration for the right of the City to use the Leased Property; and

WHEREAS, the City's obligation under the Lease to pay Rent and Additional Rentals (as defined in the Lease) shall be from year to year only; shall constitute a currently budgeted expenditure of the City; shall not constitute a mandatory charge or requirement in any ensuing budget year; and shall not constitute a general obligation or other indebtedness or multiple fiscal year direct or indirect City debt or other financial obligation of the City within the meaning of any charter, constitutional or statutory limitation or requirement concerning the creation of indebtedness or multiple fiscal year financial obligation, nor a mandatory payment obligation of the City in any ensuing fiscal year beyond any fiscal year during which the Lease shall be in effect; and

WHEREAS, the Supplemental Public Securities Act, part 2 of article 57 of title 11, Colorado Revised Statutes (the "Supplemental Act"), provides that a public entity, including the City, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Act to an issue of securities; and

WHEREAS, there have been filed with the City Clerk proposed forms of: (i) the Site Lease; and (ii) the Lease; and

WHEREAS, no member of the Council has any conflict of interest or is interested in any pecuniary manner in the transactions contemplated by this ordinance; and

WHEREAS, capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Lease.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BLACK HAWK, COLORADO THAT:

Section 1. Ratification. All action heretofore taken (not inconsistent with the provisions of this Ordinance) by the Council or the officers, employees and agents of the City related to the Site Lease, the Lease, the selection of KGF, or directed toward the financing of the Project and the leasing of the Leased Property is hereby ratified, approved and confirmed.

Section 2. Findings and Authorization. The Council hereby finds and determines, pursuant to the Constitution and the laws of the State of Colorado, that construction of the Project, and financing the costs thereof pursuant to the terms set forth in the Site Lease and the Lease,

including the payment of the costs of execution and delivery of such documents, are necessary, convenient, and in furtherance of the City's purposes and are in the best interests of the City and the inhabitants of the City and the Council hereby authorizes and approves the same. The Council hereby finds and determines that the Project is advantageous to and in the best interest of the City and its citizens and inhabitants.

Section 3. Application of Supplemental Act. The Council hereby elects to apply all of the provisions of the Supplemental Act to the Site Lease and the Lease, except that it shall not apply Section 11-57-211 thereof. In connection therewith, the Council hereby delegates to the Mayor, the City Manager or the Finance Director of the City the authority to make any determination delegable pursuant to Section 11-57-205(1)(a-i) of the Supplemental Act in relation to the Site Lease and the Lease, and to execute a sale certificate (the "Sale Certificate") setting forth such determinations, subject to the following parameters and restrictions:

- (a) the minimum amount of rental payments to be received by the City from KGF pursuant to the Site Lease shall not be less than \$20,000,000;
- (b) the term of the Site Lease shall not extend beyond December 31, 2046;
- (c) the maximum total principal amount of the Rent payable by the City under the Lease shall not exceed \$20,000,000;
- (d) the maximum Applicable Rate on the interest component of the Rent under the Lease shall not exceed 3.50%, provided that this limitation shall not apply to any increase in the Applicable Rate resulting from the occurrence and continuation of an Event of Taxability or an Event of Default under the Lease;
- (e) the maximum annual and maximum total repayment cost of the Rent payable by the City under the Lease shall not exceed \$2,000,000 and \$30,000,000 respectively; and
- (f) the Lease Term shall end no later than December 31, 2036.

The delegation set forth in this Section 3 shall be effective for one year following the date hereof.

Section 4. Approval and Execution of Lease and Site Lease. The Site Lease and the Lease, in substantially the forms thereof presented at this meeting of the Council, are in all respects approved, authorized and confirmed, and the designated officers of the City are hereby authorized and directed to execute the Lease and Site Lease in substantially the forms and with substantially the same contents as presented at this meeting of the Council, for and on behalf of the City, with any such changes as the Mayor, the City Manager or the City's Finance Director may hereafter approve.

Section 5. Authorization to Execute Collateral Documents; Direction to Officers. The Mayor, the City Clerk (or her deputy), the City Manager, the Finance Director of the City and other officers, employees and agents of the City are hereby authorized and directed to take all

action necessary or appropriate to effectuate the provisions of this Ordinance, including, without limiting the generality of the foregoing, the execution, attestation and delivery of any document authorized and approved by this Ordinance for and on behalf of the City; entering into any agreements necessary or appropriate in connection with the Project; the execution of such certificates as may be required by KGF, including the tenure and identity of City officials, the absence of litigation, pending or threatened, affecting the Lease and Site Lease, and performing all other acts that they may deem necessary or appropriate in order to implement and carry out the transactions and other matters authorized by this Ordinance. The appropriate officers of the City are also authorized to execute on behalf of the City agreements concerning the deposit and investment of funds in connection with the transactions contemplated by this Ordinance.

The approval hereby given to the various documents referred to above includes an approval of such additional details therein as may be necessary and appropriate for their completion, deletions therefrom and additions thereto as may be deemed necessary by the parties thereto in order to carry out the purposes of this Ordinance and to comply with the terms of the Sale Certificate. The execution of any document or instrument by the aforementioned officials or employees of the City shall be conclusive evidence of the approval by the City of such document or instrument in accordance with the terms hereof and thereof.

Section 6. No General Obligation Debt. No provision of this Ordinance, the Site Lease or the Lease, shall be construed as creating or constituting a general obligation or other indebtedness or multiple fiscal year financial obligation of the City within the meaning of any charter, constitutional or statutory provision, nor a mandatory charge or requirement against the City in any ensuing fiscal year beyond the then current fiscal year. The City shall have no obligation to make any Rent payment under the Lease and certain other payments under the Lease, which payments may be terminated by the City in accordance with the provisions of the Lease. Neither the Site Lease nor the Lease shall constitute a mandatory charge or requirement of the City in any ensuing fiscal year beyond the then current fiscal year, or constitute or give rise to a general obligation or other indebtedness or multiple fiscal year financial obligation of the City within the meaning of any constitutional or statutory debt limitation and shall not constitute a multiple fiscal year direct or indirect City debt or other financial obligation whatsoever. No provision of the Site Lease or the Lease shall be construed or interpreted as creating an unlawful delegation of governmental powers nor as a donation by or a lending of the credit of the City within the meaning of Sections 1 or 2 of Article XI of the Colorado Constitution. Neither the Site Lease nor the Lease shall directly or indirectly obligate the City to make any payments beyond those budgeted and appropriated for the City's then current fiscal year.

Section 7. Reasonableness of Rent. The Council hereby determines and declares that the Rent due under the Lease, in the maximum amounts authorized pursuant to Section 3 hereof, constitute the fair rental value of the Leased Property and do not exceed a reasonable amount so as to place the City under an economic compulsion to renew the Lease or to exercise its option to purchase KGF's leasehold interest in the Leased Property pursuant to the Lease. The Council hereby determines and declares that the period during which the City has an option to purchase KGF's leasehold interest in the Leased Property (i.e., the entire maximum term of the Lease) does not exceed the useful life of the Leased Property.

The Council hereby further determines that the amount of rental payments to be received by the City from KGF pursuant to the Site Lease, in the minimum amount set forth in Section 3 hereof, is reasonable consideration for the leasing of the Leased Property to KGF for the term of the Site Lease as provided therein.

Section 8. No Recourse Against Members of the Council, Officers or Agents. Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the Council, or any officer or agent of the City acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the Rent. Such recourse shall not be available either directly or indirectly through the Council or the City, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise.

Section 9. Limitation of Actions. Pursuant to Section 11-57-212 of the Supplemental Act, no legal or equitable action brought with respect to any legislative acts or proceedings of the City in connection with the authorization or execution of the Lease or Site Lease, including but not limited to the adoption of this Ordinance, shall be commenced more than thirty days after the approval of this Ordinance.

Section 10. Recording and Authentication. Immediately on its passage this Ordinance shall be signed by the Mayor and attested by the City Clerk, recorded in the official records of the City kept for that purpose, and shall be posted or published in accordance with Article II, Section 15 of the Charter.

Section 11. Repealer. All acts, ordinances and resolutions, or parts thereof, in conflict with this Ordinance or with any of the documents hereby approved, are hereby rescinded, annulled and repealed to the extent of such inconsistency. This repealer shall not be construed to revive any act, ordinance or resolution or part thereof, heretofore repealed.

Section 12. Severability. If any section, subsection, paragraph, clause or provision of this Ordinance or the documents hereby authorized and approved (other than provisions as to the payment of Rent by the City during the Lease Term, provisions for the quiet enjoyment of the Leased Property by the City during the Lease Term and provisions for the conveyance of the Leased Property to the City under the conditions provided in the Lease) shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, subsection, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance or such documents.

Section 13. Electronic Transactions. In the event the Mayor, City Clerk, City Manager, Finance Director, or other employee or official of the City that is authorized or directed to execute any agreement, document, certificate, instrument or other paper in accordance with this Ordinance (collectively, the "Authorized Documents") is not able to be physically present to manually sign any such Authorized Document, such individual or individuals are hereby authorized to execute Authorized Documents electronically via facsimile or email signature. Any electronic signature so affixed to any Authorized Document shall carry the full legal force and effect of any original, handwritten signature. This provision is made pursuant to Article 71.3 of Title 24, C.R.S., also known as the Uniform Electronic Transactions Act. It is hereby determined that the transactions described herein may be conducted and related documents may be stored by electronic

means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.


Section 14. Effectiveness. The City Clerk is directed to post the Ordinance as required by the Charter. This Ordinance shall become effective upon posting by the City Clerk.

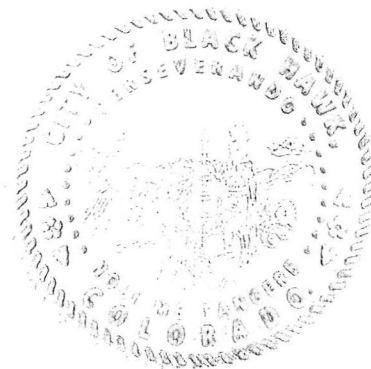
READ, PASSED AND ORDERED POSTED this 13th day of October 2021.


David D. Spellman, Mayor

(SEAL)

ATTEST:


Melissa Greiner, City Clerk



STATE OF COLORADO)
)
COUNTY OF GILPIN) SS.
)
CITY OF BLACK HAWK)

I, Melissa Greiner, City Clerk of the City of Black Hawk, Colorado (the “City”),
do hereby certify:

(1) The foregoing is a true, complete and correct copy of an ordinance (the “Ordinance”) introduced and adopted at the regular public meeting of the City Council of the City (the “Council”) on October 13, 2021. A quorum of the Council was in attendance at such meeting.

(2) The members of the Council voted on passage and adoption of the Ordinance on October 13, 2021, as follows:

	Voting “Yea”	Voting “Nay”	Absent	Abstaining
David D. Spellman, Mayor				X
Linda Armbright	X			
Paul G. Bennett	X			
Jim Johnson	X			
Hal Midcap	X			
Greg Moates	X			
Benito Torres	X			

(3) The Ordinance was signed by the Mayor, sealed with the City seal, attested by me as City Clerk and recorded in the minutes of the Council.

(4) Pursuant to the City's Charter, following passage, the Ordinance was posted in three public places within the City.

(5) Attached hereto as **Exhibit A** is a copy of the notice of the meeting of October 13, 2021, which was posted at the official physical and online locations not less than 24 hours in advance of the meeting as required by law.

IN WITNESS WHEREOF, I have hereto set my hand and the seal of the City this
13th day of October, 2021.

(SEAL)



Melissa A. Greiner
City Clerk

EXHIBIT A

NOTICE OF MEETING



REGULAR MEETING AGENDA

City of Black Hawk City Council
211 Church Street, Black Hawk, CO

October 13, 2021
3:00 p.m.

RINGING OF THE BELL:

1. CALL TO ORDER:
2. ROLL CALL & PLEDGE OF ALLEGIANCE:
3. AGENDA CHANGES:
4. CONFLICTS OF INTEREST: (Council disclosures are on file w/City Clerk & Sec. of State)
5. INTRODUCTION OF
NEW EMPLOYEE: Emily Richards, Development Services Coordinator
6. PUBLIC COMMENT: *Please limit comments to 5 minutes*
7. APPROVAL OF MINUTES: September 22, 2021
8. PUBLIC HEARINGS:
 - A. CB29, An Ordinance Amending Article II of Chapter 6 of the Black Hawk Municipal Code with the Addition of a New Section 6-77
 - B. CB30, An Ordinance Amending Section 6-73 of the Black Hawk Municipal Code and Adding a New Section 6-78 Relating to Festival Permits
 - C. CB31, An Ordinance Amending Section 6-73 of the Black Hawk Municipal Code and Adding a New Section 6-79 Relating to Communal Dining Areas
 - D. CB32, An Ordinance Amending Section 6-73 of the Black Hawk Municipal Code and Adding a New Section 6-80 Relating to Tastings in Retail Liquor Stores
 - E. CB33, An Ordinance Amending Sections 6-13 and 6-14 of the Black Hawk Municipal Code Relating to Business Licensing
 - F. CB34, An Ordinance Amending Section 10-162 of the Black Hawk Municipal Code Prohibiting the Carrying of Firearms into City Buildings
 - G. CB35, An Ordinance Authorizing the Execution and Delivery of a Site Lease Agreement, a Lease Purchase Agreement, and Related Documents in Connection with the Construction of Certain Public Improvements of the City; Approving the Forms of Such Documents; and Providing for Other Matters Relating Thereto
 - H. CB36, An Ordinance Amending Section 10-222(e) of the Black Hawk Municipal Code Relating to Service Fee for False Alarms by Alarm Devices
9. ACTION ITEMS:
 - A. Resolution 67-2021, A Resolution Accepting the Petition for Annexation and Establishing December 8, 2021, as the Date of Public Hearing on the Requested Annexation of a Parcel of Unincorporated Territory Located in the County of Gilpin (Lake Gulch Whiskey Resort Annexation No. 8)
 - B. Resolution 68-2021, A Resolution Accepting the Petitions for Annexation and Establishing December 8, 2021, as the Date of Public Hearing on the Requested Annexation of Parcels of Unincorporated Territory Located in the County of Gilpin (Lake Gulch Whiskey Resort Annexation Nos. 9 Through 12)

MISSION STATEMENT

The mission of the City of Black Hawk is to progressively provide cost effective programs and services of the highest quality to the community

- C. Resolution 69-2021, A Resolution Accepting the Petition for Annexation and Establishing December 8, 2021, as the Date of Public Hearing on the Requested Annexation of a Parcel of Unincorporated Territory Located in the County of Gilpin (Lake Gulch Whiskey Resort Annexation No. 13)
- D. Resolution 70-2021, A Resolution Accepting the Petition for Annexation and Establishing December 8, 2021, as the Date of Public Hearing on the Requested Annexation of a Parcel of Unincorporated Territory Located in the County of Gilpin (Lake Gulch Whiskey Resort Annexation No. 14)
- E. Resolution 71-2021, A Resolution Accepting the Petition for Annexation and Establishing December 8, 2021, as the Date of Public Hearing on the Requested Annexation of a Parcel of Unincorporated Territory Located in the County of Gilpin (Lake Gulch Whiskey Resort Annexation No. 15)
- F. Resolution 72-2021, A Resolution Accepting the Petition for Annexation and Establishing December 8, 2021, as the Date of Public Hearing on the Requested Annexation of a Parcel of Unincorporated Territory Located in the County of Gilpin (Lake Gulch Whiskey Resort Annexation No. 16)
- G. Resolution 73-2021, A Resolution Accepting the Petition for Annexation and Establishing December 8, 2021, as the Date of Public Hearing on the Requested Annexation of a Parcel of Unincorporated Territory Located in the County of Gilpin (Lake Gulch Whiskey Resort Annexation No. 17)
- H. Resolution 74-2021, A Resolution Accepting the Petition for Annexation and Establishing December 8, 2021, as the Date of Public Hearing on the Requested Annexation of a Parcel of Unincorporated Territory Located in the County of Gilpin (Lake Gulch Whiskey Resort Annexation No. 18)
- I. Resolution 75-2021, A Resolution Approving the License Agreement Between the City of Black Hawk and Penn National Gaming Inc. (Ameristar Casino) for Promotional Vehicle Displays and Associated Special Event Signs
- J. Resolution 76-2021, A Resolution Approving the First Amendment to Commercial Lease with the Woodbury Collective Corporation for the Property Located at 327 Gregory Street, Black Hawk, Colorado
- K. Local Liquor Authority Consideration of a Request for a New Retail Liquor Store for Feeney Farms II, Inc. at 7320 Black Hawk Blvd., Suite 1A and to set the Boundaries of the Neighborhood and to Set a Date for Public Hearing

10. CITY MANAGER REPORTS: Distribution of the 2022 Proposed Budget

11. CITY ATTORNEY:

12. EXECUTIVE SESSION:

Executive Session to consider the purchase, acquisition, lease, transfer or sale of real, personal or other property, pursuant to C.R.S § 24-6-402(4)(a), and to instruct negotiators regarding City owned land on Artisans Point, Gregory Street Plaza, and other City owned property pursuant to C.R.S § 24-6-402(4)(e).

13. ADJOURNMENT:

MISSION STATEMENT

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