

**TOWN OF LYONS,
COLORADO**

ORDINANCE 1052

**AN ORDINANCE OF THE TOWN OF LYONS, COLORADO, APPROVING A CONTRACT TO
BUY AND SELL REAL ESTATE FOR THE SALE OF TOWN PROPERTY TO PAUL
TAMBURELLO AND AUTHORIZING EXECUTION OF ALL CLOSING DOCUMENTS.**

WHEREAS, Section 31-15-713 (1)(b), C.R.S. provides that the Town of Lyons ("the Town"), by ordinance, may dispose of any real property not held or used for park purposes or any other governmental purpose upon terms and conditions the Board of Trustees ("the Board") may determine; and

WHEREAS, the Town acquired a parcel of real property from the City of Longmont with the intent of subdividing the property for the creation of a public works building and reselling the surplus subdivided portions of the property for development; and

WHEREAS, the Town subdivided the property on February 1, 2019 and the original parcel has now been platted as three individual parcels; and

WHEREAS, the legal descriptions for the three parcels of property are set forth on **Exhibit B** attached hereto and incorporated herein by reference; and

WHEREAS, Parcel #1 is being retained by the Town for a new public works building; and

WHEREAS, the Town desires to convey Parcels #2 and #3 to Paul Tamburello pursuant to a Contract to Buy and Sell Real Estate attached hereto as **Exhibit A**; and

WHEREAS, since the acquisition of Parcels #2 and #3, the two parcels of property have not been used by the Town for park or any governmental purpose; and

WHEREAS, sale of Parcels #2 and #3 to Paul Tamburello allow for economic development of the eastern corridor of the Town; and

WHEREAS, as a condition of sale the Town is requiring the Town and Paul Tamburello ("the Parties") to execute and record a Right of First Refusal Agreement and Memorandum of Agreement Regarding Railroad Right Way Property ("MOA") attached hereto as **Exhibits C and D** respectively; and

WHEREAS, the Board has conducted a public hearing to consider evidence and testimony concerning approving the Contract to Buy and Sell Real Estate thus providing adequate opportunity for interested citizens to be heard; and

WHEREAS, the Board has reviewed the terms and conditions of the Contract to Buy and Sell Real Estate presented to the Board for the sale of the two parcels to Paul Tamburello along with this Ordinance and accompanying Exhibits and determined that the terms and conditions of the Contract to Buy and Sell Real Estate are beneficial to the Town of Lyons.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF LYONS, THAT:

Section 1. The recitals set forth above are incorporated as if set fully forth herein.

Section 2. The Contract to Buy and Sell Real Estate attached to this Ordinance as **Exhibit A** is approved and the Mayor or, in the absence there, the Mayor Pro Tem is authorized and directed to execute the Contract to Buy and Sell Real Estate for and on behalf of the Town.

Section 3. The Right of First Refusal Agreement and MOA attached to this Ordinance as **Exhibit C** and **D** are approved and the Mayor or, in their absence, the Mayor Pro Tem is authorized and directed to execute the Contract to Buy and Sell Real Estate for and on behalf of the Town.

Section 4. The Town Administrator in Consultation with the Town Attorney is authorized to close the sale of the parcels of property pursuant to the terms and conditions of the Contract to Buy and Sell Real Estate without further action and/or approval by the Board.

Section 5. **Severability.** Should any one or more sections or provisions of this Ordinance enacted hereby be judicially determined invalid or unenforceable, such judgment shall not affect, impair or invalidate the remaining provisions of this Ordinance, the intention being that the various sections and provisions are severable.

Section 6. **Repeal.** Any and all ordinances, resolutions, or codes, or parts thereof, which are in conflict or inconsistent with this ordinance are repealed, to the extent of such conflict or inconsistency exists. The repeal of any such ordinance, resolution, or code or part thereof, shall not revive any other section or part of any ordinance, resolution, or code provision. This repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance or code hereby repealed prior to this ordinance taking effect.

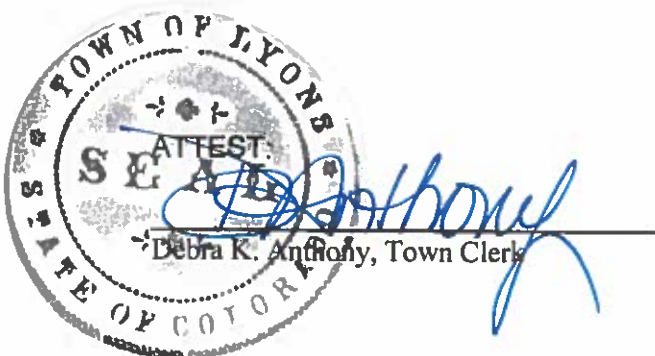
Section 7. **Effective Date.** This Ordinance shall become effective thirty (30) days after publication following final passage in accordance with Section 2-2-160 of the Lyons Municipal Code.

INTRODUCED AND PASSED ON FIRST READING THIS 4TH DAY OF FEBRUARY 2019.

INTRODUCED, AMENDED, PASSED, ADOPTED AND ORDERED PUBLISHED ON SECOND READING THIS 4th DAY OF MARCH 2019.

TOWN OF LYONS, COLORADO


Barney Dreistadt, Mayor Pro Tem



1 THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT
2 LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.
3
4

5 **CONTRACT TO BUY AND SELL REAL ESTATE**
6 **(LAND)**
7 **(Property with No Residences)**
8

Date: 2/19/2019

9 **AGREEMENT**
10

11 **1. AGREEMENT.** Buyer agrees to buy and Seller agrees to sell, the Property described below on the
12 terms and conditions terms and conditions set forth in this contract (Contract).
13

14 **2. PARTIES AND PROPERTY**

15 **2.1 Buyer.** Buyer, Paul Tamburello, will take title to the Property described below as in
16 severalty.

17 **2.2 Assignability.** This Contract Is assignable by Buyer as specified in Additional
18 Provisions.

19 **2.3 Seller.** Seller, Town of Lyons, is the current owner of the Property described below.

20 **2.4 Property.** The Property is the following legally described real estate in the County of
21 Boulder, Colorado: Lot 2, Lyons Village East*, consisting of approximately 7.58 acres *following
22 recordation of Lyons Village East plat in the real property records of the County of Boulder, State
23 of Colorado, together with the interests, easements, rights, benefits, improvements and attached fixtures
24 appurtenant thereto, and all interest of Seller in vacated streets and alleys adjacent thereto, except as
25 herein excluded (Property).
26

27 **2.5. Inclusions.** The Purchase Price includes the following items (Inclusions):

28 **2.5.1. Inclusions.** The following items, whether fixtures or personal property, are
29 included in the Purchase Price unless excluded under Exclusions: None If any additional items are
30 attached to the Property after the date of this contract, such additional items are also included in the
31 Purchase Price.

32 **2.5.2. Personal Property – Conveyance.** Any personal property must be conveyed at
33 Closing by Seller free and clear of all taxes (except personal property taxes for the year of Closing), liens
34 and encumbrances, except: None. Conveyance of all personal property will be by bill of sale or other
35 applicable legal instrument.

36 **2.6. Exclusions.** The following items are excluded (Exclusions): None



37
38 **2.7. Water Rights, Well Rights, Water and Sewer Taps.**

39 ☐ **2.7.1. Deeded Water Rights.** The following legally described water rights: None. Any
40 deeded water rights will be conveyed by a good and sufficient deed at Closing.

41 ☐ **2.7.2. Other Rights Relating to Water.** The following rights relating to water not included
42 in §§ 2.7.1, 2.7.3, 2.7.4 and 2.7.5, will be transferred to Buyer at Closing:

43 ☐ **2.7.3. Well Rights.** Seller agrees to supply required information to Buyer about the well.
44 Buyer understands that if the well to be transferred is a "Small Capacity Well" or a "Domestic Exempt
45 Water Well," used for ordinary household purposes, Buyer must, prior to or at Closing, complete a
46 Change in Ownership form for the well. If an existing well has not been registered with the Colorado
47 Division of Water Resources in the Department of Natural Resources (Division), Buyer must complete a
48 registration of existing well form for the well and pay the cost of registration. If no person will be proving a
49 closing service in connections with the transaction, Buyer must file the form with the Division within sixty
50 days after Closing. The Well Permit # is. N/A

51 ☐ **2.7.4. Water Stock Certificates.** The water stock certificates to be transferred at Closing
52 area as follows: N/A.

53 **2.7.5. Water and Sewer Taps.** The parties agree that water and sewer taps listed below
54 for the Property are being conveyed as part of the Purchase Price as follows: n/a. If any water or sewer
55 taps are included in the sale, Buyer is advised to obtain, from the provider, written confirmation of
56 the amount remaining to be paid, if any, time and other restrictions for transfer and use of the
57 taps.

58 **2.7.6. Conveyance.** If Buyer is to receive any rights to water pursuant to § 2.7.2 (Other
59 Rights Relating to Water), § 2.7.3 (Well Rights), or § 2.7.4 (Water Stock Certificates), Seller agrees to
60 convey such rights to Buyer by executing the applicable legal instrument at Closing.

61 **2.8. Growing Crops.** With respect to growing crops, Seller and Buyer agree as follows:

62 N/A

63
64 **3. DATES AND DEADLINES**

66 Item No.	Reference	Event	Date or
67 Deadline			
68 1	§ 4.3	Alternative Earnest Money Deadline	5 days
69 after MEC			
70	Title		
71 2	§ 8.1	Record Title Deadline	20
72 days after MEC			

73	3	§ 8.2	Record Title Objection Deadline	45
74	days after MEC			
75	4	§ 8.3	Off-Record Title Deadline	25
76	days after MEC			
77	5	§ 8.3	Off-Record Title Objection Deadline	45
78	days after MEC			
79	6	§ 8.4	Title Resolution Deadline	60
80	days after MEC			
81	7	§ 8.6	Right of First Refusal Deadline	N/A
82			Owner's Association	
83	8	§ 7.3	Association Documents Deadline	N/A
84	9	§ 7.4	Association Documents Objection Deadline	N/A
85			Seller's Property Disclosure	
86	10	§ 10.1	Sellers Property Disclosure Deadline	15
87	days after MEC			
88			Loan and Credit	
89	11	§ 5.1	Loan Application Deadline	N/A
90	12	§ 5.2	Loan Objection Deadline	N/A
91	13	§ 5.3	Buyers Credit Information Deadline	N/A
92	14	§ 5.3	Disapproval of Buyer's Credit Information Deadline	N/A
93	15	§ 5.4	Existing Loan Documents Deadline	N/A
94	16	§ 5.4	Existing Loan Documents Objection Deadline	N/A
95	17	§ 5.4	Loan Transfer Approval Deadline	N/A
96	18	§ 4.7	Seller or Private Financing Deadline	N/A
97			Appraisal	
98	19	§ 6.2	Appraisal Deadline	N/A
99	20	§ 6.2	Appraisal Objection Deadline	N/A
100	21	§ 6.2	Appraisal Resolution Deadline	N/A
101			Survey	
102	22	§ 9.1	New ILC or New Survey Deadline	N/A
103	23	§ 9.3	New ILC or New Survey Objection Deadline	N/A
104	24	§ 9.4	New ILC or New Survey Resolution Deadline	N/A
105			Inspection and Due Diligence	
106	25	§ 10.3	Inspection Objection Deadline	75
107	days after MEC			
108	26	§ 10.3	Inspection Resolution Deadline	80
109	days after MEC			

110	27	§ 10.5	Property Insurance Objection Deadline	75
111	days after MEC			
112	28	§ 10.6	Due Diligence Documents Delivery Deadline	20
113	days after MEC			
114	29	§ 10.6	Due Diligence Documents Objection Deadline	50
115	days after MEC			
116	30	§ 10.6	Due Diligence Documents Resolution Deadline	75
117	days after MEC			
118	31	§ 10.6	Environmental Inspection Objection Deadline	75
119	days after MEC			
120	32	§ 10.6	ADA Evaluation Objection Deadline	N/A
121	33	§ 10.7	Conditional Sale Deadline	N/A
122	34	§ 11.1	Tenant Estoppel Statements Deadline	N/A
123	35	§ 11.2	Tenant Estoppel Statements Objection Deadline	N/A
124	Closing and Possession			
125	36	§ 12.3	Closing Date	90
126	days after MEC			
127				
128	Delivery of Deed			
129	37	§ 17	Possession Date	Upon
130	Delivery of Deed			
131	38	§ 17	Possession Time	Upon
132	Delivery of Deed			
133	39	§ 28	Acceptance Deadline Date	
134	2/8/2019 Friday			
135	40	§ 28	Acceptance Deadline Time	5:00
136	PM MDT			
137				

138 **3.1. Applicability of Terms.** Any box checked in this Contract means the corresponding
139 provision applies. Any box, blank or line in this Contract left blank or completed with the abbreviation
140 "N/A" or the word "Deleted" means such provision, including any deadline, is not applicable and the
141 corresponding provision of the Contract to which reference is made is deleted. If no box is checked in a
142 provision that contains a selection of "None", such provision means that "None" applies.

144 The abbreviation "MEC" (mutual execution of this Contract) means the date upon which both parties have
145 signed this Contract.

146

147 **4. Purchase Price and Terms.**

148 **4.1. Price and Terms.** The Purchase Price set forth below is payable in U.S. Dollars by Buyer as
149 follows:

150	Item No.	Reference	Item	Amount
151		Amount		
152	1	4.1	Purchase Price	\$851,000.00
153	2	§ 4.3	Earnest Money	
154				\$40,000.00
155	3	§ 4.5	New Loan	
156	4	§ 4.6	Assumption Balance	
157	5	§ 4.7	Private Financing	
158	6	§ 4.7	Seller Financing	
159	7	§ 4.4	Cash at Closing	
160				\$811,000.00
161	8		TOTAL	\$851,000.00
162				\$851,000.00

163
164 **4.2. Seller Concession.** At Closing, Seller will credit to Buyer \$ 0 (Seller Concession). The Seller
165 Concession may be used for any Buyer Fee, cost, charge or expenditure to the extent the amount is
166 allowed by the Buyer's lender and is included in the Closing Statement or Closing Disclosure, at Closing.
167 Examples of allowable items to be paid for by the Seller Concession include, but are not limited to:
168 Buyer's closing costs, loan discount points, loan origination fees, prepaid items and any other fee, cost,
169 charge, expense or expenditure. Seller Concession is in addition to any sum Seller has agreed to pay or
170 credit Buyer elsewhere in this Contract.

171 **4.3. Earnest Money.** The Earnest Money set forth in this section, in the form of a **Personal**
172 **Check**, will be payable to and held by **Land Title Guarantee Company 2595 Canyon Blvd, Boulder,**
173 **Colorado 80302 (Earnest Money Holder)**, in its trust account, on behalf of both Seller and Buyer. The
174 Earnest Money deposit must be tendered, by Buyer, with this Contract unless the parties mutually agree
175 to an **Alternative Earnest Money Deadline** for its payment. The parties authorize delivery of the Earnest
176 Money deposit to the company conducting the Closing (Closing Company), if any, at or before Closing. In
177 the event Earnest Money Holder has agreed to have interest on Earnest Money deposits transferred to a
178 fund established for the purpose of providing affordable housing to Colorado residents, Seller and Buyer
179 acknowledge and agree that any interest accruing on the Earnest Money deposited with the Earnest
180 Money Holder in this transaction will be transferred to such fund.

181 **4.3.1. Alternative Earnest Money Deadline.** The deadline for delivering the Earnest
182 Money, if other than at the time of tender of this Contract, is as set forth as the **Alternative Earnest**
183 **Money Deadline.**



184 **4.3.2. Return of Earnest Money.** If Buyer has a Right to Terminate and timely
185 terminates, Buyer is entitled to the return of Earnest Money as provided in this Contract. If this Contract is
186 terminated as set forth in § 25 and, except as provided in § 24, if the Earnest Money has not already
187 been returned following receipt of a Notice to Terminate, Seller agrees to execute and return to Buyer or
188 Broker working with Buyer, written mutual instructions (e.g., Earnest Money Release form), within three
189 days of Seller's receipt of such form.

190 **4.4. Form of Funds; Time of Payment; Available Funds.**

191 **4.4.1. Good Funds.** All amounts payable by the parties at Closing, including any loan
192 proceeds, Cash at Closing and closing costs, must be in funds that comply with all applicable Colorado
193 laws, including electronic transfer funds, certified check, savings and loan teller's check and cashier's
194 check (Good Funds).

195 **4.4.2. Time of Payment; Available Funds.** All funds, including the Purchase Price to be
196 paid by Buyer, must be paid before or at Closing or as otherwise agreed in writing between the parties to
197 allow

198 disbursement by Closing Company at Closing **OR SUCH NONPAYING PARTY WILL BE IN DEFAULT.**

199 Buyer
200 represents that Buyer, as of the date of this Contract, **Does** have funds that are immediately verifiable
201 and available in an amount not less than the amount stated as Cash at Closing in 4.1.

202 **4.5. New Loan.** (Omitted as inapplicable)

203 **4.6. Assumption.** (Omitted as inapplicable)

204 **4.7. Seller or Private Financing.** (Omitted as inapplicable)

205
206 **TRANSACTION PROVISIONS**

207
208 **5. FINANCING CONDITIONS AND OBLIGATIONS** (Omitted as inapplicable)

209 **5.1. Credit Information and Buyer's New Senior Loan.** (Omitted as inapplicable)

210 **5.2. Existing Loan Review.** (Omitted as inapplicable)

211
212 **6. APPRAISAL PROVISIONS** (Omitted as inapplicable)

213 **6.1 Appraisal Definition.** (Omitted as inapplicable)

214 **6.2 Appraisal Condition.** (Omitted as inapplicable)

215 **6.3. Lender Property Requirements.** (Omitted as inapplicable)

216 **6.4. Cost of Appraisal.** (Omitted as inapplicable)

217
218 **7. OWNER'S ASSOCIATION.** This Section is applicable if the Property is located within a
219 Common Interest Community and subject to such declaration.

220 **7.1. Common Interest Community Disclosure.** **THE PROPERTY IS LOCATED WITHIN A**

COMMON INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR THE COMMUNITY. THE OWNER OF THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE OWNER'S ASSOCIATION FOR THE COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS WILL IMPOSE FINANCIAL OBLIGATIONS UPON THE OWNER OF THE PROPERTY, INCLUDING AN OBLIGATION TO PAY ASSESSMENTS OF THE ASSOCIATION. IF THE OWNER DOES NOT PAY THESE ASSESSMENTS, THE ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY AND POSSIBLY SELL IT TO PAY THE DEBT. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS OF THE COMMUNITY MAY PROHIBIT THE OWNER FROM MAKING CHANGES TO THE PROPERTY WITHOUT AN ARCHITECTURAL REVIEW BY THE ASSOCIATION (OR A COMMITTEE OF THE ASSOCIATION) AND THE APPROVAL OF THE ASSOCIATION. PURCHASERS OF PROPERTY WITHIN THE COMMON INTEREST COMMUNITY SHOULD INVESTIGATE THE FINANCIAL OBLIGATIONS OF MEMBERS OF THE ASSOCIATION. PURCHASERS SHOULD CAREFULLY READ THE DECLARATION FOR THE COMMUNITY AND THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION.

7.2. Owner's Association Documents. Owner's Association Documents (Association Documents) consist of the following:

7.2.1. All Owner's Association declarations, articles of incorporation, bylaws, articles of organization, operating agreements, rules and regulations, party wall agreements;

7.2.2. Minutes of most recent annual owner's meeting;

7.2.3. Minutes of any directors' or managers' meetings during the six-month period immediately preceding the date of this Contract. If none of the preceding minutes exist, then the most recent minutes, if any (§§ 7.2.1, 7.2.2 and 7.2.3, collectively, Governing Documents); and

7.2.4. The most recent financial documents which consist of: (1) annual and most recent balance sheet, (2) annual and most recent income and expenditures statement, (3) annual budget, (4) reserve study, and (5) notice of unpaid assessments, if any (collectively, Financial Documents).

7.3. Association Documents to Buyer.

7.3.1. Seller to Provide Association Documents. Seller is obligated to provide to Buyer the Association Documents, at Seller's expense, on or before **Association Documents Deadline**. Seller authorizes the Association to provide the Association Documents to Buyer, at Seller's expense. Seller's obligation to provide the Association Documents is fulfilled upon Buyer's receipt of the Association Documents, regardless of who provides such documents.

7.4. Conditional on Buyer's Review. Buyer has the right to review the Association Documents. Buyer has the Right to Terminate under § 25.1, on or before **Association Documents Objection Deadline**, based on any unsatisfactory provision in any of the Association Documents, in Buyer's sole subjective discretion. Should Buyer receive the Association Documents after **Association Documents Deadline**, Buyer, at Buyer's option, has the Right to Terminate under § 25.1 by Buyer's Notice to



Terminate received by Seller on or before ten days after Buyer's receipt of the Association Documents. If Buyer does not receive the Association Documents, or if Buyer's Notice to Terminate would otherwise be required to be received by Seller after Closing Date, Buyer's Notice to Terminate must be received by Seller on or before Closing. If Seller does not receive Buyer's Notice to Terminate within such time, Buyers accepts the provisions of the Association Documents as satisfactory, and Buyer waives any Right to Terminate under this provision, notwithstanding the provisions of § 8.6 (Right of First Refusal or Contract Approval).

8. TITLE INSURANCE, RECORD TITLE AND OFF-RECORD TITLE.

8.1. Evidence of Record Title.

☐ **8.1.1. Seller Selects Title Insurance Company.** If this box is checked, Seller will select the title insurance company to furnish the owner's title insurance policy at Seller's expense. On or before Record Title Deadline, Seller must furnish to Buyer, a current commitment for owner's title insurance policy (Title Commitment), in an amount equal to the Purchase Price, or if this box is checked, ☐ an Abstract of Title certified to a current date. Seller will cause the title insurance policy to be issued and delivered to Buyer as soon as practicable at or after Closing.

☒ **8.1.2. Buyer Selects Title Insurance Company.** If this box is checked, Buyer will select the title insurance company to furnish the owner's title insurance policy at Buyer's expense. On or before Record Title Deadline, Buyer must furnish to Seller, a current commitment for owner's title insurance policy (Title Commitment), in an amount equal to the Purchase Price. If neither box § 8.1.1 or § 8.1.1 is checked, § 8.1.1 applies.

8.1.3 Owner's Extended Coverage (OEC). The Title Commitment Will contain Owner's Extended Coverage (OEC). If the Title Commitment is to contain OEC, it will commit to delete or insure over the standard exceptions which relate to (1) parties in possession, (2) unrecorded easements, (3) survey matters, (4) unrecorded mechanics' liens, (5) gap period (period between the effective date and time of commitment to the date and time the deed is recorded), and (6) unpaid taxes, assessments and unredeemed tax sales prior to the year of Closing. Any additional premium expense to obtain OEC will be paid by Buyer.

Regardless of whether the Contract requires OEC, the Title Insurance Commitment may not provide OEC or delete or insure over any or all of the standard exceptions for OEC. The Title Insurance Company may require a New Survey or New ILC, defined below, among other requirements for the OEC. If the Title Insurance Commitment is not satisfactory to Buyer, Buyer has a right to object under § 8.4 (Right to Object to Title Resolution).

8.1.4. Title Documents. Title Documents consist of the following: (1) copies of any plats, declarations, covenants, conditions and restrictions burdening the Property, and (2) copies of any other documents (or, if illegible, summaries of such documents) listed in the schedule of exceptions (Exceptions) in the Title Commitment furnished to Buyer (collectively, Title Documents).

295 **8.1.5. Copies of Title Documents.** Buyer must receive, on or before **Record Title**
296 **Deadline**, copies of all Title Documents. This requirement pertains only to documents as shown of record
297 in the office of the clerk and recorder in the county where the Property is located. The cost of furnishing
298 copies of the documents required in this Section will be at the expense of the party or parties obligated to
299 pay for the owner's title insurance policy.

300 **8.1.6. Existing Abstracts of Title.** Seller must deliver to Buyers copies of any abstracts
301 of title covering all or any portion of the Property (Abstract of Title) in Seller's possession on or before
302 **Record Title Deadline**.

303 **8.2. Record Title.** Buyer has the right to review and object to the Abstract of Title or Title
304 Commitment and any of the Title Documents as set forth in § 8.4 (Right to Object to Title, Resolution) on
305 or before **Record Title Objection Deadline**. Buyer's objection may be based on any unsatisfactory form
306 or content of Title Commitment or Abstract of Title, notwithstanding § 13, or any other unsatisfactory title
307 condition, in Buyer's sole subjective discretion. If the Abstract of Title, Title Commitment or Title
308 Documents are not received by Buyer on or before the **Record Title Deadline**, or if there is an
309 endorsement to the Title Commitment that adds a new Exception to title, a copy of the new Exception to
310 title and the modified Title Commitment will be delivered to Buyer. Buyer has until the earlier of Closing or
311 ten days after receipt of such documents by Buyer to review and object to: (1) any required Title
312 Document not timely received by Buyer, (2) any change to the Abstract of Title, Title Commitment or Title
313 Documents, or (3) any endorsement to the Title Commitment. If Seller receives Buyer's Notice to
314 Terminate or Notice of Title Objection, pursuant to this § 8.2 (Record Title), any title objection by Buyer is
315 governed by the provisions set forth in § 8.4 (Right to Object to Title, Resolution). If Seller has fulfilled all
316 Seller's obligations, if any, to deliver to Buyer all documents required by § 8.1 (Evidence of Record Title)
317 and Seller does not receive Buyer's Notice to Terminate or Notice of Title Objection by the applicable
318 deadline specified above, Buyer accepts the condition of title as disclosed by the Abstract of Title, Title
319 Commitment and Title Documents as satisfactory.

320 **8.3. Off-Record Title.** Seller must deliver to Buyer, on or before **Off-Record Title Deadline**, true
321 copies of all existing surveys in Seller's possession pertaining to the Property and must disclose to Buyer
322 all easements, liens (including, without limitation, governmental improvements approved, but not yet
323 installed) or other title matters (including, without limitation, rights of first refusal and options) not shown
324 by public records, of which Seller has actual knowledge (Off-Record Matters). Buyer has the right to
325 inspect the Property to investigate if any third party has any right in the Property not shown by public
326 records (e.g., unrecorded easement, boundary line discrepancy or water rights). Buyer's Notice to
327 Terminate or Notice of Title Objection of any unsatisfactory condition (whether disclosed by Seller or
328 revealed by such inspection, notwithstanding § 8.2 and § 13), in Buyer's sole subjective discretion, must
329 be received by Seller on or before **Off-Record Title Objection Deadline**. If an Off-Record Matter is
330 received by Buyer after the **Off-Record Title Deadline**, Buyer has until the earlier of Closing or ten days
331 after receipt by Buyer to review and object to such Off-Record Matter. If Seller receives Buyer's Notice to

Terminate or Notice of Title Objection pursuant to this § 8.3 (Off-Record Title), any title objection by Buyer and this Contract are governed by the provisions set forth in § 8.4 (Right to Object to Title, Resolution). If Seller does not receive Buyer's Notice to Terminate or Notice of Title Objection by the applicable deadline specified above, Buyer accepts title subject to such rights, if any, of third parties of which Buyer has actual knowledge.

8.4. Right to Object to Title, Resolution. Buyer's right to object to any title matters includes, but is not limited to those matters set forth in §§ 8.2 (Record Title), 8.3 (Off-Record Title) and 13 (Transfer of Title), in Buyer's sole subjective discretion. If Buyer objects to any title matter, on or before the applicable deadline, Buyer has the following options:

8.4.1. Title Objection, Resolution. If Seller receives Buyer's written notice objecting to any title matter (Notice of Title Objection) on or before the applicable deadline, and if Buyer and Seller have not agreed to a written settlement thereof on or before **Title Resolution Deadline**, this Contract will terminate on the expiration of **Title Resolution Deadline**, unless Seller receives Buyer's written withdrawal of Buyer's Notice of Title Objection (i.e., Buyer's written notice to waive objection to such items and waives the Right to Terminate for that reason), on or before expiration of **Title Resolution Deadline**. If either the Record Title Deadline or the Off-Record Title Deadline, or both, are extended to the earlier of Closing or ten days after receipt of the applicable documents by Buyer, pursuant to § 8.2 (Record Title) or § 8.3 (Off-Record Title), the Title Resolution Deadline also will be automatically extended to the earlier of Closing or fifteen days after Buyer's receipt of the applicable documents; or

8.4.2. Title Objection, Right to Terminate. Buyer may exercise the Right to Terminate under § 25.1, on or before the applicable deadline, based on any unsatisfactory title matter, in Buyer's sole subjective discretion.

8.5. Special Taxing Districts. SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND TAX TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYERS SHOULD INVESTIGATE THE SPECIAL TAXING DISTRICTS IN WHICH THE PROPERTY IS LOCATED BY CONTACTING THE COUNTY TREASURER, BY REVIEWING THE CERTIFICATE OF TAXES DUE FOR THE PROPERTY, AND BY OBTAINING FURTHER

369 INFORMATION FROM THE BOARD OF COUNTY COMMISSIONERS, THE COUNTY CLERK AND
370 RECORDER, OR THE COUNTY ASSESSOR.

371 Buyer has the Right to Terminate under § 25.1, on or before Off-Record Title Objection
372 Deadline, based on any unsatisfactory effect of the Property being located within a special taxing district,
373 in Buyer's sole subjective discretion.

374 **8.6. Right of First Refusal or Contract Approval.** If there is a right of first refusal on the
375 Property or a right to approve this Contract, Seller must promptly submit this Contract according to the
376 terms and conditions of such right. If the holder of the right of first refusal exercises such right or the
377 holder of a right to approve disapproves this Contract, this Contract will terminate. If the right of first
378 refusal is waived explicitly or expires, or the Contract is approved, this Contract will remain in full force
379 and effect. Seller must promptly notify Buyer in writing of the foregoing. If expiration or waiver of the right
380 of first refusal or approval of this Contract has not occurred on or before **Right of First Refusal Deadline**,
381 this Contract will then terminate.

382 **8.7. Title Advisory.** The Title Documents affect the title, ownership and use of the Property and
383 should be reviewed carefully. Additionally, other matters not reflected in the Title Documents may affect
384 the title, ownership and use of the Property, including, without limitation, boundary lines and
385 encroachments, set-back requirements, area, zoning, building code violations, unrecorded easements
386 and claims of easements, leases and other unrecorded agreements, water on or under the Property, and
387 various laws and governmental regulations concerning land use, development and environmental
388 matters.

389 **8.7.1. OIL, GAS, WATER AND MINERAL DISCLOSURE.** THE SURFACE ESTATE OF
390 THE PROPERTY MAY BE OWNED SEPARATELY FROM THE UNDERLYING MINERAL ESTATE, AND
391 TRANSFER OF THE SURFACE ESTATE MAY NOT NECESSARILY INCLUDE TRANSFER OF THE
392 MINERAL ESTATE OR WATER RIGHTS. THIRD PARTIES MAY OWN OR LEASE INTERESTS IN OIL,
393 GAS, OTHER MINERALS, GEOTHERMAL ENERGY OR WATER ON OR UNDER THE SURFACE OF
394 THE PROPERTY, WHICH INTERESTS MAY GIVE THEM RIGHTS TO ENTER AND USE THE
395 SURFACE OF THE PROPERTY TO ACCESS THE MINERAL ESTATE, OIL, GAS OR WATER.

396 **8.7.2. SURFACE USE AGREEMENT.** THE USE OF THE SURFACE ESTATE OF THE
397 PROPERTY TO ACCESS THE OIL, GAS OR MINERALS MAY BE GOVERNED BY A SURFACE USE
398 AGREEMENT, A MEMORANDUM OR OTHER NOTICE OF WHICH MAY BE RECORDED WITH THE
399 COUNTY CLERK AND RECORDER.

400 **8.7.3. OIL AND GAS ACTIVITY.** OIL AND GAS ACTIVITY THAT MAY OCCUR ON OR
401 ADJACENT TO THE PROPERTY MAY INCLUDE, BUT IS NOT LIMITED TO, SURVEYING, DRILLING,
402 WELL COMPLETION OPERATIONS, STORAGE, OIL AND GAS, OR PRODUCTION FACILITIES,
403 PRODUCING WELLS, REWORKING OF CURRENT WELLS, AND GAS GATHERING AND
404 PROCESSING FACILITIES.



8.7.4. ADDITIONAL INFORMATION. BUYER IS ENCOURAGED TO SEEK ADDITIONAL INFORMATION REGARDING OIL AND GAS ACTIVITY ON OR ADJACENT TO THE PROPERTY, INCLUDING DRILLING PERMIT APPLICATIONS. THIS INFORMATION MAY BE AVAILABLE FROM THE COLORADO OIL AND GAS CONSERVATION COMMISSION.

8.7.5. Title Insurance Exclusions. Matters set forth in this Section, and others, may be excepted, excluded from, or not covered by the owner's title insurance policy.

8.8. Consult an Attorney. Buyer is advised to timely consult legal counsel with respect to all such matters as there are strict time limits provided in this Contract (e.g., Record Title Objection Deadline and Off-Record Title Objection Deadline).

9. NEW ILC, NEW SURVEY

9.1. New ILC or New Survey. (Omitted as inapplicable)

9.2. Buyer's Right to Waive or Change New ILC or New Survey Selection. (Omitted as inapplicable)

9.3. New ILC or New Survey Objection. (Omitted as inapplicable)

DISCLOSURE, INSPECTION AND DUE DILIGENCE

10. PROPERTY DISCLOSURE, INSPECTION, INDEMNITY, INSURABILITY, DUE DILIGENCE AND SOURCE OF WATER.

10.1. Seller's Property Disclosure. On or before Seller's Property Disclosure Deadline, Seller agrees to deliver to Buyer the most current version of the applicable Colorado Real Estate Commission's Seller's Property Disclosure form completed by Seller to Seller's actual knowledge, current as of the date of this Contract.

10.2. Disclosure of Latent Defects; Present Condition. Seller must disclose to Buyer any latent defects actually known by Seller. Seller agrees that disclosure of latent defects will be in writing. Except as otherwise provided in this Contract, Buyer acknowledges that Seller is conveying the Property to Buyer in an "As Is" condition, "Where Is" and "With All Faults."

10.3. Inspection. Unless otherwise provided in this Contract, Buyer, acting in good faith, has the right to have inspections (by one or more third parties, personally or both) of the Property and Inclusions (Inspection), at Buyer's expense. If (1) the physical condition of the Property, including, but not limited to, the roof, walls, structural integrity of the Property, the electrical, plumbing, HVAC and other mechanical systems of the Property, (2) the physical condition of the Inclusions, (3) service to the Property (including utilities and communication services), systems and components of the Property (e.g., heating and plumbing), (4) any proposed or existing transportation project, road, street or highway, or (5) any other activity, odor or noise (whether on or off the Property) and its effect or expected effect on the Property or

its occupants is unsatisfactory, in Buyer's sole subjective discretion, Buyer may, on or before **Inspection Objection Deadline**:

10.3.1. Notice to Terminate. Notify Seller in writing that this Contract is terminated; or

10.3.2. Inspection Objection. Deliver to Seller a written description of any unsatisfactory physical condition that Buyer requires Seller to correct.

10.3.3. Inspection Resolution. If an Inspection Objection is received by Seller, on before **Inspection Objection Deadline**, and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **Inspection Resolution Deadline**, this Contract will terminate on **Inspection Resolution Deadline** unless Seller receives Buyer's written withdrawal of the Inspection Objection before such termination, i.e., on or before expiration of **Inspection Resolution Deadline**.

10.4. Damage, Liens and Indemnity. Buyer, except as otherwise provided in this Contract or other written agreement between the parties, is responsible for payment for all inspections, tests, surveys, engineering reports, or other reports performed at Buyer's request (Work) and must pay for any damage that occurs to the Property and Inclusions as a result of such Work. Buyer must not permit claims or liens of any kind against the Property for Work performed on the Property. Buyer agrees to indemnify, protect and hold Seller harmless from and against any liability, damage, cost or expense incurred by Seller and caused by any such Work, claim, or lien. This indemnity includes Seller's right to recover all costs and expenses incurred by Seller to defend against any such liability, damage, cost or expense, or to enforce this section, including Seller's reasonable attorney fees, legal fees and expenses. The provisions of this section survive the termination of this Contract. This § 10.4 does not apply to items performed pursuant to an Inspection Resolution.

10.5. Insurability. Buyer has the right to review and object to the availability, terms and conditions of and premium for property insurance (Property Insurance). Buyer has the Right to Terminate under § 25.1, on or before **Property Insurance Objection Deadline**, based on any unsatisfactory provision of the Property Insurance, in Buyer's sole subjective discretion.

10.6. Due Diligence.

10.6.1. Due Diligence Documents. If the respective box is checked, Seller agrees to deliver copies of the following documents and information pertaining to the Property (Due Diligence Documents) to Buyer on or before **Due Diligence Documents Delivery Deadline**:

☐ **10.6.1.1.** All contracts relating to the operation, maintenance and management of the Property

☐ **10.6.1.2.** Property tax bills for the last years;

☐ **10.6.1.3.** As-built construction plans to the Property and the tenant improvements, including architectural, electrical, mechanical, and structural systems, engineering reports, and permanent Certificates of Occupancy, to the extent now available;

☐ **10.6.1.4.** A list of all Inclusions to be conveyed to Buyer;

- 477 ☐ 10.6.1.5. Operating statements for the past -0- years;
- 478 ☐ 10.6.1.6. A rent roll accurate and correct to the date of this Contract;
- 479 ☐ 10.6.1.7. All current leases, including any amendments or other occupancy
480 agreements, pertaining to the Property. Those leases or other occupancy agreements pertaining to the
481 Property that survive Closing are as follows (Leases): N/A
- 482 ☐ 10.6.1.8. A schedule of any tenant improvement work Seller is obligated to
483 complete but has not yet completed and capital improvement work either scheduled or in process on the
484 date of this Contract;
- 485 ☐ 10.6.1.9. All insurance policies pertaining to the Property and copies of any
486 claims which have been made for the past years;
- 487 ☒ 10.6.1.10. Soils reports, surveys and engineering reports or data pertaining to
488 the Property (if not delivered earlier under § 8.3);
- 489 ☒ 10.6.1.11. Any and all existing documentation and reports regarding
490 Phase I and II environmental reports, letters, test results, advisories, and similar documents
491 respective to the existence or nonexistence of asbestos, PCB transformers, or other toxic,
492 hazardous or contaminated substances, and/or underground storage tanks and/or radon gas.
493 If no reports are in Seller's possession or known to Seller, Seller
494 warrants that no such reports are in Seller's possession or known to Seller;
- 495 ☐ 10.6.1.12. Any *Americans with Disabilities Act* reports, studies or surveys
496 concerning the compliance of the Property with said Act;
- 497 ☐ 10.6.1.13. All permits, licenses and other building or use authorizations issued
498 by any governmental authority with jurisdiction over the Property and written notice of any violation of any
499 such permits, licenses or use authorizations, if any; and
- 500 ☒ 10.6.1.14. Other documents and information:



501 **10.6.1. DUE DILIGENCE DOCUMENTS.** Regardless of whether any box is checked
502 in § 10.6.1, the Due Diligence Documents to be delivered by Seller to Buyer on or before the
503 Due Diligence Documents Delivery Deadline pursuant to § 10.6.1 include copies of any of
504 the following, to the extent the following exist and are in Seller's possession: utility bills
505 and property tax statements relating to the Property for the last 12 months; architectural
506 drawings, blueprints, as-built construction plans and any other plans or specifications
507 regarding any improvements on or to the Property; certificate(s) of occupancy or other
508 governmental approval(s) regarding any improvements on or to the Property; warranties,
509 manuals, instructional brochures or similar materials relating to the Property or inclusions,
510 or their use, operation or maintenance; inspection, soil, drainage, percolation and similar
511 reports relating to the Property.

512 **10.6.2. Due Diligence Documents Review and Objection.** Buyer has the right to review and
513 object to Due Diligence Documents. If the Due Diligence Documents are not supplied to Buyer or are
514 unsatisfactory in Buyer's sole subjective discretion, Buyer may, on or before Due Diligence Documents
515 Objection Deadline:

516 **10.6.2.1. Notice to Terminate.** Notify Seller in writing that this Contract is
517 terminated; or

518 **10.6.2.2. Due Diligence Documents Objection.** Deliver to Seller a written
519 description
520 of any unsatisfactory Due Diligence Documents that Buyer requires Seller to correct.

521 **10.6.2.3. Due Diligence Documents Resolution.** If a Due Diligence
522 Documents Objection is received by Seller, on or before Due Diligence Documents Objection
523 Deadline, and if Buyer and Seller have not agreed in writing to a settlement thereof on or before Due
524 Diligence Documents Resolution Deadline, this Contract will terminate on Due Diligence Documents
525 Resolution Deadline unless Seller receives Buyer's written withdrawal of the Due Diligence Documents
526 Objection before such termination, i.e., on or before expiration of Due Diligence Documents
527 Resolution Deadline.

528 **10.6.3. Zoning.** Buyer has the Right to Terminate under § 25.1, on or before Due
529 Diligence Documents Objection Deadline, based on any unsatisfactory zoning and any use restrictions
530 imposed by any governmental agency with jurisdiction over the Property, in Buyer's sole subjective
531 discretion.

532 **10.6.4. Due Diligence – Environmental, ADA.** Buyer has the right to obtain
533 environmental inspections of the Property including Phase I and Phase II Environmental Site
534 assessments, as applicable. Buyer will order or provide Phase I Environmental Site
535 Assessment, Phase II Environmental Site Assessment (compliant with most current version
536 of the applicable ASTM E1527 standard practices for Environmental Site Assessments) and/or
537 Asbestos, at the expense of Buyer (Environmental Inspection). In addition, Buyer, at Buyer's



538 expense, may also conduct an evaluation whether the Property complies with the Americans
539 with Disabilities Act (ADA Evaluation). All such inspections and evaluations must be conducted
540 at such times as are mutually agreeable to minimize the interruption of Seller's and any Seller's
541 tenants' business uses of the Property, if any.

542 If Buyer's Phase I Environmental Site Assessment recommends a Phase II
543 Environmental Site Assessment, the Environmental Inspection Objection Deadline will be
544 extended by 45 days (Extended Environmental Inspection Objection Deadline) and if such
545 Extended Environmental Inspection Objection Deadline extends beyond the Closing Date, the
546 Closing date will be extended a like period of time. In such event Buyer must pay the cost for
547 such Phase II Environmental Site Assessment.

548 Notwithstanding Buyer's right to obtain additional environmental inspections of the
549 Property in this § 10.6.5, Buyer has the Right to Terminate under § 25.1 on or before
550 Environmental Inspection Objection Deadline, or if applicable, the Extended Environmental
551 Inspection Objection Deadline, based on any unsatisfactory results of Environmental
552 Inspection, in Buyer's sole subjective discretion.

553 Buyer has the Right to Terminate under § 25.1 on or before ADA Evaluation
554 Objection Deadline, based on any unsatisfactory ADA Evaluation, in Buyer's sole subjective
555 discretion.

556 **10.7 Conditional Upon Sale of Property.** This Contract is conditional upon the sale
557 and closing of that certain property owned by Buyer and commonly known as N/A. Buyer has
558 the Right to Terminate under § 25.1 effective upon Seller's receipt of Buyer's Notice to
559 Terminate on or before Conditional Sale Deadline if such property is not sold and closed by
560 such deadline. This § 10.7 is for the sole benefit of Buyer. If Seller does not receive Buyer's
561 Notice to Terminate on or before Conditional Sale Deadline, Buyer waives any Right to
562 Terminate under this provision.

563 **10.8 Source of Potable Water (Residential Land and Residential Improvements Only)** Buyer
564 does not acknowledge receipt of a copy of Seller's Property Disclosure or Source of Water Addendum
565 disclosing the source of potable water for the Property. There is No Well..
566 **Note to Buyer: SOME WATER PROVIDERS RELY, TO VARYING DEGREES, ON NONRENEWABLE**
567 **GROUND WATER. YOU MAY WISH TO CONTACT YOUR PROVIDER (OR INVESTIGATE THE**
568 **DESCRIBED SOURCE) TO DETERMINE THE LONG-TERM SUFFICIENCY OF THE PROVIDER'S**
569 **WATER SUPPLIES.**

570 **10.9 Existing Leases; Modification of Existing Leases; New Leases.** Seller states that none
571 of the Leases to be assigned to the Buyer at the time of Closing contain any rent concessions, rent
572 reductions or rent abatements except as disclosed in the Lease or other writing received by Buyer. Seller
573 will not amend, alter, modify, extend or cancel any of the Leases nor will Seller enter into any new leases
574 affecting the Property without the prior written consent of Buyer, which consent will not be unreasonably



575 withheld or delayed.

576

577 **11. TENANT ESTOPPEN STATEMENTS**

578 **11.1 Tenant Estoppel Statements Conditions.** Buyer has the right to review and object to any
579 Estoppel Statements. Seller must obtain and deliver to Buyer on or before **Tenant Estoppel Statements**
580 **Deadline**, statements in a form and substance reasonably acceptable to Buyer, from each occupant or
581 tenant at the Property (Estoppel Statement) attached to a copy of the Lease stating:

582 **11.1.1.** The commencement date of the Lease and scheduled termination date of the
583 lease;

584 **11.1.2.** That said Lease is in full force and effect and that there have been no subsequent
585 modifications or amendments;

586 **11.1.3.** The amount of any advance rentals paid, rent concessions given, and deposits
587 paid to Seller;

588 **11.1.4.** The amount of monthly (or other applicable period) rental paid to Seller;

589 **11.1.5.** That there is no default under the terms of said Lease by landlord or occupant;

590 and

591 **11.1.6.** That the Lease to which the Estoppel is attached is a true, correct and complete
592 copy of the Lease demising the premises it describes.

593 **11.2. Tenant Estoppel Statements Objection.** Buyer has the Right to Terminate under § 25.1,
594 on or before **Tenant Estoppel Statements Objection Deadline**, based on any unsatisfactory Estoppel
595 Statement, in Buyer's sole subjective discretion, or if Seller fails to deliver the Estoppel Statements on or
596 before **Tenant Estoppel Statements Deadline**.

597

598

CLOSING PROVISIONS

599

600 **12. CLOSING DOCUMENTS, INSTRUCTIONS AND CLOSING**

601 **12.1. Closing Documents and Closing Information.** Seller and Buyer will cooperate with the
602 Closing Company to enable the Closing Company to prepare and deliver documents required for Closing
603 to Buyer and Seller and their designees. If Buyer is obtaining a new loan to purchase the Property, Buyer
604 acknowledges Buyer's lender is required to provide the Closing Company, in a timely manner, all required
605 loan documents and financial information concerning Buyer's new loan. Buyer and Seller will furnish any
606 additional information and documents required by Closing Company that will be necessary to complete
607 this transaction. Buyer and Seller will sign and complete all customary or reasonably required documents
608 at or before Closing

609 **12.2 Closing Instructions.** Colorado Real Estate Commission's Closing Instructions Are Not
610 executed with this Contract.

611 **12.3 Closing.** Delivery of deed from Seller to Buyer will be at closing (Closing). Closing will be on



the date specified as the **Closing Date** or by mutual agreement at an earlier date. The hour and place of Closing will be as designated by **Buyer and Seller**.

12.4. Disclosure of Settlement Costs. Buyer and Seller acknowledge that costs, quality, and extent of service vary between different settlement service providers (e.g., attorneys, lenders, inspectors and title companies).

13. TRANSFER OF TITLE. Subject to tender of payment at Closing as required herein and compliance by Buyer with the other terms and provisions hereof, Seller must execute and deliver a good and sufficient **Special Warranty Deed** to Buyer, at Closing, conveying the Property free and clear of all taxes except the general taxes for the year of Closing. Except as provided herein, title will be conveyed free and clear of all liens, including any governmental liens for special improvements installed as of the date of Buyer's signature hereon, whether assessed or not. Title will be conveyed subject to:

13.1. Those specific Exceptions described by reference to recorded documents as reflected in the Title Documents accepted by Buyer in accordance with **Record Title**;

13.2. Distribution utility easements (including cable TV);

13.3. Those specifically described rights of third parties not shown by the public records of which Buyer has actual knowledge and which were accepted by Buyer in accordance with **Off-Record Title and New ILC or New Survey**;

13.4. Inclusion of the Property within any special taxing district;

13.5. Any special assessment if the improvements were not installed as of the date of Buyer's signature hereon, whether assessed prior to or after Closing; and

13.6. Other None.

14. PAYMENT OF ENCUMBRANCES. Any encumbrance required to be paid will be paid at or before Closing from the proceeds of this transaction or from any other source.

15. CLOSING COSTS, CLOSING FEE, ASSOCIATION FEES AND TAXES.

15.1. Closing Costs. Buyer and Seller must pay, in Good Funds, their respective closing costs and all other items required to be paid at Closing, except as otherwise provided herein.

15.2. Closing Services Fee. The fee for real estate closing services must be paid at Closing ☒ One-Half by Buyer and One-Half by Seller.

15.3. Status Letter and Record Change Fees. Any fees incident to the issuance of Association's statement of assessments (Status Letter) must be paid by **None**. Any record change fee assessed by the Association including, but not limited to, ownership record transfer fees regardless of name or title of such fee (Association's Record Change Fee) must be paid by **None**.

648 **15.4. Local Transfer Tax.** The Local Transfer Tax of N/A% of the Purchase Price must be paid
649 at Closing by None.

650 **15.5. Private Transfer Fee.** Private transfer fees and other fees due to a transfer of the
651 Property, payable at Closing, such as community association fees, developer fees and foundation fees,
652 must be paid at Closing by None. The Private Transfer fee, whether one or more, is for the following
653 association(s): N/A in the total amount of n/a % of the Purchase Price or \$ N/A.

654 **15.6. Water Transfer Fees.** The Water Transfer Fees can change. The fees, as of the date of
655 this Contract to not exceed \$ N/Aa for N/A and must be paid at Closing by None

656 **15.7. Sales and Use Tax.** Any sales and use tax that may accrue because of this transaction
657 must be paid when due by None

658
659 **16. PRORATIONS.** The following will be prorated to the Closing Date, except as otherwise provided:

660 **16.1. Taxes.** Personal property taxes, if any, special taxing district assessments, if any, and
661 general real estate taxes for the year of Closing. As the property is not currently taxed, personal property
662 taxes, special taxing district assessments, and general real estate taxes will not be paid upon the
663 Closing Date. Seller is not responsible for the payment of any personal property taxes, special taxing
664 district assessments, or general real estate taxes on the Property. As a result, such taxes and
665 assessments will not be prorated and Seller will not pay any personal property taxes, special taxing
666 district assessments, or general real estate taxes on the Property at Closing.

667 **16.2. Rents.** Rents based on N/A. At Closing, Seller will transfer or credit to Buyer the security
668 deposits for all Leases assigned, or any remainder after lawful deductions, and notify all tenants in writing
669 of such transfer and of the transferee's name and address. Seller must assign to Buyer all Leases in
670 effect at Closing and Buyer must assume Seller's obligations under such Leases.

671 **16.3. Association Assessments.** Current regular Association assessments and dues
672 Association Assessments) paid in advance will be credited to Seller at Closing. Cash reserves held out of
673 the regular Association Assessments for deferred maintenance by the Association will not be credited to
674 Seller except as may be otherwise provided by the Governing Documents. Buyer acknowledges that
675 Buyer may be obligated to pay the Association, at Closing, an amount for reserves or working capital.
676 Any special assessment assessed prior to Closing Date by the Association will be the obligation of ☐
677 Buyer ☐ Seller. Except however, any special assessment by the Association for improvements that have
678 been installed as of the date of Buyer's signature hereon, whether assessed prior to or after Closing, will
679 be the obligation of Seller. Seller represents that the Association Assessments are currently payable at
680 \$N/A and that there are no unpaid regular or special assessments against the Property except the
681 current regular assessments and N/A. Such assessments are subject to change as provided in the
682 Governing Documents. Seller agrees to promptly request the Association to deliver to Buyer before
683 Closing Date a current Status Letter.

16.4. Other Prorations. Water and sewer charges, propane, interest on continuing loan, and N/A. Notwithstanding anything to the contrary contained in this Contract, Seller is not responsible for the payment of any water and sewer charges, propane, interest, or any other charges for the Property. As a result, no such charges or expenses will be prorated nor will Seller pay any such charges or expenses for the Property at Closing.

16.5. Final Settlement. Unless otherwise agreed in writing, these prorations are final.

17. POSSESSION. Possession of the Property will be delivered to Buyer on **Possession Date** at **Possession Time**, subject to the Leases as set forth in § 10.6.1.7. If Seller, after Closing, fails to deliver possession as specified, Seller will be subject to eviction and will be additionally liable to Buyer for payment of **\$ 500** per day (or any part of a day notwithstanding § 18.1) from **Possession Date** and **Possession Time** until possession is delivered.

GENERAL PROVISIONS

18. DAY; COMPUTATION OF PERIOD OF DAYS, DEADLINE.

18.1. Day. As used in this Contract, the term "day" means the entire day ending at 11:59 p.m., United States Mountain Time (Standard or Daylight Savings as applicable).

18.2. Computation of Period of Days, Deadline. In computing a period of days, when the ending date is not specified, the first day is excluded and the last day is included (e.g., three days after MEC). If any deadline falls on a Saturday, Sunday or federal or Colorado state holiday (Holiday), such deadline Will be extended to the next day that is not a Saturday, Sunday or Holiday. Should neither box be checked, the deadline will not be extended.

19. CAUSES OF LOSS, INSURANCE; DAMAGE TO INCLUSIONS AND SERVICES; CONDEMNATION; AND WALK-THROUGH. Except as otherwise provided in this Contract, the Property, Inclusions or both will be delivered in the condition existing as of the date of this Contract, ordinary wear and tear excepted.

19.1 Causes of Loss, Insurance. In the event the Property or Inclusions are damaged by fire, other perils or causes of loss prior to Closing in an amount of not more than ten percent of the total Purchase Price (Property Damage), and if the repair of the damage will be paid by insurance (other than the deductible to be paid by Seller), then Seller, upon receipt of the insurance proceeds, will use Seller's reasonable efforts to repair the Property before **Closing Date**. Buyer has the Right to Terminate under § 25.1, on or before **Closing Date** if the Property is not repaired before **Closing Date** or if the damage exceeds such sum. Should Buyer elect to carry out this Contract despite such Property Damage, Buyer is entitled to a credit at Closing for all insurance proceeds that were received by Seller (but not the Association, if any) resulting from damage to the Property and Inclusions, plus the amount of any



deductible provided for in the insurance policy. This credit may not exceed the Purchase Price. In the event Seller has not received the insurance proceeds prior to Closing, the parties may agree to extend the Closing Date to have the Property repaired prior to Closing or, at the option of Buyer, (1) Seller must assign to Buyer the right to the proceeds at Closing, if acceptable to Seller's insurance company and Buyer's lender; or (2) the parties may enter into a written agreement prepared by the parties or their attorney requiring the Seller to escrow at Closing from Seller's sale proceeds the amount Seller has received and will receive due to such damage, not exceeding the total Purchase Price, plus the amount of any deductible that applies to the insurance claim.

19.2. Damage, Inclusions and Services. Should any Inclusion or service (including utilities and communication services), system, component or fixture of the Property (collectively Service) (e.g., heating or plumbing), fail or be damaged between the date of this Contract and Closing or possession, whichever is earlier, then Seller is liable for the repair or replacement of such Inclusion or Service with a unit of similar size, age and quality, or an equivalent credit, but only to the extent that the maintenance or replacement of such Inclusion or Service is not the responsibility of the Association, if any, less any insurance proceeds received by Buyer covering such repair or replacement. If the failed or damaged Inclusion or Service is not repaired or replaced on or before Closing or possession, whichever is earlier, Buyer has the Right to Terminate under § 25.1, on or before Closing Date, or, at the option of Buyer, Buyer is entitled to a credit at Closing for the repair or replacement of such Inclusion or Service. Such credit must not exceed the Purchase Price. If Buyer receives such a credit, Seller's right for any claim against the Association, if any, will survive Closing. Seller and Buyer are aware of the existence of pre-owned home warranty programs that may be purchased and may cover the repair or replacement of such Inclusions.

19.3. Condemnation. In the event Seller receives actual notice prior to Closing that a pending condemnation action may result in a taking of all or part of the Property or Inclusions, Seller must promptly notify Buyer, in writing, of such condemnation action. Buyer has the Right to Terminate under § 25.1, on or before Closing Date, based on such condemnation action, in Buyer's sole subjective discretion. Should Buyer elect to consummate this Contract despite such diminution of value to the Property and Inclusions, Buyer is entitled to a credit at Closing for all condemnation proceeds awarded to Seller for the diminution in the value of the Property or Inclusions, but such credit will not include relocation benefits or expenses or exceed the Purchase Price.

19.4. Walk-Through and Verification of Condition. Buyer, upon reasonable notice, has the right to walk through the Property prior to Closing to verify that the physical condition of the Property and Inclusions complies with this Contract.

19.5. Risk of Loss - Growing Crops. The risk of loss for damage to growing crops by fire or other Casualty will be borne by the party entitled to the growing crops as provided in § 2.8 and such party is entitled to such insurance proceeds or benefits for the growing crops.

758 **20. RECOMMENDATION OF LEGAL AND TAX COUNSEL.** By signing this Contract, Buyer and Seller
759 acknowledge that the respective broker has advised that this Contract has important legal consequences
760 and has recommended the examination of title and consultation with legal and tax or other counsel before
761 signing this Contract.
762

763 **21. TIME OF ESSENCE, DEFAULT AND REMEDIES.** Time is of the essence for all dates and deadlines
764 in this Contract. This means that all dates and deadlines are strict and absolute. If any payment due,
765 including Earnest Money, is not paid, honored or tendered when due, or if any obligation is not performed
766 timely as provided in this Contract or waived, the non-defaulting party has the following remedies:

767 **21.1. If Buyer is In Default**

768 ☐ **21.1.1. Specific Performance.** Seller may elect to cancel this Contract and all Earnest
769 Money (whether or not paid by Buyer) will be paid to Seller and retained by Seller. It is agreed that the
770 Earnest Money is not a penalty, and the Parties agree the amount is fair and reasonable. Seller may
771 recover such additional damages as may be proper. Alternatively, Seller may elect to treat this Contract
772 as being in full force and effect and Seller has the right to specific performance or damages, or both.

773 **21.1.2. Liquidated Damages, Applicable.** This § 21.1.2 applies unless the box in §
774 21.1.1. is checked. Seller may cancel this Contract. All Earnest Money (whether or not paid by Buyer)
775 will be paid to Seller and retained by Seller. It is agreed that the Earnest Money specified in § 4.1 is
776 LIQUIDATED DAMAGES, and not a penalty, which amount the parties agree is fair and reasonable and
777 (except as provided in §§ 10.4, 22, 23 and 24), said payment of Earnest Money is SELLER'S ONLY
778 REMEDY for Buyer's failure to perform the obligations of this Contract. Seller expressly waives the
779 remedies of specific performance and additional damages.

780 **21.2. If Seller is in Default:** Buyer may elect to treat this Contract as canceled, in which case all
781 Earnest Money received hereunder will be returned and Buyer may recover such damages as may be
782 proper. Alternatively, Buyer may elect to treat this Contract as being in full force and effect and Buyer has
783 the right to specific performance or damages, or both.
784

785 **22. LEGAL FEES, COST AND EXPENSES.** Anything to the contrary herein notwithstanding, in the event
786 of any arbitration or litigation relating to this Contract, prior to or after Closing Date, the arbitrator or court
787 must award to the prevailing party all reasonable costs and expenses, including attorney fees, legal fees
788 and expenses.
789

790 **23. MEDIATION.** If a dispute arises relating to this Contract, (whether prior to or after Closing) and is not
791 resolved, the parties must first proceed, in good faith, to mediation. Mediation is a process in which the
792 parties meet with an impartial person who helps to resolve the dispute informally and confidentially.
793 Mediators cannot impose binding decisions. Before any mediated settlement is binding, the parties to the
794 dispute must agree to the settlement, in writing. The parties will jointly appoint an acceptable mediator

and will share equally in the cost of such mediation. The obligation to mediate, unless otherwise agreed, will terminate if the entire dispute is not resolved within thirty days of the date written notice requesting mediation is delivered by one party to the other at that party's last known address (physical or electronic as provided in § 27). Nothing in this Section prohibits either party from filing a lawsuit and recording a *lis pendens* affecting the Property, before or after the date of written notice requesting mediation. This section will not alter any date in this Contract, unless otherwise agreed.

24. EARNEST MONEY DISPUTE. Except as otherwise provided herein, Earnest Money Holder must release the Earnest Money following receipt of written mutual instructions, signed by both Buyer and Seller. In the event of any controversy regarding the Earnest Money, Earnest Money Holder is not required to release the Earnest Money. Earnest Money Holder, in its sole subjective discretion, has several options: (1) wait for any proceeding between Buyer and Seller; (2) interplead all parties and deposit Earnest Money into a court of competent jurisdiction, (Earnest Money Holder is entitled to recover court costs and reasonable attorney and legal fees incurred with such action); or (3) provide notice to Buyer and Seller that unless Earnest Money Holder receives a copy of the Summons and Complaint or Claim (between Buyer and Seller) containing the case number of the lawsuit (Lawsuit) within one hundred twenty days of Earnest Money Holder's notice to the parties, Earnest Money Holder is authorized to return the Earnest Money to Buyer. In the event Earnest Money Holder does receive a copy of the Lawsuit and has not interpleaded the monies at the time of any Order, Earnest Money Holder must disburse the Earnest Money pursuant to the Order of the Court. The parties reaffirm the obligation of Mediation. This Section will survive cancellation or termination of this Contract.

25. TERMINATION.

25.1. Right to Terminate. If a party has a right to terminate, as provided in this Contract (Right To Terminate), the termination is effective upon the other party's receipt of a written notice to terminate (Notice To Terminate), provided such written notice was received on or before the applicable deadline specified in this Contract. If the Notice to Terminate is not received on or before the specified deadline, the party with the Right to Terminate accepts the specified matter, document or condition as satisfactory and waives the Right to Terminate under such provision.

25.2 Effect of Termination. In the event this Contract is terminated, all Earnest Money received hereunder will be returned and the parties are relieved of all obligations hereunder, subject to §§ 10.4, 22, 23 and 24.

26. ENTIRE AGREEMENT, MODIFICATION, SURVIVAL; SUCCESSORS. This Contract, its exhibits and specified addenda, constitute the entire agreement between the parties relating to the subject hereof, and any prior agreements pertaining there to, whether oral or written, have been merged and integrated



into Contract. No subsequent modification of this Contract is valid, binding upon the parties, or enforceable unless made in writing and signed by the parties. Any right or obligation in this Contract that, by its terms, exists or is intended to be performed after termination or Closing survives the same. Any successor to a Party receives the predecessor's benefits and obligations of this contract.

27. NOTICE, DELIVERY, AND CHOICE OF LAW.

27.1. Physical Delivery and Notice. Any document, or notice to Buyer or Seller must be in writing except as provided in § 27.2 and is effective when physically received by such party, any individual named in this contract to receive documents or notices for such party, the Broker, or Brokerage Firm or Broker working with such party (except any notice or delivery after Closing must be received by the party, not Broker or Brokerage Firm).

27.2. Electronic Notice. As an alternative to physical delivery, any notice, may be delivered in electronic form to Buyer and Seller, any individual names in this Contract to receive documents or notices for such party, the Broker or Brokerage Firm or Broker working with such party (except any notice or delivery after Closing must be received by the party, not Broker or Brokerage Firm) at the electronic address of the recipient by facsimile, email or N/A.

27.3. Electronic Delivery. Electronic Delivery of documents and notice may be delivered by: (1) email at the email address of the recipient, (2) a link or access to a website or server provided the recipient receives the information necessary to access the documents, or (3) facsimile at the Fax No. of the recipient.

27.4. Choice of Law. This Contract and all disputes arising hereunder are governed by and construed in accordance with the laws of the State of Colorado that would be applicable to Colorado residents who sign a contract in Colorado for real property located in Colorado.

28. NOTICE OF ACCEPTANCE, COUNTERPARTS. This proposal will expire unless accepted in writing, by Buyer and Seller, as evidenced by their signatures below, and the offering party receives notice of such acceptance pursuant to § 27 on or before **Acceptance Deadline Date and Acceptance Deadline Time**. If accepted, this document will become a contract between Seller and Buyer. A copy of this Contract may be executed by each party, separately, and when each party has executed a copy thereof, such copies taken together are deemed to be a full and complete contract between the parties.

29. Good Faith. Buyer and Seller acknowledge that each party has an obligation to act in good faith including, but not limited to, exercising the rights and obligations set forth in the provisions of **Financing Conditions and Obligations, Title Insurance, Record Title and Off-Record Title, New ILC, New Survey and Property Disclosure, Inspection, Indemnity, Insurability, Due Diligence, Buyer Disclosure and Source of Water.**



869 ADDITIONAL PROVISIONS AND ATTACHMENTS

870
871 **30. ADDITIONAL PROVISIONS.** (The following additional provisions have not been approved
872 by the Colorado Real Estate Commission.)
873

874 **30.1 ASSIGNABILITY** Notwithstanding anything contained in this Contract to the contrary,
875 Buyer shall have the right to assign this contract to any entity in which Paul Tamburello is an owner, a
876 manager, or serves in any other principal role.

877 **30.2** Notwithstanding anything in this Contract to the contrary, Buyer is purchasing the
878 Property "AS IS", "WHERE IS" and "WITH ALL FAULTS" and "WITHOUT ANY WARRANTY,
879 EXPRESS OR IMPLIED", including, without limitation, the physical condition of the Property, including
880 whether the Property lies within a flood zone, any sinkholes, drainage, whether surface or underground
881 or other damages, the presence or absence of hazardous materials, mold, fungus, bacteria or other
882 biological growth factors, access to the Property, zoning, set-back and other ordinances, codes,
883 regulations, rules, requirements and orders affecting the Property. Buyer acknowledges that Buyer
884 has entered into this Contract with the intention of making and relying upon its own investigation of the
885 physical, environmental, economic use, compliance, and condition of the Property.

886 **30.3** Seller represents that there is no Listing Broker for this transaction. Buyer represents that
887 there is no Selling (Cooperating) Broker for this transaction. The Parties agree that no commissions will
888 be paid to any Broker(s) or any other persons related to the transaction contemplated by this Contract.

889 **30.4** Notwithstanding anything contained in this Contract to the contrary, Buyer shall select
890 Land Title Guarantee Company 2595 Canyon Blvd, Boulder, Colorado 80302 to furnish the owner's title
891 insurance policy.

892 **30.5** For purposes of this Contract whenever the phrase to "Seller's actual knowledge" or
893 words of similar import are used, they will be deemed to mean and are limited to the current actual
894 knowledge only of *Victoria Simonsen, Town Administrator*, and not any implied, imputed or
895 constructive knowledge of such individual or of Seller; it being understood and agreed that such individual
896 will have no personal liability in any manner whatsoever hereunder or otherwise related to the
897 transactions contemplated hereby.

898 **30.6** Nothing in this Contract shall be construed to waive, limit, or otherwise modify any
899 governmental immunity that may be available by law to the Seller, its elected and appointed officials,
900 employees, contractors, or agents, or any other person acting on behalf of the Seller and, in particular,
901 governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title
902 24, Article 10, Part 1 of the Colorado Revised Statutes.

903 **30.7** Seller and Buyer understand and acknowledge that the Seller is subject to Article X, § 20
904 of the Colorado Constitution ("TABOR"). Seller and Buyer do not intend to violate the terms and



requirements of TABOR by the execution of this Contract. It is understood and agreed that this Contract does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Contract to the contrary, all payment obligations of the Seller are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the Seller's current fiscal period ending upon the next succeeding December 31. Financial obligations of the Seller payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of the Seller, and other applicable law. Upon the failure to appropriate such funds, this Contract shall be terminated.

30.8 Buyer Paul Tamburello is a licensed Real Estate Broker in the State of Colorado.

30.9 Buyer shall have 1 year from the date of closing to make application for a PUD to the city that encompasses both the north and south parcels. In the event Buyers fails to make said application buyer agrees to pay a penalty fee of \$100,000.00 due and payable within 30 days. (This Section 30.9 shall survive the closing and not merge with the deed)

ATTACHMENTS.

30.1. The following attachments are a part of this Contract: the Right of First Refusal Agreement which shall be signed contemporaneously with the Contract and recorded and a Memorandum of Agreement Regarding the Railroad Right of Way which shall be signed contemporaneously with the Contract and recorded, both of which are attached hereto.

30.2. The following disclosure forms are attached but are not a part of this Contract: N/A

{SIGNATURE PAGE FOLLOWS}



942 SIGNATURES
943
944 Date 4/17/19
945 Buyer: Paul Tamburello
946

947 {NOTE: If this offer is being countered or rejected, do not sign this document. Refer to §
948 32}

949
950 Seller:

951 Town of Lypns
952 By: Chris Slen
953 Title: Mayor
954 Date: 4.17.19
955

956 31. COUNTER; REJECTION. This offer is ☐ Countered ☐ Rejected.
957 Initials only of party (Buyer or Seller) who countered or rejected offer
958

959 END OF CONTRACT TO BUY AND SELL REAL ESTATE
960
961
962

963 **32. BROKERS ACKNOWLEDGEMENTS AND COMPENSATION DISCLOSURE.**

964 (To be completed by Broker working with Buyer)

965
966 Broker ☐ Does ☐ Does Not acknowledge receipt of Earnest Money deposit and, while not a party to the
967 Contract, agrees to cooperate upon request with any mediation concluded under § 23. Broker agrees
968 that if Brokerage Firm is the Earnest Money Holder and, except as provided in § 24, if the Earnest Money
969 has not already been returned following receipt of a Notice to Terminate or other written notice of
970 termination, Earnest Money Holder will release the Earnest Money as directed by the written mutual
971 instructions. Such release of Earnest Money will be made within five days of Earnest Money Holder's
972 receipt of the executed written mutual instructions, provided the Earnest Money check has cleared.

973
974 Broker is working with Buyer as a ☐ Buyer's Agent ☐ Seller's Agent ☐ Transaction-Broker in this
975 transaction. ☐ This is a Change of Status

976
977 Brokerage Firm's compensation or commission is to be paid by: N/A.

978
979 Brokerage Firm's Name:

980 Broker's Name

981 _____ Date _____

982 Address

983 Ph:

Fax

Email

984
985 **33. BROKER'S ACKNOWLEDGEMENTS AND COMPENSATION DISCLOSURE.**

986 (To be completed by Broker working with Seller)

987
988 Broker ☐ Does ☐ Does Not acknowledge receipt of Earnest Money deposit and, while not a party to the
989 Contract, agrees to cooperate upon request with any mediation concluded under § 23. Broker agrees
990 that if Brokerage Firm is the Earnest Money Holder and, except as provided in § 24, if the Earnest Money
991 has not already been returned following receipt of a Notice to Terminate or other written notice of
992 termination, Earnest Money Holder will release the Earnest Money as directed by the written mutual
993 instructions. Such release of Earnest Money will be made within five days of Earnest Money Holder's
994 receipt of the executed written mutual instructions, provided the Earnest Money check has cleared.

995
996 Broker is working with Buyer as a ☐ Seller's Agent ☐ Buyer's Agent ☐ Transaction-Broker
997 in this transaction. ☐ This is a Change of Status

999 Brokerage Firm's compensation or commission is to be paid by: N/A
1000
1001 Brokerage Firm's Name:
1002
1003
1004 _____ Date_____
1005 _____
1006 Broker's Name:
1007 Address:
1008 Ph: Fax: Email:
1009

A handwritten signature in black ink, consisting of a stylized capital 'P' followed by a horizontal line.

RIGHT OF FIRST REFUSAL AGREEMENT

THIS RIGHT OF FIRST REFUSAL AGREEMENT ("Agreement") is entered into as of the 17 day of APRIL, 2017 (the "Effective Date"), by and between Paul Tamburello (the "Owner") and the Town of Lyons (the "Town"). Owner and the Town are sometimes collectively referred to below as the "Parties" or individually as a "Party."

WHEREAS, Owner is the owner of that certain tract of land containing approximately 7.58 acres located in Boulder County, Colorado and legally described as Lot 2, Lyons Village East, and commonly known as 4651 - 4652 Ute Highway (State Highway 66), Lyons, Colorado 80540 (hereafter the "Property");

WHEREAS, the Town previously sold the Property to Owner conditioned upon the Owner granting to the Town a right of first refusal to purchase the Property, or any portion thereof, for a period of three (3) years from the closing of such transaction; and

WHEREAS, this Agreement is intended to memorialize and give effect to the above-described condition and agreement.

NOW, THEREFORE, in consideration of Ten Dollars and 00/00 (\$10.00), and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. For a period of three (3) years following the Effective Date of this Agreement should Owner desire to offer to sell the Property or any part thereof, or receive from a third party an Offer to purchase the Property or any part thereof ("Offer") which Owner desires to accept, the Owner, before making or accepting the Offer, as the case may be, shall send the Town two (2) copies of a contract for the sale of the Property embodying the terms of the Offer, both copies of which shall have been duly executed by Owner, together with a written notification from Owner of Owner's intention to make or accept the offer embodied in the contract, as the case may be, if the Offer is not accepted by the Town. The Town shall have the right, within thirty (30) days of receipt of the contract and the written notice, to purchase the Property or such part thereof on the terms and conditions set forth in the contract. In the event the Town elects to accept the Offer embodied in the contract, the Town must do so by executing one copy of the contract and returning it to Owner within the thirty (30) day period, along with a non-refundable check equal in amount to the earnest money requirement within the Offer contract.

2. If the Town does not accept the Offer embodied in the submitted contract within the thirty (30) day period provided in paragraph 1 above, then the offer embodied in the contract shall be deemed withdrawn and Owner shall be free to sell or offer to sell the Property or such part thereof to third parties on terms not less favorable to Owner than those set forth in the contract.

3. In the event Owner shall, during or after the aforesaid thirty (30) day period, decide to revise the terms of its Offer so that the Property or any part thereof shall be offered for sale upon terms less favorable to Owner than those contained in any contract previously submitted to the Town, or shall receive from a third party an Offer to purchase the Property or any part thereof on less favorable terms, which Offer Owner is willing to accept (such less favorable terms being

hereinafter referred to as a "New Offer"), then Owner shall, with respect to each such New Offer, before offering the Property or such part thereof for sale to others on the terms embodied in the New Offer, or accepting the New Offer, as the case may be, offer to sell the Property or such part thereof to the Town on the terms contained in the then current New Offer. The terms of the New Offer shall be embodied in a new contract for the sale of the Property or such part thereof, which shall be submitted to the Town in accordance with the requirements of paragraph 1 above. If the Town shall not accept the New Offer within thirty (30) days after receipt of the new contract and the written notice referred to in paragraph 1 above, then Owner shall be free to sell or offer to sell the Property or such part thereof to third parties on terms not less favorable to Owner than those contained in the New Offer. In the event the Town elects to accept the New Offer embodied in the contract, the Town must do so by executing one copy of the contract and returning it to Owner within the thirty (30) day period, along with a non-refundable check equal in amount to the earnest money requirement within the New Offer.

4. In the event the Town does not timely close, the Town acknowledges that Owner will incur damages that Owner would otherwise not have incurred had Purchaser closed. These damages include but are not limited to the lost sale of the Property to the third party who was the buyer per the Offer, uncertainty as to any future offers that may be received from other third parties to purchase the Property, reduced offers that may be received from other third parties to purchase the Property, loss of business opportunity, ongoing expenses to manage, maintain, and hold the Property for an uncertain amount of time, and other costs and expenses. Owner and the Town agree that the damages Owner will suffer in the event the Town does not timely close on the purchase of the Property are extremely difficult to ascertain, and Owner and the Town desire and intend to liquidate these damages in advance. Owner and the Town expressly acknowledge and agree that: (1) the liquidated amount of Owner's damages in the event the Town does not timely close is equal to the nonrefundable earnest money that the Town delivered to Owner as set forth above and an amount equal to 20% of the contract purchase price; (2) that said sum is reasonable and proportionate to Owner's presumable damages in the event the Closing does not occur; and (3) the Town agrees to be liable to Owner for that amount of liquidated damages, i.e., the amount of the nonrefundable earnest money that the Town delivered to Owner as set forth above and 20% of the contract purchase price pursuant to the Offer or New Offer as applicable, with those amounts to be retained by Owner as liquidated damages.

5. When used in this Agreement, "Offer" means any offer other than an offer that is the result of Owner arranging for a third party to make an offer, the sole purpose of which is to induce the Town to accept that Offer. An "Offer" includes an offer that is above market value (regardless of the amount above market value) or is received from a real estate speculator or similar individual.

6. If the Town notified Owner that the Town accepts an Offer or New Offer, and the Town does not timely close, in addition to Owner's rights and remedies as set forth in this Agreement, the Town's first right of refusal as set forth in this Agreement shall automatically and permanently terminate.

7. The Parties agree that this Agreement shall be recorded in the real property records of the County of Boulder, State of Colorado.

8. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective personal representatives, heirs, successors and assigns.

9. All notices given pursuant to this Agreement shall be deemed given when personally delivered to the party to whom it is directed during business hours on a business day or in lieu of personal delivery on the third business day after the same is deposited in the United States Mail, postage prepaid, sent certified mail, return receipt requested addressed as follows:

If to Owner, to:

Paul Tamburello
3222 Tejon Street / Studio A
Denver, CO 80211
Phone: 303-991-6204
Email: paul@thinkgenerator.com

With a Copy to:

Scott Gelman
Gelman & Norberg, LLC
8480 East Orchard Road, Suite 5000
Greenwood Village, CO 80111
Phone: 303-740-8494
Email: sgelman@gelmannorberg.com

If to the Town, to:

Town of Lyons
Attn: Victoria Simonsen, Town Administrator
432 5th Ave
Lyons, CO 80540
Phone: 303-823-6622
Email: vsimonsen@townoflyons.com

With a Copy to:

Brandon Dittman, Town Attorney
Kissinger and Fellman, P.C.
3773 Cherry Creek N Dr # 900,
Denver, CO 80209
Phone: 303-320-6100

Email: brandon@kandf.com

Either Party may change their address for the purposes of this section by giving notice of the changed address to the other Party in the manner provided for above.

10. Should any one or more of the provisions of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, it shall be considered severed from this Agreement and shall not serve to invalidate the remaining provisions thereof. The Parties shall make a good faith effort to replace any invalid or unenforceable provision with a valid and enforceable one such that the objectives contemplated by the Parties when entering into this Agreement may be realized.

11. No provision of this Agreement may be modified, waived or discharged unless such waiver, modification, or discharge is agreed to in writing and signed by the Party to be charged. No waiver or failure to insist upon strict compliance with any provision hereof shall be deemed a waiver of any other or further breach of or noncompliance with any provision hereof. A failure of either party hereto to insist upon strict compliance by the other Party with any provision of this Agreement shall not be deemed a waiver of such provision.

12. This Agreement may be signed in one or more counterparts, any or all of which shall constitute one and the same instrument.

13. In is hereby disclosed that Paul Tamburello is a licensed real estate broker in the State of Colorado.

IN WITNESS WHEREOF the Parties have executed this Agreement effective as of the date and year first above written.

OWNER:

Paul Tamburello

By: 

Print Name: PAUL TAMBURELLO

Title: OWNER

TOWN:

Town of Lyons

By: 

Print Name: Connie Sullivan

Title: Mayor

**MEMORANDUM OF AGREEMENT
REGARDING RAILROAD RIGHT OF WAY PROPERTY**

THIS MEMORANDUM OF AGREEMENT REGARDING RAILROAD RIGHT OF WAY PROPERTY ("Agreement") is entered into as of the 17 day of APRIL, 2019 (the "Effective Date"), by and between Paul Tamburello or assigns (the "Owner") and the Town of Lyons (the "Town"). Owner and the Town are sometimes collectively referred to below as the "Parties" or individually as a "Party."

WHEREAS, Owner is the owner of that certain tract of land containing approximately 7.58 acres located in Boulder County, Colorado and legally described as Lot 2, Lyons Village East, and commonly known as 4651-4652 Ute Highway (State Highway 66), Lyons, Colorado 80540 (hereafter the "Property");

WHEREAS, the Town previously sold the Property to the Owner conditioned upon the (1) Owner granting to the Town a right of first refusal to purchase the Property, or any portion thereof, for a period of three (3) years from the closing of such transaction and (2) Town and Owner entering into a Memorandum Of Agreement regarding the future anticipated sale of the railroad right of way property by the Town to Owner, or, at Owner's discretion and election, the Town providing the Owner with a perpetual easement that runs with the land to a portion of the railroad right of way; and

WHEREAS, the railroad right of way property is that certain tract of land located in Boulder County, Colorado which is approximately 50 feet in width and immediately adjacent to the south parcel of the Property (hereinafter "the Railroad Right of Way") as depicted on Exhibit A, attached hereto and incorporated into the Agreement by reference; and

WHEREAS, the Railroad Right of Way was improved by the Town using funds received by the Town from the federal Economic Development Agency ("EDA"); and

WHEREAS, the Railroad Right of Way is a portion of a larger tract of land located in Boulder County, Colorado legally described as "100 FT PREVIOUS RAILROAD ROW SW1/4 NE1/4 & 50 FT PREVIOUS RAILROAD ROW SE1/4 NE1/4 BOTH SOUTH OF UTE HWY 20-3N-70 & 50 FT RR ROW SW1/4 NW1/4 21-3N-70" (hereinafter "100 ft Previous Railroad Right of Way") which has not been subdivided; and

WHEREAS, a portion of the Railroad Right of Way has not been annexed into the Town; and

WHEREAS; before the Railroad Right of Way can be sold to Owner, the Railroad Right of Way must 1) be approved for alienation by the EDA; 2) successfully subdivided by the Town; 3)

annexed by the Town as applicable; and 4) appraised by the Town (collectively the "Preconditions of Sale"); and

WHEREAS; in consideration for a promise to undertake commercially reasonable efforts to satisfy the above Preconditions of Sale, the Town requires from Owner 1) a Utility Easement ("Utility Easement") for Town Utilities on the Railroad Right of Way and 2) A recreational trail easement ("Trail Easement") on the Property and Railroad Right of Way (collectively "Post-Sale Conditions"); and

WHEREAS, this Agreement is intended to memorialize and give effect to the above-described agreement.

1. The Town agrees to make commercially reasonable efforts to sell to Owner the Railroad Right of Way.

2. As Precondition of Sale to the Railroad Right of Way the Town must:

- a. Receive approval for the alienation of the Railroad Property from the EDA;
- b. Subdivide 100 ft Previous Railroad Right of Way into the portion which Owner desires to purchase from the Town as the Railroad Right of Way;
- c. Annex a portion of the Railroad Property into the Town; and
- d. Appraise the value of the Railroad Property

3. The Town agrees to take commercially reasonable efforts to satisfy each of the above Preconditions of Sale. However, the final decision by EDA on alienation of the Railroad Property and the quasi-judicial decision to subdivide and annex the Railroad Property cannot be controlled nor guaranteed by the Town. By signing this Agreement, the Owner affirms that he understands and acknowledges that the Town is not responsible for these decisions and that the Town is only promising to take commercially reasonable efforts to secure each of the respective approvals.

4. If despite commercially reasonable efforts the Town cannot satisfy the Preconditions of Sale, the provisions of paragraph 7 below will apply

5. If the Town can satisfy each of the Preconditions of Sale, the Town agrees to sell to Owner the Railroad Right of Way pursuant to a contract to buy and sell, per the terms and conditions set forth in this paragraph and the applicable provisions of paragraph 6 below. If Owner, in his sole and absolute discretion, decides that he will purchase the Railroad Property, Owner will

construct the improvements to the Railroad Property at Owner's expense. If the appraised value of the Railroad Property is less than the value of the proposed Owner constructed improvements to the Railroad Property, then the sale price of the Railroad Property will be \$1.00. If the appraised value of the Railroad Property is more than the proposed improvements to the Railroad property, then the purchase price will be the difference between the appraised value and the value of the proposed improvements. The contract to buy and sell will be signed within thirty days after the Preconditions of Sale are satisfied. Owner has no liability of any nature whatsoever to the Town if the Owner, in his sole and absolute discretion, elects not to purchase the Railroad Property

6. In the event of the sale of the Railroad Right of Way to Owner, Owner agrees to satisfy the following Post-Sale Conditions contemporaneously with the execution of a contract to buy and sale:

- a. Execution and recording of a Utility Easement for Town utilities on the Railroad Right of Way in the real property records of the County of Boulder, State of Colorado. The location of that Utility Easement shall be mutually agreed to by the Parties; and
- b. Execution and recording of a Trail Easement on the Railroad Property and/or Property as determined by the Parties in the real property records of the County of Boulder, State of Colorado. The location of the Trail Easement shall be mutually agreed to by the Parties.

7. In the event Owner cannot or will not satisfy the Post-Sale Conditions, or if Owner, in his sole and absolute discretion, elects not to purchase the Railroad Property, ownership of the Railroad Property shall remain with the Town, and the following provisions shall apply:

- a. For the consideration of \$1.00 per year, the Town will provide Owner a non-exclusive, perpetual easement that runs with the land ("Easement") to a portion of the Railroad Right of Way, which is depicted on attached **Exhibit A**, which is incorporated by reference into this Agreement. The Easement shall be used for ingress into and egress from the Property by pedestrians, motor vehicles, bicycles, and other means of transportation (collectively referred to as "Owner's Primary Use"), and other related and/or incidental uses. Those parts of the Easement that are not improved for the various modes of traffic as defined in the previous sentence can be improved in such manner as Owner deems appropriate, including but not limited to installing landscaping, lighting, benches, and any other related improvements. Installation of such improvement shall be subject to all required Town and/or County land use approvals and Colorado Department of Transportation ("CDOT") right of way approval as may be applicable. The cost to

install all improvements in the Easement shall be paid for by Owner. The specific location of the Easement shall be more particularly identified in the PUD for the Property that is approved by Town. A Non-Exclusive Easement Agreement shall be prepared by the Parties and recorded in the records of the Boulder County, Colorado, Clerk and Recorder.

- b. The Town will not grant subsequent licenses or easements which affect Owner's Primary Use of the Easement in any material manner. Incidental uses of the Easement for such items as utilities, public trails, or bike paths, are permitted uses of the Easement that the Town can grant.
- c. Consistent with paragraph 7.a. above, by signing this Agreement, the Owner affirms that he understands and acknowledges that the Town intends to use a portion of the Railroad Road Right of Way for the placement of a recreational trail and Town utilities. By signing this agreement Owner agrees that a recreational trail and placement of Town utilities on the Railroad Property is not inconsistent with the Easement granted herein and shall be allowed within the Easement area.

8. The parties agree that this Agreement shall be recorded in the real property records of the County of Boulder, State of Colorado.

9. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and assigns. Owner has the right to assign this Agreement to any entity in which Paul Tamburello is an owner, a manager, or serves in any other principal role.

10. All notices given pursuant to this Agreement shall be deemed given when personally delivered to the party to whom it is directed during business hours on a business day or in lieu of personal delivery on the third business day after the same is deposited in the United States mail, postage prepaid, sent certified mail, return receipt requested addressed as follows:

If to Owner, to:

Paul Tamburello
3222 Tejon Street / Studio A
Denver, CO 80211
Phone: 303-991-6204
Email: paul@thinkgenerator.com

With a Copy to:



Scott Gelman
Gelman & Norberg, LLC
8480 East Orchard Road, Suite 5000
Greenwood Village, CO 80111
Phone: 303-740-8494
Email: sgelman@gelmannorberg.com

If to the Town, to:

Town of Lyons
Attn: Victoria Simonsen, Town Administrator
432 5th Ave
Lyons, CO 80540
Phone: 303-823-6622
Email: vsimonsen@townoflyons.com

With a Copy to:

Brandon Dittman, Town Attorney
Kissinger and Fellman, P.C.
3773 Cherry Creek N Dr # 900,
Denver, CO 80209
Phone: 303-320-6100
Email: brandon@kandf.com

Either Party may change their address for the purposes of this section by giving notice of the changed address to the other Party in the manner provided for above.

11. Should any one or more of the provisions of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, it shall be considered severed from this Agreement and shall not serve to invalidate the remaining provisions thereof. The parties shall make a good faith effort to replace any invalid or unenforceable provision with a valid and enforceable one such that the objectives contemplated by the parties when entering into this Agreement may be realized.

12. No provision of this Agreement may be modified, waived or discharged unless such waiver, modification, or discharge is agreed to in writing and signed by the Party to be charged. No waiver or failure to insist upon strict compliance with any provision hereof shall be deemed a waiver of any other or further breach of or noncompliance with any provision hereof. A failure of either party hereto to insist upon strict compliance by the other Party with any provision of this Agreement shall not be deemed a waiver of such provision.

13. This Agreement may be signed in one or more counterparts, any or all of which shall constitute one and the same instrument.

14. Owner Paul Tamburello is a licensed Real Estate Broker in the State of Colorado.

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

OWNER:

Paul Tamburello

By: 

Print Name: PAUL TAMBURELLO

Title: DIRECTOR

TOWN:

Town of Lyons

By: 

Print Name: Connie Sullivan

Title: Mayor

Exhibit A

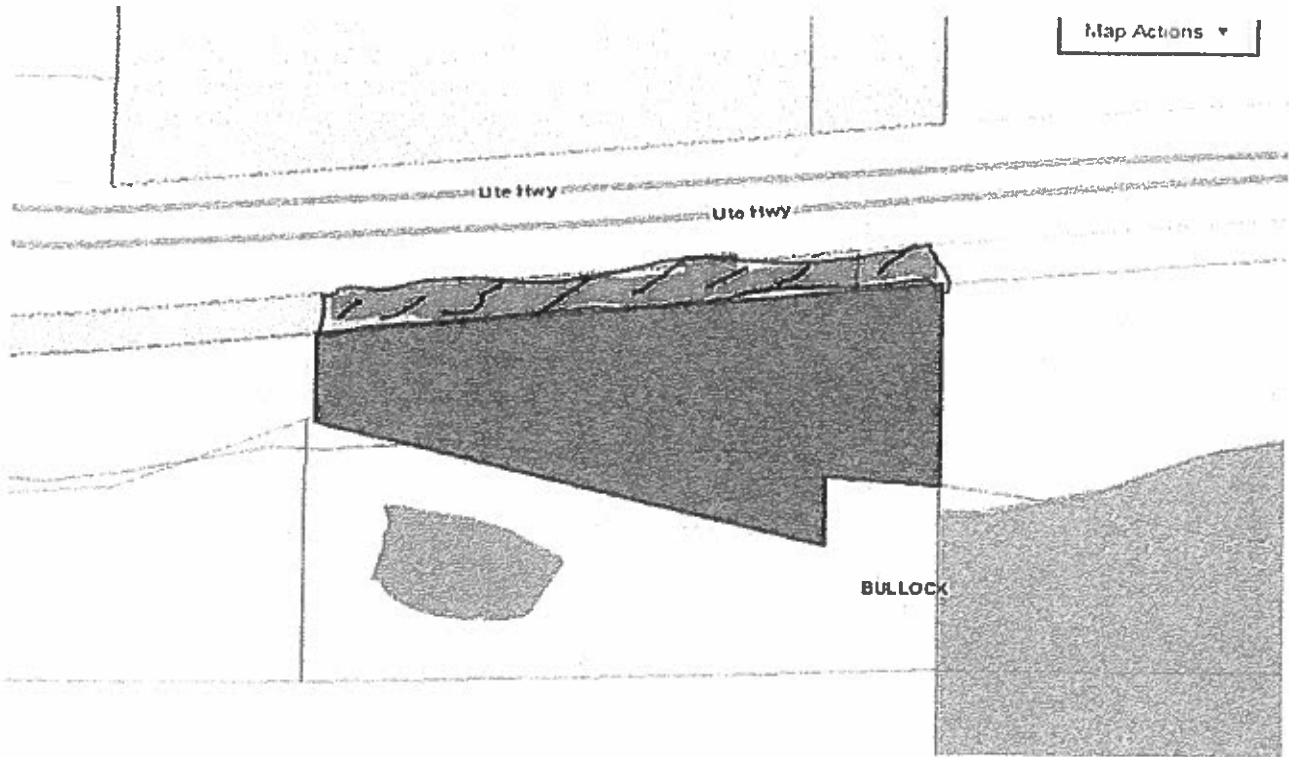


Exhibit A



The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission.
(AE41-6-18) (Mandatory 1-19)

THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR
OTHER COUNSEL BEFORE SIGNING.

AGREEMENT TO AMEND/EXTEND CONTRACT

Date: 5/23/19

1. This agreement amends the contract dated 4/17/2019 (Contract), between The Town of Lyons, Colorado
(Seller), and Paul Tamburello
(Buyer), relating to the sale and purchase of the following legally described real estate in the County of Boulder,
Colorado: Lots 2 and 3, Lyons Village East, consisting of approximately 7.58 acres following recordation of Lyons Village East plat in the real property
records of the County of Boulder, State of Colorado, together with the interest, easements, rights, benefits, improvements, and attached
fixtures appurtenant thereto, and all interests of Seller in vacated streets and alleys adjacent thereto (Property).

known as No. 4651-4652 UTE HIGHWAY LYONS CO 80540 (Property).
Street Address City State Zip

NOTE: If the table is omitted, or if any item is left blank or is marked in the "No Change" column, it means no change to
the corresponding provision of the Contract. If any item is marked in the "Deleted" column, it means that the
corresponding provision of the Contract to which reference is made is deleted.

2. § 3.1. Dates and Deadlines. [Note: This table may be omitted if inapplicable.]

Item No.	Reference	Event	Date or Deadline	No Change	Deleted
1	§ 4.3	Alternative Earnest Money Deadline		X	
		Title			
2	§ 8.1, § 8.4	Record Title Deadline		X	
3	§ 8.2, § 8.4	Record Title Objection Deadline	8/30/2019		
4	§ 8.3	Off-Record Title Deadline	8/10/2019		
5	§ 8.3	Off-Record Title Objection Deadline	8/30/2019		
6	§ 8.5	Title Resolution Deadline	9/14/2019		
7	§ 8.6	Right of First Refusal Deadline		X	
		Owners' Association			
8	§ 7.2	Association Documents Deadline		X	
9	§ 7.4	Association Documents Termination Deadline		X	
		Seller's Disclosures			
10	§ 10.1	Seller's Property Disclosure Deadline	7/31/2019		
11	§ 10.10	Lead-Based Paint Disclosure Deadline CBS1, 2, F1		X	
		Loan and Credit			
12	§ 5.1	Loan Application Deadline		X	
13	§ 5.2	Loan Termination Deadline		X	
14	§ 5.3	Buyer's Credit Information Deadline		X	
15	§ 5.3	Disapproval of Buyer's Credit Information Deadline		X	
16	§ 5.4	Existing Loan Documents Deadline		X	
17	§ 5.4	Existing Loan Documents Termination Deadline		X	
18	§ 5.4	Loan Transfer Approval Deadline		X	
19	§ 4.7	Seller or Private Financing Deadline		X	
		Appraisal			
20	§ 6.2	Appraisal Deadline		X	
21	§ 6.2	Appraisal Objection Deadline		X	
22	§ 6.2	Appraisal Resolution Deadline		X	

		Survey			
23	§ 9.1	New ILC or New Survey Deadline		X	
24	§ 9.3	New ILC or New Survey Objection Deadline		X	
25	§ 9.3	New ILC or New Survey Resolution Deadline		X	
		Inspection and Due Diligence			
26	§ 10.3	Inspection Objection Deadline	9/29/2019		
27	§ 10.3	Inspection Termination Deadline		X	
28	§ 10.3	Inspection Resolution Deadline	10/4/2019		
29	§ 10.5	Property Insurance Termination Deadline		X	
30	§ 10.6	Due Diligence Documents Delivery Deadline	8/5/2019		
31	§ 10.6	Due Diligence Documents Objection Deadline	9/4/2019		
32	§ 10.6	Due Diligence Documents Resolution Deadline	9/29/2019		
33	§ 10.6	Environmental Inspection Objection Deadline CBS2, 3, 4	9/29/2019		
34	§ 10.6	ADA Evaluation Objection Deadline CBS2, 3, 4		X	
35	§ 10.7	Conditional Sale Deadline		X	
36	§ 10.10	Lead-Based Paint Termination Deadline CBS1, 2, F1		X	
37	§ 11.1, 11.2	Estoppel Statements Deadline CBS2, 3, 4		X	
38	§ 11.3	Estoppel Statements Termination Deadline CBS2, 3, 4		X	
		Closing and Possession			
39	§ 12.3	Closing Date	10/14/2019		
40	§ 17	Possession Date	10/14/2019		
41	§ 17	Possession Time	5:00 PM		
42		Property Insurance Objection Deadline	9/29/2019		

3. Other dates or deadlines set forth in the Contract are changed as follows:

N/A

4. Additional amendments:

None

All other terms and conditions of the Contract remain the same.

This proposal expires unless accepted in writing by Seller and Buyer as evidenced by their signatures below and the offering party to this document receives notice of such acceptance on or before June 1, 2019 11:59 P.M.

Date

Time

Buyer's Name: Paul Tamburello

Buyer's Name: _____

Buyer's Signature

Date

Buyer's Signature

Date

Seller's Name: Town of Lyons, Colorado

Seller's Name: _____

Seller's Signature

Date

Seller's Signature

Date