

George Hofmann (10005)  
Steven C. Strong (6340)  
Jeffrey L. Trousdale (14814)  
**Cohne Kinghorn, P.C.**  
111 East Broadway, 11th Floor  
Salt Lake City, UT 84111  
Telephone: (801) 363-4300

Attorneys for III Exploration II LP

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**IN THE UNITED STATES BANKRUPTCY COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

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In re

III EXPLORATION II LP,

Debtor.

Bankruptcy No. 16-26471 (RKM)

Chapter 11

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**MOTION FOR ORDER APPROVING SALE OF DEBTOR'S CITY RANCH PROPERTY**

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Pursuant to Bankruptcy Code §§ 105, 363 and 365 and Federal Rules of Bankruptcy Procedure 2002, 6004 and 6006, III Exploration II LP, debtor and debtor-in-possession in the above-captioned case (the "Debtor"), through its undersigned counsel, hereby moves for the entry of an order (the "Sale Order") approving the sale (the "Sale") of the Debtor's City Ranch Property, located in Walsenburg, Colorado (the "City Ranch Property") to Paul Kimmel ("Buyer"). In support of this motion (the "Motion"), the Debtor respectfully represents as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334.

2. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
3. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

#### **BACKGROUND REGARDING DEBTOR AND ITS OPERATIONS**

4. As of the Petition Date (defined below), the Debtor essentially was a real property holding company, holding a variety of working interests in approximately 900 oil and gas leases in Utah, Colorado and North Dakota (the "Property") and generating the majority of its revenue through sales of crude oil and natural gas extracted from the Property by operators.

5. Prior to the Petition Date, the Debtor obtained financing from certain lenders (the "First Lien Lenders") pursuant to a senior secured credit facility evidenced by that certain Credit Agreement dated February 19, 2013 among the Debtor, as borrower, Wilmington Trust, National Association ("First Lien Agent"), as successor administrative agent to KeyBank National Association, and the First Lien Lenders (as amended, the "First Lien Facility"). The Debtor also obtained a second priority secured financing from KeyBank National Association, acting as administrative agent ("Second Lien Agent") for certain lenders (the "Second Lien Lenders"). The obligations owing to the First Lien Lenders and Second Lien Lenders are secured by a pledge of substantially all of the assets of the Debtor, including the City Ranch Property.

#### **GENERAL BACKGROUND RELATED TO SALE**

6. On July 26, 2016 (the "Petition Date"), the Debtor filed for voluntary relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

7. The Debtor is in the process of selling substantially all of its assets.

8. The City Ranch Property is a small parcel of land located in the County of Huerfano, Colorado, and is more specifically described as:

City Ranch Properties III track 83, per tax schedule # 398528, also known as Lot 83 City Ranch Properties, Walsenburg, CO 81089, 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.

9. Prior to the Petition Date, the Debtor employed Fuller Real Estate, LLC (“Fuller”) as its realtor with respect to the City Ranch Property.

10. Fuller marketed the City Ranch Property using its customary marketing practices, including listing it publicly on applicable real estate websites and publications.

11. Roughly contemporaneous with the filing of this Motion, the Debtor has also filed its Motion to Approve Fuller as Realtor for the Debtor (the “Employment Motion”), solely with respect to Fuller’s efforts to sell the City Ranch Property.

12. On February 28, 2017, the Debtor entered into a Contract to Buy and Sell Real Estate (together with subsequent amendments thereto, the “Sale Agreement”), whereby the Debtor has agreed to sell the City Ranch Property to Buyer for \$30,000.00 (the “Purchase Price”). The Sale Agreement is attached hereto as Exhibit 1.

13. Fuller will be paid a 10% commission under the Sale Agreement, subject to Court approval.

### **BASIS FOR RELIEF**

**A. The Sale Satisfies the Requirements of Bankruptcy Code § 363(b) for a Sale Other than in the Ordinary Course of the Debtor’s Business.**

14. Bankruptcy Code § 363 provides that the Debtor, “after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property

of the estate.” Bankruptcy Code § 363(b). To approve the use, sale or lease of property outside of the ordinary course of business, the Debtor must show four requirements: “(1) that a sound business reason exists for the sale; (2) there has been adequate and reasonable notice to interested parties, including full disclosure of the sale terms and the Debtor’s relationship with the buyer; (3) that the sale price is fair and reasonable; and (4) that the proposed buyer is proceeding in good faith.” In re Medical Software Solutions, 286 B.R. 431 (Bankr. D. Utah 2002); accord Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983) (identifying the “sound business purpose” test); In re Abbotts Dairies of Penn., Inc., 788 F.2d 143, 145-47 (3d Cir. 1986) (implicitly adopting the articulated business justification test of Lionel, and adding the “good faith” requirement).

15. In general, bankruptcy courts often defer to a debtor’s business judgment regarding the sale of estate assets, unless such decision is arbitrary and capricious. See In re Curlew Valley Assocs., 14 B.R. 506, 511-13 (Bankr. D. Utah 1981). Courts generally will not second-guess a debtor’s business decisions when those decisions involve “a business judgment made in good faith, upon a reasonable basis, and within the scope of his authority under the Code.” Id. at 513-14 (footnotes omitted).

16. The Debtor has sound business reasons for the proposed sale of the City Ranch Property to Buyer. The Debtor has marketed the City Ranch Property since well before the Petition Date, and Buyer is the first party to express interest in purchasing the City Ranch Property. The Debtor believes it is highly unlikely that it will receive any higher or better offers to purchase the City Ranch Property.

17. There will be adequate and reasonable notice to interested parties. The Debtor is serving the Motion to the mailing matrix in this case, which includes but is not limited to (a) non-debtor parties to relevant contracts or leases (executory or otherwise), (b) creditors and other parties, and (c) all known persons asserting a lien, claim, encumbrance or other interest in any of the Property. Therefore, adequate notice is being given to parties in interest of the proposed Sale, and they will have sufficient time to submit objections to the Motion. More importantly, Fuller conducted a robust marketing and sale process on behalf of the Debtor. Therefore, adequate notice was given or will be given to parties in interest of the Sale, and they have sufficient time to submit objections to the Sale.

18. The Purchase Price is fair and reasonable. As further described in the preceding paragraphs, the Debtor used its best efforts to publicize the sale of the City Ranch Property, including using the services of Fuller. No parties other than Buyer have expressed an interest in the City Ranch Property. Accordingly, the Purchase Price appears to be the highest and best offer that the Debtor will receive for the City Ranch Property. Moreover, the proposed sale is subject to higher and better offers, which must be received no later than 5 days prior to the hearing to be held on the Motion.

19. The proposed buyer is proceeding in good faith. The Debtor identified Buyer through the marketing process conducted by Fuller. Buyer has no apparent connection to the Debtor or any other party-in-interest in this Bankruptcy Case. Based upon the foregoing, the Debtor believes that Crescent Point is proceeding in good faith, and the Debtor has not received or is aware of any information to the contrary.

**B. The Sale Satisfies the Requirements of Bankruptcy Code § 363(f) for a Sale Free and Clear of Liens, Claims, Encumbrances and Interests**

20. Pursuant to Bankruptcy Code § 363(f), the Debtor may sell property free and clear of any lien, claim, or interest in such property, if, among other things:

- (1) applicable nonbankruptcy law permits 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 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.

21. Because Bankruptcy Code § 363(f) is drafted in the disjunctive, satisfaction of any one of the five requirements will be sufficient to permit the sale of the City Ranch Property free and clear of liens, claims, encumbrances, pledges, mortgages, security interests, charges, options, and other interests (collectively, the "Interests").

22. The Debtor is not currently aware of any Interests in the City Ranch Property other than the liens of the First Lien Lenders and Second Lien Lenders. The First Lien Lenders and Second Lien Lenders consent to the Sale. Therefore, the City Ranch Property may be sold free and clear of any Interests asserted by the First Lien Lenders and Second Lien Lenders pursuant to Bankruptcy Code § 363(f)(2). Although, the Debtor is not aware of other parties claiming any Interest in the City Ranch Property, entities that do not object to the Sale are deemed to have consented. In re C.W. Mining Co., No. 08-20105, 2010 WL 3123140, at \*6 (Bankr. D. Utah Aug. 6, 2010); In re Korea

Tech. Indus. Am., Inc., No. 11-32259, 2011 WL 6004120, at \*4 (Bankr. D. Utah Nov. 15, 2011).

23. Because the Debtor is not currently aware of any Interests in the City Ranch Property other than the liens of the First Lien Lenders and Second Lien Lenders, the Debtor requests authority to distribute proceeds of the Sale at the closing to the First Lien Lenders, after the payment of expenses and costs of the Sale, including Fuller's commission.

24. The Debtor reserves the right to assert the Sale may proceed under other subsections of Bankruptcy Code § 363(f) to extent any parties in interest object to the Sale and this Motion.

**C. Cause Exists to Make the Order Approving this Motion Effective Immediately**

25. Pursuant to Fed. R. Bankr. P. 6004(h), an order authorizing the sale of property of the estate is stayed until 14 days after the entry of the order, unless the Court orders otherwise. The Debtor respectfully requests that, under the circumstances of this case, time is of the essence, and the Court should waive the 14-day stay otherwise imposed by Fed. R. Bankr. P. 6004(h).

26. In particular, Buyer and the Debtor originally intended to close the Sale on or before March 27, 2017. Buyer has a significant interest in closing the Sale as soon as possible, and the Debtor has a significant interest in ensuring the Buyer close the Sale as soon as possible, since it appears that the Buyer is the only party interested in purchasing the City Ranch Property at this time.

**CONCLUSION**

WHEREFORE, the Debtor respectfully requests entry of an order (i) approving the Sale Agreement and ordering and authorizing the Debtor and Buyer to carry out its terms; (ii) approving the sale of assets contemplated by the Sale Agreement pursuant to Bankruptcy Code § 363, free and clear of Interests to the greatest extent possible under Bankruptcy Code § 363(f); (iii) waiving the 14-day stay that would otherwise apply by virtue of Fed. R. Bankr. P. 6004(h); (v) authorizing the Debtor to distribute to the First Lien Lenders proceeds of the Sale at the closing in an amount to be agreed upon by the Debtor and First Lien Lenders; and (vi) or such other and further relief as is just and proper under the circumstances.

Dated: March 23, 2017.

**COHNE KINGHORN, P.C.**

/s/ Jeffrey L. Trousdale  
GEORGE B. HOFMANN  
STEVEN C. STRONG  
JEFFREY L. TROUSDALE  
Attorneys for the Debtor



**EXHIBIT 1**  
(Sale Agreement)

Fuller Real Estate, LLC

Paul M. Machmuller

Ph: 719-738-6955 Fax: 719-738-6957

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission.(CBS4-6-15) (Mandatory 1-16)

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

CONTRACT TO BUY AND SELL REAL ESTATE (LAND)

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

Date: 2/28/2017

AGREEMENT

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

2. PARTIES AND PROPERTY.

2.1. Buyer. Buyer, Paul Kimmel, will take title to the Property described below as

Joint Tenants Tenants In Common X Other sole owner.

2.2. No Assignability. This Contract Is Not assignable by Buyer unless otherwise specified in Additional Provisions.

2.3. Seller. Seller, III Exploration II, LP, 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

Huerfano, Colorado:

City Ranch Properties III track 83, per tax schedule # 398528

known as No. lot 83 City Ranch Properties, Walsenburg, CO 81089,

together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto, and all interest of Seller in vacated streets and alleys adjacent thereto, except as herein excluded (Property).

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

2.5.1. Inclusions. The following items, whether fixtures or personal property, are included in the Purchase Price unless excluded under Exclusions:

n/a If any additional items are attached to the Property after the date of this Contract, such additional items are also included in the Purchase Price.

2.5.2. Personal Property - Conveyance. Any personal property must be conveyed at Closing by Seller free and clear of all taxes (except personal property taxes for the year of Closing), liens and encumbrances, except n/a.

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

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

2.7. Water Rights, Well Rights, Water and Sewer Taps.

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 n/a deed at Closing.

2.7.2. Other Rights Relating to Water. The following rights relating to water not included in

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§§ 2.7.1, 2.7.3, 2.7.4 and 2.7.5, 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 280652.

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

**2.7.5. Water and Sewer Taps.** The parties agree that water and sewer taps listed below for the Property are being conveyed as part of the Purchase Price as follows: n/a

**If any water or sewer taps are included in the sale, Buyer is advised to obtain, from the provider, written confirmation of the amount remaining to be paid, if any, time and other restrictions for transfer and use of the taps.**

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

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

n/a

**3. DATES AND DEADLINES.**

Item No.	Reference	Event	Date or Deadline	
1	§ 4.3	Alternative Earnest Money Deadline	<b>3/8/2017</b>	Wednesday
		<b>Title</b>		
2	§ 8.1	Record Title Deadline	<b>3/15/2017</b>	Wednesday
3	§ 8.2	Record Title Objection Deadline	<b>3/16/2017</b>	Thursday
4	§ 8.3	Off-Record Title Deadline	<b>n/a</b>	
5	§ 8.3	Off-Record Title Objection Deadline	<b>n/a</b>	
6	§ 8.4	Title Resolution Deadline	<b>3/17/2017</b>	Friday
7	§ 8.6	Right of First Refusal Deadline	<b>n/a</b>	
		<b>Owners' Association</b>		
8	§ 7.3	Association Documents Deadline	<b>n/a</b>	
9	§ 7.4	Association Documents Objection Deadline	<b>n/a</b>	
		<b>Seller's Property Disclosure</b>		
10	§ 10.1	Seller's Property Disclosure Deadline	<b>n/a</b>	
		<b>Loan and Credit</b>		
11	§ 5.1	Loan Application Deadline	<b>n/a</b>	
12	§ 5.2	Loan Objection Deadline	<b>n/a</b>	
13	§ 5.3	Buyer's Credit Information Deadline	<b>n/a</b>	
14	§ 5.3	Disapproval of Buyer's Credit Information Deadline	<b>n/a</b>	
15	§ 5.4	Existing Loan Documents Deadline	<b>n/a</b>	
16	§ 5.4	Existing Loan Documents Objection Deadline	<b>n/a</b>	
17	§ 5.4	Loan Transfer Approval Deadline	<b>n/a</b>	
18	§ 4.7	Seller or Private Financing Deadline	<b>n/a</b>	
		<b>Appraisal</b>		

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19	§ 6.2	Appraisal Deadline	n/a	
20	§ 6.2	Appraisal Objection Deadline	n/a	
21	§ 6.2	Appraisal Resolution Deadline	n/a	
		<b>Survey</b>		
22	§ 9.1	New ILC or New Survey Deadline	n/a	
23	§ 9.3	New ILC or New Survey Objection Deadline	n/a	
24	§ 9.4	New ILC or New Survey Resolution Deadline	n/a	
		<b>Inspection and Due Diligence</b>		
25	§ 10.3	Inspection Objection Deadline	3/15/2017	Wednesday
26	§ 10.3	Inspection Resolution Deadline	3/17/2017	Friday
27	§ 10.5	Property Insurance Objection Deadline	n/a	
28	§ 10.6	Due Diligence Documents Delivery Deadline	n/a	
29	§ 10.6	Due Diligence Documents Objection Deadline	n/a	
30	§ 10.6	Due Diligence Documents Resolution Deadline	n/a	
31	§ 10.6	Environmental Inspection Objection Deadline	n/a	
32	§ 10.6	ADA Evaluation Objection Deadline	n/a	
33	§ 10.7	Conditional Sale Deadline	n/a	
34	§ 11.1	Tenant Estoppel Statements Deadline	n/a	
35	§ 11.2	Tenant Estoppel Statements Objection Deadline		
		<b>Closing and Possession</b>		
36	§ 12.3	Closing Date	3/31/2017 or before	Friday
37	§ 17	Possession Date	date of closing	
38	§ 17	Possession Time	time of closing	
39	§ 28	Acceptance Deadline Date	3/3/2017	Friday
40	§ 28	Acceptance Deadline Time	12:00 Noon	
41	n/a	n/a	n/a	
42	n/a	n/a	n/a	

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

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	\$30,000.00	
2	§ 4.3	Earnest Money		\$1,000.00
3	§ 4.5	New Loan		
4	§ 4.6	Assumption Balance		
5	§ 4.7	Private Financing		

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6	§ 4.7	Seller Financing		
7	n/a	n/a		
8	n/a	n/a		
9	§ 4.4	Cash at Closing		\$29,000.00
10		TOTAL	\$30,000.00	\$30,000.00

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

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

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

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

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

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

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

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

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

**TRANSACTION PROVISIONS**

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

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

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**5.4. Existing Loan Review. (Omitted as inapplicable)**

**6. APPRAISAL PROVISIONS.**

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

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

**6.2.1. Conventional/Other.** Buyer has the right to obtain an Appraisal. If the Appraised Value is less than the Purchase Price, or if the Appraisal is not received by Buyer on or before **Appraisal Deadline** Buyer may, on or before **Appraisal Objection Deadline**, notwithstanding § 8.3 or § 13:

**6.2.1.1. Notice to Terminate.** Notify Seller in writing that this Contract is terminated;

**6.2.1.2. Appraisal Objection.** Deliver to Seller a written objection accompanied by either a copy of the Appraisal or written notice from lender that confirms the Appraisal Value is less than the Purchase Price.

**6.2.1.3. Appraisal Resolution.** If an Appraisal Objection is received by Seller, on or before **Appraisal Objection Deadline**, and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **Appraisal Resolution Deadline** (§ 3), this Contract will terminate on the **Appraisal Resolution Deadline**, unless Seller receives Buyer's written withdrawal of the Appraisal Objection before such termination, i.e., on or before expiration of **Appraisal Resolution Deadline**.

**6.3. Lender Property Requirements.** If the lender imposes any requirements, replacements, removals or repairs, including any specified in the Appraisal (Lender Requirements) to be made to the Property (e.g., roof repair, repainting), beyond those matters already agreed to by Seller in this Contract, Seller has the Right to Terminate under § 25.1, (notwithstanding § 10 of this Contract), on or before three days following Seller's receipt of the Lender Requirements, in Seller's sole subjective discretion. Seller's Right to Terminate in this § 6.3 does not apply if, on or before any termination by Seller pursuant to this § 6.3: (1) the parties enter into a written agreement regarding the Lender Requirements; or (2) the Lender Requirements have been completed; or (3) the satisfaction of the Lender Requirements is waived in writing by Buyer.

**6.4. Cost of Appraisal.** Cost of the Appraisal to be obtained after the date of this Contract must be timely paid by Buyer Seller. The cost of the Appraisal may include any and all fees paid to the appraiser, appraisal management company, lender's agent or all three.

**7. OWNERS' ASSOCIATION. This Section is applicable if the Property is located within a Common Interest Community and subject to such declaration.**

**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. Owners' Association Documents.** Owners' Association Documents (Association Documents) consist of the following:

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351 **7.2.1.** All Owners' Association declarations, articles of incorporation, bylaws, articles of  
 352 organization, operating agreements, rules and regulations, party wall agreements;  
 353 **7.2.2.** Minutes of most recent annual owners' meeting;  
 354 **7.2.3.** Minutes of any directors' or managers' meetings during the six-month period  
 355 immediately preceding the date of this Contract. If none of the preceding minutes exist, then the most recent  
 356 minutes, if any (§§ 7.2.1, 7.2.2 and 7.2.3, collectively, Governing Documents); and  
 357 **7.2.4.** The most recent financial documents which consist of: (1) annual and most recent  
 358 balance sheet, (2) annual and most recent income and expenditures statement, (3) annual budget, (4) reserve  
 359 study, and (5) notice of unpaid assessments, if any (collectively, Financial Documents).

360 **7.3. Association Documents to Buyer.**

361 **7.3.1. Seller to Provide Association Documents.** Seller is obligated to provide to Buyer the  
 362 Association Documents, at Seller's expense, on or before **Association Documents Deadline**. Seller  
 363 authorizes the Association to provide the Association Documents to Buyer, at Seller's expense. Seller's  
 364 obligation to provide the Association Documents is fulfilled upon Buyer's receipt of the Association Documents,  
 365 regardless of who provides such documents.

366 **7.4. Conditional on Buyer's Review.** Buyer has the right to review the Association Documents.  
 367 Buyer has the Right to Terminate under § 25.1, on or before **Association Documents Objection Deadline**,  
 368 based on any unsatisfactory provision in any of the Association Documents, in Buyer's sole subjective  
 369 discretion. Should Buyer receive the Association Documents after **Association Documents Deadline**, Buyer,  
 370 at Buyer's option, has the Right to Terminate under § 25.1 by Buyer's Notice to Terminate received by Seller on  
 371 or before ten days after Buyer's receipt of the Association Documents. If Buyer does not receive the  
 372 Association Documents, or if Buyer's Notice to Terminate would otherwise be required to be received by Seller  
 373 after **Closing Date**, Buyer's Notice to Terminate must be received by Seller on or before Closing. If Seller does  
 374 not receive Buyer's Notice to Terminate within such time, Buyer accepts the provisions of the Association  
 375 Documents as satisfactory, and Buyer waives any Right to Terminate under this provision, notwithstanding the  
 376 provisions of § 8.6 (Right of First Refusal or Contract Approval).

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

378 **8.1. Evidence of Record Title.**

379  **8.1.1. Seller Selects Title Insurance Company.** If this box is checked, Seller will select the  
 380 title insurance company to furnish the owner's title insurance policy at Seller's expense. On or before **Record**  
 381 **Title Deadline**, Seller must furnish to Buyer, a current commitment for an owner's title insurance policy (Title  
 382 Commitment), in an amount equal to the Purchase Price, or if this box is checked,  an **Abstract of Title**  
 383 certified to a current date. Seller will cause the title insurance policy to be issued and delivered to Buyer as  
 384 soon as practicable at or after Closing.

385  **8.1.2. Buyer Selects Title Insurance Company.** If this box is checked, Buyer will select the  
 386 title insurance company to furnish the owner's title insurance policy at Buyer's expense. On or before **Record**  
 387 **Title Deadline**, Buyer must furnish to Seller, a current commitment for owner's title insurance policy (Title  
 388 Commitment), in an amount equal to the Purchase Price.

389 If neither box in § 8.1.1 or § 8.1.2 is checked, § 8.1.1 applies.

390 **8.1.3. Owner's Extended Coverage (OEC).** The Title Commitment Will Will Not  
 391 contain Owner's Extended Coverage (OEC). If the Title Commitment is to contain OEC, it will commit to delete  
 392 or insure over the standard exceptions which relate to: (1) parties in possession, (2) unrecorded easements,  
 393 (3) survey matters, (4) unrecorded mechanics' liens, (5) gap period (period between the effective date and time  
 394 of commitment to the date and time the deed is recorded), and (6) unpaid taxes, assessments and  
 395 unredeemed tax sales prior to the year of Closing. Any additional premium expense to obtain OEC will be paid  
 396 by Buyer  Seller  One-Half by Buyer and One-Half by Seller  Other n/a.

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

402 **8.1.4. Title Documents.** Title Documents consist of the following: (1) copies of any plats,

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421 declarations, covenants, conditions and restrictions burdening the Property, and (2) copies of any other  
422 documents (or, if illegible, summaries of such documents) listed in the schedule of exceptions (Exceptions) in  
423 the Title Commitment furnished to Buyer (collectively, Title Documents).  
424

425 **8.1.5. Copies of Title Documents.** Buyer must receive, on or before **Record Title Deadline**,  
426 copies of all Title Documents. This requirement pertains only to documents as shown of record in the office of  
427 the clerk and recorder in the county where the Property is located. The cost of furnishing copies of the  
428 documents required in this Section will be at the expense of the party or parties obligated to pay for the  
429 owner's title insurance policy.  
430

431 **8.1.6. Existing Abstracts of Title.** Seller must deliver to Buyer copies of any abstracts of title  
432 covering all or any portion of the Property (Abstract of Title) in Seller's possession on or before **Record Title**  
433 **Deadline**.  
434

435 **8.2. Record Title.** Buyer has the right to review and object to the Abstract of Title or Title  
436 Commitment and any of the Title Documents as set forth in § 8.4 (Right to Object to Title, Resolution) on or  
437 before **Record Title Objection Deadline**. Buyer's objection may be based on any unsatisfactory form or  
438 content of Title Commitment or Abstract of Title, notwithstanding § 13, or any other unsatisfactory title  
439 condition, in Buyer's sole subjective discretion. If the Abstract of Title, Title Commitment or Title Documents are  
440 not received by Buyer on or before the **Record Title Deadline**, or if there is an endorsement to the Title  
441 Commitment that adds a new Exception to title, a copy of the new Exception to title and the modified Title  
442 Commitment will be delivered to Buyer. Buyer has until the earlier of Closing or ten days after receipt of such  
443 documents by Buyer to review and object to: (1) any required Title Document not timely received by Buyer, (2)  
444 any change to the Abstract of Title, Title Commitment or Title Documents, or (3) any endorsement to the Title  
445 Commitment. If Seller receives Buyer's Notice to Terminate or Notice of Title Objection, pursuant to this § 8.2  
446 (Record Title), any title objection by Buyer is governed by the provisions set forth in § 8.4 (Right to Object to  
447 Title, Resolution). If Seller has fulfilled all Seller's obligations, if any, to deliver to Buyer all documents required  
448 by § 8.1 (Evidence of Record Title) and Seller does not receive Buyer's Notice to Terminate or Notice of Title  
449 Objection by the applicable deadline specified above, Buyer accepts the condition of title as disclosed by the  
450 Abstract of Title, Title Commitment and Title Documents as satisfactory.  
451

452 **8.3. Off-Record Title.** Seller must deliver to Buyer, on or before **Off-Record Title Deadline**, true  
453 copies of all existing surveys in Seller's possession pertaining to the Property and must disclose to Buyer all  
454 easements, liens (including, without limitation, governmental improvements approved, but not yet installed) or  
455 other title matters (including, without limitation, rights of first refusal and options) not shown by public records,  
456 of which Seller has actual knowledge (Off-Record Matters). Buyer has the right to inspect the Property to  
457 investigate if any third party has any right in the Property not shown by public records (e.g., unrecorded  
458 easement, boundary line discrepancy or water rights). Buyer's Notice to Terminate or Notice of Title Objection  
459 of any unsatisfactory condition (whether disclosed by Seller or revealed by such inspection, notwithstanding §  
460 8.2 and § 13), in Buyer's sole subjective discretion, must be received by Seller on or before **Off-Record Title**  
461 **Objection Deadline**. If an Off-Record Matter is received by Buyer after the **Off-Record Title Deadline**, Buyer  
462 has until the earlier of Closing or ten days after receipt by Buyer to review and object to such Off-Record  
463 Matter. If Seller receives Buyer's Notice to Terminate or Notice of Title Objection pursuant to this § 8.3  
464 (Off-Record Title), any title objection by Buyer and this Contract are governed by the provisions set forth in §  
465 8.4 (Right to Object to Title, Resolution). If Seller does not receive Buyer's Notice to Terminate or Notice of Title  
466 Objection by the applicable deadline specified above, Buyer accepts title subject to such rights, if any, of third  
467 parties of which Buyer has actual knowledge.  
468

469 **8.4. Right to Object to Title, Resolution.** Buyer's right to object to any title matters includes, but is  
470 not limited to those matters set forth in §§ 8.2 (Record Title), 8.3 (Off-Record Title) and 13 (Transfer of Title), in  
471 Buyer's sole subjective discretion. If Buyer objects to any title matter, on or before the applicable deadline,  
472 Buyer has the following options:  
473

474 **8.4.1. Title Objection, Resolution.** If Seller receives Buyer's written notice objecting to any  
475 title matter (Notice of Title Objection) on or before the applicable deadline, and if Buyer and Seller have not  
476 agreed to a written settlement thereof on or before **Title Resolution Deadline**, this Contract will terminate on  
477 the expiration of **Title Resolution Deadline**, unless Seller receives Buyer's written withdrawal of Buyer's  
478 Notice of Title Objection (i.e., Buyer's written notice to waive objection to such items and waives the Right to  
479 Terminate for that reason), on or before expiration of **Title Resolution Deadline**. If either the Record Title  
480

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491 Deadline or the Off-Record Title Deadline, or both, are extended to the earlier of Closing or ten days after  
492 receipt of the applicable documents by Buyer, pursuant to § 8.2 (Record Title) or § 8.3 (Off-Record Title), the  
493 Title Resolution Deadline also will be automatically extended to the earlier of Closing or fifteen days after  
494 Buyer's receipt of the applicable documents; or

495 **8.4.2. Title Objection, Right to Terminate.** Buyer may exercise the Right to Terminate under  
496 § 25.1, on or before the applicable deadline, based on any unsatisfactory title matter, in Buyer's sole subjective  
497 discretion.  
498  
499

500 **8.5. Special Taxing Districts. SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL**  
501 **OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES**  
502 **ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS**  
503 **MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND TAX TO SUPPORT THE SERVICING OF**  
504 **SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO**  
505 **DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYERS**  
506 **SHOULD INVESTIGATE THE SPECIAL TAXING DISTRICTS IN WHICH THE PROPERTY IS LOCATED BY**  
507 **CONTACTING THE COUNTY TREASURER, BY REVIEWING THE CERTIFICATE OF TAXES DUE FOR THE**  
508 **PROPERTY, AND BY OBTAINING FURTHER INFORMATION FROM THE BOARD OF COUNTY**  
509 **COMMISSIONERS, THE COUNTY CLERK AND RECORDER, OR THE COUNTY ASSESSOR.**  
510  
511

512 Buyer has the Right to Terminate under § 25.1, on or before **Off-Record Title Objection Deadline**, based  
513 on any unsatisfactory effect of the Property being located within a special taxing district, in Buyer's sole  
514 subjective discretion.  
515  
516

517 **8.6. Right of First Refusal or Contract Approval.** If there is a right of first refusal on the Property  
518 or a right to approve this Contract, Seller must promptly submit this Contract according to the terms and  
519 conditions of such right. If the holder of the right of first refusal exercises such right or the holder of a right to  
520 approve disapproves this Contract, this Contract will terminate. If the right of first refusal is waived explicitly or  
521 expires, or the Contract is approved, this Contract will remain in full force and effect. Seller must promptly  
522 notify Buyer in writing of the foregoing. If expiration or waiver of the right of first refusal or approval of this  
523 Contract has not occurred on or before **Right of First Refusal Deadline**, this Contract will then terminate.  
524  
525

526 **8.7. Title Advisory.** The Title Documents affect the title, ownership and use of the Property and  
527 should be reviewed carefully. Additionally, other matters not reflected in the Title Documents may affect the  
528 title, ownership and use of the Property, including, without limitation, boundary lines and encroachments,  
529 set-back requirements, area, zoning, building code violations, unrecorded easements and claims of  
530 easements, leases and other unrecorded agreements, water on or under the Property, and various laws and  
531 governmental regulations concerning land use, development and environmental matters.  
532  
533

534 **8.7.1. OIL, GAS, WATER AND MINERAL DISCLOSURE. THE SURFACE ESTATE OF THE**  
535 **PROPERTY MAY BE OWNED SEPARATELY FROM THE UNDERLYING MINERAL ESTATE, AND**  
536 **TRANSFER OF THE SURFACE ESTATE MAY NOT NECESSARILY INCLUDE TRANSFER OF THE**  
537 **MINERAL ESTATE OR WATER RIGHTS. THIRD PARTIES MAY OWN OR LEASE INTERESTS IN OIL, GAS,**  
538 **OTHER MINERALS, GEOTHERMAL ENERGY OR WATER ON OR UNDER THE SURFACE OF THE**  
539 **PROPERTY, WHICH INTERESTS MAY GIVE THEM RIGHTS TO ENTER AND USE THE SURFACE OF THE**  
540 **PROPERTY TO ACCESS THE MINERAL ESTATE, OIL, GAS OR WATER.**  
541  
542

543 **8.7.2. SURFACE USE AGREEMENT. THE USE OF THE SURFACE ESTATE OF THE**  
544 **PROPERTY TO ACCESS THE OIL, GAS OR MINERALS MAY BE GOVERNED BY A SURFACE USE**  
545 **AGREEMENT, A MEMORANDUM OR OTHER NOTICE OF WHICH MAY BE RECORDED WITH THE**  
546 **COUNTY CLERK AND RECORDER.**  
547

548 **8.7.3. OIL AND GAS ACTIVITY. OIL AND GAS ACTIVITY THAT MAY OCCUR ON OR**  
549 **ADJACENT TO THE PROPERTY MAY INCLUDE, BUT IS NOT LIMITED TO, SURVEYING, DRILLING,**  
550 **WELL COMPLETION OPERATIONS, STORAGE, OIL AND GAS, OR PRODUCTION FACILITIES,**  
551 **PRODUCING WELLS, REWORKING OF CURRENT WELLS, AND GAS GATHERING AND PROCESSING**  
552 **FACILITIES.**  
553

554 **8.7.4. ADDITIONAL INFORMATION. BUYER IS ENCOURAGED TO SEEK ADDITIONAL**  
555 **INFORMATION REGARDING OIL AND GAS ACTIVITY ON OR ADJACENT TO THE PROPERTY,**  
556 **INCLUDING DRILLING PERMIT APPLICATIONS. THIS INFORMATION MAY BE AVAILABLE FROM THE**  
557 **COLORADO OIL AND GAS CONSERVATION COMMISSION.**  
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561 **8.7.5. Title Insurance Exclusions.** Matters set forth in this Section, and others, may be  
562 excepted, excluded from, or not covered by the owner's title insurance policy.

563 **8.8. Consult an Attorney.** Buyer is advised to timely consult legal counsel with respect to all such  
564 matters as there are strict time limits provided in this Contract (e.g., **Record Title Objection Deadline** and  
565 **Off-Record Title Objection Deadline**).  
566  
567

568  
569 **9. NEW ILC, NEW SURVEY.**

570 **9.1. New ILC or New Survey.** If the box is checked, a  **New Improvement Location Certificate**  
571 **(New ILC)**  **New Survey** in the form of n/a is required and the following will apply:  
572

573 **9.1.1. Ordering of New ILC or New Survey.**  **Seller**  **Buyer** will order the New ILC or New  
574 Survey. The New ILC or New Survey may also be a previous ILC or survey that is in the above-required form,  
575 certified and updated as of a date after the date of this Contract.  
576

577 **9.1.2. Payment for New ILC or New Survey.** The cost of the New ILC or New Survey will be  
578 paid, on or before Closing, by:  **Seller**  **Buyer** or: n/a  
579

580 **9.1.3. Delivery of New ILC or New Survey.** Buyer, Seller, the issuer of the Title Commitment (or  
581 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  
582 before **New ILC or New Survey Deadline**.  
583

584 **9.1.4. Certification of New ILC or New Survey.** The New ILC or New Survey will be certified by  
585 the surveyor to all those who are to receive the New ILC or New Survey.  
586

587 **9.2. Buyer's Right to Waive or Change New ILC or New Survey Selection.** Buyer may select a  
588 New ILC or New Survey different than initially specified in this Contract if there is no additional cost to Seller or  
589 change to the **New ILC or New Survey Objection Deadline**. Buyer may, in Buyer's sole subjective discretion,  
590 waive a New ILC or New Survey if done prior to Seller incurring any cost for the same.  
591

592 **9.3. New ILC or New Survey Objection.** Buyer has the right to review and object to the **New ILC** or  
593 **New Survey**. If the New ILC or New Survey is not timely received by Buyer or is unsatisfactory to Buyer, in  
594 Buyer's sole subjective discretion, Buyer may, on or before **New ILC or New Survey Objection Deadline**,  
595 notwithstanding § 8.3 or § 13:  
596

597 **9.3.1. Notice to Terminate.** Notify Seller in writing that this Contract is terminated; or

598 **9.3.2. New ILC or New Survey Objection.** Deliver to Seller a written description of any matter that  
599 was to be shown or is shown in the New ILC or New Survey that is unsatisfactory and that Buyer requires  
600 Seller to correct.  
601

602 **9.3.3. New ILC or New Survey Resolution.** If a **New ILC or New Survey Objection** is received  
603 by Seller, on or before **New ILC or New Survey Objection Deadline**, and if Buyer and Seller have not agreed  
604 in writing to a settlement thereof on or before **New ILC or New Survey Resolution Deadline**, this Contract will  
605 terminate on expiration of the **New ILC or New Survey Resolution Deadline**, unless Seller receives Buyer's  
606 written withdrawal of the New ILC or New Survey Objection before such termination, i.e., on or before  
607 expiration of **New ILC or New Survey Resolution Deadline**.  
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<b>DISCLOSURE, INSPECTION AND DUE DILIGENCE</b>
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613 **10. PROPERTY DISCLOSURE, INSPECTION, INDEMNITY, INSURABILITY, DUE DILIGENCE AND**  
614 **SOURCE OF WATER.**  
615

616 **10.1. Seller's Property Disclosure.** On or before **Seller's Property Disclosure Deadline**, Seller  
617 agrees to deliver to Buyer the most current version of the applicable Colorado Real Estate Commission's  
618 Seller's Property Disclosure form completed by Seller to Seller's actual knowledge, current as of the date of  
619 this Contract.  
620

621 **10.2. Disclosure of Latent Defects; Present Condition.** Seller must disclose to Buyer any latent  
622 defects actually known by Seller. Seller agrees that disclosure of latent defects will be in writing. Except as  
623 otherwise provided in this Contract, Buyer acknowledges that Seller is conveying the Property to Buyer in an  
624 "As Is" condition, "Where Is" and "With All Faults."  
625

626 **10.3. Inspection.** Unless otherwise provided in this Contract, Buyer, acting in good faith, has the right  
627 to have inspections (by one or more third parties, personally or both) of the Property and Inclusions  
628 (Inspection), at Buyer's expense. If (1) the physical condition of the Property, including, but not limited to, the  
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631 roof, walls, structural integrity of the Property, the electrical, plumbing, HVAC and other mechanical systems of  
632 the Property, (2) the physical condition of the Inclusions, (3) service to the Property (including utilities and  
633 communication services), systems and components of the Property (e.g., heating and plumbing), (4) any  
634 proposed or existing transportation project, road, street or highway, or (5) any other activity, odor or noise  
635 (whether on or off the Property) and its effect or expected effect on the Property or its occupants is  
636 unsatisfactory, in Buyer's sole subjective discretion, Buyer may, on or before **Inspection Objection Deadline:**  
637

638 **10.3.1. Notice to Terminate.** Notify Seller in writing that this Contract is terminated; or  
639

640 **10.3.2. Inspection Objection.** Deliver to Seller a written description of any unsatisfactory  
641 physical condition that Buyer requires Seller to correct.  
642

643 **10.3.3. Inspection Resolution.** If an Inspection Objection is received by Seller, on or before  
644 **Inspection Objection Deadline**, and if Buyer and Seller have not agreed in writing to a settlement thereof on  
645 or before **Inspection Resolution Deadline**, this Contract will terminate on **Inspection Resolution Deadline**  
646 unless Seller receives Buyer's written withdrawal of the Inspection Objection before such termination, i.e., on or  
647 before expiration of **Inspection Resolution Deadline**.  
648

649 **10.4. Damage, Liens and Indemnity.** Buyer, except as otherwise provided in this Contract or other  
650 written agreement between the parties, is responsible for payment for all inspections, tests, surveys,  
651 engineering reports, or other reports performed at Buyer's request (Work) and must pay for any damage that  
652 occurs to the Property and Inclusions as a result of such Work. Buyer must not permit claims or liens of any  
653 kind against the Property for Work performed on the Property. Buyer agrees to indemnify, protect and hold  
654 Seller harmless from and against any liability, damage, cost or expense incurred by Seller and caused by any  
655 such Work, claim, or lien. This indemnity includes Seller's right to recover all costs and expenses incurred by  
656 Seller to defend against any such liability, damage, cost or expense, or to enforce this section, including  
657 Seller's reasonable attorney fees, legal fees and expenses. The provisions of this section survive the  
658 termination of this Contract. This § 10.4 does not apply to items performed pursuant to an Inspection  
659 Resolution.  
660

661 **10.5. Insurability.** Buyer has the right to review and object to the availability, terms and conditions of  
662 and premium for property insurance (Property Insurance). Buyer has the Right to Terminate under § 25.1, on or  
663 before **Property Insurance Objection Deadline**, based on any unsatisfactory provision of the Property  
664 Insurance, in Buyer's sole subjective discretion.  
665

666 **10.6. Due Diligence.**

667 **10.6.1. Due Diligence Documents.** If the respective box is checked, Seller agrees to deliver  
668 copies of the following documents and information pertaining to the Property (Due Diligence Documents) to  
669 Buyer on or before **Due Diligence Documents Delivery Deadline:**  
670

- 671  **10.6.1.1.** All contracts relating to the operation, maintenance and management of the  
672 Property;
- 673  **10.6.1.2.** Property tax bills for the last na years;
- 674  **10.6.1.3.** As-built construction plans to the Property and the tenant improvements,  
675 including architectural, electrical, mechanical, and structural systems, engineering reports, and permanent  
676 Certificates of Occupancy, to the extent now available;
- 677  **10.6.1.4.** A list of all Inclusions to be conveyed to Buyer;
- 678  **10.6.1.5.** Operating statements for the past n/a years;
- 679  **10.6.1.6.** A rent roll accurate and correct to the date of this Contract;
- 680  **10.6.1.7.** All current leases, including any amendments or other occupancy  
681 agreements, pertaining to the Property. Those leases or other occupancy agreements pertaining to the  
682 Property that survive Closing are as follows (Leases): n/a
- 683  **10.6.1.8.** A schedule of any tenant improvement work Seller is obligated to complete  
684 but has not yet been completed and capital improvement work either scheduled or in process on the date of  
685 this Contract;
- 686  **10.6.1.9.** All insurance policies pertaining to the Property and copies of any claims  
687 which have been made for the past n/a years;
- 688  **10.6.1.10.** Soils reports, surveys and engineering reports or data pertaining to the  
689 Property (if not delivered earlier under § 8.3);
- 690  **10.6.1.11.** Any and all existing documentation and reports regarding Phase I and II  
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701 environmental reports, letters, test results, advisories, and similar documents respective to the existence or  
702 nonexistence of asbestos, PCB transformers, or other toxic, hazardous or contaminated substances, and/or  
703 underground storage tanks and/or radon gas. If no reports are in Seller's possession or known to Seller, Seller  
704 warrants that no such reports are in Seller's possession or known to Seller;

706  **10.6.1.12.** Any *Americans with Disabilities Act* reports, studies or surveys concerning  
707 the compliance of the Property with said Act;

708  **10.6.1.13.** All permits, licenses and other building or use authorizations issued by any  
709 governmental authority with jurisdiction over the Property and written notice of any violation of any such  
710 permits, licenses or use authorizations, if any; and

712  **10.6.1.14.** Other documents and information:

713 n/a

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

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

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

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

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

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

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

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

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

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

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771 does not receive Buyer's Notice to Terminate on or before **Conditional Sale Deadline**, Buyer waives any Right  
772 to Terminate under this provision.

773 **10.8. Source of Potable Water (Residential Land and Residential Improvements Only).**  
774 Buyer Does Does Not acknowledge receipt of a copy of Seller's Property Disclosure or Source of  
775 Water Addendum disclosing the source of potable water for the Property.  There is **No Well**. Buyer Does  
776 Does Not acknowledge receipt of a copy of the current well permit.  
777

778 **Note to Buyer: SOME WATER PROVIDERS RELY, TO VARYING DEGREES, ON NONRENEWABLE**  
779 **GROUND WATER. YOU MAY WISH TO CONTACT YOUR PROVIDER (OR INVESTIGATE THE DESCRIBED**  
780 **SOURCE) TO DETERMINE THE LONG-TERM SUFFICIENCY OF THE PROVIDER'S WATER SUPPLIES.**  
781

782 **10.9. Existing Leases; Modification of Existing Leases; New Leases.** Seller states that none  
783 of the Leases to be assigned to the Buyer at the time of Closing contain any rent concessions, rent reductions  
784 or rent abatements except as disclosed in the Lease or other writing received by Buyer. Seller will not amend,  
785 alter, modify, extend or cancel any of the Leases nor will Seller enter into any new leases affecting the Property  
786 without the prior written consent of Buyer, which consent will not be unreasonably withheld or delayed.  
787

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790 **11. TENANT ESTOPPEL STATEMENTS.**  
791

792 **11.1. Tenant Estoppel Statements Conditions.** Buyer has the right to review and object to any  
793 Estoppel Statements. Seller must obtain and deliver to Buyer on or before **Tenant Estoppel Statements**  
794 **Deadline**, statements in a form and substance reasonably acceptable to Buyer, from each occupant or tenant  
795 at the Property (Estoppel Statement) attached to a copy of the Lease stating:  
796

797 **11.1.1.** The commencement date of the Lease and scheduled termination date of the Lease;

798 **11.1.2.** That said Lease is in full force and effect and that there have been no subsequent  
799 modifications or amendments;

800 **11.1.3.** The amount of any advance rentals paid, rent concessions given, and deposits paid to  
801 Seller;

802 **11.1.4.** The amount of monthly (or other applicable period) rental paid to Seller;

803 **11.1.5.** That there is no default under the terms of said Lease by landlord or occupant; and

804 **11.1.6.** That the Lease to which the Estoppel is attached is a true, correct and complete copy  
805 of the Lease demising the premises it describes.  
806

807 **11.2. Tenant Estoppel Statements Objection.** Buyer has the Right to Terminate under § 25.1, on  
808 or before **Tenant Estoppel Statements Objection Deadline**, based on any unsatisfactory Estoppel  
809 Statement, in Buyer's sole subjective discretion, or if Seller fails to deliver the Estoppel Statements on or  
810 before **Tenant Estoppel Statements Deadline**. Buyer also has the unilateral right to waive any unsatisfactory  
811 Estoppel Statement.  
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816 **CLOSING PROVISIONS**  
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819 **12. CLOSING DOCUMENTS, INSTRUCTIONS AND CLOSING.**  
820

821 **12.1. Closing Documents and Closing Information.** Seller and Buyer will cooperate with the Closing  
822 Company to enable the Closing Company to prepare and deliver documents required for Closing to Buyer and  
823 Seller and their designees. If Buyer is obtaining a new loan to purchase the Property, Buyer acknowledges  
824 Buyer's lender is required to provide the Closing Company, in a timely manner, all required loan documents  
825 and financial information concerning Buyer's new loan. Buyer and Seller will furnish any additional information  
826 and documents required by Closing Company that will be necessary to complete this transaction. Buyer and  
827 Seller will sign and complete all customary or reasonably required documents at or before Closing.  
828

829 **12.2. Closing Instructions.** Colorado Real Estate Commission's Closing Instructions Are Are  
830 **Not** executed with this Contract.  
831

832 **12.3. Closing.** Delivery of deed from Seller to Buyer will be at closing (Closing). Closing will be on the  
833 date specified as the **Closing Date** or by mutual agreement at an earlier date. The hour and place of Closing  
834 will be as designated by mutual agreement.  
835

836 **12.4. Disclosure of Settlement Costs.** Buyer and Seller acknowledge that costs, quality, and extent  
837 of service vary between different settlement service providers (e.g., attorneys, lenders, inspectors and title  
838 companies).  
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**13. TRANSFER OF TITLE.** Subject to tender of payment at Closing as required herein and compliance by Buyer with the other terms and provisions hereof, Seller must execute and deliver a good and sufficient **General Warranty** deed to Buyer, at Closing, conveying the Property free and clear of all taxes except the general taxes for the year of Closing. Except as provided herein, title will be conveyed free and clear of all liens, including any governmental liens for special improvements installed as of the date of Buyer's signature hereon, whether assessed or not. Title will be conveyed subject to:

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

**13.2.** Distribution utility easements (including cable TV),

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

**13.4.** Inclusion of the Property within any special taxing district, and

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

**13.6.** Other n/a.

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

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

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

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

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

**15.4. Local Transfer Tax.**  The Local Transfer Tax of n/a % 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): n/a in the total amount of na% of the Purchase Price or \$ n/a.

**15.6. Water Transfer Fees.** The Water Transfer Fees can change. The fees, as of the date of this Contract, do not exceed \$ n/a for:  
 Water Stock/Certificates  Water District  
 Augmentation Membership  Small Domestic Water Company  n/a 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.

**16. PRORATIONS.** 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,  Other n/a.

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**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 that the Association Assessments are currently payable at approximately \$ n/a per n/a and that there are no unpaid regular or special assessments against the Property except the current regular assessments and n/a. Such assessments are subject to change as provided in the Governing Documents. Seller agrees to promptly request the Association to deliver to Buyer before **Closing Date** a current Status Letter.

**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.

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 \$ 1.00 per day (or any part of a day notwithstanding § 18.1) from **Possession Date** and **Possession Time** until possession is delivered.

**GENERAL PROVISIONS**

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

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

**18.2. Computation of Period of Days, Deadline.** In computing a period of days, when the ending date is not specified, the first day is excluded and the last day is included (e.g., three days after MEC). If any deadline falls on a Saturday, Sunday or federal or Colorado state holiday (Holiday), such deadline  **Will**  **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 in an amount of not more than ten percent of the total Purchase Price (Property Damage), and if the repair of the damage will be paid by insurance (other than the deductible to be paid by Seller), then Seller, upon receipt of the insurance proceeds, will use Seller's reasonable efforts to repair the Property before **Closing Date**. Buyer has the Right to Terminate under § 25.1, on or before **Closing Date** if the Property is not repaired before **Closing Date** or if the damage exceeds such sum. Should Buyer elect to carry out this Contract despite such Property Damage, Buyer is entitled to a credit at Closing for all insurance proceeds that were received by Seller (but not the Association, if any) resulting from damage to the Property and Inclusions, plus the amount of any deductible provided for in the insurance policy. This credit may not exceed the Purchase Price. In the event Seller has not received the insurance proceeds prior to Closing, the parties may agree to extend the **Closing Date** to have the Property repaired prior to Closing or, at the

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981 option of Buyer, (1) Seller must assign to Buyer the right to the proceeds at Closing, if acceptable to Seller's  
982 insurance company and Buyer's lender; or (2) the parties may enter into a written agreement prepared by the  
983 parties or their attorney requiring the Seller to escrow at Closing from Seller's sale proceeds the amount Seller  
984 has received and will receive due to such damage, not exceeding the total Purchase Price, plus the amount of  
985 any deductible that applies to the insurance claim.  
986

987 **19.2. Damage, Inclusions and Services.** Should any Inclusion or service (including utilities and  
988 communication services), system, component or fixture of the Property (collectively Service) (e.g., heating or  
989 plumbing), fail or be damaged between the date of this Contract and Closing or possession, whichever is  
990 earlier, then Seller is liable for the repair or replacement of such Inclusion or Service with a unit of similar size,  
991 age and quality, or an equivalent credit, but only to the extent that the maintenance or replacement of such  
992 Inclusion or Service is not the responsibility of the Association, if any, less any insurance proceeds received by  
993 Buyer covering such repair or replacement. If the failed or damaged Inclusion or Service is not repaired or  
994 replaced on or before Closing or possession, whichever is earlier, Buyer has the Right to Terminate under §  
995 25.1, on or before **Closing Date**, or, at the option of Buyer, Buyer is entitled to a credit at Closing for the repair  
996 or replacement of such Inclusion or Service. Such credit must not exceed the Purchase Price. If Buyer receives  
997 such a credit, Seller's right for any claim against the Association, if any, will survive Closing. Seller and Buyer  
998 are aware of the existence of pre-owned home warranty programs that may be purchased and may cover the  
999 repair or replacement of such Inclusions.  
1000

1001 **19.3. Condemnation.** In the event Seller receives actual notice prior to Closing that a pending  
1002 condemnation action may result in a taking of all or part of the Property or Inclusions, Seller must promptly  
1003 notify Buyer, in writing, of such condemnation action. Buyer has the Right to Terminate under § 25.1, on or  
1004 before **Closing Date**, based on such condemnation action, in Buyer's sole subjective discretion. Should Buyer  
1005 elect to consummate this Contract despite such diminution of value to the Property and Inclusions, Buyer is  
1006 entitled to a credit at Closing for all condemnation proceeds awarded to Seller for the diminution in the value of  
1007 the Property or Inclusions but such credit will not include relocation benefits or expenses, or exceed the  
1008 Purchase Price.  
1009

1010 **19.4. Walk-Through and Verification of Condition.** Buyer, upon reasonable notice, has the right to  
1011 walk through the Property prior to Closing to verify that the physical condition of the Property and Inclusions  
1012 complies with this Contract.  
1013

1014 **19.5. Risk of Loss - Growing Crops.** The risk of loss for damage to growing crops by fire or other  
1015 casualty will be borne by the party entitled to the growing crops as provided in § 2.8 and such party is entitled  
1016 to such insurance proceeds or benefits for the growing crops.  
1017

1018 **20. RECOMMENDATION OF LEGAL AND TAX COUNSEL.** By signing this Contract, Buyer and Seller  
1019 acknowledge that the respective broker has advised that this Contract has important legal consequences and  
1020 has recommended the examination of title and consultation with legal and tax or other counsel before signing  
1021 this Contract.  
1022

1023 **21. TIME OF ESSENCE, DEFAULT AND REMEDIES.** Time is of the essence for all dates and deadlines  
1024 in this Contract. This means that all dates and deadlines are strict and absolute. If any payment due, including  
1025 Earnest Money, is not paid, honored or tendered when due, or if any obligation is not performed timely as  
1026 provided in this Contract or waived, the non-defaulting party has the following remedies:  
1027

1028 **21.1. If Buyer is in Default:**

1029  **21.1.1. Specific Performance.** Seller may elect to cancel this Contract and all Earnest  
1030 Money (whether or not paid by Buyer) will be paid to Seller and retained by Seller. It is agreed that the Earnest  
1031 Money is not a penalty, and the Parties agree the amount is fair and reasonable. Seller may recover such  
1032 additional damages as may be proper. Alternatively, Seller may elect to treat this Contract as being in full force  
1033 and effect and Seller has the right to specific performance or damages, or both.  
1034

1035  **21.1.2. Liquidated Damages, Applicable. This § 21.1.2 applies unless the box in § 21.1.1.**  
1036 **is checked.** Seller may cancel this Contract. All Earnest Money (whether or not paid by Buyer) will be paid to  
1037 Seller, and retained by Seller. It is agreed that the Earnest Money specified in § 4.1 is LIQUIDATED  
1038 DAMAGES, and not a penalty, which amount the parties agree is fair and reasonable and (except as provided  
1039 in §§ 10.4, 22, 23 and 24), said payment of Earnest Money is SELLER'S ONLY REMEDY for Buyer's failure to  
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1051 perform the obligations of this Contract. Seller expressly waives the remedies of specific performance and  
1052 additional damages.

1053 **21.2. If Seller is in Default:** Buyer may elect to treat this Contract as canceled, in which case all  
1054 Earnest Money received hereunder will be returned and Buyer may recover such damages as may be proper.  
1055 Alternatively, Buyer may elect to treat this Contract as being in full force and effect and Buyer has the right to  
1056 specific performance or damages, or both.  
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1060 **22. LEGAL FEES, COST AND EXPENSES.** Anything to the contrary herein notwithstanding, in the event  
1061 of any arbitration or litigation relating to this Contract, prior to or after **Closing Date**, the arbitrator or court must  
1062 award to the prevailing party all reasonable costs and expenses, including attorney fees, legal fees and  
1063 expenses.  
1064

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1066 **23. MEDIATION.** If a dispute arises relating to this Contract, (whether prior to or after Closing) and is not  
1067 resolved, the parties must first proceed, in good faith, to mediation. Mediation is a process in which the parties  
1068 meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot  
1069 impose binding decisions. Before any mediated settlement is binding, the parties to the dispute must agree to  
1070 the settlement, in writing. The parties will jointly appoint an acceptable mediator and will share equally in the  
1071 cost of such mediation. The obligation to mediate, unless otherwise agreed, will terminate if the entire dispute  
1072 is not resolved within thirty days of the date written notice requesting mediation is delivered by one party to the  
1073 other at that party's last known address (physical or electronic as provided in § 27). Nothing in this Section  
1074 prohibits either party from filing a lawsuit and recording a *lis pendens* affecting the Property, before or after the  
1075 date of written notice requesting mediation. This section will not alter any date in this Contract, unless  
1076 otherwise agreed.  
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1080 **24. EARNEST MONEY DISPUTE.** Except as otherwise provided herein, Earnest Money Holder must  
1081 release the Earnest Money following receipt of written mutual instructions, signed by both Buyer and Seller. In  
1082 the event of any controversy regarding the Earnest Money, Earnest Money Holder is not required to release the  
1083 Earnest Money. Earnest Money Holder, in its sole subjective discretion, has several options: (1) wait for any  
1084 proceeding between Buyer and Seller; (2) interplead all parties and deposit Earnest Money into a court of  
1085 competent jurisdiction, (Earnest Money Holder is entitled to recover court costs and reasonable attorney and  
1086 legal fees incurred with such action); or (3) provide notice to Buyer and Seller that unless Earnest Money  
1087 Holder receives a copy of the Summons and Complaint or Claim (between Buyer and Seller) containing the  
1088 case number of the lawsuit (Lawsuit) within one hundred twenty days of Earnest Money Holder's notice to the  
1089 parties, Earnest Money Holder is authorized to return the Earnest Money to Buyer. In the event Earnest Money  
1090 Holder does receive a copy of the Lawsuit, and has not interpleaded the monies at the time of any Order, Earnest  
1091 Money Holder must disburse the Earnest Money pursuant to the Order of the Court. The parties reaffirm the  
1092 obligation of **Mediation**. This Section will survive cancellation or termination of this Contract.  
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1096 **25. TERMINATION.**  
1097 **25.1. Right to Terminate.** If a party has a right to terminate, as provided in this Contract (Right to  
1098 Terminate), the termination is effective upon the other party's receipt of a written notice to terminate (Notice to  
1099 Terminate), provided such written notice was received on or before the applicable deadline specified in this  
1100 Contract. If the Notice to Terminate is not received on or before the specified deadline, the party with the Right  
1101 to Terminate accepts the specified matter, document or condition as satisfactory and waives the Right to  
1102 Terminate under such provision.  
1103

1104 **25.2. Effect of Termination.** In the event this Contract is terminated, all Earnest Money received  
1105 hereunder will be returned and the parties are relieved of all obligations hereunder, subject to §§ 10.4, 22, 23  
1106 and 24.  
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1110 **26. ENTIRE AGREEMENT, MODIFICATION, SURVIVAL; SUCCESSORS.** This Contract, its exhibits and  
1111 specified addenda, constitute the entire agreement between the parties relating to the subject hereof, and any  
1112 prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this  
1113 Contract. No subsequent modification of any of the terms of this Contract is valid, binding upon the parties, or  
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1121 enforceable unless made in writing and signed by the parties. Any right or obligation in this Contract that, by its  
1122 terms, exists or is intended to be performed after termination or Closing survives the same. Any successor to a  
1123 Party receives the predecessor's benefits and obligations of this Contract.  
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1126 **27. NOTICE, DELIVERY, AND CHOICE OF LAW.**

1127 **27.1. Physical Delivery and Notice.** Any document, or notice to Buyer or Seller must be in writing,  
1128 except as provided in § 27.2, and is effective when physically received by such party, any individual named in  
1129 this Contract to receive documents or notices for such party, the Broker, or Brokerage Firm of Broker working  
1130 with such party (except any notice or delivery after Closing must be received by the party, not Broker or  
1131 Brokerage Firm).  
1132

1133 **27.2. Electronic Notice.** As an alternative to physical delivery, any notice, may be delivered in  
1134 electronic form to Buyer or Seller, any individual named in this Contract to receive documents or notices for  
1135 such party, the Broker or Brokerage Firm of Broker working with such party (except any notice or delivery after  
1136 Closing must be received by the party; not Broker or Brokerage Firm) at the electronic address of the recipient  
1137 by facsimile, email or *n/a*.  
1138

1139 **27.3. Electronic Delivery.** Electronic Delivery of documents and notice may be delivered by: (1) email  
1140 at the email address of the recipient, (2) a link or access to a website or server provided the recipient receives  
1141 the information necessary to access the documents, or (3) facsimile at the Fax No. of the recipient.  
1142

1143 **27.4. Choice of Law.** This Contract and all disputes arising hereunder are governed by and construed  
1144 in accordance with the laws of the State of Colorado that would be applicable to Colorado residents who sign a  
1145 contract in Colorado for real property located in Colorado.  
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1148 **28. NOTICE OF ACCEPTANCE, COUNTERPARTS.** This proposal will expire unless accepted in writing,  
1149 by Buyer and Seller, as evidenced by their signatures below, and the offering party receives notice of such  
1150 acceptance pursuant to § 27 on or before **Acceptance Deadline Date** and **Acceptance Deadline Time**. If  
1151 accepted, this document will become a contract between Seller and Buyer. A copy of this Contract may be  
1152 executed by each party, separately, and when each party has executed a copy thereof, such copies taken  
1153 together are deemed to be a full and complete contract between the parties.  
1154

1155 **29. GOOD FAITH.** Buyer and Seller acknowledge that each party has an obligation to act in good faith  
1156 including, but not limited to, exercising the rights and obligations set forth in the provisions of **Financing**  
1157 **Conditions and Obligations, Title Insurance, Record Title and Off-Record Title, New ILC, New Survey**  
1158 **and Property Disclosure, Inspection, Indemnity, Insurability, Due Diligence, Buyer Disclosure and**  
1159 **Source of Water.**

**ADDITIONAL PROVISIONS AND ATTACHMENTS**

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

***Seller agrees to pay Fuller Real Estate 10% commission at closing.***

***"As Is Where Is" Condition. Buyer is acquiring the Property in an "As is, Where is" condition and is accepting the land in "As Is, Where Is" condition. Buyer waives their right to any appraisal, survey or contingencies except for issues related to title and conveyance via General Warranty Deed. Buyer accepts these conditions and holds the Seller, Brokers and Brokerage firm (Fuller Real Estate, LLC) harmless.***

***Buyer acknowledges well permit # 280652, dry well previously drilled and accepts is as is condition.***

**31. ATTACHMENTS.**

**31.1.** The following attachments are a part of this Contract:  
***Brokerage Disclosure to Buyer, Closing Instructions, Source of Water Addendum to Contract***

Initials \_\_\_\_\_

**to Buy and Sell Real Estate**

31.2. The following disclosure forms are attached but are not a part of this Contract:  
n/a

**SIGNATURES**

*Paul Kimmel*

Date: 2/28/2017

Buyer: **Paul Kimmel**

[NOTE: If this offer is being countered or rejected, do not sign this document. Refer to § 32]

Date: \_\_\_\_\_

Seller: **III Exploration II, LP**

By: **Paul Powell, President of Petroglyph Energy Inc as General Partner**

32. COUNTER; REJECTION. This offer is  Countered  Rejected.  
Initials only of party (Buyer or Seller) who countered or rejected offer

\_\_\_\_\_  
**III Exploration II, LP**

By: **Paul Powell , President of Petroglyph Energy Inc as General Partner**

**END OF CONTRACT TO BUY AND SELL REAL ESTATE**

**33. BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.**

(To be completed by Broker working with Buyer)

Broker  Does  Does Not acknowledge receipt of Earnest Money deposit and, while not a party to the Contract, agrees to cooperate upon request with any mediation concluded under § 23. 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.

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

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

Brokerage Firm's Name: **Fuller Real Estate, LLC**

Initials \_\_\_\_\_

*Paul M. Machmuller*

Date: 2/28/2017

Broker's Name: **Paul M. Machmuller**

Address: **138 W 7th st Walsenburg , CO 81089**

Ph: **719-738-6955** Fax: **719-738-6957** Email: **pmachmuller@fullerwestern.com**

**34. BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.**

(To be completed by Broker working with Seller)

Broker  Does  **Does Not** acknowledge receipt of Earnest Money deposit and, while not a party to the Contract, agrees to cooperate upon request with any mediation concluded under § 23. 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.

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

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

Brokerage Firm's Name: **Fuller Real Estate, LLC**

*Paul Machmuller*

Date: 2/28/2017

Broker's Name: **Paul Machmuller**

Address: **138 W 7th st Walsenburg , CO 81089**

Ph: **719-738-6955** Fax: **719-738-6957** Email: **pmachmuller@fullerwestern.com**

**CBS4-6-15. CONTRACT TO BUY AND SELL REAL ESTATE (LAND)**

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Initials \_\_\_\_\_

1093 30. ADDITIONAL PROVISIONS. (The following additional provisions have not been approved by the Colorado  
1094 Real Estate Commission.)

1095 Seller agrees to pay Fuller Real Estate 10% commission at closing.  
1096  
1097

1098 "As Is Where Is" Condition. Buyer is acquiring the Property in an "As is, Where is" condition and is  
1099 accepting the land in "As Is, Where Is" condition. Buyer waives their right to any appraisal, survey  
1100 or contingencies except for issues related to title and conveyance via General Warranty Deed.  
1101 Buyer accepts these conditions and holds the Seller, Brokers and Brokerage firm (Fuller Real  
1102 Estate, LLC) harmless.  
1103  
1104

1105  
1106 Buyer acknowledges well permit # 280652, dry well previously drilled and accepts is as is  
1107 condition.  
1108

1109 31. ATTACHMENTS.

1110 31.1. The following attachments are a part of this Contract:  
1111 Brokerage Disclosure to Buyer, Closing Instructions, Source of Water Addendum to Contract to  
1112 Buy and Sell Real Estate  
1113  
1114

1115 31.2. The following disclosure forms are attached but are not a part of this Contract:  
1116 n/a  
1117  
1118


1119 SIGNATURES  
1120  
1121  
1122

*Paul Kimmel*

Date: 2/28/2017

Buyer: Paul Kimmel

[NOTE: If this offer is being countered or rejected, do not sign this document. Refer to § 32]



SELLER'S SIGNATURE

Save
Select Signature Font
Clear

---

Seller: III Exploration II, LP  
By: Paul Powell, President of Petroglyph Energy Inc as General Partner

32. COUNTER; REJECTION. This offer is  Countered  Rejected.  (clear selection)  
Initials only of party (Buyer or Seller) who countered or rejected offer

You will be able to view the Initials Boxes once you have clicked on Countered or Rejected.

END OF CONTRACT TO BUY AND SELL REAL ESTATE

33. BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.

(To be completed by Broker working with Buyer)

Broker  Does  Does Not acknowledge receipt of Earnest Money deposit and, while not a party to the Contract, agrees to cooperate upon request with any mediation concluded under § 23. Broker agrees that if

**Fuller Real Estate, LLC**

Paul M. Machmuller

Ph: 719-738-6955 Fax: 719-738-6957

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission (SWA35-8-10) (Mandatory 1-11)

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

**SOURCE OF WATER ADDENDUM  
TO CONTRACT TO BUY AND SELL REAL ESTATE**

Date: 2/28/2017

**1. ADDENDUM TO CONTRACT TO BUY AND SELL REAL ESTATE.** This Source of Water Addendum (Addendum) is made a part of that Contract to Buy and Sell Real Estate between Seller and Buyer dated 2/28/2017 (Contract), for the purchase and sale of the Property known as No. **lot 83 City Ranch Properties, Walsenburg, CO 81089**

**2. SOURCE OF POTABLE WATER.** Seller discloses the following information for the source of potable water for the Property:


[Select and complete 1, 2 or 3 as applicable.]

**2.1** The Property's source of water is a Well. Well Permit #: 280652(dry well)  
If a well is the source of water for the Property, a copy of the current Well Permit  **Is**  **Is Not** attached.

**2.2** The Water Provider for the Property can be contacted at:  
Name:  
Address:  
Web Site:  
Phone No.:

**2.3** There is neither a Well nor a Water Provider for the Property. The source of water for the Property is [describe source]:

**NOTE TO BUYER: SOME WATER PROVIDERS RELY, TO VARYING DEGREES ON NONRENEWABLE GROUND WATER. YOU MAY WISH TO CONTACT YOUR PROVIDER (OR INVESTIGATE THE DESCRIBED SOURCE) TO DETERMINE THE LONG-TERM SUFFICIENCY OF THE PROVIDER'S WATER SUPPLIES.**



SELLER'S SIGNATURE

Save Select Signature Font Clear

Seller: **III Exploration II, LP**  
**By: Paul Powell, President of Petroglyph Energy Inc as General Partner**

Seller: \_\_\_\_\_ Date: \_\_\_\_\_

Date: **2/28/2017**

**Addendum No. 2 to Contract to Buy and Sale Real Estate (Land)**

The following terms are hereby incorporated as part of the Contract to Buy and Sale Real Estate (Land) (together with Addendum No. 1 attached thereto and the Closing Instructions attached thereto, the "Agreement") between Paul Kimmel (the "Buyer") and III Exploration II LP, an Idaho limited partnership debtor and debtor in possession ("Seller")

RECITALS

A. Seller is a debtor in possession under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the "Bankruptcy Code") as a result of filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code on July 26, 2016 in the United States Bankruptcy Court for the District of Utah (the "Bankruptcy Court"), where Seller's bankruptcy case is administered under Case No. 16-26471 (the "Bankruptcy Case").

B. Buyer desires to purchase Seller's interests in the Property (as defined in the Agreement) herein) located known as Lot 83, City Ranch Properties, Walsenburg, CO, free and clear (except for Permitted Encumbrances (as defined herein) and Seller desires to sell its interests in the Property, to Buyer, all subject to and according to the terms and conditions set forth below (such purchase and sale, the "Sale Transaction").

C. Buyer and Seller (each, a "Party" and, collectively, the "Parties") have agreed to seek an Order of the Bankruptcy Court authorizing and approving the Sale Transaction free and clear (except for Permitted Encumbrances as described in the Agreement pursuant to sections 105, 363 and 365 of the Bankruptcy Code.

D. The Sale Transaction is conditioned on Bankruptcy Court approval as set forth herein.

E. The Parties acknowledge and agree that the terms of the Sale Transaction are the result of arm's length negotiations.

Capitalized terms used herein and not otherwise defined have the meanings ascribed them in the Agreement. To the extent the following terms modify or conflict with the provisions of the Agreement, these terms shall control. All other terms of the Agreement not modified shall remain the same.

Agreement

1. Bankruptcy Court Approval. The parties hereby acknowledge and agree that this Agreement is subject to the approval of the United States Bankruptcy Court for the District of Utah (the "Bankruptcy Court"). The Seller agrees to seek the Bankruptcy Court's approval of the Agreement not later than March 10, 2017, notwithstanding paragraph 3(36) of the Agreement. The order approving the transaction must be free and clear of all liens, claims, and interests.

2. Conveyance. Notwithstanding anything in the Agreement to the contrary the Seller shall convey the Property by a Special Warranty Deed.

3. Retention of Jurisdiction. Notwithstanding anything in the Agreement to the contrary (including, without limitation, paragraph 23 of the Agreement), the Bankruptcy Court shall retain exclusive jurisdiction to adjudicate any controversy, dispute or claim arising out of or in connection with the Agreement, or the breach, termination or validity thereof.

4. “As is” Sale. NOTWITHSTANDING ANYTHING IN THE AGREEMENT TO THE CONTRARY, THE PROPERTY IS SOLD “AS IS, WHERE IS” AND WITH ALL FAULTS. THE SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE AUTHENTICITY, NATURE, QUALITY, UNIQUENESS, VALUE OR CONDITION OF ANY OF THE PROPERTY (INCLUDING, BUT NOT LIMITED TO, TITLE TO THE PROPERTY, USE, VALUE, ENVIRONMENTAL CONDITION, ACCESS, WATER SHARES OR RIGHTS, OR ANY OTHER CONDITION OF THE PROPERTY OR ANY IMPROVEMENT HEREON). THE BUYER REPRESENTS AND WARRANTS THAT IT HAS NOT RELIED ON THE SELLER’S SKILL OR JUDGMENT TO SELECT OR FURNISH ALL OR ANY PORTION OF THE PROPERTY FOR ANY PARTICULAR PURPOSE AND THE SELLER EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE BUYER ACKNOWLEDGES AND AGREES THAT THE TRANSACTIONS CONTEMPLATED BY THE AGREEMENT ARE WITHOUT RECOURSE TO THE TRUSTEE OR THE ESTATE.

5. Environmental Hazards. Buyer acknowledges that the Property is a potentially dangerous place. Flammable, noxious, corrosive and pressurized substances may be present. Heavy equipment may be operated, and electrical circuits may be live. Every person enters the Property as his or her own risk with notice of the condition of the Property and the activities that will be or have been conducted on the Property. Buyer shall so advise its agents and employees. No person shall have any claim against the Seller or the Estate, or Seller’s agents, attorneys, or employees, for any injuries sustained or for damages to or loss of property that may occur at the Property. It is Buyer’s sole responsibility to meet all governmental safety and environmental standards in using the Property. Certain portions of the Property may contain “hazardous substances,” “hazardous wastes,” “hazardous materials,” or “oil” as those terms are defined under federal, state or local environmental laws and regulations (collectively, “Hazardous Substances”). The Seller has no duty to remove any Hazardous Substances that are contained in or are a part of the Property.

6. Buyer’s Post-Closing Use of Property. Buyer agrees to defend (by counsel reasonably satisfactory to Buyer) and indemnify the Seller, and his agents, attorneys and employees, from and against any claim, demand, cause of action, liability or expense (including reasonable attorneys’ fees and costs) asserted against or incurred by the Seller in connection with the ownership or operation of the Property after Closing of this Agreement.

7. Subject to Higher and Better Offers. This sale is subject to higher and better cash offers with no contingencies submitted to the Seller at least five business days before the hearing on the Seller’s motion to obtain the Bankruptcy Court’s approval of this sale. Notice of the sale shall be mailed to creditors of the Estate and may be sent to persons who may have expressed an interest in the Property. In the event that the Seller receives a higher and better cash offer, the Seller shall conduct an auction sale among Buyer and all parties who have submitted offers and such auction sale may be conducted at the hearing on the motion to approve this sale. The time and place of the auction sale if other than at the hearing, shall be established by the Seller. Buyer and all parties who have submitted offers will be provided with not less than 24 hours - notice of the time and place of the auction sale if one is to be held, and if it is not held at the hearing.

8. Attorney’s Fees. The parties agree that paragraph 22 of the Agreement is not binding on the Seller. Notwithstanding anything to the contrary in the Agreement, the Seller shall not be liable for any other party’s attorneys’ fees, and no other party shall be liable for the Seller’s attorneys’ fees.

9. Deletion of Sections 10 and 11. Sections 10 and 11 of the Agreement and the subsections in such Sections are deleted in their entirety from the Agreement.



10. Survival. Sections 1-9 of this Addendum shall survive the Closing of this Agreement.

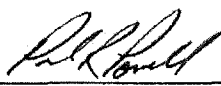
11. Counterparts. This Addendum may be executed in counterparts and counterparts containing the signatures of all parties shall represent one and the same agreement.

DATED this 2nd day of MARCH, 2017.

“Seller”

III EXPLORATION II LP

By: Petroglyph Energy, Inc., its general partner

By:   
Name: Paul R. Powell  
Title: President

“Buyer”

By:  
Name: Paul Kimmel