

COUNCIL BILL NO. 5

SERIES 2024

A BILL FOR AN ORDINANCE APPROVING A SUBORDINATION AGREEMENT WITH FIRST BANK PERTAINING TO STABLES VILLAGE HOMES LLC FINANCING FOR THE STABLES VILLAGE PROJECT.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO:

Section 1. That the Town Council of the Town of Breckenridge hereby approves the Agreement Relating to Development and Subordination attached hereto as **Exhibit A**.

Section 2. This ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Charter.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this 27th day of February, 2024. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the 12th day of March, 2024, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

TOWN OF BRECKENRIDGE, a Colorado municipal corporation

By: _____
Kelly Owens, Mayor Pro Tem

ATTEST:

Helen Cospolich, CMC,
Town Clerk

After recording return to:
FirstBank
Attn: Loan Operations
12345 West Colfax Avenue
Lakewood, CO 80215

AGREEMENT RELATING TO DEVELOPMENT AND SUBORDINATION

THIS AGREEMENT RELATING TO DEVELOPMENT AND SUBORDINATION (this “Agreement”) dated _____, 2024 (the “Effective Date”), is by and among the TOWN OF BRECKENRIDGE, COLORADO, a Colorado home rule municipality (the “Town”), STABLES VILLAGE HOMES LLC, a Colorado limited liability company (“Borrower”), and FIRSTBANK, a Colorado state banking corporation (“Lender”).

RECITALS

A. On or about May 15, 2023, the Town and Stables Village, LLC, a Colorado limited liability company, as a predecessor in interest to Borrower, entered into that certain Stables Village Project Agreement (“Project Agreement”), related to the construction of workforce housing (the “Project”) on the real property more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference (the “Property”).

B. The Property is subject to a Master Plan (PL-2023-0034) approved by the Town on April 11, 2023, commonly known as the Stillson Master Plan .

C. On October 10, 2023, the Town conveyed to the Borrower, a portion of the Property (Phase I of the Project, which included Phase 1A and Phase 1B per the budget documents and Tracts A, B, and C, collectively referred to herein as, “Phase 1 Property”) in consideration for the agreements set forth in the Project Agreement and for construction of the [thirty-seven homes comprised of 18 townhome units, 16 duplexes, and 3 single family homes] (“Phase 1 Project”).

D. In connection with the conveyance of the Phase 1 Property to Borrower, also on October 10, 2023, the Town and Borrower entered into a Restrictive Housing Covenant and Notice of Lien for Stables Village, Summit County, Colorado recorded with the Clerk and Recorder at Reception No. 1319331 on October 18, 2023 (the “Restrictive Covenant”). Also in connection with the conveyance of the Phase 1 Property to Borrower, the Town and Borrower entered into the Public Improvements, Site Work, and Infrastructure Construction Agreement dated August 15, 2023 (“Improvement Agreement”).

E. On or about even date herewith, Lender will close a construction loan to Borrower in an original principal amount of [approximately Twenty Million and No/100ths Dollars (\$20,000,000.00)] to fund a portion of the costs of the Phase 1 Project (“Loan”). The Loan is secured by, among other things, that certain Deed of Trust dated on or about even date herewith and recorded in the Records on _____ at Reception No. _____

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and Assignment of Leases, Rents, and other Rights dated on or about even date herewith and recorded in the Records on _____ at Reception No. _____ (collectively, the “Deed of Trust”), encumbering the Phase 1 Property. The Deed of Trust, together with any and all agreements, documents, writings or instruments which evidence and/or secure the Loan, as the same may be extended, consolidated, amended, modified, supplemented, or restated are collectively referred to herein as the “Loan Documents.”

F. As a condition precedent to closing and advancing the Loan, Lender requires the parties execute and deliver this Agreement and the Borrower and Town wish to execute and deliver this Agreement. Capitalized terms not defined herein shall have the meanings ascribed in the Loan Documents.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals which are incorporated herein, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, and to induce Lender to enter into the transactions contemplated by the Loan Documents, Borrower, Lender and the Town agree as follows:

1. Consent to Loan. The Town hereby consents to the Loan and agrees that the Loan meets the conditions of the Project Agreement for an “Encumbrance” as defined in Section 16 of the Project Agreement.

2. Collateral Assignment of Development Rights and Project Agreement. As additional collateral for the Loan, Borrower has collaterally assigned to Lender all of Borrower’s right, title, and interest in and to the Project Agreement and any and all vested development rights under C.R.S. § 24-68-101 *et seq.*, development rights issued, granted, conveyed, or accruing to Borrower in connection with the Phase 1 Project, including, without limitation, all rights, benefits, approvals, variances and exemptions (collectively, with the Project Agreement, the “Development Rights”) and the Borrower has collaterally assigned the Improvement Agreement. The Town, upon demand from Lender as a result of Borrower’s uncured default under the Loan Documents, will recognize and accept Lender as the holder of the Development Rights and the Improvement Agreement for any and all purposes relating to Phase 1 Project as fully as it would recognize and accept Borrower and the performance of Borrower thereunder. Following a default or an Event of Default under the Loan Documents, without further notice or demand and without the necessity for any action and at Borrower’s sole cost and expense, (i) the Town upon written notice from Lender of the occurrence of a default or an Event of Default, shall be and is hereby authorized by Borrower to allow Lender to perform under the Project Agreement and the Improvement Agreement in accordance with the terms and conditions thereof without any obligation to determine whether or not such default or Event of Default has in fact occurred or is continuing, (ii) Lender is entitled to exercise all rights of Borrower under the Project Agreement and Improvement Agreement; and (iii) if Lender does so perform under either of the Project Agreement or the Improvement Agreement, Town shall not find a default of the Project Agreement or the Improvement Agreement merely on the basis of Lender assuming Borrower’s rights and responsibilities thereunder. Any amounts collected by Borrower or Lender under the Project Agreement or the Improvement Agreement after the occurrence of a default or

Event of Default by Borrower under the Loan Documents shall be applied in accordance with the provisions of the Loan Documents.

3. Subordination. Notwithstanding anything to the contrary set forth in the Project Agreement, the reverter obligations of Borrower set forth in Paragraph 13 of the Project Agreement and the termination rights set forth in Section 28 (individual, or collectively, as the context may require, the “Reverter and Termination Provisions”) (a) are hereby subordinated to Lender’s Deed of Trust, and if Lender shall complete a foreclosure of the lien of the Deed of Trust, or accept a deed in lieu thereof, such Reverter and Termination Provisions automatically terminate and shall be deemed null and void and of no further force or effect, and (b) are subject to the repayment of the Loan in full, until such time as the Loan is paid in full at which time the Lender’s Deed of Trust shall be released from the Property. In no event shall the Property be reconveyed by Borrower without payment of the Loan in full. In consideration of the terms in this Agreement, the parties agree upon Lender or its successors or assigns becoming an owner of the Property whether through foreclosure, deed in lieu thereof, or otherwise, Lender or its successors or assigns is entitled and has development authority from the Town to complete the Phase 1 Project in accordance with all of its customary requirements for developments under the authority of the Town, including issuances of permits, which approval shall not be unreasonably delayed or withheld by the Town, and/or Lender is entitled to sell any part of or the whole Property subject to the Stillson Master Plan and applicable land use guidelines. It being acknowledged by the Town that after the Lender or its successor or assigns is the owner of the Property, Town has no right to withhold permits, authorizations, or verifications of completeness of Phase 1 for the reason that the Phase 1 Project except the Town has the full right and authority to withhold permits, authorizations or verifications if the Property does not comply with the Town’s customary requirements for developments and in accordance with the Stillson Master Plan and applicable land use guidelines.

4. Restrictive Covenant. The Town acknowledges and agrees that the Restrictive Covenant and any Notice of Lien (as defined in and in the form attached to the Restrictive Covenant) between Town and Borrower are hereby irrevocably made and shall be subject and unconditionally subordinate to the Loan Documents, including, without limitation, (A) the liens created by the Deed of Trust and any and all renewals, extensions, modifications, assignments, replacements, or consolidations thereof; (B) all of the terms, covenants and conditions contained in the Loan Documents, including, without limitation, any and all of such advances, interest, expenses, charges and fees that are secured by the Deed of Trust and rights, privileges, and powers of Lender under the Loan Documents and all renewals, extensions, modifications, assignments, replacements, or consolidations thereof; and (C) the liens, terms, covenants and conditions contained in any security or loan documents (including, without limitation, any and all advances, interest, expenses, charges and fees) of any commercial lender who shall hereafter refinance the Loan in an amount equal to or less than all of the amount to pay in full Loan at such time of refinance. Upon Lender’s foreclosure of the Deed of Trust or deed in lieu thereof, the Restrictive Covenant and any Notice of Lien shall automatically terminate and shall be deemed null and void and of no further force or effect.

5. Town Agreements. Notwithstanding any provision in the Project Agreement to the contrary, without prior written approval of the Lender during the Standstill Period, the Town

will standstill from (i) proceeding with or assuming any responsibilities of the Borrower under the Project Agreement (except to complete the Public Improvements); (ii) entering the Property without an easement or license approved in writing by Lender which approval will not be unreasonably withheld (except for the purposes of constructing the Public Improvements, or as is customarily required for developments under the authority of the Town for inspections for issuances of permits or verifications of completion of improvements or for authorized governmental functions of the Town); (iii) taking possession of the Project, materials or any equipment relating to the Project; or (iv) terminating the Project Agreement. For purposes of this subsection 5 and otherwise in the Agreement, the “Standstill Period” means from the Effective Date and ending ninety (90) days after Lender’s receipt from the Town of written notice describing the Borrower’s default or event of default under the Project Agreement (“Town Default Notice”) or such longer time as Lender may need if within ninety (90) days of receipt of the Town Default Notice, Lender shall deliver to Town evidence that is has (x) commenced an action for appointment of receiver; (y) commenced foreclosure; or (z) is pursuing a cure for the event of default or default described in the Town Default Notice.

6. Estoppel. The Town and Borrower represent and warrant that all of the following are true:

(a) The “Master Plan” as defined in the Project Agreement has been approved by the Town;

(b) The budget for Phase 1 has been approved by the Town and the Town will be contributing \$11,100,000.00 to the costs of construction for Phase 1 Project which the Town and Borrower agree will be expended in full for costs of the Phase 1 Project before the Borrower is entitled to draw on the Loan;

(c) Neither the Town or Borrower have a right to terminate the Project Agreement pursuant to Section 9 of the Agreement with respect to the Phase 1 Project and if the Project Agreement shall be terminated with respect to any future phase of the Project, the Project Agreement still remains with respect to the Phase 1 Project;

(d) The Town has approved the plans and specifications for the Phase 1 Project and all of the public improvements required for the development of the Phase 1 Project have been approved;

(e) As of the Effective Date, the Project and any and all applications, plans, agreements and other required submittals in connection with the Project comply with all zoning and land use approvals of the Town, including site plan approvals and the site plan has been approved, and there are no conditions remaining outstanding for the Town approval of the site plan;

(f) The Project Agreement is in full force and effect and has not been modified, amended or assigned other than pursuant to this Agreement;

(g) The Improvement Agreement is in full force and effect and has not been modified, amended or assigned other than pursuant to this Agreement;

(h) Neither Town nor Borrower is in default under any of the terms, covenants or provisions of the Project Agreement, and the Town knows of no event or circumstance

which, with the passage of time or the giving of notice, or both, would constitute an event of default under the Project Agreement;

(i) Neither Town nor Borrower has commenced any action or given or received any notice for the purpose of terminating the Project Agreement; and

(j) The Town has the full power and authority to enter into this Agreement.

7. No Amendments or Termination. The Town and Borrower agree that the Project Agreement shall not be terminated, amended or modified without the prior written consent of Lender.

8. Notices to Lender and Town. Borrower and the Town, respectively agree to provide Lender with any and all notices delivered between them in connection with the Project and under the Project Agreement.

9. Repayment of Loan.

(a) The Town and the Borrower acknowledge that the Loan Documents require at all times that the Loan proceeds left to be drawn pursuant to the Loan Documents together with Borrower's equity paid into the Phase 1 Project are sufficient to complete construction the Phase 1 Project. If the remaining Loan funds plus Borrower's equity paid into the Phase 1 Project are insufficient to fund the Phase 1 Project, Lender will send notice thereof to Borrower and the Town ("Budget Shortfall Notice"). Upon receipt of the Budget Shortfall Notice, if Borrower shall not fund the shortfall set forth therein, the Town will fund the shortfall, subject to Paragraph 10 of this Agreement.

(b) In the event of default under the Loan which is uncured by the Borrower for ninety (90) days, Town will pay the Loan in full, including without limitation all fees, costs, interest, and principal, subject to Paragraph 10 of this Agreement. Upon receipt of payment of the Loan, Lender will release the lien of the Deed of Trust and this Agreement will terminate. Borrower authorizes and the Lender agrees to accept the payment in full of the Loan from the Town.

10. Annual Appropriation. Any payment of the Loan or other financial obligation of the Town under this Agreement payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available by the Town Council of the Town of Breckenridge, Colorado. If sufficient funds shall not be made available, the Town shall have no financial obligation hereunder. The Town's obligations hereunder shall not constitute a general obligation indebtedness or multiple-year direct or indirect debt or other financial obligation whatsoever within the meaning of the Constitution or laws of the State of Colorado.

11. Further Assurances. So long as the Deed of Trust shall remain a lien upon the Property or any part thereof, the parties hereto, and their respective successors or assigns, shall execute, acknowledge and deliver, promptly after being requested to do so any and all further instruments in recordable form reasonably requested by the requesting party for the purpose of confirming and carrying out the purpose and intent of the foregoing covenants. Promptly upon repayment in full of the Loan, Lender will release the lien of the Deed of Trust, unless Lender determines in its reasonable discretion that any such repayment of the Loan may be considered a

“preference” as such term is used by applicable bankruptcy law or may otherwise be set aside or subject to return or recovery. Upon the release of the Deed of Trust, this Agreement shall be deemed to have terminate.

12. Notices. Any notice from Lender to Borrower, or Borrower to Lender, shall be given in the manner set forth in the Loan Documents. Any notice from the Town to Lender, or Lender to the Town, shall be in writing, shall be given by certified mail, return receipt requested, by Federal Express or other nationally recognized overnight delivery service, or delivered by hand, addressed as follows, or at such other address as a party entitled to receive notices hereunder (a “Notice Party”) may notify the other Notice Parties in writing:

If to the Town: Town of Breckenridge
Attn:

With a Copy to: _____

If to Lender: FirstBank
Attn: Presley Ilieva
12345 West Colfax Avenue
Lakewood, Colorado 80215

With a Copy to: Lewis Roca Rothgerber Christie LLP
Attn: Lindsay McKae, Esq.
1601 19th Street, Suite 3000
Denver, Colorado 80202

Any notice given hereunder if given by certified mail will be deemed received when delivered, or if delivery is refused, when delivery is first attempted in the ordinary course. Any notice sent by hand delivery shall be deemed received when actually received. Any notice sent by Federal Express or any nationally recognized overnight courier service shall be deemed received one business day after having been deposited with such overnight courier service if designated for next business day delivery.

13. Specific Performance and Injunctive Relief. Notwithstanding the availability of any other remedies, the non-defaulting party hereunder shall be entitled to obtain specific performance, mandatory or prohibitory injunctive relief, or other equitable relief requiring any defaulting party to cure any breach by it of the terms of this Agreement or refrain from repeating any breach or default hereunder

14. No Waiver, Remedies. No failure on the part of a party hereto to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of that right or any

other right (except as specifically referenced in this Agreement); nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise of the right or the exercise of any other right. All remedies are cumulative and not exclusive of any remedies provided by law or in equity. The failure at any time of the Town, Lender, or Borrower to timely comply with this Agreement shall constitute a default. No waiver of any provision of this Agreement shall be effective against any party hereto unless the waiver is in writing and signed by the party against whom the waiver shall apply and shall be a waiver only with respect to the specific instance involved, nor shall the same establish a course of conduct.

15. Modification of Loan Documents. No renewal or extension of time of payment or modification of the Loan Documents, no release or surrender of security for the payment thereof, no delay in the enforcement of payment thereof and no delay or omission in exercising any right or power under the Loan Documents, shall in any manner impair or adversely affect the rights of Lender under this Agreement. The Town hereby waives any further notice of the creation, existence, extension or renewal of the Loan or of any modification of the Loan or of any other actions or matters of any nature whatsoever in connection with the Loan.

16. Miscellaneous.

(a) This Agreement shall be binding upon and inure to the benefit of the parties hereto and each of their successors and assigns.

(b) This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado.

(c) This Agreement may be signed in any number of counterparts, all of which will constitute an original, and all of which when taken together shall constitute one instrument.

(d) Any action concerning this Agreement may be brought in the Colorado District Court for the county in which the Property is located and the parties hereto hereby agree that all claims in respect of any such action or proceeding may be heard in any of the courts described above.

(e) No provision of this Agreement may be changed, waived, discharged or terminated orally, by telephone or by any other means except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

(f) If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provisions shall be fully severable and there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid or enforceable.

(g) Headings used in this Agreement are used for reference purposes only and do not constitute substantive matter to be considered in construing the terms of this Agreement. The Recitals to this Agreement and all exhibits referenced herein are incorporated herein and made a part of this Agreement.

[Remainder of Page Intentionally Left blank]

IN WITNESS WHEREOF, this Agreement Relating to Development and Subordination is executed as of the date and year set forth above.

LENDER:

FIRSTBANK,
a Colorado state banking corporation

By: _____
Name:
Title:

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2024, by _____, as _____ of FirstBank, a Colorado state banking corporation.

WITNESS MY HAND AND OFFICIAL SEAL.

My Commission expires: _____.

[S E A L]

Notary Public

EXHIBIT A

The Property

Legal Description