

## ORDINANCE NO. 1281

AN ORDINANCE OF THE TOWN OF BERTHOUD, COLORADO AUTHORIZING A SITE LEASE AND LEASE PURCHASE AGREEMENT BETWEEN THE TOWN, AND UMB BANK, N.A. (SOLELY IN ITS CAPACITY AS TRUSTEE) FOR THE PURPOSE OF FINANCING THE CONSTRUCTION OF A RECREATION CENTER; APPROVING NOT TO EXCEED \$23,000,000 PRINCIPAL AMOUNT OF CERTIFICATES OF PARTICIPATION, SERIES 2020 IN CONNECTION THEREWITH; AUTHORIZING OFFICIALS OF THE TOWN TO TAKE ALL ACTION NECESSARY TO CARRY OUT THE TRANSACTIONS CONTEMPLATED HEREBY; AND RELATED MATTERS

WHEREAS, the Town of Berthoud, Colorado (the "Town") is authorized, pursuant to Section 31-15-801, Colorado Revised Statutes, as amended, to enter into long-term or short-term rental or leasehold agreements in order to provide necessary land, buildings, equipment and other property for governmental or proprietary purposes, which agreements may include an option to purchase and acquire title to such leased or rented property; and

WHEREAS, in order to provide for the capital asset needs of the Town, the Board of Trustees of the Town (the "Board") hereby determines that it is necessary and in the best interests of the Town and its citizens that the Town undertake lease-purchase financing for the acquisition, construction, improvement and equipping of facilities to be used as recreation center (the "Project"), to be completed on land currently owned by the Town; and

WHEREAS, the Board wishes to fund the Project from the proceeds of a lease-purchase financing (the "Financing") to be completed within 12 months of the date hereof; and

WHEREAS, the Town is the owner in fee simple of certain real property and improvements, on land located generally at the intersection of Berthoud Parkway and Bunyan Avenue in Berthoud, Colorado (the "Site Leased Property"); and

WHEREAS, to provide financing for the acquisition and construction of the Project, Certificates of Participation, Series 2020 (the "Series 2020 Certificates") in an aggregate amount not to exceed \$23,000,000 will be executed, sold and delivered pursuant to an Indenture of Trust (the "Indenture") entered into by UMB Bank, n.a. (the "Trustee"); and

WHEREAS, in connection with the Series 2020 Certificates, it will be necessary to execute and deliver a Site Lease (the "Site Lease") and a Lease Purchase Agreement (the "Lease") between the Town and the Trustee; and

WHEREAS, the Series 2020 Certificates are to be sold by public offering pursuant to a Certificate Purchase Agreement to be dated as of its dated date (the "CPA") between the Town and D.A. Davidson & Co. (the "Underwriter"); and

WHEREAS, there have been filed for public inspection with the Town Clerk in connection herewith the proposed forms of the Site Lease, the Lease and the Indenture (collectively, the

“Financing Documents”) as well as a preliminary official statement for the use of prospective buyers of the Series 2020 Certificates (the “Official Statement”).

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF BERTHOUD, COLORADO:

**Section 1. Ratification of Actions.** All action heretofore taken, not inconsistent with the provisions of this ordinance (the “Ordinance”), by the Board or the officers of the Town, directed toward the implementation of the Project, including the preparation of the forms of Site Lease, Lease, Indenture, the CPA and Official Statement and related documents, are hereby ratified, approved and confirmed.

**Section 2. Findings; Authorizations.** The Board hereby finds and determines, pursuant to the laws of the State of Colorado, that the Project is necessary, convenient, and in furtherance of the governmental purposes of the Town and in the best interests of the Town and its citizens; and the Board hereby authorizes the Project.

**Section 3. Approval and Execution of Documents; Town Representatives.** The Site Lease, the Lease, the Indenture and the Official Statement, in substantially the forms filed in the office of the Town Clerk prior to the final adoption of this Ordinance, are in all respects approved, authorized and confirmed, and the Mayor or the Mayor Pro Tem of the Town are hereby authorized and directed to execute and deliver, and the Town Clerk of the Town or any Deputy or Assistant Town Clerk are hereby authorized and directed to affix the seal of the Town to, and attest, the Site Lease and the Lease, in substantially the forms filed with the Town Clerk, with such changes as are not inconsistent with the intent of this Ordinance and are approved by bond counsel or the Town Attorney. The Board hereby designates the Town Administrator and the Deputy Town Administrator (and any persons authorized by law to act on their behalf in their absence) to act as “Town Representatives” under the Lease and any related documents. In the event that bond insurance or other credit enhancement is deemed advantageous to the Town in connection with the Series 2020 Certificates by the Town Representatives, they may insert provisions, not inconsistent herewith, required by the provider of such credit enhancement. Prior to the execution of the Site Lease, the Lease or any other instrument contemplated by this Ordinance, or the issuance of the Series 2020 Certificates, the final Base Rentals due under the Site Lease and Lease, and the principal amount, interest rates and other terms of the Series 2020 Certificates, not inconsistent herewith, shall be approved by a certificate executed by the Town Administrator (the “Final Terms Certificate”) not later than the date that is one year from the effective date of this Ordinance.

**Section 4. The Series 2020 Certificates.** The Board hereby acknowledges and consents to the sale, execution and delivery of the Series 2020 Certificates pursuant to the Indenture. The Board hereby acknowledges and approves the forms, terms and provisions of the Series 2020 Certificates contained in the Indenture, in substantially the form filed with the Town Clerk prior to the final adoption of this Ordinance.

The Series 2020 Certificates shall be issued in a principal amount not to exceed \$23,000,000, shall mature not later than December 1, 2049, shall bear interest at a net effective interest rate not exceeding 5.00%, and may be made subject to redemption at redemption prices which may include redemption premiums not exceeding 3% of their principal amount, all as may

be approved by Final Terms Certificate. The proceeds of the Series 2020 Certificates shall be used to accomplish the Project in the manner required under the Site Lease, the Lease and the Indenture.

**Section 5. Additional Documents.** The Town Clerk is hereby authorized and directed to attest all signatures and acts of any official of the Town in connection with the matters authorized by this Ordinance. The Mayor, the Mayor Pro Tem and the Town Representatives are hereby authorized to execute and deliver for and on behalf of the Town any and all additional certificates, documents and other papers and to perform all other acts that they may deem necessary or appropriate in order to implement and carry out the transactions and other matters authorized by this Ordinance. The appropriate officers of the Town are also authorized to execute on behalf of the Town agreements concerning the deposit and investment of funds in connection with the transactions contemplated by this Ordinance.

**Section 6. No General Obligation or Other Indebtedness.** The obligation of the Town to make rental payments under the Lease is subject to annual appropriation by the Board and constitutes an undertaking of the Town to make current expenditures. No provision of this Ordinance, the Lease, the Indenture, the CPA or the Series 2020 Certificates shall be construed as constituting or giving rise to a general obligation or other indebtedness or multiple fiscal year financial obligation of the Town within the meaning of any home rule, constitutional or statutory debt limitation nor a mandatory charge or requirement against the Town in any ensuing fiscal year beyond the current fiscal year. The Town shall have no obligation to make any payment with respect to the Series 2020 Certificates except in connection with the payment of the Base Rentals (as defined in the Lease) and certain other payments under the Lease, which payments are subject to termination and nonrenewal by the Town in accordance with the provisions of the Lease.

**Section 7. Expression of Need; Reasonable Rentals.** The Town hereby declares its current need for the Leased Property, which is considered to be essential to the governmental operations of the Town. It is hereby declared to be the present intention and expectation of the Board that the Lease will be renewed annually until all of the Leased Property is acquired by the Town pursuant to the Lease; but this declaration shall not be construed as contractually obligating or otherwise binding the Town.

The maximum Base Rentals payable under the Lease shall be an amount which would provide Revenues, as defined in the Lease, sufficient to pay the maximum principal and interest authorized herein for the Series 2020 Certificates. The Board hereby determines and declares that the Base Rentals due under the Lease will represent the fair value of the use of the Leased Property and the Purchase Option Price (as defined in the Lease) will represent, as of any date upon which the Town may exercise its option to purchase such Leased Property, the fair purchase price of such Leased Property. The Board further hereby determines and declares that the Base Rentals due under the Lease will not exceed a reasonable amount so as to place the Town under an economic or practical compulsion to renew the Lease or to exercise its option to purchase the Leased Property pursuant to the Lease. In making such determinations, the Board has given consideration to the cost of acquiring and installing the Leased Property, the uses and purposes for which the Leased Property will be employed by the Town, the benefit to the citizens of the Town by reason of the acquisition and installation of the Leased Property and the use of the Leased Property pursuant to the terms and provisions of the Lease, the Town's option to purchase the Leased Property, and the expected eventual vesting of title to the Leased Property in the Town. The Board hereby

determines and declares that the acquisition and installation of the Leased Property and the leasing of the Leased Property pursuant to the Lease will result in facilities of comparable quality and meeting the same requirements and standards as would be necessary if the acquisition and installation of the Leased Property were performed by the Town other than pursuant to the Lease. The Board hereby determines and declares that the maximum duration of the portion of the Lease allocable to any item of Leased Property separately identified in the Lease will not exceed the weighted average useful life of such item of Leased Property.

**Section 8. Severability.** If any section, paragraph, clause or provision of this Ordinance or the Lease (other than provisions as to the payment of Base Rentals by the Town during the term of the Lease, provisions for the quiet enjoyment of the Leased Property by the Town during the term of the Lease, and provisions for the transfer of the Leased Property to the Town under the conditions provided in the Lease) shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

**Section 9. Repeater of Measures.** All acts, orders, resolutions, ordinances or parts thereof, in conflict with this Ordinance or with any of the documents hereby approved, are hereby repealed only to the extent of such conflict. This repealer shall not be construed as reviving any resolution, ordinance, or part thereof heretofore repealed.

**Section 10. Publication and Effective Date.** Following final passage of this Ordinance after a single reading, it shall be recorded in the Town book of ordinances kept for that purpose, shall be authenticated by the signatures of the Mayor and the Town Clerk, and shall be published in full in a newspaper published within the Town and on the Town webpage: [www.berthoud.org](http://www.berthoud.org).. The Town Clerk is hereby authorized to include in such publications any additional information the Town Clerk may deem necessary or appropriate. This Ordinance shall take effect on the thirtieth day following its final publication.

INTRODUCED ADOPTED AND APPROVED on January 28, 2020.

[TOWN SEAL]

Attest:

By

Town Clerk

