

**TOWN OF BASALT, COLORADO
ORDINANCE No. 28
SERIES OF 2014**

**AN ORDINANCE AUTHORIZING THE SECOND AMENDMENT TO THE
OPTION CONTRACT TO BUY AND SELL REAL ESTATE BETWEEN ROCKY
MOUNTAIN INSTITUTE AND THE TOWN OF BASALT, COLORADO**

RECITALS

A. By Ordinance No. 22, Series of 2010, the Basalt Town Council approved an Option Contract to buy and sell real estate between the Rocky Mountain Institute (the "Buyer") and the Town of Basalt ("the Option Contract"). The Property that is the subject of the Option Contract consisted of approximately .55 acres described in Exhibit A of the Option Contract.

B. By Ordinance No. 22, Series of 2013, the Town of Basalt approved an extension to the Option Contract and amendments to the Option Contract.

C. By Resolution No. 45, Series of 2013, the Town Council approved a Predevelopment Agreement with the Buyer.

D. The predevelopment agreement, Paragraph A.3.P, states that the Parties shall work diligently to define any financial, tax and incentive impacts of the project. This includes the potential establishment of districts that would provide funding to meet site work, infrastructure and utility requirements of the project.

E. During RMI's development review process, the Applicant determined that it was beneficial to move the proposed RMI building and lot slightly to the west with a corresponding move of the RFC River Center building so that there could be more land between the pond and the proposed RFC River Center. The predevelopment agreement Paragraph A.3.E states that the Town Staff will prepare an ordinance to amend the option contract to revise the Property boundary for the Council's consideration.

F. Also during RMI's development review process the Town and RMI agreed to swap certain assets and funds to satisfy mutual goals. Under this program RMI conveys property containing six (6) units that RMI owns in Old

Snowmass and in exchange the Town conveys the lot it owns on which RMI will build and pays for the construction of the Two Rivers Road improvements, the trails on the east and west sides of the building and other RMI public and quasi-public improvements for which RMI would have been responsible. The difference owed to the Town will be accounted for in an In-Kind Services Program.

G. The Council agrees it is appropriate to make the changes described above because of the mutual benefits expected from the results.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BASALT, COLORADO, THAT THE OPTION CONTRACT IS AMENDED AS FOLLOWS:

1. The following sentence shall be added to Paragraph 1, Parties and Responsibilities:

Buyer has apprised the Town that it wishes to form a Special Purpose Entity (SPE) to develop and own the Property. The Town and RMI agree to transfer the rights and responsibilities of the Second Option Contract to the SPE upon a demonstration to the Town's attorney that all State filing requirements have been satisfied and that there is sufficient linkage among all of the approval documents to ensure that the Town is adequately protected.

2. The boundaries of the Property are hereby moved and expanded to .95 acres as shown in the revised **Exhibit A. Exhibit A**, showing the amended land area, is hereby added to the Option Contract, replacing the prior **Exhibit A** approved through Ordinance No. 22, Series of 2013.

3. In Order to implement the Affordable Housing and Financial Strategy approved in the land use approvals, Paragraph 6 is deleted and amended to read as follows:

6. **PURCHASE PRICE AND TERMS.** The purchase price of the Property shall be \$600,000, payable as described below:

a. **EARNEST MONEY.** The Town and Buyer agree that the Buyer has paid \$5,000.00 as earnest money deposit and partial payment of the purchase price to and held by Pitkin County Title Company, Inc. (the "Title Company"), in its trust account on behalf of both Seller and Buyer. The Title Company is authorized to deliver the earnest money deposit to the closing agent at or before closing. In the event Buyer terminates this option for any reason at any time, the earnest money plus accrued interest shall be immediately reimbursed.

b. CASH AT CLOSING. Buyer shall not provide any additional cash at closing.

c. EXCHANGE OF ASSETS AND RESPONSIBILITIES. In lieu of cash, the Town and the Buyer shall exchange certain assets and responsibilities. The terms of the exchange are outlined in Condition No. 11 of Ordinance No. 27, Series of 2014, which grants final land use approvals to enable the Buyer to build on the Property (Ordinance No. 27). The Town shall pay the Buyer for the Buyer's construction of the public and quasi-public improvements required for the RMI Innovation Center as outlined in Condition No. 11. Additional terms are outlined in new paragraphs Nos. 40 and 41 to the Second Amended Option Contract.

3. The Option Contract will be amended to add a new Paragraph 40 to read as follows:

40. SNOWMASS HOUSING PROPERTY. Buyer will exchange its 7-acre property located at 30 Shinning Mountain Way in Old Snowmass, including a duplex, fourplex, a barn and an equipment shed described in **Exhibit B** (Snowmass Housing Property) for the following terms and conditions:

(a) A deed to the Property, with agreed value of \$595,000, which is the remaining due on the purchase of this site it has optioned to purchase along with the addition of (b) below.

(b) The public, quasi-public and site costs RMI owes the Town for its development of the RMI Innovation Center currently estimated to total \$696,083 as shown on Exhibit D to Ordinance 27. The Town agrees to review and refine as necessary the Site/Fill amount currently at \$134,537 shown on Exhibit D, which is based on an 11/7/2012 cost estimate prepared by Sopris Engineering, to more accurately reflect the Town's actual cost for filling the Property and removing it from the floodplain (Final Floodplain Mitigation Amount).

(c) The \$91,083 difference between the value of (a) plus (b) above and the value of the Snowmass Housing Property as shown on Exhibit D of Ordinance 27 (or the Final Town/Buyer agreed difference to account for more accurate costs for Floodplain Mitigation), shall be provided by the Buyer to the Town through in-kind services that total not less than \$50,000 over five (5) years and a maximum of \$100,000 over a 10 - 13 year period, as additionally outlined in Exhibit E of Ordinance No. 27 (In-Kind Services Program). However, nothing herein restricts the Town and Buyer from amending the In-Kind Services Program by agreement mutually signed by both parties to address issues that come forward during the

implementation of the In-Kind Services Program or better meet the needs of both parties.

(d) The Town and Buyer shall enter into a deed escrow agreement at closing, providing that the fully executed deed for the Snowmass Housing Property will be escrowed with the title company for recordation of the deed upon receipt of notice from the Town for when either: Option A occurs whereby Buyer receives a Certificate of Occupancy for the new building (to allow Buyer to ensure that its line of credit currently collateralized by the housing property can be transferred to the new building); or Option B occurs whereby Buyer is able to shift its line of credit to the new building property or other assets, whichever occurs sooner. The Buyer at any time may notify the title company to release the title to the Town.

(e) Buyer shall also escrow a fully executed promissory note for \$1.2M for security purposes (or such lower amount to account for Final Town/Buyer Agreed Difference as provided in Subsection 3 c above) in the event that one of the following occurs:

(i) There is a lien against the Snowmass Housing Property that the Town has not approved. In that event, Buyer shall have 60 days to have the lien released, and should the Buyer be unsuccessful, the Town shall have the right to call the note and return the escrowed deed for the Snowmass Housing Property to the Buyer.

(ii) There is some other occurrence whereby the Buyer obtains a certificate of occupancy for the new building (RMI Innovation Center) but there is some other unanticipated reason the deed cannot be released to the Town. In that event, Buyer shall have 60 days to correct the problem, and should the Buyer be unsuccessful, the Town shall have the right to call the note and return the escrowed deed for the Snowmass Housing Property to the Buyer.

(f) After closing on the Property, Buyer shall have the right to house Buyer's staff in both the duplex and fourplex at the rental rates specified in an Appraisal recently prepared for the Town (\$1600/month per each 2-bedroom duplex unit and \$1400/month per each 2-bedroom fourplex unit), except that the Town will be guaranteed two (2) units by November 1, 2016, four (4) units by November 1, 2017, and all six (6) units by November 1, 2018 regardless of whether the title of the Snowmass Housing Property has transferred to the Town. Ownership of

the Snowmass Housing Property containing the units shall remain as specified in Paragraph 40 (c) c with any rent shall be paid to the party having title. If title has not been transferred to the Town, the Town will ensure that the Buyer is paid the same rental rates for Town rented units as specified in the Appraisal. However, if at any time during this period Buyer chooses not to rent one of the units, it will provide a 1-month vacation notice to the Town (Housing Vacation Notice).

(g) Upon receipt of any Housing Vacation Notice or after units may be rented by the Town as provided in subsection (f) above, the Town may rent the unit to an employee of the Town or other individual who qualifies under the Town's then current affordable housing guidelines. At any time any unit vacated by Buyer is not being occupied by the Town during this period, the Town will give Buyer the first right of refusal to rent it at the Appraisal rent rate.

(h) At any time during these three years, the Town has the right to provide RMI substitute housing units within the Town limits so long as the units are comparable in size, quality, and cost as determined by the Town. In that event, the Town will provide RMI a one (1) month notice of the substitution for RMI's approval, which will not be unreasonably withheld. Upon the Town's request Buyer may approve a different combination of substitute units in terms of number, size, quality or cost which the Buyer feels in its sole discretion will satisfy the needs of the Buyer equally or better than the applicable Snowmass Housing Property units.

(i) The Town shall lease to Amory Lovins (Lovins) a portion of the "barn parcel" area of the Snowmass Housing Property, immediately behind the Lovins property located at 1739 Snowmass Creek Road large enough for the purpose of locating the storage container currently on site, along with vehicular access to the storage container and for temporary parking of vehicles during events at the Lovins property. Such lease will be at the rate of \$1/year for an indefinite period of time. The lease shall be non-transferable. The Town shall provide Lovins a six (6) -month notice if the Town wishes for the container to be removed or parking for special events to cease.

(j) The Buyer shall be responsible for maintaining the Snowmass Housing Property and keeping it in good condition equal or greater than the condition which existed at the time of the 2014 Appraisal prepared by Les Gray until its release by the title company to the Town. If the Town feels the Buyer has not satisfied this condition and the Buyer does not agree, an Appraiser licensed in the State of Colorado, and mutually agreed to by both parties shall be hired to review the prior appraisal and

condition of the units. Buyer shall also maintain adequate insurance on the Snowmass Housing Property until title is transferred to the Town.

(k) During the time period that the deed is in escrow, The Town shall have access to the Barn upon request to Buyer and entering into a Lease agreement with the Buyer. Such lease will be at the rate of \$1/year. The Town shall carry property insurance and liability insurance during the time of the lease.

(l) The terms and conditions outlined above shall be automatically assigned to any successor owner of the Snowmass Housing Property.

4. The Council hereby approves a contract for purchase for the Snowmass Housing Property on the terms and condition contained in this ordinance and other standard provisions that will be operable to the conveyance of the Snowmass Housing Property to the Town of Basalt.

5. The Option Contract will be amended to add a new Paragraph 41 to read as follows:

41. AGREEMENTS. The Town and Buyer agree to enter into Additional agreements to address the following matters.

a. Payment. The Town shall pay an amount for construction as outlined in the certified cost estimates prepared by Sopris Engineering dated 7/9/2014, and included as Exhibit C of Ordinance No. 27. The Town, at its discretion, may place the funds in escrow with a title company to be released to RMI's contractor upon demonstration to the Basalt Town Engineer that work has been performed. Alternatively, the Town and Buyer shall agree to a payment schedule that ensures timely payment to Buyer's contractors upon completion of work. If the cost of constructing the public and semi-public improvements exceeds the amount shown on Exhibit C, Buyer will make up the difference. If such excess costs are less than \$50,000 the Town Manager is authorized to approve an addendum to the In-Kind Serves Program whereby in-kind services are added in an amount to equal to the excess costs. If the Town Manager does not approve the addendum or the overage is \$50,000 or more, Buyer may request that the Town Council increase its contribution or approve additional in-kind services to offset the amount of overage, and the Town's decision to do so shall be solely at the discretion of the Town Council. Any such in-kind services shall be added to the In-Kind Services amount derived at above in Paragraph 40 (c) and shall not be credited to the \$50,000 minimum of in-kind services owned to the Town. Buyer will not be responsible for excess cost due to an unusual occurrence which could not have been anticipated, including but not limited to finding archeological

artifacts or remnants under Two River's Road from its railroad history. A difference in unit prices or the amount of material needed in construction is not considered an unusual occurrence.

b. Indemnification. Buyer shall indemnify the Town for work its contractor performs on the Town property. RMI shall list the Town as an additional insured on its insurance policy and provide proof to the Town.

c. Other agreements and documents. Prior to or simultaneous with the transfer of assets and responsibilities authorized by the Amended Option Contract, the Town and the Buyer shall execute and deliver for recording any documents to satisfy compliance with the conditions of approval included in this ordinance. After approval by the Town Attorney, the Mayor and Town Clerk are hereby authorized to execute and deliver any documents reasonably necessary to accomplish the purposes and intent of this ordinance.

6. The list of Exhibits to the Option Contract is hereby amended as shown on **Exhibit C** to this Ordinance.

7. The Town Manager is hereby authorized to execute an amendment to the Option Contract containing the amendments contained herein and any other changes necessary to reflect the provisions included in this Ordinance, the ordinance approving amendments to the Basalt Riverfront Park Subdivision in Ordinance No. 26, Series of 2014, or the final land use approvals for the RMI Innovation Center in Ordinance No. 27, Series of 2014.

8. If any part, section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance and the Town Council hereby declares it would have passed this ordinance and each part, section, subsection, sentence, clause or phrase thereof regardless of the fact that any one or more parts, sections, subsections, sentences, clauses or phrases be declared invalid.

9. This Ordinance, after its passage and publication, shall be authenticated by the signature of the Mayor, or by the Town Clerk, and by the Certificate of Publication. This Ordinance shall be effective fourteen (14) days after final publication.

10. This Ordinance after being fully executed, shall be recorded in the office of the County Clerk and Recorder.

READ ON FIRST READING, ORDERED PUBLISHED, AND SET FOR PUBLIC HEARING ON SEPTEMBER 9, 2014, by a vote of 6 to 0 on August 26, 2014.

READ ON SECOND READING AND PUBLIC HEARING, AND ADOPTED by a vote of 7 to 0, on September 9, 2014.



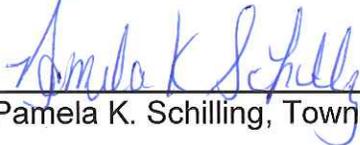
TOWN OF BASALT, COLORADO

By


Jacque R. Whitsitt, Mayor

ATTEST:

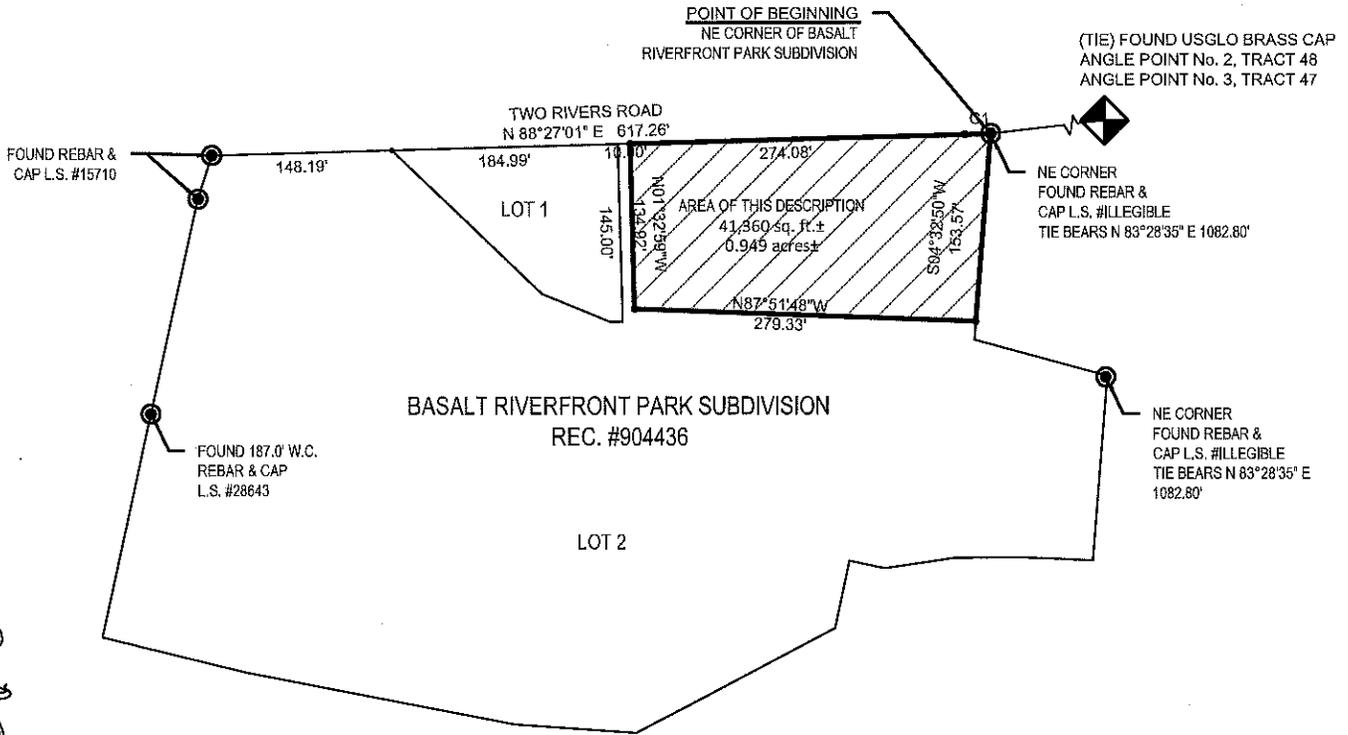
By


Pamela K. Schilling, Town Clerk

First Publication: Thursday, September 4, 2014
Final Publication: Thursday, September 18, 2014
Effective Date: Thursday, October 2, 2014

EXHIBIT A: RMI PROPERTY DESCRIPTION

SHEET 1 OF 1



**DRAWING
SCALE**
1"=150'

CURVE TABLE						
CURVE	LENGTH	RADIUS	TANGENT	CHORD	BEARING	DELTA
C1	20.98'	1223.30'	10.49'	20.98'	N 88°56'30" E	0°58'57"

PROPERTY DESCRIPTION

A PARCEL OF LAND SITUATED IN SECTION 7, TOWNSHIP 8 SOUTH, RANGE 86 WEST OF THE 6TH P.M., COUNTY OF EAGLE, STATE OF COLORADO; SAID PARCEL OF LAND BEING ENTIRELY WITHIN LOT 2, BASALT RIVERFRONT PARK SUBDIVISION, ACCORDING TO THE FINAL PLAT THEREOF RECORDED JANUARY 26, 2005 UNDER RECEPTION NO. 904436 OF THE EAGLE COUNTY RECORDS; SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF TWO RIVERS ROAD, SAID POINT ALSO BEING THE NORTHEAST CORNER OF SAID LOT 2 (WITH ALL BEARINGS HEREIN BEING RELATIVE TO A BEARING OF N 69°21'11" W BETWEEN NGS STATIONS F-158 AND G-158, PER THE 1996 GREENHORNE AND O'MARA, INC. COUNTY OF EAGLE/TOWN OF BASALT CONTROL NETWORK PROJECT); THENCE S.04°32'50"W., A DISTANCE OF 153.57 FEET; THENCE N.87°51'48"W., A DISTANCE OF 279.33 FEET; THENCE N.01°32'59"W., A DISTANCE OF 134.92 FEET TO THE NORTHERLY BOUNDARY LINE OF SAID LOT 2; THENCE ALONG THE NORTHERLY BOUNDARY LINE OF SAID LOT 2 THE FOLLOWING TWO (2) COURSES:

- 1) N.88°27'01"E., A DISTANCE OF 274.08 FEET
- 2) 20.98 FEET ALONG THE ARC OF A CURVE TO THE RIGHT WITH A RADIUS OF 1,223.30 FEET AND A CENTRAL ANGLE OF 00°58'57", CHORD BEARS N.88°56'30"E., A DISTANCE OF 20.98 FEET TO THE POINT OF BEGINNING.

CONTAINING 41,360 SQUARE FEET OR 0.949 ACRES, MORE OR LESS.

TOWN OF BASALT
COUNTY OF EAGLE
STATE OF COLORADO

**SOPRIS ENGINEERING - LLC
CIVIL CONSULTANTS**

502 MAIN STREET, SUITE A3
CARBONDALE, COLORADO 81623
(970) 704-0311
sopris@sopriseng.com

Exhibit B

Description of Snowmass Housing Property

That part of Tracts 81 and 82 in Section 34, Township 8 South, Range 86 West of the 6th Principal Meridian described as follows:

Beginning at Angle Point No. 6 of said Tract 81; thence North $01^{\circ}18'00''$ West 103.36 feet along the Easterly line of said Tract 81; thence South $87^{\circ}43'00''$ East 129.70 feet to a point in the center of a 20-foot road easement; thence 102.80 feet along the arc of a curve to the right, having a radius of 311.32 feet, the chord of which bears: North $10^{\circ}06'59''$ East 102.41 feet; thence North $89^{\circ}57'59''$ West 299.45 feet to a point on the Easterly line of Gateway of Snowmass Mesa Subdivision, First Filing; thence North $01^{\circ}04'11''$ West 215.76 feet along said Subdivision line; thence North $07^{\circ}57'23''$ West 192.80 feet along said Subdivision line; thence North $89^{\circ}48'58''$ East 222.00 feet; thence South $39^{\circ}25'01''$ East 317.42 feet to a point in the center of a 20-foot road easement; thence North $32^{\circ}13'02''$ East 268.60 feet along the center line of said road easement to a point on the Westerly right-of-way line of a County Road; thence South $13^{\circ}59'00''$ East 237.95 feet along said right-of-way line; thence South $02^{\circ}27'00''$ West 251.53 feet along said right-of-way line; thence South $22^{\circ}31'00''$ West 151.83 feet along said right-of-way line; thence South $13^{\circ}41'00''$ West 87.04 feet along said right-of-way line; thence North $87^{\circ}43'00''$ West 347.74 feet to a point on the Westerly line of said Tract No. 82; thence North $01^{\circ}18'00''$ West 104.64 feet along said tract line to Angle Point No. 6 of said Tract No. 81, to the point of beginning.

TOGETHER WITH a non-exclusive easement for ingress, egress and utility installation 20 feet in width, being 10 feet on each of the following described centerline;

Beginning at a point on the Westerly right-of-way line of the existing County Road, from whence Angle Point No.6 of said Tract 81 bears South $32^{\circ}58'24''$ West 701.56 feet, more or less; thence South $32^{\circ}13'02''$ West 330 feet, more or less to the Northerly line of the above-described parcel of land herein conveyed and the point of terminus.

County of Pitkin, State of Colorado

JLL

Exhibit C
List of New Exhibits
List of Exhibits Approved by Ordinance No. 28

Exhibit	Prior to Ord. 28	Approved by Ord. 28
A	Property Description	Amended Property Description
B	Promissory Note (for Property being purchased by Buyer)	Snowmass Housing Property Description
C	Deed of Trust	Remove
D	Declaration of Restrictive Covenants Concerning 22826 Two Rivers Road	Same
E	First Option Right to Purchase Property and Right of First Refusal	Same