

## LEASE AND NETWORK OPERATION AGREEMENT

**THIS LEASE AND NETWORK OPERATION AGREEMENT** is entered into on May 21<sup>st</sup>, 2019 between the Town of Breckenridge, located at 150 Ski Hill Road, Breckenridge, CO 80424 (hereinafter called “Town” or “Lessor”) and Allo Communications, LLC, located at 330 South 21<sup>st</sup> Street Lincoln, Nebraska 68508 (hereinafter called “Allo” or “Lessee”). Allo and Town individually referred to as a “Party” or collectively as the “Parties”.

### RECITALS

1. To provide better municipal services to Town residents and businesses, and to facilitate economic benefit throughout the Town, the Town desires to deploy a new fiber-to-the-premises network throughout the Breckenridge area.
2. The Town desires to structure the Breckenridge Fiber Network (“BFN”) in a manner that effectively enables the provision of gigabit broadband Internet access services and capabilities as described herein.
3. The Town has conducted a public selection process to identify and enter into an agreement with a qualified private-sector entity to activate and operate the BFN on a nondiscriminatory basis and to offer the Services to Town residents and businesses.
4. The Town has identified and selected Allo as the best candidate to provide such Services, and to that end the Town has negotiated this Agreement with Allo.
5. To effect the purposes set forth above, the Town desires to lease to Allo certain BFN assets, including dark fiber and access to associated outside plant equipment.
6. Allo desires to accept such lease, to activate and operate the BFN on a nondiscriminatory basis, and to provide the Services to Town residents and businesses, as further set forth in, and subject to the provisions of, this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises set forth below, and for other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, Lessor and Lessee agree as follows:

#### **1. Table of Exhibits Made Part of This Agreement**

- a. Exhibit A: Plans
- b. Exhibit B: Listed Assets
- c. Exhibit C: Service Level Agreements
- d. Exhibit D: Maintenance of Assets
- e. Exhibit E: Right of First Offer

#### **2. Definitions**

- a. “Affiliate” means, with respect to any specified Person, any other Person controlling or controlled by or under common control with the specified Person. For the purposes of this definition, “control” means the power to direct management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.
- b. “Agreement” means this Fiber Lease and Network Operation Agreement, any and all Exhibits and Attachments, and any Addenda or written amendments to which the Parties may agree from time to time.
- c. “Assets” means the BFN including any dark fiber strands and Outside Plant associated with the BFN and leased to Allo under this Agreement, as specified in Exhibit A.
- d. “Authorizations” means the permissions a Party must have to perform its obligations under this Agreement, which may include franchises; licenses; permits; zoning approvals; variances; exemptions; grants of authority to use public rights of way or facilities; agreements to make attachments to poles, ducts, conduits, towers, buildings, rooftops, manholes, and the like; and any other approval of a governmental authority or third persons with respect to (i) the construction, installation, repair, maintenance, operation or use of tangible or intangible property, as the case may be, or (ii) any requirement by a governmental authority for the engagement in a business or enterprise.
- e. “Breckenridge Fiber Network” / “BFN” means the fiber-to-the-premises network owned and installed by the Town of Breckenridge as contemplated herein and reflected in Exhibit A, including, but not limited to Dark Fiber, conduit, strands, pedestals, terminals, equipment owned by the Town, attachment points, backbone extensions, private property access, building entrances, and any other property interest including any fee, easement, or any franchise rights directly related to or attached to the infrastructure identified in Exhibit A. The BFN will not include the entirety of the Dark Fiber, some of which will be kept by the Town for its own non-commercial use, i.e., uses that do not compete with the services Allo offers for which it generates Qualifying Revenue as defined herein. BFN excludes any CPE and any equipment owned by Allo or equipment installed by Allo, any conduit owned by the Town which is not utilized for fiber by Allo. The BFN includes Drops owned by the Town, but does not include Drops owned Allo. The BFN may extend into expanded service areas that are constructed after the initial build of the BFN as contemplated by Exhibit A upon mutual agreement of the Parties.
- f. “Commercially Reasonable” means efforts that are reasonable and in good faith given the circumstances, however, such efforts do not require all or every possible effort to be made.



- g. “Customer Premises Equipment” (“CPE”) means terminal and associated equipment and inside wiring located at a Premises that is necessary for the receipt of Services, and which is owned and installed by Allo.
- h. “Dark Fiber” means fiber optic cable strands without electronic and optronic equipment which has not completed Light Testing or has not been activated.
- i. “Drop” means the fiber cables and network interface unit connecting a given Premises to the BFN.
- j. “Effective Date” means the date upon which this Agreement has been executed by the Parties.
- k. “FTTP” means fiber to the premises.
- l. “Government Authorization Fees” means all permit, right-of-way, easement, pole attachment, franchise, encroachment, or license fee, charge or assessment of any kind relating to a Party’s execution of its obligations under this Agreement.
- m. “Intra-Town Transport Services” all point-to-point BFN data transport services in which all points terminate within BFN.
- n. “Initial Term” has the meaning set forth in 4.a.
- o. “Internet Services” means the provision of high-speed internet access service provided by the Allo for hire, sale, or resale to the general public.
- p. “Lease” has the meaning set forth in Section 3.a.
- q. “Light Testing” means the process by which Allo ensures that activated fiber is ready for use.
- r. “Municipal Purposes” means Town use of the BFN to support governmental entities and services, which excludes any commercial use of the BFN by Town that directly competes with Allo’s uses of the BFN.
- s. “Network Operator” means Allo’s role in (i) configuring and activating a community fiber network utilizing the BFN, and (ii) providing data / IP transport services to unrelated Service Providers on a nondiscriminatory basis, as further articulated in Section 8.
- t. “Optical Network Terminal” / “ONT” means a CPE device that performs interface functions, such as code conversion, protocol conversion, and buffering, required for

communications to and from an optical fiber network.

- u. “Outside Plant” means equipment and structures owned by the Town that is used to house or support BFN fiber optic cable, to which Allo is granted an exclusive right to use under this Agreement.
- v. “Person” means an individual, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, a government or any government department or government agency or any other entity.
- w. “Premises” means a residence, commercial building, multi-dwelling unit or buildable lot that can be feasibly and reasonably served from the BFN.
- x. “Prorated Lease Payments” has the meaning set forth in Section 3.b.i.
- y. “Qualifying Revenue” means revenue, as determined in accordance with generally accepted accounting principles, received by the Allo from providing the following services: (i) Internet Services; (ii) Intra-Town Transport Services and Voice Services. “Qualifying Revenue” shall not include (A) any taxes, fees or assessments collected by the Allo from Subscribers for any pass-through to a government agency, including, without limitation, the FCC user fee, Franchise Fee, or any sales or utility taxes, provided, however that fees for multi-channel video services shall be addressed in a separate cable franchise between the parties; (B) unrecovered bad debt; (C) credits, refunds and deposits paid to Subscribers, (D) any fees derived from Allo’s activities outside of its role as Network Operator or Service Provider; connection fees; (E) “over the top” services (F) late fees; (G) installation and reconnection fees; (H) upgrade and downgrade fees.
- z. “Renewal Term 1” has the meaning set forth in Section 4.
- aa. “Renewal Term 2” has the meaning set forth in Section 4.
- bb. “Route” means the physical path traversed by the BFN, as set forth in applicable maps and related documents that are made a part of this Agreement.
- cc. “Service” means any retail or wholesale communications service offered and provided using the BFN and the Assets, whether by Allo or another Service Provider, including but not limited to broadband Internet access service, Voice Service, and Video Service.
- dd. “Service Provider” means, in addition to Allo, a provider of retail Services, to which Allo provides data transport services using Assets.



- ee. “Subscriber” means a business, governmental or residential customer of retail or wholesale Services provided by a Service Provider or provided by Allo.
- ff. “Term” means the Initial Term and any Renewal Terms, as provided in Section 4 of this Agreement.
- gg. “Video Service” means a wireline multichannel video programming delivery service, as such term is defined under federal law and interpreted by the Federal Communications Commission, or its substantial equivalent.
- hh. “Voice Service” means interconnected service, as such term is interpreted by the Federal Communications Commission, or its substantial equivalent.

### 3. Lease; Lease Payments.

- a. **Grant of Lease.** Upon the Effective Date, the Town grants to Allo for the Term the exclusive right to use the BFN and the Assets for the purposes described in this Agreement, as it may be amended from time to time, for the purposes set forth in this Agreement (“Lease”). It is the intent of the Parties for this Agreement to be a conveyance of a leasehold interest in the BFN property from Town to Allo for the duration of the Term.
  - i. **Allo’s Use.** Allo shall have the exclusive right to use the BFN to operate a fiber network capable of providing the Services in any manner that complies with applicable law.
  - ii. **Title.** Legal title in the Assets and the BFN is, and shall be held by the Town and, except as otherwise stated herein, nothing in this Agreement shall convey any legal title to real or personal property, nor shall it create any security interest for Allo or any other person’s benefit.
  - iii. **Sale or Transfer of Assets.** In the event the Town sells, assigns, otherwise transfers title in the Assets prior to the expiration of the Term, Allo’s right to use the Assets during the Term shall not be affected, and any such transfer, assignment, or sale shall explicitly be made subject to and conditioned upon the continuation of the Lease (including Allo payment obligations under this Lease) and the assignment of the Lease to the transferee or successor in interest.
  - iv. **Town Sale - Allo Right of First Offer.** The Town grants to Allo a Right of First Offer with respect to the BFN as set forth on Exhibit E.
- b. **Lease Payment; Reporting.**
  - i. **Lease Payment.** Allo shall pay the Town an amount equal to twenty-five percent (25%) of Qualifying Revenue per month (“Lease Payment”). Lease

payments described in this Section and not subject to a good faith dispute, and of any other fees or charges under the Agreement, shall be due monthly, in arrears. Allo shall have no obligation to make a Lease Payment until Allo derives Qualifying Revenue from the BFN.

- ii. In the event there is a good faith dispute relating to the payment of any amount due under this Agreement (“Dispute”), the Party claiming the Dispute will notify the other Party of the Dispute in writing, then Parties will meet to discuss the Dispute and attempt to resolve it in good faith. If the Dispute is not resolved within ten calendar (10) calendar days of the date of the Dispute notice, then the Dispute will be escalated to senior members of the Parties’ respective organizations. If the Dispute remains unresolved for an additional ten (10) calendar day period after the Dispute has been escalated to the senior members of the respective organizations, then the Dispute will be subject to mediation, if both parties mutually agree. The parties may mutually agree on a qualified mediator, no later than thirty calendar (30) days after a Party submits a written request for mediation to the other Party. Mediation shall take place in Summit County, Colorado. Arrangements reached in mediation shall be enforceable as settlement agreements in any court have jurisdiction thereof. If no arrangement is reached during mediation, the Dispute shall be subject to the Dispute Section 28 of this Agreement. For as long as the Dispute unresolved, it shall not be considered a breach of this Agreement.
- iii. **Financial Reporting.** On an annual basis (or a more frequent basis, as reasonably requested by Town) Allo shall provide to Town a written report including at least the following information:
  - A. The total number of Subscribers activated by Allo;
  - B. The total number of Subscribers deactivated by Allo;
  - C. The net Subscriber count, as of the last day of each year;
  - D. Any other information that the Town may reasonably require, including without limitation, break down information on the number of subscribers and revenue received from the sale of each category of Services.
- iv. **Audit.** The Town shall have the right to audit all Lease Payments in accordance with Section 22 below.

#### 4. **Term and Termination.**



- a. Term; Term Renewal.** This Agreement is effective on the Effective Date, but the Initial Term will not commence until Allo makes its first Lease Payment. This Agreement shall continue for a term of ten (10) years from the date upon which Allo makes its first Lease Payment, (“Initial Term”), unless terminated sooner under the provisions of Section 4.b of this Agreement, or otherwise by mutual agreement of the Parties. The Parties may renew this Agreement for one (1) additional ten (10) year extension (“Renewal Term 1”), and then a second additional ten (10) year extension after Renewal Term 1 (“Renewal Term 2”). Renewal Term 1 and Renewal Term 2 will be collectively referred to as a “Renewal Term”. If Allo submits its written request to renew this Agreement no less than six months prior to the expiration of the Initial Term, or any Renewal Term, as applicable, Town shall not unreasonably withhold or condition its approval of such renewal. The decision to grant or deny a renewal request shall be based upon the following standards:

- i. Allo’s compliance with the requirements of this Agreement;
- ii. Allo’s compliance with applicable federal, state and local laws, rules and policies.

If written approval or approval with conditions from the Town is not received by the expiration date of the Initial Term or any Renewal Term, Allo’s rights under this Agreement will automatically extend for an additional Renewal Term of 10 years.

- b. Termination.** Either Party may terminate this Agreement in the event of Default of this Agreement by the other Party, consistent with and subject to the procedures and remedies for breach set forth in Section 5.

- c. Effect of Termination.** In the event of termination of this Agreement, Allo shall immediately relinquish and quit all claims of right to use the Assets as set forth in this Agreement. All other rights and obligations of the Parties set forth under this Agreement shall cease immediately, except for rights and obligations specifically designated to survive termination, as set forth in this Section. After the effective date of termination, there shall be a six (6) month transition period in which Allo and the Town will cooperate in good faith to wind down Allo’s activities on the BFN (“Termination Transition Period”). Further, during the Termination Transition Period, the Parties agree as follows:

- i. Purchase of Equipment. Allo shall not remove or deactivate any CPE or other equipment during the Termination Transition Period for any reason, and during such period, Town shall rent the equipment from Allo at a mutually agreed, upon price not to exceed the Lease Payments. In addition, if requested by the Town, Allo shall be required to sell such CPE, other equipment, and Drops to the Town at a price equal to a reasonable, mutually

agreed upon depreciated asset valuation measure, by providing Allo written notice of its intent to purchase equipment no later than thirty (30) days prior to the expiration of the Termination Transition Period. If the Town fails to provide notice of its intent to purchase equipment, Allo, in its sole and absolute discretion, shall have the right to dispose of the equipment in any manner upon the expiration of the Termination Transition Period.

- ii. Lease Payments. Upon the effective date of termination, Allo shall have the right to receive all revenues generated from Subscribers and any commercial activities using the BFN until the Termination Transition Period expires, and shall be responsible for any Lease Payments due related to those revenues.

## 5. **Default.**

- a. **Default.** A Default under this Agreement shall occur if (a) a Party materially breaches this Agreement, (b) such breach is not excused by any provision of this Agreement, and (c) such breach continues un-remedied for a period of thirty (30) days following receipt of written notice from the non-breaching Party. If the breach by its nature cannot be cured within thirty (30) days and the breaching Party within that time has commenced its cure and presented a commercially reasonable plan to cure such default over a longer period of time not to exceed seventy-five (75) days from the date of the original notice of Default, there shall be no Default as long as the Party diligently continues such cure to completion.
- b. **Default Rights.** Upon the occurrence of a Default, the non-breaching Party shall have the right, subject to the express limitations contained in Section 5 and this Agreement, to terminate this Agreement. Nothing in this Agreement shall preclude either Party from also pursuing other available remedies, including damages, injunctive relief, and costs (which shall include reasonable attorneys' fees awarded to the substantially prevailing Party).

## 6. **Town's Obligations.**

### a. **Marketing**

- i. Town will perform applicable branding and marketing of the BFN in order to explain the benefits to the community and potential Subscribers.

### b. **BFN Network Construction and Maintenance.**

- i. The Town will finance, develop engineering plans, contract for construction, implement, and maintain the physical plant of a BFN passing every feasible Premises in the area of the Town of Breckenridge as reflected in Exhibit A (which may include areas upon mutual agreement of the Parties that may be annexed by Breckenridge in the future), of which the



Assets leased to Allo under this Agreement shall be a part of the BFN. In the case of any multi-dwelling unit, the Town shall be responsible for passing each building in which the units are housed, in addition, the Town or some other party shall be responsible for taking fiber to each unit within the multi-dwelling building where commercially feasible.

- ii. The Town shall be responsible for acquiring and maintaining throughout the Term, at its expense (including Government Authorization Fees), all applicable Authorizations relating to the Assets and the BFN. To the extent Allo's activities under this Agreement require any Authorizations, Allo shall be responsible for acquiring and maintaining throughout the Term, at its expense, all applicable Authorizations. Any agreements or Authorizations necessary for provision of additional Services, in particular including any franchise agreement, shall be executed separately from and shall in no way encumber this Agreement.

#### **7. BFN Maintenance; BFN Access.**

- a. **Maintenance and Repair.** The Town shall be responsible for the physical maintenance relating to the BFN, including Assets, as further described in Exhibit D.
- b. **Access to BFN by Allo.** Town shall provide Allo with access to BFN plant and enclosure facilities for installation, customer connections, maintenance and troubleshooting of Allo services and equipment, and for splicing purposes. Town shall allow Allo personnel or its agents reasonable direct ingress and egress to Town property within which BFN and any Assets have been placed, including fiber plant and enclosure facilities, and shall permit Allo personnel or its agents to access such property at such times as may be required to install, test and repair Allo's equipment. Allo personnel and its agents shall, while on such property, comply with all industry standard rules, regulations, and procedures, and Allo shall make good faith efforts to comply with such other reasonable requirements communicated to Allo by the Town.
- c. **Locates.** Town at its sole cost and expense shall undertake any locates necessary for identification of the Town's underground utilities.

#### **8. Allo Operational Service Obligations.**

- a. **General.** Throughout the Term of this Agreement, and as described more specifically in this Section, Allo will operate in two roles:
  - i. As Network Operator of BFN, using Assets to configure and activate electronics, and operate and manage the BFN as described in subsection 8.b below; and

- ii. As a Service Provider, providing retail and wholesale Services to Subscribers connected to the BFN.
- b. **Network Operator.** As Network Operator of the BFN, and as may be more fully described elsewhere in this Agreement, Allo shall:
- i. Procure, install, configure, operate, monitor, maintain, and upgrade, as needed all equipment necessary to activate or “light” the BFN, excluding the Town’s maintenance and repair obligations as outlined in Exhibit D. All such equipment shall remain the property of Allo during the Term and following contract.
  - ii. Operate the BFN and any plants connected to the BFN.
  - iii. To the extent Town requires any data transport services, the Town will provide Allo reasonable advanced written notice specifying in reasonable detail the transport services required. After receiving such notice, Allo shall use Commercially Reasonable efforts to provide the requested transport services. Allo will provide the Town with timelines for requested transport services and detailed monthly accounting for any such connections made for Town’s transport services. The Town shall pay all capital costs associated with Town requested transport services and shall also pay Allo’s incremental direct costs incurred in the setup of such service (*i.e.*, extra transport costs). In addition, the Town shall pay Allo a mutually agreed upon monthly fee for the management of these network sites and transport services.
  - iv. Maintain, repair and upgrade as needed all of Allo’s equipment (including CPE), including cabling to and between such equipment inside enclosures. For the avoidance of doubt, Allo’s responsibility to maintain, repair and upgrade pursuant to this Section 8.b.iv shall not include cabling between two different enclosures that are a part of the BFN;
  - v. Execute all necessary splicing tasks between equipment and cabling owned by Allo, and the BFN;
- c. **Network Operator; Premises Construction, Installation and Equipment.** As Network Operator, Allo shall procure, install, configure, monitor, maintain, and upgrade as needed any and all CPE (including any ONT) as necessary to connect the Premises to the BFN, enabling the provision of retail Services by Allo. Allo may pass on such cost to the customer in unusually high cost scenarios, such scenarios determined in Allo’s sole and absolute discretion.
- i. **Ownership.** Any connection and any CPE used to receive, route, or



process a Service (such as a set-top box or in-home router) leased or sold by Allo remains the property of Allo or the purchasing customer, as applicable under Allo's Terms of Use with Allo's Subscriber.

**d. FTTP Service Provider.**

- i. **Retail Broadband Internet Access Service.** Allo shall offer residential and business broadband Internet access Service via the BFN, including a symmetrical speed tier of up to 1 gigabit per second to all potential Subscribers served by the BFN, provided the Town has constructed a Drop to the potential Subscriber.
  - ii. **Voice Services and Video Services.** Allo shall make Voice Services and Video Services available.
  - iii. **Connection Fees.** Allo acknowledges Town reserves the right to charge Connection Fees to Subscribers. To the extent Town charges any such fee, Allo shall charge Subscribers the Connection Fee, without markup, and remit the proceeds of connection fee to the Town. Town acknowledges Allo, in certain limited circumstances where connection is not economically feasible, shall have the right to charge a reasonable Connection Fee, with the Town's prior written approval, which shall not be unreasonably withheld, conditioned or delayed.
- e. **Service Level Agreements and Standards.** Allo's Services shall meet the Service Level Agreements and standards set forth in Exhibit D.
- f. **Allo Service Fees.** Fees charged for the Services shall be determined by Allo according to industry standard practices.

**9. Allo Customer Service Obligations.**

- a. **Subscriber Relationship.** As a Service Provider, Allo, and not the Town, shall be responsible for all aspects of the customer relationship involving Subscribers to retail and wholesale Services provided by Allo, as set forth in this subsection.
  - i. **Subscriber Customer Support.** Allo and not the Town, shall be responsible for receiving, servicing, and resolving directly all reasonable requests for support from Allo's Subscribers, including but not limited to technical, billing, and sales and marketing inquiries. Under no

circumstances shall Allo direct any Subscriber to contact the Town for customer support.

- ii. **Billing and Collections.** Allo shall be responsible for all invoicing, billing and collection activities relating to its Subscribers.
  - iii. **Sales and Marketing.** Allo shall be responsible for any and all sales and marketing activities relating to Allo's Services, including but not limited to pricing of services, description of services, and promotional activities.
  - iv. **Bad Debts.** Allo shall be responsible for any and all bad debts associated with its Subscribers.
  - v. **Physical Presence and Staffing.** Allo shall maintain an appropriately staffed physical presence with the Town of Breckenridge during the Term of this Agreement.
  - vi. **Lifeline Program.** If required by applicable law, Allo shall offer the Federal Communications Commission's Lifeline Program for eligible residents within the Town.
  - vii. **Customer Support.** Allo shall have provide standard telephone and e-mail support to Subscribers during normal business hours. In addition, Allo will provide a "24/7" emergency contact number.
- b. Reports.** Allo shall provide the Town on a calendar quarterly basis, reports addressing the following various aspects of the Subscriber relationship. While the reports shall address the following categories, the Parties shall work together to modify this list as necessary, to address the reasonable oversight needs of the Town and the general business operations of Allo.
- i. A summary of Allo's marketing activities to promote the BFN.
  - ii. Number of total customers at the time of the report compared to the previous quarter's report.
  - iii. A breakdown of the number of customers subscribing to the different categories of services offered.
  - iv. Number of total customer complaints and a breakdown of complaints by category.



- v. A description of the time taken to resolve complaints generally and by category.

10. **Allo Community Engagement.** In furtherance of the mission of expanding fiber optic deployment and use in the Town, the Parties agree to undertake certain activities designed to engage and educate the public as to construction timelines and phases, and the benefits and capabilities of the BFN. Such activities shall include, but shall not be limited to, the following:

- a. **Education.** In furtherance of its mission to expand fiber optic deployment and use in the Town, the Town will work with Allo to educate residents and businesses about construction phases.
- b. **Economic Development.** In furtherance of its mission to expand economic activity in Breckenridge, Allo will work the Town to develop, expand and attract businesses to Breckenridge.

11. **Town Wi-Fi Services.** Upon Town's request, Allo shall use Commercially Reasonable efforts to construct and deploy wireless access networks ("Wi-Fi Networks") at any location requested by the Town, provided such location is served by the BFN.

- a. **Fees.** Town will pay all capital costs associated with the construction, deployment and installation of any Wi-Fi Network, including any equipment costs. All equipment comprising the Wi-Fi Network shall be provided to Town at its wholesale price. In addition to any fees associated with the construction, deployment and installation of any Wi-Fi Networks, Town shall also pay Allo a monthly management fee in an amount to be mutually agreed to by the Parties, to manage the Wi-Fi Networks.

12. **Relocation.**

- a. **Emergency Relocations.** Upon prior reasonable notice to Allo, Town shall have the right at any time to remove or relocate any pole, wire, cable, or structure that presents an imminent danger to life or property at Town's sole discretion, provided that Town shall restore such pole, wire, cable or structure as soon as Commercially Reasonable and bear all costs associated with such removal or relocation.
- b. **Relocation for Town's Convenience.** Town shall have the right, with at least sixty (60) days' notice to Allo, to remove or relocate any pole, wire, cable, or

structure at Town's sole discretion and for Town's convenience, provided, Town will be responsible for both Town and Allo's costs of any such relocation. Town and Allo shall use Commercially Reasonable efforts to inform all Subscribers impacted by any relocation at least forty-five (45) days prior to such relocation. The Town and Allo shall both provide easily accessible information to Subscribers with information on the status of any relocation work, timing for completion, impact on Subscribers and any other information the Parties deem to be helpful to consumers.

- c. **Minimizing Interruptions.** During any planned relocation, Town will use Commercially Reasonable efforts, in cooperation with Allo, to minimize (a) any material interruption to Allo's enjoyment of the Agreement; (b) any material interfering with the BFN; and (c) any material interference on Allo's ability to carry traffic on the BFN with the equipment used on the BFN before the relocation. Allo and the Town shall use Commercially Reasonable efforts to work together to provide temporary services if an interruption lasts or is expected to last greater than 48 hours;

13. **Use of Subcontractors.** Either Party may subcontract for testing, maintenance, repair, restoration, relocation, or any other operational and technical services it is obligated to provide pursuant to this Agreement. Both Parties will remain responsible for the obligations under this Agreement delegated to its respective subcontractors.

14. **Indemnification; Indemnification Procedures.** Except as provided herein, each Party, on behalf of itself and its affiliates, directors, officers, employees, agents, successors, and assigns ("Indemnitor") agrees to indemnify, defend, protect and hold the other Party and its directors, officers, directors, employees, agents, successors, and assigns ("Indemnatee") harmless from and against any claims, suits, actions or damages brought or asserted by a third party of any kind or character (collectively "Claims") and from and against any liability, losses, fines, judgments, costs and expenses (including reasonable attorney, accountant and expert fees) arising out of any Claims incurred by any Indemnatee (a) because of the death of any person, or any injuries or damage received or sustained by any persons or property, which in whole or in part arises on account of the negligent acts or omissions or willful misconduct of the Indemnitor in the performance or non-performance of its obligations or exercise of its rights under this Agreement, including any material violation by Indemnitor of any law or permit applicable thereto; (b) under the Workers' Compensation laws asserted by any other person providing goods or services for or on behalf of any of the foregoing in connection with this Agreement; or (c) arising out of, caused by, related to, or based upon, a contractual or other relationship between such claiming Party and the Indemnitor, as it relates to the use of Assets or BFN.

The Indemnitor shall defend the Indemnatee in any proceeding alleging the third party claims listed above, at Indemnitor's sole cost and expense. The Indemnitor will have the option to select and provide legal counsel for that defense. If Indemnatee wants additional



counsel of its choosing, the costs and expenses of the additional counsel will be Indemnatee's responsibility, and Indemnitor will have no obligation to pay additional counsel. Indemnitor's counsel will lead, direct and manage the litigation, and will ensure Indemnatee's additional counsel receives adequate information to monitor the litigation.

Notwithstanding the foregoing, any indemnification provisions shall apply to the Town only to the extent permitted by Colorado Law. Nothing contained herein is intended to waive any limitations or protections or coverages available to the Town through the Colorado Governmental Immunity Act or any other provisions of applicable law.

This provision shall survive the expiration or termination of this Agreement.

**15. Representations and Warranties.** By execution of this Agreement, each Party represents and warrants to the other that: (a) the Party is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization; (b) the Party has full right and authority to enter into and perform this Agreement in accordance with its terms (in the case of the Town, its Opt-Out Vote pursuant to Colorado Senate Bill 05-152 provides the Town with authority to enter into and perform in accordance with its terms); (c) the Party's execution, delivery, and performance of this Agreement will not conflict with, violate or result in a breach of (i) any law, regulation, order, writ, injunction, decree, determination or award of any governmental authority or any arbitrator, applicable to such Party, (ii) any of the terms, conditions or provisions of its charter, bylaws, or other governing documents of such Party, (iii) any material agreement to which it is a Party, or (iv) any instrument to which such Party is or may be bound or to which any of its material properties or assets is subject; (d) the Party's execution, delivery and performance of this Agreement has been duly authorized by all requisite corporate action; (e) that the signatories for such Party are authorized to sign this Agreement; (f) there are no actions, suits, proceedings or investigations pending, or to the knowledge of the Party, threatened against or affecting the Party of any of its properties, assets or businesses in any court or before or by any governmental authority that could, if adversely determined, reasonably be expected to have a material adverse effect on the Party's ability to perform its obligations under this Agreement; (g) the Party has not received any currently effective notice of any material default; and (h) the Party has not previously been and is not currently, debarred, suspended, or proposed for debarment, declared ineligible, voluntarily excluded from transactions by any federal or state department or agency, or subject to any inquiry, investigation, or proceeding regarding the foregoing.

**16. Limitation of Liability.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL COSTS, LIABILITIES OR DAMAGES, WHETHER FORESEEABLE OR NOT, INCLUDING WITHOUT LIMITATION AS APPLICABLE, ECONOMIC LOSS OR LOST BUSINESS OR PROFITS, INTERRUPTIONS OF SERVICE, OR ANY DELAY, ERROR OR LOSS OF DATA OR INFORMATION, ARISING IN ANY MANNER OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT AND A PARTY'S PERFORMANCE OR NONPERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN



CONTRACT OR TORT (INCLUDING STRICT LIABILITY), ALL CLAIMS FOR WHICH ARE HEREBY SPECIFICALLY WAIVED. Nothing contained within this Agreement is intended to be a waiver of the Town's immunity pursuant to the Colorado Governmental Immunity Act or the protections of any other provisions of applicable law.

**17. Confidentiality.**

- a. Non-Disclosure of this Agreement.** All sharing of information concerning this Agreement shall be only with those individuals deemed necessary to carry out the terms of this Agreement, except as required for disclosures required by law, or to incorporate requirements of this agreement into its own agreements with Customers and Service Providers.
- b. Confidential Information.** If either Party provides or has provided confidential or proprietary information ("Confidential Information") designated as such to the other Party conspicuously in writing, the receiving Party shall hold such information in confidence and shall afford it the same care and protection that it affords to its own confidential and proprietary information (which in any case shall be not less than reasonable care) to avoid disclosure to or unauthorized use by any third party, except as otherwise provided below. All Confidential Information, unless otherwise specified in writing, shall remain the property of the disclosing Party and shall be used by the receiving Party only for the intended purposes set forth in this Agreement. Except as otherwise required by law, after the receiving Party's need for Confidential Information has expired, or upon the reasonable request of the disclosing Party, or promptly following the termination or expiration of this Agreement, the receiving Party shall destroy or return to the disclosing Party all Confidential Information, including all copies of such information, and all notes, summaries, or other writing reflecting Confidential Information. The receiving Party shall not reproduce Confidential Information, except to the extent reasonably necessary to perform under this Agreement, or as otherwise may be permitted in writing by the disclosing Party.
- c. Exceptions.** The foregoing provisions of this section shall not apply to (i) any required disclosures to any government authority, (ii) disclosures required under the Freedom of Information Act and/or applicable state or local government open records laws, (iii) any Confidential Information or any provisions of this Agreement which becomes publicly available, other than through the Party claiming this exception, or is required to be disclosed by law, (iv) Confidential Information that is independently developed by the receiving Party without breach of any obligation of confidentiality; (v) Confidential Information that becomes available to the Party claiming this exception without restriction from an unrelated third Party, or becomes relevant to the settlement of any dispute or enforcement or defense of either Party's rights under this Agreement, provided that appropriate protective measures shall be taken to preserve the confidentiality of such Confidential Information to the extent permissible in accordance with such settlement or enforcement process; (vi) disclosures of this Agreement to any proposed permitted



assignee provided that each such proposed assignee agrees to be bound by confidentiality obligations no less stringent than those set forth herein; or (vii) disclosures by either Party of the general physical route of the BFN or Assets for marketing and sales-related purposes.

- d. **Open Records Law.** Notwithstanding anything contained herein to the contrary, the Parties understand and agree that the Town, as a municipal government, is subject to the Colorado Open Records Act. If the Town receives a request for documents and believes it must release any Allo confidential records, it shall advise Allo in advance so that Allo may take appropriate steps to protect its interests. If the Town receives a demand from any person for disclosure of any information designated by Allo as confidential, the Town shall, so far as consistent with applicable law, advise Allo and provide Allo with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, the Town agrees that, to the extent permitted by law, it shall deny access to any of Allo's records marked confidential as set forth above to any person. Allo shall reimburse the Town for all reasonable costs and attorneys' fees incurred in any legal proceedings pursued under this Section.
- e. **Survival.** The confidentiality provisions in this section shall survive expiration or termination of this Agreement.

18. **Intellectual Property.** Nothing in this Agreement shall be construed as a grant of any right or license under any copyrights, inventions, patents, trade secrets or other intellectual property now or later owned or controlled by Allo or the Town, and nothing in this Agreement shall be construed as granting any right, title or interest in the other Party's trademarks, trade names, servicemarks or other intellectual property rights. The Parties agree not to use the trademarks, trade names, or service marks of the other Party without prior written permission.

19. **Taxes.** Each Party shall be responsible for paying its own federal, state or local sales, use, excise, value-added, personal property, income or other taxes or charges assessed on or levied against any transaction or event arising from the performance of this Agreement.

20. **Insurance.** During the term of this Agreement, each Party shall maintain a policy of comprehensive liability insurance or other coverage compliant with the Colorado Governmental Immunity Act, including public liability, bodily injury, and property damage, written by a company licensed to do business in the State of Colorado, covering use and activity contemplated by this Agreement with combined single limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) aggregate with Five Million Dollars (\$5,000,000.00) form following umbrella coverage. In addition, the Town shall carry insurance sufficient to insure the BFN and all Assets.

Allo shall name the Town, including its officers, employees, and agents, as Additional Insureds for the said purpose and use of this Agreement. Each Party shall also maintain Workers' Compensation insurance to meet the requirements of the Workers' Compensation laws of Colorado where applicable. Certificates of Insurance evidencing such insurance coverage shall be provided to either Party upon the other Party's request.

21. **Assignment.** This Agreement will not be assigned by Allo without the prior written consent of the Town, which consent will not be unreasonably withheld, conditioned or delayed. However, Allo shall have the right, after thirty (30) days written notice to the Town, to assign this Agreement or delegate any obligation of this Agreement to any Affiliate of Allo. Any other proposed assignment or similar transfer or conveyance shall be made in writing by Allo to the Town, at least ninety (90) days prior to a proposed closing. Allo shall additionally provide any documentation requested by the Town that the Town reasonably determines is necessary to evaluate whether to approve the transaction. This Agreement shall be binding on and inure to the benefit of the Parties and their respective permitted successors and assigns. In the case of any assignment, sale, transfer or disposition requiring the Town's consent or as permitted under this Agreement, the assignee, purchaser or transferee shall execute and deliver a written agreement reasonably acceptable to the Town in which the assignee, purchaser or transferee agrees to be bound by all of the terms and conditions of this Agreement to the extent of the rights and obligations assigned, sold or transferred.
22. **Audit Rights.** Upon reasonable prior written notice to the other Party, and no more than once in a contract year, in coordination with a Party's management, the other Party may perform or arrange to have audits performed to verify a Party's compliance with this Agreement. In connection with such audits, the party conducting the audit shall specifically have the right to review all relevant data related to the obligations and compliance with any provisions of this Agreement. Except as provided herein, all audits will be performed at the auditing Party's sole expense and during the other Party's normal business hours. Notwithstanding the foregoing, if an audit or similar financial review of Allo's financial obligations to the Town shows that any payments have been underpaid by two percent (2%) or more, Allo shall pay the Town's total actual cost of the audit or review.
23. **Relationship of the Parties.** This Agreement is not intended to create, nor shall it be construed to create, any partnership, joint venture, or employment relationship between the Town and Allo, and neither Party shall be liable for the payment or performance of any debt, obligations, or liabilities of the other Party, unless expressly assumed in writing. Each Party covenants that it shall not act in a manner that may be construed to be inconsistent with the foregoing nor otherwise act or purport to act on behalf of the other Party except as may be expressly authorized in writing by the other Party. The Town and Allo, in performing any of their obligations, shall be independent contractors or independent Parties and shall discharge their contractual obligations at their own risk subject, however, to the terms and conditions of this Agreement.
24. **Severability.** If any provision of this Agreement is or becomes invalid or unenforceable under applicable law, that provision or part will be deemed removed without affecting in



any way the remainder of this Agreement.

**25. Force Majeure.**

- a. **Force Majeure Events.** Notwithstanding any other provision of this Agreement, neither Party shall be responsible to the other Party, or for any loss or damage, resulting from any event or circumstance beyond the reasonable control of the Party, including but not limited to an earthquake, hurricane, fire, flood, lightning, sinkhole or other forces of nature, acts of war, terrorism (including cyberterrorism), or civil unrest, strikes, lockouts or other labor unrest, or legal order, government action or application of laws, regulations or codes (“Force Majeure Event”).
- b. **Response to Force Majeure Events.** A Party whose performance is impacted by a Force Majeure Event shall provide reasonable notice to the other Party and shall make Commercially Reasonable efforts to minimize the impact of the Force Majeure Event on its performance.
- c. **Suspension Pending Force Majeure.** The deadline by when a Party must perform an obligation under this Agreement, shall be postponed by the period of time by which the Party’s ability to perform that obligation is materially prevented or interfered with by a Force Majeure Event.

**26. Eminent Domain.** Should any portion of the Assets, or any other interest belonging to the Town or to Allo with respect to this Agreement be acquired by condemnation, eminent domain, nationalization or expropriation (each of which, a “Taking”) by any government authority or other person possessing such power, then each Party will be excused from performance of its obligations to the extent of the Taking, as provided in this Section. In the proceeding for any Taking or an involuntary discontinuance of the use of the Assets in anticipation of an imminent Taking, the interests of Town and Allo in the affected portion will be severed. The Town and Allo each may claim and receive the portion of the total award attributable to its interest in the Assets, and the Town and Allo each may claim damages payable on account of the Taking and the relocation or re-routing expenses relating to the Assets.

**27. Notices.** All notices, demands and requests required or permitted to be given under the provisions of this Agreement shall be (a) in writing, (b) delivered by facsimile transmission with confirmation of delivery, electronic mail with confirmation of delivery receipt, or sent by overnight commercial delivery service or certified mail, return receipt requested. Notice shall be deemed to have been given on the date of the transmission and receipt of facsimile or electronic mail transmissions, or the delivery date set forth in the records of the delivery service or on the return receipt when addressed as follows:

If to Allo:

Allo Communications, LLC

c/o Brad Moline, President  
121 S. 13<sup>th</sup> St., Ste 100  
Lincoln, NE 68508  
[bmoline@allophone.net](mailto:bmoline@allophone.net)

With a copy to:

Allo Communications, LLC  
c/o General Counsel  
121 S. 13<sup>th</sup> St., Ste 100  
Lincoln, NE 68508

If to Town:

Town of Breckenridge  
c/o Rick Holman  
150 Ski Hill Road  
PO Box 168  
Breckenridge, CO 80424

With a copy to:

Town of Breckenridge  
c/o Helen Cospolich  
150 Ski Hill Road  
PO Box 168  
Breckenridge, CO 80424

28. **Dispute Resolution; Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Colorado, without regard to any conflicts of law provisions. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF THIS AGREEMENT. Venue for any dispute arising from this Agreement shall be located in Summit County, Colorado.
29. **Headings.** Headings and captions of this Agreement's sections and paragraphs are only for convenience and reference. These headings and captions shall not affect or modify this Agreement's terms or be used to interpret or assist in the construction of this Agreement.
30. **Waiver.** The waiver or failure of either Party to exercise in any respect any right provided for in this Agreement will not be deemed a waiver of any further right under this Agreement.
31. **Counterparts.** This Agreement may be executed in any number of counterparts. Each counterpart will be deemed an original, but all counterparts together will constitute the




same instrument.

32. **Compliance with Laws.** Each Party will comply with all federal, state and local laws and regulations during the Term of this Agreement.

33. **Entire Agreement.** This is the entire and exclusive statement of the Agreement between the Parties including all duly executed exhibits, which supersedes and merges all prior proposals, understandings and all other agreements, oral and written, between the parties relating to the Services or any other provision of this Agreement but is not intended to grant or alter the terms of any Franchise Agreement that may be required or pursued by the Parties.

ALLO COMMUNICATIONS, LLC

By: 

Bradley A. Moline

Title: President

Date: 5/28/19

TOWN OF BRECKENRIDGE

By: 

Rick G. Holman

Title: Town Manager

Date: 5/21/19

**EXHIBIT A**

**PLANS**

**[Insert]**



## **EXHIBIT B**

### **LISTED ASSETS**

The particular Assets in which Allo shall have a right of use under the Agreement set forth in this Agreement shall be as described in this Exhibit B. This Exhibit may be amended by the Parties from time to time in a writing signed by both Parties and referencing this Exhibit B.

1. All current and anticipated future fiber, conduit, strand, pedestals, terminals and other structures for the fiber network

**EXHIBIT C**

**SERVICE LEVEL AGREEMENT**

1. Upon successful Light Testing of 100% of the BFN, in the event Allo, as either a Service Provider or Network Operator, suffers a network outage outside of (i) events defined as Force Majeure; (ii) scheduled network maintenance; (iii) emergency network maintenance; (iv) a network outage resulting from the Town's non-performance of its obligations under this Agreement; or (v) a network outage resulting from the negligent acts or omissions of the Town or its agents or employees; then Allo will adhere to the following credit schedule:
  - a. 98.0% to 98.9% BFN uptime, measured monthly: 2% of monthly fees, pro-rated by the number of days of outage, paid by an individual customer for the month in which the outage occurred, credited to customer's account.
  - b. 97.0% to 97.9% BFN uptime, measured monthly: 4% of monthly fees pro-rated by the number of days of outage, paid by an individual customer for the month in which the outage occurred, credited to customer's account.
  - c. 96.0% to 96.9% BFN uptime, measured monthly: 6% of monthly fees pro-rated by the number of days of outage, paid by an individual customer for the month in which the outage occurred, credited to customer's account.
  - d. Below 96% BFN uptime, measured monthly: 8% of monthly fees pro-rated by the number of days of outage, paid by an individual customer for the month in which the outage occurred, credited to customer's account.

Allo shall have the right to compensate customers for outages by applying credits to the customer's account.



## EXHIBIT D

### TOWN MAINTENANCE OF ASSETS

#### 1. Maintenance.

- a. **Scheduled Maintenance.** Routine maintenance and repair of the Assets (“Scheduled Maintenance”) will be performed by or under the direction of the Town as necessary to keep the Assets in good operating condition, at Allo’s reasonable request or at the Town’s reasonable discretion, all at Town’s expense. Scheduled Maintenance will commence upon the Effective Date, and includes: (i) inspection of the BFN and other Assets on a regularly scheduled basis, which shall be no less than once each calendar quarter; (ii) appropriate routine preventative maintenance on the Assets, minimally in accordance with industry standards; (iii) maintenance of an inventory of spare cable and other equipment, together with maintenance equipment, at strategic locations to facilitate timely restoration along the Route.
- b. **Unscheduled Maintenance.** Non-routine maintenance and repair of the BFN and other Assets which is not included as Scheduled Maintenance (“Unscheduled Maintenance”) will be performed by or under the direction of Town and at the Town’s expense. Unscheduled Maintenance will commence upon the Effective Date, as provided in the Agreement. Unscheduled Maintenance shall consist of Unscheduled Maintenance in response to: (i) notification by Allo or any third party of any failure, interruption or impairment in the operation of the Assets, or any event imminently likely to cause the failure, interruption or impairment in the operation of the Assets; or (ii) any potential service-affecting situation to prevent any failure, interruption or impairment in the operation of the Assets, each to the extent same is not included in the definition of Scheduled Maintenance.

If known to Allo, Allo shall promptly report the need for Unscheduled Maintenance to the Town in accordance with escalation procedures provided in Section 3 below. The Town will log the time of any Allo report, verify the problem and dispatch personnel to take corrective action.

2. **Response.** The Town’s maintenance employees or contractors shall be available for dispatch twenty-four (24) hours a day, seven (7) days a week. The Town will have its first maintenance employee (or contracted agent) at the site requiring emergency Unscheduled Maintenance activity within four (4) hours after the time the Town becomes aware of an event requiring Unscheduled Maintenance due to an emergency situation.

#### 3. **Cooperation and Coordination.**

- a. **Escalation List.** The Parties each shall use the escalation list of the other Party, as updated from time to time by the applicable Party pursuant to the escalation list or other notice provision, to report and seek immediate initial redress of exceptions

noted in the performance of a Party in meeting maintenance service objectives and regarding all other aspects applicable to BFN operations. The notice list numbers are 24 hour, 7 day per week emergency notification numbers. The Escalation List will be mutually agreed upon by the parties throughout the Term of the Agreement.

- b. **Performance.** In performing its services under this Exhibit, the Town will take workmanlike care to prevent impairment to the signal continuity and performance of the Assets. The precautions to be taken by Town will include prompt notifications to Allo with respect to any unscheduled maintenance impacting network operations. In addition, the Town will reasonably cooperate with Allo in sharing information and analyzing the disturbances regarding the Assets. In the event that any Scheduled Maintenance or Unscheduled Maintenance requires a traffic roll or reconfiguration involving Assets, then Allo shall, at Town's request, make such personnel of Allo available as may be necessary in order to accomplish such maintenance, which personnel shall coordinate and cooperate with the Town in performing such maintenance as required of the Town under this Agreement.
- c. **Notification.** The Town will use Commercially Reasonable efforts to notify Allo at least ten (10) days prior to the date of any Scheduled Maintenance that may result in an outage or degradation in the use of Assets, and as soon as possible, but in no event later than eight (8) hours after becoming aware of the need for Unscheduled Maintenance. Allo may be present during the performance of any Scheduled Maintenance or Unscheduled Maintenance so long as this right or the exercise thereof does not interfere with the Town's ability to perform its obligations under this Agreement. In the event that Scheduled Maintenance is canceled or delayed for whatever reason as previously notified, the Town will use Commercially Reasonable efforts to notify Allo at the Town's earliest opportunity, but in no event less than forty-eight (48) hours after cancellation, and will comply with the above-provisions for any re-scheduled activity.

#### 4. **Facilities.**

- a. **Condition of Assets.** The Town will maintain the BFN and the Assets in a manner which will permit Allo's use and operation, in accordance with the terms and conditions of the Agreement, including the Service Level Agreement.
- b. **Unscheduled Maintenance Communication.** The Town will maintain sufficient capability to teleconference with Allo during Unscheduled Maintenance in emergency situations in order to provide regular communications during the repair process.
- c. **Scheduled Maintenance Timing.** It is the Town's intention, and the Town represents and warrants, that maintenance work performed by Town on the Assets will not normally result in interruptions. Scheduled Maintenance which is reasonably expected to produce any signal discontinuity or jeopardize Allo's use of the BFN and other Assets in any material respect generally will be scheduled



after midnight and before 5:00 a.m. local time. Major system work, such as fiber rolls and hot cuts, will be scheduled for Scheduled Maintenance weekends as mutually agreed by Allo and the Town. The Town's intent is to avoid major system work on the first and last weekends of the month and high-traffic holidays.

5. **Restoration.** The Town will respond to any interruption of service or a failure of the Assets as quickly as possible, but in no event later than four (4) hours after the Town becomes actually aware of the failure or interruption, in accordance with the procedures set forth herein. The Town shall address the problem by working diligently with Allo to enable restored service as soon as technically practical and Commercially Reasonable, in accordance with the procedures set forth herein. In order to accomplish such objective, Allo acknowledges that such repairs may be temporary in nature. In such event, within twenty-four (24) hours after completion of any such Unscheduled Maintenance, the Town will commence its planning for permanent repair, and thereafter promptly notify Allo of such plans, and shall use all Commercially Reasonable efforts to implement such permanent repair as soon as possible thereafter.

**EXHIBIT E**

**RIGHT OF FIRST OFFER**

1. **Right of First Offer.** During the Term of this Agreement the Town will not sell the BFN, or any portion thereof (“Sale Property”), without first offering the Sale Property to Allo pursuant to this Right of First Offer Provision. This Right of First Offer Provision creates a right of first offer to purchase the Sale Property in favor of Allo subject to the terms and conditions of this Right of First Offer Provision.

2. **Procedure to Comply With Right of First Offer.** The right of first offer will be honored by the Town and exercised by Allo in the following manner:

- a. If the Town desires to sell the Sale Property the Town will first send a written offer (“Offer”) to Allo by certified mail, return receipt requested, at its address provided in Section 27. The Offer shall have been properly served on Allo when it is delivered to Allo.
- b. An Offer must describe the Sale Property, and state a specified price and all principal terms and conditions of the proposed sale.
- c. If Allo desires to accept the Offer, Allo must notify the Town in writing of such acceptance within 15 days of the date of service of the Offer upon Allo. Notice of Allo’s acceptance of the Offer must either be personally delivered to the Town, or sent by certified mail, return receipt requested, to the Town at the Town’s address provided in Section 27. A notice of acceptance is valid and effective when personally delivered to the Town or, if mailed, when received by the Town, whichever is applicable.
- d. If Allo fails deliver to Town written notice of acceptance of the Offer within the 15 day period, the Town may, within 6 months after the expiration of the 15 day period described above, sell the Sale Property on the same or better material terms (including, but not limited to, the same or better sale price) described in the Offer. Such sale may be made free and clear of the right of first offer provided for in this provision. If the Sale Property is not sold within such 6 month period, any subsequent sale of the Sale Property is subject to the requirement that a new Offer be given to Allo in accordance with this Right of First Offer Provision.
- e. If Allo accepts the Offer, then the Town and Allo shall negotiate in good faith and attempt to reach a commercially reasonable contract for the purchase and sale of the Sale Property. If Allo and the Town sign a contract for the purchase and sale of the Sale Property, the rights and responsibilities of the Parties will be as set forth in the contract. If Allo and the Town have not signed a contract for the sale and purchase of the Sale Property within 60 days after the giving of timely notice of acceptance of the Offer by Allo, the Town may sell the Sale Property to any person on the same or better material terms (including, but not limited to, the same or



better sale price) described in the Offer. Such sale may be made free and clear of the right of first offer provided for in this provision.

