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Attorneys for Debtors

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA

IN RE: JEFFREY W. BERGER and TAMI M. BERGER, Debtors.	Case No. 18-60032-11 MOTION TO SELL FREE AND CLEAR OF LIENS
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JEFFREY W. BERGER and TAMI M. BERGER, Debtors and Debtor-in-Possession above-named (“Debtors”), by and through counsel, James A. Patten, move this Court, pursuant to 11 U.S.C. §363(f), to sell undeveloped real property in Larimer County, Colorado, free and clear of liens. In support hereof, the Debtors state as follows:

1. The Debtors are voluntary Chapter 11 Debtors. This case was commenced on January 16, 2018. No committee has been appointed in this case pursuant to 11 U.S.C. § 1102. The Debtors are Debtors-in-Possession pursuant to 11 U.S.C. § 1107.

2. At the time this case was commenced, the Debtors were parties to a fully executed Buy/Sell Agreement, a copy of which is attached hereto marked as Exhibit A, to sell real property described as the Lot 1, Stanley Hills Subdivision, PUD, Estes Park, Larimer County,

Colorado. The property is undeveloped property, zoned commercial, situated on Big Thompson Avenue, in Estes Park, Colorado (the “Property”).

3. The purchasers under the sale are Philip W. Hinrichs and Ryan D. Wells. The purchase price is \$825,000.00.

4. The Purchasers are not related to or affiliated with the Debtors.

5. The lien holders on the real property are (i) accrued but not yet due property tax, and (ii) Yellowstone Bank, whose original indebtedness is \$12,196,321.00 pursuant to the promissory notes dated June 1, 2015; the mortgage securing the Property contains a cross-collateralization clause such that the Property is collateral for all of the Debtors’ indebtedness to Yellowstone Bank, and the current total of this indebtedness is approximately \$12,196,321.00. There are no other liens on the Property.

6. The Debtors entered into a listing contract with Randy Good with Coldwell Banker Estate Village Properties pre-petition. The Debtors have filed an application to approve their employment of Randy Good with Coldwell Banker Estate Village Properties [Doc. No. 16].

7. It is in the best interest of the creditors of this case that the Court approve the sale as described herein. The property being sold is not necessary for the Debtors’ ongoing business operations.

8. The Debtor projects the proceeds of sale to be paid as follows:

Gross sales proceeds:	\$825,000.00
Less estimated commissions (5.0%):	-\$ 41,250.00
Less prorated property taxes (est.):	-\$ 2,667.00
Less Estimated closing costs (est.):	<u>-\$ 4,125.00</u>
Net sale proceeds paid to Yellowstone Bank	\$776,958.00

9. A sale under §363(f) is appropriate because the price to be paid reflects the fair market value of the property. The sale is permitted under §363(f) because the lienholders will be

paid in full, with respect to any property taxes due to Larimer County, or the lienholder consents to the sale with respect to Yellowstone Bank.

10. After sale, Yellowstone Bank will continue to have perfected liens on real estate and personal property collateral valued in excess of \$25,000,000.00.

WHEREFORE the foregoing reasons, the Debtors, JEFFREY W. BERGER and TAMI M. BERGER, respectfully move this Court, pursuant to 11 U.S.C. §363(f) to sell the Property free and clear of liens to Philip W. Hinrichs and Ryan D. Wells for the sum of \$825,000.00 and direct that the sale proceeds be used to satisfy (i) costs of closing, (ii) property taxes, (iii) real estate commission owed to Randy Good with Coldwell Banker Estes Village Properties as approved by the Court, and (iv) the remaining balance paid to Yellowstone Bank.

DATED this 19th day of January, 2018.

PATTEN, PETERMAN, BEKKEDAH & GREEN, PLLC
2817 2nd Avenue North, Suite 300
P.O. Box 1239
Billings, MT 59103-1239

By: /s/ JA Patten
James A. Patten,
Attorney for Debtors

NOTICE OF OPPORTUNITY TO RESPOND AND REQUEST A HEARING

If you object to the motion, you must file a written responsive pleading and request a hearing within fourteen (14) days of the date of the notice. The responding party shall schedule the hearing on the application at least 21 days after the date of the response and request for hearing and shall include in the caption of the responsive pleading, the date, time and location of the hearing by inserting in the caption the following:

NOTICE OF HEARING

Date: _____

Time: _____

Location: _____

If no response and request for hearing are timely filed, the Court may grant the relief requested as a failure to respond by any entity shall be deemed an admission that the relief requested should be granted.

DATED this 19th day of January, 2018.

PATTEN, PETERMAN, BEKKEDAHN & GREEN, PLLC
2817 2nd Avenue North, Suite 300
P.O. Box 1239
Billings, MT 59103-1239

By: /s/JA Patten
James A. Patten
Attorney for Debtors

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify, under penalty of perjury, that on the 19th day January, 2018, a copy of the foregoing was served by electronic means pursuant to LBR 9013-1(d)(2) on the parties noted in the Court's ECF transmission facilities and/or by mail on the following parties:

See attached Mailing Matrix

*The attached list will not be mailed out to creditors but will be on file with the United States Bankruptcy Court. A copy will be provided upon Request.

By: /s/JA Patten

For Patten, Peterman, Bekkedahl & Green, PLLC

AMERICREDIT/GM FINANCIAL
PO BOX 18155
ARLINGTON TX 76096-3853

18-60032-BPH Doc#: 22-1

FALLON COUNTY TREASURER
55 SOUTH ELM AVENUE
EATON CO 80615-8270

BOWMAN COUNTY TREASURER
104 1ST STREET NW SUITE 2
BOWMAN ND 58623-4342

DENBURY ONSHORE LLC
5320 LEGACY DRIVE
PLANO TX 75024-3127

FALLON COUNTY TREASURER
PO BOX 787
BAKER MT 59313-0787

GOLDEN VALLEY TREASURER
PO BOX 896
BEACH ND 58621-0896

HARDING COUNTY TREASURER
PO BOX 125
BUFFALO SD 57720-0125

INTERNAL REVENUE SERVICE
PO BOX 7346
PHILADELPHIA PA 19101-7346

JOHN O'BRIEN
SPENCER FANE LLP
1700 Lincoln St., Ste. 2000
DENVER, CO 80203

Kleven Feed Lot-Brent Kleven
4990 38TH STREET SE
MEDINA ND 58467-9703

Knife River Corp - North Central
33-3 ROCK ISLAND PLACE
BISMARCK ND 58504

MCKENZIE COUNTY TREASURER
201 5TH ST NW SUITE 504
WATFORD CITY ND 58854-7118

MONTANA DEPT OF REVENUE
BANKRUPTCY SPECIALIST
PO BOX 7701
HELENA MT 59604-7701

MONY
100 MADISON STREET
TWR 2 5TH FL MD 35-70
SYRACUSE NY 13202-2701

ND DEPT. OF TRUST LANDS
1707 N. 9TH ST.
PO BOX 5523
BISMARCK ND 58506-5523

Office Of The Commissioner Of
School & Public Lands
500 EAST CAPITOL AVE.
PIERRE SD 57501-5007

PRAIRIE COUNTY TREASURER
PO BOX 566
TERRY MT 59349-0566

Pro-Frac Heating & Trucking LLC
P.O. BOX 2758
WILLISTON ND 58802-2758

RICHARD EFTA
C/O RAY BANISTER, P.R.
293 W. EDGE HILL RD
WIBAUX MT 59353-9127

SCHLEMMER FARMS INC.
51 LESLIE ROAD
JOLIET MT 59041-9567

South Dakota Real Estate Leases
PO BOX 125
BUFFALO SD 57720-0125

STATE OF MONTANA
Dept Of Natural Resources & Cons
PO BOX 201601
HELENA MT 59620-1601

US DEPT OF INTERIOR BLM
111 GARRYOWEN RD.
MILES CITY MT 59301-7000

WELLS FARGO BANK
600 SOUTH 4TH STREET
MINNEAPOLIS MN 55415-1526

WIBAUX COUNTY TREASURER
PO BOX 237
WIBAUX MT 59353-0237

WILLIAMS COUNTY TREASURER
PO BOX 2047
WILLISTON ND 58802-2047

YELLOWSTONE BANK
120 2ND STREET NW
SIDNEY MT 59270-4112

Yellowstone County Treasurer
ROOM 108
PO BOX 35010
BILLINGS MT 59107-5010

TAMI M. BERGER
PO BOX 1104
WILLISTON, ND 58802-1104

JEFFREY W. BERGER
PO BOX 1104
WILLISTON, ND 58802-1104

GEOFFREY KELLER
2812 First Ave. N., Ste. 225
PO BOX 1098
BILLINGS, MT 59103-1098

SCOTT SANDBERG
SPENCER FANE LLP
1700 Lincoln St. Ste. 2000
DENVER, CO 80203



Estes Park Team Realty
457 E. Wonderview
Estes Park, CO 80517
Phone: (970)586-3838 Fax: (970)586-4025

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)

(☒ **Property with No Residences**)
 (☐ **Property with Residences-Residential Addendum Attached**)

Date: November 29, 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, *Philip W. Hinrichs and Ryan D Wells,*
 will take title to the Property described below as ☐ **Joint Tenants** ☒ **Tenants In Common** ☐ **Other N/A.**

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

2.3. Seller. Seller, *Jeffrey W. Berger & Tami M. Berger,* 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 *Larimer*, Colorado:
LOT 1 STANLEY HILLS SUB, PUT, ESTES PK

known as No.	<i>TBD Big Thompson Avenue</i>	<i>Estes Park</i>	<i>Colorado</i>	<i>80517</i>
	Street Address	City	State	Zip

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

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

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

None

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

2.5.2. Personal Property - Conveyance. Any personal property must be conveyed at Closing by Seller free and clear of all taxes (except personal property taxes for the year of Closing), liens and encumbrances, except **No Exceptions**. Conveyance of all personal property will be by bill of sale or other applicable legal instrument.



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2.6. Exclusions. The following items are excluded (Exclusions):

None.

2.7. Water Rights, Well Rights, Water and Sewer Taps.☐ **2.7.1. Deeded Water Rights.** The following legally described water rights:

None.

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 §§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 *N/A*.☐ **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:

None.

3. DATES AND DEADLINES.

Item No.	Reference	Event	Date or Deadline
1	§ 4.3	Alternative Earnest Money Deadline	December 8, 2017
		Title	
2	§ 8.1	Record Title Deadline	December 22, 2017
3	§ 8.2	Record Title Objection Deadline	December 27, 2017
4	§ 8.3	Off-Record Title Deadline	January 11, 2018
5	§ 8.3	Off-Record Title Objection Deadline	January 15, 2018

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6	§ 8.4	Title Resolution Deadline	January 17, 2018
7	§ 8.6	Right of First Refusal Deadline	N/A
Owners' Association			
8	§ 7.3	Association Documents Deadline	December 22, 2017
9	§ 7.4	Association Documents Objection Deadline	December 27, 2017
Seller's Property Disclosure			
10	§ 10.1	Seller's Property Disclosure Deadline	December 22, 2017
Loan and Credit			
11	§ 5.1	Loan Application Deadline	December 8, 2017
12	§ 5.2	Loan Objection Deadline	February 2, 2018
13	§ 5.3	Buyer's Credit Information Deadline	N/A
14	§ 5.3	Disapproval of Buyer's Credit Information Deadline	N/A
15	§ 5.4	Existing Loan Documents Deadline	N/A
16	§ 5.4	Existing Loan Documents Objection Deadline	N/A
17	§ 5.4	Loan Transfer Approval Deadline	N/A
18	§ 4.7	Seller or Private Financing Deadline	N/A
Appraisal			
19	§ 6.2	Appraisal Deadline	January 19, 2018
20	§ 6.2	Appraisal Objection Deadline	January 22, 2018
21	§ 6.2	Appraisal Resolution Deadline	January 24, 2018
Survey			
22	§ 9.1	New ILC or New Survey Deadline	January 19, 2018
23	§ 9.3	New ILC or New Survey Objection Deadline	January 22, 2018
24	§ 9.4	New ILC or New Survey Resolution Deadline	January 24, 2018
Inspection and Due Diligence			
25	§ 10.3	Inspection Objection Deadline	January 19, 2018
26	§ 10.3	Inspection Resolution Deadline	January 22, 2018
27	§ 10.5	Property Insurance Objection Deadline	January 24, 2018
28	§ 10.6	Due Diligence Documents Delivery Deadline	January 31, 2018
29	§ 10.6	Due Diligence Documents Objection Deadline	February 2, 2018
30	§ 10.6	Due Diligence Documents Resolution Deadline	February 5, 2018
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	N/A
Closing and Possession			
36	§ 12.3	Closing Date	February 22, 2018
37	§ 17	Possession Date	February 22, 2018
38	§ 17	Possession Time	Closing & Delivery of Deed
39	§ 28	Acceptance Deadline Date	December 5, 2017
40	§ 28	Acceptance Deadline Time	5:00 PM MT
	N/A	N/A	N/A
	N/A	N/A	N/A

89 **3.1. Applicability of Terms.** Any box checked in this Contract means the corresponding provision applies. Any box,
 90 blank or line in this Contract left blank or completed with the abbreviation "N/A", or the word "Deleted" means such provision,
 91 including any deadline, is not applicable and the corresponding provision of this Contract to which reference is made is deleted. If
 92 no box is checked in a provision that contains a selection of "None", such provision means that "None" applies.

93 The abbreviation "MEC" (mutual execution of this Contract) means the date upon which both parties have signed this Contract.
 94

95 **4. PURCHASE PRICE AND TERMS.**

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96 **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	\$ 825,000.00	
2	§ 4.3	Earnest Money		\$ 25,000.00
3	§ 4.5	New Loan		\$ 660,000.00
4	§ 4.6	Assumption Balance		\$ N/A
5	§ 4.7	Private Financing		\$ N/A
6	§ 4.7	Seller Financing		\$ N/A
7	N/A	N/A	N/A	N/A
8	N/A	N/A	N/A	N/A
9	§ 4.4	Cash at Closing		\$ 140,000.00
10		TOTAL	\$ 825,000.00	\$ 825,000.00

97 **4.2. Seller Concession.** At Closing, Seller will credit to Buyer \$ N/A (Seller Concession). The Seller
 98 Concession may be used for any Buyer fee, cost, charge or expenditure to the extent the amount is allowed by the Buyer's lender
 99 and is included in the Closing Statement or Closing Disclosure, at Closing. Examples of allowable items to be paid for by the
 100 Seller Concession include, but are not limited to: Buyer's closing costs, loan discount points, loan origination fees, prepaid items
 101 and any other fee, cost, charge, expense or expenditure. Seller Concession is in addition to any sum Seller has agreed to pay or
 102 credit Buyer elsewhere in this Contract.

103 **4.3. Earnest Money.** The Earnest Money set forth in this section, in the form of a *Personal/Business Check*, will
 104 be payable to and held by *Rocky Mountain Escrow and Title* (Earnest Money Holder), in its trust account, on behalf of
 105 both Seller and Buyer. The Earnest Money deposit must be tendered, by Buyer, with this Contract unless the parties mutually
 106 agree to an **Alternative Earnest Money Deadline** for its payment. The parties authorize delivery of the Earnest Money deposit to
 107 the company conducting the Closing (Closing Company), if any, at or before Closing. In the event Earnest Money Holder has
 108 agreed to have interest on Earnest Money deposits transferred to a fund established for the purpose of providing affordable housing
 109 to Colorado residents, Seller and Buyer acknowledge and agree that any interest accruing on the Earnest Money deposited with the
 110 Earnest Money Holder in this transaction will be transferred to such fund.

111 **4.3.1. Alternative Earnest Money Deadline.** The deadline for delivering the Earnest Money, if other than at the
 112 time of tender of this Contract, is as set forth as the **Alternative Earnest Money Deadline**.

113 **4.3.2. Return of Earnest Money.** If Buyer has a Right to Terminate and timely terminates, Buyer is entitled to
 114 the return of Earnest Money as provided in this Contract. If this Contract is terminated as set forth in § 25 and, except as provided
 115 in § 24, if the Earnest Money has not already been returned following receipt of a Notice to Terminate, Seller agrees to execute
 116 and return to Buyer or Broker working with Buyer, written mutual instructions (e.g., Earnest Money Release form), within three
 117 days of Seller's receipt of such form.

118 **4.4. Form of Funds; Time of Payment; Available Funds.**

119 **4.4.1. Good Funds.** All amounts payable by the parties at Closing, including any loan proceeds, Cash at Closing
 120 and closing costs, must be in funds that comply with all applicable Colorado laws, including electronic transfer funds, certified
 121 check, savings and loan teller's check and cashier's check (Good Funds).

122 **4.4.2. Time of Payment; Available Funds.** All funds, including the Purchase Price to be paid by Buyer, must be
 123 paid before or at Closing or as otherwise agreed in writing between the parties to allow disbursement by Closing Company at
 124 Closing **OR SUCH NONPAYING PARTY WILL BE IN DEFAULT.** Buyer represents that Buyer, as of the date of this
 125 Contract, ☒ **Does** ☐ **Does Not** have funds that are immediately verifiable and available in an amount not less than the amount
 126 stated as Cash at Closing in § 4.1.

127 **4.5. New Loan.**

128 **4.5.1. Buyer to Pay Loan Costs.** Buyer, except as provided in § 4.2, if applicable, must timely pay Buyer's loan
 129 costs, loan discount points, prepaid items and loan origination fees, as required by lender.

130 **4.5.2. Buyer May Select Financing.** Buyer may pay in cash or select financing appropriate and acceptable to
 131 Buyer, including a different loan than initially sought, except as restricted in § 4.5.3 or § 30 (Additional Provisions).

132 **4.5.3. Loan Limitations.** Buyer may purchase the Property using any of the following types of loans:

133 ☐ **Conventional** ☒ **Other Commercial Bank Loan.**

134 **4.6. Assumption.** OMITTED AS INAPPLICABLE.

147 **4.7. Seller or Private Financing.** OMITTED AS INAPPLICABLE.

P/R W

164

TRANSACTION PROVISIONS

165 **5. FINANCING CONDITIONS AND OBLIGATIONS.**

166 **5.1. Loan Application.** If Buyer is to pay all or part of the Purchase Price by obtaining one or more new loans (New
 167 Loan), or if an existing loan is not to be released at Closing, Buyer, if required by such lender, must make an application verifiable
 168 by such lender, on or before **Loan Application Deadline** and exercise reasonable efforts to obtain such loan or approval.

169 **5.2. Loan Objection.** If Buyer is to pay all or part of the Purchase Price with a New Loan, this Contract is conditional
 170 upon Buyer determining, in Buyer's sole subjective discretion, whether the New Loan is satisfactory to Buyer, including its
 171 availability, payments, interest rate, terms, conditions, and cost of such New Loan. This condition is for the sole benefit of Buyer.
 172 Buyer has the Right to Terminate under § 25.1, on or before **Loan Objection Deadline**, if the New Loan is not satisfactory to
 173 Buyer, in Buyer's sole subjective discretion. **IF SELLER IS NOT IN DEFAULT AND DOES NOT TIMELY RECEIVE**
 174 **BUYER'S WRITTEN NOTICE TO TERMINATE, BUYER'S EARNEST MONEY WILL BE NONREFUNDABLE**, except
 175 as otherwise provided in this Contract (e.g., Appraisal, Title, Survey).

176 **5.3. Credit Information.** If an existing loan is not to be released at Closing, this Contract is conditional (for the sole
 177 benefit of Seller) upon Seller's approval of Buyer's financial ability and creditworthiness, which approval will be at Seller's sole
 178 subjective discretion. Accordingly: (1) Buyer must supply to Seller by **Buyer's Credit Information Deadline**, at Buyer's
 179 expense, information and documents (including a current credit report) concerning Buyer's financial, employment and credit
 180 condition; (2) Buyer consents that Seller may verify Buyer's financial ability and creditworthiness; and (3) any such information
 181 and documents received by Seller must be held by Seller in confidence, and not released to others except to protect Seller's interest
 182 in this transaction. If the Cash at Closing is less than as set forth in § 4.1 of this Contract, Seller has the Right to Terminate under
 183 § 25.1, on or before Closing. If Seller disapproves of Buyer's financial ability or creditworthiness, in Seller's sole subjective
 184 discretion, Seller has the Right to Terminate under § 25.1, on or before **Disapproval of Buyer's Credit Information Deadline**.

185 **5.4. Existing Loan Review.** If an existing loan is not to be released at Closing, Seller must deliver copies of the loan
 186 documents (including note, deed of trust, and any modifications) to Buyer by **Existing Loan Documents Deadline**. For the sole
 187 benefit of Buyer, this Contract is conditional upon Buyer's review and approval of the provisions of such loan documents. Buyer
 188 has the Right to Terminate under § 25.1, on or before **Existing Loan Documents Objection Deadline**, based on any
 189 unsatisfactory provision of such loan documents, in Buyer's sole subjective discretion. If the lender's approval of a transfer of the
 190 Property is required, this Contract is conditional upon Buyer's obtaining such approval without change in the terms of such loan,
 191 except as set forth in § 4.6. If lender's approval is not obtained by **Loan Transfer Approval Deadline**, this Contract will
 192 terminate on such deadline. Seller has the Right to Terminate under § 25.1, on or before Closing, in Seller's sole subjective
 193 discretion, if Seller is to be released from liability under such existing loan and Buyer does not obtain such compliance as set forth
 194 in § 4.6.

195 **6. APPRAISAL PROVISIONS.**

196 **6.1. Appraisal Definition.** An "Appraisal" is an opinion of value prepared by a licensed or certified appraiser, engaged
 197 on behalf of Buyer or Buyer's lender, to determine the Property's market value (Appraised Value). The Appraisal may also set
 198 forth certain lender requirements, replacements, removals or repairs necessary on or to the Property as a condition for the Property
 199 to be valued at the Appraised Value.

200 **6.2. Appraisal Condition.** The applicable appraisal provision set forth below applies to the respective loan type set forth
 201 in § 4.5.3, or if a cash transaction (i.e. no financing), § 6.2.1 applies.

202 **6.2.1. Conventional/Other.** Buyer has the right to obtain an Appraisal. If the Appraised Value is less than the
 203 Purchase Price, or if the Appraisal is not received by Buyer on or before **Appraisal Deadline** Buyer may, on or before **Appraisal**
 204 **Objection Deadline**, notwithstanding § 8.3 or § 13:

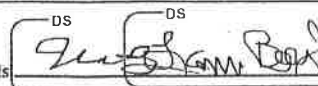
205 **6.2.1.1. Notice to Terminate.** Notify Seller in writing that this Contract is terminated; or

206 **6.2.1.2. Appraisal Objection.** Deliver to Seller a written objection accompanied by either a copy of the
 207 Appraisal or written notice from lender that confirms the Appraisal value is less than the Purchase Price.

208 **6.2.1.3. Appraisal Resolution.** If an Appraisal Objection is received by Seller, on or before **Appraisal**
 209 **Objection Deadline**, and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **Appraisal Resolution**
 210 **Deadline** (§ 3), this Contract will terminate on the **Appraisal Resolution Deadline**, unless Seller receives Buyer's written
 211 withdrawal of the Appraisal Objection before such termination, i.e., on or before expiration of **Appraisal Resolution Deadline**.

212 **6.3. Lender Property Requirements.** If the lender imposes any requirements, replacements, removals or repairs.
 213 including any specified in the Appraisal (Lender Requirements) to be made to the Property (e.g., roof repair, repainting), beyond
 214 those matters already agreed to by Seller in this Contract, Seller has the Right to Terminate under § 25.1, (notwithstanding § 10 of
 215 this Contract), on or before three days following Seller's receipt of the Lender Requirements, in Seller's sole subjective discretion.
 216 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
 217

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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 or 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:

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

7.2.2. Minutes of most recent annual owners' meeting;

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

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

7.3. **Association Documents to Buyer.**

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

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

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

8.1. **Evidence of Record Title.**

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

☐ 8.1.2. **Buyer Selects Title Insurance Company.** If this box is checked, Buyer will select the title insurance

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company to furnish the owner's title insurance policy at Buyer's expense. On or before **Record Title Deadline**, Buyer must furnish to Seller, a current commitment for owner's title insurance policy (Title Commitment), in an amount equal to the Purchase Price.

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

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

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

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

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

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

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

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

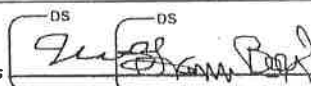
8.4. Right to Object to Title, Resolution. Buyer's right to object to any title matters includes, but is not limited to those matters set forth in §§ 8.2 (Record Title), 8.3 (Off-Record Title) and 13 (Transfer of Title), in Buyer's sole subjective discretion. If Buyer objects to any title matter, on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

8.4.1. Title Objection, Resolution. If Seller receives Buyer's written notice objecting to any title matter (Notice

Buyer Initials

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Seller Initials



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

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

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

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

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

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

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

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

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

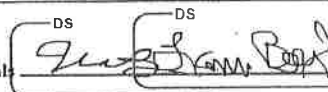
8.7.4. ADDITIONAL INFORMATION. BUYER IS ENCOURAGED TO SEEK ADDITIONAL INFORMATION REGARDING OIL AND GAS ACTIVITY ON OR ADJACENT TO THE PROPERTY, INCLUDING DRILLING PERMIT APPLICATIONS. THIS INFORMATION MAY BE AVAILABLE FROM THE COLORADO OIL AND GAS CONSERVATION COMMISSION.

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

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

9. NEW ILC, NEW SURVEY.

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- 386 9.1. **New ILC or New Survey.** If the box is checked, a ☒ **New Improvement Location Certificate (New ILC)**
 387 ☐ **New Survey** in the form of *N/A* is required and the following will apply:
 388 9.1.1. **Ordering of New ILC or New Survey.** ☐ **Seller** ☒ **Buyer** will order the New ILC or New Survey. The
 389 New ILC or New Survey may also be a previous ILC or survey that is in the above-required form, certified and updated as of a
 390 date after the date of this Contract.
 391 9.1.2. **Payment for New ILC or New Survey.** The cost of the New ILC or New Survey will be paid, on or
 392 before Closing, by: ☐ **Seller** ☒ **Buyer** or:
 393 *At Closing*
 394
 395 9.1.3. **Delivery of New ILC or New Survey.** Buyer, Seller, the issuer of the Title Commitment (or the provider
 396 of the opinion of title if an Abstract of Title), and *Buyer(s), Buyer(s) Lender, Buyer(s) Realtor,* will receive a
 397 New ILC or New Survey on or before
 398 **New ILC or New Survey Deadline.**
 399 9.1.4. **Certification of New ILC or New Survey.** The New ILC or New Survey will be certified by the surveyor
 400 to all those who are to receive the New ILC or New Survey.
 401 9.2. **Buyer's Right to Waive or Change New ILC or New Survey Selection.** Buyer may select a New ILC or New
 402 Survey different than initially specified in this Contract if there is no additional cost to Seller or change to the **New ILC or New**
 403 **Survey Objection Deadline.** Buyer may, in Buyer's sole subjective discretion, waive a New ILC or New Survey if done prior to
 404 Seller incurring any cost for the same.
 405 9.3. **New ILC or New Survey Objection.** Buyer has the right to review and object to the New ILC or New Survey. If
 406 the New ILC or New Survey is not timely received by Buyer or is unsatisfactory to Buyer, in Buyer's sole subjective discretion,
 407 Buyer may, on or before **New ILC or New Survey Objection Deadline**, notwithstanding § 8.3 or § 13:
 408 9.3.1. **Notice to Terminate.** Notify Seller in writing that this Contract is terminated; or
 409 9.3.2. **New ILC or New Survey Objection.** Deliver to Seller a written description of any matter that was to be
 410 shown or is shown in the New ILC or New Survey that is unsatisfactory and that Buyer requires Seller to correct.
 411 9.3.3. **New ILC or New Survey Resolution.** If a **New ILC or New Survey Objection** is received by Seller, on
 412 or before **New ILC or New Survey Objection Deadline**, and if a Buyer and Seller have not agreed in writing to a settlement
 413 thereof on or before **New ILC or New Survey Resolution Deadline**, this Contract will terminate on expiration of the **New ILC**
 414 **or New Survey Resolution Deadline**, unless Seller receives Buyer's written withdrawal of the New ILC or New Survey
 415 Objection before such termination, i.e., on or before expiration of **New ILC or New Survey Resolution Deadline**.

DISCLOSURE, INSPECTION AND DUE DILIGENCE

- 416
 417 **10. PROPERTY DISCLOSURE, INSPECTION, INDEMNITY, INSURABILITY, DUE DILIGENCE AND SOURCE**
 418 **OF WATER.**
 419 10.1. **Seller's Property Disclosure.** On or before **Seller's Property Disclosure Deadline**, Seller agrees to deliver to
 420 Buyer the most current version of the applicable Colorado Real Estate Commission's Seller's Property Disclosure form completed
 421 by Seller to Seller's actual knowledge, current as of the date of this Contract.
 422 10.2. **Disclosure of Latent Defects; Present Condition.** Seller must disclose to Buyer any latent defects actually known
 423 by Seller. Seller agrees that disclosure of latent defects will be in writing. Except as otherwise provided in this Contract, Buyer
 424 acknowledges that Seller is conveying the Property to Buyer in an "As Is" condition, "Where Is" and "With All Faults."
 425 10.3. **Inspection.** Unless otherwise provided in this Contract, Buyer, acting in good faith, has the right to have inspections
 426 (by one or more third parties, personally or both) of the Property and Inclusions (Inspection), at Buyer's expense. If (1) the
 427 physical condition of the Property, including, but not limited to, the roof, walls, structural integrity of the Property, the electrical,
 428 plumbing, HVAC and other mechanical systems of the Property, (2) the physical condition of the Inclusions, (3) service to the
 429 Property (including utilities and communication services), systems and components of the Property (e.g. heating and plumbing),
 430 (4) any proposed or existing transportation project, road, street or highway, or (5) any other activity, odor or noise (whether on or
 431 off the Property) and its effect or expected effect on the Property or its occupants is unsatisfactory, in Buyer's sole subjective
 432 discretion, Buyer may, on or before **Inspection Objection Deadline**:
 433 10.3.1. **Notice to Terminate.** Notify Seller in writing that this Contract is terminated; or
 434 10.3.2. **Inspection Objection.** Deliver to Seller a written description of any unsatisfactory physical condition that
 435 Buyer requires Seller to correct.
 436 10.3.3. **Inspection Resolution.** If an Inspection Objection is received by Seller, on or before **Inspection Objection**
 437 **Deadline**, and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **Inspection Resolution Deadline**,
 438 this Contract will terminate on **Inspection Resolution Deadline** unless Seller receives Buyer's written withdrawal of the
 439 Inspection Objection before such termination, i.e., on or before expiration of **Inspection Resolution Deadline**.

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

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

10.6. Due Diligence.

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

Documents Delivery Deadline:

- ☐ **10.6.1.1.** All contracts relating to the operation, maintenance and management of the Property;
- ☐ **10.6.1.2.** Property tax bills for the last *N/A* years;
- ☐ **10.6.1.3.** As-built construction plans to the Property and the tenant improvements, including architectural, electrical, mechanical, and structural systems, engineering reports, and permanent Certificates of Occupancy, to the extent now available;
- ☐ **10.6.1.4.** A list of all Inclusions to be conveyed to Buyer;
- ☐ **10.6.1.5.** Operating statements for the past *N/A* years;
- ☐ **10.6.1.6.** A rent roll accurate and correct to the date of this Contract;
- ☐ **10.6.1.7.** All current leases, including any amendments or other occupancy agreements, pertaining to the Property. Those leases or other occupancy agreements pertaining to the Property that survive Closing are as follows (Leases):
None.
- ☐ **10.6.1.8.** A schedule of any tenant improvement work Seller is obligated to complete but has not yet been completed and capital improvement work either scheduled or in process on the date of this Contract;
- ☐ **10.6.1.9.** All insurance policies pertaining to the Property and copies of any claims which have been made for the past *N/A* years;
- ☐ **10.6.1.10.** Soils reports, surveys and engineering reports or data pertaining to the Property (if not delivered earlier under § 8.3);
- ☐ **10.6.1.11.** Any and all existing documentation and reports regarding Phase I and II environmental reports, letters, test results, advisories, and similar documents respective to the existence or nonexistence of asbestos, PCB transformers, or other toxic, hazardous or contaminated substances, and/or underground storage tanks and/or radon gas. If no reports are in Seller's possession or known to Seller, Seller warrants that no such reports are in Seller's possession or known to Seller;
- ☐ **10.6.1.12.** Any *Americans with Disabilities Act* reports, studies or surveys concerning the compliance of the Property with said Act;
- ☐ **10.6.1.13.** All permits, licenses and other building or use authorizations issued by any governmental authority with jurisdiction over the Property and written notice of any violation of any such permits, licenses or use authorizations, if any; and
- ☐ **10.6.1.14.** Other documents and information:
None.

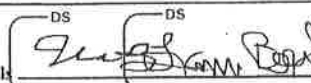
10.6.2. Due Diligence Documents Review and Objection. Buyer has the right to review and object to Due Diligence Documents. If the Due Diligence Documents are not supplied to Buyer or are unsatisfactory in Buyer's sole subjective discretion, Buyer may, on or before **Due Diligence Documents Objection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

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

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

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

11. TENANT ESTOPPEL STATEMENTS.

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

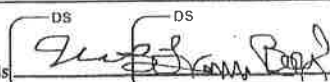
- 11.1.1.** The commencement date of the Lease and scheduled termination date of the Lease;
- 11.1.2.** That said Lease is in full force and effect and that there have been no subsequent modifications or amendments;
- 11.1.3.** The amount of any advance rentals paid, rent concessions given, and deposits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

11.2. Tenant Estoppel Statements Objection. Buyer has the Right to Terminate under § 25.1, on or before **Tenant Estoppel Statements Objection Deadline**, based on any unsatisfactory Estoppel Statement, in Buyer's sole subjective discretion.

Buyer Initials

P. H. W.

Seller Initials



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or if Seller fails to deliver the Estoppel Statements on or before **Tenant Estoppel Statements Deadline**. Buyer also has the unilateral right to waive any unsatisfactory Estoppel Statement.

CLOSING PROVISIONS

12. CLOSING DOCUMENTS, INSTRUCTIONS AND CLOSING.

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

12.2. Closing Instructions. Colorado Real Estate Commission's Closing Instructions ☐ Are ☒ Are Not executed with this Contract.

12.3. Closing. Delivery of deed from Seller to Buyer will be at closing (Closing). Closing will be on the date specified as the **Closing Date** or by mutual agreement at an earlier date. The hour and place of Closing will be as designated by *Estes Park Team Realty and Coldwell Banker Estes Village Properties*.

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

13. TRANSFER OF TITLE. Subject to tender of payment at Closing as required herein and compliance by Buyer with the other terms and provisions hereof, Seller must execute and deliver a good and sufficient *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 *None Other*..

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 *N/A* % 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

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605 ☐ Augmentation Membership ☐ Small Domestic Water Company ☐ N/A
 606 and must be paid at Closing by ☐ None ☐ Buyer ☒ Seller ☐ One-Half by Buyer and One-Half by Seller
 607 15.7. Sales and Use Tax. Any sales and use tax that may accrue because of this transaction must be paid when due by
 608 ☒ None ☐ Buyer ☐ Seller ☐ One-Half by Buyer and One-Half by Seller.

609 16. PRORATIONS. The following will be prorated to Closing Date, except as otherwise provided:

610 16.1. Taxes. Personal property taxes, if any, special taxing district assessments, if any, and general real estate taxes for the
 611 year of Closing, based on ☐ Taxes for the Calendar Year Immediately Preceding Closing ☒ Most Recent Mill Levy and
 612 Most Recent Assessed Valuation, ☐ Other N/A.

613 16.2. Rents. Rents based on ☐ Rents Actually Received ☐ Accrued. At Closing, Seller will transfer or credit to
 614 Buyer the security deposits for all Leases assigned, or any remainder after lawful deductions, and notify all tenants in writing of
 615 such transfer and of the transferee's name and address. Seller must assign to Buyer all Leases in effect at Closing and Buyer must
 616 assume Seller's obligations under such Leases.

617 16.3. Association Assessments. Current regular Association assessments and dues (Association Assessments) paid in
 618 advance will be credited to Seller at Closing. Cash reserves held out of the regular Association Assessments for deferred
 619 maintenance by the Association will not be credited to Seller except as may be otherwise provided by the Governing Documents.
 620 Buyer acknowledges that Buyer may be obligated to pay the Association, at Closing, an amount for reserves or working capital.
 621 Any special assessment assessed prior to Closing Date by the Association will be the obligation of ☐ Buyer ☒ Seller. Except
 622 however, any special assessment by the Association for improvements that have been installed as of the date of Buyer's signature
 623 hereon, whether assessed prior to or after Closing, will be the obligation of Seller. Seller represents that the Association
 624 Assessments are currently payable at approximately \$ 50.00 per year, and that there are no unpaid regular
 625 or special assessments against the Property except the current regular assessments and None. Such
 626 assessments are subject to change as provided in the Governing Documents. Seller agrees to promptly request the Association to
 627 deliver to Buyer before Closing Date a current Status Letter.

628 16.4. Other Prorations. Water and sewer charges, propane, interest on continuing loan, and None Other.

629 16.5. Final Settlement. Unless otherwise agreed in writing, these prorations are final.

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

632 If Seller, after Closing, fails to deliver possession as specified, Seller will be subject to eviction and will be additionally liable
 633 to Buyer for payment of \$ 500.00 per day (or any part of a day notwithstanding § 18.1) from Possession Date and
 634 Possession Time until possession is delivered.
 635

GENERAL PROVISIONS

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

637 18.1. Day. As used in this Contract, the term "day" means the entire day ending at 11:59 p.m., United States Mountain
 638 Time (Standard or Daylight Savings as applicable).

639 18.2. Computation of Period of Days, Deadline. In computing a period of days, when the ending date is not specified,
 640 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
 641 federal or Colorado state holiday (Holiday), such deadline ☐ Will ☒ Will Not be extended to the next day that is not a
 642 Saturday, Sunday or Holiday. Should neither box be checked, the deadline will not be extended.
 643

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

647 19.1. Causes of Loss, Insurance. In the event the Property or Inclusions are damaged by fire, other perils or causes of
 648 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
 649 the damage will be paid by insurance (other than the deductible to be paid by Seller), then Seller, upon receipt of the insurance
 650 proceeds, will use Seller's reasonable efforts to repair the Property before Closing Date. Buyer has the Right to Terminate under
 651 § 25.1, on or before Closing Date if the Property is not repaired before Closing Date or if the damage exceeds such sum. Should
 652 Buyer elect to carry out this Contract despite such Property Damage, Buyer is entitled to a credit at Closing for all insurance
 653 proceeds that were received by Seller (but not the Association, if any) resulting from damage to the Property and Inclusions, plus
 654 the amount of any deductible provided for in the insurance policy. This credit may not exceed the Purchase Price. In the event
 655 Seller has not received the insurance proceeds prior to Closing, the parties may agree to extend the Closing Date to have the
 656 Property repaired prior to Closing or, at the option of Buyer, (1) Seller must assign to Buyer the right to the proceeds at Closing, if
 657 acceptable to Seller's insurance company and Buyer's lender; or (2) the parties may enter into a written agreement prepared by the

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parties or their attorney requiring the Seller to escrow at Closing from Seller's sale proceeds the amount Seller has received and will receive due to such damage, not exceeding the total Purchase Price, plus the amount of any deductible that applies to the insurance claim.

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

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

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

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

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

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

21.1. If Buyer is in Default:

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

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

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

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

23. MEDIATION. If a dispute arises relating to this Contract, (whether prior to or after Closing) and is not resolved, the parties must first proceed, in good faith, to mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. Before any mediated settlement is binding, the parties to the dispute must agree to the settlement, in writing. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The obligation to mediate, unless otherwise agreed, will terminate if the entire

Buyer Initials

P. H. W.

Seller Initials

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

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

25. TERMINATION.

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

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

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

27. NOTICE, DELIVERY, AND CHOICE OF LAW.

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

27.2. Electronic Notice. As an alternative to physical delivery, any notice, may be delivered in electronic form to Buyer or Seller, any individual named in this Contract to receive documents or notices for such party, the Broker or Brokerage Firm of Broker working with such party (except any notice or delivery after Closing must be received by the party, not Broker or Brokerage Firm) at the electronic address of the recipient by facsimile, email or *None Other*.

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

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

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

29. GOOD FAITH. Buyer and Seller acknowledge that each party has an obligation to act in good faith including, but not

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763 limited to, exercising the rights and obligations set forth in the provisions of **Financing Conditions and Obligations, Title**
 764 **Insurance, Record Title and Off-Record Title, New ILC, New Survey and Property Disclosure, Inspection, Indemnity,**
 765 **Insurability, Due Diligence, Buyer Disclosure and Source of Water.**

766 **ADDITIONAL PROVISIONS AND ATTACHMENTS**

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

769 1. Contract contingent upon approval by the Town of Estes Park that the building
 and use is approved by January 31, 2018.

2. Contract is contingent upon approval by Stanley Hills Homeowners Association
 for the building and use by January 31, 2018.

3. Buyer(s) may take title in an Corporation or LLC owned by them and formed
 prior to closing.

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777 **31. ATTACHMENTS.**

778 **31.1.** The following attachments are a part of this Contract:

779 None.

784 **31.2.** The following disclosure forms are attached but are not a part of this Contract:

785 None.

789 **SIGNATURES**

790 Buyer's Name: Philip W. Hinrichs and Ryan D Wells

DocuSigned by:

 00A5A6F122A9413

11/30/2017

Buyer's Signature Philip W. Hinrichs

Date

Address: N/A

N/A

Phone No.: N/A

Fax No.: N/A

Email Address: N/A

DocuSigned by:

 053A8F14F4D648C

11/30/2017

Buyer's Signature Ryan D Wells

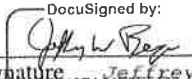
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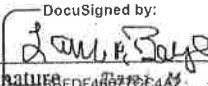
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Address: N/A
 N/A
 Phone No.: N/A
 Fax No.: N/A
 Email Address: N/A

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

Seller's Name: Jeffrey W. Berger & Tami M. Berger

DocuSigned by:

 Seller's Signature Jeffrey W. Berger 12/1/2017
 Date
 Address: N/A
 N/A
 Phone No.: N/A
 Fax No.: N/A
 Email Address: N/A

DocuSigned by:

 Seller's Signature Tami M. Berger 12/1/2017
 Date
 Address: N/A
 N/A
 Phone No.: N/A
 Fax No.: N/A
 Email Address: N/A

792

793 32. COUNTER; REJECTION. This offer is ☐ Countered ☐ Rejected.

794 Initials only of party (Buyer or Seller) who countered or rejected offer _____

795

END OF CONTRACT TO BUY AND SELL REAL ESTATE

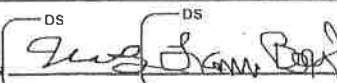
33. BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.

(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.

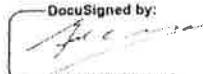
Broker is working with Buyer as a ☐ Buyer's Agent ☐ Seller's Agent ☒ Transaction-Broker in this transaction.





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☐ 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: *Estes Park Team Realty*Broker's Name: *Gerald D. Mayo*DocuSigned by:

FOE1BAD30A90428...

11/29/2017

Broker's Signature:

Date

Address: *457 E. Wonderview
Estes Park, CO 80517*Phone No.: *(970) 586-3838*Fax No.: *(970) 586-4025*Email Address: *frontdesk@estespark.co***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: *N/A*Broker's Name: *N/A*

 Broker's Signature: _____ Date: *12/1/17*
Address: *N/A**N/A*Phone No.: *N/A*Fax No.: *N/A*Email Address: *N/A*

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ADDENDUM # _____ BETWEEN PARTIES FOR ADDITIONAL PROVISIONS



1 Date 01/12/18

2 This addendum adds additional provisions to a document between _____
 3 Jeff Berger And Tami Berger ("Seller/Landlord") and
 4 Derik Pierce And Tina Pierce ("Buyer/Tenant") and

5 concerns the following described property:

6 Big valley ranch Wibaux county
 7 Refer to buy sell.

8
 9 The document to which additional provisions are being added is/are as follows:

10 ☒ Buy-Sell Agreement 01/12/18
 11 ☐ Counter Offer _____ Date _____
 12 ☐ Agreement to Manage Property _____ Date _____
 13 ☐ Other (specify document) _____ Date _____

14 Additional provisions:

15 Calving barn portable panels, alleys, gates, maternity pens, head catches.

16 Metal feed bunks, round bale feeders, All harvested feed in round or
 17 square bales.

18
 19 Five year Lease, commencing at closing of Big Valley ranch sale, with
 20 first right of refusal on the Long Coulee ranch, 4,480+/- deeded acres.

21
 22 Lease terms on the Long Coulee ranch will be negotiated and reduced to
 23 writing 2 weeks prior to the closing of this transaction.

24
 25 Any existing EQUIP contracts outstanding to be paid in full by seller at
 26 closing.

27
 28
 29
 30
 31 _____ Date _____
 32 (Buyer/Tenant) Date (Seller/Landlord) Date
Derik Pierce Jeff Berger

33 _____ Date _____
 34 (Buyer/Tenant) Date (Seller/Landlord) Date
Tina Pierce Tami Berger

NOTE: Unless otherwise expressly stated the term "Days" means calendar days and not business days. Business days are defined as all days as except Sundays and holidays. Any performance which is required to be completed on a Saturday, Sunday or a holiday can be performed on the next business day.