

**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.

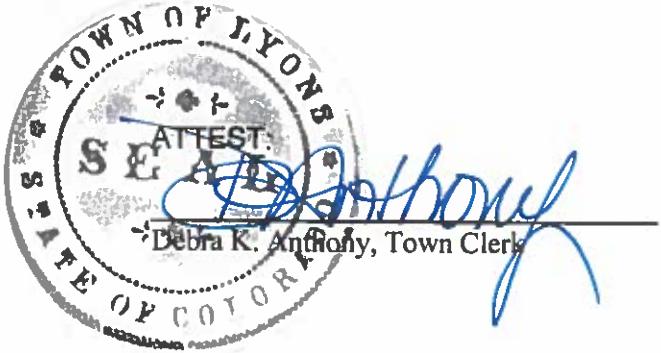
**Section 7. Effective Date.** This Ordinance shall become effective thirty (30) days after publication following final passage in accordance with Section 2-2-160 of the Lyons Municipal Code.

INTRODUCED AND PASSED ON FIRST READING THIS 4<sup>TH</sup> 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  
Barney Dreistadt, Mayor Pro Tem



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

**CONTRACT TO BUY AND SELL REAL ESTATE  
(LAND)  
(Property with No Residences)**

Date: 2/19/2019

## **AGREEMENT**

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

## 2. PARTIES AND PROPERTY

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

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

**2.3 Seller. Seller, Town of Lyons, is the current owner of the Property; deeded and held.**

**2.4 Property.** The Property is the following legally described real estate in the County of Boulder, Colorado: Lot 2, 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 interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto, and all interest of Seller in vacated streets and alleys adjacent thereto, except as herein excluded (Property).

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

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

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

**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**

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



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			<b>Closing and Possession</b>	
125	36	§ 12.3	Closing Date	90
126	days after MEC			
127				Upon
128	<b>Delivery of Deed</b>			
129	37	§ 17	Possession Date	Upon
130	<b>Delivery of Deed</b>			
131	38	§ 17	Possession Time	Upon
132	<b>Delivery of Deed</b>			
133	39	§ 28	Acceptance Deadline Date	
134		2/8/2019 Friday		
135	40	§ 28	Acceptance Deadline Time	5:00
136	PM MDT			
137				
138	<b>3.1. Applicability of Terms.</b> Any box checked in this Contract means the corresponding provision applies. Any box, blank or line in this Contract left blank or completed with the abbreviation "N/A" or the word "Deleted" means such provision, including any deadline, is not applicable and the corresponding provision of the Contract to which reference is made is deleted. If no box is checked in a provision that contains a selection of "None", such provision means that "None" applies.			
139				
140				
141				
142				
143				
144	The abbreviation "MEC" (mutual execution of this Contract) means the date upon which both parties have signed this Contract.			
145				
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.	151     Reference	152     Item	153     Amount
152     1	153     4.1	154     Purchase Price	155     \$851,000.00
153     2	154     § 4.3	155     Earnest Money	
154     \$40,000.00			
155     3	156     § 4.5	157     New Loan	
156     4	157     § 4.6	158     Assumption Balance	
157     5	158     § 4.7	159     Private Financing	
158     6	159     § 4.7	160     Seller Financing	
159     7	160     § 4.4	161     Cash at Closing	
160     \$811,000.00			
161     8		162     TOTAL	163     \$851,000.00
162     \$851,000.00			

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)

206                   **TRANSACTION PROVISIONS**

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)

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)

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



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

236       **7.2. Owner's Association Documents.** Owner's Association Documents (Association  
237 Documents) consist of the following:

238        7.2.1. All Owner's Association declarations, articles of incorporation, bylaws, articles of  
239 organization, operating agreements, rules and regulations, party wall agreements;

240        7.2.2. Minutes of most recent annual owner's meeting;

241        7.2.3. Minutes of any directors' or managers' meetings during the six-month period  
242 immediately preceding the date of this Contract. If none of the preceding minutes exist, then the most  
243 recent minutes, if any (§§ 7.2.1, 7.2.2 and 7.2.3, collectively, Governing Documents); and

244        7.2.4. The most recent financial documents which consist of: (1) annual and most recent  
245 balance sheet, (2) annual and most recent income and expenditures statement, (3) annual budget, (4)  
246 reserve study, and (5) notice of unpaid assessments, if any (collectively, Financial Documents).

247       **7.3. Association Documents to Buyer.**

248        7.3.1. **Seller to Provide Association Documents.** Seller is obligated to provide to Buyer  
249 the Association Documents, at Seller's expense, on or before **Association Documents Deadline**. Seller  
250 authorizes the Association to provide the Association Documents to Buyer, at Seller's expense. Seller's  
251 obligation to provide the Association Documents is fulfilled upon Buyer's receipt of the Association  
252 Documents, regardless of who provides such documents.

253        7.4. **Conditional on Buyer's Review.** Buyer has the right to review the Association Documents.  
254 Buyer has the Right to Terminate under § 25.1, on or before **Association Documents Objection**  
255 **Deadline**, based on any unsatisfactory provision in any of the Association Documents, in Buyer's sole  
256 subjective discretion. Should Buyer receive the Association Documents after **Association Documents**  
257 **Deadline**, Buyer, at Buyer's option, has the Right to Terminate under § 25.1 by Buyer's Notice to



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

265

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

267 **8.1. Evidence of Record Title.**

268  **8.1.1. Seller Selects Title Insurance Company.** If this box is checked, Seller will select  
269 the title insurance company to furnish the owner's title insurance policy at Seller's expense. On or before  
270 **Record Title Deadline**, Seller must furnish to Buyer, a current commitment for owner's title insurance  
271 policy (Title Commitment), in an amount equal to the Purchase Price, or if this box is checked,  an  
272 **Abstract of Title** certified to a current date. Seller will cause the title insurance policy to be issued and  
273 delivered to Buyer as soon as practicable at or after Closing.

274  **8.1.2. Buyer Selects Title Insurance Company.** If this box is checked, Buyer will select  
275 the title insurance company to furnish the owner's title insurance policy at Buyer's expense. On or before  
276 **Record Title Deadline**, Buyer must furnish to Seller, a current commitment for owner's title insurance  
277 policy (Title Commitment), in an amount equal to the Purchase Price. If neither box § 8.1.1 or § 8.1.1 is  
278 checked, § 8.1.1 applies.

279 **8.1.3 Owner's Extended Coverage (OEC).** The Title Commitment Will contain Owner's  
280 Extended Coverage (OEC). If the Title Commitment is to contain OEC, it will commit to delete or insure  
281 over the standard exceptions which relate to (1) parties in possession, (2) unrecorded easements, (3)  
282 survey matters, (4) unrecorded mechanics' liens, (5) gap period (period between the effective date and  
283 time of commitment to the date and time the deed is recorded), and (6) unpaid taxes, assessments and  
284 unredeemed tax sales prior to the year of Closing. Any additional premium expense to obtain OEC will be  
285 paid by Buyer.

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

291 **8.1.4. Title Documents.** Title Documents consist of the following: (1) copies of any plats,  
292 declarations, covenants, conditions and restrictions burdening the Property, and (2) copies of any other  
293 documents (or, if illegible, summaries of such documents) listed in the schedule of exceptions  
294 (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



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

337 **8.4. Right to Object to Title, Resolution.** Buyer's right to object to any title matters includes, but  
338 is

339 not limited to those matters set forth in §§ 8.2 (Record Title), 8.3 (Off-Record Title) and 13 (Transfer of  
340 Title), in Buyer's sole subjective discretion. If Buyer objects to any title matter, on or before the applicable  
341 deadline, Buyer has the following options:

342 **8.4.1. Title Objection, Resolution.** If Seller receives Buyer's written notice objecting to  
343 any title matter (Notice of Title Objection) on or before the applicable deadline, and if Buyer and Seller  
344 have not agreed to a written settlement thereof on or before Title Resolution Deadline, this Contract will  
345 terminate on the expiration of Title Resolution Deadline, unless Seller receives Buyer's written withdrawal  
346 of Buyer's Notice of Title Objection (i.e., Buyer's  
347 written notice to waive objection to such items and waives the Right to Terminate for that reason), on or  
348 before expiration

349 of Title Resolution Deadline. If either the Record Title Deadline or the Off-Record Title Deadline, or  
350 both, are extended  
351 to the earlier of Closing or ten days after receipt of the applicable documents by Buyer, pursuant to § 8.2  
352 (Record Title) or  
353 § 8.3 (Off-Record Title), the Title Resolution Deadline also will be automatically extended to the earlier of  
354 Closing or  
355 fifteen days after Buyer's receipt of the applicable documents; or

356 **8.4.2. Title Objection, Right to Terminate.** Buyer may exercise the Right to Terminate  
357 under § 25.1, on or before the applicable deadline, based on any unsatisfactory title matter, in Buyer's  
358 sole subjective discretion.

360 **8.5. Special Taxing Districts.** SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL  
361 OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX  
362 LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH  
363 DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND TAX TO SUPPORT THE  
364 SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF  
365 SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN  
366 MILL LEVIES. BUYERS SHOULD INVESTIGATE THE SPECIAL TAXING DISTRICTS IN WHICH THE  
367 PROPERTY IS LOCATED BY CONTACTING THE COUNTY TREASURER, BY REVIEWING THE  
368 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.**



405                   **8.7.4. ADDITIONAL INFORMATION. BUYER IS ENCOURAGED TO SEEK**  
406                   **ADDITIONAL INFORMATION REGARDING OIL AND GAS ACTIVITY ON OR ADJACENT TO THE**  
407                   **PROPERTY, INCLUDING DRILLING PERMIT APPLICATIONS. THIS INFORMATION MAY BE**  
408                   **AVAILABLE FROM THE COLORADO OIL AND GAS CONSERVATION COMMISSION.**

409                   **8.7.5. Title Insurance Exclusions.** Matters set forth in this Section, and others, may be  
410                   excepted, excluded from, or not covered by the owner's title insurance policy.

411                   **8.8. Consult an Attorney.** Buyer is advised to timely consult legal counsel with respect to all  
412                   such matters as there are strict time limits provided in this Contract (e.g., Record Title Objection  
413                   Deadline and Off-Record Title Objection Deadline).

414  
415                   **9. NEW ILC, NEW SURVEY**

416                   **9.1. New ILC or New Survey.** (Omitted as inapplicable)

417                   **9.2. Buyer's Right to Waive or Change New ILC or New Survey Selection.** (Omitted as  
418                   inapplicable)

419                   **9.3. New ILC or New Survey Objection.** (Omitted as inapplicable)

420  
421                   **DISCLOSURE, INSPECTION AND DUE DILIGENCE**

422  
423                   **10. PROPERTY DISCLOSURE, INSPECTION, INDEMNITY, INSURABILITY, DUE DILIGENCE AND**  
424                   **SOURCE OF WATER.**

425                   **10.1. Seller's Property Disclosure.** On or before Seller's Property Disclosure Deadline,  
426                   Seller agrees to deliver to Buyer the most current version of the applicable Colorado Real Estate  
427                   Commission's Seller's Property Disclosure form completed by Seller to Seller's actual knowledge,  
428                   current as of the date of this Contract.

429                   **10.2. Disclosure of Latent Defects; Present Condition.** Seller must disclose to Buyer any  
430                   latent defects actually known by Seller. Seller agrees that disclosure of latent defects will be in writing.  
431                   Except as otherwise provided in this Contract, Buyer acknowledges that Seller is conveying the Property  
432                   to Buyer in an "As Is" condition, "Where Is" and "With All Faults."

433                   **10.3. Inspection.** Unless otherwise provided in this Contract, Buyer, acting in good faith, has the  
434                   right to have inspections (by one or more third parties, personally or both) of the Property and Inclusions  
435                   (Inspection), at Buyer's expense. If (1) the physical condition of the Property, including, but not limited to,  
436                   the roof, walls, structural integrity of the Property, the electrical, plumbing, HVAC and other mechanical  
437                   systems of the Property, (2) the physical condition of the Inclusions, (3) service to the Property (including  
438                   utilities and communication services), systems and components of the Property (e.g., heating and  
439                   plumbing), (4) any proposed or existing transportation project, road, street or highway, or (5) any other  
440                   activity, odor or noise (whether on or off the Property) and its effect or expected effect on the Property or



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

443                   **10.3.1. Notice to Terminate.** Notify Seller in writing that this Contract is terminated; or

444                   **10.3.2. Inspection Objection.** Deliver to Seller a written description of any unsatisfactory  
445 physical condition that Buyer requires Seller to correct.

446                   **10.3.3. Inspection Resolution.** If an Inspection Objection is received by Seller, on  
447 before **Inspection Objection Deadline**, and if Buyer and Seller have not agreed in writing to a settlement  
448 thereof on or before **Inspection Resolution Deadline**, this Contract will terminate on **Inspection**  
449 **Resolution Deadline** unless Seller receives Buyer's written withdrawal of the Inspection Objection before  
450 such termination, i.e., on or before expiration of **Inspection Resolution Deadline**.

451                   **10.4. Damage, Liens and Indemnity.** Buyer, except as otherwise provided in this Contract or  
452 other written agreement between the parties, is responsible for payment for all inspections, tests, surveys,  
453 engineering reports, or other reports performed at Buyer's request (Work) and must pay for any damage  
454 that occurs to the Property and Inclusions as a result of such Work. Buyer must not permit claims or liens  
455 of any kind against the Property for Work performed on the Property. Buyer agrees to indemnify, protect  
456 and hold Seller harmless from and against any liability, damage, cost or expense incurred by Seller and  
457 caused by any such Work, claim, or lien. This indemnity includes Seller's right to recover all costs and  
458 expenses incurred by Seller to defend against any such liability, damage, cost or expense, or to enforce  
459 this section, including Seller's reasonable attorney fees, legal fees and expenses. The provisions of this  
460 section survive the termination of this Contract. This § 10.4 does not apply to items performed pursuant to  
461 an **Inspection Resolution**.

462                   **10.5. Insurability.** Buyer has the right to review and object to the availability, terms and  
463 conditions of and premium for property insurance (Property Insurance). Buyer has the Right to Terminate  
464 under § 25.1, on or before **Property Insurance Objection Deadline**, based on any unsatisfactory  
465 provision of the Property Insurance, in Buyer's sole subjective discretion.

466                   **10.6. Due Diligence.**

467                   **10.6.1. Due Diligence Documents.** If the respective box is checked, Seller agrees to  
468 deliver copies of the following documents and information pertaining to the Property (Due  
469 Diligence Documents) to Buyer on or before **Due Diligence Documents Delivery Deadline**:

470                                      **10.6.1.1.** All contracts relating to the operation, maintenance and management  
471 of the Property

472                                      **10.6.1.2.** Property tax bills for the last years;

473                                      **10.6.1.3.** As-built construction plans to the Property and the tenant  
474 improvements, including architectural, electrical, mechanical, and structural systems, engineering reports,  
475 and permanent Certificates of Occupancy, to the extent now available;

476                                      **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 agreements, pertaining to the Property. Those leases or other occupancy agreements pertaining to the 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 complete but has not yet completed and capital improvement work either scheduled or in process on the date of this Contract;

485  10.6.1.9. All insurance policies pertaining to the Property and copies of any claims which have been made for the past years;

487  10.6.1.10. Soils reports, surveys and engineering reports or data pertaining to the Property (if not delivered earlier under § 8.3);

489  10.6.1.11. Any and all existing documentation and reports regarding Phase I and II environmental reports, letters, test results, advisories, and similar documents respective to the existence or nonexistence of asbestos, PCB transformers, or other toxic, hazardous or contaminated substances, and/or underground storage tanks and/or radon gas. If no reports are in Seller's possession or known to Seller, Seller 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 concerning the compliance of the Property with said Act;

497  10.6.1.13. All permits, licenses and other building or use authorizations issued by any governmental authority with jurisdiction over the Property and written notice of any violation of any 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.

656        **10.7 Conditional Upon Sale of Property.** This Contract is conditional upon the sale  
657 and closing of that certain property owned by Buyer and commonly known as N/A. Buyer has  
658 the Right to Terminate under § 25.1 effective upon Seller's receipt of Buyer's Notice to  
659 Terminate on or before **Conditional Sale Deadline** if such property is not sold and closed by  
660 such deadline. This § 10.7 is for the sole benefit of Buyer. If Seller does not receive Buyer's  
661 Notice to Terminate on or before **Conditional Sale Deadline**, Buyer waives any Right to  
662 Terminate under this provision.

63           **10.8 Source of Potable Water (Residential Land and Residential Improvements Only)** Buyer  
64    does not acknowledge receipt of a copy of Seller's Property Disclosure or Source of Water Addendum  
65    disclosing the source of potable water for the Property. There is No Well..  
66    **Note to Buyer: SOME WATER PROVIDERS RELY, TO VARYING DEGREES, ON NONRENEWABLE**  
67    **GROUND WATER. YOU MAY WISH TO CONTACT YOUR PROVIDER (OR INVESTIGATE THE**  
68    **DESCRIBED SOURCE) TO DETERMINE THE LONG-TERM SUFFICIENCY OF THE PROVIDER'S**  
69    **WATER SUPPLIES**

70        **10.9 Existing Leases; Modification of Existing Leases; New Leases.** Seller states that none  
71 of the Leases to be assigned to the Buyer at the time of Closing contain any rent concessions, rent  
72 reductions or rent abatements except as disclosed in the Lease or other writing received by Buyer. Seller  
73 will not amend, alter, modify, extend or cancel any of the Leases nor will Seller enter into any new leases  
74 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:**

#### 11.1.4. The amount of monthly (or other applicable period) rental will be \$11,000.

11.1.5. That there is no default under the terms of said Lease by Landlord.

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.

697

## **CLOSING PROVISIONS**

99

00 12. CLOSING DOCUMENTS, INSTRUCTIONS AND CLOSING

01           **12.1. Closing Documents and Closing Information.** Seller and Buyer will cooperate with the  
02 Closing Company to enable the Closing Company to prepare and deliver documents required for Closing  
03 to Buyer and Seller and their designees. If Buyer is obtaining a new loan to purchase the Property, Buyer  
04 acknowledges Buyer's lender is required to provide the Closing Company, in a timely manner, all required  
05 loan documents and financial information concerning Buyer's new loan. Buyer and Seller will furnish any  
06 additional information and documents required by Closing Company that will be necessary to complete  
07 this transaction. Buyer and Seller will sign and complete all customary or reasonably required documents  
08 at or before Closing.

09           **12.2 Closing Instructions.** Colorado Real Estate Commission's Closing Instructions Are Not  
10           executed with this Contract.

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

4

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

614       **12.4. Disclosure of Settlement Costs.** Buyer and Seller acknowledge that costs, quality, and  
615 extent of service vary between different settlement service providers (e.g., attorneys, lenders, inspectors  
616 and title companies).

617

618       **13. TRANSFER OF TITLE.** Subject to tender of payment at Closing as required herein and compliance  
619 by

620 Buyer with the other terms and provisions hereof, Seller must execute and deliver a good and sufficient  
621 Special Warranty Deed to Buyer, at Closing, conveying the Property free and clear of all taxes except the  
622 general taxes for the year of Closing. Except as provided herein, title will be conveyed free and clear of all  
623 liens, including any governmental liens for special improvements installed as of the date of Buyer's  
624 signature hereon, whether assessed or not. Title will be conveyed subject to:

625       **13.1.** Those specific Exceptions described by reference to recorded documents as reflected in  
626 the Title Documents accepted by Buyer in accordance with **Record Title**;

627       **13.2.** Distribution utility easements (including cable TV);

628       **13.3.** Those specifically described rights of third parties not shown by the public records of which  
629 Buyer has actual knowledge and which were accepted by Buyer in accordance with **Off-Record  
630 Title and New ILC or New Survey**;

631       **13.4.** Inclusion of the Property within any special taxing district;

632       **13.5.** Any special assessment if the improvements were not installed as of the date of Buyer's  
633 signature hereon, whether assessed prior to or after Closing; and

634       **13.6.** Other None.

635

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

638

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

640       **15.1. Closing Costs.** Buyer and Seller must pay, in Good Funds, their respective closing costs  
641 and all other items required to be paid at Closing, except as otherwise provided herein.

642       **15.2. Closing Services Fee.** The fee for real estate closing services must be paid at Closing  
643  One-Half by Buyer and One-Half by Seller.

644       **15.3. Status Letter and Record Change Fees.** Any fees incident to the issuance of  
645 Association's statement of assessments (Status Letter) must be paid by **None**. Any record change fee  
646 assessed by the Association including, but not limited to, ownership record transfer fees regardless of  
647 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.



684           **16.4. Other Prorations.** Water and sewer charges, propane, interest on continuing loan, and  
685    N/A. Notwithstanding anything to the contrary contained in this Contract, Seller is not responsible for the  
686    payment of any water and sewer charges, propane, interest, or any other charges for the Property. As a  
687    result, no such charges or expenses will be prorated nor will Seller pay any such charges or expenses for  
688    the Property at Closing.

689           **16.5. Final Settlement.** Unless otherwise agreed in writing, these prorations are final.

690  
691           **17. POSSESSION.** Possession of the Property will be delivered to Buyer on **Possession Date** at  
692    **Possession Time**, subject to the Leases as set forth in § 10.6.1.7. If Seller, after Closing, fails to deliver  
693    possession as specified, Seller will be subject to eviction and will be additionally liable to Buyer for  
694    payment of \$ 500 per day (or any part of a day notwithstanding § 18.1) from **Possession Date** and  
695    **Possession Time** until possession is delivered.

#### GENERAL PROVISIONS

696  
697           **18. DAY; COMPUTATION OF PERIOD OF DAYS, DEADLINE.**

698           **18.1. Day.** As used in this Contract, the term "day" means the entire day ending at 11:59 p.m.,  
699    United States Mountain Time (Standard or Daylight Savings as applicable).

700           **18.2. Computation of Period of Days, Deadline.** In computing a period of days, when the  
701    ending date is not specified, the first day is excluded and the last day is included (e.g., three days after  
702    MEC). If any deadline falls on a Saturday, Sunday or federal or Colorado state holiday (Holiday), such  
703    deadline will be extended to the next day that is not a Saturday, Sunday or Holiday. Should neither box  
704    be checked, the deadline will not be extended.

705  
706           **19. CAUSES OF LOSS, INSURANCE; DAMAGE TO INCLUSIONS AND SERVICES;**  
707    **CONDEMNATION; AND WALK-THROUGH.** Except as otherwise provided in this Contract, the  
708    Property, Inclusions or both will be delivered in the condition existing as of the date of this  
709    Contract, ordinary wear and tear excepted.

710           **19.1 Causes of Loss, Insurance.** In the event the Property or Inclusions are damaged by fire,  
711    other perils or causes of loss prior to Closing in an amount of not more than ten percent of the total  
712    Purchase Price (Property Damage), and if the repair of the damage will be paid by insurance (other than  
713    the deductible to be paid by Seller), then Seller, upon receipt of the insurance proceeds, will use Seller's  
714    reasonable efforts to repair the Property before **Closing Date**. Buyer has the Right to Terminate under §  
715    25.1, on or before **Closing Date** if the Property is not repaired before **Closing Date** or if the damage  
716    exceeds such sum. Should Buyer elect to carry out this Contract despite such Property Damage, Buyer is  
717    entitled to a credit at Closing for all insurance proceeds that were received by Seller (but not the  
718    Association, if any) resulting from damage to the Property and Inclusions, plus the amount of any



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

729 **19.2. Damage, Inclusions and Services.** Should any Inclusion or service (including utilities and  
730 communication services), system, component or fixture of the Property (collectively Service) (e.g., heating  
731 or plumbing), fail or be damaged between the date of this Contract and Closing or possession, whichever  
732 is earlier, then Seller is liable for the repair or replacement of such Inclusion or Service with a unit of  
733 similar size, age and quality, or an equivalent credit, but only to the extent that the maintenance or  
734 replacement of such Inclusion or Service is not the responsibility of the Association, if any, less any  
735 insurance proceeds received by Buyer covering such repair or replacement. If the failed or damaged  
736 Inclusion or Service is not repaired or replaced on or before Closing or possession, whichever is earlier,  
737 Buyer has the Right to Terminate under § 25.1, on or before **Closing Date**, or, at the option of Buyer,  
738 Buyer is entitled to a credit at Closing for the repair or replacement of such Inclusion or Service. Such  
739 credit must not exceed the Purchase Price. If Buyer receives such a credit, Seller's right for any claim  
740 against the Association, if any, will survive Closing. Seller and Buyer are aware of the existence of pre-  
741 owned home warranty programs that may be purchased and may cover the repair or replacement of such  
742 Inclusions.

743 **19.3. Condemnation.** In the event Seller receives actual notice prior to Closing that a  
744 pending condemnation action may result in a taking of all or part of the Property or Inclusions, Seller must  
745 promptly notify Buyer, in writing, of such condemnation action. Buyer has the Right to Terminate under §  
746 25.1, on or before **Closing Date**, based on such condemnation action, in Buyer's sole subjective  
747 discretion. Should Buyer elect to consummate this Contract despite such diminution of value to the  
748 Property and Inclusions, Buyer is entitled to a credit at Closing for all condemnation proceeds awarded to  
749 Seller for the diminution in the value of the Property or Inclusions, but such credit will not include  
750 relocation benefits or expenses or exceed the Purchase Price.

751 **19.4. Walk-Through and Verification of Condition.** Buyer, upon reasonable notice, has the  
752 right to walk through the Property prior to Closing to verify that the physical condition of the Property and  
753 Inclusions complies with this Contract.

754 **19.5. Risk of Loss - Growing Crops.** The risk of loss for damage to growing crops by fire or  
755 other Casualty will be borne by the party entitled to the growing crops as provided in § 2.8 and such party  
756 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



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

801

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

816

817 **25. TERMINATION.**

818       **25.1. Right to Terminate.** If a party has a right to terminate, as provided in this Contract  
819           (Right

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

825       **25.2 Effect of Termination.** In the event this Contract is terminated, all Earnest Money  
826 received hereunder will be returned and the parties are relieved of all obligations hereunder, subject to §§  
827 10.4, 22, 23 and 24.

828

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



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

836

837 **27. NOTICE, DELIVERY, AND CHOICE OF LAW.**

838       **27.1. Physical Delivery and Notice.** Any document, or notice to Buyer or Seller must be in  
839 writing except as provided in § 27.2 and is effective when physically received by such party, any  
840 individual named in this contract to receive documents or notices for such party, the Broker, or Brokerage  
841 Firm or Broker working with such party (except any notice or delivery after Closing must be received by  
842 the party, not Broker or Brokerage Firm).

843       **27.2. Electronic Notice.** As an alternative to physical delivery, any notice, may be delivered in  
844 electronic form to Buyer and Seller, any individual names in this Contract to receive documents or notices  
845 for such party, the Broker or Brokerage Firm of Broker working with such party (except any notice or  
846 delivery after Closing must be received by the party, not Broker or Brokerage Firm) at the electronic  
847 address of the recipient by facsimile, email or N/A.

848       **27.3. Electronic Delivery.** Electronic Delivery of documents and notice may be delivered by:  
849 (1) email at the email address of the recipient, (2) a link or access to a website or server provided the  
850 recipient receives the information necessary to access the documents, or (3) facsimile at the Fax No. of  
851 the recipient.

852       **27.4. Choice of Law.** This Contract and all disputes arising hereunder are governed by and  
853 construed in accordance with the laws of the State of Colorado that would be applicable to Colorado  
854 residents who sign a contract in Colorado for real property located in Colorado.

855

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

862

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

868



#### **ADDITIONAL PROVISIONS AND ATTACHMENTS**

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

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

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

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

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

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

A handwritten signature in black ink, appearing to read "James C. Clegg, Jr." The signature is fluid and cursive, with a small circle at the end of the "g".

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

914       **30.8**   Buyer Paul Tamburello is a licensed Real Estate Broker in the State of Colorado.

915       **30.9**   Buyer shall have 1 year from the date of closing to make application for a PUD to the city  
916 that encompasses both the north and south parcels. In the event Buyers fails to make said application  
917 buyer agrees to pay a penalty fee of \$100,000.00 due and payable within 30 days. (This Section 30.9  
918 shall survive the closing and not merge with the deed)

919       **ATTACHMENTS.**

920       **30.1.** The following attachments are a part of this Contract: the Right of First Refusal Agreement  
921 which shall be signed contemporaneously with the Contract and recorded and a Memorandum of  
922 Agreement Regarding the Railroad Right of Way which shall be signed contemporaneously with the  
923 Contract and recorded, both of which are attached hereto.

924       **30.2.** The following disclosure forms are attached but are not a part of this Contract: N/A

925  
926  
927  
928  
929  
930  
931  
932  
933  
934       **(SIGNATURE PAGE FOLLOWS)**



942

943

944

945 Buyer: Paul Tamburello

946

SIGNATURES

Date

4/17/19

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: Cun She

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

END OF CONTRACT TO BUY AND SELL REAL ESTATE

959

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

Phy 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

998



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



## RIGHT OF FIRST REFUSAL AGREEMENT

THIS RIGHT OF FIRST REFUSAL AGREEMENT ("Agreement") is entered into as of the 17 day of APRIL, 2019 (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 contain 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.

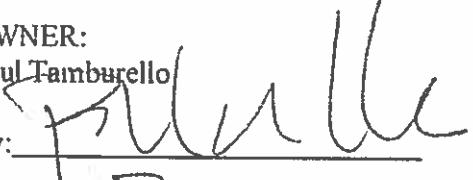
12. This Agreement may be signed in one or more counterparts, any or all of which shall constitute one and the same instrument.

13. It 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: 

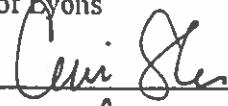
Print Name:

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](mailto: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](mailto: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](mailto: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.



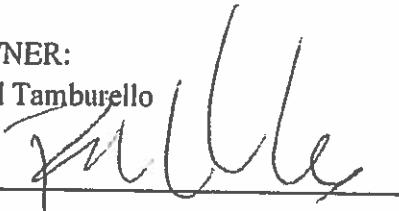
13. This Agreement may be signed in one or more counterparts, any or all of which shall constitute one and the same instrument.

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: OWNER

TOWN:

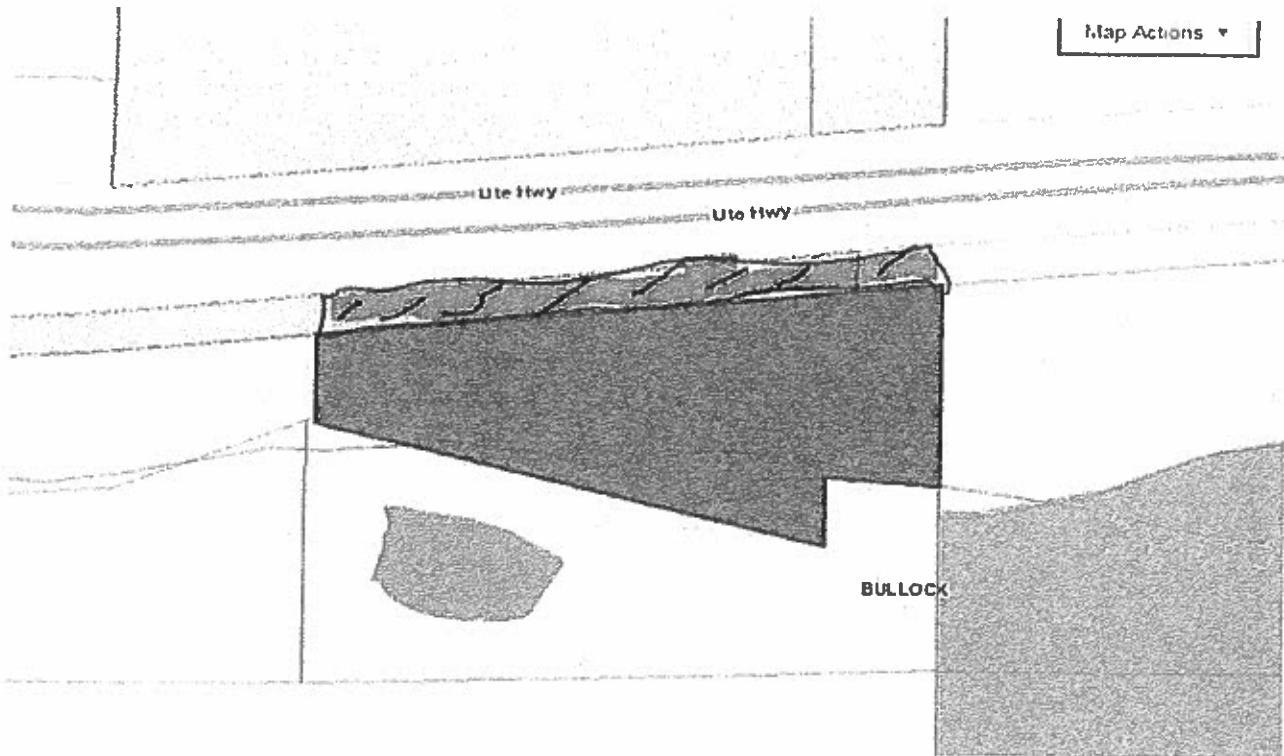
Town of Lyons

By: 

Print Name: Connie Sullivan

Title: Mayor

## Exhibit A



## Exhibit A



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

3  
4 THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR  
5 OTHER COUNSEL BEFORE SIGNING.  
6

## 7 AGREEMENT TO AMEND/EXTEND CONTRACT 8

9 Date: 5/23/19  
10

11 1. This agreement amends the contract dated 4/17/2019 (Contract), between The Town of Lyons, Colorado  
12 (Seller), and Paul Tamburello  
13 (Buyer), relating to the sale and purchase of the following legally described real estate in the County of Boulder,  
14 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  
15 records of the County of Boulder, State of Colorado, together with the interest, easements, rights, benefits, improvements, and attached  
16 fixtures appurtenant thereto, and all interests of Seller in vacted streets and alleys adjacent thereto (Property).  
17

18 known as No. 4651-4652 UTE HIGHWAY LYONS CO 80540 (Property).  
19 Street Address City State Zip  
20

21 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  
22 the corresponding provision of the Contract. If any item is marked in the "Deleted" column, it means that the  
23 corresponding provision of the Contract to which reference is made is deleted.  
24

25 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	
		<b>Title</b>			
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	
		<b>Owners' Association</b>			
8	§ 7.2	Association Documents Deadline		X	
9	§ 7.4	Association Documents Termination Deadline		X	
		<b>Seller's Disclosures</b>			
10	§ 10.1	Seller's Property Disclosure Deadline	7/31/2019		
11	§ 10.10	Lead-Based Paint Disclosure Deadline CBS1, 2, F1		X	
		<b>Loan and Credit</b>			
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	
		<b>Appraisal</b>			
20	§ 6.2	Appraisal Deadline		X	
21	§ 6.2	Appraisal Objection Deadline		X	
22	§ 6.2	Appraisal Resolution Deadline		X	

