

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO**

In re:)	
)	
CONFLUENCE ENERGY, LLC)	Case No. 18-17090 EEB
EIN: 61-1538063)	Chapter 11
)	
Debtor.)	

**MOTION TO APPROVE SALE OF REAL AND PERSONAL PROPERTY FREE AND
CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES**

The Debtor, Confluence Energy, LLC (“Debtor”), by and through its attorneys, Wadsworth Garber Warner & Conrardy, PC, respectfully moves the Court pursuant to 11 U.S.C. Section 363 and Bankruptcy Rules 6004 and 9014 for entry of an Order authorizing the Debtor to sell certain real and personal property located in Kremmling, Colorado and the personal property located thereat free and clear of liens, claims and encumbrances, and as grounds therefor respectfully states as follows:

BACKGROUND

1. The Debtor filed its Voluntary Petition pursuant to Chapter 11 of the Bankruptcy Code on August 14, 2018 (the “Petition Date”). The Debtor remains a Debtor-in-Possession.

2. The Debtor was created in 2007 with a business model aimed at two issues: a shortage in the wood pellet industry and the abundance of dead and dying beetle kill trees. In 2008, the first shipments of beetle kill trees left the Debtor’s manufacturing plant. As business grew, the Debtor began to diversify, becoming a producer of a variety of bio-mass products made primarily from wood fiber. The Debtor’s all natural product lines include pet bedding, cat litter, absorbents, biomulch, biochar, other agricultural enhancements and a multitude of products and services for the oil and gas industry. In 2013, the Debtor acquired competitor Rocky Mountain Pellets to be able to provide a steady supply of quality wood fiber products to its customers. The Debtor has two manufacturing plants, one located in Kremmling, Colorado and the second in Walden, Colorado.

3. The Debtor owns the real property and improvements which constitute the Kremmling manufacturing plant located at 1809 Highway 9, Kremmling, Colorado 80459 (the “Real Property”).

4. The Debtor, pursuant to Order of the Bankruptcy Court, retained Pinnacle Real Estate Advisors (“Pinnacle”) to market the Real Property.

5. The Debtor has received an offer to purchase the Real Property and the personal property located thereat (the “Personal Property”).

6. The Real Property and Personal Property are subject to two secured claims. The first is the held by US Bank, National Association, in its capacity as bond trustee (the “Bond Trustee”) in the amount of not less than \$12,000,000. The Real Property and Personal Property is further secured by a statutory lien for taxes in favor of the Grand County Treasurer. The Grand County Treasurer has filed two Proofs of Claim in this Bankruptcy Case asserting a lien upon the Debtor’s real and personal property located in Grand County. The two Proofs of Claim asserts Claims in the cumulative amount of \$151,770.76 for person and real property taxes for tax years 2017 and 2018. The first Proof of Claim asserts a Secured Claim in the amount of \$53,492.80. The second Proof of Claim asserts a Secured Claim in the amount of \$98,277.80. A comparison of the first Proof of Claim as compared to the Second Proof of Claim appears to indicate that the Claim asserted in the first Proof Claim is duplicated in the second Proof of Claim. The Debtor does not dispute the Grand County Claims for real property taxes nor the personal property taxes for 2017. The Debtor disputes the assessed 2018 personal property tax in the amount of \$27,371.48 as the Debtor did not operate in Grand County in 2018.

7. The Debtor and Don Chelemedos (“Buyer”) have entered into a Contract to Buy and Sell Real Estate (Commercial) (“Sale Agreement”), subject to Court approval. A copy of the Sale Agreement is attached hereto and incorporated herein as Exhibit A.

8. The principal terms of the Sale Agreement are:¹
- a. The purchase price for the Residence is \$800,000 (“Purchase Price”);
 - b. The Purchase Price shall be paid through an earnest money payment of \$20,000, with the balance paid in cash at the closing;
 - c. There is no financing contingency;
 - d. There are standard due diligence contingencies, with the time frames running in accordance with the deadlines in the Sale Agreement.
 - e. The Sale Agreement is for the purchase of the Real Property and the Personal Property.

¹ For a complete understanding of the Sale Agreement, the Sale Agreement in its entirety should be reviewed.

- f. The Sale Agreement is subject to Bankruptcy Court approval;
- g. The Buyer may assign the Sale Agreement to another entity controlled by Buyer at Buyer's discretion, subject to Debtor's permission; and
- h. The Buyer and Debtor shall each pay one half of the closing costs.

9. It is anticipated that the Buyer will be transferring the Sale Agreement to a newly formed entity to run a business out of the Real Property. The Buyer's business will be in a different business line than the Debtor and therefore will not compete with the Debtor's Walden plant operations. One or more of the following insiders of the Debtor will have a minority ownership interest in the Buyer's new business venture: Bruce Anderson, Adam Poe, Charley Kurtz, and/or Mark Mathis. Accordingly, the Sale Agreement contemplates an Operating Agreement in which one or more of these insiders will be members will be entered into prior to a closing.

RELIEF REQUESTED

10. The Debtor is seeking Court authorization to sell the Real Property and Personal Property pursuant to Bankruptcy Code § 363 free and clear of all liens, claims and encumbrances. All liens, claims and encumbrances will attach to the proceeds of the sale in the order of their priorities.

11. Section 363(b) of the Bankruptcy Code provides authority for a trustee and, through the application of Bankruptcy Code section 1107(a), a debtor-in-possession, "after notice and a hearing, [to] use, sell or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Further, section 105(a) of the Bankruptcy Code allows the Court to "issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

12. The Bankruptcy Court's power to authorize a sale under section 363(b) is to be exercised at the Court's discretion. In re WPRV-TV, Inc., 983 F.2d 336, 340 (1st Cir. 1993); New Haven Radio, Inc. v. Meister (In re Martin-Trigona), 760 F.2d 1334, 1346 (2d Cir. 1985); Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1069 (2d Cir. 1983).

13. Courts have authorized a sale of a debtor's assets pursuant to section 363(b) of the Bankruptcy Code or in the absence of a reorganization plan where there is a "sound business purpose." In re Delaware & Hudson Ry. Co., 124 B.R. 169 (D. Del. 1991); Titusville Country Club v. Penn Bank (In re Titusville Country Club), 128 B.R. 396 (Bankr. W.D.Pa. 1991); In re Industrial

Valley Refrigeration and Air Conditioning Supplies, Inc., 77 B.R. 15 (Bankr. E.D.Pa. 1987). See also, Stephens Indus., Inc. v. McClune, 789 F.2d 386 (6th Cir. 1986); In re Lionel Corp., 722 F.2d at 1071 (setting forth the “sound business purpose” test in the context of a sale of assets under section 363(b) of the Bankruptcy Code).

14. It is in the best interests of the Debtor, its estate and its creditors to sell the Real Property and Personal Property. The Debtor and the estate are receiving no financial benefit from retaining the Real Property and Personal Property and the Debtor will continue to incur expenses related to such property if it is not sold, such as insurance and accruing interest. The sale of the Real Property and Personal Property will also provide the Debtor with funds to pay secured creditors, substantially reducing the claims in the case. Lastly, the sale will enable the Debtor to sell assets of the estate for what the Debtor believes is the highest value that can be received.

15. Therefore, the sale of the Real Property and Personal Property will maximize the return for the Debtor’s creditors.

16. Courts have also required that the sale price be fair and reasonable and that the sale be the result of good-faith negotiations with the buyer. In re Abbotts Dairies of Pa., 788 F.2d 143, 147-50 (3rd Cir. 1986); In re Tempo Technology Corp., 202 B.R. 363, 367 (D. Del. 1996), aff’d sub nom. Diamond Abrasives Corp. v. Temtechco, Inc. (In re Temtechco, Inc.), 141 F.3d 1155 (3d Cir. 1998); In re Industrial Valley, 77 B.R. at 22; In re Stroud Ford, Inc., 163 B.R. 730 (Bankr. M.D. Pa. 1983); See also In re Ewell, 958 F.2d 276 (9th Cir. 1992) (declining to set aside or modify a sale pursuant to section 363 of the Bankruptcy Code because the price was fair and reasonable and the buyer was a good faith purchaser pursuant to section 363(m) of the Bankruptcy Code).

17. While the Bankruptcy Code does not define “good faith,” courts have held that for purposes of section 363(m), a “good faith purchaser” is one who buys “in good faith” and “for value” and that lack of good faith is shown by fraud, collusion, or an attempt to take grossly unfair advantage of other bidders. In re Abbotts Dairies of PA., 788 F.2d at 147; In re Tempo Technology Corp., 202 B.R. at 367.

18. The Buyer is a good faith purchaser. The Debtor has retained Pinnacle, who has been marketing the Real Property for sale for several months. The only offer the Debtor has received for the Real Property is the offer from the Buyer. The Buyer has no relation with the Debtor other than the Sale Agreement and the possibility that certain insider may be members of the Buyer’s successor

limited liability company. The Real Property based upon its location is a unique property with a limited pool of potential buyers. There are no loan contingencies in the Sale Agreement, which will allow the sale to close quickly and removes the risk that the sale will not be able to close because of an inability to obtain funding. The Sale Agreement has an expedited diligence period to quickly get to a closing. The sale of the Real Property and Personal Property provides an immediate benefit to the Debtor, the estate, and its creditors.

19. The Debtor requests authorization to sell the Property free and clear of liens, claims and encumbrances and other interests. Section 363(f) of the Bankruptcy Code authorizes a debtor in possession to sell property under section 363(b) “free and clear of any interest in such property of an entity other than the estate” if one of the following conditions is satisfied:

- (1) applicable nonbankruptcy law permits the sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

20. The purchase price is sufficient to satisfy the claim of Grand County. The Debtor has obtained the consent of the Bond Trustee, who has participated in the sale process and has indicated its consent.

21. To the extent the Debtor does not have consent of Grand County, Grand County could be compelled to accept a money satisfaction of their interests, thereby satisfying § 363(f)(5) of the Bankruptcy Code. See, e.g., In re James, 203 B.R. 449, 453 (Bankr. W.D.Mo. 1997); In re Grand Slam U.S.A., Inc., 178 B.R. 460, 463-64 (E.D. Mich. 1995); WPRY-TV, Inc., 143 B.R. at 321. Courts considering this issue have held that the “cramdown” provision under the Bankruptcy Code constitutes such a “legal or equitable proceeding” and permits a sale free and clear pursuant to section 363(f)(5). See, e.g., Grand Slam U.S.A., Inc., 178 B.R. at 464; Scherer v. Federal National Mortgage Association (In re Terrace Chalet Apartments), 159 B.R. 821, 829 (N.D. Ill. 1993); In re

Healthco Int'l, Inc., 174 B.R. 174, 176-77 (Bankr. D.Mass. 1994).

22. The Debtor requests authorization to utilize the proceeds from the sale of the Real Property and Personal Property to pay the following:

- a. Closing and related costs associated with the sale;
- b. Real estate broker fees of 6% of the Purchase Price;
- c. Create a reserve in the full amount of Grand County's asserted claim, which will be paid upon resolution of the dispute over Grand County's claim.
- d. The balance, to the extent needed, shall be paid to the Bond Trustee to fully and finally pay the outstanding balance on the debtor-in-possession loan.
- e. Any remaining amounts shall be held in an escrow account, separate from any operating account of the Debtor, for distribution under a plan of reorganization to be confirmed by the Debtor or as otherwise ordered by the Court.

CONCLUSION

WHEREFORE, the Debtor respectfully requests that the Court enter an Order, a proposed form is filed herewith, (a) authorizing the sale of the Real Property and Personal Property free and clear of all liens, claims and encumbrances, (b) authorizing the distribution of the sale proceeds as set forth herein; and (e) granting such further and additional relief as to the Court may appear proper.

Dated: March 25, 2019

Respectfully submitted,

/s/ Aaron A. Garber

Aaron A. Garber, #36099

WADSWORTH GARBER WARNER CONRARDY, P.C.

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Littleton, Colorado 80120

303-296-1999 / 303-296-7600 FAX

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Attorneys for Debtor

EXHIBIT A



Pinnacle Real Estate Advisors
One Broadway Denver, CO 80203
Barton Thompson
Ph: 3039629555

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission.(CBS3-6-18) (Mandatory 1-19)

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
(COMMERCIAL)**

Property with No Residences)
 Property with Residences-Residential Addendum Attached)

Date: 3/4/2019

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, *Don Chelemedos* (Buyer) will take title to the Property described below as
 Joint Tenants Tenants In Common Other TBD.

2.2. No Assignability. This Contract IS NOT assignable by Buyer unless otherwise specified in Additional Provisions.

2.3. Seller. *Confluence Energy, LLC* (Seller) is the current owner of the Property described below.

2.4. Property. The Property is the following legally described real estate in the County of Grand, Colorado:

SUBD: METES & BOUNDS 80 ALL 4.815 ACRES TRACT IN SW4NW4 OF SEC 16 AND SE4NE4 OF SEC 17 T1N R80W DESC AT B/352 P/834 LESS TR

-AND-

SUBD: METES & BOUNDS 80 ALL 10.632 ACRES TRACT IN S2NW4 SEC 16 T1N R80W DESC AT B/352 P/838

-AND-

SUBD: METES & BOUNDS 80 ALL 4.186 ACRES TRACT IN S2NW4 SEC 16 T1N R80W DESC AT B/352 P/842

known as No. **1809 Highway 9, Kremmling, CO 80459**, 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).

Seller(s) Initials: *MM*

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

2.5.1. Inclusions - Attached. If attached to the Property on the date of this Contract, the following items are included unless excluded under **Exclusions:** lighting, heating, plumbing, ventilating and air conditioning units, TV antennas, inside telephone, network and coaxial (cable) wiring and connecting blocks/jacks, plants, mirrors, floor coverings, intercom systems, built-in kitchen appliances, sprinkler systems and controls, built-in vacuum systems (including accessories) and garage door openers (including n/a remote controls). If checked, the following are owned by the Seller and included (leased items should be listed under **Due Diligence Documents**): **None** **Solar Panels** **Water Softeners** **Security Systems** **Satellite Systems** (including satellite dishes). 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. Inclusions - Not Attached. If on the Property, whether attached or not, on the date of this Contract, the following items are included unless excluded under **Exclusions:** storm windows, storm doors, window and porch shades, awnings, blinds, screens, window coverings and treatments, curtain rods, drapery rods, fireplace inserts, fireplace screens, fireplace grates, heating stoves, storage sheds, carbon monoxide alarms, smoke/fire detectors and all keys.

2.5.3. 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 **All Personal Property existing on the Property used for the daily operation and maintenance of the Property, none will be added to the property.**

Conveyance of all personal property will be by bill of sale or other applicable legal instrument.

2.5.4. Other Inclusions. The following items, whether fixtures or personal property, are also included in the Purchase Price: n/a

2.5.5. Parking and Storage Facilities. The use or ownership of the following parking facilities: **All those appurtenant to the property;** and the use or ownership of the following storage facilities:

Note to Buyer: If exact rights to the parking and storage facilities is a concern to Buyer, Buyer should investigate.

2.5.6. Trade Fixtures. With respect to trade fixtures, Seller and Buyer agree as follows: **All equipment on property.**

The trade fixtures to be conveyed at Closing will be conveyed by Seller free and clear of all taxes (except personal property taxes for the year of Closing), liens and encumbrances, except . Conveyance will be by bill of sale or other applicable legal instrument.

2.6. Exclusions. The following items are excluded (Exclusions): n/a

2.7. Water Rights/Well Rights.


2.7.1. Deeded Water Rights. The following legally described water rights: n/a

Any deeded water rights will be conveyed by a good and sufficient deed at Closing.

2.7.2. Other Rights Relating to Water. The following rights relating to water not included in §§ 2.7.1, 2.7.3, and 2.7.4, will be transferred to Buyer at Closing: n/a

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

2.7.4. Water Stock Certificates. The water stock certificates to be transferred at Closing are as follows: n/a

Seller(s) Initials: 



141 **2.7.5. Conveyance.** If Buyer is to receive any rights to water pursuant to § 2.7.2 (Other
 142 Rights Relating to Water), § 2.7.3 (Well Rights), or § 2.7.4 (Water Stock Certificates), Seller agrees to convey
 143 such rights to Buyer by executing the applicable legal instrument at Closing.
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 146 **3. DATES, DEADLINES AND APPLICABILITY.**

147 **3.1 Dates and Deadlines.**

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Item No.	Reference	Event	Date or Deadline
1	§ 4.3	Alternative Earnest Money Deadline	See Section 30.6
		Title	
2	§ 8.1, § 8.4	Record Title Deadline	7 days after MEC
3	§ 8.2, § 8.4	Record Title Objection Deadline	10 days after MEC
4	§ 8.3	Off-Record Title Deadline	7 days after MEC
5	§ 8.3	Off-Record Title Objection Deadline	10 days after MEC
6	§ 8.5	Title Resolution Deadline	14 days after MEC
7	§ 8.6	Right of First Refusal Deadline	n/a
		Owners' Association	
8	§ 7.2	Association Documents Deadline	n/a
9	§ 7.4	Association Documents Termination Deadline	n/a
		Seller's Disclosures	
10	§ 10.1	Seller's Property Disclosure Deadline	7 days after MEC
11	§ 10.10	Lead-Based Paint Disclosure Deadline	n/a
		Loan and Credit	
12	§ 5.1	New Loan Application Deadline	n/a
13	§ 5.2	New Loan Termination Deadline	n/a
14	§ 5.3	Buyer's Credit Information Deadline	n/a
15	§ 5.3	Disapproval of Buyer's Credit Information Deadline	n/a
16	§ 5.4	Existing Loan Deadline	n/a
17	§ 5.4	Existing Loan Termination Deadline	n/a
18	§ 5.4	Loan Transfer Approval Deadline	n/a
19	§ 4.7	Seller or Private Financing Deadline	n/a
		Appraisal	
20	§ 6.2	Appraisal Deadline	n/a
21	§ 6.2	Appraisal Objection Deadline	n/a
22	§ 6.2	Appraisal Resolution Deadline	n/a
		Survey	
23	§ 9.1	New ILC or New Survey Deadline	n/a
24	§ 9.3	New ILC or New Survey Objection Deadline	n/a
25	§ 9.3	New ILC or New Survey Resolution Deadline	n/a
		Inspection and Due Diligence	
26	§ 10.3	Inspection Objection Deadline	21 days after MEC
27	§ 10.3	Inspection Termination Deadline	25 days after MEC
28	§ 10.3	Inspection Resolution Deadline	25 days after MEC
29	§ 10.5	Property Insurance Termination Deadline	21 days after MEC
30	§ 10.6	Due Diligence Documents Delivery Deadline	7 days after MEC
31	§ 10.6	Due Diligence Documents Objection Deadline	21 days after MEC
32	§ 10.6	Due Diligence Documents Resolution Deadline	25 days after MEC

Seller(s) Initials: *MM*

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33	§ 10.6	Environmental Inspection Termination Deadline	n/a	
34	§ 10.6	ADA Evaluation Termination Deadline	n/a	
35	§ 10.7	Conditional Sale Deadline	n/a	
36	§ 10.10	Lead-Based Paint Termination Deadline	n/a	
37	§ 11.1, 11.2	Estoppel Statements Deadline	n/a	
38	§ 11.3	Estoppel Statements Termination Deadline	n/a	
Closing and Possession				
39	§ 12.3	Closing Date	40 days after MEC	
40	§ 17	Possession Date	Date of Closing	
41	§ 17	Possession Time	Time of Closing	
39	§ 28	Acceptance Deadline Date	3/15/2019	Friday
42	§ 28	Acceptance Deadline Time	5:00 PM MST	
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3.2. Applicability of Terms. Any box checked in this Contract means the corresponding provision applies. If any deadline blank in § 3.1 (Dates and Deadlines) is left blank or completed with the abbreviation "N/A", or the word "Deleted," such deadline is not applicable and the corresponding provision containing the deadline is deleted. If no box is checked in a provision that contains a selection of "None", such provision means that "None" applies.

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


4. PURCHASE PRICE AND TERMS.

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

Item No.	Reference	Item	Amount	Amount
1	§ 4.1	Purchase Price	\$800,000.00	
2	§ 4.3	Earnest Money		\$20,000.00
3	§ 4.5	New Loan		
4	§ 4.6	Assumption Balance		
5	§ 4.7	Private Financing		
6	§ 4.7	Seller Financing		
7				
8				
9	§ 4.4	Cash at Closing		\$780,000.00
10		TOTAL	\$800,000.00	\$800,000.00

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

4.3. Earnest Money. The Earnest Money set forth in this Section, in the form of a Good Funds, will be payable to and held by Fidelity Title (Earnest Money Holder), in its trust account, on behalf of

Seller(s) Initials: 



281 both Seller and Buyer. The Earnest Money deposit must be tendered, by Buyer, with this Contract unless the
282 parties mutually agree to an **Alternative Earnest Money Deadline** for its payment. The parties authorize
283 delivery of the Earnest Money deposit to the company conducting the Closing (Closing Company), if any, at or
284 before Closing. In the event Earnest Money Holder has agreed to have interest on Earnest Money deposits
285 transferred to a fund established for the purpose of providing affordable housing to Colorado residents, Seller
286 and Buyer acknowledge and agree that any interest accruing on the Earnest Money deposited with the Earnest
287 Money Holder in this transaction will be transferred to such fund.

290 **4.3.1. Alternative Earnest Money Deadline.** The deadline for delivering the Earnest
291 Money, if other than at the time of tender of this Contract, is as set forth as the **Alternative Earnest Money**
292 **Deadline.**

294 **4.3.2. Return of Earnest Money.** If Buyer has a Right to Terminate and timely
295 terminates, Buyer is entitled to the return of Earnest Money as provided in this Contract. If this Contract is
296 terminated as set forth in § 25 and, except as provided in § 24 (Earnest Money Dispute), if the Earnest Money
297 has not already been returned following receipt of a Notice to Terminate, Seller agrees to execute and return to
298 Buyer or Broker working with Buyer, written mutual instructions (e.g., Earnest Money Release form), within
299 three days of Seller's receipt of such form.

302 **4.4. Form of Funds; Time of Payment; Available Funds.**

303 **4.4.1. Good Funds.** All amounts payable by the parties at Closing, including any loan
304 proceeds, Cash at Closing and closing costs, must be in funds that comply with all applicable Colorado laws,
305 including electronic transfer funds, certified check, savings and loan teller's check and cashier's check (Good
306 Funds).

308 **4.4.2. Time of Payment; Available Funds.** All funds, including the Purchase Price to be
309 paid by Buyer, must be paid before or at Closing or as otherwise agreed in writing between the parties to allow
310 disbursement by Closing Company at Closing **OR SUCH NONPAYING PARTY WILL BE IN DEFAULT.** Buyer
311 represents that Buyer, as of the date of this Contract, **Does** **Does Not** have funds that are immediately
312 verifiable and available in an amount not less than the amount stated as Cash at Closing in § 4.1.

315 **4.5. New Loan.**

316 **4.5.1. Buyer to Pay Loan Costs.** Buyer, except as otherwise permitted in § 4.2 (Seller
317 Concession), if applicable, must timely pay Buyer's loan costs, loan discount points, prepaid items and loan
318 origination fees as required by lender.

320 **4.5.2. Buyer May Select Financing.** Buyer may pay in cash or select financing
321 appropriate and acceptable to Buyer, including a different loan than initially sought, except as restricted in §
322 4.5.3 (Loan Limitations) or § 30 (Additional Provisions).

324 **4.5.3. Loan Limitations.** Buyer may purchase the Property using any of the following
325 types of loans: **Conventional** **Other**

326 **4.6. Assumption.** (Omitted as inapplicable)

328 **4.7. Seller or Private Financing.** (Omitted as inapplicable)

TRANSACTION PROVISIONS

334 **5. FINANCING CONDITIONS AND OBLIGATIONS.**

335 **5.1. New Loan Application.** If Buyer is to pay all or part of the Purchase Price by obtaining one or
336 more new loans (New Loan), or if an existing loan is not to be released at Closing, Buyer, if required by such
337 lender, must make an application verifiable by such lender, on or before **New Loan Application Deadline** and
338 exercise reasonable efforts to obtain such loan or approval.

340 **5.2. New Loan Review.** If Buyer is to pay all or part of the Purchase Price with a New Loan, this
341 Contract is conditional upon Buyer determining, in Buyer's sole subjective discretion, whether the New Loan is
342 satisfactory to Buyer, including its availability, payments, interest rate, terms, conditions and cost. This
343 condition is for the sole benefit of Buyer. Buyer has the Right to Terminate under § 25.1, on or before **New**
344 **Loan Termination Deadline**, if the New Loan is not satisfactory to Buyer, in Buyer's sole subjective discretion.
345 Buyer does not have a Right to Terminate based on the New Loan if the objection is based on the Appraised
346 Value (defined below) or the Lender Requirements (defined below). **IF SELLER IS NOT IN DEFAULT AND**
347 **DOES NOT TIMELY RECEIVE BUYER'S WRITTEN NOTICE TO TERMINATE, BUYER'S EARNEST MONEY**
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Seller(s) Initials: *MM*

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351 **WILL BE NONREFUNDABLE**, except as otherwise provided in this Contract (e.g., Appraisal, Title, Survey).

352 **5.3. Credit Information.** If an existing loan is not to be released at Closing, this Contract is conditional
353 (for the sole benefit of Seller) upon Seller's approval of Buyer's financial ability and creditworthiness, which
354 approval will be in Seller's sole subjective discretion. Accordingly: (1) Buyer must supply to Seller by **Buyer's**
355 **Credit Information Deadline**, at Buyer's expense, information and documents (including a current credit
356 report) concerning Buyer's financial, employment and credit condition; (2) Buyer consents that Seller may
357 verify Buyer's financial ability and creditworthiness; and (3) any such information and documents received by
358 Seller must be held by Seller in confidence and not released to others except to protect Seller's interest in this
359 transaction. If the Cash at Closing is less than as set forth in § 4.1 of this Contract, Seller has the Right to
360 Terminate under § 25.1, on or before Closing. If Seller disapproves of Buyer's financial ability or
361 creditworthiness, in Seller's sole subjective discretion, Seller has the Right to Terminate under § 25.1, on or
362 before **Disapproval of Buyer's Credit Information Deadline** .

363 **5.4. Existing Loan Review.** If an existing loan is not to be released at Closing, Seller must deliver
364 copies of the loan documents (including note, deed of trust and any modifications) to Buyer by **Existing Loan**
365 **Deadline**. For the sole benefit of Buyer, this Contract is conditional upon Buyer's review and approval of the
366 provisions of such loan documents. Buyer has the Right to Terminate under § 25.1, on or before **Existing**
367 **Loan Termination Deadline**, based on any unsatisfactory provision of such loan documents, in Buyer's sole
368 subjective discretion. If the lender's approval of a transfer of the Property is required, this Contract is
369 conditional upon Buyer obtaining such approval without change in the terms of such loan, except as set forth in
370 § 4.6. If lender's approval is not obtained by **Loan Transfer Approval Deadline**, this Contract will terminate on
371 such deadline. Seller has the Right to Terminate under § 25.1, on or before Closing, in Seller's sole subjective
372 discretion, if Seller is to be released from liability under such existing loan and Buyer does not obtain such
373 compliance as set forth in § 4.6.

382 **6. APPRAISAL PROVISIONS.**

383 **6.1. Appraisal Definition.** An "Appraisal" is an opinion of value prepared by a licensed or certified
384 appraiser, engaged on behalf of Buyer or Buyer's lender, to determine the Property's market value (Appraised
385 Value). The Appraisal may also set forth certain lender requirements, replacements, removals or repairs
386 necessary on or to the Property as a condition for the Property to be valued at the Appraised Value.

387 **6.2. Appraisal Condition.** The applicable appraisal provision set forth below applies to the respective
388 loan type set forth in § 4.5.3, or if a cash transaction (i.e. no financing), § 6.2.1 applies.

389 **6.2.1. Conventional/Other.** Buyer has the right to obtain an Appraisal. If the Appraised Value
390 is less than the Purchase Price, or if the Appraisal is not received by Buyer on or before **Appraisal Deadline**
391 Buyer may, on or before **Appraisal Objection Deadline**:


392 **6.2.1.1. Notice to Terminate.** Notify Seller in writing, pursuant to § 25.1, that this
393 Contract is terminated; or

394 **6.2.1.2. Appraisal Objection.** Deliver to Seller a written objection accompanied by
395 either a copy of the Appraisal or written notice from lender that confirms the Appraised Value is less than the
396 Purchase Price (Lender Verification).

397 **6.2.1.3. Appraisal Resolution.** If an Appraisal Objection is received by Seller, on or
398 before **Appraisal Objection Deadline** and if Buyer and Seller have not agreed in writing to a settlement
399 thereof on or before **Appraisal Resolution Deadline**, this Contract will terminate on the **Appraisal Resolution**
400 **Deadline**, unless Seller receives Buyer's written withdrawal of the Appraisal Objection before such termination,
401 i.e., on or before expiration of **Appraisal Resolution Deadline**.

402 **6.3. Lender Property Requirements.** If the lender imposes any written requirements, replacements,
403 removals or repairs, including any specified in the Appraisal (Lender Requirements) to be made to the Property
404 (e.g., roof repair, repainting), beyond those matters already agreed to by Seller in this Contract, this Contract
405 terminates on the earlier of three days following Seller's receipt of the Lender Requirements, or Closing, unless
406 prior to termination: (1) the parties enter into a written agreement to satisfy the Lender Requirements; (2) the
407 Lender Requirements have been completed; or (3) the satisfaction of the Lender Requirements is waived in
408 writing by Buyer.

409 **6.4. Cost of Appraisal.** Cost of the Appraisal to be obtained after the date of this Contract must be
410 timely paid by Buyer Seller. The cost of the Appraisal may include any and all fees paid to the appraiser,
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Seller(s) Initials: 



421 appraisal management company, lender's agent or all three.

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~~7. OWNERS' ASSOCIATION. This Section is applicable if the Property is located within a Common Interest Community and subject to the declaration (Association).~~

~~7.1. Common Interest Community Disclosure. THE PROPERTY IS LOCATED WITHIN A COMMON INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR THE COMMUNITY. THE OWNER OF THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE OWNERS' ASSOCIATION FOR THE COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION. THE DECLARATION, BYLAWS AND RULES AND REGULATIONS WILL IMPOSE FINANCIAL OBLIGATIONS UPON THE OWNER OF THE PROPERTY, INCLUDING AN OBLIGATION TO PAY ASSESSMENTS OF THE ASSOCIATION. IF THE OWNER DOES NOT PAY THESE ASSESSMENTS, THE ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY AND POSSIBLY SELL IT TO PAY THE DEBT. THE DECLARATION, BYLAWS AND RULES AND REGULATIONS OF THE COMMUNITY MAY PROHIBIT THE OWNER FROM MAKING CHANGES TO THE PROPERTY WITHOUT AN ARCHITECTURAL REVIEW BY THE ASSOCIATION (OR A COMMITTEE OF THE ASSOCIATION) AND THE APPROVAL OF THE ASSOCIATION. PURCHASERS OF PROPERTY WITHIN THE COMMON INTEREST COMMUNITY SHOULD INVESTIGATE THE FINANCIAL OBLIGATIONS OF MEMBERS OF THE ASSOCIATION. PURCHASERS SHOULD CAREFULLY READ THE DECLARATION FOR THE COMMUNITY AND THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION.~~

~~7.2. Association Documents to Buyer. Seller is obligated to provide to Buyer the Association Documents (defined below), at Seller's expense, on or before Association Documents Deadline. Seller authorizes the Association to provide the Association Documents to Buyer, at Seller's expense. Seller's obligation to provide the Association Documents is fulfilled upon Buyer's receipt of the Association Documents, regardless of who provides such documents.~~

~~7.3. Association Documents. Association documents (Association Documents) consist of the following:~~

~~7.3.1. All Association declarations, articles of incorporation, bylaws, articles of organization, operating agreements, rules and regulations, party wall agreements and the Association's responsible governance policies adopted under § 38-33.3-209.5, C.R.S.;~~

~~7.3.2. Minutes of: (1) the annual owners' or members' meeting and (2) any executive boards' or managers' meetings; such minutes include those provided under the most current annual disclosure required under § 38-33.3-209.4, C.R.S. (Annual Disclosure) and minutes of meetings, if any, subsequent to the minutes disclosed in the Annual Disclosure. If none of the preceding minutes exist, then the most recent minutes, if any (§§ 7.3.1 and 7.3.2, collectively, Governing Documents); and~~

~~7.3.3. List of all Association insurance policies as provided in the Association's last Annual Disclosure, including, but not limited to, property, general liability, association director and officer professional liability and fidelity policies. The list must include the company names, policy limits, policy deductibles, additional named insureds and expiration dates of the policies listed (Association Insurance Documents);~~

~~7.3.4. A list by unit type of the Association's assessments, including both regular and special assessments as disclosed in the Association's last Annual Disclosure;~~

~~7.3.5. The Association's most recent financial documents which consist of: (1) the Association's operating budget for the current fiscal year, (2) the Association's most recent annual financial statements, including any amounts held in reserve for the fiscal year immediately preceding the Association's last Annual Disclosure, (3) the results of the Association's most recent available financial audit or review, (4) list of the fees and charges (regardless of name or title of such fees or charges) that the Association's community association manager or Association will charge in connection with the Closing including, but not limited to, any fee incident to the issuance of the Association's statement of assessments (Status Letter), any rush or update fee charged for the Status Letter, any record change fee or ownership record transfer fees (Record Change Fee), fees to access documents, (5) list of all assessments required to be paid in advance, reserves or working capital due at Closing and (6) reserve study, if any (§§ 7.3.4 and 7.3.5, collectively, Financial Documents);~~

~~7.3.6. Any written notice from the Association to Seller of a "construction defect action" under § 38-33.3-303.5, C.R.S. within the past six months and the result of whether the Association approved or disapproved such action (Construction Defect Documents). Nothing in this Section limits the Seller's obligation-~~

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491 to disclose adverse material facts as required under § 10.2 (Disclosure of Adverse Material Facts; Subsequent
492 Disclosure; Present Condition) including any problems or defects in the common elements or limited common
493 elements of the Association property.
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495 ~~7.4. Conditional on Buyer's Review. Buyer has the right to review the Association Documents.
496 Buyer has the Right to Terminate under § 25.1, on or before Association Documents Termination Deadline,
497 based on any unsatisfactory provision in any of the Association Documents, in Buyer's sole subjective
498 discretion. Should Buyer receive the Association Documents after Association Documents Deadline, Buyer,
499 at Buyer's option, has the Right to Terminate under § 25.1 by Buyer's Notice to Terminate received by Seller on
500 or before ten days after Buyer's receipt of the Association Documents. If Buyer does not receive the
501 Association Documents, or if Buyer's Notice to Terminate would otherwise be required to be received by Seller
502 after Closing Date, Buyer's Notice to Terminate must be received by Seller on or before Closing. If Seller does
503 not receive Buyer's Notice to Terminate within such time, Buyer accepts the provisions of the Association
504 Documents as satisfactory and Buyer waives any Right to Terminate under this provision, notwithstanding the
505 provisions of § 8.6 (Right of First Refusal or Contract Approval).
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510 **8. TITLE INSURANCE, RECORD TITLE AND OFF-RECORD TITLE.**

511 **8.1. Evidence of Record Title.**

512 **8.1.1. Seller Selects Title Insurance Company.** If this box is checked, Seller will select the
513 title insurance company to furnish the owner's title insurance policy at Seller's expense. On or before **Record
514 Title Deadline**, Seller must furnish to Buyer, a current commitment for an owner's title insurance policy (Title
515 Commitment), in an amount equal to the Purchase Price, or if this box is checked, an **Abstract of Title**
516 certified to a current date. Seller will cause the title insurance policy to be issued and delivered to Buyer as
517 soon as practicable at or after Closing.
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519 **8.1.2. Buyer Selects Title Insurance Company.** If this box is checked, Buyer will select the
520 title insurance company to furnish the owner's title insurance policy at Buyer's expense. On or before **Record
521 Title Deadline**, Buyer must furnish to Seller, a current commitment for owner's title insurance policy (Title
522 Commitment), in an amount equal to the Purchase Price.
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524 If neither box in § 8.1.1 or § 8.1.2 is checked, § 8.1.1 applies.

525 **8.1.3. Owner's Extended Coverage (OEC).** The Title Commitment **Will** **Will Not**
526 contain Owner's Extended Coverage (OEC). If the Title Commitment is to contain OEC, it will commit to delete
527 or insure over the standard exceptions which relate to: (1) parties in possession, (2) unrecorded easements,
528 (3) survey matters, (4) unrecorded mechanics' liens, (5) gap period (period between the effective date and time
529 of commitment to the date and time the deed is recorded) and (6) unpaid taxes, assessments and unredeemed
530 tax sales prior to the year of Closing. Any additional premium expense to obtain OEC will be paid by **Buyer**
531 **Seller** **One-Half by Buyer and One-Half by Seller** **Other** .
532

533 Regardless of whether the Contract requires OEC, the Title Insurance Commitment may not provide OEC or
534 delete or insure over any or all of the standard exceptions for OEC. The Title Insurance Company may require
535 a New Survey or New ILC, defined below, among other requirements for OEC. If the Title Insurance
536 Commitment is not satisfactory to Buyer, Buyer has a right to object under § 8.5 (Right to Object to Title,
537 Resolution).
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539 **8.1.4. Title Documents.** Title Documents consist of the following: (1) copies of any plats,
540 declarations, covenants, conditions and restrictions burdening the Property and (2) copies of any other
541 documents (or, if illegible, summaries of such documents) listed in the schedule of exceptions (Exceptions) in
542 the Title Commitment furnished to Buyer (collectively, Title Documents).
543

544 **8.1.5. Copies of Title Documents.** Buyer must receive, on or before **Record Title Deadline**,
545 copies of all Title Documents. This requirement pertains only to documents as shown of record in the office of
546 the clerk and recorder in the county where the Property is located. The cost of furnishing copies of the
547 documents required in this Section will be at the expense of the party or parties obligated to pay for the
548 owner's title insurance policy.
549

550 **8.1.6. Existing Abstracts of Title.** Seller must deliver to Buyer copies of any abstracts of title
551 covering all or any portion of the Property (Abstract of Title) in Seller's possession on or before **Record Title
552 Deadline**.
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554 **8.2. Record Title.** Buyer has the right to review and object to the Abstract of Title or Title
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Seller(s) Initials: *MM*

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561 Commitment and any of the Title Documents as set forth in § 8.5 (Right to Object to Title, Resolution) on or
 562 before **Record Title Objection Deadline**. Buyer's objection may be based on any unsatisfactory form or
 563 content of Title Commitment or Abstract of Title, notwithstanding § 13, or any other unsatisfactory title
 564 condition, in Buyer's sole subjective discretion. If the Abstract of Title, Title Commitment or Title Documents are
 565 not received by Buyer on or before the **Record Title Deadline**, or if there is an endorsement to the Title
 566 Commitment that adds a new Exception to title, a copy of the new Exception to title and the modified Title
 567 Commitment will be delivered to Buyer. Buyer has until the earlier of Closing or ten days after receipt of such
 568 documents by Buyer to review and object to: (1) any required Title Document not timely received by Buyer, (2)
 569 any change to the Abstract of Title, Title Commitment or Title Documents, or (3) any endorsement to the Title
 570 Commitment. If Seller receives Buyer's Notice to Terminate or Notice of Title Objection, pursuant to this § 8.2
 571 (Record Title), any title objection by Buyer is governed by the provisions set forth in § 8.5 (Right to Object to
 572 Title, Resolution). If Seller has fulfilled all Seller's obligations, if any, to deliver to Buyer all documents required
 573 by § 8.1 (Evidence of Record Title) and Seller does not receive Buyer's Notice to Terminate or Notice of Title
 574 Objection by the applicable deadline specified above, Buyer accepts the condition of title as disclosed by the
 575 Abstract of Title, Title Commitment and Title Documents as satisfactory.

580 **8.3. Off-Record Title.** Seller must deliver to Buyer, on or before **Off-Record Title Deadline**, true
 581 copies of all existing surveys in Seller's possession pertaining to the Property and must disclose to Buyer all
 582 easements, liens (including, without limitation, governmental improvements approved, but not yet installed) or
 583 other title matters (including, without limitation, rights of first refusal and options) not shown by public records,
 584 of which Seller has actual knowledge (Off-Record Matters). This Section excludes any **New ILC** or **New**
 585 **Survey** governed under § 9 (New ILC, New Survey). Buyer has the right to inspect the Property to investigate
 586 if any third party has any right in the Property not shown by public records (e.g., unrecorded easement,
 587 boundary line discrepancy or water rights). Buyer's Notice to Terminate or Notice of Title Objection of any
 588 unsatisfactory condition (whether disclosed by Seller or revealed by such inspection, notwithstanding § 8.2
 589 (Record Title) and § 13 (Transfer of Title)), in Buyer's sole subjective discretion, must be received by Seller on
 590 or before **Off-Record Title Objection Deadline**. If an Off-Record Matter is received by Buyer after the
 591 **Off-Record Title Deadline**, Buyer has until the earlier of Closing or ten days after receipt by Buyer to review
 592 and object to such Off-Record Matter. If Seller receives Buyer's Notice to Terminate or Notice of Title Objection
 593 pursuant to this § 8.3 (Off-Record Title), any title objection by Buyer is governed by the provisions set forth in §
 594 8.5 (Right to Object to Title, Resolution). If Seller does not receive Buyer's Notice to Terminate or Notice of Title
 595 Objection by the applicable deadline specified above, Buyer accepts title subject to such Off-Record Matters
 596 and rights, if any, of third parties not shown by public records of which Buyer has actual knowledge.

600 **8.4. Special Taxing Districts. SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL**
 601 **OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES**
 602 **ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS**
 603 **MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND TAX TO SUPPORT THE SERVICING OF**
 604 **SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO**
 605 **DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYERS**
 606 **SHOULD INVESTIGATE THE SPECIAL TAXING DISTRICTS IN WHICH THE PROPERTY IS LOCATED BY**
 607 **CONTACTING THE COUNTY TREASURER, BY REVIEWING THE CERTIFICATE OF TAXES DUE FOR THE**
 608 **PROPERTY AND BY OBTAINING FURTHER INFORMATION FROM THE BOARD OF COUNTY**
 609 **COMMISSIONERS, THE COUNTY CLERK AND RECORDER, OR THE COUNTY ASSESSOR.**

610 A tax certificate from the respective county treasurer listing any special taxing districts that effect the
 611 Property (Tax Certificate) must be delivered to Buyer on or before **Record Title Deadline**. If the Property is
 612 located within a special taxing district and such inclusion is unsatisfactory to Buyer, in Buyer's sole subjective
 613 discretion, Buyer may object, on or before **Record Title Objection Deadline**. If the Tax Certificate shows that
 614 the Property is included in a special taxing district and is received by Buyer after the **Record Title Deadline**,
 615 Buyer has until the earlier of Closing or ten days after receipt by Buyer to review and object to the Property's
 616 inclusion in a special taxing district as unsatisfactory to Buyer.

620 **8.5. Right to Object to Title, Resolution.** Buyer's right to object, in Buyer's sole subjective
 621 discretion, to any title matters includes those matters set forth in § 8.2 (Record Title), § 8.3 (Off-Record Title), §
 622 8.4 (Special Taxing District) and § 13 (Transfer of Title). If Buyer objects to any title matter, on or before the
 623 applicable deadline, Buyer has the following options:
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8.5.1. Title Objection, Resolution. If Seller receives Buyer's written notice objecting to any title matter (Notice of Title Objection) on or before the applicable deadline and if Buyer and Seller have not agreed to a written settlement thereof on or before **Title Resolution Deadline**, this Contract will terminate on the expiration of **Title Resolution Deadline**, unless Seller receives Buyer's written withdrawal of Buyer's Notice of Title Objection (i.e., Buyer's written notice to waive objection to such items and waives the Right to Terminate for that reason), on or before expiration of **Title Resolution Deadline**. If either the Record Title Deadline or the Off-Record Title Deadline, or both, are extended pursuant to § 8.2 (Record Title), § 8.3 (Off-Record Title) or § 8.4 (Special Taxing Districts), the Title Resolution Deadline also will be automatically extended to the earlier of Closing or fifteen days after Buyer's receipt of the applicable documents; or

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

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

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

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

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

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


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

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

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

9. NEW ILC, NEW SURVEY.

9.1. New ILC or New Survey. If the box is checked, a: 1) **New Improvement Location Certificate**

Seller(s) Initials: 



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(New ILC); or, 2) **New Survey** in the form of n/a; is required and the following will apply:

9.1.1. Ordering of New ILC or New Survey. **Seller** **Buyer** will order the New ILC or New Survey. The New ILC or New Survey may also be a previous ILC or survey that is in the above-required form, certified and updated as of a date after the date of this Contract.

9.1.2. Payment for New ILC or New Survey. The cost of the New ILC or New Survey will be paid, on or before Closing, by: **Seller** **Buyer** or: n/a

9.1.3. Delivery of New ILC or New Survey. Buyer, Seller, the issuer of the Title Commitment (or the provider of the opinion of title if an Abstract of Title) and n/a will receive a New ILC or New Survey on or before **New ILC or New Survey Deadline**.

9.1.4. Certification of New ILC or New Survey. The New ILC or New Survey will be certified by the surveyor to all those who are to receive the New ILC or New Survey.

9.2. Buyer's Right to Waive or Change New ILC or New Survey Selection. Buyer may select a New ILC or New Survey different than initially specified in this Contract if there is no additional cost to Seller or change to the **New ILC or New Survey Objection Deadline**. Buyer may, in Buyer's sole subjective discretion, waive a New ILC or New Survey if done prior to Seller incurring any cost for the same.

9.3. New ILC or New Survey Objection. Buyer has the right to review and object to the **New ILC or New Survey**. If the New ILC or New Survey is not timely received by Buyer or is unsatisfactory to Buyer, in Buyer's sole subjective discretion, Buyer may, on or before **New ILC or New Survey Objection Deadline**, notwithstanding § 8.3 or § 13:

9.3.1. Notice to Terminate. Notify Seller in writing, pursuant to § 25.1, that this Contract is terminated; or

9.3.2. New ILC or New Survey Objection. Deliver to Seller a written description of any matter that was to be shown or is shown in the New ILC or New Survey that is unsatisfactory and that Buyer requires Seller to correct.

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

DISCLOSURE, INSPECTION AND DUE DILIGENCE

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

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

10.2. Disclosure of Adverse Material Facts; Subsequent Disclosure; Present Condition. Seller must disclose to Buyer any adverse material facts actually known by Seller as of the date of this Contract. Seller agrees that disclosure of adverse material facts will be in writing. In the event Seller discovers an adverse material fact after the date of this Contract, Seller must timely disclose such adverse fact to Buyer. Buyer has the Right to Terminate based on the Seller's new disclosure on the earlier of Closing or five days after Buyer's receipt of the new disclosure. Except as otherwise provided in this Contract, Buyer acknowledges that Seller is conveying the Property to Buyer in an "As Is" condition, "Where Is" and "With All Faults."

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

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771 (whether on or off the Property) and its effect or expected effect on the Property or its occupants is
772 unsatisfactory, in Buyer's sole subjective discretion, Buyer may:

773 **10.3.1. Inspection Objection.** On or before the **Inspection Objection Deadline**, deliver to
774 Seller a written description of any unsatisfactory condition that Buyer requires Seller to correct; or

775 **10.3.2. Terminate.** On or before the **Inspection Termination Deadline**, notify Seller in writing,
776 pursuant to § 25.1, that this Contract is terminated due to any unsatisfactory condition. **Inspection**
777 **Termination Deadline will be on the earlier of Inspection Resolution Deadline or the date specified in §**
778 **3.1 for Inspection Termination Deadline.**

781 **10.3.3. Inspection Resolution.** If an Inspection Objection is received by Seller, on or before
782 **Inspection Objection Deadline** and if Buyer and Seller have not agreed in writing to a settlement thereof on
783 or before **Inspection Resolution Deadline**, this Contract will terminate on **Inspection Resolution Deadline**
784 unless Seller receives Buyer's written withdrawal of the Inspection Objection before such termination, i.e., on or
785 before expiration of **Inspection Resolution Deadline**.

788 **10.4. Damage, Liens and Indemnity.** Buyer, except as otherwise provided in this Contract or other
789 written agreement between the parties, is responsible for payment for all inspections, tests, surveys,
790 engineering reports, or other reports performed at Buyer's request (Work) and must pay for any damage that
791 occurs to the Property and Inclusions as a result of such Work. Buyer must not permit claims or liens of any
792 kind against the Property for Work performed on the Property. Buyer agrees to indemnify, protect and hold
793 Seller harmless from and against any liability, damage, cost or expense incurred by Seller and caused by any
794 such Work, claim, or lien. This indemnity includes Seller's right to recover all costs and expenses incurred by
795 Seller to defend against any such liability, damage, cost or expense, or to enforce this Section, including
796 Seller's reasonable attorney fees, legal fees and expenses. The provisions of this Section survive the
797 termination of this Contract. This § 10.4 does not apply to items performed pursuant to an Inspection
798 Resolution.

801 **10.5. Insurability.** Buyer has the right to review and object to the availability, terms and conditions of
802 and premium for property insurance (Property Insurance). Buyer has the Right to Terminate under § 25.1, on or
803 before **Property Insurance Termination Deadline**, based on any unsatisfactory provision of the Property
804 Insurance, in Buyer's sole subjective discretion.

807 **10.6. Due Diligence.**

809 **10.6.1. Due Diligence Documents.** If the respective box is checked, Seller agrees to deliver
810 copies of the following documents and information pertaining to the Property (Due Diligence Documents) to
811 Buyer on or before **Due Diligence Documents Delivery Deadline**:

812 **10.6.1.1.** All contracts relating to the operation, maintenance and management of the
813 Property;

814 **10.6.1.2.** Property tax bills for the last 3 years;

815 **10.6.1.3.** As-built construction plans to the Property and the tenant improvements,
816 including architectural, electrical, mechanical, and structural systems, engineering reports, and permanent
817 Certificates of Occupancy, to the extent now available;

818 **10.6.1.4.** A list of all Inclusions to be conveyed to Buyer;

819 **10.6.1.5.** Operating statements for the past 3 years;

820 **10.6.1.6.** A rent roll accurate and correct to the date of this Contract;

821 **10.6.1.7.** All current leases, including any amendments or other occupancy
822 agreements, pertaining to the Property. Those leases or other occupancy agreements pertaining to the
823 Property that survive Closing are as follows (Leases): ***Those in place at time of Closing***

824 **10.6.1.8.** A schedule of any tenant improvement work Seller is obligated to complete
825 but has not yet been completed and capital improvement work either scheduled or in process on the date of
826 this Contract;

827 **10.6.1.9.** All insurance policies pertaining to the Property and copies of any claims
828 which have been made for the past 3 years;

829 **10.6.1.10.** Soils reports, surveys and engineering reports or data pertaining to the
830 Property (if not delivered earlier under § 8.3);

831 **10.6.1.11.** Any and all existing documentation and reports regarding Phase I and II
832 environmental reports, letters, test results, advisories and similar documents respective to the existence or
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841 nonexistence of asbestos, PCB transformers, or other toxic, hazardous or contaminated substances, and/or
 842 underground storage tanks and/or radon gas. If no reports are in Seller's possession or known to Seller, Seller
 843 warrants that no such reports are in Seller's possession or known to Seller;
 844 **10.6.1.12.** Any *Americans with Disabilities Act* reports, studies or surveys concerning
 845 the compliance of the Property with said Act;
 846 **10.6.1.13.** All permits, licenses and other building or use authorizations issued by any
 847 governmental authority with jurisdiction over the Property and written notice of any violation of any such
 848 permits, licenses or use authorizations, if any; and
 849 **10.6.1.14.** Other documents and information:
 850 any other customary or reasonable request by Buyer
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855 **10.6.2. Due Diligence Documents Review and Objection.** Buyer has the right to review and
 856 object to Due Diligence Documents. If the Due Diligence Documents are not supplied to Buyer or are
 857 unsatisfactory, in Buyer's sole subjective discretion, Buyer may, on or before **Due Diligence Documents**
 858 **Objection Deadline:**
 859

860 **10.6.2.1. Notice to Terminate.** Notify Seller in writing, pursuant to § 25.1, that this
 861 Contract is terminated; or
 862

863 **10.6.2.2. Due Diligence Documents Objection.** Deliver to Seller a written description
 864 of any unsatisfactory Due Diligence Documents that Buyer requires Seller to correct.
 865

866 **10.6.2.3. Due Diligence Documents Resolution.** If a Due Diligence Documents
 867 Objection is received by Seller, on or before **Due Diligence Documents Objection Deadline** and if Buyer and
 868 Seller have not agreed in writing to a settlement thereof on or before **Due Diligence Documents Resolution**
 869 **Deadline**, this Contract will terminate on **Due Diligence Documents Resolution Deadline** unless Seller
 870 receives Buyer's written withdrawal of the Due Diligence Documents Objection before such termination, i.e., on
 871 or before expiration of **Due Diligence Documents Resolution Deadline**.
 872

873 **10.6.3. Zoning.** Buyer has the Right to Terminate under § 25.1, on or before **Due Diligence**
 874 **Documents Objection Deadline**, based on any unsatisfactory zoning and any use restrictions imposed by any
 875 governmental agency with jurisdiction over the Property, in Buyer's sole subjective discretion.
 876

877 **10.6.4. Due Diligence – Environmental, ADA.** Buyer has the right to obtain environmental
 878 inspections of the Property including Phase I and Phase II Environmental Site Assessments, as applicable.
 879 **Seller** **Buyer** will order or provide **Phase I Environmental Site Assessment**, **Phase II**
 880 **Environmental Site Assessment** (compliant with most current version of the applicable ASTM E1527
 881 standard practices for Environmental Site Assessments) and/or , at the expense of **Seller** **Buyer**
 882 (Environmental Inspection). In addition, Buyer, at Buyer's expense, may also conduct an evaluation whether
 883 the Property complies with the *Americans with Disabilities Act* (ADA Evaluation). All such inspections and
 884 evaluations must be conducted at such times as are mutually agreeable to minimize the interruption of Seller's
 885 and any Seller's tenants' business uses of the Property, if any.
 886

887 If Buyer's Phase I Environmental Site Assessment recommends a Phase II Environmental Site
 888 Assessment, the **Environmental Inspection Termination Deadline** will be extended by days (Extended
 889 Environmental Inspection Objection Deadline) and if such Extended Environmental Inspection Objection
 890 Deadline extends beyond the **Closing Date**, the **Closing Date** will be extended a like period of time. In such
 891 event, **Seller** **Buyer** must pay the cost for such Phase II Environmental Site Assessment.
 892

893 Notwithstanding Buyer's right to obtain additional environmental inspections of the Property in this §
 894 10.6.4, Buyer has the Right to Terminate under § 25.1, on or before **Environmental Inspection Termination**
 895 **Deadline**, or if applicable, the Extended Environmental Inspection Objection Deadline, based on any
 896 unsatisfactory results of Environmental Inspection, in Buyer's sole subjective discretion.
 897

898 Buyer has the Right to Terminate under § 25.1, on or before **ADA Evaluation Termination Deadline**,
 899 based on any unsatisfactory ADA Evaluation, in Buyer's sole subjective discretion.
 900

901 **10.7. Conditional Upon Sale of Property.** This Contract is conditional upon the sale and closing of
 902 that certain property owned by Buyer and commonly known as *n/a*. Buyer has the Right to Terminate under §
 903 25.1 effective upon Seller's receipt of Buyer's Notice to Terminate on or before **Conditional Sale Deadline** if
 904 such property is not sold and closed by such deadline. This Section is for the sole benefit of Buyer. If Seller
 905 does not receive Buyer's Notice to Terminate on or before **Conditional Sale Deadline**, Buyer waives any Right
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911 to Terminate under this provision.

912 **10.8. Source of Potable Water (Residential Land and Residential Improvements Only).**

913 **[Intentionally Deleted]**

914 **10.9. Existing Leases; Modification of Existing Leases; New Leases.** Seller states that none of
915 the Leases to be assigned to the Buyer at the time of Closing contain any rent concessions, rent reductions or
916 rent abatements except as disclosed in the Lease or other writing received by Buyer. Seller will not amend,
917 alter, modify, extend or cancel any of the Leases nor will Seller enter into any new leases affecting the Property
918 without the prior written consent of Buyer, which consent will not be unreasonably withheld or delayed.
919

920 ~~**11.1. Estoppel Statements Conditions.** Buyer has the right to review and object to any Estoppel
921 Statements. Seller must request from all tenants of the Property and if received by Seller, deliver to Buyer on
922 or before Estoppel Statements Deadline, statements in a form and substance reasonably acceptable to
923 Buyer, from each occupant or tenant at the Property (Estoppel Statement) attached to a copy of the Lease
924 stating:~~

- 925 ~~11.1.1. The commencement date of the Lease and scheduled termination date of the Lease;~~
- 926 ~~11.1.2. That said Lease is in full force and effect and that there have been no subsequent~~
- 927 ~~modifications or amendments;~~
- 928 ~~11.1.3. The amount of any advance rentals paid, rent concessions given, and deposits paid to~~
- 929 ~~Seller;~~
- 930 ~~11.1.4. The amount of monthly (or other applicable period) rental paid to Seller;~~
- 931 ~~11.1.5. That there is no default under the terms of said Lease by landlord or occupant; and~~
- 932 ~~11.1.6. That the Lease to which the Estoppel Statement is attached is a true, correct and~~
- 933 ~~complete copy of the Lease demising the premises it describes.~~

934 ~~**11.2. Seller Estoppel Statements.** In the event Seller does not receive from all tenants of the
935 Property a completed signed Estoppel Statement, Seller agrees to complete and execute an Estoppel
936 Statement setting forth the information and documents required §11.1 above and deliver the same to Buyer on
937 or before Estoppel Statements Deadline.~~

938 ~~**11.3. Estoppel Statements Termination.** Buyer has the Right to Terminate under § 25.1, on or
939 before Estoppel Statements Termination Deadline, based on any unsatisfactory Estoppel Statement, in
940 Buyer's sole subjective discretion, or if Seller fails to deliver the Estoppel Statements on or before Estoppel
941 Statements Deadline. Buyer also has the unilateral right to waive any unsatisfactory Estoppel Statement.~~

942 **CLOSING PROVISIONS**

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

944 **12.1. Closing Documents and Closing Information.** Seller and Buyer will cooperate with the Closing
945 Company to enable the Closing Company to prepare and deliver documents required for Closing to Buyer and
946 Seller and their designees. If Buyer is obtaining a loan to purchase the Property, Buyer acknowledges Buyer's
947 lender is required to provide the Closing Company, in a timely manner, all required loan documents and
948 financial information concerning Buyer's loan. Buyer and Seller will furnish any additional information and
949 documents required by Closing Company that will be necessary to complete this transaction. Buyer and Seller
950 will sign and complete all customary or reasonably-required documents at or before Closing.

951 **12.2. Closing Instructions.** Colorado Real Estate Commission's Closing Instructions Are Are
952 Not executed with this Contract.

953 **12.3. Closing.** Delivery of deed from Seller to Buyer will be at closing (Closing). Closing will be on the
954 date specified as the Closing Date or by mutual agreement at an earlier date. The hour and place of Closing
955 will be as designated by mutual agreement.

956 **12.4. Disclosure of Settlement Costs.** Buyer and Seller acknowledge that costs, quality and extent of
957 service vary between different settlement service providers (e.g., attorneys, lenders, inspectors and title
958 companies).

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13. TRANSFER OF TITLE. Subject to Buyer's compliance with the terms and provisions of this Contract, including the tender of any payment due at Closing, Seller, provided another deed is not selected, must execute and deliver a good and sufficient special warranty deed to Buyer, at Closing. However, if the box is checked, the parties agree to use the corresponding deed instead:

general warranty deed bargain and sale deed quit claim deed personal representative's deed
 deed.

13.1. Special Warranty Deed and General Warranty Deed Exceptions. If title will be conveyed using a special warranty deed or a general warranty deed, title will be conveyed subject to:

- 13.1.1.** General taxes for the year of Closing,
- 13.1.2.** Distribution utility easements (including cable TV),
- 13.1.3.** Those specifically described rights of third parties not shown by the public records of which Buyer has actual knowledge and which were accepted by Buyer in accordance with with § 8.3 (Off-Record Title) and § 9 (New ILC or New Survey),
- 13.1.4.** Inclusion of the Property within any special taxing district,
- 13.1.5.** Any special assessment if the improvements were not installed as of the date of Buyer's signature hereon, whether assessed prior to or after Closing and
- 13.1.6.** Other n/a.

13.2. Special Warranty Deed. In addition to the requirements of § 13.1, if title will be conveyed by a special warranty deed, Seller will warrant title against all persons claiming by, through or under Seller subject to those specific recorded exceptions, if any, created during Seller's ownership of the Property and described by reference to recorded documents shown as Exceptions in the Title Documents that are accepted by Buyer in accordance with § 8.2 (Record Title) and described in the deed by reference to the specific recording information for each recorded document.

13.3. General Warranty Deed. In addition to the requirements of § 13.1, if title will be conveyed by a general warranty deed, Seller will warrant the title subject to those specific recorded exceptions described by reference to recorded documents shown as Exceptions in the Title Documents that are accepted by Buyer in accordance with § 8.2 (Record Title) and described in the deed by reference to the specific recording information for each recorded document.

14. PAYMENT OF LIENS AND ENCUMBRANCES. Unless agreed to by Buyer in writing, any amounts owed on any liens or encumbrances securing a monetary sum, including, but not limited to, any governmental liens for special improvements installed as of the date of Buyer's signature hereon, whether assessed or not and previous years' taxes, will be paid at or before Closing by Seller from the proceeds of this transaction or from any other source.

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

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

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

15.3. Status Letter and Record Change Fees. At least fourteen days prior to Closing Date, Seller agrees to promptly request the Association to deliver to Buyer a current Status Letter. Any fees incident to the issuance of Association's Status Letter must be paid by None Buyer Seller One-Half by Buyer and One-Half by Seller. Any Record Change Fee must be paid by None Buyer Seller
 One-Half by Buyer and One-Half by Seller .

15.4. Local Transfer Tax. The Local Transfer Tax of % of the Purchase Price must be paid at Closing by None Buyer Seller One-Half by Buyer and One-Half by Seller.

15.5. Private Transfer Fee. Private transfer fees and other fees due to a transfer of the Property, payable at Closing, such as community association fees, developer fees and foundation fees, must be paid at Closing by None Buyer Seller One-Half by Buyer and One-Half by Seller. The Private Transfer fee, whether one or more, is for the following association(s): in the total amount of % of the Purchase Price or

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15.6. Water Transfer Fees. The Water Transfer Fees can change. The fees, as of the date of this Contract, do not exceed \$ for:

- Water Stock/Certificates Water District
- Augmentation Membership Small Domestic Water Company and must be paid at Closing by None Buyer Seller One-Half by Buyer and One-Half by Seller

15.7. Sales and Use Tax. Any sales and use tax that may accrue because of this transaction must be paid when due by None Buyer Seller One-Half by Buyer and One-Half by Seller.

15.8. FIRPTA and Colorado Withholding.

15.8.1. FIRPTA. The Internal Revenue Service (IRS) may require a substantial portion of the Seller's proceeds be withheld after Closing when Seller is a foreign person. If required withholding does not occur, the Buyer could be held liable for the amount of the Seller's tax, interest and penalties. If the box in this Section is checked, Seller represents that Seller IS a foreign person for purposes of U.S. income taxation. If the box in this Section is not checked, Seller represents that Seller is not a foreign person for purposes of U.S. income taxation. Seller agrees to cooperate with Buyer and Closing Company to provide any reasonably requested documents to verify Seller's foreign person status. If withholding is required, Seller authorizes Closing Company to withhold such amount from Seller's proceeds. Seller should inquire with Seller's tax advisor to determine if withholding applies or if an exemption exists.

15.8.2. Colorado Withholding. The Colorado Department of Revenue may require a portion of the Seller's proceeds be withheld after Closing when Seller will not be a Colorado resident after Closing, if not otherwise exempt. Seller agrees to cooperate with Buyer and Closing Company to provide any reasonably requested documents to verify Seller's status. If withholding is required, Seller authorizes Closing Company to withhold such amount from Seller's proceeds. Seller should inquire with Seller's tax advisor to determine if withholding applies or if an exemption exists.

16. PRORATIONS AND ASSOCIATION ASSESSMENT. The following will be prorated to the Closing Date, except as otherwise provided:

16.1. Taxes. Personal property taxes, if any, special taxing district assessments, if any and general real estate taxes for the year of Closing, based on Taxes for the Calendar Year Immediately Preceding Closing Most Recent Mill Levy and Most Recent Assessed Valuation, adjusted by any applicable qualifying seniors property tax exemption, qualifying disabled veteran exemption or Other .

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

~~**16.3. Association Assessments.** Current regular Association assessments and dues (Association Assessments) paid in advance will be credited to Seller at Closing. Cash reserves held out of the regular Association Assessments for deferred maintenance by the Association will not be credited to Seller except as may be otherwise provided by the Governing Documents. Buyer acknowledges that Buyer may be obligated to pay the Association, at Closing, an amount for reserves or working capital. Any special assessment assessed prior to Closing Date by the Association will be the obligation of Buyer Seller. Except however, any special assessment by the Association for improvements that have been installed as of the date of Buyer's signature hereon, whether assessed prior to or after Closing, will be the obligation of Seller. Seller represents there are no unpaid regular or special assessments against the Property except the current regular assessments and *n/a*. Association Assessments are subject to change as provided in the Governing Documents.~~

16.4. Other Prorations. Water and sewer charges, propane, interest on continuing loan and *n/a*.

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

17. POSSESSION. Possession of the Property will be delivered to Buyer on Possession Date at Possession Time, subject to the Leases as set forth in § 10.6.1.7.

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If Seller, after Closing, fails to deliver possession as specified, Seller will be subject to eviction and will be additionally liable to Buyer for payment of \$ 200 per day (or any part of a day notwithstanding § 18.1) from Possession Date and Possession Time until possession is delivered.

GENERAL PROVISIONS

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

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

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

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

19.1. Causes of Loss, Insurance. In the event the Property or Inclusions are damaged by fire, other perils or causes of loss prior to Closing (Property Damage) in an amount of not more than ten percent of the total Purchase Price and if the repair of the damage will be paid by insurance (other than the deductible to be paid by Seller), then Seller, upon receipt of the insurance proceeds, will use Seller's reasonable efforts to repair the Property before **Closing Date**. Buyer has the Right to Terminate under § 25.1, on or before **Closing Date**, if the Property is not repaired before **Closing Date**, or if the damage exceeds such sum. Should Buyer elect to carry out this Contract despite such Property Damage, Buyer is entitled to a credit at Closing for all insurance proceeds that were received by Seller (but not the Association, if any) resulting from damage to the Property and Inclusions, plus the amount of any deductible provided for in the insurance policy. This credit may not exceed the Purchase Price. In the event Seller has not received the insurance proceeds prior to Closing, the parties may agree to extend the **Closing Date** to have the Property repaired prior to Closing or, at the option of Buyer, (1) Seller must assign to Buyer the right to the proceeds at Closing, if acceptable to Seller's insurance company and Buyer's lender; or (2) the parties may enter into a written agreement prepared by the parties or their attorney requiring the Seller to escrow at Closing from Seller's sale proceeds the amount Seller has received and will receive due to such damage, not exceeding the total Purchase Price, plus the amount of any deductible that applies to the insurance claim.

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

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

Seller(s) Initials: *MM*

DC

1191 Purchase Price.

1192 **19.4. Walk-Through and Verification of Condition.** Buyer, upon reasonable notice, has the right to
1193 walk through the Property prior to Closing to verify that the physical condition of the Property and Inclusions
1194 complies with this Contract.
1195
1196

1197 **20. RECOMMENDATION OF LEGAL AND TAX COUNSEL.** By signing this Contract, Buyer and Seller
1198 acknowledge that the respective broker has advised that this Contract has important legal consequences and
1199 has recommended the examination of title and consultation with legal and tax or other counsel before signing
1200 this Contract.
1201
1202

1203 **21. TIME OF ESSENCE, DEFAULT AND REMEDIES.** Time is of the essence for all dates and deadlines
1204 in this Contract. This means that all dates and deadlines are strict and absolute. If any payment due, including
1205 Earnest Money, is not paid, honored or tendered when due, or if any obligation is not performed timely as
1206 provided in this Contract or waived, the non-defaulting party has the following remedies:
1207
1208

1209 **21.1. If Buyer is in Default:**

1210 **21.1.1. Specific Performance.** Seller may elect to cancel this Contract and all Earnest
1211 Money (whether or not paid by Buyer) will be paid to Seller and retained by Seller. It is agreed that the Earnest
1212 Money is not a penalty and the Parties agree the amount is fair and reasonable. Seller may recover such
1213 additional damages as may be proper. Alternatively, Seller may elect to treat this Contract as being in full force
1214 and effect and Seller has the right to specific performance or damages, or both.
1215
1216

1217 **21.1.2. Liquidated Damages, Applicable. This § 21.1.2 applies unless the box in § 21.1.1.**
1218 **is checked.** Seller may cancel this Contract. All Earnest Money (whether or not paid by Buyer) will be paid to
1219 Seller and retained by Seller. It is agreed that the Earnest Money specified in § 4.1 is LIQUIDATED DAMAGES
1220 and not a penalty, which amount the parties agree is fair and reasonable and (except as provided in §§ 10.4,
1221 22, 23 and 24), said payment of Earnest Money is SELLER'S ONLY REMEDY for Buyer's failure to perform
1222 the obligations of this Contract. Seller expressly waives the remedies of specific performance and additional
1223 damages.
1224
1225

1226 **21.2. If Seller is in Default:** Buyer may elect to treat this Contract as canceled, in which case all
1227 Earnest Money received hereunder will be returned to Buyer and Buyer may recover such damages as may be
1228 proper. Alternatively, Buyer may elect to treat this Contract as being in full force and effect and Buyer has the
1229 right to specific performance or damages, or both.
1230
1231

1232 **22. LEGAL FEES, COST AND EXPENSES.** Anything to the contrary herein notwithstanding, in the event
1233 of any arbitration or litigation relating to this Contract, prior to or after **Closing Date**, the arbitrator or court must
1234 award to the prevailing party all reasonable costs and expenses, including attorney fees, legal fees and
1235 expenses.
1236
1237

1238 **23. MEDIATION.** If a dispute arises relating to this Contract (whether prior to or after Closing) and is not
1239 resolved, the parties must first proceed, in good faith, to mediation. Mediation is a process in which the parties
1240 meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot
1241 impose binding decisions. Before any mediated settlement is binding, the parties to the dispute must agree to
1242 the settlement, in writing. The parties will jointly appoint an acceptable mediator and will share equally in the
1243 cost of such mediation. The obligation to mediate, unless otherwise agreed, will terminate if the entire dispute
1244 is not resolved within thirty days of the date written notice requesting mediation is delivered by one party to the
1245 other at that party's last known address (physical or electronic as provided in § 27). Nothing in this Section
1246 prohibits either party from filing a lawsuit and recording a *lis pendens* affecting the Property, before or after the
1247 date of written notice requesting mediation. This Section will not alter any date in this Contract, unless
1248 otherwise agreed.
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24. EARNEST MONEY DISPUTE. Except as otherwise provided herein, Earnest Money Holder must
release the Earnest Money following receipt of written mutual instructions, signed by both Buyer and Seller. In
the event of any controversy regarding the Earnest Money, Earnest Money Holder is not required to release the
Earnest Money. Earnest Money Holder, in its sole subjective discretion, has several options: (1) wait for any

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DC

proceeding between Buyer and Seller; (2) interplead all parties and deposit Earnest Money into a court of competent jurisdiction (Earnest Money Holder is entitled to recover court costs and reasonable attorney and legal fees incurred with such action); or (3) provide notice to Buyer and Seller that unless Earnest Money Holder receives a copy of the Summons and Complaint or Claim (between Buyer and Seller) containing the case number of the lawsuit (Lawsuit) within one hundred twenty days of Earnest Money Holder's notice to the parties, Earnest Money Holder is authorized to return the Earnest Money to Buyer. In the event Earnest Money Holder does receive a copy of the Lawsuit and has not interpled the monies at the time of any Order, Earnest Money Holder must disburse the Earnest Money pursuant to the Order of the Court. The parties reaffirm the obligation of § 23 (Mediation). This Section will survive cancellation or termination of this Contract.

25. TERMINATION.

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

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

26. ENTIRE AGREEMENT, MODIFICATION, SURVIVAL; SUCCESSORS. This Contract, its exhibits and specified addenda, constitute the entire agreement between the parties relating to the subject hereof and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Contract. No subsequent modification of any of the terms of this Contract is valid, binding upon the parties, or enforceable unless made in writing and signed by the parties. Any right or obligation in this Contract that, by its terms, exists or is intended to be performed after termination or Closing survives the same. Any successor to a party receives the predecessor's benefits and obligations of this Contract.

27. NOTICE, DELIVERY AND CHOICE OF LAW.


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

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

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

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

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

Seller(s) Initials: 



together are deemed to be a full and complete contract between the parties.

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

ADDITIONAL PROVISIONS AND ATTACHMENTS

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

1. Contract shall be assignable by Buyer to an entity controlled by Buyer without Seller's permission. If Buyer assigns contract to any other entity, Seller's written permission shall be required.

2. Section 10.6.1. shall include the language "if in Seller's possession."

3. In the event that the closing date takes place on the 1st through the 5th of the calendar month the rent pro-rations shall be based off of rents received. in the event the closing date takes place on the 6th through the 31st rents shall be based off of rents accrued.

4. The Contract is subject to Bankruptcy Court approval and any offer related to the Property is subject to bankruptcy court approval, and potential buyers will be informed of such requirement.

5. This offer is subject to Bankruptcy Court approval.

6. Buyer shall deliver Earnest Money to Fidelity Title two (2) business days after Bankruptcy approval.

7. Contract is contingent on Operating Agreement agreed upon and fully executed by both Buyer & Seller at least 3 days prior to scheduled closing.

31. **ATTACHMENTS.**

31.1. The following documents are a part of this Contract:

1. Addendum A

31.2. The following documents have been provided but are attached but are not a part of this Contract:

n/a

SIGNATURES

Don Chelemedos

Date: 3/14/2019

Buyer: **Don Chelemedos**

By: **Don Chelemedos**

[NOTE: If this offer is being countered or rejected, do not sign this document.]

Mark Mathis

Date: 3/13/2019

Seller: **Confluence Energy, LLC**

By: **Mark Mathis**

Seller(s) Initials: *MM*

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END OF CONTRACT TO BUY AND SELL REAL ESTATE

32. BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.

(To be completed by Broker working with Buyer)

Broker Does **Does Not** acknowledge receipt of Earnest Money deposit. Broker agrees that if Brokerage Firm is the Earnest Money Holder and, except as provided in § 24, if the Earnest Money has not already been returned following receipt of a Notice to Terminate or other written notice of termination, Earnest Money Holder will release the Earnest Money as directed by the written mutual instructions. Such release of Earnest Money will be made within five days of Earnest Money Holder's receipt of the executed written mutual instructions, provided the Earnest Money check has cleared.

Although Broker is not a party to the Contract, Broker agrees to cooperate, upon request, with any mediation requested under § 23.

Broker is working with Buyer as a **Buyer's Agent** **Transaction-Broker** in this transaction. This is a **Change of Status**

Customer. Broker has no brokerage relationship with Buyer. See § 33 for Broker's brokerage relationship with Seller.

Brokerage Firm's compensation or commission is to be paid by **Listing Brokerage** **Buyer** **Other** .

Brokerage Firm's Name: **Pinnacle Real Estate Advisors**

Brokerage Firm's License #: **EC.100006179**

Newell Team

Barton Thompson

Date: 3/14/2019

Broker's Name: **Barton Thompson**

Broker's License #: **FA100068935**

Address: **One Broadway Denver, CO 80203**

Ph: **3039629555** Fax: Email Address: **bthompson@pinnaclearea.com**

33. BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.

(To be completed by Broker working with Seller)

Broker Does **Does Not** acknowledge receipt of Earnest Money deposit. Broker agrees that if Brokerage Firm is the Earnest Money Holder and, except as provided in § 24, if the Earnest Money has not already been returned following receipt of a Notice to Terminate or other written notice of termination, Earnest Money Holder will release the Earnest Money as directed by the written mutual instructions. Such release of Earnest Money will be made within five days of Earnest Money Holder's receipt of the executed written mutual instructions, provided the Earnest Money check has cleared.

Although Broker is not a party to the Contract, Broker agrees to cooperate, upon request, with any mediation requested under § 23.

Seller(s) Initials: *MM*

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

Customer. Broker has no brokerage relationship with Seller. See § 32 for Broker's brokerage relationship with Buyer.

Brokerage Firm's compensation or commission is to be paid by Seller Buyer Other .

Brokerage Firm's Name: **Pinnacle Real Estate Advisors**

Brokerage Firm's License #: **EC.100006179**

Barton Thompson

Date: 3/14/2019

Broker's Name: **Barton Thompson**

Broker's License #: **303**

Address: **One Broadway Denver, CO 80203**

Ph: 3039629555 Fax: Email Address: bthompson@pinnaclearea.com

CBS3-6-18. CONTRACT TO BUY AND SELL REAL ESTATE (COMMERCIAL)

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MM

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