

ORDINANCE NO. 6

Series 2002

AN ORDINANCE AUTHORIZING THE SALE OF REAL PROPERTY
(A Portion of Lot 17, Abbett Addition – Alpine Bank)

WHEREAS, the Town of Breckenridge is the owner of the following described real property, to wit:

A TRACT OF LAND BEING A PORTION OF LOT 17, ABBETT ADDITION TO THE TOWN OF BRECKENRIDGE, ACCORDING TO THE PLAT RECORDED IN THE OFFICE OF THE CLERK AND RECORDER, TOWN OF BRECKENRIDGE, COUNTY OF SUMMIT, STATE OF COLORADO, AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 17, ALSO BEING CORNER NO. 8 OF M. S. NO. 843; THENCE N07°00'00"E ALONG THE WEST LINE OF SAID LOT 17 A DISTANCE OF 57.93 FEET TO THE COMMON CORNER BETWEEN LOT 51 AND 52, BARTLETT AND SHOCK ADDITION TO THE TOWN OF BRECKENRIDGE; THENCE N89°21'00"E ALONG SAID COMMON LINE EXTENDED EAST A DISTANCE OF 2.96 FEET TO THE WEST RIGHT-OF-WAY LINE OF A TWENTY-FOOT ALLEY; THENCE S00°39'00"E ALONG SAID WEST RIGHT-OF-WAY LINE A DISTANCE OF 57.58 FEET TO THE SOUTH LINE OF SAID LOT 17; THENCE N89°45'00"W ALONG SAID SOUTH LINE A DISTANCE OF 10.67 FEET TO THE POINT OF BEGINNING, CONTAINING 392 SQUARE FEET OR 0.009 ACRES, MORE OR LESS.

("Property")
; and

WHEREAS, the Town of Breckenridge has agreed to sell the Property to Alpine Bank, a Colorado corporation ("Alpine Bank"); and

WHEREAS, a proposed Contract of Sale between the Town and Alpine Bank has been prepared, a copy of which is marked Exhibit "A", attached hereto and incorporated herein by reference ("Contract"); and

WHEREAS, the Town Council of the Town of Breckenridge has reviewed the proposed Contract, and finds and determines that it would be in the best interest of the Town and its residents for the Town to sell the Property to Alpine Bank pursuant to the Contract; and

WHEREAS, Section 15.3 of the Breckenridge Town Charter provides that the Town Council may authorize the sale of Town-owned real property by Ordinance.

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

Section 1. The proposed Contract with Alpine Bank, a Colorado corporation (Exhibit "A" hereto) is approved; and the Town Manager is hereby authorized, empowered and directed to execute such Contract for and on behalf of the Town of Breckenridge.

Section 2. The Town Manger is hereby further authorized, empowered and directed to take all necessary and appropriate action to close the sale of the Property contemplated by the Contract. In connection therewith, the Town Manager shall have full power and authority to do and perform all matters and things necessary to the sale of the Property pursuant to the Contract, including, but not limited to, the following:

1. The making, execution and acknowledgement of settlement statements, closing agreements and other usual and customary closing documents;
2. The execution, acknowledgement and delivery to the Buyer of the deed of conveyance for the Property; and
3. The performance of all other things necessary to the sale of the Property by the Town pursuant to the Contract.

Section 3. The Town Council hereby finds, determines and declares that it has the power to adopt this Ordinance pursuant to the authority granted to home rule municipalities by Article XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.

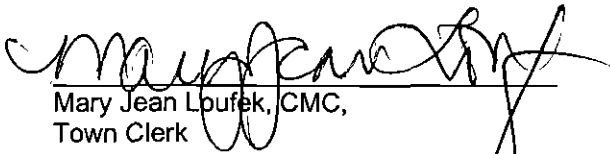
Section 4. This Ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Charter.

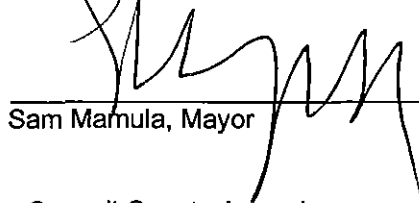
INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this 12th day of February, 2002. A Public Hearing shall be held at the regular meeting of the Town Council of

the Town of Breckenridge, Colorado on the 26th day of February, 2002, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

ATTEST:

TOWN OF BRECKENRIDGE


Mary Jean Loufek, CMC,
Town Clerk


Sam Mamula, Mayor

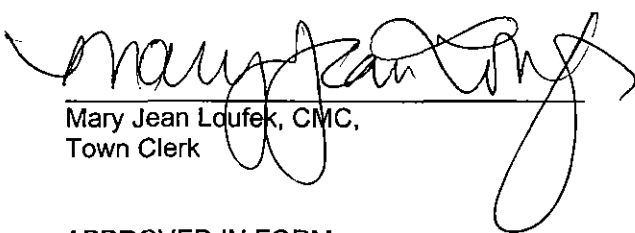
This ordinance was published in full in the Summit County Journal, a newspaper of general circulation within the Town of Breckenridge, on February 22, 2002.

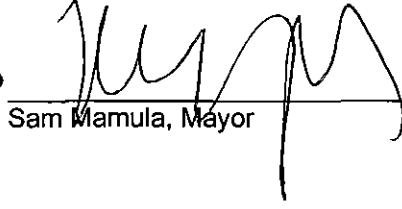
The public hearing on this ordinance was held on February 26, 2002.

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED BY TITLE ONLY, this 26th day of February, 2002. A copy of this ordinance is available for inspection in the office of the Town Clerk.

ATTEST:

TOWN OF BRECKENRIDGE


Mary Jean Loufek, CMC,
Town Clerk


Sam Mamula, Mayor

APPROVED IN FORM:


Town Attorney Date

This ordinance was published by title only in the Summit County Journal, a newspaper of general circulation within the Town of Breckenridge, on March 8, 2002.

CONTRACT OF SALE

THIS CONTRACT OF SALE ("Contract"), dated _____, 2002, is between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation ("Seller") and ALPINE BANK a Colorado corporation ("Buyer").

1. Property. Seller hereby agrees to sell to the Buyer, and the Buyer agrees to purchase from the Seller, the fee simple real property described as:

A TRACT OF LAND BEING A PORTION OF LOT 17, ABBETT ADDITION TO THE TOWN OF BRECKENRIDGE, ACCORDING TO THE PLAT RECORDED IN THE OFFICE OF THE CLERK AND RECORDER, TOWN OF BRECKENRIDGE, COUNTY OF SUMMIT, STATE OF COLORADO, AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 17, ALSO BEING CORNER NO. 8 OF M. S. NO. 843; THENCE N07°00'00"E ALONG THE WEST LINE OF SAID LOT 17 A DISTANCE OF 57.93 FEET TO THE COMMON CORNER BETWEEN LOT 51 AND 52, BARTLETT AND SHOCK ADDITION TO THE TOWN OF BRECKENRIDGE; THENCE N89°21'00"E ALONG SAID COMMON LINE EXTENDED EAST A DISTANCE OF 2.96 FEET TO THE WEST RIGHT-OF-WAY LINE OF A TWENTY-FOOT ALLEY; THENCE S00°39'00"E ALONG SAID WEST RIGHT-OF-WAY LINE A DISTANCE OF 57.58 FEET TO THE SOUTH LINE OF SAID LOT 17; THENCE N89°45'00"W ALONG SAID SOUTH LINE A DISTANCE OF 10.67 FEET TO THE POINT OF BEGINNING, CONTAINING 392 SQUARE FEET OR 0.009 ACRES, MORE OR LESS. SUCH PARCEL IS DEPICTED ON THE ATTACHED EXHIBIT "A", WHICH IS INCORPORATED HEREIN BY REFERENCE.

Such real property must be legally re-subdivided by Seller before it can be conveyed to Buyer pursuant to this Contract (see Paragraph 4). Such real property, together with its appurtenances, is hereinafter called the "Property".

2. Density Limitation. It is agreed that the Property shall be conveyed by Seller to Buyer with only 130 square feet of developable or buildable "density" (as that term is defined and used in the ordinances of the Town of Breckenridge) attributed to it. This restriction shall be set forth in the deed conveying the Property from Seller to Buyer. Any density on the Property, over and above the 130 square feet described above, may be extinguished by Seller at the time of Closing.

3. Purchase Price. The purchase price to be paid by the Buyer to the Seller for the Property is Seven Thousand Eight Hundred Forty Dollars (\$7,840.00) ("Purchase Price"), payable as follows:

A. One Thousand Dollars (\$1,000.00) in the form of Buyer's check to be held in a non-interest bearing account by Land Title Guarantee Company of Summit County ("Closing Agent") as Earnest Money and part of the Purchase Price ("Earnest Money"); and

B. The balance in cash or certified funds at time of Closing.

4. Buyer's Right Of Entry And Inspection. During the term of this Contract the Buyer, its agents, employees, contractors and engineers, shall have the right from time to time to enter upon the Property at their risk for the purpose of inspecting the same and conducting surveys, engineering studies, soil tests, investigations, feasibility studies and the like. Within a reasonable time after such entries Buyer shall, to the extent practicable, restore the Property to its prior condition. The Buyer agrees to indemnify and save the Seller harmless from all claims arising by reason of such entries.

5. Seller's Contingency. The obligations of the Seller hereunder are expressly contingent upon Seller obtaining all approvals for, and the filing of, a re-subdivision plat sufficient to designate the Property as a legal lot capable of being conveyed to Buyer under the Town of Breckenridge Subdivision Ordinance. Upon the filing of such re-subdivision plat, the legal description of the Property shall be deemed to have been amended, and the Property shall be conveyed to Buyer using the legal description contained in the re-subdivision plat, rather than the legal description set forth in Paragraph 1 of this Contract. In the event Seller shall give the Buyer written notice of the nonfulfillment of such contingency prior to Closing, this Contract shall terminate, in which event Buyer's Earnest Money shall be returned and each party shall be released from any further obligation hereunder.

6. Closing. Closing shall occur on March 14, 2002 at 10:00 A.M. at the office of the Closing Agent at 200 North Ridge Street, Breckenridge, Colorado, or at such earlier date and time or other location as the parties may agree upon. At Closing Buyer shall pay the Purchase Price as provided in Paragraph 2, and the Seller shall execute and deliver to Buyer a quit claim deed for the Property. Title to the Property shall be merchantable in Seller, free and clear of all liens and encumbrances.

7. Title Insurance. If Buyer desires to obtain title insurance, Buyer shall pay the cost thereof.

8. Risk Of Loss. The Property shall be held at the risk of the Seller until legal title has passed and possession has been given to the Buyer.

9. Costs. Buyer shall pay all of the costs associated with the closing of the transaction contemplated by this Contract, including, but not limited to: (i) the cost of recording the deed conveying the Property to it; (ii) the Town of Breckenridge Real Estate Transfer Tax; (iii) the title insurance premium, if title insurance is desired by Buyer; (iv) the tax certificate; and (v) all costs for closing services charged by Closing Agent. Buyer shall also

reimburse Seller at closing for: (i) the attorneys' fees incurred by the Town in connection with the preparation of this Contract and the review of the closing documents; and (ii) all costs incurred by Seller in re-subdividing the Property, including, without limitation, the cost of the preparation and recording of the required re-subdivision plat.

10. Real Estate Taxes. The Property is tax exempt pursuant to Section 39-3-105, C.R.S., and no tax proration shall be required or shall be made. Buyer shall be solely responsible for any real estate taxes levied and assessed against the property from and after the date of Closing.

11. Possession. Possession of the Property shall be delivered to Buyer at Closing, free and clear of any leases or tenancies.

12. Disclaimer. Buyer acknowledges that the Property shall be conveyed and transferred "**AS IS,**" "**WHERE IS**" and "**WITH ALL FAULTS**", and that Seller does not warrant or make any representations, express or implied, relating to the quality, condition, suitability or **FITNESS FOR ANY PURPOSE WHATSOEVER** of the Property. Seller has no liability whatsoever to undertake any repairs, alterations, removal, remedial actions, or other work of any kind with respect to any portion of the Property. Buyer also acknowledges and agrees that the provisions in this Contract for inspection and investigation of the physical condition of the Property by Buyer should be, and are, adequate to enable Buyer to make Buyer's own determination with respect to the quality, condition, and suitability or fitness for any purpose of the Property. The provisions of this Paragraph shall be incorporated into the deed conveying the Property from Seller to Buyer.

13. Real Estate Commission. The Seller and Buyer each warrant and represent to the other that they have not used the services of any broker, agent or finder who would be entitled to a commission on account of this Contract or the consummation of the transaction contemplated hereby, and agree to defend, indemnify and save the other harmless from any commission or fee which may be payable to any broker, agent or finder with whom the indemnifying party has dealt in connection with this Contract.

14. Warning Concerning Special Taxing Districts. **Special taxing districts may be subject to general obligation indebtedness that is paid by revenues produced from annual tax levies on the taxable property within such districts. Property owners in such districts may be placed at risk for increased mill levies and excessive tax burdens to support the servicing of such debt where circumstances arise resulting in the inability of such a district to discharge such indebtedness without such an increase in mill levies. Buyer should investigate the debt financing requirements of the authorized general obligation indebtedness of such districts, existing mill levies of such district servicing such indebtedness, and the potential for an increase in such mill levies.**

15. Default; Remedies. If any obligation is not performed as herein provided, there shall be the following remedies:

A. IF BUYER IS IN DEFAULT: (1) Seller may elect to treat this Contract as terminated, in which case the Earnest Money shall be delivered by Closing Agent to Seller and Seller may recover such damages as may be proper, or (2) Seller may elect to treat this Contract as being in full force and effect and Seller shall have the right to an action for specific performance or damages, or both.

B. IF SELLER IS IN DEFAULT: (1) Buyer may elect to treat this Contract as terminated, in which case the Earnest Money shall be returned to Buyer by Closing Agent and Buyer may recover such damages as may be proper, or (2) Buyer may elect to treat this Contract as being in full force and effect and Buyer shall have the right to an action for specific performance or damages, or both.

C. Anything to the contrary herein notwithstanding, in the event of any litigation arising out of this Contract, the court may award to the prevailing party all reasonable costs and expenses, including attorneys' fees.

16. Notices. All notices required or permitted under this Contract shall 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 Seller, to:

Town of Breckenridge
P.O. Box 168
150 Ski Hill Road
Breckenridge, Colorado 80424
Attn: Timothy J. Gagen, Town Manager
Telecopier number: (970)547-3104
Telephone number: (970)453-2251

with a copy in each case (which shall not constitute notice) to:

Timothy H. Berry, Esq.
Timothy H. Berry, P.C.
131 West 5th Street
P. O. Box 2
Leadville, Colorado 80461
Telecopier number: (719)486-3039

Telephone number: (719)486-1889

If intended for Buyer, to:

Alpine Bank
P.O. Box 2559
Breckenridge, Colorado 80424
Attn: Bill Souba, Senior Vice President
Telecopier number: (970)453-4377
Telephone number: (970)453-4929

with a copy in each case (which shall not constitute notice) to:

J. Albert Bauer, Esq.
J. Albert Bauer, P.C.
P.O. Box 307
Breckenridge, Colorado 80424

Telecopier number: (970)453-9046
Telephone number: (970)453-2734

Any notice delivered by mail in accordance with this Paragraph shall be deemed to have been duly given on the third business day after the same is deposited in any post office or postal box regularly maintained by the United States postal service. Any notice delivered by telecopier in accordance with this Paragraph shall be deemed to have been duly given upon receipt if concurrently with sending by telecopier receipt is confirmed orally by telephone and a copy of said notice is sent by certified mail, return receipt requested, on the same day to that intended recipient. Any notice delivered by hand or commercial carrier shall be deemed to have been duly given upon actual receipt. Either party, by notice given as above, may change the address, telephone number and/or telecopier number to which future notices may be sent.

17. Miscellaneous.

A. This Contract contains the final and entire agreement between the parties and neither they nor their agents shall be bound by any terms, conditions or representations not herein written.

B. Time shall be of the essence of this Contract.

C. Neither party shall have the right to assign this Contract, or any interest therein, without the express written consent of the other party.

D. Buyer has been advised to seek legal counsel as to this Contract. The law firm of Timothy H. Berry, P.C. represents only the Seller in connection with this Contract and the transaction contemplated hereby.

IN WITNESS WHEREOF, the parties hereto have executed this Contract of Sale on the date first above written.

SELLER:

TOWN OF BRECKENRIDGE, a Colorado municipal corporation

By: _____
Timothy J. Gagen, Town Manager

ATTEST:

Mary Jean Loufek, CMC, Town Clerk

BUYER:

ALPINE BANK, a Colorado corporation

By: _____

Title: _____

Receipt For Earnest Money

The undersigned hereby acknowledges receipt of the Earnest Money described in Paragraph 3(A) of this Contract, and agrees on behalf of the Closing Agent that such funds shall be held in the Closing Agent's trust account on behalf of the Seller and Buyer.

Signed the ___ day of _____, 2002.

LAND TITLE GUARANTEE COMPANY

By: _____

Title: _____