

RESOLUTION NO. 36

SERIES 1998

A RESOLUTION APPROVING AN ASSIGNMENT OF PARTIAL INTEREST IN REAL ESTATE OPTION AGREEMENT WITH THE BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY

WHEREAS, Summit County ("County") entered into that certain Option Agreement with Mark E. Mulkern and Mary A. Mulkern (collectively, "Mulkerns"), dated August 14, 1998 (as amended by the Agreement To Amend Option Agreement dated October 6, 1998)("Option Agreement"), pertaining to the following described real property situate in the County of Summit and State of Colorado, to wit:

The Detroit Placer Mining Claim (U.S. Mineral Survey No. 9076) located in the Leadville Mining District, and encompassing portions of Section 29, Township 6 South, Range 77 West of the 6th P.M., more particularly described in United States Patent recorded October 15, 1915 in Book 89 at Page 95 of the records of the Clerk and Recorder of Summit County, Colorado ("Property")

; and

WHEREAS, Town desires to obtain a partial assignment of County's interest in the Option Agreement such that in the event the option granted in the Option Agreement is exercised, the Town and the County will acquire the Property as tenants in common with each owning an undivided one-half interest in the Property; and

WHEREAS, the terms of the Option Agreement expressly provide that the County shall have the right to assign its rights and obligations thereunder, in whole or in part, to the Town without the necessity of obtaining the approval of the Mulkerns; and

WHEREAS, County is willing to partially assign to Town its interest in the Option Agreement in accordance with, and subject to, the terms, conditions and provisions of this Assignment; and

WHEREAS, a proposed Assignment of Partial Interest in Real Estate Option Agreement ("Assignment") has been prepared (Exhibit "A" hereto); and

WHEREAS, the Town Council has reviewed the proposed Assignment and finds and determines that it would be the best interest of the Town and its citizens if the Assignment was approved.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO, as follows:

Section 1. The proposed Assignment of Partial Interest in Real Estate Option Agreement with the Board of County Commissioners of Summit County (Exhibit "A") is approved; and the Town Manager is hereby authorized, empowered and directed to execute such instrument for and on behalf of the Town of Breckenridge.

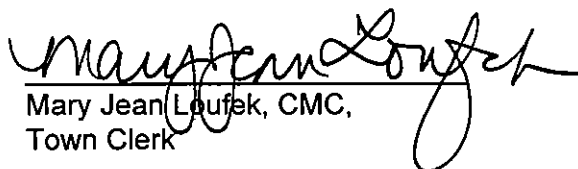
Section 2. This Resolution shall become effective upon its adoption.

RESOLUTION APPROVED AND ADOPTED THIS 10TH DAY OF NOVEMBER, 1998.


TOWN OF BRECKENRIDGE

ATTEST:

By 
Stephen C. West, Mayor


Mary Jean Loufek, CMC,
Town Clerk

APPROVED IN FORM


Town Attorney 11/10/98
date

Assignment of Partial Interest in Real Estate Option Agreement

This Assignment of Partial Interest in Real Estate Option Agreement ("Assignment") is made and entered into at Breckenridge, Colorado this ___ day of November, 1998, by and between the Board of County Commissioners of Summit County, Colorado ("County") and the Town of Breckenridge, a Colorado municipal corporation ("Town").

Witnesseth:

WHEREAS, County entered into that certain Option Agreement with Mark E. Mulkern and Mary A. Mulkern (collectively, "Mulkerns"), dated August 14, 1998 (as amended by the Counterproposal dated August 28, 1998 and the Agreement To Amend Option Agreement dated October 6, 1998) (collectively, "Option Agreement"), pertaining to the following described real property situate in the County of Summit and State of Colorado, to wit:

The Detroit Placer Mining Claim (U.S. Mineral Survey No. 9076) located in the Leadville Mining District, and encompassing portions of Section 29, Township 6 South, Range 77 West of the 6th P.M., more particularly described in United States Patent recorded October 15, 1915 in Book 89 at Page 95 of the records of the Clerk and Recorder of Summit County, Colorado ("Property")

; and

WHEREAS, Town desires to obtain a partial assignment of County's interest in the Option Agreement such that in the event the option granted in the Option Agreement is exercised, the Town and the County will acquire the Property as tenants in common with each owning an undivided one-half interest in the Property; and

WHEREAS, the terms of the Option Agreement expressly provide that the County shall have the right to assign its rights and obligations thereunder, in whole or in part, to the Town without the necessity of obtaining the approval of the Mulkerns; and

WHEREAS, County is willing to partially assign to Town its interest in the Option Agreement in accordance with, and subject to, the terms, conditions and provisions of this Assignment.

Now, therefore, for and in consideration of the mutual promises and covenants contained herein, and intending to be legally bound, the parties agree as follows:

1. Partial Assignment of Option Agreement. For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County hereby irrevocably assigns, transfers and conveys to Town an undivided one-half (½) interest in the Option Agreement. By its execution of this Assignment, Town hereby

irrevocably accepts such assignment, transfer and conveyance and agrees to be bound by the terms and conditions of the Option Agreement with the same force and effect as if the Town had originally executed such Option Agreement.

2. Joint Decision To Exercise Option. Town and County shall jointly decide whether to exercise the option to purchase the Property granted in the Option Agreement. If the parties fail to mutually agree to exercise the option, the option shall not be exercised.

3. Joint Financial Obligations. All financial obligations to be paid or incurred in connection with obtaining the Option Agreement and acquiring the Property pursuant to the Option Agreement (if the option is exercised) shall be paid equally by the Town and the County. Town acknowledges that County paid to Mulkerns the sum of One Hundred Dollars (\$100.00) at the time of the execution of the Option Agreement. If the option is exercised, the Town's portion of the purchase price and related closing expenses (or the Town's portion of the earnest money provided in the Option Agreement, at the option of the County) shall be increased by Fifty Dollars (\$50.00), and the County's portion thereof shall be decreased by Fifty Dollars (\$50.00), in order to equalize the financial contributions of the parties with respect to the acquisition of the Property. If, for any reasons, the option to purchase the Property provided for in the Option Agreement is not exercised, Town shall upon demand pay to County the sum of Fifty Dollars (\$50.00).

4. Title Matters. In the event the option to purchase the Property provided for in the Option Agreement is exercised by the parties, title to the Property shall be taken such that each of the parties will own an undivided one-half interest in the Property as tenants in common. The form of the deed of conveyance for the Property shall be acceptable to counsel for both the Town and the County.

5. Use of Property. In the event the option to purchase the Property provided for in the Option Agreement is exercised by the parties, the Property shall be used for open spaces purposes as allowed by applicable land use regulations, unless the parties subsequently agree to some other or further use of the Property.

6. No Partition. In the event the option to purchase the Property provided for in the Option Agreement is exercised by the parties, neither party shall seek to partition the Property. This agreement shall survive the closing and delivery of the deed of the deed to the Property.

7. Applicable Law. This Assignment shall be interpreted in all respects in accordance with the laws of the State of Colorado.

8. Entire Agreement. This Assignment constitutes the

entire agreement and understanding between the parties and
supersedes any prior agreement or understanding relating to the
subject matter of this Assignment.

9. Binding Effect. This Assignment shall be binding upon,
and shall inure to the benefit of the parties, and their
respective successors and assigns.

Executed the date first written above.

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By _____
Gary Martinez, Town Manager

ATTEST:

Mary Jean Loufek, CMC,
Town Clerk

BOARD OF COUNTY COMMISSIONERS
OF SUMMIT COUNTY, COLORADO

By _____
Chair

ATTEST:

Clerk and Recorder,
Summit County, Colorado;
ex officio Clerk of said
Board