

RESOLUTION NO. 20

Series 2018

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH SUMMIT COUNTY, COLORADO ACTING BY AND THROUGH THE BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY, COLORADO
(Block 11 Apartments a/k/a COTO Flats)

WHEREAS, pursuant to the provisions of Section 18 of Article XIV of the Colorado Constitution and Section 29-1-203, C.R.S., as amended, the Town and Summit County, Colorado, acting by and through the Board of County Commissioners of Summit County, Colorado ("**County**"), may cooperate or contract with one another to provide any function, service or facility lawfully authorized to each; and

WHEREAS, the Town owns the real property described as Lot 6A, Final Plat of A Resubdivision of Lots 4, 5 and 6, Denison Placer Subdivision, recorded August 8, 2018 at Reception No. 1177006 of the records of the Clerk and Recorder of Summit County, Colorado, which property is commonly known as 15 McGee Lane and 51 McGee Lane, Breckenridge, Colorado 80424 ("**Property**"); and

WHEREAS, the Town is in the process of constructing on the Property two identical three story apartment buildings, each of which when completed shall contain 6,893 square feet, and include nine one-bedroom apartments, including three ground level apartments that shall be ADA accessible, heated storage closets for each apartment, and a mechanical/boiler room; and

WHEREAS, the Town intends to retain one of the buildings on the Property for its use; and

WHEREAS, the Town has agreed to sell to the County, and the County has agreed to purchase from The Town, an undivided one-half interest in the Property, which shall include the exclusive right to operate and control the other building located on the Property; and

WHEREAS, after such sale has been concluded, The Town and the County will own the entirety of the Property as tenants in common; and

WHEREAS, the Town and the County desire to agree upon certain matters related to their joint ownership and operation of the Property; and

WHEREAS, a proposed "Intergovernmental Agreement (Block 11 Apartments a/k/a COTO Flats)" between the Town and the County has been prepared, a copy of which is marked **Exhibit "A"**, attached hereto and incorporated herein by reference; and

WHEREAS, the Town Council has reviewed the proposed Intergovernmental Agreement (Block 11 Apartments a/k/a COTO Flats), and finds and determines that it would be in the best interest of the Town to enter into such agreement.

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

Section 1. The proposed "Intergovernmental Agreement (Block 11 Apartments a/k/a COTO Flats)"with Summit County, Colorado, acting by and through the Board of County Commissioners of Summit County, Colorado (**Exhibit "A"** hereto), is approved and the Town Manager is authorized, empowered, and directed to execute such agreement for and on behalf of the Town of Breckenridge.

Section 2. This resolution is effective upon adoption.

RESOLUTION APPROVED AND ADOPTED THIS 23rd DAY OF OCTOBER, 2018.

TOWN OF BRECKENRIDGE

By: _____/s/_____
Eric S. Mamula, Mayor

ATTEST:

_____/s/_____
Helen Cospolich, CMC,
Town Clerk

APPROVED IN FORM

_____/s/_____
Town Attorney date

1
2 INTERGOVERNMENTAL AGREEMENT
3 (Block 11 Apartments)
4

5 This Intergovernmental Agreement (“**Agreement**”) is dated _____,
6 2018 (“**Effective Date**”) and is between the TOWN OF BRECKENRIDGE, a Colorado
7 municipal corporation (the “**Town**”), and SUMMIT COUNTY, COLORADO, acting by and
8 through the BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY, COLORADO
9 (the “**County**”). The Town and the County are sometimes referred to individually as a “**Party**,”
10 or together as the “**Parties**.”
11

12 For and in consideration of the mutual promises and covenants contained herein, and
13 intending to be legally bound, the Parties agree as follows:
14

15 1. Recitals.

- 16 A. The Town is a home rule municipal corporation organized and existing pursuant to
17 Article 20, Section 6 of the Colorado Constitution.
- 18 B. The County is a political subdivision of the State of Colorado organized and existing
19 under the laws of the State of Colorado.
- 20 C. The Town owns the real property described as Lot 6A, Final Plat of A Resubdivision
21 of Lots 4, 5 and 6, Denison Placer Subdivision, recorded August 8, 2018 at Reception
22 No. 1177006 of the records of the Clerk and Recorder of Summit County, Colorado,
23 which property is commonly known as 15 McGee Lane and 51 McGee Lane,
24 Breckenridge, Colorado 80424 (“**Property**”).
- 25 D. The Town is in the process of constructing on the Property two identical three story
26 apartment buildings on the Property, each of which when completed shall contain
27 6,893 square feet, and include nine one-bedroom apartments, including three ground
28 level apartments that shall be ADA accessible, heated storage closets for each
29 apartment, and a mechanical/boiler room. Each apartment building is referred to in
30 this Agreement as a “**Building**.”
- 31 E. The Town intends to retain one of the Buildings for rental purposes in accordance
32 with this Agreement.
- 33 F. The Town has agreed to sell to the County, and the County has agreed to purchase
34 from the Town, an undivided one-half interest in the Property, which shall include the
35 exclusive right to operate and control one of the Buildings as provided in this
36 Agreement. After such sale has been concluded, the Town and the County shall own
37 the entirety of the Property as tenants in common.
- 38 G. Normally, under Colorado law tenants in common have the right to possess, use, and
39 enjoy the entire property they own. However, the tenants in common can contract

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1 otherwise. The purpose of this Agreement is for the Town and the County, as tenants
2 in common of the entire Property, to supersede the common law rule and agree
3 between themselves as to their respective rights to possess, use, and enjoy the
4 Property, all as provided in this Agreement.

5 H. The Parties acknowledge that pursuant to this Agreement: (i) the Town shall not
6 solely own the Town's Building (as hereafter defined); and (ii) the County shall not
7 solely own the County's Building (as hereafter defined). Each Party shall continue to
8 own an undivided one-half interest in the entire Property, and the designation of a
9 Building as the "Town's Building" or the "County's Building" is merely an
10 allocation of exclusive use and possession of space between co-owners of the
11 Property, all as more fully set forth in this Agreement.

12 2. Authority For Agreement. This Agreement is entered into by the Parties pursuant to the
13 authority granted by Article XIV, Section 18(2)(a) of the Colorado Constitution and Part
14 2 of Article 1 of Title 29, C.R.S.

15 3. Definitions.

16 A. Terms that are specifically defined in parentheses and bold quotation marks in this
17 Agreement shall have the definitions as provided.

18 B. As used in this Agreement, the following terms have the following meanings, unless
19 the context clearly requires otherwise:

"Area Median Income" means: The median annual income for the Town of Breckenridge, Colorado (or if not available for the Town Breckenridge, the Area Median Income for Summit County, Colorado) most recently available immediately prior to the renting of an apartment in a Building, or any successor or other index reasonably acceptable to both the Town and the County.

"Common Areas" means: The following areas of the Property: (i) the grounds; (ii) the parking area(s); (iii) the sidewalks;; (iv) the trash dumpster area; and (v) any other area of the Property that the Parties may agree from time to time is for the common use of the Parties and their tenants.

"County's Building" means: The Building located at 15 McGee Lane, Breckenridge, Colorado, over which the County has exclusive possession and control pursuant to this Agreement. Such Building consists of a three story apartment building

containing approximately 6,893 square feet, and includes nine one-bedroom apartments, including three ground level apartments that shall be ADA accessible, heated storage closets for each apartment, and a mechanical/boiler room.

“Town’s Building” means:

The Building located at 51 McGee Lane, Breckenridge, Colorado, over which the Town has exclusive possession and control pursuant to this Agreement. Such Building consists of a three story apartment building containing approximately 6,893 square feet, and includes nine one-bedroom apartments, including three ground level apartments that shall be ADA accessible, heated storage closets for each apartment, and a mechanical/boiler room.

“Utilities” means:

Gas, electricity, water, sewer and trash services, but not telephone or any television services.

- 1
2 4. Term. The term of this Agreement (“**Term**”) shall commence on the Effective Date, and
3 shall continue until it is terminated by:
- 4 A. Mutual agreement of the Parties;
- 5 B. For default as provided in Section 18;
- 6 C. As specifically authorized by any other provision of this Agreement; and
- 7 D. By either Party by giving the other Party written notice of termination not less than
8 one year prior to the effective date of termination.
- 9 5. Construction of County’s Building.
- 10 A. The County’s Building shall be constructed by the Town in substantial conformance
11 with the plans which have been approved by the Town. The County acknowledges
12 that it is familiar with and approves of:
- 13 (i) the plans for the County’s Building that have been approved by the Town; and
- 14
- 15 (ii) the Building Specifications/Floorplans of the County’s Building.
- 16

1 No change to the approved plans, or the Building Specifications/Floorplans of the
2 County's Building, shall be made by the Town without the County's prior consent.

3 B. The Town shall proceed with reasonable diligence to complete construction of the
4 County's Building. The term "**Completion**" means a date subsequent to the issuance
5 of a final or temporary certificate of occupancy or inspection approval authorizing
6 occupancy by the Town, and also when the Town deems the County's Building to be
7 complete and available for purchase. Completion of the County's Building shall be
8 achieved not later than November 15, 2018 ("**Completion Date**"). A final
9 Completion Date shall be provided to the County within four (4) weeks of
10 completion. The Completion Date shall automatically be extended as a result of a
11 delay in the delivery of the County's Building, inability to obtain materials and
12 supplies, delays caused by weather and/or acts of God, or for any other reason
13 resulting from conditions beyond the control of the Town.

14 C. When the County's Building is complete and before Closing, the County's
15 representative(s) and representative(s) of the Town's general contractor shall inspect
16 the County's Building and compile a list of defective or incomplete items ("**Punch
17 List**"). The general contractor on the Town's behalf shall diligently complete or
18 correct all items on the Punch List within forty-five (45) days after Closing. Such
19 forty-five (45) day period of time shall be extended due to conditions beyond the
20 control of the Town or the Town's general contractor. The Closing shall not be
21 delayed nor shall any escrow be required to assure completion of the Punch List
22 items. The County acknowledges that on the Closing Date, some portions of the
23 exterior improvements of the Property and the County's Building may not be
24 completed, but the Town shall complete such work as soon as practical.

25 D. The County's Building shall be subject to the two (2) year warranty provided to the
26 Town by the Town's general contractor. The Town shall work cooperatively with the
27 County to provide assistance with respect to any warranty claim related to the
28 County's Building arising during the two (2) year warranty period.

29 E. TOWN MAKES NO WARRANTY, EXPRESS OR IMPLIED, TO THE COUNTY
30 WITH RESPECT TO THE CONSTRUCTION OF THE COUNTY'S BUILDING.
31 COUNTY UNDERSTANDS, ACKNOWLEDGES, AND AGREES THAT ALL
32 REPRESENTATIONS AND WARRANTIES, OF ANY NATURE, EXPRESS OR
33 IMPLIED, INCLUDING, BUT NOT LIMITED TO, THOSE OF WORKMANLIKE
34 CONSTRUCTION, HABITABILITY, DESIGN, CONDITION, QUALITY,
35 MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OR OTHERWISE,
36 WITH RESPECT TO THE COUNTY'S BUILDING OR THE COMMON AREAS
37 ON THE PROPERTY, OR ANY IMPROVEMENTS, FIXTURES, EQUIPMENT,
38 APPLIANCES, OR OTHER PERSONAL PROPERTY IN THE COUNTY'S
39 BUILDING OR THE COMMON AREAS, ARE EXPRESSLY DISCLAIMED BY
40 TOWN AND WAIVED BY COUNTY, TO THE FULLEST EXTENT PERMITTED
41 BY LAW. TO THE FULLEST EXTENT PERMITTED BY LAW COUNTY: (A)
42 WAIVES ALL CLAIMS RELATING TO DAMAGE OR DEFECTS TO OR OF

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1 THE COUNTY'S BUILDING OR THE COMMON AREAS, OR ANY
2 IMPROVEMENTS, FIXTURES, EQUIPMENT, APPLIANCES, OR OTHER
3 PERSONAL PROPERTY IN THE COUNTY'S BUILDING OR THE COMMON
4 AREAS, WHETHER ARISING UNDER COMMON LAW OR STATUTE,
5 WHETHER BASED ON BREACHES OF WARRANTY, TORT, OR ANY OTHER
6 THEORY AT LAW OR IN EQUITY; AND (B) WAIVES ALL DAMAGES,
7 WHETHER ACTUAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR
8 OTHERWISE, OR OTHER REMEDIES OR RELIEF RELATED TO ANY SUCH
9 DAMAGES OR DEFECTS. THE COUNTY'S ACCEPTANCE AND
10 ASSUMPTION OF THIS RISK AND WAIVER OF CLAIMS, DAMAGES, AND
11 OTHER RELIEF ARE PARTIALLY IN CONSIDERATION OF THE AMOUNT
12 OF THE PURCHASE PRICE, WHICH IS LOWER THAN IT WOULD BE IF THE
13 TOWN WAS TO BE HELD RESPONSIBLE FOR ANY SUCH RISKS,
14 DAMAGES, OR DEFECTS BY VIRTUE OF ANY EXPRESS OR IMPLIED
15 REPRESENTATIONS OR WARRANTIES OR IF THE COUNTY DID NOT
16 WAIVE SUCH CLAIMS, DAMAGES, AND OTHER RELIEF.

17 F. IN NO EVENT SHALL THE TOWN BE LIABLE TO THE COUNTY FOR ANY
18 INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT
19 NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS, REVENUE OR
20 SAVINGS, OR ANY SIMILAR CLAIM ARISING FROM THE TOWN'S
21 BREACH OF THIS AGREEMENT, EVEN IF THE TOWN HAS BEEN ADVISED
22 OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION APPLIES
23 NOTWITHSTANDING THE FAILURE OF AN ESSENTIAL PURPOSE OF ANY
24 LIMITED REMEDY.

25 6. Preconstruction Agreement For Sale and Purchase of Undivided Interest in the Property.

26 A. The Town hereby agrees to sell to the County, and the County agrees to purchase
27 from the Town, and undivided one-half interest in the Property.

28 B. The Purchase Price to be paid by the County to the Town for the Property is two
29 Million One Hundred Thousand Dollars (\$2,100,000.00) ("**Purchase Price**"),
30 payable without interest as follows:
31

32 i. seven hundred thousand dollars (\$700,000.00) shall be paid to the Town at
33 the time of Closing;

34 ii. seven hundred thousand dollars (\$700,000.00) shall be paid to the Town on
35 or before January 15, 2019; and

36 iii. seven hundred thousand dollars (\$700,000.00) shall be paid to the Town on
37 or before January 15, 2020.

1 The County's obligations under this Section shall survive the Closing and delivery of
2 the deed for the one-half interest in the Property that the County is purchasing from
3 the Town.
4

5 C. Should the County, for any reason, fail or refuse to pay the entire Purchase Price to
6 the Town as and when due, the County shall, upon the request of the Town,
7 immediately reconvey to the Town by special warranty deed the County's undivided
8 one-half interest in the Property, whereupon this Agreement shall become null and
9 void, and each Party shall be released from any further obligations under this
10 Agreement, except for the indemnity obligations provided in Section 13 which shall
11 survive such termination and be fully enforceable thereafter, subject to any applicable
12 statute of limitation or statute of repose. At the time of the delivery of the County's
13 deed to the Town, the County shall also assign to the Town all then-current leases for
14 the apartments in the County's Building, and the County shall transfer to the Town all
15 tenant security deposits then held by the County.

16 D. At any time prior to Closing the County, its agents, employees, contractors and
17 engineers, shall have the right from time to time to enter upon the Property at their
18 risk for the purpose of inspecting the same and conducting surveys, engineering
19 studies, soil tests, investigations, feasibility studies and the like. The County shall not
20 engage in any destructive testing of the Property. The County agrees to indemnify and
21 save the Town harmless from all claims arising by reason of such entries.

22 E. Closing shall be held on or after the Completion Date. The date, time, and place of
23 Closing shall be designated by mutual agreement of the Parties. Closing shall be held
24 at the Breckenridge Town Hall, 150 Ski Hill Road, Breckenridge, Colorado unless
25 otherwise mutually agreed.

26 F. At Closing the County shall pay the first installment of the Purchase Price as provided
27 in Section 6Bi, and the Town shall execute and deliver to the County a special
28 warranty deed for an undivided one-half interest in the Property. The title to the
29 undivided one-half interest in the Property so conveyed shall be a good and
30 merchantable fee simple absolute title, both of record and in fact, free of all liens and
31 encumbrances, except those title exceptions accepted by the County pursuant to
32 Section 6G.

33 G. Not less than 15 days prior to Closing the Town shall furnish to the County, at the
34 Town's cost, a copy of an ownership and encumbrance report ("O&E") prepared by
35 Land Title Guarantee Company – Breckenridge Office showing title to the Property
36 vested in the Town. The O&E shall have an issuance date that is within 30 days of
37 Closing. The County shall give written notice to the Town within five days after
38 receipt of the O&E of any lien or encumbrance disclosed in the O&E that is not
39 acceptable to the County. If the Town and the County are able to agree as to the liens
40 and encumbrances on the Property that are acceptable to the Town, the title conveyed
41 by the Town to the County shall be subject to such liens and encumbrances. If the
42 Town and the County are unable to agree as to the liens and encumbrances on the

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1 Property that are acceptable to the Town, the Town shall have the right to terminate
2 this Agreement by giving notice of termination to the Town. If this Agreement is
3 terminated by the Town, each Party shall then be released from any further
4 obligations under this Agreement.

5 H. The Property shall be held at the risk of the Town until legal title has passed and
6 possession of the undivided one-half interest in the Property has been given to the
7 County.

8 I. The sale of the undivided one-half interest in the Property to the County pursuant to
9 this Agreement shall be exempt from the Town Breckenridge Real Estate Transfer
10 Tax.

11 J. The Property has been tax exempt while owned by the Town. No proration of the real
12 estate taxes shall be required at Closing.

13 K. Each Party shall defend, indemnify, and save the other Party harmless from any
14 commission or fee due to any broker, agent, or finder with whom such Party has a
15 contract that provides for the payment of a commission on account of this Agreement.
16

17 L. SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL
18 OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED
19 FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH
20 DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED
21 AT RISK FOR INCREASED MILL LEVIES AND EXCESSIVE TAX BURDENS
22 TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES
23 ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO
24 DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN
25 MILL LEVIES. THE COUNTY SHOULD INVESTIGATE THE DEBT
26 FINANCING REQUIREMENTS OF THE AUTHORIZED GENERAL
27 OBLIGATION INDEBTEDNESS OF SUCH DISTRICTS, EXISTING MILL
28 LEVIES OF SUCH DISTRICT SERVICING SUCH INDEBTEDNESS, AND THE
29 POTENTIAL FOR AN INCREASE IN SUCH MILL LEVIES.
30

31 7. Allocation of Exclusive Possession and Control of Buildings.
32

33 A. By virtue of its ownership of an undivided one-half interest in the Property, the Town
34 shall have exclusive possession and control of the Town's Building; provided,
35 however, the Town's use and occupancy of such property shall be subject to the terms
36 and conditions of this Agreement.

37 B. By virtue of its ownership of an undivided one-half interest in the Property, the
38 County shall have exclusive possession and control of the County's Building;
39 provided, however, the County's use and occupancy of such property shall be subject
40 to the terms and conditions of this Agreement.

1 8. Agreements Concerning Rental of Buildings. Each Party shall have full control and
2 responsibility for all issues related to management, tenants, rental rates, occupancy, use,
3 and operation of such Party's Building, subject to the following terms and conditions:

4 A. Each Party agrees to utilize its Building to house only:

5 i. its own employees, together with such person's spouse/significant other and
6 minor children, if any; or

7 ii. a person eighteen (18) years of age or older who, during the entire period of
8 his or her occupancy of the apartment in the Building, earns his or her living
9 by working in Summit County, Colorado at least thirty (30) hours per week,
10 together with such person's spouse/significant other and minor children, if
11 any.

12 iii. Tenant subleases are not allowed.

13 ~~ii.~~

14 B. Each Party agrees to rent the apartments in its Building for monthly rental amounts
15 (including utilities) equal to or less than such amounts as are affordable to individuals
16 earning 80% or less of the AMI, and the maximum permissible rental amounts
17 (including Utilities) shall be determined in accordance with the formula or
18 methodology used from time to time by the Summit Combined Housing Authority, or
19 such other formula or methodology that is mutually acceptable to the Parties. It shall
20 not be a violation of this Agreement if any apartment in either Building is occupied or
21 used by person otherwise authorized to occupy the apartment who becomes disabled
22 after commencing lawful occupancy of the apartment such that he or she cannot work
23 the required number of hours each week required by this Section; provided, that such
24 person is permitted to occupy the apartment only for a maximum period of one (1)
25 year following the commencement of such person's disability unless a longer period
26 of occupancy is authorized by the Party having exclusive possession and control of
27 such apartment.

28 9. Maintenance of Buildings and Common Areas.

29 A. Each Party shall pay, at its sole cost, all expenses of maintaining and operating its
30 Building, including, without limitation, the obligation to pay for all utilities provided
31 so such Building. Each Building has its own individual water and sewer meters.

32 B. The Parties shall equally pay when due all common expenses related to the
33 maintenance of the Common Areas of the Property, including, but not limited to,
34 snow removal, trash removal, and landscaping. This obligation also includes the
35 expenses related to the maintenance of McGee Lane, which is a private (non-public)
36 street serving both the Property and the Blue 52 Townhomes.

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1 C. The Parties shall cooperate in scheduling and performing any required maintenance
2 of the Buildings and Common Areas.

3 10. Building Income. All income received by a Party from the operation of such Party's
4 Building shall be the sole and separate property of that Party, and the other Party shall
5 have no right or interest in and to such income.

6 11. Covenants of Mutual Cooperation and Non-Interference.

7 A. The Parties acknowledge and accept the relationship of trust and confidence
8 established between them by this Agreement.

9 B. Each Party shall designate at least one member of its staff who shall be charged with
10 working cooperatively with the other Party's designated representative with respect to
11 the management and operation of the Property and the Buildings.

12 C. Throughout the Term of this Agreement representatives of the Parties shall meet and
13 confer at least once each calendar year (and more frequently if required) to informally
14 discuss matters of mutual concern or interest with respect to the operation of the two
15 Buildings. Both Parties shall act promptly and in good faith to attempt to resolve such
16 matters of mutual concern.

17 D. The Parties agree to work cooperatively to coordinate their policies, rules, and
18 regulations regarding the Buildings, including, but not limited to, such things as
19 smoking, pets, occupancy restrictions, and other similar management matters.

20 E. Neither Party shall interfere with the other Party's rights with respect to the Building
21 to which the other Party has been allocated the exclusive right to use and occupy. For
22 clarification, the Town shall not interfere with the County's right to use and occupy
23 the County Building; and the County shall not interfere with the Town's right to use
24 and occupy the Town's Building. Neither Party shall directly interfere with the other
25 Party's tenants.

26 12. Waiver of Right to Partition. Neither the Town nor the County shall have any right to
27 partition the Property, and both the Town and the County hereby irrevocably waive any
28 and all rights that they might have to maintain any action for partition of the Property.

29 13. Mutual Indemnification.

30 A. Indemnification By Town. The Town shall indemnify and defend the County, its
31 officers, employees, insurers, and self-insurance pool, against all liability, claims, and
32 demands, on account of injury, loss, or damage, including, without limitation, claims
33 arising from bodily injury, personal injury, sickness, disease, death, property loss or
34 damage, or any other loss of any kind whatsoever, arising out of or in any manner
35 connected with this Agreement, to the extent that such injury, loss, or damage is
36 caused by or arises from:

- 1 i. the negligence or intentional wrongful act of the Town, or any officer,
2 employee, representative, or agent of the Town;
- 3 ii. the operation, use, or maintenance of the Town’s Building; or
- 4 iii. the Town’s breach of this Agreement,

5 except to the extent such liability, claim, or demand arises through the negligence
6 or intentional wrongful act of the County, its officers, employees, or agents, or the
7 County’s breach of this Agreement. To the extent indemnification is required
8 under this Agreement, the Town agrees to investigate, handle, respond to, and to
9 provide defense for and defend against, any such liability, claims, or demands at
10 its expense, and to bear all other costs and expenses related thereto, including
11 court costs and attorneys’ fees.

12

13 B. Indemnification By County. The County shall indemnify and defend the Town, its
14 officers, employees, insurers, and self-insurance pool, against all liability, claims, and
15 demands, on account of injury, loss, or damage, including, without limitation, claims
16 arising from bodily injury, personal injury, sickness, disease, death, property loss or
17 damage, or any other loss of any kind whatsoever, arising out of or in any manner
18 connected with this Agreement, to the extent that such injury, loss, or damage is
19 caused by or arises from:

- 20 i. the negligence or intentional wrongful act of the County, or any officer,
21 employee, representative or agent of the County;
- 22 ii. the operation, use, or maintenance of the County’s Building; or
- 23 iii. the County’s breach of this Agreement,

24 except to the extent such liability, claim, or demand arises through the negligence
25 or intentional wrongful act of the Town, its officers, employees, or agents, or the
26 Town’s breach of this Agreement. To the extent indemnification is required under
27 this Agreement, the County agrees to investigate, handle, respond to, and to
28 provide defense for and defend against, any such liability, claims, or demands at
29 its expense, and to bear all other costs and expenses related thereto, including
30 court costs and attorneys’ fees.

31

32 C. Indemnity Subject To Act. The obligation of a Party to indemnify and defend the
33 other Party pursuant to this Section is expressly subject to any applicable limitation or
34 provision of the Colorado Governmental Immunity Act, Part 1 of Article 10 of Title
35 24, C.R.S., as amended throughout the Term of this Agreement (“**Act**”).

36 D. Indemnity For Worker’s Compensation Claims.

1 i. The Town shall indemnify and defend the County with respect to any claim,
2 damage, or loss arising out of any worker's compensation claim of any
3 employee of the Town.

4 ii. The County shall indemnify and defend the Town with respect to any claim,
5 damage, or loss arising out of any worker's compensation claim of any
6 employee of the County.

7 E. Survival. The obligation of a Party to indemnify and defend the other Party pursuant
8 to this Section shall survive the termination of this Agreement, and shall continue to
9 be enforceable thereafter until such obligations are fully performed, subject to any
10 applicable statute of limitation or statute of repose.

11 14. Insurance.

12 A. Required Insurance. Throughout the Term of this Agreement each Party shall procure
13 and maintain the following minimum insurance coverages:

14 i. workers' compensation insurance to cover obligations imposed by
15 applicable laws for any employee of that Party.

16 ii. general liability insurance with limits of liability not less than the limits of
17 liability established from time to time by the Act. The policy must include
18 coverage for bodily injury, broad form property damage (including complete
19 operations), personal injury (including coverage for contractual and
20 employee's acts), blanket contractual, products, and completed operations.

21 iii. property and casualty insurance for the Building over which such Party has
22 exclusive possession and control pursuant to this Agreement for not less
23 than the full replacement costs of such Building.

24 iv. The Town shall be responsible for providing property, casualty, and general
25 liability insurance covering the Common Areas.

26 Such coverages shall be procured and maintained with forms and insurers
27 reasonably acceptable to the other Party. All coverage shall be continuously
28 maintained throughout the Term of this Agreement. In the case of any claims-
29 made policy, the necessary retroactive dates and extended reporting periods shall
30 be procured to maintain such continuous coverage.

31 B. Deductibles. Each Party shall be solely responsible for any deductible amounts
32 required to be paid under its required insurance policies described in in this Section.
33

34 C. Insurance Certificates. Each Party shall provide the other Party with a certificate of
35 insurance evidencing that policies providing the required coverages, conditions, and
36 minimum limits are in full force and effect. Such certificates shall be provided within

1 30 days of the Effective Date of this Agreement, and on each renewal or replacement
2 of the required insurance policies throughout the Term of this Agreement. The
3 completed insurance insurances shall be sent to the Parties at the addresses provided
4 in Section 19.

5 15. Annual Appropriation.

6
7 A. Financial obligations of the Town under this Agreement payable after the current
8 fiscal year in which this Agreement is executed are contingent upon funds for that
9 purpose being appropriated, budgeted, and otherwise made available by the Town
10 Council of the Town of Breckenridge, Colorado.

11 B. Financial obligations of the County under this Agreement payable after the current
12 fiscal year in which this Agreement is executed are contingent upon funds for that
13 purpose being appropriated, budgeted, and otherwise made available by the Board of
14 County Commissioners of Summit County, Colorado.

15 C. Except as provided in Section 6C with respect to the County's failure to pay the full
16 Purchase Price, if the governing body of the either Party (the "**Non-Appropriating
17 Party**") fails to appropriate and budget sufficient funds to pay the financial
18 obligations of the Non-Appropriating Party under this Agreement, the other Party
19 shall have the right to purchase the Non-Appropriating Party's interest in the Property
20 pursuant to the provisions of Section 17 of this Agreement.

21 D. Neither the Town's nor the County's obligations under this Agreement shall
22 constitute a general obligation indebtedness or multiple year direct or indirect debt or
23 other financial obligation whatsoever within the meaning of the Constitution or laws
24 of the State of Colorado.

25 16. Mutual Right of First Refusal.

26 A. Each Party agrees that it shall not sell its undivided one-half interest in the Property,
27 or any part thereof, without first offering the same to the other Party for purchase.
28 This Agreement creates in both Parties a right of first refusal to purchase the other
29 Party's undivided one-half interest in the Property according to the terms and
30 conditions of this Section 16.

31 B. The right of first refusal granted in Section 16A shall be honored and exercised by the
32 Parties in the following manner:

- 33 i. If, at any time, one Party receives a bona fide third-party offer to purchase
34 or otherwise acquire title to the Party's undivided one-half interest in the
35 Property, or any part thereof, any contract which may be entered into
36 between such Party and such bona fide purchaser shall specifically provide
37 that the transaction shall be subject to the right of first refusal set forth in
38 this Section 16.

- 1 ii. If either Party enters into such contract with a bona fide third-party
2 purchaser to purchase or otherwise acquire title to the Party's undivided
3 one-half interest in the Property, or any part thereof, (the "**Selling Party**")
4 the other Party (the "**Purchasing Party**") shall have the prior right to
5 purchase and acquire title to the Selling Party's undivided one-half interest
6 in the Property, or any part thereof, the Property, upon the same terms and
7 conditions as therein provided or, at the Purchasing Party's option, for cash.
- 8 iii. A Selling Party that has entered into such contract with a bona fide third-
9 party purchaser to purchase or otherwise acquire title to the Selling Party's
10 undivided one-half interest in the Property, or any part thereof, shall submit
11 to the Purchasing Party a duplicate original of an executed contract with the
12 bona fide purchaser. If, after the receipt of such documents, the Purchasing
13 Party shall fail to exercise its right of first refusal by signing and returning to
14 the Selling Party, within 30 calendar days of receipt, a signed copy of said
15 contract, together with the earnest money payment therein provided, the
16 Selling Party shall have the right to conclude the proposed sale and
17 conveyance on the same terms and conditions, and no other, as in the
18 contract with the bona fide third-party purchaser.
- 19 iv. A Purchasing Party's failure to exercise its right of first refusal, or a
20 Purchasing Party's written disclaimer of such right, shall be deemed a
21 waiver and cancellation of such right of first refusal if the proposed sale and
22 conveyance to the same bona fide third-party purchaser is consummated. If
23 the proposed sale and conveyance to the same bona fide third-party
24 purchaser is not consummated, the right of first refusal herein set forth shall
25 not be deemed waived or cancelled but shall remain in full force and effect.
- 26 v. If any offer made by the Selling Party according to the terms and conditions
27 herein stated is rejected or is allowed to expire without acceptance by
28 Purchasing Party, Purchasing Party agrees, within 10 days after receipt of a
29 written request from Selling Party, to give to Selling Party, or to any third
30 person Selling Party shall designate, a written statement properly signed and
31 acknowledged in recordable form that:
- 32 (1) an offer has been made by Selling Party in accordance with the
33 terms and conditions of this Agreement, together with disclosure of
34 the offering price and the terms and conditions of a proposed sale;
- 35 (2) said offer has been rejected by Purchasing Party or has been
36 allowed to expire; and
- 37 (3) Selling Party or any designated third person may rely upon
38 such statement by Purchasing Party as evidence of the submission
39 and rejection or expiration of a valid offer made to Purchases Party
40 pursuant to and in accordance with this Agreement.

1 vi. This right of first refusal shall apply to all transactions involving a
2 conveyance of title to a Party's undivided one-half interest in the Property,
3 or any part thereof the Property, including, but not limited to a purchase, an
4 exchange, or any other transfer of an interest in the Property for
5 consideration.

6 17. Disposition of Project and Property Upon Termination. Except as provided in Section 6C
7 with respect to the County's failure to pay the full Purchase Price, upon the lawful
8 termination of this Agreement as provided herein, the Parties shall promptly and in good
9 faith attempt to agree upon a fair and equitable disposition of the Property. For this
10 purpose, authorized representatives of the Parties shall meet not later than fifteen (15)
11 business days after the effective date of termination at a mutually acceptable time and
12 place, and thereafter as often as they reasonably deem necessary, to exchange relevant
13 information and to attempt to resolve all issues related to the disposition of the Property
14 and all remaining Project assets, income, and liabilities. If the matter has not been
15 resolved within sixty (60) business days of the effective date of termination of this
16 Agreement, the Property shall be offered for sale for cash at their then fair market value.
17 The "**Fair Market Value**" of the Property shall be determined by an appraiser
18 mutually acceptable to the Parties. The appraiser shall be a licensed Colorado real estate
19 broker with no less than ten (10) years' experience in appraising real property in Summit
20 County, Colorado. If the Parties are unable to agree upon an mutually acceptable
21 appraiser, the appraiser shall be selected by the Chief Judge of the Fifth Judicial District.
22 The appraiser's determination shall be binding on the Parties. The cost of the appraisal
23 shall be paid equally by the Parties. Either Party may be the purchaser of the other Party's
24 right, title, and interest in the Property and the Parties' jointly owned assets exclusively
25 used or associated with the Project. The net sale proceeds of the Property shall be divided
26 equally between the Parties.

27 18. Default; Resolution Of Disputes.

28 A. Default. A default shall exist under this Agreement if any Party violates any
29 covenant, condition or obligation required to be performed hereunder ("**Defaulting**
30 **Party**"). If any Party fails to cure such default within 20 business days after the other
31 Party ("**Non-Defaulting Party**") gives written notice of the default to the Defaulting
32 Party then, at the Non-Defaulting Party's option, the Non-Defaulting Party may
33 terminate this Agreement. In the event of a default not capable of being cured within
34 20 business days, a Defaulting Party shall not be in default hereunder if it commences
35 curing the default within 20 business days after receipt of written notice of default
36 from the Non-Defaulting Party, and thereafter cures such default with due diligence
37 and in good faith. Notwithstanding any Party's right to terminate this Agreement for
38 an uncured default, this Agreement is subject to the rights of any Party to invoke the
39 remaining provisions of this Section.

40 B. Negotiation. Either Party may give the other Party written notice of any dispute
41 arising out of or related to this Agreement that is not resolved in the normal course of
42 business. The Parties shall attempt in good faith to resolve any such dispute promptly

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1 by negotiations between the Parties' Authorized Representatives. Within 15 business
2 days after receipt of said notice, Authorized Representatives shall meet at a mutually
3 acceptable time and place, and thereafter as often as they reasonably deem necessary,
4 to exchange relevant information and to attempt to resolve the dispute. If the matter
5 has not been resolved within 60 business days of the notice of dispute, or if the
6 Parties fail to initially meet within 15 business days, either Party to the dispute may
7 initiate mediation of the controversy as provided below.

8 C. Mediation. If the dispute has not been resolved by negotiation as provided above, the
9 Parties shall endeavor to settle the dispute by mediation with a neutral third Party. If
10 the Parties encounter difficulty in agreeing on a neutral third Party, they may each
11 appoint a neutral third Party, such third Parties to appoint a neutral third Party to
12 mediate.

13 D. Judicial Action. Any dispute arising out of or relating to this Agreement or the
14 breach, termination or validity hereof, which has not been resolved by the methods
15 set forth above within 30 days of the initiation of mediation, may be finally resolved
16 by appropriate judicial action commenced in a court of competent jurisdiction. The
17 Parties agree to venue in the courts of Summit County, Colorado with respect to any
18 dispute arising out of or relating to this Agreement. **BOTH PARTIES WAIVE THE RIGHT
19 TO A JURY TRIAL IN ACTION TO ENFORCE, INTERPRET OR CONSTRUE THIS
20 AGREEMENT.**

21 E. Provisional Remedies. The procedures specified in this Section are the sole and
22 exclusive procedures for the resolution of disputes among the Parties arising out of or
23 relating to this Agreement; provided, however, that a Party may seek a preliminary
24 injunction or other provisional judicial relief if, in its judgment, such action is
25 necessary to avoid irreparable damage or to preserve the status quo. Despite such
26 action, the Parties shall continue to participate in good faith in the procedures
27 specified in this Section.

28 F. Performance To Continue. Each Party is required to continue to perform its
29 obligations under this Agreement pending final resolution of any dispute arising out
30 of or relating to this Agreement.

31 G. Extension Of Deadlines. All deadlines specified in this Section may be extended by
32 mutual agreement.

33 H. Costs. Each Party shall pay its own costs with respect to negotiation and mediation.
34 The prevailing Party in any judicial action is entitled to reimbursement from the other
35 Party for all reasonable costs and expenses, including attorney fees in connection with
36 such judicial action.

37 19. Notices. All notices required or permitted under this Agreement must be given by
38 registered or certified mail, return receipt requested, postage prepaid, or by hand or
39 commercial carrier delivery, or by telecopies directed as follows:

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1 If intended for the Town to:

2
3 Town of Breckenridge
4 P.O. Box 168
5 150 Ski Hill Road
6 Breckenridge, Colorado 80424
7 Attn: Rick G. Holman, Town Manager
8 Telecopier number: (970)547-3104
9 Telephone number: (970)453-2251

10
11 with a copy in each case (which shall not constitute notice) to:

12
13 Timothy H. Berry, Esq.
14 Town Attorney
15 Timothy H. Berry, P.C.
16 131 West 5th Street
17 P. O. Box 2
18 Leadville, Colorado 80461
19 Telephone number: (719)486-1889
20 Telecopier number: (719)486-3039

21
22 If intended for the County, to:

23
24 Board of County Commissioners
25 P.O. Box 68
26 Breckenridge, Colorado 80424
27 Attn: Scott Vargo, County Manager
28 Telephone number: (970)453-3401
29 Telecopier number: (970)453-3535

30
31 with a copy in each case (which shall not constitute notice) to:

32
33 Jeff Huntley, Esq.
34 Summit County Attorney
35 P.O. Box 68
36 Breckenridge, Colorado 80424
37 Telephone number: (970)453-3407
38 Telecopier number: (970)454-3535

39
40 Any notice delivered by mail in accordance with this Section shall be deemed to have
41 been duly given and received on the third business day after the same is deposited in any
42 post office or postal box regularly maintained by the United States postal service. Any
43 notice delivered by telecopier in accordance with this Section shall be deemed to have
44 been duly given and received upon receipt if concurrently with sending by telecopier
45 receipt is confirmed orally by telephone and a copy of said notice is sent by certified

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1 mail, return receipt requested, on the same day to that intended recipient. Any notice
2 delivered by hand or commercial carrier shall be deemed to have been duly given and
3 received upon actual receipt. Either Party, by notice given as above, may change the
4 address to which future notices may be sent. E-mail is not a valid method for the giving
5 of notice under this Agreement.
6

7 20. Governmental Immunity. In entering into this Agreement the Parties are each relying on,
8 and do not waive or intend to waive by any provision of this Agreement, the monetary
9 limitations of the Act, or any other limitation, right, immunity, defense or protection
10 otherwise available to the Town and the County, and their respective officers,
11 representatives, agents and employees.

12 21. Time of the Essence. Time is of the essence in the performance of any and all provisions
13 of this Agreement.

14 22. Time Periods. If any time period referred to in this Agreement shall end on a Saturday,
15 Sunday or legal holiday, such time period shall automatically be extended to the first
16 regular business day thereafter.

17 23. Third Parties. This Agreement does not confer upon or grant to any third party any right
18 to claim damages or to bring suit, action, or other proceeding against either the Town or
19 the County because of any breach of this Agreement, or because of any of the terms,
20 covenants, agreements and conditions contained in this Agreement.

21 24. Waiver. The failure of either Party to exercise any of its rights under this Agreement is
22 not a waiver of those rights. A Party waives only those rights specified in writing and
23 signed by either Party waiving its rights.

24 25. Independent Contractor. In connection with this Agreement each of the Parties acts as an
25 independent contractor (and not an agent or employee of the other Party), without the
26 right or authority to impose tort or contractual liability upon the other Party.

27 26. Applicable Law. This Agreement shall be interpreted in all respects in accordance with
28 the laws of the State of Colorado.

29 27. Entire Agreement. This Agreement constitutes the entire agreement and understanding
30 between the Parties as to the subject matter of this Agreement, and supersedes any prior
31 agreement or understanding relating thereto.

32 28. Amendment. This Agreement may be modified or amended only by a duly authorized
33 written instrument executed by the Parties. No oral amendment or modification of this
34 Agreement is allowed.

35 29. Severability. If any of the provisions of this Agreement are declared by a final, non-
36 appealable judgment court of competent jurisdiction to be invalid, illegal, or
37 unenforceable in any respect, the Parties shall negotiate in good faith to modify this

- 1 Agreement to fulfill as closely as possible the original intents and purposes of this
2 Agreement.
- 3 30. Section Headings. Section and subsection headings are inserted for convenience only
4 and in no way limit or define the interpretation to be placed upon this Agreement.
- 5 31. Signatories' Authority. The individuals executing this Agreement on behalf of each of
6 the Parties represent to the other Party that they have all requisite powers and authority to
7 cause the Party for whom they have signed to enter into this Agreement, and to bind such
8 Party to fully perform its obligations as set forth in this Agreement.
- 9 32. No Adverse Construction. Both Parties acknowledge having had the opportunity to
10 participate in the drafting of this Agreement. This Agreement is not to be construed
11 against either Party based upon authorship.
- 12 33. Force Majeure. Neither Party is liable to the other for any failure, delay or interruption in
13 the performance of any of the terms, covenants or conditions of this Agreement due to
14 causes beyond the control of that Party, including, without limitation, strikes, boycotts,
15 labor dispute, embargoes, shortages of materials, acts of God, acts of the public enemy,
16 acts of superior governmental authority, weather conditions, floods, riots, rebellion,
17 sabotage or any other circumstance for which such Party is not responsible or which is
18 not in its power to control.
- 19 34. Binding Effect. This Agreement is binding upon, and inures to the benefit of, the Parties
20 and their respective successors.
- 21 35. Approval By Governing Boards or Other Authority. In accordance with Section 29-1-
22 203(1), C.R.S., this Agreement shall not become effective unless and until it has been
23 approved by the governing bodies of both the Town and the County, or by such persons
24 as have the power to approve this Agreement on behalf of the Town and the County.

25
26
27
28
29
30 [SIGNATURE PAGE FOLLOW]
31

TOWN OF BRECKENRIDGE

By: _____
Rick G. Holman, Town Manager

ATTEST:

Helen Cospolich, CMC,
Town Clerk

BOARD OF COUNTY COMMISSIONERS OF
SUMMIT COUNTY, COLORADO

By:

Dan Gibbs, Chair

ATTEST:

Kathleen Neel, Clerk and Recorder, and
ex-officio clerk to the Board of County Commissioners

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