

524



1055081

Kathleen Neel - Summit County Recorder

**REAL ESTATE TRANSFER ASSESSMENT AGREEMENT  
(Muggins Gulch)**

THIS REAL ESTATE TRANSFER ASSESSMENT AGREEMENT (the "Agreement") is entered into this 9<sup>th</sup> day of May, 2014 ("Effective Date") by and between BLUE SKY RANCH, LLC, a Florida limited liability company ("Owner"), and the BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY, COLORADO, ("County"). Owner and the County, and their successors and assigns, may individually be referred to hereinafter as a "Party" or collectively as the "Parties."

WHEREAS, Owner is the owner of all of the "Lots" described, delineated and depicted on the Plat of Muggins Gulch recorded on the 16<sup>th</sup> day of May, 2014, at Reception No. 1055079, Summit County, Colorado ("Plat"); and

WHEREAS, Owner intends to convey the Lots to one or more third parties who may construct residences thereon (each a "Residence"); and

WHEREAS, the Summit Combined Housing Authority Referred Measure No. 5A approved by the voters of Summit County on November 7, 2006 provided for a development impact fee of \$2.00 or less per square foot of new construction to be used for affordable housing purposes for a period of ten (10) years ("Impact Fee"); and

WHEREAS, the County has adopted policies in connection with the implementation of the Impact Fee as set forth in the Administrative Policy Paper, Affordable Housing Development Impact Fee, last modified July 25, 2008 ("Policy"), and the Policy provides for the waiver of the Impact Fee for a new structure if the property owner elects to record a restrictive covenant against the property creating a one-third of one percent (.33%) real estate transfer fee to the County payable upon the second sale or transfer of the property after such structure is completed; and

WHEREAS, in connection with Planning Case 07-072, in lieu of the Impact Fee, Owner has offered to cause a real estate transfer assessment of one-half of one percent (.50%) to be imposed upon the second and each subsequent sale, conveyance or other legal transfer of any Lot, without regard to whether any structure has been constructed, for purposes of providing funding to the County for affordable housing ("RETA"), which will result in such funding occurring sooner and at a higher rate than the transfer fee authorized by the Policy and for a longer term than that provided for the Impact Fee; and

WHEREAS, the Parties desire to set forth the method by which the RETA will be levied, collected and paid to the County as more particularly set forth below.

**AGREEMENT**

NOW THEREFORE, in consideration of the premises and the mutual agreements and covenants contained herein, the adequacy and sufficiency of which are hereby mutually acknowledged, the Parties hereto covenant and agree as follows:

1. RETA. Upon the second and each subsequent sale, conveyance or other legal transfer of any Lot, whether improved or unimproved, the grantee shall pay to the Summit County, Colorado Treasurer the RETA (that amount equal to .50% of the consideration paid in connection with the sale, conveyance or transfer). Upon the initial sale, conveyance or other legal transfer of any Lot on which Owner has constructed a residence and associated improvements, the grantee shall pay to the Summit County, Colorado Treasurer the RETA. Second sale as used herein shall mean the sale of any Lot by an owner to whom Owner sold, conveyed or transferred the Lot. Until paid, the obligation to pay the RETA will constitute a lien on the transferred Lot in favor of the County and the amount of such lien shall accrue interest from the date of the transfer until paid at the statutory rate of interest. For purposes of this paragraph, the consideration paid for a sale, conveyance or transfer shall have the meaning set forth in Section 39-13-102, Colorado Revised Statutes, as amended. This Section is not intended to restrict the ability of the Parties to a sale, conveyance or other legal transfer of a Lot to agree on an apportionment of the RETA between the transferor and the transferee.

2. No Impact Fee. The County hereby agrees that the Impact Fee shall not apply to any of the Lots and that, accordingly, no residence, structure or other improvements constructed or to be constructed on any of the Lots shall be subject to the Impact Fee now in effect or as it may be extended beyond the current period for which it is in effect. Further, the County agrees that, in the event that any new impact type fee to provide funding to the County or the Summit Combined Housing Authority, or any successor thereto, for affordable housing purposes, the owner of any Lot on which such new fee is to be imposed shall be entitled to a credit in an amount equal to the RETA paid in connection with the sale, conveyance or transfer of the Lot to such owner.

3. Use of RETA; Accounting. The County hereby agrees that the funds received from the RETA shall be utilized by the County in the same manner as the Impact Fee is to be utilized as provided for in the Referred Measure 5A and for no other uses, unless otherwise agreed to in writing by the County and Muggins Gulch Association established by Owner in connection with the recording of the Plat (“Association”). The County shall maintain records and books of account covering all expenditures of RETA funds received under this Agreement, which books, records, accounts and other relevant documentation shall be maintained and preserved by the County for at least five (5) years following any such expenditure and shall be open to inspection by the Association at any reasonable time. Other than as specified herein, this Covenant is not intended to impose any legal or other responsibility on County.

4. RETA Exemptions. Notwithstanding anything to the contrary set forth in this Agreement, the RETA shall not apply to:

- (a) Any transfer where the consideration is less than \$500.
- (b) Any transfer to the United States or any agency or instrumentality thereof, the State of Colorado, any county, municipality, special district or other political subdivision.
- (c) Any gift of real property where no consideration is paid other than love and affection or in connection with a charitable donation.

(d) Any transfer of title or change in interest by reason of death, pursuant to a will or the laws of descent and distribution.

(e) Any transfer made: (i) pursuant to the reorganization, merger, or consolidation of any legal entities, (ii) by a subsidiary to a parent entity for no consideration other than cancellation or surrender of the subsidiary's stock, or (iii) to a legal entity if the entity is owned by the persons by whom such transfer was made and there is no consideration other than their respective interests in the new entity.

(f) Any transfer made pursuant to any plan confirmed or ordered by a court of competent jurisdiction under the United States Bankruptcy Code or in an equity receivership proceeding. Any transfer made without consideration for the purpose of: (i) confirming, correcting, modifying or supplementing a transfer previously recorded; (ii) making minor boundary adjustments; (iii) removing clouds on title; or (iv) granting rights-of-way, easements, or licenses.

(g) Any decree or order of a court of competent jurisdiction quieting, determining, or vesting title, including a final order awarding title pursuant to a condemnation proceeding.

(h) Any transfer between spouses or former spouses made pursuant to a separation agreement, decree of legal separation, or dissolution of marriage.

(i) Any transfer by deed in lieu of foreclosure, provided that:

(i) Such transfer shall be exempt only if the grantee in such deed is the person holding the obligation or instrument which is being canceled, in whole or in part, in exchange for the transfer; and

(ii) Such transfer shall be exempt only to the extent of the amount of the obligation which is being canceled in exchange for the transfer.

(j) Any transfer by: (i) sheriff's deed, trustee's deed or other conveyance pursuant to an execution sale; (ii) foreclosure sale by the public trustee under a power of sale, court decree foreclosing a mortgage, deed of trust, or other security instrument; or (iii) court decree of lien foreclosure.

(k) Any executory contract for the sale of a Lot of less than three (3) years' duration under which the vendee is entitled to or does take possession thereof without acquiring title thereto or any assignment or cancellation of any such contract; provided, however, that the RETA shall be paid when the vendee acquires title to the Lot.

(l) Any transfer arising solely from the termination of a joint tenancy with respect to a Lot or the partition of a Lot held under common ownership, except to the extent that additional consideration is given in connection therewith.

(m) Any lease of any Lot or portion thereof (or assignment or transfer of any interest in any such lease) that does not result in equitable ownership of the Lot transferring to the lessee.

(n) Any transfer to secure a debt or other obligation or to release property which is security for a debt or other obligation.

(o) Any transfer of a Lot or portion thereof to a qualified intermediary in connection with a tax deferred exchange of real property under Section 1031 of the Internal Revenue Code, on the condition that the transferee of the qualified intermediary pays the RETA.

To the extent a grantee of a Lot is uncertain as to whether any of the foregoing exemptions apply to a particular Lot transfer or conveyance, such grantee may request a determination on exemption eligibility from the Treasurer of Summit County, Colorado, whose decision may be appealed to the County for a final determination on exemption eligibility.

5. Default; Notice and Right to Cure; Remedies. The failure by any Party to observe or perform any of their respective obligations set forth in this Agreement in any material respect and the continuance of such failure beyond the Cure Period shall constitute an "Event of Default."

Upon the occurrence of an Event of Default, the non-defaulting party shall provide the defaulting party with a written notice of such default ("Notice of Default"). The defaulting party shall have 30 days after receipt of the Notice of Default ("Cure Period") to cure the breach specified in the Notice of Default; provided, however, that if the nature of the alleged default is such that it cannot be reasonably cured within the Cure Period, the Cure Period shall be extended for the time reasonably required to complete the cure, so long as the defaulting Party commences the cure within the Cure Period and diligently prosecutes the cure to completion thereafter. During the Cure Period, the Parties shall seek diligently and in good faith to negotiate a settlement of any dispute set forth in the Notice of Default, using the services of a neutral mediator or other means of alternative dispute resolution if both parties agree. The conduct of such negotiations, or the failure of such negotiations to achieve a settlement, shall not affect the other rights and remedies of the parties under this Agreement.

In the event of an Event of Default by a grantee of a Lot, the County may withhold the issuance of any or all grading or building permits or occupancy permits applied for, in connection with the Lot of such grantee until such Event of Default has been cured or may execute on its lien provided for in paragraph 1 above in any manner provided for under the laws of the State of Colorado. Upon an Event of Default by the County, the Association shall have all rights available to it at law or in equity, specifically including the right to injunctive relief, specific performance and/or damages.

6. Miscellaneous.

(a) No Waiver. The failure of any of the Parties to enforce a provision of this Agreement shall in no way constitute a waiver of the provision, nor in any way affect the

validity of this Agreement or any part hereof, or the right of such party thereafter to enforce each and every provision hereof.

(b) Amendment. This Agreement may be amended only by written agreement executed by all Parties hereto.

(c) Assignment. None of the Parties may assign this Agreement or any of their respective rights and obligations hereunder without the prior written consent of the other Parties.

(d) Choice of Law. The laws of the State of Colorado shall govern this Agreement and any interpretation thereof.

(e) Severability. If any provision of this Agreement is held invalid by a court of competent jurisdiction, such invalidity shall not affect any other provision of this Agreement.

(f) Entire Agreement; Conflict. This Agreement embodies the entire agreement of the Parties relating to the subject matter hereof. There are no promises, terms, conditions or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations or agreements, either oral or written, between the parties in this regard.

(g) Authority. Each of the Parties hereto represents to the others that this Agreement is a valid and binding obligation of such party and has been approved by all necessary action and that such party has full power and authority to execute, deliver and perform this Agreement, and that the individual executing this agreement on behalf of the party is fully empowered and authorized to do so.

(h) Binding Effect. This Agreement shall run with the land in perpetuity and be binding upon and inure to the benefit of the Parties hereto and their respective successors and any permitted assigns.

(i) Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all Parties had signed the same document. All counterparts shall be construed together and shall constitute one (1) agreement.

(j) No Benefit to Third Parties. This Agreement does not and shall not be deemed to confer upon or grant to any third party any rights to claim damages or to bring any lawsuit, action or other proceedings against any of the Parties because of any breach hereof, or because of any terms, covenants, agreements or conditions contained herein. Other than as specified herein, this Agreement is not intended to impose any legal or other responsibility on the Parties.

(k) Jurisdiction and Venue. The laws of the State of Colorado shall govern the interpretation and performance of this Agreement. Venue shall only be proper in Summit County, Colorado.

(l) Attorneys' Fees. Notwithstanding anything to the contrary contained in this Agreement, if any Party institutes legal proceedings against another Party or Parties with respect to this Agreement, the substantially non-prevailing Party or Parties shall pay to the prevailing Party or Parties an amount equal to all reasonable attorneys' fees and disbursements and all other costs and expenses incurred by the substantially prevailing Party or Parties in connection therewith, including, without limitation, the reasonable fees and disbursements of any attorneys, accountants, auditors, appraisers or other professionals engaged by the substantially prevailing Party or Parties, whether incurred before or at trial, on appeal or in post-judgment collection.

(m) Recordation. Owner shall record this instrument in a timely fashion in the official records of the Summit County, Colorado Clerk and Recorder.

(n) Severability. The terms and conditions of this Agreement are expressly intended to be severable. In the case one or more of the provisions contained in this Agreement, or any application hereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained in this Agreement and the application thereof shall not in any way be affected or impaired thereby.

(o) Appropriation of Funds. Notwithstanding anything to the contrary contained herein, the payment of all direct and indirect County obligations hereunder, in fiscal years subsequent to the current year, are contingent upon funds for this Agreement being duly appropriated and budgeted. If funds for this Agreement are not so appropriated and budgeted in any year subsequent to the fiscal year of execution of this Agreement, the County may terminate this Agreement upon written notice to the parties. The County's fiscal year is currently the calendar year. This Agreement is intended to be in compliance with the provisions of Article 25 of Title 30 of the Colorado Revised Statutes, and with the Local Government Budget Law (C.R.S. 29-1-101 et. seq.).

(p) Governmental Immunity. The County does not intend to waive, by any provision of this Agreement, the monetary limits or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed as of the Effective Date set forth above.

[SEPARATE SIGNATURE PAGES TO FOLLOW]

BLUE SKY RANCH, LLC,  
a Florida limited liability company

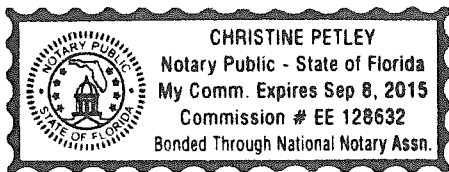
By: Rookis Development Company,  
a Florida corporation, its Manager

By: [Signature]  
Richard J. Rookis, President

Address:  
154 N. Ryan Street  
Santa Rosa Beach, FL 32459

STATE OF FLORIDA                    )  
  )  
COUNTY OF WALTON                )

The foregoing was acknowledged before me this 9<sup>th</sup> day of MAY, 2014, by Richard J. Rookis as President of Rookis Development Company, a Florida corporation, Manager of Blue Sky Ranch, LLC, a Florida limited liability company, who personally appeared before me and  is personally known to me or  produced FLDL as identification.



(Seal)

[Signature]  
(Notary Public (sign above))  
Print Name: CHRISTINE PETLEY  
Notary Public, State of Florida  
My Commission Expires: SEPT 08, 2015

SUMMIT COUNTY, COLORADO

ATTEST:

Kathleen Neel  
Kathleen Neel, Clerk and Recorder

By: K. Stiegelmeier  
Karn Stiegelmeier, Chairman  
Board of County Commissioners

Address:  
P.O. Box 68  
Breckenridge, CO 80424

STATE OF COLORADO    )  
                                  ) ss.  
COUNTY OF SUMMIT    )

The foregoing instrument was acknowledged before me this 13 day of May, 2014 by Karn Stiegelmeier as Chairman of the Board of County Commissioners of Summit County, Colorado and Kathleen Neel as Clerk and Recorder of Summit County, Colorado.

WITNESS my hand and official seal.

My commission expires: 10-8-2017

Mary Jean Griffin  
Notary Public

MARY JEAN GRIFFIN  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20034024276  
MY COMMISSION EXPIRES OCTOBER 08, 2017

Approved as  
to be a

MAA  
Legal