

OWNER PARTICIPATION AGREEMENT

THIS AGREEMENT (“Agreement”) is made as of October ____, 2004, by and between the GOLDEN URBAN RENEWAL AUTHORITY (“Authority”) and McBROOM HOLDINGS, L.L.C., a Colorado limited liability company (“Owner”).

1. Acquisition of the Site. The Authority is carrying out the Golden Urban Renewal Plan a/k/a the Golden Downtown Redevelopment Plan (“Plan”). In cooperation with the Authority and in furtherance of the Plan, the Owner has acquired fee simple, marketable title to the following described property, which property, including the buildings and existing improvements thereon, is hereinafter called the “Site”: 1717 Washington Avenue, City of Golden, County of Jefferson, State of Colorado. The acquisition of the Site by the Owner is for the purpose of rehabilitating and redeveloping the Site.

2. Owner’s Financing. The Owner has obtained financing (“Owner’s Financing”) sufficient to rehabilitate the Site by constructing the improvements (“Improvements”) described in Exhibit A. The Owner’s Financing includes any equity required by the Owner’s lender. The terms of the Owner’s Financing have been approved by the Authority.

3. Improvements. The Improvements consist of the Private Improvements and the Eligible Improvements. The Owner shall commence construction of the Improvements within sixty (60) days after approval of this Agreement by the Board of Commissioners of the Authority (the “Effective Date”), and Complete Construction of the Improvements on or before March 31, 2005. “Complete Construction” or “Completion of Construction” means delivery of a final certificate of occupancy by the City of Golden (“City”). All construction shall conform with plans and specifications prepared and submitted by the Owner and approved by the Authority in writing. Prior to commencing construction the Owner shall obtain any and all permits required by the City and any other governmental agency having jurisdiction. The Owner shall document and submit to the Authority certified records of all costs, including invoices received and clearly identifiable as related to the design and construction of the Eligible Improvements.

4. Reimbursement Obligation. The Authority will reimburse the Owner for constructing the Eligible Improvements (the “Reimbursement Obligation”) from a fund (“Special Fund”) consisting solely of the ad valorem property tax valuation in excess of the base valuation for the Site calculated by the Authority in accordance with ' 31-25-107(9), C.R.S. (for this Agreement the base year shall be 200_), subject to adjustment in accordance with ' 31-25-107(9), C.R.S., and existing agreements with the City. The total Reimbursement Obligation shall be the lesser of the actual certified and documented cost of the Eligible Improvements or thirty seven thousand five hundred (\$37,500.00). The Authority’s duty to pay the Reimbursement Obligation shall commence on the Effective Date and continue until the earlier of payment in full of the Reimbursement Obligation or the eight (8th) anniversary of the Effective Date (the “Term”). The Reimbursement Obligation is a limited obligation payable solely from the Special Fund. The obligation to make such payment is not a debt or general obligation of the Authority, and is

not a debt of the City or the State of Colorado or of any political subdivision of the State of Colorado or any other public body. Such payment shall not be payable from or constitute a charge upon any funds of the Authority or the City except from the Special Fund and then only to the extent and in the manner specified in this Agreement and in any document or instrument signed by the Authority implementing this Agreement.

5. Title Insurance. Within ten (10) days after the date hereof, Owner, at Owner's expense, shall deliver to the Authority a current commitment for a mortgagee's policy of title insurance, issued by a title company acceptable to the Authority (the "Title Company") in the amount of not less than \$_____; certificates of taxes due issued by the Treasurer for Jefferson County showing the current status of all taxes and assessments due or accruing on the Site and legible copies of all recorded title exceptions referred to in the commitment. Title to the Site shall be merchantable, free and clear of all liens, defects and encumbrances except the following Permitted Exceptions: (a) the Plan, (b) this Agreement, (c) liens, defects or encumbrances waived or approved in writing by the Authority, (d) taxes or assessments for the current year or otherwise not yet due and payable, (e) utility easements and rights of way approved by the Authority, (f) deeds of trust and/or other security documents required by the Owner's Financing and (g) other matters approved in writing by the Authority.

6. Conditions Precedent; Termination. The Authority may terminate this Agreement if the Owner fails to (a) obtain or qualify for the Owner's Financing; (b) title to the Site does not conform with Section 5 on the Effective Date; (c) _____. If the Authority elects to terminate this Agreement for any reason listed herein, it shall give notice of such election to the Owner within thirty (30) days after it has received actual notice of such right to terminate. Such termination shall be effective fourteen (14) days after such notice is given. Failure to terminate this Agreement for any such failure constitutes a waiver of the right to terminate this Agreement for that particular failure only and shall not constitute a failure of the right to terminate the Agreement for any other failure. If this Agreement is terminated pursuant to this section, the Agreement shall be null and void and of no effect. In addition, the parties agree to execute such mutual releases or other instruments reasonably required to effectuate and give notice of such termination.

7. Transfer Restrictions. Except for the Owner's Financing as originally approved by the Authority and the exercise of lender remedies with respect thereto, during the Term the Owner shall not assign, transfer or sell all or any part of the Site, the Improvements, this Agreement, or a majority interest in the Owner (a "Transfer") without the prior written approval of the Authority. The Owner shall promptly notify the Authority of any and all changes whatsoever in the identity of the parties in control of the Owner. No voluntary or involuntary successor in interest of the Owner shall acquire any rights or powers under this Agreement except as expressly set forth in this Agreement. If the Owner undertakes a Transfer in violation of this Agreement, in addition to any other remedies it has at law or in equity, the Authority's obligation to make any further payments into the Special Fund shall terminate unless the Authority approves such Transfer in writing, which approval shall not be unreasonably withheld; provided, however, the Authority shall not be obligated to approve any Transfer unless the

Owner first complies with the obligations under this Agreement, and, if the Owner wishes to be released from its obligations hereunder, the Authority determines that the transferee is qualified to carry out the duties and responsibilities of the Owner under this Agreement.

8. Facade Covenant. After Completion of Construction and until the expiration of the Term, the Owner may not alter or add to the external facade of the buildings on the Site without the prior written consent of the Authority, which consent shall not be unreasonably withheld.

9. Tax Information Covenants. For as long as this Agreement is in effect, the Owner shall provide, and shall require all tenants occupying the Site and the Improvements (as an affirmative covenant in all lease documents) to provide, the Authority with the dates and amounts of ad valorem property taxes paid by the Owner and each such tenant each year at the same time such payment or payments are made. The information required by this provision is necessary to calculate the amounts available for deposit in the Special Fund each year.

10. Hold Harmless and Indemnification. In the performance of this Agreement, the Owner agrees to indemnify and hold harmless the Authority, its officers, employees, agents and others acting on its behalf and to defend and protect them from and against any and all loss, damage, liability, cost and expense (including, without limitation, attorneys' fees and other costs and expenses of defense), of any sort whatsoever based upon, resulting from or otherwise arising in connection with any actions, claims, or proceedings brought, or any loss, damage or injury of any type, by reason of any act or omission of the Owner, its employees or agents or any other person or entity for whose acts or omissions the Owner is legally responsible.

11. Representations and Warranties by the Owner. The Owner represents, warrants and certifies to the Authority as follows:

a. The Owner holds fee simple marketable title to the Site, subject only to the Permitted Exceptions;

b. There is no action or proceeding pending or, to the knowledge of the Owner, threatened against the Owner, its managers and members or the Site before any court or administrative agency that might result in any material adverse change in the business or financial condition of the Owner or of the Site;

c. The Owner is not involved in any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation proceeding and, to the best knowledge of the party executing this Agreement on behalf of the Owner, no such proceeding is contemplated or threatened.

12. Remedies. If any event of default by the Authority occurs and is continuing hereunder, the Owner may seek enforcement of the Reimbursement Obligation. In no event shall the Authority be

liable for special, consequential, or punitive damages. If any event of default by the Owner occurs and is continuing hereunder, the Authority may (a) seek any available remedy at law or equity including, without limitation, specific performance or injunction; and (b) elect to terminate this Agreement.

13. Notices. Unless otherwise notified in writing by either party, all notices required or permitted by this Agreement shall be in writing and shall be sufficiently given if delivered in person, by prepaid overnight express mail or express courier to either party or by certified mail, with postage prepaid, return receipt requested and addressed:

In the case of the Authority to:

Golden Urban Renewal Authority
Attention: Executive Director
1111 Washington Avenue, Suite 115
Golden, CO 80401

In the case of Owner to:

14. Further Assurances: Estoppel Certificates. The parties agree to execute such additional instruments or documents and take such other actions as shall be reasonably requested by the other party to implement this Agreement. The parties agree to execute such documents as the other party shall reasonably request to verify or confirm the status of this Agreement and of the performance of the obligations hereunder.

15. Covenant of Good Faith. Each party agrees to act reasonably and in good faith in performing or attempting to perform each and every condition, covenant, obligation or duty required by the Agreement, and any other agreement implementing this Agreement, and each party shall not unreasonably, arbitrarily or capriciously withhold any approval or action required by the Agreement.

16. The Authority or City Not a Partner. Notwithstanding any language in this Agreement or any other agreement, representation or warranty to the contrary, neither the Authority nor the City shall be deemed to be a partner or joint venturer of the Owner, and neither the Authority nor the City shall be responsible for any debt or liability of the Owner.

17. City Not a Party. The City is not a party to this Agreement, and the Authority is not part of the City or a department or agency of the City and is not authorized to bind or represent the City or the position of the City in any manner whatsoever, nor is the City authorized to bind or represent the Authority or the position of the Authority in any manner whatsoever.

18. Binding Effect; No Third Party Beneficiaries. The Agreement shall be binding upon and inure to the benefit of the parties, their personal representatives, successors and assigns. No third-party beneficiary rights are created in favor of any person not a party to this Agreement.

19. Amendments. This Agreement is the entire Agreement of the parties as to the subject matter herein and supersedes and replaces all prior agreements with respect to the subject matter herein and may be amended only in writing fully subscribed by the parties or their successors or assigns.

20. Repair or Reconstruction of Improvements. If the Site, including the Improvements, is damaged or destroyed by fire or other casualty prior to Completion of Construction, the Owner agrees to reconstruct or repair such damaged buildings and Improvements to a condition reasonably satisfactory to the Authority within a reasonable period of time, but in any event within six (6) months of the date of such damage or destruction, or the Authority may terminate this Agreement.

21. Minor Changes. This Agreement is approved in substantially the form submitted to the Owner and to the Board of Commissioners of the Authority. The officers executing the Agreement are authorized to make such minor changes in the Agreement and the attachments as may be necessary, so long as such changes are consistent with the intent and understanding of the parties. The execution of the Agreement or any document regarding such minor changes shall constitute conclusive evidence of the approval of such changes by the respective parties.

22. Enforced Delay and Performance for Causes Beyond Control of Party. Neither party shall be considered in default of its obligations under this Agreement in the event of enforced delay due to causes beyond its control and without its fault or negligence, including, without limitation, acts of God, acts of the public enemy, acts of the federal, state or local government (including any effects caused by initiatives or referendum), acts of the other party, acts of third-parties, acts or orders of court, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather or delays of subcontractors or material men due to such causes. In the event of the occurrence of any enforced delay, the time or times for performance of the obligations of the party claiming delay shall be extended for the period of the enforced delay; provided, that the party seeking the benefit of the provisions of this section shall notify the other party, within thirty (30) days after such party knows of any enforced delay, of the specific delay in writing and claim the right to an extension of the period of the enforced delay.

23. Authority. The persons executing this Agreement on behalf of parties represent and warrant that each is fully authorized to bind such party to all of the terms and conditions of this Agreement.

24. Incorporation by Reference. The exhibits to this Agreement are incorporated into and made a part of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

GOLDEN URBAN RENEWAL AUTHORITY

Attest:

By:

McBROOM HOLDINGS, L.L.C.
a Colorado limited liability company

By:

EXHIBIT A

The Improvements

A. The Private Improvements

This list does not include the Eligible Improvements set forth below,

B. The Eligible Improvements

Terms and Conditions Applicable to The Authority's Reimbursement Obligation

Expenditures for the Eligible Improvements shall be documented by the Owner and approved by the Authority as follows:

1. The Owner shall submit the following documentation to the Authority at least monthly after Commencement of Construction:
 - a. An itemized statement of expenditures for which the Owner seeks credit, including a certification signed by the party submitting the statement that the information contained therein is true and accurate to the best of that individual's information and belief and conforms with the requirements of the Agreement.
 - b. Copies of each check issued by the Owner for each item listed on the statement.
2. Upon receipt of the above documentation, the Authority may compile an aggregate running total of the Reimbursement Obligation, plus interest, including crediting of any payments made to the Owner.
3. The Owner shall use its reasonable best efforts to obtain bids for construction services and materials that do not exceed what is customarily paid for the same or similar work in the Denver-Golden

area. The Owner will include a requirement similar in effect to the foregoing provision of this Paragraph 3 in all general construction and construction management contracts for the Private Improvements.

4. The Authority shall have the right to audit in a reasonable manner any and all of the Owner's contracts, subcontracts, books and accounts with respect to items claimed and allocated as expenditures eligible for inclusion in the Reimbursement Obligation.

5. Commencing on the Effective Date and until the _____ (____) anniversary of the Effective Date, the Authority will deposit into the Special Fund the revenues described in Section 4, hereof.

6. Provided there is no material conflict with its obligations under this Agreement, the Authority may earn and retain interest earnings on the amounts in the Special Fund in accordance with the policies of the Authority and the City applicable to similar funds and accounts.

7. The Authority shall make monthly disbursements to the Owner of all amounts in the Special Fund until first to occur of payment in full of the Reimbursement Obligation or expiration of the Term.

8. As part of obtaining Owner's Financing, the Owner may assign its right to receive payments of the Reimbursement Obligation to a Lender, but the Authority shall not be responsible for failure to make such payments, the risk and responsibility for making any and all payments to the Lender shall remain with the Owner.