

INTERGOVERNMENTAL AGREEMENT
(Silverthorne Childcare Authority)

This Intergovernmental Agreement establishing the Silverthorne Childcare Authority (this "Agreement") is dated June 23, 2021 (the "Effective Date") and is between the TOWN OF SILVERTHORNE, a Colorado municipal corporation ("Town") and SUMMIT COUNTY, COLORADO, acting by and through the BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY, COLORADO ("County"). Town and County are sometimes referred to individually as a "Party," and together as the "Parties."

Background

The Parties entered into a Preliminary Intergovernmental Agreement dated June 11, 2021 related to the joint development of a childcare facility in Silverthorne Colorado. The purpose of the Preliminary Intergovernmental Agreement was to describe the intended ownership and operational structures for the development of a new childcare facility (the "Project," or "Facility" in reference to the improvements on the Property as defined in the Preliminary Intergovernmental Agreement) and to establish the initial framework for the work to be completed by the Parties in the pre-development stage for the Facility. The Parties recognize that due to limited financial resources, a partnership is prudent and necessary to bring a child care facility in the Smith Ranch Neighborhood to fruition. Town has agreed to provide land in the Smith Ranch Neighborhood for a childcare facility as well as ongoing financial support for the facility's childcare operations and County has agreed to provide substantial funding for the facility, subject to the terms and conditions of the Preliminary Intergovernmental Agreement.

Purpose

The Parties have determined that it is desirable to create a separate legal entity, to be known as the "Silverthorne Childcare Authority," to own, operate, manage, control, and rent the Facility and real property upon which it is situated. The Purpose of this Agreement is to establish the Authority in order to facilitate the transfer of property necessary before the Parties can execute a final Intergovernmental Agreement so that construction of the Facility may begin.

ARTICLE 1 - THE AUTHORITY

Section 1. Establishment of Authority. The "Silverthorne Childcare" ("Authority") is hereby established in conformity with C.R.S. § 29-1-2.03.5, and the provisions of that statute apply to the Authority.

Section 2. Legal Status of Authority. The Authority shall be a political subdivision and a public corporation, separate from the Parties.

Section 3. Purpose of Authority. The purpose of the Authority is to own, operate, manage, and control the Facility, all as provided in this Agreement. The Facility will house an early learning facility for young children from ages 6 week to 6 years. The facility will contain infant, toddler, and Pre-K classrooms. The Facility will be located on Tracts C-1 and C-2 of the Smith Ranch Subdivision as described on the Plat depicted in Exhibit A, which is incorporated

herein by reference. The Authority will not be involved in the day-to-day childcare operations at the Facility. Childcare operations will be managed by a non-profit organization organized pursuant to 26 U.S.C. § 501(c)(3) (the "Organization") by the Child Care Startup Coordinator hired and compensated by Town.

Section 4. Authority's Office. The office of the Authority shall be the Summit County Courthouse, 208 Lincoln Ave, Breckenridge, Colorado, or such other place as the Board of Directors of the Authority (the "Board") may designate.

Section 5. Books and Records of Authority. Unless otherwise directed by the Board the books and records for the Authority shall be maintained at the Summit County Courthouse, 208 Lincoln Ave, Breckenridge,, Colorado. Each Party has the right, at its sole cost and expense, at all reasonable times during usual business hours to audit, examine, and copy the books and records of the Authority. Such right may be exercised through any agent or employee of such Party. The books and records of the Authority may be subject to public inspection and copying pursuant to the Colorado Open Records Act, Title 24, Article 72, Part 2, C.R.S., or other applicable law.

Section 6. Seal. The Board shall adopt a seal for the Authority that shall be circular in form and shall contain the name of the Authority and such other information as the Board shall determine.

ARTICLE 2 - POWERS OF THE AUTHORITY

Section 1. Powers of Authority.

A. The Authority shall have all powers, privileges, and duties vested in or imposed on it by the Intergovernmental Relations Statute, this Agreement and any other applicable law, as well as all rights, powers, privileges, and duties arising from or inherent to its ownership of the Project.

B. Without limiting the generality of the preceding Section, the Authority shall have the following powers:

- i. to own, operate, manage, and control the Project;
- ii. to obtain: (a) general liability insurance, and (b) property and casualty insurance on the Project, with such insurance providers and in such amounts as the Board shall determine;
- iii. to establish and amend from time to time the qualifications and limitations of persons to whom the units in the Project shall be rented;
- iv. to hire and terminate managing agents and other employees, agents, and independent contractors, as well as attorneys and accountants;
- v. to institute, defend, or intervene in litigation or administrative proceedings in accordance with applicable law;

- vi. to make contracts and incur liabilities, subject to any applicable restriction or limitation;
- vii. to regulate the use, maintenance, repair, replacement, and modification of the Project;
- viii. to acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property;
- ix. to grant easements, leases, licenses, and concessions through or over the Project;
- x. to establish and amend from time to time rules and regulations governing the use of the Project;
- xi. to enforce covenants, restrictions, and conditions affecting the Project; and
- xii. to exercise any other powers conferred by this Agreement or applicable law.

C. Notwithstanding C.R.S. 29-1-203(5), the Authority shall not have the power to make loans to any government pursuant to such section.

D. The foregoing enumeration of powers shall not limit or restrict in any manner the exercise of other and further rights and powers which may now or hereafter be allowed or permitted by law; and the powers specified in each of the sections or paragraphs of this Article 2 are independent powers, not to be restricted by reference to or inference from the terms of any other paragraph or provisions of this Article 2.

ARTICLE 3 - BOARD OF DIRECTORS

Section 1. Powers and Duties. The Authority shall be governed by a Board of Directors as described in this Article 3. All legislative power of the Authority shall be vested in the Board. The Board shall exercise and perform all powers, privileges, and duties vested in or imposed on the Authority. Subject to the provisions of this Agreement, the Board may delegate any of its powers to any director, officer, employee, or agent of the Authority.

Section 2. Directors. The Board shall be composed of three (6) directors. The Town shall select and appoint three (3) directors, and the County shall select and appoint three (3) directors. Each Party may also appoint Alternate Director(s) as its proxy to attend and represent it at a Board meeting whenever a regular director is unable to attend the Board meeting, and such Alternate Director may vote in accordance with this Agreement on any matter which may come before the Board at such meeting.

Section 3. Terms of Office. The term of office of each director shall commence with his or her appointment and shall continue until the date on which a successor is duly appointed.

Section 7. Resignation, Removal, and Vacancies. Any director may resign at any time, effective upon receipt by the Secretary or the Chair of written notice signed by the person who is resigning. A director may be removed at any time by the governing body of the Party that appointed him or her, in its sole and exclusive discretion, effective upon receipt by the Secretary or the Chair of written notice signed by a duly authorized representative the governing body of

the appointing Party. Vacancies in the office of any director shall be filled in the same manner in which the vacant office was originally filled pursuant to Section 2 of this Article 3.

Section 5. Compensation. Directors shall serve without compensation, but may be reimbursed for expenses incurred in serving in such capacities upon such terms and pursuant to such procedures as may be established by the Board.

Section 6. Voting; Quorum. All actions of the Board shall be approved by the affirmative vote of at least a majority of a quorum of the directors eligible to vote thereon. A quorum shall consist of a majority of the directors then in office.

Section 7. Bylaws and Rules. The Board may adopt bylaws or rules governing the activities of the Authority and the Board, including, but not limited to, bylaws or rules governing the conduct of Board meetings, voting procedures, and other rules or procedures. The bylaws shall be consistent with this Agreement, and other applicable law.

ARTICLE 4 - OFFICERS AND DUTIES

Section 1. Generally. The Board shall annually select and appoint a Chair, a Vice Chair, a Secretary, and a Treasurer. The Board also may appoint one or more subordinate officers and agents, each of whom shall hold his or her office or agency for such term and shall have such authority, powers, and duties as shall be determined from time to time by the Board. The Chair and the Vice Chair shall be directors. Other officers may, but need not, be directors. Any two or more of such offices may be held by the same person, except that the offices of Chair and Secretary may not be held by the same person. All officers of the Authority shall be persons of the age of eighteen (18) years or older.

Section 2. Chair. The Chair shall have the power to call meetings of the Board; the power to execute, deliver, acknowledge, file and record on behalf of the Authority such documents as may be required by this Agreement, the Act or other applicable law; and such other powers as may be prescribed from time to time by the Board. The Chair may execute and deliver contracts, deeds, and other instruments and agreements on behalf of the Authority as are necessary or appropriate in the ordinary course of its activities or as are duly authorized or approved by the Board. The Chair shall have such additional authority, powers, and duties as are appropriate and customary for the office of the chair of the board of directors of entities such as the Authority, and as the Board may otherwise prescribe.

Section 3. Vice Chair. The Vice Chair shall be the officer next in seniority after the Chair and, upon the death, absence, or disability of the Chair, shall have the authority, powers, and duties of the Chair. The Vice Chair shall have such additional authority, powers, and duties as are prescribed by the Board.

Section 4. Secretary. The Secretary shall give, or cause to be given, notice of all meetings (including special meetings) of the Board, keep written minutes of such meetings, have charge of the Authority's seal, be responsible for the maintenance of all records and files and the preparation and filing of reports to governmental agencies (other than tax returns), have authority to impress or affix the Authority's seal to any instrument requiring it (and, when so impressed or affixed, it may be attested by his or her signature), and have such other

authority, powers, and duties as are appropriate and customary for the office of secretary of entities such as the Authority, and as the Board may otherwise prescribe. If a Treasurer has not been appointed, the Secretary shall also serve as Treasurer and may use the title of Treasurer in performing the functions of Treasurer.

Section 5. Treasurer. The Treasurer shall, subject to rules and procedures established by the Board, be responsible for the custody of the funds of the Authority, and shall be responsible for the preparation and filing of all tax returns, if any, required to be filed by the Authority. The Treasurer shall receive all moneys paid to the Authority and, subject to any limits imposed by the Board or the Chair, shall have authority to give receipts and vouchers, to sign and endorse checks and warrants in the Authority's name and on the Authority's behalf, and to give full discharge for the same. The Treasurer shall also have charge of disbursement of the funds of the Authority, shall keep full and accurate records of the receipts and disbursements, and shall deposit all moneys and other valuables in such depositories as shall be designated by the Board. The Treasurer shall deposit and invest all funds of the Authority in accordance with this Agreement and laws of the State of Colorado applying to the deposit and investment of funds of a separate legal entity formed under the Intergovernmental Relations Statute. The Treasurer shall have such additional authority, powers, and duties as are appropriate and customary for the office of treasurer of entities such as the Authority, and as the Board may otherwise prescribe. If a Treasurer has not been appointed, the Secretary shall also serve as Treasurer and may use the title of Treasurer in performing the functions of Treasurer.

Section 6. Resignation and Removal. Any officer may resign at any time effective upon receipt by the Secretary or the Chair of written notice signed by the person who is resigning, and may be removed at any time by the Board in its discretion.

Section 7. Changes to Authority, Powers, and Duties. Notwithstanding any other provision of this Article 4, the Board at any time may expand, limit, or modify the authority, powers, and duties of any officer.

Section 8. Vacancies. Vacancies in the office of any officer shall be filled in the same manner in which such office was originally filled.

Section 9. Compensation. The Authority may compensate officers who are not directors for services performed, and may reimburse them for expenses incurred in serving in such capacities upon such terms and pursuant to such procedures as may be established by the Board.

Section 10. Additional Duties. The officers of the Authority shall perform such other duties and functions as may from time to time be required by the Authority, this Agreement, or any other applicable law, rule, regulation, or contract.

ARTICLE 5 - AUTHORITY MEETINGS SUBJECT TO OPEN MEETINGS LAW

Section 1. Open Meeting Law Applies. All meetings of the Authority shall be subject to the provisions of the Colorado Open Meetings Law, Title 24, Article 6, Part 4, C.R.S., as amended from time to time. Without limiting the generality of the preceding sentence, notice of each regular or special meeting of the Authority shall be posted by the Secretary on the bulletin board located in the south foyer on the main level of the Summit County Courthouse not less than

twenty four (24) hours prior to the holding of the meeting. The posting shall include specific agenda information where possible.

Section 2. List of Interested Parties. The Secretary shall maintain a list of persons who, within the previous two (2) years, have requested notification of all meetings of the Authority, or meetings when certain specified polices will be discussed, and shall provide not less than twenty four (24) hours advance notification of such meetings to such persons. Notice may be given by telephone, electronically, fax, or in person. Such notice as may be provided by the Secretary pursuant to this Section 2 is determined to be reasonable and sufficient. The unintentional failure to provide such advance notice will not nullify actions taken by the Authority at an otherwise properly noticed meeting.

ARTICLE 6 - ARTICLE 6 - FISCAL YEAR; ANNUAL BUDGET; ACCOUNTING; AUDIT

Section 1. Fiscal Year. The first fiscal year of the Authority shall close on December 31, 2021, and thereafter the fiscal year of the Authority shall extend from January 1 of each year to December 31 of each year.

Section 2. Annual Budget. The Board shall adopt an annual budget. The budget shall comply with the requirements of C.R.S. § 29-1-101 et seq.

Section 3. Accounting. The Board shall comply with the requirements of C.R.S § 29-1-501 et seq.concerning accounting.

Section 4. Audit. The Board shall comply with the requirements of C.R.S. § 29-1-601 et seq. concerning an annual audit of the affairs of the Authority.

ARTICLE 7 - AUTHORITY FINANCES

Section 1. Project Funding. The County shall appropriate \$3,000,000 from Summit County Strong Futures tax revenue capital fund for Project pre-development and construction costs. The remaining \$1,000,000 of anticipated cost for of the Project that will be covered by Town's fundraising and grant application efforts shall be provided to the Summit County Finance Department, which will place it into a separate fund designated solely for Authority use for pre-development and construction costs.

Section 2. Contract Invoices. All contract invoices for pre-development and constructions costs shall be received by the Authority's Owner's Representative for the Project and submitted to the Summit County Finance Department for payment upon approval.

Section 3. Allocation of Project Surplus. Any earmarked Strong Futures funds and funds from the Town's fundraising efforts remaining after completion of the Project shall be placed into a fund reserved for capital improvements and necessary repairs (the "Capital Fund"). The Board shall determine future funding sources for capital improvements and necessary repairs after the Capital Fund has been depleted.

Section 4. Allocation of Project Shortfall. In the event that the earmarked Strong Futures funds and Town's fundraising efforts are insufficient to complete the Project, it is agreed that additional Strong Futures funds will be allocated to cover the shortfall.

Section 5. Operating Revenue. Because the child care operations are the responsibility of the Organization, the Authority will not generate revenue. All revenue gains or losses will be retained by the Organization.

ARTICLE 8 - PROJECT PROPERTY

Section 1. Title to Be Held By the Authority. The Parties acknowledge and agree that prior to the Effective Date of this Agreement the Property was solely owned by the Town and that upon the Effective Date the Authority shall own the Property during the term of this Agreement. To accomplish this, the Town agrees to execute and deliver to the Authority an appropriate warranty deed conveying the real property upon which the Project is located to the Authority, subject to all existing liens and encumbrances of record as of the date of the execution of the deed.

Section 2. Waiver of Right to Partition. Neither the Town nor the County have any right to partition the Property or any of the Parties' jointly owned assets exclusively used or associated with the Project, and both the Town and the County hereby irrevocably waive any and all rights that they might have to maintain any action for partition of the Property and such jointly owned assets.

ARTICLE 9 - TERM OF AGREEMENT

Section 1. Term. The term of this Agreement shall commence on the Effective Date, and shall continue until it is terminated by mutual agreement of the Parties or as otherwise provided in this Agreement; provided, however, that this Agreement may not be terminated so long as the Authority has any bonds, notes, or other financial obligations outstanding, unless provision for full payment of such obligations, by escrow or otherwise, has been made pursuant to the terms of such obligations.

ARTICLE 10 - DEFAULT; RESOLUTION OF DISPUTES

Section 1. Default. A default exists under this Agreement if any Party violates any covenant, condition, or obligation required to be performed under this Agreement. As used in this Section, a Party violating any covenant, condition, or obligation required to be performed under this Agreement is the "Defaulting Party," and the other Party is the "Non-Defaulting Party." If a Defaulting Party fails to cure such default within thirty (30) business days after the other Non-Defaulting Party gives written notice of the default to the Defaulting Party then, at the Non-Defaulting Party's option, the Non-Defaulting Party may terminate this Agreement, subject to the provisions of Article 9 and Article 11 of this Agreement. If a default is not capable of being cured within thirty (30) business days, a Defaulting Party shall not be in default if it commences curing the default within thirty (30) business days after receipt of written notice of default from the Non-Defaulting Party, and thereafter cures such default with due diligence and in good faith. Notwithstanding any Party's right to terminate this Agreement for an uncured default, this Agreement is subject to the rights of any Party to invoke the remaining provisions of this Section.

Section 2. Negotiation. Either Party may give the other Party written notice of any dispute arising out of or related to this Agreement that is not resolved in the normal course of business. The Parties shall attempt in good faith to resolve any such dispute promptly by negotiations between the Parties' authorized representatives. Within fifteen (15) business days after receipt of said notice, authorized representatives shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within sixty (60) business days of the notice of dispute, or if the Parties fail to initially meet within fifteen (15) business days, either Party to the dispute may initiate mediation of the controversy as provided below.

Section 3. Mediation. If the dispute has not been resolved by negotiation as provided above, the Parties shall endeavor to settle the dispute by mediation with a neutral third party. If the Parties encounter difficulty in agreeing on a neutral third party, they may each appoint a neutral third party to mediate.

Section 4. Judicial Action. Any dispute arising out of or relating to this Agreement or the breach, termination, or validity hereof, which has not been resolved by the methods set forth above within thirty (30) days of the initiation of mediation, may be finally resolved by appropriate judicial action commenced in a court of competent jurisdiction. The Parties agree to venue in the courts of Summit County, Colorado with respect to any dispute arising out of or relating to this Agreement. BOTH PARTIES WAIVE THE RIGHT TO A JURY TRIAL IN ACTION TO ENFORCE, INTERPRET, OR CONSTRUE THIS AGREEMENT.

Section 5. Provisional Remedies. The procedures specified in this Article 10 are the sole and exclusive procedures for the resolution of disputes among the Parties arising out of or relating to this Agreement; provided, however, that a Party may seek a preliminary injunction or other provisional judicial relief if, in its judgment, such action is necessary to avoid irreparable damage or to preserve the status quo. Despite such action, the Parties shall continue to participate in good faith in the procedures specified in this Article 10.

Section 6. Performance To Continue. Each Party is required to continue to perform its obligations under this Agreement pending final resolution of any dispute arising out of or relating to this Agreement.

Section 7. Extension Of Deadlines. All deadlines specified in this Article 10 may be extended by mutual agreement.

Section 8. Costs. Each Party shall pay its own costs with respect to negotiation and mediation. The prevailing Party in any judicial action is entitled to reimbursement from the other Party for all reasonable costs and expenses, including attorney fees and expert witness fees, in connection with such judicial action.

ARTICLE 11 - DISTRIBUTION OF ASSETS UPON TERMINATION OF AGREEMENT; RIGHT TO FINAL ACCOUNTING

Section 1. Disposition of Project and Property Upon Termination. Upon the lawful termination of this Agreement as provided herein, except for a termination due to non-appropriation prior to full payment of the Project Debt Service as provided in Article 13, the

Parties shall promptly and in good faith attempt to agree upon a fair and equitable disposition of the Property and the Project, the Parties' jointly owned assets exclusively used or associated with the Project, and all other remaining Project assets, income, and liabilities. For this purpose, authorized representatives of the Parties shall meet not later than fifteen (15) business days after the effective date of termination at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve all issues related to the disposition of the Property and all remaining Project assets, income, and liabilities. If the matter has not been resolved within sixty (60) business days of the effective date of termination of this Agreement, the Property, together with all of the Parties' jointly owned assets exclusively used or associated with the Project, shall be offered for sale for cash at their then fair market value. The "Fair Market Value" of the Property and the Parties' jointly owned assets shall be determined by an appraiser mutually acceptable to the Parties. The appraiser shall be a licensed Colorado real estate broker with no less than ten (10) years' experience in appraising real property in Summit County, Colorado. If the Parties are unable to agree upon an mutually acceptable appraiser, the appraiser shall be selected by the Chief Judge of the Fifth Judicial District. The appraiser's determination shall be binding on the Parties. The cost of the appraisal shall be paid equally by the Parties. Either Party may be the purchaser of the other Party's right, title, and interest in the Property and the Parties' jointly owned assets exclusively used or associated with the Project. The net sale proceeds of the Property and the Parties' jointly owned assets exclusively used or associated with the Project, shall be used to pay the balance of the Project Debt Service for the Project, and any balance of such proceeds shall then be divided equally between the Parties.

Section 2. Right to Final Accounting. In addition to such other remedies as may be available by applicable law or this Agreement, and without regard to a Party's receipt of a share of the net sale proceeds of the Property and the Parties' jointly owned assets exclusively used or associated with the Project as described in Section 1 of this Article 11, either Party has the right to a final accounting of all financial matters associated with the development of the Property and the operation of the Project to assure compliance with the terms and conditions of this Agreement. A request for a final accounting must be made no later than the last to occur of:

A. The expiration of 180 days after the sale of the Property and the Parties' jointly owned assets exclusively used or associated with the Project pursuant to Section 1 of this Article 11; or

B. The expiration of one (1) year after that effective date of the termination of this Agreement.

The failure to make a timely request for a final accounting shall be a waiver of the right to a final accounting.

ARTICLE 12 - INDEMNIFICATION

Section 1. Indemnification. All actions or omissions by any Party or the Authority, including their respective representatives, employees, agents, volunteers, or officials, shall be the sole responsibility of the respective Party. Accordingly, each Party shall fully indemnify, to the extent permissible under Colorado law, the other Party for any damages, claims, costs, expenses, cause of action or liability of any manner, including without limit reasonable attorney's fees, arising out of or relating to the acts or omissions of such Party. The Parties hereto understand and

agree that liability for claims for injuries to persons or property arising out of the actions or omissions of any Party is controlled and limited by the provisions of the Colorado Governmental Immunity Act (the "Immunity Act") Title 24, Article 10, C.R.S., as now or hereafter amended, and that the Parties do not intend to waive by any provision of this Agreement the liability limitations or any other right, immunity, or protection afforded by the Immunity Act or as may otherwise be afforded by law. The indemnity obligations of this Section 1 shall survive the termination of this Agreement and shall be fully enforceable thereafter, subject to any applicable statute of limitation.

ARTICLE 13 - ANNUAL APPROPRIATION

Section 1. Town Obligation Subject to Appropriation. Financial obligations of the Town under this Agreement payable after the current fiscal year in which this Agreement is executed are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available by the Town Council of the Town of Silverthorne, Colorado.

Section 2. County Obligation Subject to Appropriation. Financial obligations of the County under this Agreement payable after the current fiscal year in which this Agreement is executed are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available by the Board of County Commissioners of Summit County, Colorado.

Section 3. Right to Terminate Upon Non-Appropriation. If the governing body of the either Party (the "Non-Appropriating Party") fails to appropriate and budget sufficient funds to pay the financial obligations of the Non-Appropriating Party under this Agreement, this Agreement may be terminated by either Party without penalty, but subject to the remainder of this Article 13.

Section 4. Required Conveyance of the Property Upon Termination Due to Non-Appropriation. In the event of non-appropriation prior to the full payment of the Project Debt Service the Non-Appropriating Party shall, upon request of the other Party, execute, acknowledge, and deliver to the other Party a deed and bill of sale conveying to the other Party all of the Non-Appropriating Party's right, title, and interest, of whatever kind or nature, in and to the Project and the Property. The conveyance of the Project and the Property pursuant to this Section 4 shall not be a waiver of the Non-Appropriating Party's rights under this Agreement, but the provisions of Section 1 of Article 11 concerning the forced disposition of the Property shall not apply in the event of the termination of this Agreement as a result of non-appropriation prior to the full payment of the Project Financing. The provisions of this Section 4 are specifically enforceable, and both Parties irrevocably waive the right to challenge the enforceability of such specific performance remedy.

Section 5. No Constitutional Debt. Neither the Town's nor the County's obligations under this Agreement shall 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.

ARTICLE 14 - MISCELLANEOUS PROVISIONS

Section 1. Force Majeure. Neither Party is liable to the other Party for any failure, delay, or interruption in the performance of any of the terms, covenants, or conditions of this Agreement due to causes beyond the control of that Party, including, without limitation, strikes, boycotts, labor dispute, embargoes, shortages of materials, acts of God, acts of the public enemy, terrorism, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage or any other circumstance for which such Party is not responsible or which is not in its power to control.

Section 2. Notices. All notices required or permitted under this Agreement must be given by registered or certified mail, return receipt requested, postage prepaid, or by hand or commercial carrier delivery, or by telecopies directed as follows:

If intended for the Town to:

Town of Silverthorne
P.O. Box 1309
601 Center Circle
Silverthorne, Colorado 80498
Attn: Ryan Hyland, Town Manager
Ryan.hyland@silverthorne.org

If intended for the County, to:

Board of the County Commissioners
P.O. Box 68
Breckenridge, Colorado 80424
Attn: Scott Vargo, County Manager
Scott.vargo@summitcountyco.gov

Any notice delivered by mail in accordance with this Section 2 is effective on the third business day after being deposited in any post office or postal box regularly maintained by the United States Postal Service. Any notice delivered by hand or commercial carrier in accordance with this Section 2 is effective upon actual receipt. Either Party, by notice given as above, may change the address to which future notices may be sent.

Section 3. Third Parties. This Agreement does not confer upon or grant to any third party any right to claim damages or to bring suit, action, or other proceeding against either the Town or the County because of any breach of this Agreement, or because of any of the terms, covenants, agreements, and conditions contained in this Agreement.

Section 4. Waiver. The failure of either Party to exercise any of its rights under this Agreement is not a waiver of those rights. A Party waives only those rights specified in writing and signed by either Party waiving its rights.

Section 5. Applicable Law. This Agreement is to be interpreted in all respects in accordance with the laws of the State of Colorado.

Section 6. Effect of Prior Agreements. Except where inconsistent with the provisions of this Agreement, the Preliminary Intergovernmental Agreement dated ~~January 15, 2016~~ June 11, 2021 related to the joint development of a childcare facility project on the Property remains in full force and effect. To the extent there is a conflict between this Agreement and the Intergovernmental Agreement dated ~~January 15, 2016~~ June 11, 2021, this Agreement shall control.

Section 7. Amendment. This Agreement may be modified or amended only by a duly authorized written instrument executed by the Parties. No oral amendment or modification of this Agreement is allowed.

Section 8. Severability. If any of the provisions of this Agreement are declared by a final, non-appealable judgment court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

Section 9. "Day" Defined. Unless specifically indicated to be a business day, the term "day" when used in this Agreement means a calendar day. A "business day" is a day when the banks in the Town of Breckenridge, Colorado are open for business.

Section 10. Section Headings. Section and subsection headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Agreement.

Section 11. Authority. The individuals executing this Agreement on behalf of each of the Parties represent to the other Party that they have all requisite powers and authority to cause the Party for whom they have signed to enter into this Agreement, and to bind such Party to fully perform its obligations as set forth in this Agreement.

Section 12. No Adverse Construction. Both Parties acknowledge having had the opportunity to participate in the drafting of this Agreement. This Agreement is not to be construed against either Party based upon authorship.

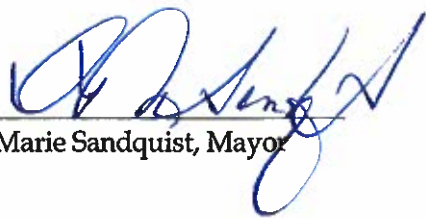
Section 13. Binding Effect. This Agreement is binding upon, and inures to the benefit of, the Parties and their respective successor governing boards.

Section 14. Approval By Governing Boards. In accordance with C.R.S. § 29-1-203(1), this Agreement shall not become effective unless and until it has been approved by the governing bodies of both the Town and the County, or by such persons as has the power to approve this Agreement on behalf of the Town and the County.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to sign this SERVICES AGREEMENT as of the date first written above.

SILVERTHORNE TOWN COUNCIL

BOARD OF COUNTY COMMISSIONERS
OF SUMMIT COUNTY

By: 
Ann-Marie Sandquist, Mayor

By: _____
Elisabeth Lawrence, Chair

Attest, 
Michele Miller, Town Clerk

Attest, _____
Kathleen Neel, County Clerk