

# STATE OF COLORADO INTERGOVERNMENTAL AGREEMENT

## COVER PAGE

<b>State Agency</b> Department of Transportation (CDOT)	<b>Agreement Number</b> Insert CMS Number or Other Agreement Number <b>SAP Encumbrance Number</b> Insert SAP Encumbrance Number
<b>Town</b> Town of Frisco, a Colorado home rule municipal corporation	<b>Agreement Performance Beginning Date</b> The Effective Date
<b>Agreement Maximum Amount</b> Initial Term <span style="float: right;">\$2,166,038.00</span>  Total for All State Fiscal Years <span style="float: right;">\$2,166,038.00</span>	<b>Initial Agreement Expiration Date</b> June 30, 2024  <b>Agreement Authority</b> §§43-1-105, 43-1-106 and 43-1-211, C.R.S.; State Fiscal Rule 2-5, Miscellaneous compensation and Other Benefits (Perquisites); CDOT Policy Directive 1209.0 "Housing Assistance"; CDOT Procedural Directive 1209.1 "Housing Assistance"
<b>Agreement Purpose</b> CDOT owns a tract of undeveloped land within the Town that is described on <b>Exhibit D</b> and illustrated on <b>Exhibit E</b> (the "Property"). The Town and State previously entered into agreement to jointly plan for, and potentially construct, a residential housing project on the Property for purposes of Town and State affordable work-force housing. At this time, the Town and CDOT desire to proceed with development and construction of the project and to agree on the allocation of costs of construction of the project, ownership of completed units and other duties, rights and responsibilities related to the project through this Agreement.	
<b>Exhibits and Order of Precedence</b> The following Exhibits and attachments are included with this Agreement: <ol style="list-style-type: none"> <li>1. Exhibit A – Property Transaction Information</li> <li>2. Exhibit B – CDOT Units Transaction Information</li> <li>3. Exhibit C – Deed Restriction</li> <li>4. Exhibit D – Property Legal Description</li> <li>5. Exhibit E – Property Map</li> <li>6. Exhibit F – Right of First Refusal</li> <li>7. Exhibit G - State Quit Claim Deed to Town</li> <li>8. Exhibit H - Condominium Plat</li> <li>9. Exhibit I - Town Deed to State</li> <li>10. Exhibit J - Change Order</li> <li>11. Exhibit K - Emergency Field Change Order</li> <li>12. Exhibit L – Form of Option Letter</li> </ol> <p>In the event of a conflict or inconsistency between this Agreement and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:</p> <ol style="list-style-type: none"> <li>1. Colorado Special Provisions in §19 of the main body of this Agreement</li> <li>2. The provisions of the other sections of the main body of this Agreement</li> <li>3. Exhibit A – Property Transaction Information</li> <li>4. Exhibit B – CDOT Units Transaction Information</li> <li>5. Exhibit D – Property Legal Description</li> <li>6. Exhibit E – Property Map</li> <li>7. Exhibit F – Right of First Refusal</li> <li>8. Exhibit G - State Quit Claim Deed to Town</li> <li>9. Exhibit H – Condominium Plat</li> <li>10. Exhibit I - Town Deed to State</li> <li>11. Exhibit C – Deed Restriction</li> </ol>	

- 12. Executed Option Letters
- 13. Executed Change Orders
- 14. Executed Emergency Field Change Orders

**Principal Representatives**

For the State:

Marcella Broussard  
CDOT – Property Management  
2829 West Howard Place  
Denver, CO 80204  
[Marcella.broussard@state.co.us](mailto:Marcella.broussard@state.co.us)  
(303) 512-5505

Copy of notices to:

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CDOT – Property Management  
2829 West Howard Place  
Denver, CO 80204  
[David.fox@state.co.us](mailto:David.fox@state.co.us)  
(303) 249-4233

For Town:

Leslie Edwards, Finance Director  
Town of Frisco  
PO Box 4100  
Frisco, Colorado 80443  
[LeslieE@TownofFrisco.com](mailto:LeslieE@TownofFrisco.com)  
970-668-9138

Copy of notices to:

Thad W. Renaud, Esq.  
Murray Dahl Beery & Renaud LLP  
710 Kipling Street, Suite 300  
Lakewood, CO 80215  
[trenaud@mdbrlaw.com](mailto:trenaud@mdbrlaw.com)  
303-493-6670

## SIGNATURE PAGE

### THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

Each person signing this Agreement represents and warrants that the signer is duly authorized to execute this Agreement and to bind the Party authorizing such signature.

<p><b>TOWN</b> <b>TOWN OF FRISCO</b></p>    <p>_____ By: Hunter Mortensen, Mayor</p> <p>Date: _____</p>	<p><b>STATE OF COLORADO</b> Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director</p>    <p>_____ By: Stephen Harelson, P.E., Chief Engineer</p> <p>Date: _____</p>
<p>ATTEST:</p> <p><b>TOWN OF FRISCO</b></p>    <p>_____ By: Deborah Wohlmuth, CMC, Town Clerk</p> <p>Date: _____</p>	<p>In accordance with §24-30-202, C.R.S., this Agreement is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p><b>STATE CONTROLLER</b> <b>Robert Jaros, CPA, MBA, JD</b></p>  <p>By: _____ Office of the State Controller, Controller Delegate</p> <p>Effective Date: _____</p>

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### 1. PARTIES

This Agreement is entered into by and between Town named on the Cover Page for this Agreement (the “**Town**”), and the STATE OF COLORADO acting by and through the State agency named on the Cover Page for this Agreement (the “**State**”). Town and the State agree to the terms and conditions in this Agreement.

### 2. TERM AND EFFECTIVE DATE

#### A. EFFECTIVE DATE

This Agreement shall not be valid or enforceable until the Effective Date. The State shall not be bound by any provision of this Agreement before the Effective Date, and shall have no obligation to pay Town for any Work performed or expense incurred before the Effective Date or after the expiration or sooner termination of this Agreement.

#### B. INITIAL TERM

The Parties’ respective performances under this Agreement shall commence on the Agreement Performance Beginning Date shown on the Cover Page for this Agreement and shall terminate on the Initial Agreement Expiration Date shown on the Cover Page for this Agreement (the “**Initial Term**”) unless sooner terminated or further extended in accordance with the terms of this Agreement.

#### C. EARLY TERMINATION IN THE PUBLIC INTEREST

The State is entering into this Agreement to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Agreement ceases to further the public interest of the State, the State, in its discretion, may terminate this

Agreement in whole or in part. A determination that this Agreement should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Agreement by the State because of Town's Breach of Contract, which shall be governed by §13.

- i. **Method and Content**. The State shall notify Town of such termination in accordance with §16. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Agreement, and shall include, to the extent practicable, the public interest justification for the termination.
- ii. **Obligations and Rights**. Upon receipt of a termination notice for termination in the public interest, the Parties shall be subject to the rights and obligations set forth in §14.

### 3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **"Affordable Workforce Housing"** means a unit that is restricted in perpetuity to occupancy by individuals meeting the income limitations and occupancy standards as established from by the Town and State. At minimum, these restrictions shall include a maximum household income equivalent to 100% Area Median Income or less, and a minimum occupancy restriction of employed in Summit County on average a minimum of 30 hours per week on an annual basis.
- B. **"Agreement"** means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- C. **"Agreement Funds"** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement.
- D. **"Agreement Maximum Amount"** means an amount equal to the total of Agreement Funds for this Agreement.
- E. **"Breach of Contract"** means the failure of a Party to perform any of its obligations in accordance with this Agreement, in whole or in part or in a timely or satisfactory manner.
- F. **"Business Day"** means any day other than Saturday, Sunday or a legal holiday as listed in §24-11-101(1), C.R.S.
- G. **"CDOT Acceptance"** means the acceptance described in §6.B.v.
- H. **"CDOT Termination"** means the termination of this Agreement by CDOT pursuant to §14.A.i.
- I. **"CDOT Units"** are the eleven (11) Units to be transferred to the State pursuant to this Agreement.
- J. **"CDOT Units Closing"** means the completion of all conditions precedent under this Agreement and contemporaneous execution of all related documents for transfer of the CDOT Units to the State.
- K. **"CDOT Units Closing Date"** means the date on which the CDOT Units Closing occurs.
- L. **"CDOT Units Closing Location"** shall be the location where CDOT Units Closing shall occur which is identified on **Exhibit B**. The CDOT Units Closing Location can be virtual.

- M. **"CDOT Units Disclosures"** those documents identified on **Exhibit B** for disclosure by the Town to the State.
- N. **"CDOT Units Drawings"** shall mean the survey on the CDOT Units identified on **Exhibit B**.
- O. **"CDOT Units Due Diligence Period"** shall have the meaning stated in **§7.A.vii.c**.
- P. **"CDOT Units Permitted Exceptions"** means the following exceptions: Those matters identified on the CDOT Units Title Commitment and that are approved or deemed approved pursuant to the terms hereof; all matters set forth on the CDOT Units Drawings and approved or deemed approved by the State pursuant to this Agreement; any matters arising by, through or under the State; and, all leases encumbering the CDOT Units if the State has agreed in writing to the assignment of the leases as shown on **Exhibit B**.
- Q. **"CDOT Units Purchase Price"** is the amount listed on **Exhibit B** for the purchase of the CDOT Units, which amount shall be equal to the State's Share of the Construction Expenses.
- R. **"CDOT Units Title Commitment"** means a current standard ALTA form(s) commonly used by a title company authorized to do business in the State of Colorado that said title company uses before issuing a title policy insuring State's interest in the CDOT Units and related proportionate share of the General Common Elements together with, as applicable, any updates of the CDOT Units Title Commitment.
- S. **"CDOT Units Title Evidence"** means the CDOT Units Drawings and the CDOT Units Title Commitment, and the documents furnished therewith and the certificates of taxes due furnished by the Title Company.
- T. **"CDOT Units Title Policy"** means the owner's title insurance policy in current ALTA form issued to the State pursuant to the CDOT Units Title Commitment.
- U. **"CDOT Units Valuation"** pursuant to §24-30-202(5)(b), C.R.S., the CDOT Units and related proportionate share of the General Common Elements shall be valued at an amount equal to the State Property Purchase Price plus the State Share of all costs and expenses incurred under this Agreement.
- V. **"Construction Expenses"** shall have the meaning in **§6.C.i.a**.
- W. **"CORA"** means the Colorado Open Records Act, §§24-72-200.1, *et seq.*, C.R.S.
- X. **"Deed Restriction"** means the Affordable Workforce Housing deed restriction in the form of **Exhibit C**.
- Y. **"Effective Date"** means the date on which this Agreement is approved and signed by the Colorado State Controller or designee, as shown on the Signature Page for this Agreement.
- Z. **"Exhibits"** means the exhibits and attachments included with this Agreement as shown on the Cover Page for this Agreement.
- AA. **"General Common Elements"** means common entryways, corridors, security systems, doors, windows, the common lighting system, electrical transmission lines, lighting fixtures on the exterior of the buildings, foundations, roof, supporting columns, unit perimeter walls, ceilings, driveways, parking areas, easements, electrical transmission system, fire suppression system, garbage rooms, gas meter room and gas distribution system, lobby, common hallways, stairs and stairwells, monuments and signs, and sewer system, water

distribution system locker areas, garages, grounds, walkways, heating and air conditioning systems, pipes and other building infrastructure items inherent to the integrity and operations of the New Building.

- BB. **“Initial Term”** means the time period defined in **§2.B**.
- CC. **“Losses”** means any and all liabilities, losses, costs, claims, damages of any type permitted to be recovered by law, penalties and documented out-of-pocket expenses; provided however, it being understood that in the event that any of the foregoing are indemnifiable hereunder, the term **“Losses”** shall include any and all reasonable attorney's fees and expenses and costs of investigation and litigation incurred by the indemnified person in enforcing such indemnity.
- DD. **“Mineral Estate”** means the mineral estate, including all minerals, ores and metals, coal, asphaltum, oil, gas, or other like substances including sand, gravel, earth, rock, geothermal resources, coal, and other hydrocarbons, and all clay and other mineral rights in, under or upon said Property.
- EE. **“New Building”** is the multi-story residential building to be constructed by the Town on the Property including the site-work and parking areas.
- FF. **“Party”** means the State or Town, and **“Parties”** means both the State and Town.
- GG. **“Phase 1”** means the first phase of the Project in which State transfers the Property to Town.
- HH. **“Phase 2”** means the second phase of the Project in which the Town, in cooperation with the State, constructs the New Building and the Units.
- II. **“Phase 3”** means the third phase of the Project in which the Town transfers the CDOT Units to the State.
- JJ. **“PII”** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records. PII includes, but is not limited to, all information defined as personally identifiable information in §§24-72-501 and 24-73-101, C.R.S.
- KK. **“Planning Agreements”** means the Work Force Housing Planning Agreement dated September 9, 2020, PO 471001650, as amended, and a Work Force Housing Planning Agreement dated February 1, 2022, PO 471001900 between the State and Town.
- LL. **“Project”** means the construction of the New Building on the Property for purposes of Town and State affordable work-force housing. Project shall include only that number of Units, and that mix of Unit sizes, to be allocated to each Party that each Party reasonably expects to have the individual capacity to finance for construction.
- MM. **“Property”** means the real property owned by State which is described on **Exhibit D** and illustrated on **Exhibit E**, which includes all interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto and all interest of State in vacated streets and alleys adjacent thereto, except as herein excluded.
- NN. **“Right of First Refusal”** shall have the meaning stated in **§5.C.iii**.

- OO. **"Services"** means the services to be performed by Town, directly or indirectly through Subcontractors, as set forth in this Agreement.
- PP. **"State Confidential Information"** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Town which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Town without restrictions at the time of its disclosure to Town; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Town to the State; (iv) is disclosed to Town, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.
- QQ. **"State Fiscal Rules"** means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.
- RR. **"State Fiscal Year"** means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- SS. **"State Property Closing"** means the completion of all conditions precedent under this Agreement and contemporaneous execution of all related documents.
- TT. **"State Property Closing Date"** means the date on which the State Property Closing occurs.
- UU. **"State Property Closing Location"** shall be the location where State Property Closing shall occur which is identified on Exhibit A. The State Property Closing Location can be virtual.
- VV. **"State Property Disclosures"** those documents identified on Exhibit A for disclosure by the State to Town.
- WW. **"State Property Due Diligence Period"** shall have the meaning stated in §5.A.vii.c.
- XX. **"State Property Permitted Exceptions"** means the following exceptions: Those matters identified on the State Property Title Commitment and that are approved or deemed approved pursuant to the terms hereof; all matters set forth on the State Property Survey and approved or deemed approved by the Town pursuant to this Agreement; any matters arising by, through or under the Town; and, all leases encumbering the Property if the Town has agreed in writing to the assignment of the leases as shown on Exhibit A.
- YY. **"State Property Purchase Price"** is the amount listed on Exhibit A for the purchase of the Property by Town which shall be applied to Construction Expenses.
- ZZ. **"State Property Survey"** shall mean the ILC/survey on the Property identified on Exhibit A.
- AAA. **"State Property Title Commitment"** means a current standard ALTA form(s) commonly used by a title company authorized to do business in the State of Colorado that said title company uses before issuing a title policy insuring Town's interest in the Property together with, as applicable, any updates of the State Property Title Commitment.



- BBB. **"State Property Title Evidence"** means the State Property Survey and the State Property Title Commitment, and the documents furnished therewith and the certificates of taxes due furnished by the Title Company.
- CCC. **"State Property Title Policy"** means the owner's title insurance policy in current ALTA form issued to the Town pursuant to the State Property Title Commitment.
- DDD. **"State Records"** means any and all State data, information, and records, regardless of physical form.
- EEE. **"State Share"** means the State's percentage of costs and expenses for the Project pursuant to this Agreement that is stated in **§6.C.i.a.**
- FFF. **"Subcontractor"** means any third party engaged by Town to aid in performance of the Work.
- GGG. **"Title Company"** means a mutually agreed upon title insurance company authorized to do business in the State of Colorado.
- HHH. **"Town Records"** means any and all Town data, information, and records, regardless of physical form.
- III. **"Town Share"** means the Town's percentage of costs and expenses for the Project pursuant to this Agreement that is stated in **§6.C.i.a.**
- JJJ. **"Town Termination"** means the termination of this Agreement by Town pursuant to **§14.B.i.**
- KKK. **"Transfer Document(s)"** means the document(s) specified on **Exhibit A** or **Exhibit B** which are prepared and approved by the Parties for transfer of the Property and the CDOT Units.
- LLL. **"Units"** means the condominiums constructed by the Town in the New Building for residential housing.
- MMM. **"Water Rights"** means all of State's rights, title and interests in any and all water and water rights of any kind or nature historically used, or decreed or permitted for use, on the Property. Water Rights includes well rights.
- NNN. **"Work"** shall mean Services performed by Town, or its Subcontractors for construction related to the CDOT Units and/or New Building with approval of the State. Work shall include labor, materials and equipment to perform such Services in accordance with **Exhibit H**.

Any other term used in this Agreement that is defined elsewhere in this Agreement or in an Exhibit shall be construed and interpreted as defined in that section or in that Exhibit.

#### 4. SUMMARY TRANSACTION DESCRIPTION

Subject to the provisions of this Agreement:

##### A. Phase 1 - State Sale of Property

- i. The State will sell, transfer, and convey unto the Town, and the Town shall purchase from Seller all of State's right, title, and interest in the Property.
- ii. The Property will be transferred subject to a reversion right to the State if the Property and New Building are no longer used for Affordable Workforce Housing.
- iii. The Property will be transferred subject to a Right of First Refusal.

**B. Phase 2 - Construction of New Building and Units**

- i. The Parties shall jointly develop and construct the New Building on the Property and, subject to the terms of this Agreement, the Parties shall share in the cost thereof as stated in §6.C. The State Property Purchase Price shall be part of the State's contribution to the Construction Expenses of the New Building.
- ii. The Town shall conduct the procurement process set forth in the Town Code for the construction and engagement of Subcontractors to construct the New Building and/or to prepare materials or documents pursuant to this Agreement. Such Subcontractors will include, but not necessarily be limited to, architects and engineers.
- iii. The New Building shall be condominiumized into Units for the purpose of Affordable Workforce Housing.
- iv. The Parties shall create a governing organization for the condominiumized New Building in accordance with the Colorado Common Ownership Interest Act (CCOIA).
- v. The Parties shall manage the New Building in accordance with the Project pursuant to §§6A.v and 6.E.

**C. Phase 3 - Town Sale of Units**

After the New Building and Units have been constructed and the CDOT Acceptance has occurred, the Town will sell, transfer, and convey unto the State, and the State shall purchase from Town all of Town's right, title, and interest in the CDOT Units and the related General Common Elements. After the payment by the State of the State's share of the Construction Expenses, there will be no additional consideration given by the State for the transfer of the CDOT Units and related General Common Elements.

**5. PHASE 1 - STATE SALE OF PROPERTY**

State will sell, transfer, and convey unto the Town, and the Town shall purchase from Seller all of State's right, title, and interest in the Property via the Transfer Document(s) specified on Exhibit A.

**A. PERFORMANCE CONTINGENCIES**

The Parties' performance of the transfer of the Property to the Town under this Agreement is contingent upon successful completion of each of the following conditions in this Section. If one or more of these contingencies are required and are not satisfied by the State Property Closing Date, and the Parties have not agreed in writing to allow additional time for satisfaction, then this Agreement shall automatically terminate and the Parties shall be released from all further obligations and liabilities with respect to this Agreement.

- i. Approvals. Final approvals of the transaction contemplated by this Agreement by the following entities and persons:
  - a. The Colorado Transportation Commission, which shall be evidenced by a resolution of the Transportation Commission; and
  - b. The Colorado State Controller, which shall be evidenced by the execution of this Agreement by the State Controller or his delegate.
  - c. Frisco Town Council, which shall be evidenced by a Resolution approved at a meeting of Town Council.

ii. **Appraisal**

- a. In accordance with CRS §24-30-202(5)(b) and to establish the market value of the Property, State obtained an appraisal on the Property which is equal to the State Property Purchase Price.
- b. The State has contracted and paid for the cost of such appraisal.

iii. **Legal Descriptions and Maps (Survey)**

Pursuant to the Planning Agreements, the Parties equally split the expense to prepare a legal description and a site map of its Property that are acceptable to, and approved by, the Town.

iv. **State Property Survey**

- a. Pursuant to the Planning Agreements, the Parties equally split the expense to obtain the State Property Survey for the Property, and have agreed the survey is satisfactory. The surveyor shall certify what portion, if any, of the Property is situated in a flood plain or flood hazard area, as identified by the U. S. Department of Housing and Urban Development or any agency of the State of Colorado.
- b. Town has the right to review and object to the State Property Survey. If the State Property Survey is not timely received by Town or is unsatisfactory to Town, in Town's sole subjective discretion, Town may, on or before State Property Survey Objection Deadline in **Exhibit A** take any of the following actions:
  - 1) **Notice to Terminate**. Notify State in writing, that this Agreement is terminated.
  - 2) **State Property Survey Objection**. Deliver to State a written description of any matter that was to be shown or is shown in the State Property Survey that is unsatisfactory and that Town requires State to correct.
  - 3) **State Property Survey Resolution**. If a State Property Survey Objection is received by State, on or before State Property Survey Objection Deadline in **Exhibit A** and if State and Town have not agreed in writing to a settlement thereof on or before State Property Survey Resolution Deadline in **Exhibit A**, this Agreement will terminate on expiration of the State Property Survey Resolution Deadline, unless State receives Town's written withdrawal of the State Property Survey Objection before such termination, i.e., on or before expiration of State Property Survey Resolution Deadline. If the State is willing to resolve a State Property Survey Objection, but it cannot do so prior to the State Property Survey Resolution Deadline, the State, with prior written approval of the Town, shall have the option to extend the State Property Survey Resolution Deadline a reasonable amount of time. The State shall provide the Town with written notice of the extension.

v. **Title Evidence**

- a. At the State's expense, State shall obtain a current State Property Title Commitment that insures the Town's interest in an amount equal to or greater than the State Property Purchase Price, and certificates of taxes due issued by the Treasurer of the County where the Property is located showing the current status of all taxes and assessments due or accruing, together with legible copies of all

recorded title exceptions referred to in the commitment, shall be delivered by the State to the Town no later than fifteen (15) business days after the Effective Date of this Agreement. The State will deliver the State Property Title Policy to the Town in accordance with §5.E.i.a and pay the premium thereon. The Title Company must commit to issue a State Property Title Policy including deletion of or insurance over the standard exceptions, Schedule B Section 2 Numbers 1 through 6. The Property shall be conveyed to the Town by the State subject to the State Property Permitted Exceptions.

- b. If a title matter is cured or removed pursuant to this Agreement, such title matter shall not be included as a State Property Permitted Exception. State Property Title Commitment exceptions pertaining to taxes and assessments for the year of State Property Closing and subsequent years shall not be State Property Permitted Exceptions.
- vi. **Approval of Title Evidence.** The Town shall examine the State Property Title Evidence and if the Town is not satisfied with the matters disclosed by the State Property Survey or State Property Title Evidence established for the Property, the Town may give written notice of the specific defect or defects in title to the State within ten (10) calendar days following the date of receipt by the Town of the State Property Title Evidence disclosing the matter. Upon receipt of notice of defects from the Town, the State may, by written notice to the Town within ten (10) calendar days, elect to cure such defects or not to cure them. Unless the State elects to cure such defects, the Town may, by written notice to the State at or before the State Property Closing (i) expressly waive such defects and proceed to close; or (ii) elect to proceed with a Town Termination. If the State elects to cure title defects, upon written notice of such election to the Town, either Party may postpone the State Property Closing for a reasonable period of time not to exceed sixty (60) days. If, after making such election, the State is unable to cure within said sixty (60)-day period, the Town shall have the options stated in (i) and (ii) above.
- vii. **Due Diligence and State Property Disclosures**
  - a. **Disclosures.** To assist the Town in its due diligence, no later than fifteen (15) business days after the Effective Date (unless otherwise noted below) the State, at its sole expense, will make available to the Town copies of the State Property Disclosures identified on **Exhibit A**, to the extent the documents exist and are available. No later than fifteen (15) business days after the Effective Date, State shall provide Town with written notice of any State Property Disclosures that do not exist or are not available.
  - b. **Inspection of Records.** In addition, from the Effective Date through the State Property Closing Date or earlier termination of this Agreement, during regular business hours with twenty-four (24) hours prior written notice to the State, the State shall permit the Town and its representatives to examine the State's books and records, including, if applicable, tenant, operating, maintenance, and management files pertaining to the Property.
  - c. **Due Diligence Period.** The Town's performance under this Agreement shall be contingent upon the Town's approval, in its sole discretion, of the State Property

Disclosures. The Town, at its sole discretion, shall have through Due Diligence Expiration Date stated on **Exhibit A** to review all documentation, obtain third party reports, inspect the Property, and otherwise research or approve the Property ("**State Property Due Diligence Period**"). If the Town determines within this timeframe, for any reason, that the Property is not suitable for Town's use, the Town may elect to proceed with a Town Termination. Nothing in this provision shall modify the review and termination periods for other performance contingencies in this §5.

- d. **Town Inspection.** During the State Property Due Diligence Period, the Town may inspect the Property without interfering with the State's operation of the Property. All inspection fees, engineering fees and other expenses of any kind incurred by the Town relating to the inspection of the Property will be paid by the Town. The State shall cooperate with the Town in all reasonable respects in making such inspections. The State hereby reserves the right to have a representative present during, and the right to determine the time of, any such inspection. The Town shall notify the State not less than one (1) Business Day in advance of making any such inspection. In making any inspection hereunder, the Town will treat, and will cause any representative of the Town to treat, all information obtained by the Town pursuant to the terms of this Agreement as confidential and the State will treat, and will cause any representative of the State to treat, all information obtained by the State pursuant to the terms of this Agreement as confidential. Nothing in this Paragraph shall limit either Party's ability to comply with the obligations of Colorado law, including but not limited to CORA, and the Colorado Sunshine Law, § 24-6-401 through § 24-6-402, C.R.S., or create liability for such compliance.

- e. **Hazardous Waste.** If hazardous waste **is not** a significant concern as identified on **Exhibit A**, this provision applies.

State represents that to the best of State's actual knowledge without a duty of investigation or inquiry (except as may be disclosed in the Environmental Report), (a) the Property has never been used as a landfill or waste dump; (b) there has been no installation in, or production, disposal or storage on, the Property of any hazardous waste or other toxic substances, including, without limitation asbestos, by a tenant or any previous owner or previous tenant or any other activity which could have toxic results in violation of applicable government laws and regulations; and (c) there is no proceeding or inquiry by any governmental authority or agency with respect thereto. As used throughout this Agreement, "to the best of State's actual knowledge" shall include the current actual knowledge of David Cesark, CDOT Region 3 Environmental Program Manager, without duty to investigate.

- f. **Hazardous Substances.** If hazardous waste **is** a significant concern as identified on **Exhibit A**, this provision applies.

- 1) The terms "hazardous substance", "release" and "removal" as used herein shall have the same meaning and definition as set forth in paragraphs (14), (22) and (23), respectively, of Title 42 U.S.C. §9601; provided, however, that the term "hazardous substance" as used herein also shall include "hazardous waste" as

defined in paragraph (5) of 42 U.S.C. §6903 and "petroleum" as defined in paragraph (8) of 42 U.S.C. §6991. The term "Superfund" as used herein means the Comprehensive Environmental Response, Compensation and Liability Act, as amended, Title 42 U.S.C. §9601 et seq., as amended, and any similar state statute or local ordinance applicable to the Property, and all rules and regulations promulgated, administered and enforced by any governmental agency or authority pursuant thereto. The term "underground storage tank" as used herein shall have the same meaning and definitions as set forth in paragraph (1) of 42 U.S.C. §6991.

- 2) The Town must be able to determine to its satisfaction that: (a) the Property is not in any way contaminated with any hazardous substance; (b) the Property is not subject to any federal, state or local "Superfund" lien, proceedings, claim liability or action, or the threat or likelihood thereof, for the cleanup, removal or remediation of any such hazardous substance from the Property; (c) there is no asbestos on the Property; and (d) there is no underground storage tank on the Property. In order to assist the Town in making such determination, and to induce the Town to purchase the Property, State hereby represents to the Town that: (i) the Property is not contaminated with any hazardous substance; (ii) State has not caused and will not cause, and to the best of State's knowledge, after diligent investigation and inquiry, there never has occurred, the release of any hazardous substance on the Property; (iii) the Property is not subject to any federal, state or local "Superfund" lien, proceedings, claim, liability or action, or the threat or likelihood thereof, for the cleanup, removal, or remediation of any such hazardous substance from the Property; (iv) there is no asbestos on the Property; (v) there is no underground storage tank on the Property; (vi) by acquiring the Property, the Town will not incur or be subjected to any "Superfund" liability for the cleanup, removal or remediation of any hazardous substance from the Property or any liability, cost, or expense for the removal of any asbestos or underground storage tank from the Property; and (vii) State shall be solely responsible for any and all claims, demands, liabilities, damages, suits, actions, judgments, fines, penalties, loss, cost and expense (including, without limitation, attorney fees) arising or resulting from, or suffered, sustained or incurred as a result (direct or indirect) of, the untruth or inaccuracy of any of the foregoing matters represented by State to the Town. This obligation of State shall survive the State Property Closing hereunder. All of the foregoing covenants, representations shall be true and correct at the time of the State Property Closing hereunder and shall survive the State Property Closing. Notwithstanding the foregoing, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of Seller available under the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 USC §2671 et seq., as applicable, as now or hereafter amended.

- g. Environmental Assessments. Town has the right to obtain environmental inspections of the Property including Phase I and Phase II Environmental Site

Assessments, as applicable. Town will order or provide Phase I Environmental Site Assessment, or Phase II Environmental Site Assessment (compliant with most current version of the applicable ASTM E1527 standard practices for Environmental Site Assessments), at the expense of Town ("**Environmental Inspection**"). In addition, Town, at Town's expense, may also conduct an evaluation whether the Property complies with the Americans with Disabilities Act ("**ADA Evaluation**"). All such inspections and evaluations must be conducted at such times as are mutually agreeable to minimize the interruption of State's and any State's tenants' business uses of the Property, if any.

- 1) If Town's Phase I Environmental Site Assessment recommends a Phase II Environmental Site Assessment, the Environmental Inspection Termination Deadline stated on Exhibit A will be extended by 90 days ("**Extended Environmental Inspection Objection Deadline**") and if such Extended Environmental Inspection Objection Deadline extends beyond the State Property Closing Date, the State Property Closing Date will be extended a like period of time. In such event, Town must pay the cost for such Phase II Environmental Site Assessment.
- 2) Notwithstanding Town's right to obtain additional environmental inspections of the Property in this Section, Town has the right to terminate this Agreement on or before Environmental Inspection Termination Deadline, or if applicable, the Extended Environmental Inspection Objection Deadline, based on any unsatisfactory results of Environmental Inspection, in State's sole subjective discretion.
- 3) Town has the right to terminate this Agreement on or before ADA Evaluation Termination Deadline stated on Exhibit A, based on any unsatisfactory ADA Evaluation, in Town's sole subjective discretion.
- 4) If the Town elects to terminate this Agreement pursuant to this **§5.A.vii.g**, the Town shall give State written notice of such termination, which shall be a Town Termination.

viii. **Performance**. The Parties shall each have performed and satisfied all agreements and covenants required hereby to be performed by each Party prior to or at the Closing.

## **B. STATUS PENDING CLOSING**

The following conditions shall apply as of the Effective Date of this Agreement through State Property Closing and as a condition to State Property Closing:

- i. **Maintenance of the Property**. Except as specified in this Agreement or on Exhibit A, the Property shall be maintained in its present conditions by the State until State Property Closing. Except as otherwise specified in this Agreement, the following acts, which create loss or damage, are prohibited on the Property: cutting, slashing, removing, destroying or wasting of any trees or plants; diking, dredging, filling or other disturbances; or disturbance of the soils or any alteration of the surface or of any vegetation thereon (with the exception of historic livestock grazing, which shall be in accordance with acceptable range management standards).

- ii. **Right of Entry.** From the Effective Date of this Agreement, any officers and accredited agents of the Town shall have the right of ingress, egress, and regress to the Property to survey, inspect, collect soil and water samples, and for all other lawful purposes, in connection with this acquisition. Town shall give State reasonable advance notice of at least 24 hours for entry onto the Property pursuant to this provision.
- iii. **Risk of Loss.** The State shall bear all risk of loss or damage to the Property until State Property Closing. This includes, but is not limited to, Losses from acts of nature, such as fire, flood, and landslide. In the event of damage to the Property by fire or other casualty prior to the State Property Closing Date which damage either reduces or affects the usable facilities on the Property by any amount other than what was in place as of the Effective Date or reduces the value of the Property below the State Property Purchase Price, then this Agreement may be terminated at the option of the Town, which option shall be exercised, if at all, by the Town's written notice thereof to the State within twenty (20) business days after the Town receives written notice of such fire or other casualty, and upon the exercise of such option by the Town this Agreement shall become null and void, and neither Party shall have any further liability or obligations hereunder, except as otherwise provided in this Agreement. State Property Closing shall be delayed for up to thirty (30) days, if necessary, until the Town makes such election. If the Town does not so elect to terminate, State shall assign and transfer to the Town on the State Property Closing Date all of the State's right, title and interest in and to all insurance proceeds or other compensation paid or payable to the Town on account of such fire or casualty together with the amount of the deductible relating thereto.
- iv. **Condemnation.** If, between the Effective Date of this Agreement and the State Property Closing Date, proceedings are initiated which might result in the taking of any part of the Property or the taking or closing of any right of access to the Property, the Town may:
  - a. Proceed with the State Property Closing, in which event the State shall assign to the Town all of the State's right, title and interest in and to any award made in connection with such condemnation or eminent domain proceedings; or
  - b. Terminate this Agreement by written notice to the State and all Parties shall be released from this Agreement.
  - c. The State shall immediately notify the Town in writing of the commencement or occurrence of any condemnation or eminent domain proceedings. The Town shall then notify the State, within twenty (20) days of the Town's receipt of the State's notice, whether the Town elects to exercise its rights under this Agreement. State Property Closing shall be delayed for up to thirty (30) days, if necessary, until the Town makes such election.
- v. **Leases and Other Agreements.** State and Seller hereby agree that from and after the Effective Date and until State Property Closing or termination pursuant to the terms hereof, the State shall not, without the prior written approval of the Town, in the Town's discretion.



- a. Enter into any new lease or other agreement involving the Property or any portion thereof which would bind the Property or the owner of the Property or would not be cancelable within thirty (30) days' notice; or
  - b. Agree to any modification, extension, assignment or subletting of any lease, service contract, management agreement or other agreement involving the Property or any portion thereof, unless State is not entitled to unreasonably withhold its consent to such action pursuant to the respective document. In such case, the State shall consult with the Town prior to executing any modification, extension, assignment or subletting of any lease, service contract, management agreement or other agreement involving the Property or any portion thereof.
- vi. **Title.** From and after the end of the State Property Due Diligence Period and until State Property Closing or termination pursuant to the terms hereof, the State shall not create, incur or permit to exist any new lien encumbrance, easement, or license agreement affecting the Property or any portion thereof, without the prior written consent of the Town. The Title Company shall be committed to issue and deliver to the Town the State Property Title Policy, and State shall have made all deliveries required of State for the State Property Closing and State Property Disclosures.

C. **THE TRANSFER**

- i. If applicable and unless specified otherwise on **Exhibit A**, the following shall be transferred to the Town at the State Property Closing:
  - a. all of State's right, title, and interest in and to any and all easements, rights, benefits, improvements, and attached fixtures appurtenant to the Property,
  - b. any and all easements, licenses, and permits appurtenant to the Property shown on **Exhibit A**,
  - c. all leases appurtenant to the Property shown on **Exhibit A** and all security deposits in State's actual possession under said leases,
  - d. all personal property located on the Property at the Closing,
  - e. Mineral Estate, and
  - f. Water Rights.
- ii. All of the Units shall have an Affordable Workforce Housing deed restriction in the form of **Exhibit C** recorded in the real estate records of Summit County.
- iii. The Property will be subject to a right of first refusal by which if the Town desires to sell the Property, the State shall have the first right to purchase the Property for an amount equal to the Town's Share of the Construction Expenses plus fifty percent (50%) of the appreciation of the Property, including the New Building, from the date of the sale of the Property by State to Town to the date of the sale of the Property/New Building to CDOT in the future pursuant to this Right of First Refusal ("**Right of First Refusal**"). Upon completion of construction, the Right of First Refusal shall apply to individual Town Units as well as the Property, and the value of the Right of First Refusal shall be determined as the fair market value of the Property and/or Unit(s) as determined in accordance with CRS §43-1-210(5). Pursuant to CRS §43-1-210(5), the

Town shall have a Right of First Refusal to purchase the State's Units if the State desires to sell individual Units.

- iv. **State Property Purchase Price.** The State Property Purchase Price for the Property shall be the amount stated on **Exhibit A**. The State Property Purchase Price shall be applied by Town to the Construction Expenses in Phase 2. Such State Property Purchase Price shall be subject to all prorations, offsets, closing credits, and charges as provided herein.

**D. REPRESENTATIONS**

All representations of State contained in this §5 shall be true and correct as of the date made and as of the State Property Closing Date with the same effect as though such representations were made at and as of the State Property Closing. In addition, State makes the following specific representations, which are true in all material respects as of the date hereof and, as a condition to State Property Closing, shall continue to be true in all material respects as of the State Property Closing:

- i. **Compliance with Law.** To the best knowledge of the State, State is in compliance with the laws, orders, and regulations of each governmental department, commission, board or agency having jurisdiction over its Property in those cases where noncompliance would have a material adverse affect on the Property.
- ii. **Hazardous Substances.** Except as specifically referenced in this Agreement, the State has no knowledge of any "Hazardous Substance," as defined in 42 U.S.C. §9601 (14), or hazardous or toxic material, substance, or waste, as they may be defined under relevant state or local law, or asbestos, being located on the Property and State has not received notice of any violation or alleged violation of any law, rule, or regulation regarding such substances. The conveyance of the Property under the terms hereof is not intended to relieve the State of any obligation or liability State would incur pursuant to relevant federal or State law concerning such substances as an owner of the Property.
- iii. **Other Agreements.** The State is not a party to, subject to, or bound by any agreement, contract, or lease of any kind relating to the Property that would conflict with State's performance hereunder other than those matters of record revealed in the State Property Title Commitment.
- iv. **Ownership of the Property.** State is the sole owner in fee simple of the Property as of the Effective Date of this Agreement, State is the record owner of the Property, and at State Property Closing the Town shall receive good and marketable title to the Property, subject to those matters of record revealed in the State Property Title Commitment and those matters disclosed to the Town.
- v. **Pending Actions.** There are no actions, suits, proceedings, or investigations pending or, to the State's knowledge, threatened, against or affecting the Property, or arising out of the representing State's actions or inactions related to the Property.
- vi. **Defaults.** The execution and delivery of this Agreement, and the consummation of the Property transfer contemplated hereby, will not result in any breach of the terms of, conditions of, or constitute a default under, any instrument or obligation by which State is bound, or violate any order, writ, injunction or decree of any court in any litigation

to which State is a party. State is duly authorized and qualified to do all things required of it under this Agreement.

- vii. **Validity**. The persons executing this Agreement on behalf of State are and will be duly authorized to fully and legally bind State.
- viii. **Capacity**. State has the capacity and authority to enter into this Agreement and consummate the transactions herein provided without the consent or joinder of any other party.
- ix. **Water Rights**. If Water Rights are being conveyed through this Agreement as indicated on **Exhibit A**, this provision applies.
  - a. State has not previously conveyed, transferred or hypothecated any interest in the Water Rights of the Property, except as disclosed herein, in the State Property Title Commitment or any document referred to in such State Property Title Commitment.
  - b. To State's knowledge, no person or entity has objected to or asserted an adverse claim to the use and ownership by State or its predecessors of any of the Water Rights, except as disclosed herein, in the State Property Title Commitment or any document referred to in such State Property Title Commitment.
  - c. To State's knowledge, there are no leases, liens, encumbrances or the exceptions to title to the Water Rights, except as disclosed herein, in the State Property Title Commitment or any document referred to in such State Property Title Commitment.
  - d. Entering into and consummation of the transaction contemplated hereby will not violate any law, rule, license, regulation, judgment, order, decree or, to State's knowledge, contract governing or affecting State or the Water Rights.
- x. CDOT's Chief Engineer has determined that if the Town constructs the New Building and related improvements and appurtenances on the Property as required by this Agreement, and if Town conveys the CDOT Units to State, then the Property will no longer be needed by State for state highway or any other purposes.

E. **STATE PROPERTY CLOSING**

- i. **Date and Time**. The date and time of State Property Closing shall be at the mutual agreement of the Parties, but not later than 5:00 p.m. on the Maximum End Date for State Property Closing stated on **Exhibit A**. State Property Closing shall occur at the State Property Closing Location stated on **Exhibit A**. At State Property Closing,
  - a. State shall deliver the following:
    - 1) State shall deliver to Town the properly executed Transfer Document(s) specified on **Exhibit A** suitable for recording substantially in the form of **Exhibit G**,
    - 2) State shall provide Town with a State Property Title Policy for the Property, subject only to State Property Permitted Exceptions accepted by Town, the cost of which State Property Title Policy shall be paid by State. State shall obtain deletion of the standard printed title exceptions from the State Property

Title Policy, other than the standard exceptions that require a survey to delete or insure, at no cost to Town.

- 3) An Owner's Affidavit and other documents, if required by the Title Company to issue the State Property Title Policy.
  - 4) Execute and deliver such other documents as the Title Company may reasonably require from State in order to consummate the purchase and sale of the Property
- b. Town shall deliver the following:
- 1) Town shall execute the attached **Exhibit F** to the State for the Right of First Refusal.
  - 2) Execute and deliver such other documents as the Title Company may reasonably require from Town in order to consummate the purchase and sale of the Property.
- ii. **Closing Costs, Documents and Services.** The State Property Closing shall be completed by the Title Company furnishing the State Property Title Commitment and subsequent State Property Title Policy. The State shall pay one half of any closing services fees, the Town shall collectively pay one half of any closing services fees and each Party shall pay its share of other customary closing costs and all other items required to be paid at State Property Closing, except as otherwise provided herein.
- iii. **Commissions.** There shall be no commissions payable related to this transaction.
- iv. **Conveyance.** All conveyances shall be free and clear of (i) all taxes and assessments, due and payable as of the date of State Property Closing; (ii) any installments for special assessments payable prior to the State Property Closing Date; (iii) any mortgage, deed of trust, mechanics' or judgment liens; and (iv) encumbrances, leases, easements, rights of way, reservations, and restrictions, except building and zoning codes and regulations, and except as identified in the State Property Title Evidence, State Property Survey and State Property Permitted Exceptions, and accepted by the Town.
- v. **Prorations.** The following shall be prorated for the Property to the State Property Closing Date, except as otherwise provided:
- a. **Taxes.** The State is exempt from the payment of taxes. As a result, there are no taxes due for the year of the State Property Closing.
  - b. **Utilities.** Water, sewer and other utilities.
  - c. **Common Area Maintenance.** Common Area Maintenance charges, if any, under the leases, if any, ("**CAM**") shall be prorated to the date of State Property Closing; provided, however, that the Town shall not receive a credit for CAM due to tenants under the leases, if any, at State Property Closing, and State shall have until ninety (90) calendar days following State Property Closing to reconcile CAM charges with tenants under the leases (if any). Town agrees to cooperate with State to effectuate the reconciliation contemplated by this section.
  - d. **Association Assessments.** Current regular association assessments and dues ("**Association Assessments**") paid in advance will be credited to State at State

Property Closing. Cash reserves held out of the regular Association Assessments for deferred maintenance by the association will not be credited to State except as may be otherwise provided by the association's governing documents. Town acknowledges that Town may be obligated to pay the association, at State Property Closing, an amount for reserves or working capital. Any special assessment assessed prior to State Property Closing Date by the association will be the obligation of State. Except however, any special assessment by the association for improvements that have been installed as of the date of Town's signature hereon, whether assessed prior to or after State Property Closing, will be the obligation of State. State represents there are no unpaid regular or special assessments against the Property except the current regular assessments. Association Assessments are subject to change as provided in the association's governing documents.

- e. Unless otherwise agreed in writing, these prorations will be final.
- vi. State will be responsible for termination, close out and payment of all vendor/supply contracts on the State Property Closing Date.

**F. POST-CLOSING COVENANTS**

The following covenants shall inure to and be binding upon the Parties and their heirs, personal and legal representative, successors and assigns forever.

- i. The Parties will take such other actions and will execute and deliver such other instruments, documents and certificates as are required by the terms of this Agreement or as may be reasonably requested by any party in connection with the consummation of the transactions contemplated herein or therein.

**6. PHASE 2 - CONSTRUCTION OF NEW BUILDING AND UNITS**

**A. COOPERATION**

CDOT and the Town shall jointly engage in the construction of the New Building and all appurtenances and improvements on the Property for the Project in accordance with **Exhibit H**. The Town shall be the lead agency and the Town purchasing policy shall be followed with contracts executed by the Town and Contractor following consultation and consent of State. Such activities may include the following:

- i. preparation and presentation of the Project to appropriate local and State authorities (including authorities of the Town of Frisco and State);
- ii. preparation of plans, plats, drawings and other descriptive or supportive materials that are necessary or desirable for approval and/or construction of the Project under applicable law;
- iii. preparation of documents for the condominiumization of the New Building, including the Declarations and Articles of Incorporation and Bylaws for the governing organization; and
- iv. engagement and oversight of Subcontractors.

**B. CONSTRUCTION**

- i. **New Building/Units**. The New Building shall include the following:

- a. **Units.** The New Building shall have 22 Units of which 11 shall be CDOT Units and 11 shall be Units owned by the Town. The details of the Units shall be as described on **Exhibit H.**
- b. **Parking.** Paved and striped parking spaces to be generally shared among all users of the New Building pursuant to the proposed Declarations and to be located upon the General Common Elements of the condominiumized Property. Notwithstanding the above, there shall be a minimum of one (1) parking space per bedroom for each allocated Unit.
- ii. **Construction Plans.** The construction plans attached hereto as **Exhibit H** have been approved by State and Town. To the extent such plans are hereafter modified, Town shall not proceed with the Work absent State prior approval of modified plans, which approval shall not be unreasonably withheld or delayed.
- iii. **Compliance.** The design and construction of the New Building and Units shall comply with **Exhibit H** and the construction methods, and materials used for such construction shall comply with the Town's ordinances and regulations, and to any State requirements as required by Colorado law or regulation. In addition, all plans and specifications, construction methods and materials used in the construction of the New Building shall be subject to inspection and approval by CDOT's Program Architect or authorized designee, such approval not to be unreasonably withheld, conditioned or delayed, and must conform to all applicable current standards contained within the following publications, including, but not limited to, the following:
  - a. National Electrical Safety Code - published by the Institute of Electrical and Electronic Engineers, current adopted addition, with amendments as adopted by the Town of Frisco;
  - b. International Building Code - published by the International Code Council, current adopted addition, with amendments as adopted by Town of Frisco; and
  - c. The current edition of ICC/ANSI A117.1 Accessible and Usable Buildings and Facilities and the American Disabilities Act, Title II and III Regulations.All such publications are incorporated herein by this reference as conditions of this Agreement, to the extent applicable.
- iv. **Engagement of Subcontractors.** The Town shall engage, through the bidding or other procurement process set forth in the Town Code for the construction and engagement of professional Subcontractors as may be necessary or desirable to construct the New Building and/or to prepare materials or documents pursuant to this Agreement for Phase 2. Such Subcontractors will include, but not necessarily be limited to, general contractors, architects and engineers.

Every engagement of any Subcontractor shall be by written agreement between the Subcontractor and the Town that that has been approved pursuant to the law or policy of the Town and subject to the limitations of §6.C, after written consent is provided by CDOT's Property Management Program Manager to the Town's entering into the Subcontractor agreement. To that end, State shall participate, and the Parties shall cooperate, in the selection process for Subcontractors to be engaged by the Town pursuant to this Phase 2. The selected Subcontractors shall:

- a. secure, prior to the effective date of such subcontract, and maintain at all times during the term of such subcontract, at their sole expense, all licenses, certifications, permits, and other authorizations required to perform their obligations under such subcontract, and shall ensure that all employees, agents and subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to the subcontract; and
- b. agree to indemnify, save, and hold harmless Town and State, its employees, agents and assignees (collectively, the "**Indemnified Parties**"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by such consultant and/or contractor, or its employees, agents, subcontractors, or assignees in connection with the subcontract.
- v. **CDOT Approval**. State, in its discretion, shall inspect, approve and accept such construction and performance in writing, which shall not unreasonably withheld. It is considered reasonable to be within State's discretion to require that all structures, appurtenances, and improvements be completed in a good and workmanlike manner and in accordance with the plans set forth in **Exhibit H** and shall include the receipt of a notice of occupancy ("**CDOT Acceptance**").
- vi. **Construction Related Application Fees**. Town shall be solely responsible for all permits required for the performance of the Work with respect to the New Building and Property. Town shall determine which permits, applications and fees apply to the work. The costs for such permits, applications and fees shall be considered part of the Construction Expenses.
- vii. **Public Utility Transfer and Application Fees**. Town shall be solely responsible for all applications for and all costs of procuring connection to and/or transfer of all public utilities to the structures and other appurtenances described in **Exhibit H**. All such utilities shall connect or transfer prior to the CDOT Units Closing.
- viii. The Parties shall take all actions required by law to condominiumize the New Building and the Property prior to the CDOT Units Closing.
- ix. **Articles, Bylaws and Declarations**. Town shall provide State with a draft of the Articles of Incorporation and Bylaws of the governing organization of the condominiumized New Building and the Declarations for the New Building. Pursuant to the Declarations, the owners of the Units shall be responsible for proportionate shares of any and all building management fees, CAM fees, utilities and/or taxes, if applicable. State and Town shall share oversight responsibilities of the governing entity, in accordance with the Colorado Common Interest Ownership Act.

C. **SHARING OF EXPENSES AND COSTS**

- i. **Costs and Expenses of Construction for the Project**
  - a. For purposes of the allocation of costs and ownership of Units construction of the Project, a per Unit construction cost shall be determined on a square footage basis

by dividing the sum of all Project costs, by the combined total square footage of all Units to be constructed as part of the Project. The resulting per square foot cost shall be applied to the square footage of the particular Unit(s) to be owned by a Party, to determine that Party's allocation of construction cost for that Unit. After this determination, the State's share in the costs and expenses for the Project pursuant to this Agreement is **49.1%** ("**State Share**") and the Town's share is **50.9%** ("**Town Share**"). The Parties have agreed that they shall share at the State Share and Town Share, respectively, in the payment of all costs and expenses incurred under this Agreement, which as of the Effective Date is equal to the amount of the Construction Expenses listed below. "**Construction Expenses**" shall include all costs and expenses (except internal personnel and administrative costs and expenses) incurred by the Parties in making applications pursuant to this Agreement, and all costs of construction of the New Building on the Property for the Project.

- b. Each Party shall provide such personnel and other internal administrative resources as reasonably necessary to cooperate in the joint effort under this Agreement, and each Party shall solely bear the costs and expenses of the internal personnel and other administrative resources it has provided hereunder. The Parties agree that attorney's fees shall not be subject to this Section and such attorney's fees shall be borne by the Party incurring such obligations.
- c. Construction Expenses shall initially be estimated based on the cost estimates for construction received by Town, and agreed to by State, through the solicitation process. The initial estimate of Construction Expenses is **\$9,378,274**. Except as may be expressly otherwise provided in this Agreement, State will pay up to the State Share and the Town will pay up to the Town Share in the payment of all other costs and expenses incurred under this Agreement, up to the aggregate sum of **\$4,604,732**. Town agrees that it has duly appropriated the sum of **\$4,773,541** for expenditure under this Agreement as of the Effective Date. This Construction Expenses estimate shall be updated through the Change Order process in **§6.D**.
- d. **State Property Purchase Price**. The amount of the State Property Purchase Price shall be State's initial contribution to Construction Expenses, however, such amount shall not be encumbered within CDOT's financial system. Upon execution of this Agreement, the State will encumber an amount equal to the State Share of the initial estimate of Construction Expenses minus the State Property Purchase Price, which is **\$2,166,038** ("**Initial Encumbrance**"). When the amount of the State's Share of Construction Expenses is expected to exceed the amount of the State Property Purchase Price plus the Initial Encumbrance (collectively, the "**State's Combined Amount**"), Town shall promptly notify the State in writing in advance of such expenditure so that State can encumber additional funds for the State's allocation of its State Share of Construction Expenses in excess of the State's Combined Amount through the Change Order process in **§6.D**. This additional encumbered amount shall be added to the Agreement Maximum Amount, which shall be adjusted through the Change Order process.
- e. **Town Credit**. If the Town is able to waive any fees (water taps, utility connections, building permits, etc.) for the construction of the New Building and



related structures on the Property for the Project, such reduction in fees shall be applied as a Town contribution to Construction Expenses. The amount of the waived fees shall not be included as Construction Expenses.

- f. **Grants.** If either Party is able to obtain State of Colorado or federal grants to apply to the construction of the New Building and related structures on the Property for the Project, the amount of such grants shall equally reduce the amount of Construction Expenses and each Party shall share in the reduction of Construction Expenses.
- ii. **Invoices and Payment.** This section shall apply to payments by the State to Town for amounts that exceed the amount of the State's Combined Amount.
  - a. The State shall pay Town in the amounts and in accordance with the other conditions set forth in this Agreement.
  - b. Town shall initiate payment requests by invoice to the State for its share of Construction Expenses, in a form and manner approved by the State.
  - c. The State shall pay each invoice within 30 days following the State's receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Town and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Town shall make all changes necessary to correct that invoice.
  - d. The acceptance of an invoice shall not constitute acceptance of any Work performed provided under this Agreement.
  - e. **Interest.** Amounts not paid by the State within 45 days of the State's acceptance of the invoice shall bear interest on the unpaid balance beginning on the 45th day at the rate of 1% per month, as required by §24-30-202(24)(a), C.R.S., until paid in full; provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Town shall invoice the State separately for accrued interest on delinquent amounts, and the invoice shall reference the delinquent payment, the number of days' interest to be paid and the interest rate.
  - f. **Payment Disputes.** If Town disputes any calculation, determination or amount of any payment, Town shall notify the State in writing of its dispute within 30 days following the earlier to occur of Town's receipt of the payment or notification of the determination or calculation of the payment by the State. The State will review the information presented by Town and may make changes to its determination based on this review. The calculation, determination or payment amount that results from the State's review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after the State has concluded its review, and the State shall not pay any interest on any amount during the period it is subject to dispute under this subsection.

D. **CHANGE ORDERS**

- i. After the initial estimated Work and associated Construction Expenses, Town may incur additional Construction Expenses and need to add additional Work during Phase 2. The State's Principal Representative may designate, without invalidating the

Agreement, and with the approval of the State Controller, may order extra Work or make changes with the consent of the Town, by altering, adding to or deducting from the Work, the Agreement Maximum Amount being adjusted accordingly. All such changes in the Work shall be within the general scope of and be executed under the conditions of the Agreement.

- ii. No change in the Work shall be made unless by 1) a written Change Order in the form attached as **Exhibit J**, approved by the State's Principal Representative, and the State Controller prior to proceeding with the changed Work; or 2) by an Emergency Field Change Order in the form attached as **Exhibit K** approved by the State's Principal Representative as hereafter provided in **§6.D.iii**, Emergency Field Change Ordered Work. No change to the Agreement Maximum Amount shall be valid until either a Change Order is fully executed or an Option Letter is processed according to **§6.D.iv**. Change Orders and Emergency Field Change Orders cannot be used to change the term of this Agreement.

- a. **Value**. The value of any extra Work or changes in the Work shall be determined by actual cost of the extra Work or change in the Work, which shall be documented in writing prior to starting the extra or changed Work.
- b. **Detailed Breakdown**. To request an increase in the cost of the Work, Town shall submit a detailed change proposal, with which the State's Principal Representative may require an itemized list of materials, equipment and labor, indicating quantities, time and cost for completion of the changed Work.

Such detailed change proposals shall be stated in lump sum amounts and shall be supported by a separate breakdown, which shall include estimates of all or part of the following when requested by the State's Principal Representative:

- 1) **Materials**, indicating quantities and unit prices including taxes and delivery costs if any (separated where appropriate into general, mechanical and electrical and/or other subcontractors' Work; and the State's Principal Representative may require in its discretion any significant subcontract costs to be similarly and separately broken down).
- 2) **Labor costs**, indicating hourly rates and time and labor burden to include Social Security and other payroll taxes such as unemployment, benefits and other customary burdens.
- 3) **Construction equipment (including small tools)**. Expenses for equipment and fuel shall be based on customary commercially reasonable rental rates and schedules. Equipment and hand tool costs shall not include the cost of items customarily owned by workers.
- 4) Testing costs not otherwise excluded by this Agreement.
- 5) Subcontractor costs.

- iii. **Emergency Field Change Ordered Work**. The State's Principal Representative, without invalidating the Agreement, and without the approval of the State Controller, may order extra Work or make changes in the case of an emergency that is a threat to life or property or where the likelihood of delays in processing a normal Change Order will result in substantial delays and or significant cost increases for the Work.

Emergency Field Change Orders are not to be used solely to expedite normal Change Order processing absent a clear showing of a high potential for significant and substantial cost or delay. Such changes in the Work may be directed through issuance of an Emergency Field Change Order signed by the Town and the State's Principal Representative (or by a designee specifically appointed to do so in writing). The change shall be directed using an Emergency Field Change Order attached as **Exhibit K**.

If the amount of the adjustment of the Agreement Maximum Amount can be determined at the time of issuance of the Emergency Field Change Order, those adjustments shall be reflected on the face of the Emergency Field Change Order. Otherwise, the Emergency Field Change Order shall reflect a not to exceed (NTE) amount for any adjustment to Agreement Maximum Amount, which NTE amount shall represent the maximum amount of adjustment to which the Town will be entitled, including direct and indirect costs of changed Work, as well as any direct or indirect costs attributable to delays, inefficiencies or other impacts arising out of the change. Emergency Field Change Orders directed in accordance with this provision need not bear the approval signatures of the State Controller.

On Emergency Field Change Orders where the price has not been finally determined, the Town shall submit final costs for adjustment as soon as practicable. No later than seven (7) days after issuance, except as otherwise permitted, and every seven days thereafter, the Town shall report all costs to the State's Principal Representative. The final adjustment of the Emergency Field Change Order amount shall be prepared on a normal Change Order in accordance with the procedures described above. Unless otherwise provided in writing signed by the Chief Engineer to the Principal Representative, describing the extent and limits of any greater authority, individual Emergency Field Change Orders shall not be issued for more than \$25,000, nor shall the cumulative value of Emergency Field Change Orders exceed an amount of \$100,000. If actual costs are determined during execution of the Work to potentially exceed the not-to-exceed value of the Emergency Field Change Order, a new Emergency Field Change Order must be put in place prior to continue with the Work.

- iv. The State, at its discretion, shall have the option to add Work initially approved through Emergency Field Change Order(s) and/or Change Order(s) and to increase or decrease the Agreement Maximum Amount in accordance with such Emergency Field Change Order(s)/Change Order(s). In order to exercise this option, the State shall provide written notice to Town in a form substantially equivalent to the Sample Option Letter attached to this Agreement as **Exhibit L**. Performance of Services shall continue at the same rates and terms as described in this Agreement. The State shall have the ability to group Emergency Field Change Order(s)/Change Order(s) on one option letter.

#### **E. CONDOMINIUM ASSOCIATION**

- i. In accordance with the condominium declarations established for the Project, the condominium association established for the Project will be responsible for engaging a property management company to operate and maintain the Property, including the New Building. As the Town will be owners of all Units prior to the CDOT Units Closing described in §7, and it is desirable to contract with a property management company prior to completion of construction of the New Building, the Town and State shall engage the property management company by a separate written agreement between

the property management company and the Town and the State. The agreement shall comply with all rules, laws and policies of the Town and the State and shall be subject to the limitations of the Parties. To that end, Parties shall cooperate in the selection process for the property management company to be engaged. The selected company shall at minimum:

- a. secure, prior to the effective date of such agreement, and maintain at all times during the term of such agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under such agreement, and shall ensure that all employees, agents and subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to the agreement; and
  - b. agree to indemnify, save, and hold harmless State, its employees, agents and assignees (collectively, the "**Indemnified Parties**"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by such company, or its employees, agents, subcontractors, or assignees in connection with the agreement.
- ii. The Parties shall share in the fees and expenses of such company for management of the Property and New Building at the State Share and Town Share, respectively, subject to **§19.B**.

## **7. PHASE 3 - TOWN SALE OF UNITS**

After the New Building and Units have been constructed and the CDOT Acceptance has occurred, the Town shall sell, transfer, and convey unto the State, and the State shall purchase from Town all of Town's right, title, and interest in the CDOT Units and related proportionate share of the General Common Elements via the Transfer Document(s) specified on **Exhibit B**. Except as specified herein, the State shall have no liability to compensate Town for any performance that is not specifically set forth in this Agreement.

### **A. PERFORMANCE CONTINGENCIES**

The Parties' performance of the transfer of the CDOT Units and related General Common Elements to the State under this Agreement is contingent upon successful completion of each of the following conditions in this Section. If one or more of these contingencies are required and are not satisfied by the CDOT Units Closing Date, the Parties shall have not agreed in writing to allow additional time for satisfaction, then the Parties shall have the remedies available to them as stated in **§14**.

- i. **Approvals**. Final approvals of the transaction contemplated by this Agreement by the following entities and persons:
  - a. The Colorado Transportation Commission, only if there are changes to its prior resolution obtained in **§5.A.i.a**, which shall be evidenced by a resolution of the Transportation Commission; and
  - b. The Colorado State Controller.
- ii. **Valuation**

- a. The CDOT Units Valuation shall be used for valuation of the CDOT Units and related proportionate share of the General Common Elements.

iii. **Condominium Plat**

- a. As part of Phase 2, the Parties shall cause to be prepared a Condominium Plat, including a legal description and a site map of the New Building that is acceptable to, and approved by, the State.
- b. State has the right to review and object to the Condominium Plat. If the Condominium Plat is not timely received by State or is unsatisfactory to State, in State's sole subjective discretion, State may, on or before Condominium Plat Objection Deadline in **Exhibit B** take any of the following actions:
  - 1) **Condominium Plat Objection**. Deliver to Town a written description of any matter that was to be shown or is shown in the new Condominium Plat that is unsatisfactory and that State requires Town to correct.
  - 2) **Condominium Plat Resolution**. If a Condominium Plat Objection is received by Town, on or before Condominium Plat Objection Deadline and if State and Town have not agreed in writing to a settlement thereof on or before Condominium Plat Resolution Deadline in **Exhibit B**, the State may pursue the remedies in §14, unless Town receives State's written withdrawal of the Condominium Plat Objection before such election, on or before expiration of Condominium Plat Resolution Deadline. If the Town is willing to resolve a Condominium Plat Objection, but it cannot do so prior to the Condominium Plat Resolution Deadline, the Town, with prior written approval of the State, shall have the option to extend the Condominium Plat Resolution Deadline a reasonable amount of time. The Town shall provide the State with written notice of the extension.

iv. **Title Evidence**

- a. At the Town's expense, Town shall obtain a current CDOT Units Title Commitment that insures the State's interest in an amount equal to or greater than the CDOT Units Purchase Price, and certificates of taxes due issued by the Treasurer of the County where the CDOT Units are located showing the current status of all taxes and assessments due or accruing, together with legible copies of all recorded title exceptions referred to in the commitment, shall be delivered by the Town to the State no later than a date that is mutually agreed to by the Parties. The Town will deliver such CDOT Units Title Policy to the State in accordance with §7.E.i.a and pay the premium thereon. The Title Company must commit to issue a CDOT Units Title Policy including deletion of or insurance over the standard exceptions, Schedule B Section 2 Numbers 1 through 6. The CDOT Units shall be conveyed to the State by the Town subject to the CDOT Units Permitted Exceptions.
- b. If a title matter is cured or removed pursuant to this Agreement, such title matter shall not be included as a CDOT Units Permitted Exception. CDOT Units Title Commitment exceptions pertaining to taxes and assessments for the year of CDOT Units Closing and subsequent years shall not be CDOT Units Permitted Exceptions.

- v. **Approval of Title Evidence.** The State shall examine the CDOT Units Title Evidence and if the State is not satisfied with the matters disclosed by the CDOT Units Drawings or CDOT Units Title Evidence established for the CDOT Units, the State may give written notice of the specific defect or defects in title to the Town within ten (10) calendar days following the date of receipt by the State of the CDOT Units Title Evidence disclosing the matter. Upon receipt of notice of defects from the State, the Town may, by written notice to the State within ten (10) calendar days, elect to cure such defects or not to cure them. Unless the Town elects to cure such defects, the State may, by written notice to the Town at or before the CDOT Units Closing (i) expressly waive such defects and proceed to close; or (ii) proceed with any other remedies available in law or equity. If the Town elects to cure title defects, upon written notice of such election to the State, either Party may postpone the CDOT Units Closing for a reasonable period of time not to exceed sixty (60) days. If, after making such election, the Town is unable to cure within said sixty (60)-day period, the State shall have the options stated in (i) and (ii) above.
- vi. **Due Diligence and State Property Disclosures**
- a. **Disclosures.** To assist the State in its due diligence, no later than the date specified on **Exhibit B** for CDOT Units Disclosures (“**CDOT Units Disclosures Due Date**”)(unless otherwise noted below) the Town, at its sole expense, will make available to the State copies of the CDOT Units Disclosures identified on **Exhibit B**, to the extent the documents exist and are available. No later than fifteen (15) Business Days after the CDOT Units Disclosures Due Date, Town shall provide State with written notice of any CDOT Units Disclosures that do not exist or are not available.
  - b. **Inspection of Records.** In addition, from the State Property Closing Date through the CDOT Units Closing Date or earlier termination of this Agreement, during regular business hours with twenty-four (24) hours prior written notice to the Town, the Town shall permit the State and its representatives to examine the Town's books and records, including, if applicable, tenant, operating, maintenance, and management files pertaining to the CDOT Units.
  - c. **Due Diligence Period.** The State’s performance under this Agreement shall be contingent upon the State's approval, in its sole discretion, of the CDOT Units Disclosures. The State, at its sole discretion, shall have through Due Diligence Expiration Date stated on **Exhibit B** to review all documentation, obtain third party reports, inspect the CDOT Units, and otherwise research or approve the CDOT Units (“**CDOT Units Due Diligence Period**”). If the State determines within this timeframe, for any reason, that the CDOT Units is not suitable for State's use, the State may proceed with any of the remedies available in **§14**. Nothing in this provision shall modify the review and termination periods for other performance contingencies in this **§7**.
  - d. **State Inspection.** During the CDOT Units Due Diligence Period, the State may inspect the CDOT Units without interfering with the Town's operation of the CDOT Units. All inspection fees, engineering fees and other expenses of any kind incurred by the State relating to the inspection of the CDOT Units will be paid by the State. The Town shall cooperate with the State in all reasonable respects in

making such inspections. The Town hereby reserves the right to have a representative present during, and the right to determine the time of, any such inspection. The State shall notify the Town not less than one (1) Business Day in advance of making any such inspection. In making any inspection hereunder, the State will treat, and will cause any representative of the State to treat, all information obtained by the State pursuant to the terms of this Agreement as confidential and the Town will treat, and will cause any representative of the Town to treat, all information obtained by the Town pursuant to the terms of this Agreement as confidential. Nothing in this Paragraph shall limit either Party's ability to comply with the obligations of Colorado law, including but not limited to CORA, and the Colorado Sunshine Law, § 24-6-401 through § 24-6-402, C.R.S., or create liability for such compliance.

- e. Hazardous Waste. If hazardous waste **is not** a significant concern as identified on **Exhibit B**, this provision applies.

Town represents that to the best of Town's actual knowledge without a duty of investigation or inquiry (except as may be disclosed in the Environmental Report), (a) the CDOT Units have never been used as a landfill or waste dump; (b) there has been no installation in, or production, disposal or storage on, the CDOT Units of any hazardous waste or other toxic substances, including, without limitation asbestos, by a tenant or any previous owner or previous tenant or any other activity which could have toxic results in violation of applicable government laws and regulations; and (c) there is no proceeding or inquiry by any governmental authority or agency with respect thereto. As used throughout this Agreement, "to the best of Town's actual knowledge" shall include the current actual knowledge of \_\_\_\_\_ without duty to investigate.

- f. Hazardous Substances. If hazardous waste **is** a significant concern as identified on **Exhibit B**, this provision applies.

- 1) The terms "hazardous substance", "release" and "removal" as used herein shall have the same meaning and definition as set forth in paragraphs (14), (22) and (23), respectively, of Title 42 U.S.C. §9601; provided, however, that the term "hazardous substance" as used herein also shall include "hazardous waste" as defined in paragraph (5) of 42 U.S.C. §6903 and "petroleum" as defined in paragraph (8) of 42 U.S.C. §6991. The term "Superfund" as used herein means the Comprehensive Environmental Response, Compensation and Liability Act, as amended, Title 42 U.S.C. §9601 et seq., as amended, and any similar state statute or local ordinance applicable to the CDOT Units, and all rules and regulations promulgated, administered and enforced by any governmental agency or authority pursuant thereto. The term "underground storage tank" as used herein shall have the same meaning and definitions as set forth in paragraph (1) of 42 U.S.C. §6991.
- 2) The State must be able to determine to its satisfaction that: (a) the CDOT Units are not in any way contaminated with any hazardous substance; (b) the CDOT Units are not subject to any federal, state or local "Superfund" lien, proceedings, claim liability or action, or the threat or likelihood thereof, for the cleanup, removal or remediation of any such hazardous substance from

the CDOT Units; (c) there is no asbestos on the CDOT Units; and (d) there is no underground storage tank on the CDOT Units. In order to assist the State in making such determination, and to induce the State to purchase the CDOT Units, Town hereby represents to the State that: (i) the CDOT Units are not contaminated with any hazardous substance; (ii) Town has not caused and will not cause, and to the best of Town's knowledge, after diligent investigation and inquiry, there never has occurred, the release of any hazardous substance on the CDOT Units; (iii) the CDOT Units are not subject to any federal, state or local "Superfund" lien, proceedings, claim, liability or action, or the threat or likelihood thereof, for the cleanup, removal, or remediation of any such hazardous substance from the CDOT Units; (iv) there is no asbestos on the CDOT Units; (v) there is no underground storage tank on the CDOT Units; (vi) by acquiring the CDOT Units, the State will not incur or be subjected to any "Superfund" liability for the cleanup, removal or remediation of any hazardous substance from the CDOT Units or any liability, cost, or expense for the removal of any asbestos or underground storage tank from the CDOT Units; and (vii) Town shall be solely responsible for any and all claims, demands, liabilities, damages, suits, actions, judgments, fines, penalties, loss, cost and expense (including, without limitation, attorney fees) arising or resulting from, or suffered, sustained or incurred as a result (direct or indirect) of, the untruth or inaccuracy of any of the foregoing matters represented by Town to the State. This obligation of Town shall survive the CDOT Units Closing hereunder. All of the foregoing covenants, representations shall be true and correct at the time of the CDOT Units Closing hereunder and shall survive the CDOT Units Closing. Notwithstanding the foregoing, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of Seller available under the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 USC §2671 et seq., as applicable, as now or hereafter amended.

- g. Environmental Assessments. State has the right to obtain environmental inspections of the CDOT Units including Phase I and Phase II Environmental Site Assessments, as applicable. State will order or provide Phase I Environmental Site Assessment, Phase II Environmental Site Assessment (compliant with most current version of the applicable ASTM E1527 standard practices for Environmental Site Assessments) and/or Categorical Exclusion Environmental Clearance, at the expense of State ("**Environmental Inspection**"). In addition, State, at State's expense, may also conduct an evaluation whether the CDOT Units comply with the Americans with Disabilities Act ("**ADA Evaluation**"). All such inspections and evaluations must be conducted at such times as are mutually agreeable to minimize the interruption of Town's and any Town's tenants' business uses of the CDOT Units, if any.

- 1) If State's Phase I Environmental Site Assessment recommends a Phase II Environmental Site Assessment, the Environmental Inspection Termination Deadline stated in Exhibit B will be extended by 90 days ("**Extended Environmental Inspection Objection Deadline**") and if such Extended



Environmental Inspection Objection Deadline extends beyond the CDOT Units Closing Date, the CDOT Units Closing Date will be extended a like period of time. In such event, State must pay the cost for such Phase II Environmental Site Assessment.

- vii. **Performance**. The Parties shall each have performed and satisfied all agreements and covenants required hereby to be performed by each Party prior to or at the CDOT Units Closing.

**B. STATUS PENDING CLOSING**

The following conditions shall apply as a condition to the CDOT Units Closing:

- i. **Maintenance of the Property**. Except as specified in this Agreement, the CDOT Units shall be maintained in its present conditions by the Town until the CDOT Units Closing.
- ii. **Right of Entry**. After the State Property Closing Date, officers and accredited agents of the State shall have the right of ingress, egress, and regress to the CDOT Units and General Common Elements, and for all other lawful purposes, in connection with this acquisition. State shall give Town reasonable advance notice of at least 24 hours for entry onto the CDOT Units and General Common Elements pursuant to this provision.
- iii. **Risk of Loss**. After the State Property Closing, the Town shall bear all risk of loss or damage to the CDOT Units and General Common Elements until the CDOT Units Closing. This includes, but is not limited to, Losses from acts of nature, such as fire, flood, and landslide. In the event of damage to the CDOT Units and General Common Elements by fire or other casualty prior to the CDOT Units Closing Date which damage either reduces or affects the usable facilities of the CDOT Units and General Common Elements by any amount than what was intended by **Exhibit H** or reduces the value of the CDOT Units and General Common Elements below the CDOT Units Purchase Price, then the Parties shall work together to remedy the situation and shall have all the remedies available in **§14**. CDOT Units Closing shall be delayed, if necessary, until the situation is remedied. After the agreed to remedy is achieved, Town shall assign and transfer to the State on the CDOT Units Closing Date all of the Town's right, title and interest in and to all insurance proceeds or other compensation paid or payable to the Town on account of such fire or casualty together with the amount of the deductible relating thereto.
- iv. **Condemnation**. If, between the State Property Closing Date and the CDOT Units Closing Date, proceedings are initiated which might result in the taking of any part of the CDOT Units and General Common Elements or the taking or closing of any right of access to the CDOT Units and General Common Elements, the State may:
  - a. Proceed with the CDOT Units Closing, in which event the Town shall assign to the State all of the Town's right, title and interest in and to any award made in connection with such condemnation or eminent domain proceedings; or
  - b. Proceed with any other available remedy in **§14**.
  - c. The Town shall immediately notify the State in writing of the commencement or occurrence of any condemnation or eminent domain proceedings. The State shall then notify the Town, within twenty (20) days of the State's receipt of the Town's notice, whether the State elects to exercise its rights under this Agreement. CDOT

Units Closing shall be delayed for up to thirty (30) days, if necessary, until the State makes such election.

- v. **Leases and Other Agreements.** State and Town hereby agree that from and after the State Property Closing Date and until the CDOT Units Closing or termination pursuant to the terms hereof, the Town shall not, without the prior written approval of the State, in the State's discretion.
  - a. Enter into any new lease or other agreement involving the CDOT Units or any portion thereof which would bind the CDOT Units or the owner of the CDOT Units or would not be cancelable within thirty (30) days' notice; and
  - b. Agree to any modification, extension, assignment or subletting of any lease, service contract, management agreement or other agreement involving the CDOT Units or any portion thereof, unless State is not entitled to unreasonably withhold its consent to such action pursuant to the respective document. In such case, the Town shall consult with the State prior to executing any modification, extension, assignment or subletting of any lease, service contract, management agreement or other agreement involving the CDOT Units or any portion thereof.
- vi. **Title.** From and after the end of the CDOT Units Due Diligence Period and until CDOT Units Closing or termination pursuant to the terms hereof, the Town shall not create, incur or permit to exist any new lien encumbrance, easement, or license agreement affecting the CDOT Units any portion thereof, without the prior written consent of the State. The Title Company shall be committed to issue and deliver to the State the CDOT Units Title Policy, and Town shall have made all deliveries required of Town for the CDOT Units Closing and CDOT Units Disclosures.

C. **THE TRANSFER**

- i. If applicable and unless specified otherwise on **Exhibit B**, the following shall be transferred to the State at the CDOT Units Closing:
  - a. all of Town's right, title, and interest in and to any and all easements, rights, benefits, improvements, and attached fixtures appurtenant to the CDOT Units,
  - b. any and all easements, licenses, and permits appurtenant to the CDOT Units shown on **Exhibit B**, and
  - c. all leases appurtenant to the Property shown on **Exhibit B** and all security deposits in Town's actual possession under said leases.
- ii. **CDOT Units Purchase Price.** The CDOT Units Purchase Price for the CDOT Units shall be the amount stated on **Exhibit B**. Such CDOT Units Purchase Price shall be subject to all prorations, offsets, closing credits, and charges as provided herein.

D. **REPRESENTATIONS**

All representations of Town contained in this §7 shall be true and correct as of the CDOT Units Closing Date. In addition, Town makes the following specific representations as a condition to CDOT Units Closing, which shall be true in all material respects as of the CDOT Units Closing:

- i. **Compliance with Law.** To the best knowledge of the Town, Town is in compliance with the laws, orders, and regulations of each governmental department, commission, board or agency having jurisdiction over the CDOT Units in those cases where noncompliance would have a material adverse affect on the CDOT Units.
- ii. **Hazardous Substances.** Except as specifically referenced in this Agreement, the Town has no knowledge of any "Hazardous Substance," as defined in 42 U.S.C. §9601 (14), or hazardous or toxic material, substance, or waste, as they may be defined under relevant state or local law, or asbestos, being located on the CDOT Units and Town has not received notice of any violation or alleged violation of any law, rule, or regulation regarding such substances. The conveyance of the CDOT Units under the terms hereof is not intended to relieve the Town of any obligation or liability Town would incur pursuant to relevant federal or State law concerning such substances as an owner of the CDOT Units.
- iii. **Other Agreements.** The Town is not a party to, subject to, or bound by any agreement, contract, or lease of any kind relating to the CDOT Units that would conflict with Town's performance hereunder other than those matters of record revealed in the CDOT Units Title Commitment.
- iv. **Ownership of the Property.** Town is the sole owner in fee simple of the CDOT Units as of the Phase 3 Date, Town is the record owner of the CDOT Units, and at CDOT Units Closing the State shall receive good and marketable title to the CDOT Units, subject to those matters of record revealed in the CDOT Units Title Commitment and those matters disclosed to the State.
- v. **Pending Actions.** There are no actions, suits, proceedings, or investigations pending or, to the Town's knowledge, threatened, against or affecting the CDOT Units, or arising out of the representing Town's actions or inactions related to the CDOT Units.
- vi. **Defaults.** The execution and delivery of this Agreement, and the consummation of the CDOT Units transfer contemplated hereby, will not result in any breach of the terms of, conditions of, or constitute a default under, any instrument or obligation by which Town is bound, or violate any order, writ, injunction or decree of any court in any litigation to which Town is a party. Town is duly authorized and qualified to do all things required of it under this Agreement.
- vii. **Validity.** The persons executing this Agreement on behalf of Town are and will be duly authorized to fully and legally bind Town.
- viii. **Capacity.** Town has the capacity and authority to enter into this Agreement and consummate the transactions herein provided without the consent or joinder of any other party.

E. **CDOT UNITS CLOSING**

- i. **Date and Time.** The date and time of CDOT Units Closing shall be at the mutual agreement of the Parties, but not later than 5:00 p.m. on the Maximum End Date for CDOT Units Closing stated on **Exhibit B.** CDOT Units Closing shall occur at the CDOT Units Closing Location stated on **Exhibit B.** At CDOT Units Closing,
  - a. Town shall deliver the following:

- 1) Town shall deliver to State the properly executed Transfer Document(s) specified on **Exhibit B** suitable for recording substantially in the form of **Exhibit I**,
  - 2) Town shall provide State with a CDOT Units Title Policy for the CDOT Units, subject only to permitted exceptions accepted by State, the cost of which CDOT Units Title Policy shall be paid by Town. Town shall obtain deletion of the standard printed title exceptions from the CDOT Units Title Policy, other than the standard exceptions that require a survey to delete or insure, at no cost to State, and
  - 3) An Owner's Affidavit and other documents, if required by the Title Company to issue the CDOT Units Title Policy.
  - 4) Town shall provide State with a final copy of the Declarations and the Articles of Incorporation and Bylaws for the governing entity.
  - 5) Execute and deliver such other documents as the Title Company may reasonably require from Town in order to consummate the purchase and sale of the CDOT Units.
- b. State shall deliver the following:
- 1) Execute and deliver such other documents as the Title Company may reasonably require from State in order to consummate the purchase and sale of the CDOT Units.
- ii. **Closing Costs, Documents and Services.** The CDOT Units Closing shall be completed by the Title Company furnishing the CDOT Units Title Commitment and subsequent CDOT Units Title Policy. The State shall pay one half of any closing services fees, the Town shall collectively pay one half of any closing services fees and each Party shall pay its share of other customary closing costs and all other items required to be paid at CDOT Units Closing, except as otherwise provided herein.
- iii. **Commissions.** There shall be no commissions payable related to this transaction.
- iv. **Conveyance.** All conveyances shall be free and clear of (i) all taxes and assessments, due and payable as of the date of CDOT Units Closing; (ii) any installments for special assessments payable prior to the CDOT Units Closing Date; (iii) any mortgage, deed of trust, mechanics' or judgment liens; and (iv) encumbrances, leases, easements, rights of way, reservations, and restrictions, except building and zoning codes and regulations, and except as identified in the CDOT Units Title Evidence, CDOT Units Drawings and CDOT Units Permitted Exceptions, and accepted by the State.
- v. **Prorations.** The following shall be prorated for the CDOT Units to the CDOT Units Closing Date, except as otherwise provided:
- a. **Taxes.** The Town is exempt from the payment of taxes. As a result, there are no taxes due for the year of the CDOT Units Closing.
  - b. **Utilities.** Water, sewer and other utilities.
  - c. **Common Area Maintenance.** Common Area Maintenance charges, if any, under the leases, if any, ("CAM") shall be prorated to the date of CDOT Units Closing;

provided, however, that the State shall not receive a credit for CAM due to tenants under the leases, if any, at CDOT Units Closing, and Town shall have until ninety (90) calendar days following CDOT Units Closing to reconcile CAM charges with tenants under the leases (if any). State agrees to cooperate with Town to effectuate the reconciliation contemplated by this section.

- d. Association Assessments. Current regular association assessments and dues (“**Association Assessments**”) paid in advance will be credited to Town at CDOT Units Closing. Cash reserves held out of the regular Association Assessments for deferred maintenance by the association will not be credited to Town except as may be otherwise provided by the association’s governing documents. State acknowledges that State may be obligated to pay the association, at CDOT Units Closing, an amount for reserves or working capital. Any special assessment assessed prior to CDOT Units Closing Date by the association will be the obligation of Town. Except however, any special assessment by the association for improvements that have been installed prior to the CDOT Units Closing Date, whether assessed prior to or after CDOT Units Closing, will be the obligation of Town. Town represents there are no unpaid regular or special assessments against the CDOT Units except the current regular assessments. Association Assessments are subject to change as provided in the association’s governing documents.
- e. Unless otherwise agreed in writing, these prorations will be final.
- vi. Town will be responsible for termination, close out and payment of all vendor/supply contracts on the CDOT Units Closing Date.

F. **POST-CLOSING COVENANTS**

The following covenants shall inure to and be binding upon the Parties and their heirs, personal and legal representative, successors and assigns forever.

- i. The Parties will take such other actions and will execute and deliver such other instruments, documents and certificates as are required by the terms of this Agreement or as may be reasonably requested by any party in connection with the consummation of the transactions contemplated herein or therein.
- ii. **Warranty**. Town shall cause the general contractor constructing the New Building and surrounding structures to warrant the structures, appurtenances, and improvements made upon the Property, including the CDOT Units and General Common Elements, against defects in materials and/or workmanship for a period of one (1) year subsequent to the CDOT Units Closing (“**Warranty**”). Upon timely notice by State, Town and State will conduct and eleven (11) month walk-through at the New Building prior to the expiration of the one-year Warranty period. Town shall cause the general contractor to complete any remaining necessary reconstruction or repairs prior to the expiration of such one-year Warranty period, provided that such repairs are actually a Warranty issue and are not as a result of ordinary wear and tear or of State's negligence or misuse of the improvements. If a reconstruction or repair cannot be completed within such period, Town will provide State with written notice of the extended completion date. If Town does not cause the general contractor to complete the reconstruction or repair by the extended completion date, the procedure set forth in the following shall apply:

- a. If, for any reason, Town does not cause the general contractor to complete necessary reconstruction or repair under this Warranty within a reasonable time period after being notified by State (which is five (5) Business Days for an emergency or thirty (30) calendar days for a non-emergency), State shall have the right to contract directly for the necessary reconstruction or repair and Town shall cause the general contractor to be responsible for such reasonable costs. State shall invoice the general contractor for such repair, and the general contractor shall reimburse State within thirty (30) days after submittal of a request for reimbursement to the general contractor.

## **8. PAYMENTS TO TOWN**

### **A. AGREEMENT MAXIMUM AMOUNT**

Payments to Town are limited to the unpaid, obligated balance of the Agreement Funds. The State shall not pay Town any amount under this Agreement that exceeds the Agreement Maximum Amount.

### **B. PAYMENT PROCEDURES**

- i. **Payment.** The State shall pay Town in the amounts and in accordance with the exhibits, schedules and other conditions set forth in this Agreement.
- ii. **Available Funds-Contingency-Termination.** The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Town beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Agreement Funds in any subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds constitute all or some of the Agreement Funds, the State's obligation to pay Town shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Agreement shall be made only from Agreement Funds, and the State's liability for such payments shall be limited to the amount remaining of such Agreement Funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to fund this Agreement, the State may, upon written notice, terminate this Agreement, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Agreement were terminated in the public interest as described in §2.C.

## **9. REPORTING - NOTIFICATION**

### **A. LITIGATION REPORTING**

If a Party is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Agreement or may affect the Party's ability to perform its obligations under this Agreement, such Party shall, within 10 days after being served, notify the other Party of such action and deliver copies of such pleading or document to the Party's Principal Representative identified on the Cover Page for this Agreement.

### **B. NONCOMPLIANCE**

A Party's failure to provide reports and notify the other Party in a timely manner in accordance with this Section may result in the delay of payment of funds and/or exercise of any remedies provided under this Agreement, including termination.

## 10. RECORDS

### A. MAINTENANCE

- i. **Town**. As part of the Town Records, Town shall maintain a file of all documents, records, communications, notes and other materials relating to the Work and performance under this Agreement. Town Records shall include all documents, records, communications, notes and other materials maintained by Town that relate to any Work performed by Subcontractors, and Town shall maintain all records related to the Work performed by Subcontractors required to ensure proper performance of that Work. Town shall maintain Town Records until the last to occur of: **(i)** the date three years after the date this Agreement expires or is terminated, **(ii)** the resolution of any pending Agreement matters, or **(iii)** if an audit is occurring, or Town has received notice that an audit is pending, the date such audit is completed and its findings have been resolved (the “**Town Record Retention Period**”).
- ii. **State**. As part of the State Records, State shall maintain a file of all documents, records, communications, notes and other materials relating to the Work and performance under this Agreement. State Records shall include all documents, records, communications, notes and other materials maintained by State that relate to any Work performed by Subcontractors, and State shall maintain all records related to the Work performed by Subcontractors required to ensure proper performance of that Work. State shall maintain State Records until the last to occur of: **(i)** the date three years after the date this Agreement expires or is terminated, **(ii)** the resolution of any pending Agreement matters, or **(iii)** if an audit is occurring, or State has received notice that an audit is pending, the date such audit is completed and its findings have been resolved (the “**State Record Retention Period**”). The Town Record Retention Period and State Record Retention Period are collectively, the “**Record Retention Period**.”

### B. INSPECTION

Each Party shall permit the other Party, the federal government, and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and transcribe Town Records or State Records during the Record Retention Period. Each Party shall make their records available during normal business hours at the Party's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than two Business Days' notice from the reviewing Party, unless the reviewing Party determines that a shorter period of notice, or no notice, is necessary to protect the interests of the reviewing Party.

### C. MONITORING

Each Party, the federal government, and any other duly authorized agent of a governmental agency, in its discretion, may monitor the other Party's performance of its obligations under this Agreement using procedures as determined by the monitoring Party or that governmental entity. The monitoring Party shall monitor the other Party's performance in a manner that does not unduly interfere with the other Party's performance of the Work.

### D. FINAL AUDIT REPORT

Each Party shall promptly submit to the other Party a copy of any final audit report of an audit performed on the Party's records that relates to or affects this Agreement or the Work, whether the audit is conducted by the Party or a third party.

## **11. CONFLICTS OF INTEREST**

### **A. ACTUAL CONFLICTS OF INTEREST**

Town shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Town under this Agreement. Such a conflict of interest would arise when a Town's or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Agreement.

### **B. APPARENT CONFLICTS OF INTEREST**

Town acknowledges that, with respect to this Agreement, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written approval, Town shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Town's obligations under this Agreement.

### **C. DISCLOSURE TO THE STATE**

If a conflict or the appearance of a conflict arises, or if Town is uncertain whether a conflict or the appearance of a conflict has arisen, Town shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the actual or apparent conflict constitutes a breach of this Agreement.

- D. Town acknowledges that all State employees are subject to the ethical principles described in §24-18-105, C.R.S. Town further acknowledges that State employees may be subject to the requirements of §24-18-105, C.R.S., with regard to this Agreement. For the avoidance of doubt, an actual or apparent conflict of interest shall exist if Town employs or contracts with any State employee, any former State employee within six months following such employee's termination of employment with the State, or any immediate family member of such current or former State employee. Town shall provide a disclosure statement as described in §11.C. no later than ten days following entry into a contractual or employment relationship as described in this section. Town may also be subject to such penalties as are allowed by law.

## **12. INSURANCE**

Town shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times through the State Property Closing. All insurance policies required by this Agreement that are not provided through self-insurance shall be issued by insurance companies as approved by the State.

### **A. TOWN INSURANCE**

The Town is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA") and shall maintain at all times during the term of this Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA.



**B. SUBCONTRACTOR REQUIREMENTS**

Town shall ensure that each Subcontractor that is a public entity within the meaning of the GIA, maintains at all times through the State Property Closing, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA. Town shall ensure that each Subcontractor that is not a public entity within the meaning of the GIA, maintains at all times through the State Property Closing all of the following insurance policies:

- i. **Workers' Compensation.** Workers' compensation insurance as required by state statute, and employers' liability insurance covering all Town or Subcontractor employees acting within the course and scope of their employment.
- ii. **General Liability.** Commercial general liability insurance covering premises operations, fire damage, independent Towns, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:
  - a. \$1,000,000 each occurrence;
  - b. \$1,000,000 general aggregate;
  - c. \$1,000,000 products and completed operations aggregate; and
  - d. \$50,000 any one fire.
- iii. **Automobile Liability.** Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.
- iv. **Professional Liability Insurance.** Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits as follows:
  - a. \$1,000,000 each occurrence; and
  - b. \$1,000,000 general aggregate.
- v. **Pollution Insurance.** Pollution liability insurance covering Subcontractor's liability for bodily injury, property damage and environmental damage resulting from sudden accidental and gradual pollution related cleanup costs incurred by Subcontractor, arising out of the Services (including transportation risk) performed under this Agreement with minimum limits as follows:
  - a. \$1,000,000 each occurrence; and
  - b. \$1,000,000 general aggregate.

Such policy shall have a maximum deductible of \$25,000 to be paid by the Subcontractor.

**C. ADDITIONAL INSURED**

The State shall be named as additional insured on all commercial general liability policies (leases and construction Agreements require additional insured coverage for completed operations) required of Town and Subcontractor.

**D. PRIMACY OF COVERAGE**

Coverage required of Town and each Subcontractor shall be primary over any insurance or self-insurance program carried by Town or the State.

**E. CANCELLATION**

All commercial insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Town and Town shall forward such notice to the State in accordance with §16 within seven days of Town's receipt of such notice.

**F. SUBROGATION WAIVER**

All commercial insurance policies secured or maintained by Town or its Subcontractors in relation to this Agreement shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Town or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

**G. CERTIFICATES**

For each commercial insurance plan provided by Town under this Agreement, Town shall provide to the State certificates evidencing Town's insurance coverage required in this Agreement prior to the Effective Date. Town shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Agreement prior to the Effective Date, except that, if Town's subcontract is not in effect as of the Effective Date, Town shall provide to the State certificates showing Subcontractor insurance coverage required under this Agreement within seven Business Days following Town's execution of the subcontract. No later than 15 days before the expiration date of Town's or any Subcontractor's coverage, Town shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Agreement, upon request by the State, Town shall, within seven Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this section.

**13. BREACH OF CONTRACT**

In the event of a Breach of Contract, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the Breach of Contract, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any remedy at law and equity for that Party. Notwithstanding any provision of this Agreement to the contrary, State, in its discretion, need not provide notice or a cure period and may immediately terminate this Agreement in whole or in part or institute any other remedy in this Agreement in order to protect the public interest of State; or if Town is debarred or suspended under §24-109-105, C.R.S., State, in its discretion, need not provide notice or cure period and may terminate this Agreement in whole or in part or institute any other remedy in this Agreement as of the date that the debarment or suspension takes effect.

**14. REMEDIES**

**A. STATE'S REMEDIES**

- i. **CDOT Termination.** As specified in §5 during Phase 1, the State has the option to terminate this Agreement as a CDOT Termination. If the State decides to terminate this Agreement before the State Property Closing is completed, the State shall deliver such

written notice to the Town, both the Town and the State shall be released and discharged from all further obligations under this Agreement, and neither the Town nor the State shall be subject to any claim by the other for damages of any kind except as provided in this Agreement. Each Party shall be responsible for their own costs and expenses through the State Property Closing. This process shall be described herein as "**CDOT Termination.**"

- ii. **Town Breach.** If after the State Property Closing, Town is in breach under any provision of this Agreement and fails to cure such breach, State, following the notice and cure period set forth in §13 and the dispute resolution process in §15 shall have all remedies available at law and equity.

#### B. **TOWN'S REMEDIES**

- i. **Town Termination.** As specified in §5 during Phase 1, the Town has the option to terminate this Agreement as a Town Termination. If the Town decides to terminate this Agreement before the State Property Closing is completed, the Town shall deliver such written notice to the State, both the Town and the State shall be released and discharged from all further obligations under this Agreement, and neither the Town nor the State shall be subject to any claim by the other for damages of any kind except as provided in this Agreement. This process shall be described herein as "**Town Termination.**"
- ii. **State Breach.** If after the State Property Closing, State is in breach under any provision of this Agreement and does not cure such breach, Town, following the notice and cure period in §13 and the dispute resolution process in §15 shall have all remedies available at law and equity.

#### C. **MUTUAL AGREEMENT TO TERMINATE**

After the State Property Closing and through the CDOT Units Closing, the Parties may mutually agree to terminate this Agreement. If the Parties choose this option, they shall sign an amendment to this Agreement terminating it. The amendment shall specify the effective date of the termination and whether it affects all or a portion of this Agreement.

- i. **Obligations and Rights.** To the extent specified in any amendment, Town shall not incur further obligations or render further performance past the effective date of such terminate, and unless specified otherwise in the amendment, Town shall terminate outstanding orders and subcontracts with third parties. However, Town shall complete and invoice State all Work not cancelled by the amendment, and may incur obligations as necessary to do so within this Agreement's terms. Upon termination, Town shall take timely, reasonable and necessary action to protect and preserve property in the possession of Town but in which the State has an interest. At the State's request, Town shall return materials owned by the State in Town's possession at the time of any termination.
- ii. **Payments.** Notwithstanding anything to the contrary, the State shall only pay Town for accepted Work received as of the date of termination.

### 15. **DISPUTE RESOLUTION**

#### A. **INITIAL RESOLUTION**

Except as herein specifically provided otherwise, disputes concerning the performance of this Agreement which cannot be resolved by the designated Agreement representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Town for resolution.

**B. RESOLUTION OF CONTROVERSIES**

If the initial resolution described in §15.A fails to resolve the dispute within 10 Business Days, Town shall submit any alleged breach of this Agreement by the State to the Procurement Official of the State Agency named on the Cover Page of this Agreement as described in §24-101-301(30), C.R.S., for resolution in accordance with the provisions of §§24-106-109, and 24-109-101.1 through 24-109-505, C.R.S., (collectively, the “**Resolution Statutes**”), except that if Town wishes to challenge any decision rendered by the Procurement Official, Town’s challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Town pursues any further action as permitted by such statutes. Except as otherwise stated in this section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

**16. NOTICES AND REPRESENTATIVES**

Each individual identified as a Principal Representative on the Cover Page for this Agreement shall be the principal representative of the designating Party. All notices required or permitted to be given under this Agreement shall be in writing, and shall be delivered (A) by hand with receipt required, (B) by certified or registered mail to such Party’s principal representative at the address set forth on the Cover Page for this Agreement or (C) as an email with read receipt requested to the principal representative at the email address, if any, set forth on the Cover Page for this Agreement. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party’s principal representative at the address set forth on the Cover Page for this Agreement. Either Party may change its principal representative or principal representative contact information, or may designate specific other individuals to receive certain types of notices in addition to or in lieu of a principal representative by notice submitted in accordance with this section without a formal amendment to this Agreement. Unless otherwise provided in this Agreement, notices shall be effective upon delivery of the written notice.

**17. STATEWIDE AGREEMENT MANAGEMENT SYSTEM**

If the maximum amount payable to Town under this Agreement is \$100,000 or greater, either on the Effective Date or at any time thereafter, this section shall apply. Town agrees to be governed by and comply with the provisions of §§24-106-103, 24-102-206, 24-106-106, and 24-106-107, C.R.S., regarding the monitoring of vendor performance and the reporting of Agreement performance information in the State’s Agreement management system (“**Agreement Management System**” or “**CMS**”). Town’s performance shall be subject to evaluation and review in accordance with the terms and conditions of this Agreement, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

**18. GENERAL PROVISIONS**

**A. ASSIGNMENT**

State's and Town's rights and obligations under this Agreement are personal and may not be transferred or assigned without the prior, written consent of the other Party. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of a Party's rights and obligations approved by the other Party shall be subject to the provisions of this Agreement.

**B. BINDING EFFECT**

Except as otherwise provided in §18.A, all provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

**C. AUTHORITY**

Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations have been duly authorized.

**D. CAPTIONS AND REFERENCES**

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

**E. COUNTERPARTS**

This Agreement may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

**F. ENTIRE UNDERSTANDING**

This Agreement represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Agreement. Prior or contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or effect whatsoever, unless embodied herein.

**G. DIGITAL SIGNATURES**

If any signatory signs this Agreement using a digital signature in accordance with the Colorado State Controller Agreement, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Agreement by reference.

**H. MODIFICATION**

Except as otherwise provided in this Agreement, any modification to this Agreement shall only be effective if agreed to in a formal amendment to this Agreement, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Agreement, other than Agreement amendments, shall conform to the policies issued by the Colorado State Controller.

**I. STATUTES, REGULATIONS, FISCAL RULES, AND OTHER AUTHORITY**

Any reference in this Agreement to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Agreement.

J. **EXTERNAL TERMS AND CONDITIONS**

Notwithstanding anything to the contrary herein, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on Town's or a Subcontractor's website or any provision incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in this Agreement.

K. **SEVERABILITY**

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Agreement in accordance with the intent of this Agreement.

L. **SURVIVAL OF CERTAIN AGREEMENT TERMS**

Any provision of this Agreement that imposes an obligation on a Party after termination or expiration of this Agreement shall survive the termination or expiration of this Agreement and shall be enforceable by the other Party.

M. **TAXES**

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under §§39-26-704(1), *et seq.*, C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the State imposes such taxes on Town. Town shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Town may wish to have in place in connection with this Agreement.

N. **THIRD PARTY BENEFICIARIES**

Except for the Parties' respective successors and assigns described in §18.A, this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to this Agreement, and do not create any rights for such third parties.

O. **WAIVER**

A Party's failure or delay in exercising any right, power, or privilege under this Agreement, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

P. **CORA DISCLOSURE**

To the extent not prohibited by federal law, this Agreement and the performance measures and standards required under §24-106-107, C.R.S., if any, are subject to public release through the CORA.

**Q. STANDARD AND MANNER OF PERFORMANCE**

Town shall perform its obligations under this Agreement in accordance with the highest standards of care, skill and diligence in Town's industry, trade, or profession.

**R. LICENSES, PERMITS, AND OTHER AUTHORIZATIONS**

Town shall secure, prior to the Effective Date, and maintain at all times during the term of this Agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or subcontractor, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Agreement.

**S. NON-BUSINESS DAYS**

If a closing date or any other date set forth in this Agreement is to occur on a holiday or other non-business day or if any period of time set forth in this Agreement expires on a holiday or non-Business Day, then such closing or expiration date shall be the next business day thereafter.

**T. TABOR**

Nothing herein shall constitute a multiple fiscal year obligation pursuant to Colorado Constitution Article X, Section 20. Notwithstanding any other provision of this Agreement, State's obligations under this Agreement that extend beyond June 30, 2022, are subject to annual appropriation and Town's obligations under this Agreement that extend beyond December 31, 2022, are subject to annual appropriation. Any failure of a Party annually to appropriate adequate monies to finance the Party's obligations under this Agreement shall terminate this Agreement at such time as such then-existing appropriations are to be depleted. A Party shall promptly give notice to the other Party of any failure to appropriate such adequate monies.

**19. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)**

These Special Provisions apply to all Agreements except where noted in italics.

**A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.**

This Agreement shall not be valid until it has been approved by the Colorado State Controller or designee. If this Agreement is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), C.R.S., then this Agreement shall not be valid until it has been approved by the State's Chief Information Officer or designee.

**B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.**

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

**C. GOVERNMENTAL IMMUNITY.**

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, *et seq.* C.R.S. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

**D. INDEPENDENT CONTRACTOR.**

Town shall perform its duties hereunder as an independent contractor and not as an employee. Neither Town nor any agent or employee of Town shall be deemed to be an agent or employee of the State. Town shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Town and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Town or any of its agents or employees. Town shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. Town shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.**

**E. COMPLIANCE WITH LAW.**

Town shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

**F. CHOICE OF LAW, JURISDICTION, AND VENUE.**

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the County where the Property is located.

**G. PROHIBITED TERMS.**

Any term included in this Agreement that requires the State to indemnify or hold Town harmless; requires the State to agree to binding arbitration; limits Town's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Agreement shall be construed as a waiver of any provision of §24-106-109, C.R.S.

**H. SOFTWARE PIRACY PROHIBITION.**

State or other public funds payable under this Agreement shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Town hereby certifies and warrants that, during the term of this Agreement and any extensions, Town has and shall maintain in place appropriate systems



and controls to prevent such improper use of public funds. If the State determines that Town is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Agreement, including, without limitation, immediate termination of this Agreement and any remedy consistent with federal copyright laws or applicable licensing restrictions.

**I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.**

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Agreement. Town has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Town's services and Town shall not employ any person having such known interests.

DRAFT

## EXHIBIT A, PROPERTY TRANSACTION INFORMATION

State Property Purchase Price	\$2,438,700.00
Property includes Mineral Estate:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Property includes Water Rights:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Is hazardous waste a significant concern?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Type of Survey	<input checked="" type="checkbox"/> ALTA/ACSM survey in the form of County approved Subdivision Plat <input type="checkbox"/> ILC survey <input type="checkbox"/> No survey required
Type of Transfer Document:	<input type="checkbox"/> General Warranty Deed <input type="checkbox"/> Special Warranty Deed <input checked="" type="checkbox"/> Quitclaim Deed <input type="checkbox"/> Permanent Easement <input type="checkbox"/> Slope Easement <input type="checkbox"/> Temporary Easement
Special Conditions:	None.
Included Property:	None. This is bare land.
Personal Property Conveyed:	None.
Excluded Property:	None.
Easements, licenses, and permits appurtenant to the Property:	Shall be determined through the Title Evidence, State Property Disclosures and State Property Due Diligence Period.
Leases appurtenant to the Property:	Shall be determined through the Title Evidence, State Property Disclosures and State Property Due Diligence Period.

<b>State Property Disclosures</b>	
<b>Disclosure</b>	<b>Required: X*</b>
a. All existing leases, lease abstracts, and files, including landlord and tenant correspondence.	X
b. All pending leases, lease proposals, and letters of intent under negotiation between landlord and prospective tenants.	
c. All appraisals and market valuations.	X
d. All current and former title insurance policies and title documents.	X
e. All encumbrances, liens, easements, licenses, permits, and other title matters not shown by the public record. State shall further disclose, in writing, any such interests that do not have documentation.	X
f. Copies of all other insurance policies (other than title insurance policies).	
g. Copies of all existing environmental reports, soils studies, engineering reports, engineering data, architectural studies, grading plans, topographical maps, other reports, studies, data, and test results.	X
h. All agreements and contracts affecting the Property, including without limitation, those pertaining to service, labor, construction, management, and maintenance.	X
i. Copies of the most recent property tax bills.	
j. All existing plans, surveys, drawings, and specifications.	X
k. All licenses, permits, maps (tentative and final), plats, and land use proposals relating to the Property and pending applications to governmental entities.	X
l. Copies of all documents regarding litigation, liens, or threatened claims.	X
m. All other documents requested by the Town in the State's possession or control pertaining to the Property.	X
n. Copies of all promissory notes and Deeds of Trust affecting the Property.	
o. Copies of all utility and common area maintenance bills for the preceding 24 months.	
p. Copies of all maintenance reports, reports regarding the condition and operating efficiency of the HVAC and elevator systems serving the Improvements, grading plans.	
q. Copies of any Phase I or Phase II Environmental Site Assessments or other documents related to the environmental conditions of the Property and/or adjacent properties.	X
r. Any Americans with Disabilities Act reports, studies or surveys concerning the compliance of the Property with said Act.	
s. Copies of balance sheet and income/expense statements, including billing statements for all utility bills and common area services, for the past 24 months.	
t. A true and correct rent roll. Seller will provide a new rent roll true and correct as of the State Property Closing Date.	
u. All building and occupancy permits, including certificates of occupancy.	
v. As-built construction plans to the Property and the tenant improvements, including, architectural, electrical, mechanical and structural systems;	

engineering reports; and permanent certificates of occupancy, to the extent now available.	
w. A list of all Inclusions to be conveyed to Town.	

\* The disclosure is required unless marked by the Town as not required.

### Phase I Transaction Deadlines

The following transaction deadlines shall be determined by mutual written agreement of the Principal Representatives of the Parties within 60 days of the Effective Date of the Agreement.

Item	Agmt. reference	Event	Date or Deadline
1.	§5.A.iv.b	State Property Survey Objection Deadline	
2.	§5.A.iv.b.3	State Property Survey Resolution Deadline	
3.	§5.A.vii.c	Due Diligence Expiration Date	
4.	§5.A.vii.g.1	Environmental Inspection Termination Deadline	
5.	§5.A.vii.g.3	ADA Evaluation Termination Deadline	
6.	§5.E.i	Maximum End Date for State Property Closing	
7.	§5.E.i	State Property Closing Location	

## EXHIBIT B, CDOT UNITS TRANSACTION INFORMATION

CDOT Units Purchase Price	\$TBD (§7.A.ii)
CDOT Units includes Mineral Estate:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
CDOT Units includes Water Rights:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Is hazardous waste a significant concern?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Type of Survey	<input checked="" type="checkbox"/> ALTA/ACSM survey in the form of Condominium Plat <input type="checkbox"/> ILC survey <input type="checkbox"/> No survey required
Type of Transfer Document:	<input type="checkbox"/> General Warranty Deed <input type="checkbox"/> Special Warranty Deed <input checked="" type="checkbox"/> Quitclaim Deed <input type="checkbox"/> Permanent Easement <input type="checkbox"/> Slope Easement <input type="checkbox"/> Temporary Easement
Town Prohibited Activities:	
State Authorized Activities:	survey, inspect, and for all other lawful purposes
Special Conditions:	TBD
Included Property:	TBD
Personal Property Conveyed:	None
Excluded Property:	None
Easements, licenses, and permits appurtenant to the Property:	TBD
Leases appurtenant to the CDOT Units:	TBD

<b>CDOT Units Disclosures</b>	
<b>Disclosure</b>	<b>Required: X*</b>
a. All existing leases, lease abstracts, and files, including landlord and tenant correspondence.	X
b. All pending leases, lease proposals, and letters of intent under negotiation between landlord and prospective tenants.	X
c. All appraisals and market valuations.	
d. All current and former title insurance policies and title documents.	X
e. All encumbrances, liens, easements, licenses, permits, and other title matters not shown by the public record. Town shall further disclose, in writing, any such interests that do not have documentation.	
f. Copies of all other insurance policies (other than title insurance policies).	X
g. Copies of all existing environmental reports, soils studies, engineering reports, engineering data, architectural studies, grading plans, topographical maps, other reports, studies, data, and test results.	X
h. All agreements and contracts affecting the CDOT Units, including without limitation, those pertaining to service, labor, construction, management, and maintenance.	X
i. Copies of the most recent property tax bills.	X
j. All existing plans, surveys, drawings, and specifications.	X
k. All licenses, permits, maps (tentative and final), plats, and land use proposals relating to the CDOT Units and pending applications to governmental entities.	X
l. Copies of all documents regarding litigation, liens, or threatened claims.	X
m. All other documents requested by the State in the Town's possession or control pertaining to the CDOT Units.	X
n. Copies of all promissory notes and Deeds of Trust affecting the CDOT Units.	X
o. Copies of all utility and common area maintenance bills for the preceding 24 months.	X
p. Copies of all maintenance reports, reports regarding the condition and operating efficiency of the HVAC and elevator systems serving the Improvements, grading plans.	X
q. Copies of any Phase I or Phase II Environmental Site Assessments or other documents related to the environmental conditions of the CDOT Units and/or adjacent properties.	X
r. Any Americans with Disabilities Act reports, studies or surveys concerning the compliance of the Property with said Act.	X
s. Copies of balance sheet and income/expense statements, including billing statements for all utility bills and common area services, for the past 24 months.	X
t. A true and correct rent roll. Seller will provide a new rent roll true and correct as of the CDOT Units Closing Date.	X
u. All building and occupancy permits, including certificates of occupancy.	X
v. As-built construction plans to the Property and the tenant improvements, including, architectural, electrical, mechanical and structural systems;	X

engineering reports; and permanent certificates of occupancy, to the extent now available.	
w. A list of all Inclusions to be conveyed to State.	X

\* The disclosure is required unless marked by the State as not required.

### Phase III Transaction Deadlines

The following transaction deadlines shall be determined by mutual written agreement of the Principal Representatives of the Parties.

Item	Agmt. reference	Event	Date or Deadline
1.	§7.A.iii.b	Condominium Plat Objection Deadline	
2.	§7.A.iii.b.2	State Property Survey Resolution Deadline	
3.	§7.A.vi.a	CDOT Units Disclosures Due Date	
4.	§7.A.vi.c	CDOT Units Due Diligence Expiration Date	
5.	§7.A.vii.g.1	Environmental Inspection Termination Deadline	
6.	§7.E.i	Maximum End Date for CDOT Units Closing	
7.	§7.E.i	CDOT Units Closing Location	

## EXHIBIT C, DEED RESTRICTION

### RESIDENTIAL HOUSING RESTRICTIVE COVENANT AND NOTICE OF LIEN FOR UNIT \_\_, OF \_\_\_\_\_, TOWN OF FRISCO, SUMMIT COUNTY COLORADO

This Residential Housing Restrictive Covenant and Notice of Lien for Unit \_\_, of \_\_\_\_\_, \_\_\_\_\_, Summit County, Colorado, (this "Restriction,") is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, a (hereinafter referred to as "Declarant").

#### **RECITALS:**

WHEREAS, Declarant is the Owner of that certain real estate located in the County of Summit, State of Colorado, and legally described as follows: Unit \_\_, of \_\_\_\_\_, \_\_\_\_\_, according to the plat thereof now on file in the Office of the Clerk and Recorder for Summit County, Colorado, under Reception No. \_\_\_\_\_ (hereinafter referred to as the "Property"); and

WHEREAS, pursuant to the terms of that certain State of Colorado Intergovernmental Agreement between CDOT and the Town that is dated on or about \_\_\_\_\_, 2022, Declarant is required to execute and record this Restriction.

NOW, THEREFORE, in consideration of the foregoing Recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant hereby declares that the Property shall hereafter be held, sold, and conveyed subject to the following covenants, restrictions, and conditions, all of which shall be covenants running with the land, and which are for the purposes of ensuring that the Property remains available for purchase and occupation by persons residing and working in Summit County, Colorado, as moderately priced housing, and protecting the value and desirability of the Property, and which covenants, restrictions, and conditions shall be binding on all parties having any right, title, or interest in the Property, or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of the Owner of the Property, the Summit Combined Housing Authority, the Town, and Declarant.

#### **ARTICLE I** **DEFINITIONS**

- 1.1. **Definitions.** The following words, when used in this Restriction, shall have the following meanings and the use of capitalization or lower case letters in references to the following terms shall have no bearing on the meanings of the terms:



A. "Area Median Income" or "AMI" means the median annual income for Summit County, Colorado, (or such next larger statistical area calculated by HUD that includes Summit County, Colorado, if HUD does not calculate the area median income for Summit County, Colorado, on a distinct basis from other areas), as adjusted for household size, that is calculated and published annually by HUD (or any successor index thereto acceptable to the Town or SCHA in its reasonable discretion). If current AMI data pertaining to the date of sale of the Property is not yet available as of the date the sale price is calculated, then the most recent data published by HUD shall be used in its place.

B. "Authorized Lessee" means a person approved by the Town or CDOT who meets the definition of a Resident Eligible Household and who leases the property pursuant to the limitations of section 7.2 of this Restriction.

C. "CDOT" means the State of Colorado Department of Transportation.

D. "Dependent" shall mean a person, including a spouse of, a child of, a step-child of, a child in the permanent legal custody of, or a parent of, a Resident, whose principal place of residence is in the same household as such Resident, and who is financially dependent upon the support of the Resident. Dependent shall also include any person included within the definition of "Familial Status" as defined in 42 U.S.C. § 3602(k), as amended.

E. "Eligible Household" means a household earning not more than One Hundred percent (100%) of the AMI and that has been approved by either the SCHA or the Town or CDOT so as to allow for the execution by the SCHA or Town or CDOT of the form of approval set forth in Section 5.3 of this Restriction. A household's income for purposes of determining whether such household meets this definition of eligibility shall be determined at the time of purchase or, if applicable, commencement of leasehold occupancy. For purposes of the determination of the number of people that constitute a household under this definition, any Resident or Dependent spouse of a Resident who is pregnant at the time of the determination of whether a household meets the income limitation provided in this definition shall be deemed to be two (2) people.

F. "First Mortgage" means a Mortgage which is recorded senior to any other Mortgage against the Property to secure a loan used to purchase Property.

G. "Household" means one or more persons who intend to live together in the premises of a dwelling unit as a single housekeeping unit, but does not mean a group of four (4) or more persons unrelated by blood, adoption or marriage.

H. "HUD" means the U.S. Department of Housing and Urban Development.

I. "Maximum Resale Price" means that maximum Purchase Price that shall be paid by any purchaser of the Property, other than the initial purchaser who acquires the Property from Declarant, as determined in accordance with the provisions of Section 8.3 of this Restriction. The Maximum Resale Price is not a guaranteed price, but merely the highest price an Owner may obtain for the sale of the Property.

J. "Mortgage" means a consensual interest created by a real estate mortgage, a deed of trust on real estate, or the like.

K. "Mortgagee" means any grantee, beneficiary, or assignee of a Mortgage.

L. "Owner" means the record owner of the fee simple title to the Property.

M. "Purchase Money Mortgage" means a Mortgage given by an Owner to the extent that it is: (a) taken or retained by the seller of the Property to secure all or part of the payment of the Purchase Price; or (b) taken by a person who by making advances, by making a loan, or by incurring an obligation gives value to enable the Owner to acquire the Property if such value is in fact so used.

N. "Purchase Price" shall mean all consideration paid by the purchaser to the seller for the Property, but shall EXCLUDE any proration amounts, taxes, costs and expenses of obtaining financing, lenders fees, title insurance fees, closing costs, inspection fees, real estate purchase and/or sales commission(s) or other fees and costs related to the purchase of the Property but not paid directly to Seller.

O. "Qualified Capital Improvements" means those improvements to a Property performed by the Owner, which qualify for inclusion within the calculation of Maximum Resale Price if such improvements are set forth in the Qualified Capital Improvement ("QCI") schedule contained in Exhibit B hereto, which exhibit is incorporated herein by this reference, and if the Owner furnishes the Town or its designee with the following:

- i. Original or duplicate receipts to verify the expenditures by the Owner for the Qualified Capital Improvements;
- ii. An affidavit verifying that the receipts are for actual expenditures for a specified Qualified Capital Improvement; and
- iii. True and correct copies of any building permit or certificate of occupancy required by law in connection with the Qualified Capital Improvement

P. "Qualified Owner" means natural person(s) that meet(s) the definitions of both a Resident and an Eligible Household, or non-qualified Owner under Section 5.1.B., qualified and approved by SCHA or the Town or CDOT in such manner that will allow SCHA or the Town or CDOT to execute, on an instrument of conveyance, a copy of the language set forth in Section 5.3 below.

Q. "Resident" means a person and his or her Dependents, if any, who (i) at the time of purchase of a Unit and all times during ownership or occupancy of the Property, earns his or her living from a business or governmental entity operating in Summit County, by working at such business an average of at least 30 hours per week on an annual basis. A person shall remain a Resident regardless of his or her working status, so long as he or she has owned and occupied the Property, or other real property within Summit County that is deed restricted for affordability, for a time period of not less than seven (7) years. The term "business" as used in this Article I,

Subsection M, and Section 5.1.B. shall mean an enterprise or organization providing goods and/or services, whether or not for profit, and shall include, but not be limited to, educational, religious, governmental and other similar institutions.

R. "Resident Eligible Household" shall mean an Eligible Household that includes at least one Resident.

S. "SCHA" means the Summit Combined Housing Authority.

T. "Town" means the Town of Frisco, State of Colorado.

U. "Transfer" or "transferred" means any sale, assignment or transfer that is voluntary, involuntary or by operation of law (whether by deed, contract of sale, gift, devise, trustee's sale, deed in lieu of foreclosure, or otherwise) of any interest in the Property, including, but not limited to a fee simple interest, a joint tenancy interest, a tenancy in common, a life estate, or any interest evidenced by a land contract by which possession of the Property is transferred and the Owner obtains title.

## **ARTICLE II**

### **PURPOSE**

The purpose of this Restriction is to restrict ownership, occupancy and sale of the Property in such a fashion as to provide, on a permanent basis, moderately priced housing to be occupied by Resident Eligible Households, which Resident Eligible Households, because of their income, may not otherwise be in a position to afford to purchase, own, and occupy other similar properties, and to help establish and preserve a supply of moderately priced housing to help meet the needs of the locally employed residents of Summit County.

## **ARTICLE III**

### **RESTRICTION AND AGREEMENT BINDS THE PROPERTY**

This Restriction shall constitute covenants running with title to the Property as a burden thereon, for benefit of, and enforceable by, the SCHA, the Town and CDOT, and their respective successors and assigns, and this Restriction shall bind Declarant and all subsequent Owners of the Property. Each Owner, upon acceptance of a deed to the Property, shall be personally obligated hereunder for the full and complete performance and observance of all covenants, conditions and restrictions contained herein during the Owner period of ownership of the Property. Each and every conveyance of the Property, for all purposes, shall be deemed to include and incorporate by this reference, the covenants contained in this Restriction, even without reference to this Restriction in any document of conveyance.

## **ARTICLE IV**

### **OCCUPANCY RESTRICTIONS**

Other than use by the Town or CDOT, and except as may be otherwise expressly set forth in this Restriction, the use and occupancy of the Property shall be limited exclusively to housing for natural persons who meet the definition of Resident and Eligible Household.

## **ARTICLE V**

### **OWNERSHIP RESTRICTIONS**

#### **5.1. Ownership and Occupancy Obligation.**

A. It is the intention of Town and CDOT that the Property be retained by the Town or CDOT to be offered for rent by Qualified Occupants. If the Town or CDOT desires to sell ownership interest in the Property, it shall be first offered to the other party at fair market value as determined in accordance with CRS §43-1-210(5). In the event the Town or CDOT decline the offer, the resale provisions below shall apply.

B. Except as provided in Section 5.1.B. or Article VI hereof, ownership of the Property is hereby limited exclusively to Eligible Households that include at least one Resident.

C. Upon the written consent of SCHA or Town or CDOT, which consent may be recorded, a non-qualifying natural person or entity that is a governmental entity or that owns and/or operates a business located in Summit County may purchase the Property; provided, however, that by taking title to the Property, such Owner shall be deemed to agree to the rental restrictions set forth herein, and further that any Owner who does not qualify as a Resident Eligible Household shall rent the Property to a Resident Eligible Household as more fully set forth in Section 7.1 of this Restriction, and shall not occupy or use the Property for the Owner's own use or leave the Property vacant.

5.2. Sale and Resale. In the event that the Property is sold, resold, transferred and/or conveyed without compliance with this Restriction, SCHA or the Town or CDOT shall have the remedies set forth herein, including, but not limited to, the rights set forth in Section 8.5. Except as otherwise provided herein, each and every conveyance of the Property, for any

and all purposes, shall be deemed to include and incorporate the terms and conditions of this Restriction.

5.3. Compliance. Any sale, transfer, and/or conveyance of the Property shall be wholly null and void and shall confer no title whatsoever upon the purported transferee unless (i) there is recorded in the real property records for Summit County, Colorado, along with the instrument of conveyance evidencing such sale, transfer or conveyance, a completed copy of the "Notice of Lien and Memorandum of Acceptance of Residential Housing Restrictive Covenant for Unit \_\_\_\_, of \_\_\_\_\_, Summit County, Colorado" attached hereto as Exhibit A, which copy is executed by the transferee and acknowledged by a Notary Public, and (ii) the instrument of conveyance evidencing such sale, transfer, and/or conveyance, or some other instrument referencing the same, bears the following language followed by the acknowledged signature of either the director or some other authorized representative of the SCHA, or by the Mayor of the Town or Director of CDOT, to wit:

"The conveyance evidenced by or referenced in this instrument has been approved by the Summit Combined Housing Authority or Town of Frisco or Colorado Department of Transportation as being in compliance with the Residential Housing Restrictive Covenant for Unit \_\_ of \_\_\_\_\_, \_\_\_\_\_, Summit County, Colorado, recorded in the records of Summit County, Colorado, on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, at Reception No. \_\_\_\_\_."

Each sales contract, or lease as the case may be, for the Property shall also (a) recite that the proposed purchaser has read, understands and agrees to be bound by the terms of this Restriction; and (b) require the proposed purchaser and/or lessee to submit such information as may be required by the Town or CDOT or the SCHA under its rules and regulations or policies adopted for the purpose of ensuring compliance with this Restriction.

5.4. Refinance Restriction. The Owner shall not encumber the Property in an amount in excess of the Purchase Price.

## **ARTICLE VI**

### **ORIGINAL SALE OF THE PROPERTY**

6.1 Initial Purchase Price. Except as may be permitted under Section 5.1.B. above, upon completion of construction by the Declarant, the Property shall be sold to initial purchasers who qualify as a Resident and an Eligible Household at a Purchase Price that shall be determined by the SCHA or the Town or CDOT as follows:

- (a) The number of bedrooms within the Property shall be determined and that number of bedrooms shall, in turn, determine the size of the household for which the Area Median Income shall be determined as follows: (i) for a one-bedroom dwelling unit, a 1.5 person household; (ii) for a two-bedroom dwelling unit, a 3 person household; (iii) for a three-bedroom dwelling unit, a 4.5 person household; and (iv) for a four-bedroom unit, a 6 person household;
- (b) The Area Median Income for a household of a size determined in accordance with subpart (a) above shall be determined;
- (c) The amount of Area Median Income determined in accordance with subpart (b) above shall be divided by twelve (12), and the number derived shall then be multiplied by .30 to determine the total dollar amount available to the household on a monthly basis for the payment of principal, interest, taxes, insurance and homeowner's association dues in connection with the purchase of the Property;
- (d) The amount of \$350 shall be subtracted from the total dollar amount available to the household on a monthly basis (as determined in accordance with subpart (c) above) in order to determine the total dollar amount available to the household on

a monthly basis for the payment of principal and interest on a mortgage loan for purchase of the Property;

- (e) The total dollar amount available to the household on a monthly basis (as determined in accordance with subpart (d) above) shall be used to determine the Purchase Price, through extrapolation, by determining the maximum loan amount that said dollar amount will support, assuming a mortgage loan with a standard amortization schedule, a term of thirty (30) years (360 months), an annual interest rate of \_\_\_% and a 90% loan to value ratio; and
- (f) The interest rate to be used to perform the calculation described in subpart (e) above shall be the greater of: (1) the actual interest rate obtained by the Eligible Household for purchase of the Property with a mortgage loan with a term of thirty (30) years; and (2) the interest rate determined by calculating, from data published by the Federal Home Loan Mortgage Corporation, the average interest rate, for the preceding ten (10) calendar years, for a thirty-year fixed rate loan, and adding thereto 1.5%.

## **ARTICLE VII**

### **USE RESTRICTIONS**

7.1. Occupancy. Upon initial occupancy, the Property will be owned by the Town or CDOT for the purpose of occupancy as rental by an Authorized Lessee. If the Property ownership is transferred to another Owner besides Town or CDOT, then except as otherwise provided in this Restriction, the Property shall, at all times, be occupied as a principal place of residence by an Owner, or, if applicable, an Authorized Lessee, (along with his or her Dependents) who, at the time of purchase, or in the case of an Authorized Lessee at the time of occupancy of the Property, qualified as a Resident and Eligible Household. In the event that any Owner ceases to occupy the Property as his or her principal place of residence, or any non-qualified Owner permitted to purchase the Property as set forth in Section 5.1.B. leaves the Property unoccupied by a Resident Eligible Household for a period of 90 consecutive days, the Owner of the Property shall, within 10 days of ceasing such occupation, notify the SCHA of the same and the Property shall, within 30 days of the Owner having vacated or left vacant the Property make the Property available for purchase pursuant to the terms of this Restriction. Any Owner who fails to occupy his or her Property for a period of 90 consecutive days shall be deemed to have ceased to occupy the Property as his or her principal place of residence; however, an Owner who has established the Property as his or her principal place of residence shall not be considered to have ceased occupancy of the Property during such period of time as the Owner is serving on active duty with the United States Armed Services.

7.2. Rental. Upon initial occupancy, the Property will be owned by the Town or CDOT for the purpose of occupancy as rental by an Authorized Lessee. If the Property ownership is transferred to another Owner besides Town or CDOT, then under no circumstances shall the Property be leased or rented for any period of time without the prior written approval of the SCHA or the Town or CDOT, which approval may be conditioned, in the SCHA's or Town's or CDOT's sole and absolute discretion, on the lease or rental term being limited to a twelve (12) month period either

consecutively or in the aggregate during the Owner's ownership of the Property. In the event that the Property, or any portion thereof, is leased or rented without compliance with this Restriction, such rental or lease shall be wholly null and void and shall confer no right or interest whatsoever to or upon the purported tenant or lessee. Any rental approved by the SCHA or the Town or CDOT shall be to a Resident Eligible Household at such rental rates as shall be established by the SCHA and approved by the Town, or as may be established by the Town or CDOT from time to time, and, if no such rental rates have been established, at a monthly rental rate that shall not exceed One Hundred percent (100%) of the most recent Fair Market Rent amounts published by the U.S. Department of Housing and Urban Development (or any successor index thereto acceptable to SCHA or the Town in its reasonable discretion) (such lessee being referred to herein as an "Authorized Lessee").

**7.3 Involuntary Sale Upon Change in Residence.** Upon initial occupancy, the Property will be owned by the Town or CDOT for the purpose of occupancy as rental by an Authorized Lessee. If the Property ownership is transferred to another Owner besides Town or CDOT, then in the event Owner changes residence or ceases to utilize the Property as his or her exclusive and permanent place of residence, or in the event any non-qualified Owner permitted to purchase the Property as set forth in Section 5.1.C. leaves the Property unoccupied by a Resident Eligible Household for a period of 90 consecutive days, as determined by the SCHA or the Town or CDOT, the Property shall be offered for sale pursuant to the provision of Article VIII of this Restriction. The SCHA may further require the Owner to rent the Property in accordance with the provisions of Article X below.

**7.4 Ownership Interest in Other Residential Property.** Upon initial occupancy, the Property will be owned by the Town or CDOT for the purpose of occupancy as rental by an Authorized Lessee. If the Property ownership is transferred to another Owner besides Town or CDOT, then except with respect to a non-qualified Owner permitted to purchase the Property as set forth in Section 5.1.C, if at any time the Owner also owns any interest alone or in conjunction with others in any other developed residential property, the Owner shall immediately list such other property interest for sale and sell his or her interest in such property. In the event said other property has not been sold by the Owner within one hundred (120) days of its listing required hereunder, then the Owner shall immediately list the Property for sale pursuant to the provisions of this Restriction. It is understood and agreed between the parties hereto that, in the case of an Owner whose business is the construction and sale of residential properties or the purchase and resale of such properties, the properties which constitute inventory in such Owner's business shall not constitute "other developed residential property" as that term is used in this Article.

## **ARTICLE VIII**

### **RESALE OF THE PROPERTY**

**8.1. Resale.** The Property shall not be transferred subsequent to the original purchase from the Declarant except upon full compliance with the procedures set forth in this Article VIII.

**8.2. Notice and General Limitations on Resale.** In the event that an Owner shall desire to Transfer his Property, or in the event that an Owner shall be required to Transfer his Property

pursuant to the terms of this Restriction, he shall notify the SCHA and the Town of Frisco and CDOT, or such other person or entity as may be designated by the Town or CDOT, in writing, of his intention to Transfer his Property. The Property may be offered, advertised, or listed for sale by such Owner at such Owner's sole cost and expense, in any manner in which such Owner may choose. An Owner may list the Property for sale through SCHA for a commission equal to 2.0% of the sales price. Except as otherwise set forth in this Section 8.2, the Property shall not, however, be sold, transferred and/or conveyed to any person, entity, or entities, (i) other than a Resident Eligible Household, or non-qualified buyer under Section 5.1.C., qualified and approved by the SCHA or the Town or CDOT in such as manner as will allow the SCHA or the Town or CDOT to execute the approval set forth in Section 5.3 of this Restriction (a "Qualified Buyer"), and (ii) for consideration to be paid by such qualified Resident Eligible Household that exceeds the Maximum Resale Price as such is determined pursuant to the provisions of this Article VIII. Any other provision of this Restriction notwithstanding, upon resale of the Property: (i) a Household shall qualify as a an "Eligible Household" if it earns not more than twenty percent (20%) more AMI than the AMI percentage set forth in Subsection 1.1(D) above; provided, however, that such qualification shall have no impact on the determination of the Maximum Resale Price under Section 8.3 below; and (ii) during the first thirty (30) days after listing the Property for sale with written notification to the Town of Frisco and the Summit Combined Housing Authority (SCHA) and CDOT, and in a manner accessible to the general public, the Property may be sold or contracted for sale only to a "Resident" who at the time of purchase earns his or her living either as an employee of CDOT or the Town, or from a business operating in the Town of Frisco, by working at such business or as such an employee an average of at least thirty (30) hours per week on an annual basis and who qualifies as an "Eligible Household" by earning not more than One Hundred percent (100%) AMI.

8.3. Maximum Resale Price.

- A. If the Owner lists the unit for sale with a contracted realtor with the Summit Combined Housing Authority (SCHA), the Owner may add the amount paid in sales commission, up to two percent of the sale price (2%), to the Maximum Resale Price.
- B. The Maximum Resale Price of a Property shall be no greater than the sum of:
  - (1) The Purchase Price paid by the Owner of the Property as identified in the purchase and sale agreement entered into at the time of purchase by Owner-Seller;
  - (2) Plus up to a three-percent (3%) increase of the Purchase Price per year (prorated at the rate of 1/12<sup>th</sup> for each whole month) from the date ownership transferred to Seller to the date of Seller's listing of the property with written notification to the Town of Frisco and the Summit Combined Housing Authority (SCHA); such percentage increase shall be calculated as simple interest;
  - (3) Plus up to the cost of Qualified Capital Improvements as approved by the Town of Frisco;



- (4) Plus up to the cost of real estate commission as negotiated by the Seller if the Owner lists the unit for sale with a private real estate broker (as opposed to a contracted realtor with the Summit Combined Housing Authority (SCHA),

Provided, however, that the sum of items B. (1) through B. (4) in this paragraph shall be no greater than the maximum sales price for the Property's unit type and household AMI level as published by the SCHA at the time of the sale. At the owner's discretion, the maximum resale price is not required to be less than the purchase price paid by the owner of the property as identified on closing documents at the time of purchase by Owner-Seller.

C. Owner shall be responsible for ensuring that at resale the Property is clean, the appliances are in working order, and that there are no health or safety violations regarding the Property.

D. No Owner shall permit any prospective buyer to assume any or all of the Owner customary closing costs or accept any other consideration which would cause an increase in the Purchase Price above the bid price so as to induce the Owner to sell to such prospective buyer.

**8.4 Non-Qualified Transferees.** In the event that title to the Property vests in individuals and/or entities who are not a Qualified Buyer (hereinafter "Non-Qualified Transferee(s)") by descent, by foreclosure and/or redemption by any lien or mortgage holder (except any holder of a HUD - insured First Mortgage), or by operation of law or any other event, SCHA or the Town or CDOT may elect to notify the non-qualified transferee that it must sell the Property in accordance with Section 8.5. The non-qualified transferee shall not: (i) occupy the Property; (ii) rent all or any part of the Property, except in strict compliance with this Restriction; (iii) engage in any business activity on or in the Property; (iv) sell or otherwise Transfer the Property except in accordance with this Restriction; or (v) sell or otherwise Transfer the Property for use in trade or business.

#### **8.5 Sales to Preserve as Affordable Housing.**

A. In the event the Property is occupied, transferred or leased in violation of this Restriction, SCHA or the Town or CDOT may, at its sole discretion, notify an Owner that it must immediately list the Property for sale (including the execution of a listing contract with, and the payment of the specified fees) by SCHA. The highest bid by a Qualified Owner for not less than ninety-five percent (95%) of the Maximum Sale Price shall be accepted by the Owner; provided, however, if the Property is listed for a period of at least ninety (90) days and all bids are below ninety-five percent (95%) of the Maximum Sale Price, the Property shall be sold to a Qualified Owner that has made the highest offer for at least the appraised market value of the Property, the reasonableness of which appraisal shall be determined by SCHA or the Town or CDOT in its reasonable good faith judgment.

B. If required by SCHA or the Town or CDOT, the Owner shall: (i) consent to any sale, conveyance or transfer of such Property to a Qualified Owner; (ii) execute any and all documents necessary to do so; and (iii) otherwise reasonably cooperate with SCHA or the Town or CDOT to take actions needed to accomplish such sale, conveyance or transfer of such Property. For this purpose Owner constitutes and appoints SCHA and the Town and CDOT as its true and lawful attorney-in-fact with full power of substitution to complete or undertake any and all actions

required under this Section 8.5.B. It is further understood and agreed that this power of attorney, which shall be deemed to be a power coupled with an interest, cannot be revoked. Owner specifically agrees that all power granted to SCHa and the Town and CDOT under this Restriction may be assigned by any of them to their respective successors or assigns.

C. In order to preserve the affordability of the Units for persons of low to moderate income, SCHa or the Town or CDOT, or their respective successors, as applicable, shall also have and are hereby granted the right and option to purchase the Property, exercisable within a period of fifteen (15) calendar days after notice is sent by SCHa or the Town or CDOT to the Owner that requires the Owner to sell the Property pursuant to this Section 8.5. SCHa or the Town or CDOT shall complete the purchase of the Property within thirty (30) calendar days after exercising its option hereunder for a price equal to the lesser of the appraised market value of the Property, the reasonableness of which appraisal shall be determined by SCHa or the Town in its reasonable good faith judgment, or the Maximum Sale Price. SCHa or the Town may assign its option to purchase hereunder to an eligible purchaser which, for the purpose of this Section 8.5(c), shall be a Qualified Owner.

D. In all situations in which the provisions of this Section 8.5 apply, SCHa or the Town or CDOT may alternatively require the Owner to rent the Property to a Resident Eligible Household in accordance with the requirements and limitations of this Restriction.

## **ARTICLE IX** **FORECLOSURE**

9.1 Release. Subject to the process and rights set forth in this Article IX below, this Restriction shall be deemed released as to the Property in the event of (i) the issuance of a public trustee's deed, sheriff's deed or similar conveyance of the Property in connection with a foreclosure by the holder of a HUD-insured or other First Mortgage, or (ii) the acceptance of a deed in lieu of foreclosure by the holder of a HUD-insured or other First Mortgage. This Restriction shall also automatically terminate and be released as to the Property upon the assignment to HUD of an HUD-insured mortgage encumbering the Property. The Town or CDOT, in its sole discretion, may elect to release a Property from this Restriction in the event of (1) the issuance of a public trustee's deed, sheriff's deed or similar conveyance of the Property in connection with a foreclosure of the Town's Lien or CDOT's Lien, as defined in Section 9.2, or (2) the acceptance of a deed in lieu of foreclosure by the Town or CDOT in connection with the Town's Lien or CDOT's Lien. If the Town or CDOT chooses to terminate this Restriction with respect to a particular Property, the Town or CDOT shall record a document referencing such termination in the real property records of the County. Any and all claims of the Town available hereunder against the Owner personally shall survive any release or termination of this Restriction.

### 9.2 Lien.

A. The SCHa and the Town and CDOT shall have, and are hereby granted, a lien against the Property ("SCHa's Lien" or "Town's Lien" or CDOT's Lien) to secure payment of any amounts due and owing the SCHa or the Town or CDOT pursuant to this Restriction including: the SCHa's or

the Town's or CDOT's sale proceeds and/or amounts due to the SCHa or the Town or CDOT in the event of a foreclosure of a First Mortgage and to secure the obligations to the SCHa or the Town or CDOT hereunder. The SCHa's Lien and the Town's Lien and CDOT's Lien on the Property shall be superior to all other liens and encumbrances except the following:

- (1) liens and encumbrances recorded prior to the recording of this Restriction and Agreement;
- (2) real property ad valorem taxes and special assessment liens duly imposed by Colorado governmental or political subdivision or special taxing districts;
- (3) liens given superior priority by operation of law; and
- (4) the lien of any First Mortgage against the Property.

A. Recording of this Restriction constitutes record notice and perfection of the SCHa's Lien and the Town's Lien and CDOT's Lien. No further recordation of any claim of lien is required. However, the SCHa or the Town or CDOT may elect to prepare, and record in the Office of the County Clerk and Recorder of the County, a written notice of lien. By virtue of the SCHa's Lien or the Town's Lien or CDOT's Lien, the SCHa or the Town and CDOT shall have the rights granted a lienor under C.R.S. 38-38-101 *et seq.*, and the SCHa or the Town and CDOT shall be entitled to file such notices and other information necessary to preserve its rights, as a lienor, to cure and redeem in foreclosure of the Property, as provided by C.R.S. 38-38-101 *et seq.* In addition, unless otherwise instructed by the SCHa or the Town or CDOT in writing, the Owner shall sign, acknowledge, and cooperate in SCHa's or the Town's or CDOT's recording in the County Clerk and Recorder's Office immediately subsequent to the recording of the First Mortgage, a notice of the SCHa's Lien or the Town's Lien or CDOT's Lien, substantially in the form attached hereto as Exhibit A, in order to assure that the SCHa or the Town or CDOT receives notice in the event of the foreclosure of the First Mortgage pursuant to this Article. The notice shall not alter the priority date of the SCHa's Lien or the Town's Lien or CDOT's Lien as established herein.

C. The sale or other transfer of the Property shall not affect the SCHa's Lien or the Town's Lien or CDOT's Lien. No sale or deed in lieu of foreclosure shall relieve the Owner from continuing personal liability for payment of his or her obligations hereunder. The SCHa's Lien or the Town's Lien or CDOT's Lien does not prohibit actions or suits to recover sums due pursuant to this Restriction and Agreement, or to enforce the terms of this Restriction, or to prohibit the SCHa or the Town or CDOT from taking a deed in lieu of foreclosure.

### 9.3 SCHa's and Town's and CDOT's Option to Redeem and to Buy.

A. Foreclosure/SCHa's or Town's or CDOT's Option to Redeem. In the event of a foreclosure, the SCHa and the Town and CDOT shall be entitled to receive notice of the foreclosure proceedings as is required by law to be given by the public trustee or the sheriff, as applicable, to lienors of the Property that are junior to the First Mortgage (as provided in C.R.S. §38-38-101 *et seq.*, or any succeeding statute). The SCHa and the Town and CDOT shall have a right of redemption, and such other rights as a lienor in foreclosure, as its interest appears, in accordance with Colorado law governing foreclosure. The SCHa's Lien and the Town's lien and CDOT's Lien is created pursuant to Section 9.2 above.

B. Deed in lieu of Foreclosure/Option to Buy. In the event that the First Mortgagee takes title to the Property by deed in lieu of foreclosure, the SCHA and the Town and CDOT shall have an option to buy the Property ("Option to Buy") exercisable in accordance with this paragraph. Within three (3) days after the First Mortgagee's first attempt to secure a deed in lieu of foreclosure, the Owner shall deliver written notice to the SCHA and the Town and CDOT of such intent to Transfer title. The SCHA or the Town or CDOT may exercise its Option to Buy by tendering the Deed In Lieu Price (as defined below) to the First Mortgagee, within thirty (30) days from and after vesting of title to the Property in the First Mortgagee by deed in lieu of foreclosure ("Deed in Lieu Option Period"). Upon receipt of the Deed in Lieu Price, the First Mortgagee shall deliver to the SCHA or the Town or CDOT a special warranty deed conveying fee simple title in and to the Property, in which event this Restriction and Agreement shall remain valid and in full force and effect. The Deed in Lieu Price shall be equal to: (i) the amounts unpaid pursuant to the First Mortgage note; (ii) any other reasonable costs incurred by the First Mortgagee that directly relate to the deed in lieu of foreclosure; and (iii) any additional reasonable costs incurred by the First Mortgagee during the Deed in Lieu Option Period that are directly related to maintenance of the Property. The First Mortgagee shall convey only such title as it received through the deed in lieu of foreclosure and will not create or suffer the creation of any additional liens or encumbrances against the Property following issuance of the deed in lieu of foreclosure to the First Mortgagee. The First Mortgagee shall not be liable for any of the costs of conveyance of the Property to the SCHA, the Town, CDOT, or their respective designee; *however*, the First Mortgagee shall cooperate with the SCHA or the Town or CDOT in calculating the Deed in Lieu Price and in the execution of the Option to Buy.

C. Upon Exercising Option. In the event that the SCHA or the Town or CDOT obtains title to the Property pursuant to this Article, the SCHA, the Town or CDOT or their respective designee may sell the Property to a Qualified Buyer, or rent the Property to qualified third parties until such time that the Property can be sold to a Qualified Buyer. The SCHA's or the Town's or CDOT's subsequent sale of the Property in these circumstances shall not be subject to the Maximum Sale Price restrictions set forth in Article VIII hereof.

D. Release upon Electing Not to Exercise Options. In the event that the SCHA or the Town or CDOT does not exercise its Option to Redeem as described in this Article or its Option to Buy as described above, as applicable, within the time periods set forth in this Article, this Restriction shall automatically terminate and shall be of no further force and effect, and the SCHA and the Town and CDOT shall prepare and execute a release of this Restriction and, within thirty (30) days of such termination, cause such release to be recorded in the records of the Clerk and Recorder of the County. Notwithstanding the foregoing, any and all claims of the SCHA and the Town and CDOT available hereunder against the Owner personally shall survive any release or termination of this Restriction.

9.4 Perpetuities Savings Clause. If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options created by this Article IX shall be unlawful or void for violation of: (1) the rule against perpetuities or some analogous statutory provision; (2) the rule restricting restraints on alienation; or (3) any other statutory or common law rules imposing like or similar time limits, then such provision shall continue only for the shorter of (x) the term of this Restriction, or (y) the period of the lives of the current duly elected and seated board of directors

of the SCHAs, their now living descendants, if any, and the survivor of them, plus twenty-one (21) years.

## **ARTICLE X** **ENFORCEMENT**

10.1 **Enforcement of This Restriction.** The Declarant and each Owner hereby grants and assigns to SCHAs and the Town and CDOT the right to review and enforce compliance with this Restriction. Compliance may be enforced by SCHAs or the Town or CDOT by any lawful means, including without limitation, seeking any equitable relief (including, without limitation, specific performance and other equitable relief as set forth in Section 10.2 below), as well as a suit for damages; provided, however, in the event the Property is financed by a HUD-insured First Mortgage and is sold in violation of Section 8.3 hereof, such enforcement shall not include:

- A. acceleration of a mortgage;
- B. voiding a conveyance by an Owner;
- C. terminating an Owner's interest in the Property; or
- D. subjecting an Owner to contractual liability.

Notwithstanding the foregoing, in no event shall SCHAs or the Town or CDOT have any equitable remedies (including, but not limited to, the right to sue for specific performance or seek other equitable relief as set forth in Section 10.2) or the right to sue for damages if the Owner of the Property that was financed with a HUD-insured First Mortgage breaches or violates the terms, covenants and other provisions of Section 8.3 hereof and if to do so would violate any existing or future requirement of HUD, it being understood, however, that in such event, SCHAs or the Town or CDOT shall retain all other rights and remedies hereunder for enforcement of any other terms and provisions hereof, including, without limitation: (i) the right to sue for damages to reimburse SCHAs or the Town or CDOT, or their respective agents, for its enforcement costs and to require an Owner to repay with reasonable interest (not to exceed ten percent (10%) per annum) any assistance received in connection with the purchase of the Property; (ii) the right to prohibit an Owner from retaining sales or rental proceeds collected or received in violation of this Restriction; and (iii) the option to purchase granted to SCHAs or the Town or CDOT in Section 8.5(c) hereof. Venue for a suit enforcing compliance shall be proper in Summit County, Colorado and service may be made or notice given by posting such service or notice in a conspicuous place on the applicable Property. As part of any enforcement action on the part of SCHAs or the Town or CDOT, the applicable Owner shall pay all court costs and reasonable legal fees incurred by SCHAs or the Town or CDOT, or their respective agents, in connection with these claims, actions, liabilities or judgments, including an amount to pay for the time, if any, of SCHAs or the Town's or CDOT's respective attorneys spent on such claims at the rates generally charged for similar services by private practitioners within the County.

10.2 **Injunctive and other Equitable Relief.** Declarant and each Owner agree that in the event of Declarant's or Owner's default under or non-compliance with the terms of this Restriction, SCHAs or the Town or CDOT shall have the right to seek such equitable relief as it may deem necessary or

proper, including, without limitation, the right to: (a) seek specific performance of this Restriction; (b) obtain a judgment from any court of competent jurisdiction granting a temporary restraining order, preliminary injunction and/or permanent injunction; and (c) set aside or rescind any sale of the Property made in violation of this Restriction. Any equitable relief provided for in this Section 10.2 may be sought singly or in combination with such legal remedies as SCHA or the Town or CDOT may be entitled to, either pursuant to this Restriction, under the laws of the State of Colorado or otherwise.

## **ARTICLE XI**

### **GENERAL PROVISIONS**

11.1 Equal Housing Opportunity. Pursuant to the Fair Housing Act, Declarant, the SCHA, and the Town and CDOT shall not discriminate on the basis of race, creed, color, sex, national origin, familial status or disability in the lease, sale, use or occupancy of the Property.

11.2 Rules, Regulations, and Standards. The SCHA shall have the authority to promulgate and adopt such rules, regulations and standards as it may deem appropriate, from time to time, for the purpose of carrying out its obligations and responsibilities described herein, all of which rules, regulations and standards, and any amendments thereof, shall be subject to approval of the Town and CDOT.

11.3 Waiver of Exemptions. Every Owner, by taking title to the Property, shall be deemed to have subordinated to this Restriction any and all right of homestead and any other exemption in, or with respect to, such Property under state or federal law presently existing or hereafter enacted.

11.4 Enforcement. Except as otherwise provided herein, the SCHA, the Town, CDOT, the Declarant, or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, and reservations imposed by the provisions of this Restriction and shall be entitled to specific enforcement of the same. Failure by any party described in this paragraph to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right by such party or any other party to do so thereafter.

11.5 Expenses of Enforcement. In the event that any party entitled to enforce the terms of this Restriction shall be required to bring any action as the result of any breach of the terms of this Restriction by any Owner, the party bringing such action shall be entitled to recover from and against the Owner in breach of these Restrictions, in addition to any and all other remedies available at law or in equity, reasonable attorney's fees and costs incurred in the enforcement of these Restrictions and in the bringing of such action, and the party against whom such fees and costs are awarded shall be personally liable for the payment of such fees and costs, and such award and judgment shall constitute a lien against the Property owned by the party in breach of these Restrictions which lien may be enforced by foreclosure of the defaulting Owner's Property in the manner for foreclosing a mortgage on real property under the laws of the State of Colorado or elimination of Owner's resale gain on the Property.

11.6 Severability. Invalidation of any one of the covenants or restrictions contained herein by judgment or Court order shall in no way affect any other provisions, it being the intent of the Declarant, SCHA and Town and CDOT that such invalidated provision be severable.

11.7 Term. The restrictions contained herein shall run with the land and bind the land for a term of 99 years from the date that this covenant is recorded, after which time the terms of this Covenant shall be automatically extended for successive periods of 10 years.

11.8 Amendment. This restriction may be amended only by an instrument recorded in the records of Summit County executed by the Town and CDOT and the then-Owner of the Property.

11.9 Successor to SCHA. In the event that, at any time during the duration of this Restriction, the SCHA ceases to exist, all reference in this Restriction to SCHA shall, thereafter, mean the Town its successors, assigns, or any other entity designated by the Town to administer or enforce the provisions hereof, or to perform the functions of the SCHA as described herein.

11.10 No Third Party Beneficiaries. This Restriction is made and entered into for the sole protection and benefit of the SCHA, the Town, CDOT and the Owner. Except as otherwise specifically provided for herein, no other person, persons, entity or entities, including without limitation prospective buyers of the Property, shall have any right of action with respect to this Restriction or right to claim any right or benefit from the terms provided in this Restriction or be deemed a third party beneficiary of this Restriction.

11.11 Non-Liability. SCHA and Town and CDOT and their respective employees, members, officers and agents shall not be liable to any Owner or third party by virtue of the exercise of their rights or the performance of their obligations under this Restriction. The parties understand and agree that they are relying on, and do not waive or intend to waive by any provision of this Restriction, the monetary limitations or any other rights, immunities or protections afforded by the Governmental Immunity Act, CRS §§ 24-10-101, et seq., as they may be amended, or any other limitation, right, immunity or protection otherwise available to the parties.

11.12 Exhibits. All exhibits attached hereto are incorporated herein and by this reference made part hereof.

11.13 Gender and Number. Whenever the context so requires herein, the neuter gender shall include any or all genders and vice versa and use of the singular shall include the plural and vice versa.

11.14 Personal Liability. Each Owner shall be personally liable for any of the transactions contemplated herein, jointly and severally with his or her co-owners.

11.15 Further Actions. The Owner and Owner's successors and assigns agree to execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of this Restriction or any agreement or document relating hereto or entered into in connection herewith.

11.16 Notices. Any notice, consent or approval which is required or permitted to be given hereunder shall be given by mailing the same, certified mail, return receipt requested, properly addressed and with postage fully prepaid, to any address provided herein or to any subsequent mailing address of the party as long as prior written notice of the change of address has been given to the other parties to this Restriction. Said notices, consents and approvals shall be sent to the parties hereto at the following addresses unless otherwise notified in writing:

To Declarant:

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

To the Town:

Town of Frisco  
Attn: Town Manager  
P.O. Box 4100  
Frisco, CO 80443

To CDOT:

Colorado Dept. of Transportation  
Attention: Property Management  
2829 W. Howard Pl  
Denver, CO 80204

To the Summit Combined Housing Authority:

Summit Combined Housing Authority  
P.O. Box 188  
Breckenridge, CO 80424

To the Owner:

To be determined pursuant to the Notice of Lien and Memorandum of Acceptance (as shown on Exhibit A) recorded with respect to each transfer of the Property.

11.17 Choice of Law. This Covenant and each and every related document shall be governed and constructed in accordance with the laws of the State of Colorado.

11.18 Successors. Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon the heirs, successors and assigns of the parties.



**11.19 Headings.** Article and Section headings within this Restriction are inserted solely for convenience or reference, and are not intended to, and shall not govern, limit or aid in the construction of any terms or provisions contained herein.

11.20 Signatures. Signatures to this Restriction may be in counterparts and by facsimile or scanned emailed document.

11.21 Approval. Wherever an approval is required by the SCHA or the Town , in all instances approval by the Town shall be deemed sufficient. Wherever an approval is required by CDOT, approval shall mean approval by the CDOT Chief Engineer. Town “approval” shall mean approval by the Town Manager or his or her designated representative.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has set its hand unto this Restriction this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_ , a

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

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

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

STATE OF \_\_\_\_\_ )  
 ) ss.

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_, a  
\_\_\_\_\_.

WITNESS my hand and official seal.

Notary Public

My Commission Expires: \_\_\_\_\_

**EXHIBIT A**

**NOTICE OF LIEN AND MEMORANDUM OF ACCEPTANCE  
OF RESIDENTIAL HOUSING RESTRICTIVE COVENANT AND NOTICE OF LIEN FOR UNIT \_\_, OF  
\_\_\_\_\_,  
SUMMIT COUNTY, COLORADO**

WHEREAS, \_\_\_\_\_[Buyer Name]\_\_\_\_\_, the "Buyer" is purchasing from \_\_\_\_\_[Seller Name]\_\_\_\_\_, the "Seller," at a price of \$\_\_\_\_\_[purchase price amount]\_\_\_\_\_, real property described as: \_\_\_\_\_[Legal Description]\_\_\_\_\_, according to the plat recorded under Reception No. \_\_\_\_\_, in the real property records of the County of Summit, Colorado (the "Property"); and

WHEREAS, the Seller of the Property is requiring, as a prerequisite to the sale transaction, that the Buyer acknowledge and agree to the terms, conditions and restrictions found in that certain instrument entitled "Residential Housing Restrictive Covenant and Notice of Lien for Unit \_\_, of \_\_\_\_\_, Town/County, Colorado", recorded on \_\_\_\_\_, 20\_\_, under Reception No. \_\_\_\_\_, in the real property records of the County of Summit, Colorado (the "Restrictive Covenant").

NOW, THEREFORE, as an inducement to the Seller to sell the Property, the Buyer:

1. Acknowledges that Buyer has carefully read the entire Restrictive Covenant, has had the opportunity to consult with legal and financial counsel concerning the Restrictive Covenant and fully understands the terms, conditions, provisions, and restrictions contained in the Restrictive Covenant.

2. States that the Notice to Buyer should be sent to:

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

3. Directs that this Notice be placed of record in the real estate records of the County of Summit, Colorado and a copy provided to the Summit County Housing Authority and the Town of Frisco (as defined in the Restrictive Covenant).

IN WITNESS WHEREOF, the parties hereto have executed this instrument on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

BUYER(S):

---

Print Name(s): \_\_\_\_\_

STATE OF )  
 ) ss.  
COUNTY OF )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, by \_\_\_\_\_.

Witness my hand and official seal.

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

Notary Public

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## EXHIBIT B

### Town of Frisco Qualifying Capital Improvement Summary

As permitted through the Residential Housing Restrictive Covenant and Notice of Lien for Unit \_\_, of \_\_\_\_\_, Town of Frisco, Summit County Colorado, the process for submitting Qualifying Capital Improvements (QCI) includes the information below:

- a. Qualifying Capital Improvements shall be approved by the Community Development Department and calculated in accordance with Residential Housing Restrictive Covenant and Notice of Lien.
- b. Certain improvements to a unit may be included in a unit's Maximum Resale Price. The following table outlines the costs that may be included in an owner's base price, items which will not be considered Qualifying Capital Improvements, items which will be allowed as Qualifying Capital Improvements and depreciated on a five year schedule and items which will be allowed as Qualifying Capital Improvements and depreciated on a twenty year schedule.

<p><b><u>Items included in Base Price</u></b></p> <ul style="list-style-type: none"> <li>• Purchase price, including garage, lot premium, heating systems and water heaters</li> </ul> <p>The following items may be included in base price with the written approval of the Community Development Department prior to the commencement of the work:</p> <ul style="list-style-type: none"> <li>• Structural addition or addition of livable space including bathrooms, bedrooms, exterior door, interior doors, baseboard, window casing, insulation and plumbing (excluding fixtures) and garages (detached or attached)</li> <li>• Modifications or improvements to accommodate a person with a disability as defined in the Americans with Disabilities Act of 1990</li> <li>• Roof replacement</li> </ul>	<p><b><u>Items which are NOT Qualifying Capital Improvements</u></b></p> <ul style="list-style-type: none"> <li>• All work performed without the issuance of a building permit</li> <li>• Jacuzzis, saunas, steam showers, hot tubs, etc.</li> <li>• Maintenance of existing fixtures, appliances, plumbing, mechanical systems, painting, cleaning, etc. and improvements to existing fixtures</li> <li>• Decorative items including window coverings, lamps and lighting not affixed to walls or ceilings, bath towel bars and hooks, etc.</li> <li>• Interior paint</li> <li>• Cost of tools</li> <li>• Equipment Rental</li> <li>• Removable items not attached to the unit</li> </ul>
<p><b><u>Items depreciated on 5 year schedule</u></b></p> <ul style="list-style-type: none"> <li>• Replaced appliances</li> <li>• Washer and dryer (including stackable)</li> <li>• Carpet upgrades including pad</li> <li>• Permanent fitted window blinds</li> <li>• Garage door openers</li> <li>• Gutters and downspouts</li> </ul>	<p><b><u>Items depreciated on 20 year schedule</u></b></p> <ul style="list-style-type: none"> <li>• Flooring and countertop upgrades including hardwood, stone, slate, granite, marble, tile, etc.</li> <li>• Light fixtures (electrical fixtures &amp; wiring)</li> <li>• Plumbing fixtures including sinks and toilets</li> </ul>

<ul style="list-style-type: none"> <li>• Security system</li> <li>• Electric fireplace</li> <li>• Exterior paint</li> <li>• Ceiling fans</li> <li>• Storm doors</li> <li>• Laminate flooring</li> <li>• Building permit fees</li> <li>• Improvements for health and safety protection</li> </ul>	<ul style="list-style-type: none"> <li>• Cabinets including vanities</li> <li>• Closet organization systems</li> <li>• Trees and permanent landscaping including sod, concrete pads, concrete pavers, etc.</li> <li>• Outdoor decks</li> <li>• Irrigation system</li> <li>• Fencing</li> <li>• Gas fireplace</li> <li>• Windows</li> <li>• Renewable Energy Systems</li> <li>• Asphalt roof shingles (single family &amp; duplex)</li> </ul>
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For an owner to request that Qualifying Capital Improvements be added to the Maximum Resale Price, he or she must comply with the following:

- a. Upon completion of the work, Community Development Department requests the following:
  - i. Legible copies of receipts and invoices
  - ii. Proof of payment by a third party
  - iii. Owners must retain original receipts and invoices
- b. In calculating the costs allowed as Qualifying Capital Improvements, only the owner's actual out of pocket costs and expenses shall be eligible for inclusion. Such amount shall not include an amount attributable to owner's labor, or that of their employees or business, or to any appreciation in the value of these improvements.
- c. If an owner pays cash for improvements, the owner must provide third party documentation of payment. An owner must have an invoice for improvements, but if no such documentation of proof of cash payment can be produced, the Community Development Department can inspect the improvement completed in the unit. Up to 75% of documented invoice value may be included after an inspection, subject to depreciation, at the Community Development Department's sole discretion.
- d. Work that requires and is performed without the issuance of all required building permits or property owners' association approval will not be included as a Qualifying Capital Improvement.
- e. The value of the Qualifying Capital Improvements will be added to the appreciated value of the unit at the time of sale. No appreciation is allowed on Qualifying Capital Improvements.
- f. Other improvements to the Affordable Housing unit are allowed, but adjustments to the Maximum Resale Price will only be given for Qualifying Capital Improvements.

If a Qualifying Capital Improvements or an improvement included in the base price of the unit is removed or is no longer operational, the actual cost of the improvement shall be deducted from the base price or Qualifying Capital Improvement schedule. No other categories or types of

expenditures may qualify as Qualifying Capital Improvements unless pre-approved in writing by the Community Development Department.

<b>5 Year Depreciation Schedule % of Cost</b>	<b>Months</b>	<b>Years</b>
75%	Up to 12 months	Up to 1 year
50%	12-36	2-3
25%	36-60	3-5
0%	60+	5+
<b>20 Year Depreciation Schedule % of Cost</b>	<b>Months</b>	<b>Years</b>
100%	Up to 24 months	Up to 2 years
90%	24-48	2-4
80%	48-72	4-6
70%	72-96	6-8
60%	96-120	8-10
50%	120-144	10-12
40%	144-168	12-14
30%	168-192	14-16
20%	192-216	16-18
10%	216-240	18-20
0%	240+	20+

Community Development Department may accelerate depreciation or exclude items if damaged beyond ordinary depreciation.

#### **OWNER'S AFFIDAVIT REGARDING CAPITAL IMPROVEMENTS**

The undersigned, \_\_\_\_\_, being of lawful age and having been duly sworn, upon personal knowledge states and alleges as follows:

1. I am the Owner of property located at the following street address:

\_\_\_\_\_.

2. I verify and acknowledge that the receipts and proof of payment submitted with this Affidavit represent the actual costs expended for Improvements to my home located at the address above and that the receipts are valid and correct receipts tendered at the time of purchase.

3. I verify and acknowledge that true and correct copies of any building permit or certificate of occupancy required to be issued by the Town of Frisco Building Division with respect to the Improvements have been submitted with this Affidavit.

I declare under penalty of perjury that I have read this Affidavit and the statements contained in it are true and correct to the best of my knowledge.

Date: \_\_\_\_\_

State of \_\_\_\_\_)

) ss.

County of \_\_\_\_\_)

\_\_\_\_\_  
Signature of Owner

The foregoing was subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_.

Witness my hand and official seal.  
My commission expires: \_\_\_\_\_.

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

## **EXHIBIT D, PROPERTY LEGAL DESCRIPTION**

Lots 18 through 24, Block 12, Frisco Town Subdivision, County of Summit, State of Colorado, also known as 619 Granite Street, Frisco, Colorado, and that consists of approximately 24,500 square feet of land

DRAFT



## EXHIBIT E, PROPERTY MAP

DRAFT

## EXHIBIT F, RIGHT OF FIRST REFUSAL

### Right of First Refusal

THIS RIGHT OF FIRST REFUSAL, Made this \_\_\_\_ day of \_\_\_\_\_, 202\_\_, by and between the State of Colorado, acting by and through the Department of Transportation (“**Grantee**”), whose address is 2829 W. Howard Place, Denver, Colorado 80204, and Town of Frisco, a Colorado home rule municipal corporation, (“**Grantor**”) whose address is 1 E. Main St., Frisco, CO 80443.

WITNESSETH, that Grantor, for and in consideration of \_\_\_\_\_ (\$\_\_\_\_\_) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, has granted Grantee the following right of first refusal in the real property owned by Grantor, situate, lying, and being in the County of Summit, State of Colorado, described on Exhibit A (collectively, the “**Right of First Refusal**”).

- A. Prior to completion of construction of the multi-story residential building to be constructed by the Grantor on the Property including the site-work and parking areas (“**New Building**”), if the Grantor desires to sell the Property, the Grantee shall have the first right to purchase the Property for an amount equal to the Town’s Share of the Construction Expenses plus fifty percent (50%) of the appreciation of the Property, including the New Building, from the date of the sale of the Property by Grantee to Grantor to the date of the sale of the Property/New Building to Grantee in the future pursuant to this Right of First Refusal. The terms “Town’s Share” and “Construction Expenses” shall have the meaning determined in accordance with the Intergovernmental Agreement between the Grantor and Grantee dated \_\_\_\_\_.
- B. Upon completion of construction of the New Building, if the Grantor desires to sell the Property and/or any individual units owned by the Grantor in the New Building (“**Units**”), the Grantee shall have the first right to purchase the Property and/or Units at the fair market value of the Property and/or Units as determined in accordance with CRS §43-1-210(5).
- C. If Grantor receives either a bona fide written offer by a willing third party to purchase all or part of the Property and/or Units which Grantor intends to accept, or a purchase agreement which Grantor intends to enter into (collectively, “**Offer**”), Grantor shall give written notice to Grantee at the address provided above accompanied by a copy of such Offer at least seventy five (75) days before the date of contemplated sale.
- D. Within forty-five (45) days after receipt of the written notice, Grantee shall have the right to notify Grantor that it is exercising its Right of First Refusal and will purchase the Property and/or Units pursuant to a purchase agreement which incorporates the terms and conditions of this Right of First Refusal and is in compliance with all laws, rules and regulations of the Grantee.
- E. If Grantee fails to exercise its Right of First Refusal within the time stated above, the Grantor shall have the right to sell the Property and/or Units to the willing third party and this Right of First Refusal shall have no more force and effect related to such Property and/or Units sold. However, if the third party transaction shall not close, this

Right of First Refusal shall continue to apply to the Property and/or Units.

F. This Right of First Refusal shall be recorded in the real estate records of Summit County.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Right of First Refusal on the date set forth above.

**Town of Frisco**

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

Date: \_\_\_\_\_

STATE OF COLORADO     )  
  )ss.  
COUNTY OF                    )

The foregoing instrument was acknowledged before me the \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_,  
by \_\_\_\_\_, acting on behalf of Town of Frisco.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_  
(Seal)

**STATE OF COLORADO**  
Jared S. Polis, Governor  
Department of Transportation  
Shoshana M. Lew, Executive Director

By: Stephen Harelson, P.E., Chief Engineer

Date: \_\_\_\_\_

STATE OF COLORADO     )  
  )ss.  
COUNTY OF                    )

The foregoing instrument was acknowledged before me the \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_,  
by \_\_\_\_\_, acting on behalf of the State of Colorado, Department of  
Transportation.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_  
(Seal)

DRAFT

**Exhibit A**

Lots 18 through 24, Block 12, Frisco Town Subdivision, County of Summit, State of Colorado, also known as 619 Granite Street, Frisco, Colorado, and that consists of approximately 24,500 square feet of land (collectively, the “Property”)

DRAFT

## EXHIBIT G, STATE QUIT CLAIM DEED TO TOWN

### Quit Claim Deed

THIS DEED, Made this \_\_\_\_ day of \_\_\_\_\_, 202\_\_, by and between the State of Colorado, acting by and through the Department of Transportation (“**Grantor**”), whose address is 2829 W. Howard Place, Denver, Colorado 80204, and Town of Frisco, a Colorado home rule municipal corporation (“**Grantee**”) whose address is 1 E. Main St., Frisco, CO 80443.

WITNESSETH, that Grantor, for and in consideration of \_\_\_\_\_ and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, has remised, released, sold, and quitclaimed, and by these presents does remise, release, sell, and quitclaim, unto Grantee and Grantee’s successors and assigns forever, all the real property together with improvements, if any, and any all minerals owned by Grantor, if any, situate, lying, and being in the County of Summit, State of Colorado, described on **Exhibit A** (“**Real Property**”).

TO HAVE AND TO HOLD the said Real Property above described, together with all and singular the appurtenances and privileges thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, and claim whatsoever of Grantor, either in law or in equity, to the only proper use, benefit, and behalf of Grantee, its successors and assigns forever, except for the following:

[insert exceptions/restrictions]

IN WITNESS WHEREOF, Grantor has executed this deed on the date set forth above.

#### STATE OF COLORADO

Jared S. Polis, Governor  
Department of Transportation  
Shoshana M. Lew, Executive Director

By: Stephen Harelson, P.E., Chief Engineer

Date: \_\_\_\_\_

STATE OF COLORADO    )  
                                  )ss.  
COUNTY OF            )

The foregoing instrument was acknowledged before me the \_\_\_\_ day of \_\_\_\_\_, 202\_\_, by \_\_\_\_\_, acting on behalf of the State of Colorado, Department of Transportation.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_  
(Seal)

## **Exhibit A**

Lots 18 through 24, Block 12, Frisco Town Subdivision, County of Summit, State of Colorado, also known as 619 Granite Street, Frisco, Colorado, and that consists of approximately 24,500 square feet of land (collectively, the “Property”)

DRAFT

## **EXHIBIT H, CONSTRUCTION PLANS**

DRAFT



## EXHIBIT I, TOWN DEED TO STATE

### Quit Claim Deed

THIS DEED, Made this \_\_\_\_ day of \_\_\_\_\_, 202\_\_, by and between the Town of Frisco, a Colorado home rule municipal corporation (“**Grantor**”), whose address is 1 E. Main St., Frisco, CO 80443, and State of Colorado, acting by and through the Department of Transportation, a Colorado home rule municipal corporation (“**Grantee**”) whose address is 2829 W. Howard Place, Denver, Colorado 80204.

WITNESSETH, that Grantor, for and in consideration of \_\_\_\_\_ and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, has remised, released, sold, and quitclaimed, and by these presents does remise, release, sell, and quitclaim, unto Grantee and Grantee’s successors and assigns forever, all the real property together with improvements, if any, and any all minerals owned by Grantor, if any, situate, lying, and being in the County of Summit, State of Colorado, described on **Exhibit A** (“**Real Property**”).

TO HAVE AND TO HOLD the said Real Property above described, together with all and singular the appurtenances and privileges thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, and claim whatsoever of Grantor, either in law or in equity, to the only proper use, benefit, and behalf of Grantee, its successors and assigns forever, except for the following:

[insert exceptions/restrictions]

IN WITNESS WHEREOF, Grantor has executed this deed on the date set forth above.

**TOWN OF FRISCO**

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

Date: \_\_\_\_\_

STATE OF COLORADO )

)ss.

COUNTY OF )

The foregoing instrument was acknowledged before me the \_\_\_\_ day of \_\_\_\_\_, 202\_\_, by \_\_\_\_\_, acting on behalf of the Town of Frisco.

Witness my hand and official seal.

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

My Commission Expires: \_\_\_\_\_

(Seal)

**EXHIBIT A**

DRAFT

## EXHIBIT J, CHANGE ORDER

### CHANGE ORDER

Change Order No: \_\_\_\_\_ Agreement ID No. \_\_\_\_\_ Date \_\_\_\_\_  
Town: \_\_\_\_\_  
Agency: \_\_\_\_\_  
Project No./Name: \_\_\_\_\_

Your Change Order Proposal(s), dated \_\_\_\_\_ is hereby being designated for approval of the following work:

(Note: If more space is needed for description of work, attach additional 8-1/2" x 11" sheets hereto.)

--

This change order was originated by the Town ☐, State ☐, and I/We do hereby recommend acceptance and approval of the change to the Town's Agreement Dated \_\_\_\_\_ which is by this reference, made a part hereof, and identified as Exhibit \_\_\_\_\_ with an increase ☐, a decrease ☐, no change ☐, of \$\_\_\_\_\_.

SUMMARY OF CHANGES		
	Description of Work/Date	Dollar Amounts
Original Agreement		
Change Order #1		
Change Order #2		
Current Totals		

\*Persons signing for Town hereby swear and affirm that they are authorized to act on Town's behalf and acknowledge that the State is relying on their representations to that effect. **Principal is not a recognized title and will not be accepted.**

Town (Name of Firm) \_\_\_\_\_ Name and Title (print) \_\_\_\_\_ Date \_\_\_\_\_  
Signature \_\_\_\_\_

Agency \_\_\_\_\_ Name and Title (print) \_\_\_\_\_ Principal Representative (Signature) \_\_\_\_\_ Date \_\_\_\_\_

AGREEMENT STATUS			
Original Agreement Value			
Previous increases by CO/Amend			
Previous decreases by CO/Amend			
Value After Prior CO's/Amend			
This CO/Amend			
Increases <input type="checkbox"/> Decreases <input type="checkbox"/>		STATE CONTROLLER (or Authorized Delegate)	DATE
CURRENT AGREEMENT VALUE			

## EXHIBIT K, EMERGENCY FIELD CHANGE ORDER

### EMERGENCY FIELD CHANGE ORDER

Emergency Field Change Order No:	Agreement ID No.	Date
Town		
Agency:		
Project No./Name:		

Your Emergency Field Change Order Proposal(s), dated \_\_\_\_\_ is hereby being designated for approval of the following work:

(Note: If more space is needed for description of work, attach additional 8-1/2" x 11" sheets hereto.)

--

This change order was originated by the Town ☐, State ☐, and I/We do hereby recommend acceptance and approval of the change to the Town's Agreement Dated \_\_\_\_\_ which is by this reference, made a part hereof, and identified as Exhibit \_\_\_\_\_ with an increase ☐, a decrease ☐, no change ☐, of \$\_\_\_\_\_.

SUMMARY OF CHANGES		
	Description of Work/Date	Dollar Amounts
Original Agreement		
Change Order #1		
Change Order #2		
Current Totals		

\*Persons signing for Town hereby swear and affirm that they are authorized to act on Town's behalf and acknowledge that the State is relying on their representations to that effect. **Principal is not a recognized title and will not be accepted.**

Town (Name of Firm)	Name and Title (print)	Date	
	Signature		
Agency	Name and Title (print)	Principal Representative (Signature)	Date

AGREEMENT STATUS			
Original Agreement Value			
Previous increases by CO/Amend			
Previous decreases by CO/Amend			
Value After Prior CO's/Amend			
This CO/Amend			
Increases <input type="checkbox"/> Decreases <input type="checkbox"/>			
CURRENT AGREEMENT VALUE			

## EXHIBIT L, SAMPLE OPTION LETTER

<b>State Agency</b> Department of Transportation	<b>Option Letter Number</b> Insert the Option Number (e.g. "1" for the first option)
<b>Town</b> Insert Contractor's Full Legal Name, including "Inc.", "LLC", etc...	<b>Original Agreement Number</b> Insert CMS Number or Other Contract Number of the Original Contract
<b>Current Agreement Maximum Amount</b> Initial Encumbrance                      \$0.00 Option Letter # _____              \$0.00  Total for All State Fiscal Years              \$0.00	<b>Option Agreement Number</b> Insert CMS Number or Other Contract Number of this Option  <b>Agreement Performance Beginning Date</b> The later of the Effective Date or Month Day, Year  <b>Current Agreement Expiration Date</b> Month Day, Year

**1. OPTIONS:**

A. Option to incorporate Emergency Field Change Order(s)/Change Order(s) and increase the Agreement Maximum Amount.

**2. REQUIRED PROVISIONS:**

In accordance with Section(s) Number of the Original Agreement referenced above, the State hereby exercises its option to incorporate into the Agreement the Work on the following Change Order(s)/Emergency Field Change Order(s), which are attached and incorporated by reference, and to increase the Agreement Maximum Amount on the Cover Page of the Agreement with the Current Agreement Maximum Amount table shown above:

	Date of Change Order/ Emergency Field Change Order	Description of Work	Amount (\$)
Change Order # _____			
Total			

**3. OPTION EFFECTIVE DATE:**

The effective date of this Option Letter is upon approval of the State Controller or \_\_\_\_\_, whichever is later.

<p style="text-align: center;"><b>STATE OF COLORADO</b>  Jared S. Polis, Governor  Department of Transportation  Shoshana M. Lew, Executive Director</p> <p>By: Stephen Harelson, P.E., Chief Engineer</p> <p>Date: _____</p>	<p>In accordance with §24-30-202, C.R.S., this Option Letter is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p style="text-align: center;"><b>STATE OF COLORADO</b>  STATE CONTROLLER  Robert Jaros, CPA, MBA, JD</p> <p>By: _____  Department of Transportation</p> <p>Option Letter Effective Date: _____</p>
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