

COUNCIL BILL NO. 14

Series 2024

A BILL FOR AN ORDINANCE APPROVING THE SOL CENTER ROOF LEASE BETWEEN THE TOWN OF BRECKENRIDGE AND THE FAMILY INTERCULTURAL RESOURCE CENTER (FIRC).

WHEREAS, the FIRC owns the real property at 24 Rapid Drive in Breckenridge, Colorado; and

WHEREAS, the Town Council agrees to lease the Sol Center Roof from the FIRC for a period of ten (10) years for the purposes of installing, operating, and maintaining a Solar PV system to provide renewable energy to the building; and

WHEREAS, a proposed Lease has been prepared by the Town Attorney and reviewed by the Town Council; and

WHEREAS, Section 15.4 of the Breckenridge Town Charter provides: The council may lease, for such time as council shall determine, any real or personal property to or from any person, firm, corporation, public and private, governmental or otherwise.

and;

WHEREAS, the term of the proposed Lease with the FIRC exceeds one year in length;

and;

WHEREAS, Section 1-11-4 of the Breckenridge Town Code requires that any real estate lease entered into by the Town that exceeds one year in length must be approved by ordinance.

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

Section 1. The Solar Panel Rooftop Lease Agreement attached hereto as **Ex. A-1**, entitled "A Lease between the Family Intercultural Resource Center and the Town of Breckenridge" is hereby approved, and the Town Manager is authorized, empowered, and directed to execute such agreement for and on behalf of the Town of Breckenridge.

Section 2. Minor changes to or amendments of the approved agreement may be made by the Town Attorney if the proposed changes or amendments do not substantially affect the consideration to be received or paid by the Town pursuant to the approved agreement, or the essential elements of the approved agreement.

Section 3. 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 14th day of May, 2024.

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TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By: _____
Kelly Owens, Mayor

ATTEST:

Helen Cospolich, CMC,
Town Clerk

SOLAR PANEL ROOFTOP LEASE AGREEMENT

THIS ROOFTOP LEASE is made and entered into as of the _____ day of _____, ____ (the "Effective Date"), between Family Intercultural Resource Center ("Landlord"), and the Town of Breckenridge, a home rule municipal corporation ("Tenant").

1. DEFINITIONS

In addition to terms defined in this Lease, the following terms set forth below will be defined as follows:

- a. "Building" will mean that certain building located at 24 Rapid Drive, Breckenridge, CO 80424, currently known as the McCain Property.
- b. "Rooftop" will mean the applicable portions of the roof of the Building designated by Landlord as the space for the Solar Equipment.
- c. "Solar Equipment" will mean Tenant's solar generation facility and related equipment including wiring, cabling and other accessories used therewith for installation, operation and maintenance on the Rooftop and described on Appendix 1, attached hereto and made a part hereof.

2. LEASE TO USE AND ACCESS TO ROOFTOP; SPACE FOR INCIDENTAL EQUIPMENT.

- a. Subject to the terms and conditions contained in this Lease, Landlord hereby grants to Tenant and Tenant agrees to accept the non-exclusive right to use the Rooftop and an area in the building for any incidental equipment necessary for operation of the Solar Equipment for the installation, operation and maintenance at Tenant's sole cost and expense, of the Solar Equipment. Throughout the Term of the Lease, as described below, Landlord hereby grants Tenant a license to access the Building, including all elevators, stairways or other access points of egress and ingress for purposes of accessing the Rooftop for the purpose described.
- b. Tenant will inspect the rooftop once it has been constructed and acknowledges that Landlord has made no representations or warranties respecting the condition thereof or otherwise or its suitability for Tenant's use, and that, except as may be expressly provided to the contrary in this Lease, Landlord will make any alterations, improvements, or repairs in and to the Rooftop to make same ready for Tenant's use and occupancy.

c. EQUIPMENT SPACE

Landlord acknowledges that Tenant will be installing equipment in the Equipment Space and that the purchase, installation, maintenance and use of the Equipment Space will be at Tenant's sole cost and expense and is subject to the terms of this Lease.

3. TERM OF ROOFTOP LEASE

This Lease will commence on the Effective Date and will terminate on the date that is ten (10) years from the Effective Date (the "Term"). Upon termination of this Lease, ownership of the Solar Equipment will automatically transfer to the Landlord. Tenant will surrender the Rooftop and Solar Equipment to Landlord in good condition and repair (subject to ordinary wear and tear). If Tenant is in default of this Lease, then Landlord can prohibit the removal of any of the Solar Equipment, in its sole discretion, until the default is cured.

4. FEES PAID FOR ROOFTOP LEASE

Tenant agrees to pay Landlord a fee for this Lease, without notice, setoff or demand, of ten dollars (\$10.00) per year (the "Lease Fee"). Such payments will be due on the Effective Date and on the first day of January of each succeeding calendar year of the Term of the Lease.

5. RESPONSIBILITIES OF TENANT

a. Plans and Specs of Solar Equipment. Tenant at Tenant's sole expense will procure and install the Solar Equipment in accordance with its plans and specifications, which plans and specifications Tenant will share with Landlord. Tenant is responsible for all costs associated with the Lease, including the costs of operating and maintaining the Solar Equipment.

b. Use and Maintenance. This Lease is limited to allowing Tenant only to install, maintain and operate the Solar Equipment on the Rooftop in the location or locations described in Appendix 1.

Tenant agrees not to use or permit the use of the Rooftop for any purpose which is illegal, dangerous to life, limb or property or which, in Landlord's reasonable opinion, creates a nuisance or which would increase the cost of insurance coverage with respect to the Building. In particular, no environmentally hazardous materials will either be used or stored in or around the Rooftop and no such materials will be used in any of the Solar Equipment installed by Tenant on the Rooftop. Tenant acknowledges and agrees that Tenant is solely responsible for employing, contracting or authorizing individuals or entities who are experienced, qualified or licensed, if required, to access the Equipment Space or maintain or operate the Solar Equipment, and only such individuals may be granted such access or authorized to maintain or operate the Solar Equipment. Tenant and Landlord understand that the Equipment Space must be kept locked and secure at all times.

c. Care and Maintenance by Tenant. Tenant agrees not to commit any waste or allow any waste to be committed within or on any portion of the Rooftop and will not injure the Rooftop or Building but will maintain the Rooftop in a clean condition and in good repair, except as to damage to be repaired by Landlord, as provided herein. Tenant will remove all excess cable, tools and equipment and will keep all areas neat and clean at all times. At the termination of this Lease, Tenant agrees to deliver the Rooftop to Landlord in as good condition as at the date of the commencement of the term of this Lease, ordinary wear and tear excepted.

d. Site Technical Standards. Tenant agrees that the installation, operation and maintenance of its Solar Equipment will at all times, and at Tenant's sole cost and expense, comply with such standards for the Rooftop as may from time to time be established by all laws, rules, regulations, ordinances and codes, whether now or hereafter existing, of all federal, state and local governmental authorities or by Landlord in Landlord's reasonable discretion, including, without

limitation, technical standards relating to structural engineering, and Town of Breckenridge construction permits (the "Site Technical Standards").

e. Removal of Solar Equipment. Tenant will transfer ownership of its Solar Equipment within ten (10) business days after the termination of this Lease to Landlord.

6. RESPONSIBILITIES OF LANDLORD

a. Rights of Access and Provision of Space and Facilities. Landlord will provide employees or agents of Tenant rights of ingress and egress in those portions of the Building controlled by Landlord and Landlord will provide Tenant with access to and use of the Rooftop and Equipment Space consistent with the requirements of the installation, operation, maintenance, and service of the Solar Equipment.

b. Non-Interference. Tenant will have the sole and exclusive right to install and operate solar energy generating equipment on the Rooftop. In no event during the Term will Landlord construct, build or locate, or allow others to construct, build, or locate any equipment or facilities (solar or otherwise) that would interfere with the Solar Equipment or otherwise engage in, or allow others to engage in activity, that might impede the Solar Equipment's access to the sun or decrease the output or efficiency of the Solar Equipment.

7. USE OF ELECTRICAL SERVICES BY TENANT

Landlord will furnish Tenant electrical facilities to provide sufficient power for Tenant's Solar Equipment; provided, however, that Tenant will be responsible for (i) the cost of installing such facilities, (ii) the cost of the installation of any separate meters required by Tenant, (iii) the responsibility and cost of maintenance, and (iv) the sums charged Landlord by the applicable utility for such service as reflected by such meter. Temporary interruption in the power provided by such facilities will not render Landlord liable in any respect for damages to either person or property nor relieve Tenant from fulfillment of any covenant or agreement hereof. If any of Tenant's Solar Equipment fails because of a loss of electrical power, Landlord will use reasonable diligence to restore electrical power promptly, but Tenant will have no claim for damages on account of any interruption in electrical service occasioned thereby or resulting therefrom.

8. CONSTRUCTION, ALTERATION AND MAINTENANCE

In addition to and not in limitation of any provision herein concerning construction, alterations, installation and maintenance of any equipment installed herewith, Tenant will comply and, to the extent applicable, the contractors or subcontractors of Tenant will comply with the provisions of Appendix R-3, attached hereto, together with such other rules and regulations promulgated from time to time by governing federal, state and local governmental authorities or Landlord.

9. INDEMNIFICATION.

Tenant agrees to indemnify and defend the Landlord, its officers, employees, insurers, and self-insurance pool against all liability, claims, and demands, on account of injury, loss, or damage, including, without limitation, claims arising from onsite personal injuries, eviction processes, or any other violation pertaining to property management standards, bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind

whatsoever, which arise out of or are in any manner connected property management and/ or with this Agreement, to the extent that such injury, loss, or damage is caused by:

- (i) the negligence or intentional wrongful act of Tenant or any officer, employee, representative or Tenant's subcontractors or subconsultants; or
- (ii) Tenant's breach of this Agreement.

except to the extent such liability, claim or demand arises through the negligence or intentional wrongful act of the Landlord, its officers, employees, or agents, or Landlord's breach of this Agreement. To the extent indemnification is required under this Agreement, Tenant agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims, or demands at its expense, and to bear all other costs and expenses related thereto, including court costs, expert witness fees, and attorney fees.

10. LAWS AND REGULATIONS

Tenant agrees to comply with all applicable laws, ordinances, rules, and regulations of any governmental entity or agency having jurisdiction with respect to each of the Lease, the Building or the Solar Equipment.

Tenant warrants that the equipment installed in conjunction with this Lease will comply with manufacturers' specifications, such specifications to comply with all federal, state and local rules and regulations. Tenant will, at Tenant's sole cost, take all measures necessary to ensure that such equipment is within manufacturers' specifications and that all equipment strictly complies with all laws, rules, regulations, ordinances and codes, whether now or hereafter existing, of all federal, state and local governmental authorities and that the equipment strictly complies with all contractual obligations to which Tenant is bound in connection with such equipment and as applicable to the Solar Equipment or similar facilities.

Tenant will use best efforts and take all measures necessary to ensure that the Solar Equipment installed by Tenant does not interfere with or disturb the operation of any other equipment or business of Landlord or of any other tenant, or occupant of the Building. In the event of such interference or disturbance to an existing tenant, occupant, Tenant will make such necessary adjustment to its equipment to correct such interference or disturbance.

In addition to all indemnifications provided by this Lease, Tenant expressly warrants to indemnify and hold Landlord harmless, with counsel acceptable to Landlord, against any claim, cause of action, damage, liability of any type or nature arising from a claim by any party arising under this section.

11. ENTRY BY LANDLORD

Tenant agrees to permit Landlord or its employees, agents or representatives to inspect any portion of the Solar Equipment installed in or on the Building by Tenant at all times (and without prior notice by Landlord to Tenant) to inspect the same, to clean or make repairs, alterations or additions to the Equipment Space or to the Building, and Tenant will not be entitled to any abatement or reduction of Lease Fees by reason thereof.

12. ASSIGNMENT, SUBLETTING AND TRANSFERS BY AGREEMENT

a. Tenant may assign this Lease or its rights hereunder to (a) any corporation, company or other entity which is controlled by, or is under common control with, Tenant, (b) any partnership in which Tenant has a controlling interest or (c) any entity which has purchased the Solar Equipment. In the case of any assignment, the assignee will be deemed to have assumed, without releasing Tenant, all obligations under this Lease.

Landlord may assign this Lease to any party in its sole discretion.

b. Statement by Landlord. At the request of Tenant or a Mortgagee, Landlord (a) will execute, acknowledge and deliver to such Tenant or Mortgagee a written statement declaring: (i) either that the Lease is unmodified and in full force and effect, or the manner in which the Lease had been modified and whether the Lease as so modified is in full force and effect; (ii) the dates to which Tenant's monetary obligations hereunder have been paid in advance; (iii) whether Tenant is or is not then in default hereunder; and (iv) whether any past defaults have been fully cured and (b) enter into an estoppel and consent agreement recognizing the rights of the Mortgagees as may be reasonably requested by Mortgagees.

13. INSURANCE

Prior to the commencement of any work in, on or about the Building and during the term of this Lease, Tenant will obtain and maintain any required workers compensation insurance, employer's liability, and commercial general liability insurance providing commercially reasonable limits of coverage.

14. NOTICE

All notices, demands, requests, or other communications which are required to be given, served, or sent by one party to the other pursuant to this Lease will be in writing, and will be mailed, postage pre-paid, by registered or certified mail, or by a reliable overnight courier service with delivery verification, addressed as follows:

If to Landlord to: Brianne Snow
251 West 4th Street
Silverthorne, CO 80498

and

If to Tenant to: Shannon Haynes, Town Manager
150 Ski Hill Road
P.O. Box 168
Breckenridge, CO, 80424

Each notice, demand, request, or communication which is mailed or delivered in the manner described above will be deemed sufficiently given, served, sent or received for all purposes at such time as it is delivered to the addressee first named above for each party (with the return receipt of verification of delivery being deemed conclusive evidence of such notice), or at such time as delivery is refused by addressee upon presentation.

15. SEVERABILITY

If any term or provision of this Lease, or the application thereof to any person or circumstance will, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected thereby, and each term and provision of this Lease will be valid and enforced to the fullest extent permitted by law.

16. GOVERNING LAW

This Lease and the rights and obligations of the parties hereto will be interpreted, construed, and enforced in accordance with the laws of the State of Colorado. Venue for any dispute shall be in the district court of Summit County.

17. INDEPENDENT CONTRACTOR

Tenant will at all times act in its own capacity and right as an independent contractor. Tenant will have no right to make purchases, or to obligate Landlord to expend any funds or to perform any obligations other than as provided in this Lease or as may be authorized in writing by Landlord. Tenant agrees that it and any of its employees or agents will at all times present and represent itself or themselves as representatives of Tenant.

18. FORCE MAJEURE

Except with respect to Tenant's payment obligations under this Lease, if the performance by a party to this Lease of any nonmonetary obligation hereunder is interfered with by reason of any circumstances without the fault or negligence, or beyond the reasonable control, of either party, including fire, explosion, power failure, acts of God, war, revolution, civil commotion, or acts of public enemies, any law, order, regulation, ordinance, requirement, acts of, or failures to act by, any government or any legal body or representative of any such government, labor unrest, including without limitation, strikes, slowdowns, picketing or boycotts, embargo, delay of a common carrier, or any act of any tenant or tenant's agents, or any other cause beyond such party's control, then the party affected will be excused from such performance on a day-to-day basis to the extent of such interference (and the other party will likewise be excused from performance of its obligations on a day-to-day basis to the extent such other party's obligations relate to the performance so interfered with), provided that the affected party will use reasonable efforts to remove such causes of non-performance.

19. OWNERSHIP OF EQUIPMENT

Prior to the termination of this Lease in accordance with its terms, Landowner will have no ownership or other interest in any Solar Equipment installed on the Building. The manner of

operation of the Solar Equipment, including but not limited to decisions on when to conduct maintenance, is within the sole discretion of Tenant, subject to Landlord's reasonable rules and regulations as it relates to access to the Rooftop. Tenant will, in good faith, work to coordinate all construction and maintenance (emergency repairs excepted) of the Solar Equipment with Landlord so as to not unreasonably interfere with Landlord's use of the Property.

20. ENTIRE AGREEMENT

This Lease embodies the entire agreement between the parties hereto with relation to the transaction contemplated hereby, and there have been and are no covenants, agreements, representations, warranties or restrictions between the parties hereto with regard thereto other than those specifically set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of this _____ day of _____, ____.

LANDLORD:

By:

Name:

Title:

TENANT:

By:

Name:

Title:

Appendix 1

SOLAR EQUIPMENT