

**TOWN OF FRISCO
COUNTY OF SUMMIT
STATE OF COLORADO
EMERGENCY ORDINANCE 23-12**

AN EMERGENCY ORDINANCE CONCERNING A FOR RENT WORKFORCE HOUSING PROJECT AND IN CONNECTION THEREWITH AUTHORIZING THE PROJECT AND APPROVING THE EXECUTION AND DELIVERY OF A SITE LEASE, A LEASE PURCHASE AGREEMENT, AND OTHER DOCUMENTS AND DECLARING AN EMERGENCY.

WHEREAS, the Town of Frisco, in Summit County, Colorado (the “Town”), is a duly organized and existing home rule municipality of the State of Colorado (the “State”), created and operating pursuant to Article XX of the State Constitution and the Town’s Home Rule Charter (the “Charter”).

WHEREAS, pursuant to Section 10-10 of the Charter, the Town Council of the Town (the “Council”) is authorized to enter into lease-purchase and installment-purchase agreements for the purchase, installation, or acquisition of any real or personal property for public purposes.

WHEREAS, the Town and the Colorado Department of Transportation pursuant to the provisions of the Intergovernmental Agreement, with an effective date of June 8, 2022, intend to jointly develop a workforce housing project on property owned by the Town at 619 Granite Street (the “Property”).

WHEREAS, the demand for workforce housing in the Town exceeds the supply, the Council hereby determines that it is in the public interest and is a public purpose for the Town to finance the acquisition, construction, installation, equipping of for rent workforce housing on the Property, including any legally permitted costs and expenditures in connection therewith, all for public purposes, and as authorized by law (the “Project”).

WHEREAS, the Council hereby determines that it is in the best interests of the Town and its inhabitants that the Town lease the Property to UMB Bank, n.a. (the “Trustee”) pursuant to a Site Lease (the “Site Lease”) between the Town, as lessor, and the Trustee, as lessee and lease back the Trustee’s interest in the Property pursuant to the terms of a Lease Purchase Agreement (the “Lease”) between the Trustee, as lessor, and the Town, as lessee.

WHEREAS, the Council previously adopted Ordinance No. 23-03 to authorize the Project and the Site Lease and Lease, but Ordinance No. 23-03 was not published as required by the Charter.

WHEREAS, the Certificates (as herein defined) have been sold to investors at a true interest cost of 3.651% and are scheduled to be delivered to such investors on April 26, 2023.

WHEREAS, it is necessary to adopt this emergency ordinance in order to deliver the Certificates to the investors on April 26, 2023, and failure to do so may delay the Project and increase costs of issuance to the Town and subject the Town to interest rate risk.

WHEREAS, pursuant to Section 3-10 of the Charter, because of the urgent need for the financing of the Project, the Council has determined that an emergency exists and that adoption of this

Ordinance as an emergency measure on first and final reading is necessary for the immediate preservation of the public property, health, welfare, peace, or safety or the financial well-being of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FRISCO THAT:

Section 1. Recitals.

- A. The Town owns fee title to the Property.
- B. The Trustee will execute and deliver an Indenture of Trust (the “Indenture”) pursuant to which there will be executed and delivered certain certificates of participation (the “Certificates”) dated as of their date of delivery, that shall evidence proportionate interests in the right to receive certain revenues including rental payments made by the Town under the Lease.
- C. The Town’s obligation under the Lease to pay Base Rentals and Additional Rentals (as each is defined in the Lease) will be from year to year only; will constitute a currently budgeted expenditure of the Town; will not constitute a mandatory charge or requirement in any ensuing budget year; and will not constitute a general obligation or other indebtedness or multiple fiscal year direct or indirect Town debt or other financial obligation of the Town within the meaning of any constitutional, statutory, or Charter limitation or requirement concerning the creation of indebtedness or multiple fiscal year financial obligation, nor a mandatory payment obligation of the Town in any ensuing fiscal year beyond any fiscal year during which the Lease shall be in effect.
- D. The Supplemental Public Securities Act, part 2 of article 57 of title 11, Colorado Revised Statutes (the “Supplemental Act”), provides that a public entity, including the Town, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Act to an issue of securities.
- E. There will be prepared and distributed in connection with the sale of the Certificates a Preliminary Official Statement (the “Preliminary Official Statement”) relating to the Certificates the substantially final form of which will be approved by the Town Council by resolution.
- F. No member of the Council has any conflict of interest or is interested in any pecuniary manner in the transactions contemplated by this ordinance
- G. There have been filed with the Town Clerk proposed forms of: (i) the Site Lease; (ii) the Lease; and (iii) a Continuing Disclosure Certificate (the “Continuing Disclosure Certificate”) to be delivered by the Town.
- H. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Lease and the Site Lease

Section 2. Ratification and Approval of Prior Actions. All action heretofore taken (not inconsistent with the provisions of this ordinance) by the Council or the officers, agents, or

employees of the Council or the Town relating to the Site Lease, the Lease, the implementation of the Project, and the execution and delivery of the Certificates is hereby ratified, approved and confirmed.

Section 3. Finding of Best Interests. The Council hereby finds and determines, pursuant to the Constitution and laws of the State and the Charter, that the implementation of the Project pursuant to the terms set forth in the Site Lease, the Lease, and the Indenture are necessary, convenient, and in furtherance of the Town's purposes and are in the best interests of the inhabitants of the Town and that the fair value of the Property does not exceed its Purchase Option Price (as defined in the Lease), and the Council hereby authorizes and approves the same.

Section 4. Supplemental Act Election; Parameters. The Council hereby elects to apply all of the provisions of the Supplemental Act to the Lease, the Site Lease, and the Certificates, and in connection therewith delegates to the Mayor, any other member of the Council, the Town Manager, or the Finance Director the independent authority to make any determination delegable pursuant to Section 11-57-205(1)(a-i), Colorado Revised Statutes, in relation to the Lease and the Site Lease, and to execute a sale certificate (the "Sale Certificate") setting forth such determinations, including without limitation, the term of the Site Lease, the rental amount to be paid by the Trustee pursuant to the Site Lease, the term of the Lease and the rental amount to be paid by the Town pursuant to the Lease, subject to the following parameters and restrictions:

- (a) the Site Lease Term shall end no later than December 31, 2054;
- (b) the Lease Term shall end no later than December 31, 2044;
- (c) the maximum annual repayment cost of Base Rentals payable by the Town shall not exceed \$495,000, and the total repayment cost shall not exceed \$11,600,000;
- (d) the aggregate principal amount of the Base Rentals payable by the Town under the Lease with respect to the Certificates shall not exceed \$7,300,000;
- (e) the purchase price of the Certificates shall not be less than 98% of the aggregate principal amount; and
- (f) the maximum net effective interest rate on the interest component of the Base Rentals relating to the Certificates shall not exceed 5.00%.

Pursuant to Section 11-57-205 of the Supplemental Act, the Council hereby delegates to each of the Mayor, the Town Manager, or the Finance Director the authority to acknowledge any contract for the purchase of the Certificates between the Trustee and the Purchaser, and to execute any agreement or agreements in connection therewith. In addition, each of the Mayor, the Town Manager or the Finance Director is hereby authorized to independently determine if obtaining an insurance policy for all or a portion of the Certificates is in the best interests of the Town, and if so, to select an insurer to issue an insurance policy, execute a commitment relating to the same and execute any related documents or agreements required by such commitment. Each of the Mayor, the Town Manager, or the Finance Director is also hereby authorized to determine if obtaining a reserve fund insurance policy for the Certificates is in the best interests of the Town, and if so, to select a surety provider to issue a reserve fund insurance policy and execute any related documents or agreements required by such commitment.

Section 5. Approval of Documents. The Site Lease, the Lease, and the Continuing Disclosure Certificate are in all respects approved, authorized, and confirmed, and the Mayor of the Town is hereby authorized and directed for and on behalf of the Town to execute and deliver such documents in substantially the forms and with substantially the same contents as the proposed forms of such documents on file with the Town Clerk, with such changes as may hereafter be approved by the Mayor, the Town Attorney, or the Town Manager.

Section 6. Authorization to Execute Collateral Documents. The Mayor, the Town Manager, the Finance Director, and other appropriate officials or employees of the Town are hereby authorized to execute and deliver for and on behalf of the Town any and all certificates, documents, instruments, and other papers and to perform all other acts that they deem necessary or appropriate, in order to implement and carry out the transactions and other matters authorized by this ordinance. The Town Clerk is hereby authorized and directed to attest all signatures and acts of any official of the Town, if so required by any documents in connection with the matters authorized by this ordinance. The appropriate officers of the Town are authorized to execute on behalf of the Town agreements concerning the deposit and investment of funds in connection with the transactions contemplated by this ordinance. The execution of any instrument by the aforementioned officers or members of the Council shall be conclusive evidence of the approval by the Town of such instrument in accordance with the terms hereof and thereof.

Section 7. No General Obligation Debt. No provision of this ordinance, the Site Lease, the Lease, the Indenture, the Continuing Disclosure Certificate, or the Certificates shall be construed as creating or constituting a general obligation or other indebtedness or multiple fiscal year financial obligation of the Town within the meaning of any constitutional, statutory, or Charter provision, nor a mandatory charge or requirement against the Town in any ensuing fiscal year beyond the then current fiscal year. The Town shall not have any obligation to make any payment with respect to the Certificates except in connection with the payment of the Base Rentals and certain other payments under the Lease, which payments may be terminated by the Town in accordance with the provisions of the Lease. Neither the Lease nor the Certificates shall constitute a mandatory charge or requirement of the Town in any ensuing fiscal year beyond the then current fiscal year or constitute or give rise to a general obligation or other indebtedness or multiple fiscal year financial obligation of the Town within the meaning of any constitutional, statutory or Charter debt limitation and shall not constitute a multiple fiscal year direct or indirect Town debt or other financial obligation whatsoever. No provision of the Lease or the Certificates shall be construed or interpreted as creating an unlawful delegation of governmental powers nor as a donation by or a lending of the credit of the Town within the meaning of Sections 1 or 2 of Article XI of the State Constitution. Neither the Lease nor the Certificates shall directly or indirectly obligate the Town to make any payments beyond those budgeted and appropriated for the Town's then current fiscal year.

Section 8. Reasonableness of Rentals. The Council hereby determines and declares that the Base Rentals do not exceed a reasonable amount so as to place the Town under an economic compulsion to renew the Lease or to exercise its option to purchase the Property pursuant to the Lease. The Council hereby determines and declares that the period during which the Town has an option to purchase the Property (i.e., the entire maximum term of the Lease) does not exceed the remaining useful life of the Property.

Section 9. No Recourse against Officers and Agents. Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the Council, or any officer or agent of the Town acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the principal, interest, or prior redemption premiums on the Certificates. Such recourse shall not be available either directly or indirectly through the Council or the Town, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the Certificates and as a part of the consideration of their sale or purchase, any person purchasing or selling such certificate specifically waives any such recourse.

Section 10. Charter Controls. Pursuant to Article XX of the State Constitution and the Charter, all State statutes that might otherwise apply in connection with the provisions of this ordinance are hereby superseded to the extent of any inconsistencies or conflicts between the provisions of this ordinance and the Sale Certificate authorized hereby and such statutes. Any such inconsistency or conflict is intended by the Council and shall be deemed made pursuant to the authority of Article XX of the State Constitution and the Charter.

Section 11. Repealer. All bylaws, orders, resolutions and ordinances of the Town, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any other such bylaw, order, resolution or ordinance of the Town, or part thereof, heretofore repealed. This Ordinance repeals and replaces Ordinance No. 23-03 in its entirety.

Section 12. Severability. If any section, subsection, paragraph, clause, or other provision of this ordinance for any reason is held to be invalid or unenforceable, the invalidity or unenforceability of such section, subsection, paragraph, clause, or other provision shall not affect any of the remaining provisions of this ordinance, the intent being that the same are severable.

Section 13. Emergency Declaration. It is hereby found and determined by the Council that adoption of this Ordinance as an emergency ordinance is necessary in order to deliver the Certificates to investors on April 26, 2023, and that failure to do so may delay the construction of the Project and increase costs of issuance of the financing and subject the Town to interest rate risk. As a result of the foregoing, the Council hereby declares that an emergency exists, and that this Ordinance is necessary to the immediate preservation of the public property, health, welfare, peace, or safety or the financial well-being of the Town.

Section 14. Effective Date. In accordance with Section 3-10 of the Charter, this ordinance will take effect immediately.

INTRODUCED, PASSED WITH _____ AFFIRMATIVE VOTES AS AN
EMERGENCY ORDINANCE, AND ORDERED PUBLISHED IN FULL THIS 25TH DAY OF
APRIL, 2023.

TOWN OF FRISCO, COLORADO

Mayor Hunter Mortensen

ATTEST:

Stacey Nell, Town Clerk