

FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT

This First Amendment to Intergovernmental Agreement ("Amendment") is made and entered into to be effective the 15<sup>th</sup> day of February, 2005, between the City of Louisville, Colorado ("Louisville") and the Town of Superior, Colorado ("Superior") (collectively the "Parties") as the first amendment to the Intergovernmental Agreement between the Parties effective upon certification of the election results of the November 1997 election (the "Agreement").

WHEREAS, the Parties entered into the Agreement, *inter alia*, to provide for sharing of sales taxes on the South Property, which Property was disconnected from Louisville and annexed to Superior; and

WHEREAS, the Agreement limits the amount of residential development on the South Property; and

WHEREAS, it is in the interest of both Parties that sales taxes on the South Property be maximized for the benefit of both Parties; and

WHEREAS, Superior is working with a developer that is willing to develop the South Property for a mixed-use development that includes multi-family housing, which housing will provide opportunities for persons to live and work in the area, thus maximizing the use of and revenue generation from non-residential portions of the development; and

WHEREAS, Superior has represented that this mixed-use development on the South Property is not to contain more than 2,000 dwelling units, and the Town will require a minimum of 250,000 square feet of retail, sales-tax generating development; and

WHEREAS, Louisville is not taking a position on the appropriateness or density of residential uses within Superior; and

WHEREAS, the Parties desire to amend the land use standards of the Agreement that are applicable to the South Property, to allow for additional residential development on the South Property, to set a minimum square footage of retail, sales-tax generating uses, and to provide for a phasing plan requiring the concurrent development of residential and retail uses on the South Property; and

WHEREAS, such amended land use standards shall be applicable to the South Property and enforceable as provided in the Agreement and C.R.S. §29-20-105; and

WHEREAS, the Parties desire to amend the Agreement to prevent either party from soliciting existing businesses to relocate from one jurisdiction to the other; and

WHEREAS, the Parties recognize that the South Property has not developed since the IGA was created and that this Amendment will make the South Property more attractive to the existing development market for the benefit of both Parties; and

WHEREAS, the Parties are authorized by law, including but not limited to C.R.S. §29-1-201 et seq. and C.R.S. §29-20-105, to enter into the agreements, and perform the functions, set forth herein.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants and agreements contained herein, the Parties agree as follows:

A. Subparagraphs a and b of Paragraph 3 of the Agreement are amended to read in full as follows:

3. Annexation of South Property. If the South Property is annexed to Superior, then the following shall apply:

- a. No more than eight acres of the South Property may be developed for residential retirement/senior housing in one or more buildings not exceeding the height limitation applicable to commercial buildings on the South Property. The balance of the South Property may be developed as a "mixed use" area to include residential dwelling units, office, retail and other uses, subject to provisions hereof.
- b. There shall be a minimum of 250,000 square feet of retail, sales-tax generating development on the South Property. Superior shall require construction of a minimum of 250,000 square feet of retail, sales-tax generating development on the South Property as part of its approval of the Preliminary PD/Zone District Plan for development on the South Property, and Superior shall not permit or approve any development that does not contain such minimum amount of retail, sales-tax generating square footage (exclusive of the retirement/senior housing permitted under 3.a, above). With its approval of the Preliminary PD/Zone District Plan for development on the South Property, Superior shall fix the total number of permitted residential dwelling units

(exclusive of the retirement/senior housing permitted under 3.a, above) to be developed on the South Property. With such approval, Superior shall also require a phasing plan requiring that certificates of occupancy are issued for at least 125,000 square feet of the retail, sales-tax generating development before certificates of occupancy are issued for more than 30 percent of the total number of permitted residential dwelling units or 500 dwelling units, whichever is more, but not to exceed 700 dwelling units (exclusive of the retirement/senior housing permitted under 3.a, above). Additionally, in no event shall certificates of occupancy be issued for 100 percent of the total number of permitted residential dwelling units (exclusive of the retirement/senior housing permitted under 3.a, above) or 2000 dwelling units, whichever is less, prior to issuance of certificates of occupancy for 250,000 square feet of retail, sales-tax generating development.

B. Paragraph 9 of the Agreement is amended to read in full as follows:

9. No Impairment. Neither Louisville nor Superior shall impair the rights of the other, without the other's consent, to share in the revenues to be collected and shared as described in this Agreement. Further, in recognition of Superior's interest in securing a stable sales tax base, Louisville shall not solicit any retail business located and operating in Superior's jurisdiction by incentives in order to encourage physical relocation of such business to Louisville within five years of the date of issuance of the certificate of occupancy for the 125,000<sup>th</sup> square feet of retail development on the South Property. In recognition of Louisville's interest in securing a stable sales tax base, Superior shall not solicit any retail business located and operating in Louisville's jurisdiction by incentives in order to encourage physical relocation of such business to Superior within five years of the date of issuance of the certificate of occupancy for the 125,000<sup>th</sup> square feet of retail development on the South Property. For purposes of this paragraph, "incentive" is limited to sales tax increment financing, sales tax reimbursements or waivers of fees charged to similarly situated development by the jurisdiction; and "physical relocation" means closing an existing sales tax generating retail operation in one jurisdiction in order to open the same retail operation in the other jurisdiction.

C. Paragraph 14 of the Agreement is amended to read in full as follows:

14. Sales Tax Revenue. The amount of sales tax revenues from the South Property to be shared with Louisville pursuant to this Agreement, and the amount of sales tax revenues from the North Property to be shared with Superior pursuant to this Agreement, shall not be affected or reduced by any sales tax increment finance plan, and neither party shall implement any sales tax increment finance plan that would have such effect.

D. Except as specifically amended herein, the Agreement shall remain in full force and effect.

Executed to be effective as of the date first set forth above.



Nancy Varra  
Nancy Varra, City Clerk

CITY OF LOUISVILLE  
By: [Signature]  
Charles L. Sisk, Mayor

APPROVED AS TO FORM:

By: [Signature]  
Light, Harrington & Dawes, P.C.  
City Attorney

TOWN OF SUPERIOR

ATTEST:

Phyllis L. Hardin  
Phyllis L. Hardin, Town Clerk

By: [Signature]  
Mark Hamilton, Mayor

APPROVED AS TO FORM:

By: [Signature]  
Dietze and Davis, P.C.  
Town Attorney