

ADU FUNDING AGREEMENT

THIS ADU FUNDING AGREEMENT (the “**Agreement**”) is entered into this _____ day of _____, 20____ (the “**Effective Date**”) by and between SUMMIT COUNTY, COLORADO, a body corporate and politic and political subdivision of the State of Colorado, with an address of P.O. Box 68, Breckenridge, Colorado 80424 (the “**County**”), and _____, with an address of _____ & _____ respectively (“**Owner**”).

WHEREAS, Owner owns the real property and the improvements situated thereon, located at _____ (“**Property**”) and legally described as: _____

WHEREAS, County has implemented a program known as the ADU Assistance Program, the purpose of which is to incentivize the creation of new Accessory Dwelling Units (“ADUs”) in the unincorporated county; and

WHEREAS, the ADU Assistance Program is designed to provide funding for the construction of ADUs and the provision of sewer and water services for such ADUs, provided all other requirements of the Summit County Land Use and Development Code are met; and

WHEREAS, for the consideration described in Section 2 of this Agreement Owner has agreed to place certain restrictions on the use and occupancy of the ADU for the benefit of the County, as set forth in the “Restrictive Covenant for the Establishment of an Accessory Dwelling Unit with the ADU Assistance Program” attached as Exhibit B; and

WHEREAS, the ADU is of value to the County, and the County is willing to compensate the Owner for a portion of the costs of the ADU construction in accordance with the parameters of the ADU Assistance Program.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which is mutually acknowledged, the Parties agree as follows:

1. Agreement.

- a. Owner agrees to construct, in accordance with County-approved plans and in compliance with all applicable rules and regulations, an ADU on the Property. Owner further agrees to place the required deed restriction on the Property prior to receipt of a Certificate of Occupancy (“CO”).
- b. County agrees to provide funding in the amount set forth in Section 2 (“Funding Amount”) below upon full compliance by the Owner with the terms and conditions of this Agreement and the ADU Assistance Program.

2. Funding Amount. The calculated Funding for the ADU is _____, which shall be delivered in funds which comply with all applicable Colorado laws, including electronic transfer funds, certified check and cashier's check, at the County's option. Funding is to be provided as follows (check all applicable options):
 - a. Direct contribution to water/sewer provider - \$ _____
 - b. To be paid at time of receipt of CO - \$ _____
3. ADU-Certificate of Occupancy. County's fulfillment of its obligations herein are expressly contingent upon Owner receiving a CO for the ADU. Unless otherwise agreed to in writing by County and Owner, Owner shall obtain such CO within two years of the date of this Agreement.
4. Owner's Representations and Warranties. Owner hereby represents and warrants that the following statements are now, and will be as of the date of receipt of CO, true and correct, to the best of Owner's knowledge, and Owner shall give the County prompt written notice if any of the representations or warranties made by Owner in this Agreement are no longer true or correct in any material manner:
 - a. There is no action, suit or proceeding pending, or to the best of Owner's knowledge threatened, against or otherwise affecting Owner or the Property in any court of law or equity, or before any governmental authority, in which an adverse decision might materially impair Owner's ability to perform its obligations under this Agreement.
 - b. There is no pending or threatened condemnation or similar proceeding affecting the Property.
5. County's Remedies. In the case of any breach of this Agreement by Owner, the County may terminate this Agreement by written notice to Owner, and the County shall have all remedies available at law or equity arising from Owner's breach of this Agreement, including, but not limited to, the right of specific performance. In addition to all other remedies, in the case of a breach of this Agreement by Owner, the County shall have the right to recover the entire funding amount from the Owner, in addition to all costs and fees, including attorney fees, incurred by the County.
6. Tax Implications. County makes no representations as to the tax implications of this transaction. Owner is advised to consult a tax professional to determine what, if any, tax liability will arise as a result of this transaction.
7. Miscellaneous.
 - a. Entire Agreement. This Agreement contains the entire agreement of the Parties. There are no other agreements, oral or written, and this Agreement can be amended only by written agreement signed by the Parties.

- b. Agreement Binding; Assignment. This Agreement, and the terms, covenants, and conditions herein contained, shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of the Parties. In the event Owner is two or more individuals, each individual shall be jointly and severably responsible for the obligations set forth in this Agreement.
- c. Notice. Any notice under this Agreement shall be in writing and shall be deemed sufficient when directly presented or sent pre-paid, first-class United States Mail to the Party at the address set forth on the first page of this Agreement.
- d. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Summit County, Colorado.
- e. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.
- f. Third Parties. There are no intended third-party beneficiaries to this Agreement.
- g. Subject to Annual Appropriation. Consistent with Article X, §20 of the Colorado Constitution, any financial obligation of the County not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.
- h. Governmental Immunity. The County and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities or protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the County and its officers, attorneys or employees.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

