

ORDINANCE 2024-08

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH FARM LLC FOR ITS PURCHASE OF CITY PROPERTY KNOWN AS 169 S. MULBERRY STREET, FRUITA, COLORADO AND TO EXECUTE ALL DOCUMENTS TO PERFECT THE SALE AND CONVEYANCE OF THE SAME

WHEREAS, the City of Fruita is the owner of real property described as Lots 12, 13 and 14, Block 13 of the Town of Fruita, Mesa County, Colorado also referred to 169 S. Mulberry Street, Fruita, Colorado 81521 (the “Property”); and

WHEREAS, FARM LLC has submitted an offer to purchase the Property which offer includes a cash payment and nonmonetary contributions, including the creation and lease of public parking spaces and redevelopment of the Property through agreements with the City, totaling a value of \$640,000.00 (the “Offer”); and

WHEREAS, the City has prepared a counteroffer to the Offer to clarify terms and conditions for the redevelopment and parking agreements (the “Counteroffer”) (the Offer and Counteroffer referred to herein as the “Contract”); and

WHEREAS, pursuant to Section 2.11 of the Fruita City Charter, the Fruita City Council must, by ordinance, authorize the lease or conveyance of real property of the City, and

WHEREAS, it is the intent of this ordinance to authorize the City Manager to execute the Contract to effect the sale of the Property to FARM LLC, a Colorado limited liability company, and any deeds and other necessary documents to create and lease the public parking spaces and achieve redevelopment of the Property and to convey the Property to FARM LLC, a Colorado limited liability company, for the price and terms described in the Contract attached hereto as **Exhibit A**.

NOW, THEREFORE, THE CITY OF FRUITA HEREBY ORDAINS AS FOLLOWS:

Section 1: The above Recitals are true and correct and incorporated herein.

Section 2: The City Manager is hereby authorized to finalize and execute the Contract, any documents necessary to effect a development agreement between the FARM LLC, a Colorado limited liability company, and the City for public parking spaces, including a lease thereof, and redevelopment of the Property, and to convey title to the Property to FARM LLC, a Colorado

limited liability company, for a combination of cash payment and nonmonetary contributions totaling \$640,000.00.

**PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL
ON THE 5th DAY OF MARCH, 2024.**

City of Fruita

Mayor Joel Kincaid

ATTEST:

City Clerk



Chesnick Realty, LLC
 137 N Peach St Fruita, CO 81521
 Lori Chesnick
 Broker/Owner
 lori@chesnickrealtyllc.com
 Ph: 970-858-8238
 Fax: 970-858-8266

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission. (CBS3-6-23) (Mandatory 1-24)

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

**CONTRACT TO BUY AND SELL REAL ESTATE
 (COMMERCIAL)**

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

Date: 1/16/2024

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

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

2.3. Seller. City of Fruita (Seller) is the current owner of the Property described below.

2.4. Property. The Property is the following legally described real estate in the County of Mesa, Colorado (insert legal description):

LOTS 12 AND 13 BLK 13 TOWN OF FRUITA SUB LOCATED IN SEC 17 1N 2W UM RECD 7/23/1884 RN-1968 MESA CO RECDS-.28 AC TAX PARCEL # 2697-172-22-029

AND

LOT 14 BLK 13 TOWN OF FRUITA SUB LOCATED IN SEC 17 1N 2W UM RECD 7/23/1884 RN-1968 MESA CO RECDS -.11 AC TAX PARCEL # 2697-172-22-030

TITLE COMPANY TO VERIFY LEGAL DESCRIPTION

known as: **169 S Mulberry St, Fruita, CO 81521**

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 – Attached. If attached to the Property on the date of this Contract, the following items are included unless excluded under **Exclusions:** lighting, heating, plumbing, ventilating and air conditioning units, TV antennas, inside telephone, network and coaxial (cable) wiring and connecting

57 blocks/jacks, plants, mirrors, floor coverings, intercom systems, built-in kitchen appliances, sprinkler systems
58 and controls, built-in vacuum systems (including accessories) and garage door openers (including -0- remote
59 controls). If checked, the following are owned by the Seller and included: **Solar Panels**
60 **Water Softeners** **Security Systems** **Satellite Systems** (including satellite dishes). Leased items
61 should be listed under § 2.5.7. (Leased Items). If any additional items are attached to the Property after the
62 date of this Contract, such additional items are also included in the Purchase Price.
63

64 **2.5.2. Inclusions – Not Attached.** If on the Property, whether attached or not, on the date of this
65 Contract, the following items are included unless excluded under **Exclusions**: storm windows, storm doors,
66 window and porch shades, awnings, blinds, screens, window coverings and treatments, curtain rods, drapery
67 rods, fireplace inserts, fireplace screens, fireplace grates, heating stoves, storage sheds, carbon monoxide
68 alarms, smoke/fire detectors and all keys.
69

70 **2.5.3. Other Inclusions.** The following items, whether fixtures or personal property, are also
71 included in the Purchase Price:

72 None

73 **2.5.4. Encumbered Inclusions.** Any Inclusions owned by Seller (e.g., owned solar panels) must
74 be conveyed at Closing by Seller free and clear of all taxes (except personal property and general real estate
75 taxes for the year of Closing), liens and encumbrances, except:

76 None

77 **2.5.5. Personal Property Conveyance.** Conveyance of all personal property will be by bill of
78 sale or other applicable legal instrument.
79

80 **2.5.6. Parking and Storage Facilities.** The use or ownership of the following parking facilities: ;
81 and the use or ownership of the following storage facilities:

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

84 **2.5.7. Leased Items.** The following personal property is currently leased to Seller which will be
85 transferred to Buyer at Closing (Leased Items):

86 None

87 **2.5.8. Trade Fixtures.** With respect to trade fixtures, Seller and Buyer agree as follows:

88 None

89 The trade fixtures to be conveyed at Closing will be conveyed by Seller free and clear of all taxes
90 (except personal property taxes for the year of Closing), liens and encumbrances, except . Conveyance will
91 be by bill of sale or other applicable legal instrument.
92

93 **2.6. Exclusions.** The following items are excluded (Exclusions):

94 None

95 **2.7. Water Rights/Well Rights.**

96 **2.7.1. Deeded Water Rights.** The following legally described water rights:

97 None

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

99 **2.7.2. Other Rights Relating to Water.** The following rights relating to water not included in §§
100 2.7.1., 2.7.3. and 2.7.4., will be transferred to Buyer at Closing:

101 None

102 **2.7.3. Well Rights.** Seller agrees to supply required information to Buyer about the well. Buyer
103 understands that if the well to be transferred is a “Small Capacity Well” or a “Domestic Exempt Water Well”
104 used for ordinary household purposes, Buyer must, prior to or at Closing, complete a Change in Ownership
105 form for the well. If an existing well has not been registered with the Colorado Division of Water Resources in
106 the Department of Natural Resources (Division), Buyer must complete a registration of existing well form for
107 the well and pay the cost of registration. If no person will be providing a closing service in connection with the
108 transaction, Buyer must file the form with the Division within sixty days after Closing. The Well Permit # is .
109

110 **2.7.4. Water Stock Certificates.** The water stock certificates to be transferred at Closing are as
111 follows:

112 None

116 **2.7.5. Conveyance.** If Buyer is to receive any rights to water pursuant to § 2.7.2. (Other Rights
 117 Relating to Water), § 2.7.3. (Well Rights), or § 2.7.4. (Water Stock Certificates), Seller agrees to convey such
 118 rights to Buyer by executing the applicable legal instrument at Closing.

119 **2.7.6. Water Rights Review.** Buyer Does Does Not have a Right to Terminate if
 120 examination of the Water Rights is unsatisfactory to Buyer on or before the **Water Rights Examination**
 121 **Deadline.**

123 **3. DATES, DEADLINES AND APPLICABILITY.**

124 **3.1. Dates and Deadlines.**

Item No.	Reference	Event	Date or Deadline
1	§ 3	Time of Day Deadline	
2	§ 4	Alternative Earnest Money Deadline	2/9/2024 Friday
		Title	
3	§ 8	Record Title Deadline (and Tax Certificate)	2/19/2024 Monday
4	§ 8	Record Title Objection Deadline	2/23/2024 Friday
5	§ 8	Off-Record Title Deadline	2/19/2024 Monday
6	§ 8	Off-Record Title Objection Deadline	2/23/2024 Friday
7	§ 8	Title Resolution Deadline	2/29/2024 Thursday
8	§ 8	Third Party Right to Purchase/Approve Deadline	
		Owners' Association	
9	§ 7	Association Documents Deadline	
10	§ 7	Association Documents Termination Deadline	
		Seller's Disclosures	
11	§ 10	Seller's Property Disclosure Deadline	
12	§ 10	Lead-Based Paint Disclosure Deadline (if Residential Addendum attached)	
		Loan and Credit	
13	§ 5	New Loan Application Deadline	
14	§ 5	New Loan Terms Deadline	
15	§ 5	New Loan Availability Deadline	
16	§ 5	Buyer's Credit Information Deadline	
17	§ 5	Disapproval of Buyer's Credit Information Deadline	
18	§ 5	Existing Loan Deadline	
19	§ 5	Existing Loan Termination Deadline	
20	§ 5	Loan Transfer Approval Deadline	
21	§ 4	Seller or Private Financing Deadline	
		Appraisal	
22	§ 6	Appraisal Deadline	
23	§ 6	Appraisal Objection Deadline	
24	§ 6	Appraisal Resolution Deadline	
		Survey	
25	§ 9	New ILC or New Survey Deadline	2/19/2024 Monday
26	§ 9	New ILC or New Survey Objection Deadline	2/26/2024 Monday

174	27	§ 9	New ILC or New Survey Resolution Deadline	2/29/2024	Thursday
175			Inspection and Due diligence		
176					
177	28	§ 2	Water Rights Examination Deadline		
178					
179	29	§ 8	Mineral Rights Examination Deadline		
180	30	§ 10	Inspection Termination Deadline	4/12/2024	Friday
181	31	§ 10	Inspection Objection Deadline	4/12/2024	Friday
182					
183	32	§ 10	Inspection Resolution Deadline	4/16/2024	Tuesday
184	33	§ 10	Property Insurance Termination Deadline	3/22/2024	Friday
185					
186	34	§ 10	Due Diligence Documents Delivery Deadline	2/12/2024	Monday
187	35	§ 10	Due Diligence Documents Objection Deadline	4/12/2024	Friday
188					
189	36	§ 10	Due Diligence Documents Resolution Deadline	4/16/2024	Tuesday
190	37	§ 10	Environmental Inspection Termination Deadline	3/22/2024	Friday
191					
192	38	§ 10	ADA Evaluation Termination Deadline		
193	39	§ 10	Conditional Sale Deadline		
194					
195	40	§ 10	Lead-Based Paint Termination Deadline (if Residential Addendum attached)		
196					
197	41	§ 11	Estoppel Statements Deadline		
198	42	§ 11	Estoppel Statements Termination Deadline		
199					
200			Closing and Possession		
201	43	§ 12	Closing Date	4/24/2024	Wednesday
202					
203	44	§ 17	Possession Date	4/24/2024	Wednesday
204	45	§ 17	Possession Time	Delivery of Deed	
205	46	§ 27	Acceptance Deadline Date	2/7/2024	Wednesday
206					
207	47	§ 27	Acceptance Deadline Time		
208	48				
209					
210	49				

211 **3.2. Applicability of Terms.** If any deadline blank in § 3.1. (Dates and Deadlines) is left blank or
212 completed with "N/A", or the word "Deleted," such deadline is not applicable and the corresponding provision
213 containing the deadline is deleted. Any box checked in this Contract means the corresponding provision
214 applies. If no box is checked in a provision that contains a selection of "None", such provision means that
215 "None" applies.
216

217 The abbreviation "MEC" (mutual execution of this Contract) means the date upon which both parties have
218 signed this Contract. The abbreviation "N/A" as used in this Contract means not applicable.
219

220 **3.3. Day; Computation of Period of Days; Deadlines.**

221 **3.3.1. Day.** As used in this Contract, the term "day" means the entire day ending at 11:59 p.m.,
222 United States Mountain Time (Standard or Daylight Savings, as applicable). Except however, if a **Time of**
223 **Day Deadline** is specified in § 3.1. (Dates and Deadlines), all Objection Deadlines, Resolution Deadlines,
224 Examination Deadlines and Termination Deadlines will end on the specified deadline date at the time of day
225 specified in the **Time of Day Deadline**, United States Mountain Time. If **Time of Day Deadline** is left blank
226 or "N/A" the deadlines will expire at 11:59 p.m., United States Mountain Time.
227

228 **3.3.2. Computation of Period of Days.** In computing a period of days (e.g., three days after
229 MEC), when the ending date is not specified, the first day is excluded and the last day is included.

230 **3.3.3. Deadlines.** If any deadline falls on a Saturday, Sunday or federal or Colorado state holiday
231 (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.

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	\$ 230,115.00	
2	§ 4.3.	Earnest Money		\$ 11,505.00
3	§ 4.5.	New Loan		\$
4	§ 4.6.	Assumption Balance		\$
5	§ 4.7.	Private Financing		\$
6	§ 4.7.	Seller Financing		\$
7				\$
8				\$
9	§ 4.4.	Cash at Closing		\$ 218,610.00
10		Total	\$ 230,115.00	\$ 230,115.00

4.2. **Seller Concession.** At Closing, Seller will credit to Buyer \$0.00 (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 **Check or Wire**, will be payable to and held by **Land Title** (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. **Disposition 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 § 24 and, except as provided in § 23 (Earnest Money Dispute), 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. If Seller is entitled to the Earnest Money, and, except as provided in § 23 (Earnest Money Dispute), if the Earnest Money has not already been paid to Seller, following receipt of an Earnest Money Release form, Buyer agrees to execute and return to Seller or Broker working with Seller, written mutual instructions (e.g., Earnest Money Release form), within three days of Buyer's receipt.

4.3.2.1. **Seller Failure to Timely Return Earnest Money.** If Seller fails to timely execute and return the Earnest Money Release Form, or other written mutual instructions, Seller is in default and liable to Buyer as set forth in "If Seller is in Default", § 20.2. and § 21, unless Seller is entitled to the Earnest Money due to a Buyer default.

4.3.2.2. **Buyer Failure to Timely Release Earnest Money.** If Buyer fails to timely execute and return the Earnest Money Release Form, or other written mutual instructions, Buyer is in default and

291 liable to Seller as set forth in “If Buyer is in Default, § 20.1 and § 21, unless Buyer is entitled to the Earnest
292 Money due to a Seller Default.

293 **4.4. Form of Funds; Time of Payment; Available Funds.**

294 **4.4.1. Good Funds.** All amounts payable by the parties at Closing, including any loan proceeds,
295 Cash at Closing and closing costs, must be in funds that comply with all applicable Colorado laws, including
296 electronic transfer funds, certified check, savings and loan teller’s check and cashier’s check (Good Funds).

297 **4.4.2. Time of Payment.** All funds, including the Purchase Price to be paid by Buyer, must be
298 paid before or at Closing or as otherwise agreed in writing between the parties to allow disbursement by
299 Closing Company at Closing **OR SUCH NONPAYING PARTY WILL BE IN DEFAULT.**

300 **4.4.3. Available Funds.** Buyer represents that Buyer, as of the date of this Contract, **Does**
301 **Does Not** have funds that are immediately verifiable and available in an amount not less than the amount
302 stated as Cash at Closing in § 4.1.

304 **4.5. New Loan.** (Omitted as inapplicable)

305 **4.6. Assumption.** (Omitted as inapplicable)

306 **4.7. Seller or Private Financing.** (Omitted as inapplicable)

308
309

TRANSACTION PROVISIONS

310
311

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

313 **5.3. Credit Information.** (Omitted as inapplicable)

314 **5.4. Existing Loan Review.** (Omitted as inapplicable)

316
317 **6. APPRAISAL PROVISIONS.**

318 **6.1. Appraisal Definition.** An “Appraisal” is an opinion of value prepared by a licensed or certified
319 appraiser, engaged on behalf of Buyer or Buyer’s lender, to determine the Property’s market value (Appraised
320 Value). The Appraisal may also set forth certain lender requirements, replacements, removals or repairs
321 necessary on or to the Property as a condition for the Property to be valued at the Appraised Value.

322 **6.2. Appraised Value.** The applicable appraisal provision set forth below applies to the respective
323 loan type set forth in § 4.5.3., or if a cash transaction (i.e., no financing), § 6.2.1. applies.

324 **6.2.1. Conventional/Other.** Buyer has the right to obtain an Appraisal. If the Appraised Value is
325 less than the Purchase Price, or if the Appraisal is not received by Buyer on or before **Appraisal Deadline**
326 Buyer may, on or before **Appraisal Objection Deadline**:

327 **6.2.1.1. Notice to Terminate.** Notify Seller in writing, pursuant to § 24.1., that this Contract
328 is terminated; or

329 **6.2.1.2. Appraisal Objection.** Deliver to Seller a written objection accompanied by either a
330 copy of the Appraisal or written notice from lender that confirms the Appraised Value is less than the
331 Purchase Price (Lender Verification).

332 **6.2.1.3. Appraisal Resolution.** If an Appraisal Objection is received by Seller, on or before
333 **Appraisal Objection Deadline** and if Buyer and Seller have not agreed in writing to a settlement thereof on
334 or before **Appraisal Resolution Deadline**, this Contract will terminate on the **Appraisal Resolution**
335 **Deadline**, unless Seller receives Buyer’s written withdrawal of the Appraisal Objection before such
336 termination, (i.e., on or before expiration of **Appraisal Resolution Deadline**).

337 **6.3. Lender Property Requirements.** If the lender imposes any written requirements, replacements,
338 removals or repairs, including any specified in the Appraisal (Lender Property Requirements) to be made to
339 the Property (e.g., roof repair, repainting), beyond those matters already agreed to by Seller in this Contract,
340 this Contract terminates on the earlier of three days following Seller’s receipt of the Lender Property
341 Requirements, or Closing, unless prior to termination: (1) the parties enter into a written agreement to satisfy
342 the Lender Property Requirements; (2) the Lender Property Requirements have been completed; or (3) the
343 satisfaction of the Lender Property Requirements is waived in writing by Buyer.

344 **6.4. Cost of Appraisal.** Cost of the Appraisal to be obtained after the date of this Contract must be
345
346
347
348

349 timely paid by Buyer Seller. The cost of the Appraisal may include any and all fees paid to the
350 appraiser, appraisal management company, lender's agent or all three.
351

352 **7. OWNERS' ASSOCIATIONS.** This Section is applicable if the Property is located within one or more
353 Common Interest Communities and subject to one or more declarations (Association).
354

355 **7.1. Common Interest Community Disclosure. THE PROPERTY IS LOCATED WITHIN A**
356 **COMMON INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR THE COMMUNITY.**
357 **THE OWNER OF THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE OWNERS'**
358 **ASSOCIATION FOR THE COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES AND**
359 **REGULATIONS OF THE ASSOCIATION. THE DECLARATION, BYLAWS AND RULES AND**
360 **REGULATIONS WILL IMPOSE FINANCIAL OBLIGATIONS UPON THE OWNER OF THE PROPERTY,**
361 **INCLUDING AN OBLIGATION TO PAY ASSESSMENTS OF THE ASSOCIATION. IF THE OWNER DOES**
362 **NOT PAY THESE ASSESSMENTS, THE ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY**
363 **AND POSSIBLY SELL IT TO PAY THE DEBT. THE DECLARATION, BYLAWS AND RULES AND**
364 **REGULATIONS OF THE COMMUNITY MAY PROHIBIT THE OWNER FROM MAKING CHANGES TO THE**
365 **PROPERTY WITHOUT AN ARCHITECTURAL REVIEW BY THE ASSOCIATION (OR A COMMITTEE OF**
366 **THE ASSOCIATION) AND THE APPROVAL OF THE ASSOCIATION. PURCHASERS OF PROPERTY**
367 **WITHIN THE COMMON INTEREST COMMUNITY SHOULD INVESTIGATE THE FINANCIAL**
368 **OBLIGATIONS OF MEMBERS OF THE ASSOCIATION. PURCHASERS SHOULD CAREFULLY READ**
369 **THE DECLARATION FOR THE COMMUNITY AND THE BYLAWS AND RULES AND REGULATIONS OF**
370 **THE ASSOCIATION.**
371

372 **7.2. Association Documents to Buyer.** Seller is obligated to provide to Buyer the Association
373 Documents (defined below), at Seller's expense, on or before **Association Documents Deadline.** Seller
374 authorizes the Association to provide the Association Documents to Buyer, at Seller's expense. Seller's
375 obligation to provide the Association Documents is fulfilled upon Buyer's receipt of the Association
376 Documents, regardless of who provides such documents.
377

378 **7.3. Association Documents.** Association documents (Association Documents) consist of the
379 following:

380 **7.3.1.** All Association declarations, articles of incorporation, bylaws, articles of organization,
381 operating agreements, rules and regulations, party wall agreements and the Association's responsible
382 governance policies adopted under § 38-33.3-209.5, C.R.S.;

383 **7.3.2.** Minutes of: (1) the annual owners' or members' meeting and (2) any executive boards' or
384 managers' meetings; such minutes include those provided under the most current annual disclosure required
385 under § 38-33.3-209.4, C.R.S. (Annual Disclosure) and minutes of meetings, if any, subsequent to the
386 minutes disclosed in the Annual Disclosure. If none of the preceding minutes exist, then the most recent
387 minutes, if any (§§ 7.3.1. and 7.3.2., collectively, Governing Documents); and
388

389 **7.3.3.** List of all Association insurance policies as provided in the Association's last Annual
390 Disclosure, including, but not limited to, property, general liability, association director and officer professional
391 liability and fidelity policies. The list must include the company names, policy limits, policy deductibles,
392 additional named insureds and expiration dates of the policies listed (Association Insurance Documents);
393

394 **7.3.4.** A list by unit type of the Association's assessments, including both regular and special
395 assessments as disclosed in the Association's last Annual Disclosure;

396 **7.3.5.** The Association's most recent financial documents which consist of: (1) the Association's
397 operating budget for the current fiscal year, (2) the Association's most recent annual financial statements,
398 including any amounts held in reserve for the fiscal year immediately preceding the Association's last Annual
399 Disclosure, (3) the results of the Association's most recent available financial audit or review, (4) list of the
400 fees and charges (regardless of name or title of such fees or charges) that the Association's community
401 association manager or Association will charge in connection with the Closing including, but not limited to,
402 any fee incident to the issuance of the Association's statement of assessments (Status Letter), any rush or
403 update fee charged for the Status Letter, any record change fee or ownership record transfer fees (Record
404 Change Fee), fees to access documents, (5) list of all assessments required to be paid in advance, reserves
405 or working capital due at Closing and (6) reserve study, if any (§§ 7.3.4. and 7.3.5., collectively, Financial
406

407 Documents);

408 **7.3.6.** Any written notice from the Association to Seller of a “construction defect action” under §
409 38-33.3-303.5, C.R.S. within the past six months and the result of whether the Association approved or
410 disapproved such action (Construction Defect Documents). Nothing in this Section limits the Seller’s
411 obligation to disclose adverse material facts as required under § 10.2. (Disclosure of Adverse Material Facts;
412 Subsequent Disclosure; Present Condition) including any problems or defects in the common elements or
413 limited common elements of the Association property.
414

415 **7.4. Conditional on Buyer’s Review.** Buyer has the right to review the Association Documents.
416 Buyer has the Right to Terminate under § 24.1., on or before **Association Documents Termination**
417 **Deadline**, based on any unsatisfactory provision in any of the Association Documents, in Buyer’s sole
418 subjective discretion. Should Buyer receive the Association Documents after **Association Documents**
419 **Deadline**, Buyer, at Buyer’s option, has the Right to Terminate under § 24.1. by Buyer’s Notice to Terminate
420 received by Seller on or before ten days after Buyer’s receipt of the Association Documents. If Buyer does
421 not receive the Association Documents, or if Buyer’s Notice to Terminate would otherwise be required to be
422 received by Seller after **Closing Date**, Buyer’s Notice to Terminate must be received by Seller on or before
423 Closing. If Seller does not receive Buyer’s Notice to Terminate within such time, Buyer accepts the provisions
424 of the Association Documents as satisfactory and Buyer waives any Right to Terminate under this provision,
425 notwithstanding the provisions of § 8.6. (Third Party Right to Purchase/Approve).
426
427

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

429 **8.1. Evidence of Record Title.**

430 **8.1.1. Seller Selects Title Insurance Company.** If this box is checked, Seller will select the
431 title insurance company to furnish the owner’s title insurance policy at Seller’s expense. On or before **Record**
432 **Title Deadline**, Seller must furnish to Buyer, a current commitment for an owner’s title insurance policy (Title
433 Commitment), ~~in an amount equal to the Purchase Price~~, or if this box is checked, an **Abstract of Title**
434 certified to a current date. Seller will cause the title insurance policy to be issued and delivered to Buyer as
435 soon as practicable at or after Closing.
436

437 **8.1.2. Buyer Selects Title Insurance Company.** If this box is checked, Buyer will select the
438 title insurance company to furnish the owner’s title insurance policy at Buyer’s expense. On or before **Record**
439 **Title Deadline**, Buyer must furnish to Seller, a current commitment for owner’s title insurance policy (Title
440 Commitment), in an amount equal to the Purchase Price.
441 If neither box in § 8.1.1. or § 8.1.2. is checked, § 8.1.1. applies.
442

443 **8.1.3. Owner’s Extended Coverage (OEC).** The Title Commitment **Will** **Will Not** contain
444 Owner’s Extended Coverage (OEC). If the Title Commitment is to contain OEC, it will commit to delete or
445 insure over the standard exceptions which relate to: (1) parties in possession, (2) unrecorded easements, (3)
446 survey matters, (4) unrecorded mechanics’ liens, (5) gap period (period between the effective date and time
447 of commitment to the date and time the deed is recorded) and (6) unpaid taxes, assessments and
448 unredeemed tax sales prior to the year of Closing. Any additional premium expense to obtain OEC will be
449 paid by **Buyer** **Seller** **One-Half by Buyer and One-Half by Seller** **Other** .
450 Regardless of whether the Contract requires OEC, the Title Insurance Commitment may not provide OEC or
451 delete or insure over any or all of the standard exceptions for OEC. The Title Insurance Company may
452 require a New Survey or New ILC, defined below, among other requirements for OEC. If the Title Insurance
453 Commitment is not satisfactory to Buyer, Buyer has a right to object under § 8.7. (Right to Object to Title,
454 Resolution).
455

456 **8.1.4. Title Documents.** Title Documents consist of the following: (1) copies of any plats,
457 declarations, covenants, conditions and restrictions burdening the Property and (2) copies of any other
458 documents (or, if illegible, summaries of such documents) listed in the schedule of exceptions (Exceptions) in
459 the Title Commitment furnished to Buyer (collectively, Title Documents).
460

461 **8.1.5. Copies of Title Documents.** Buyer must receive, on or before **Record Title Deadline**,
462 copies of all Title Documents. This requirement pertains only to documents as shown of record in the office of
463 the clerk and recorder in the county where the Property is located. The cost of furnishing copies of the
464 documents required in this Section will be at the expense of the party or parties obligated to pay for the
465

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 § 8.7. (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 § 8.7. (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 not shown by public records, of which Seller has actual knowledge (Off-Record Matters). This Section excludes any **New ILC** or **New Survey** governed under § 9 (New ILC, New Survey). 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. (Record Title) and § 13 (Transfer of Title), 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 is governed by the provisions set forth in § 8.7. (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 Off-Record Matters and rights, if any, of third parties not shown by public records of which Buyer has actual knowledge.

8.4. Special Taxing and Metropolitan Districts. Intentionally Deleted

8.5. Tax Certificate. A tax certificate paid for by Seller Buyer, for the Property (Tax Certificate) must be delivered to Buyer on or before **Record Title Deadline**. If the content of the Tax Certificate is unsatisfactory to Buyer, in Buyer's sole subjective discretion, Buyer may terminate, on or before **Record Title Objection Deadline**. Should Buyer receive the Tax Certificate after **Record Title Deadline**, Buyer, at Buyer's option, has the Right to Terminate under § 24.1. by Buyer's Notice to Terminate received by Seller on or before ten days after Buyer's receipt of the Tax Certificate. If Buyer does not receive the Tax Certificate, 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 content of the Tax Certificate as satisfactory and Buyer waives any Right to Terminate under this provision. If Buyer's loan specified in §4.5.3, (Loan Limitations) prohibits Buyer from paying for the Tax Certificate, the Tax Certificate will be paid for by Seller.

8.6. Third Party Right to Purchase/Approve. If any third party has a right to purchase the Property (e.g., right of first refusal on the Property, right to purchase the Property under a lease or an option held by a third party to purchase the Property) or a right of a third party to approve this Contract, Seller must promptly submit this Contract according to the terms and conditions of such right. If the third-party holder of such right

524 exercises its right this Contract will terminate. If the third party's right to purchase is waived explicitly or
525 expires, or the Contract is approved, this Contract will remain in full force and effect. Seller must promptly
526 notify Buyer in writing of the foregoing. If the third party right to purchase is exercised or approval of this
527 Contract has not occurred on or before **Third Party Right to Purchase/Approve Deadline**, this Contract will
528 then terminate. Seller will supply to Buyer, in writing, details of any Third Party Right to Purchase the
529 Property on or before the Record Title Deadline.

530 **8.7. Right to Object to Title, Resolution.** Buyer has a right to object or terminate, in Buyer's sole
531 subjective discretion, based on any title matters including those matters set forth in § 8.2. (Record Title), §
532 8.3. (Off-Record Title), § 8.5. (Tax Certificate) and § 13 (Transfer of Title). If Buyer exercises Buyer's rights to
533 object or terminate based on any such title matter, on or before the applicable deadline, Buyer has the
534 following options:
535

536 **8.7.1. Title Objection, Resolution.** If Seller receives Buyer's written notice objecting to any title
537 matter (Notice of Title Objection) on or before the applicable deadline and if Buyer and Seller have not
538 agreed to a written settlement thereof on or before **Title Resolution Deadline**, this Contract will terminate on
539 the expiration of **Title Resolution Deadline**, unless Seller receives Buyer's written withdrawal of Buyer's
540 Notice of Title Objection (i.e., Buyer's written notice to waive objection to such items and waives the Right to
541 Terminate for that reason), on or before expiration of **Title Resolution Deadline**. If either the Record Title
542 Deadline or the Off-Record Title Deadline, or both, are extended pursuant to § 8.2. (Record Title) or § 8.3.
543 (Off-Record Title) the Title Resolution Deadline also will be automatically extended to the earlier of Closing or
544 fifteen days after Buyer's receipt of the applicable documents; or
545

546 **8.7.2. Title Objection, Right to Terminate.** Buyer may exercise the Right to Terminate under §
547 24.1., on or before the applicable deadline, based on any title matter unsatisfactory to Buyer, in Buyer's sole
548 subjective discretion.

549 **8.8. Title Advisory.** The Title Documents affect the title, ownership and use of the Property and
550 should be reviewed carefully. Additionally, other matters not reflected in the Title Documents may affect the
551 title, ownership and use of the Property, including, without limitation, boundary lines and encroachments,
552 set-back requirements, area, zoning, building code violations, unrecorded easements and claims of
553 easements, leases and other unrecorded agreements, water on or under the Property and various laws and
554 governmental regulations concerning land use, development and environmental matters.
555

556 **8.8.1. OIL, GAS, WATER AND MINERAL DISCLOSURE. THE SURFACE ESTATE OF THE**
557 **PROPERTY MAY BE OWNED SEPARATELY FROM THE UNDERLYING MINERAL ESTATE AND**
558 **TRANSFER OF THE SURFACE ESTATE MAY NOT NECESSARILY INCLUDE TRANSFER OF THE**
559 **MINERAL ESTATE OR WATER RIGHTS. THIRD PARTIES MAY OWN OR LEASE INTERESTS IN OIL,**
560 **GAS, OTHER MINERALS, GEOTHERMAL ENERGY OR WATER ON OR UNDER THE SURFACE OF THE**
561 **PROPERTY, WHICH INTERESTS MAY GIVE THEM RIGHTS TO ENTER AND USE THE SURFACE OF**
562 **THE PROPERTY TO ACCESS THE MINERAL ESTATE, OIL, GAS OR WATER.**
563

564 **8.8.2. SURFACE USE AGREEMENT. THE USE OF THE SURFACE ESTATE OF THE**
565 **PROPERTY TO ACCESS THE OIL, GAS OR MINERALS MAY BE GOVERNED BY A SURFACE USE**
566 **AGREEMENT, A MEMORANDUM OR OTHER NOTICE OF WHICH MAY BE RECORDED WITH THE**
567 **COUNTY CLERK AND RECORDER.**

568 **8.8.3. OIL AND GAS ACTIVITY. OIL AND GAS ACTIVITY THAT MAY OCCUR ON OR**
569 **ADJACENT TO THE PROPERTY MAY INCLUDE, BUT IS NOT LIMITED TO, SURVEYING, DRILLING,**
570 **WELL COMPLETION OPERATIONS, STORAGE, OIL AND GAS, OR PRODUCTION FACILITIES,**
571 **PRODUCING WELLS, REWORKING OF CURRENT WELLS AND GAS GATHERING AND PROCESSING**
572 **FACILITIES.**
573

574 **8.8.4. ADDITIONAL INFORMATION. BUYER IS ENCOURAGED TO SEEK ADDITIONAL**
575 **INFORMATION REGARDING OIL AND GAS ACTIVITY ON OR ADJACENT TO THE PROPERTY,**
576 **INCLUDING DRILLING PERMIT APPLICATIONS. THIS INFORMATION MAY BE AVAILABLE FROM THE**
577 **COLORADO OIL AND GAS CONSERVATION COMMISSION.**

578 **8.8.5. Title Insurance Exclusions.** Matters set forth in this Section and others, may be
579 excepted, excluded from, or not covered by the owner's title insurance policy.

580 **8.9. Mineral Rights Review.** Buyer Does Does Not have a Right to Terminate if examination of
581

582 the Mineral Rights is unsatisfactory to Buyer on or before the **Mineral Rights Examination Deadline**.
583

584 **9. NEW ILC, NEW SURVEY.**
585

586 **9.1. New ILC or New Survey.** If the box is checked, (1) **New Improvement Location Certificate**
587 **(New ILC)**; or, (2) **New Survey** in the form of ; is required and the following will apply:

588 **9.1.1. Ordering of New ILC or New Survey.** **Seller** **Buyer** will order the New ILC or New
589 Survey. The New ILC or New Survey may also be a previous ILC or survey that is in the above-required form,
590 certified and updated as of a date after the date of this Contract.

591 **9.1.2. Payment for New ILC or New Survey.** The cost of the New ILC or New Survey will be paid, on
592 or before Closing, by: **Seller** **Buyer** or:
593 **Seller to provide an updated copy of the Improvement Survey dated 04/05/2023. Improvement**
594 **survey by QED is acceptable**
595

596 **9.1.3. Delivery of New ILC or New Survey.** Buyer, Seller, the issuer of the Title Commitment (or
597 the provider of the opinion of title if an Abstract of Title) and **Agent** will receive a New ILC or New Survey on
598 or before **New ILC or New Survey Deadline**.

599 **9.1.4. Certification of New ILC or New Survey.** The New ILC or New Survey will be certified by
600 the surveyor to all those who are to receive the New ILC or New Survey.
601

602 **9.2. Buyer's Right to Waive or Change New ILC or New Survey Selection.** Buyer may select a
603 New ILC or New Survey different than initially specified in this Contract if there is no additional cost to Seller
604 or change to the **New ILC or New Survey Objection Deadline**. Buyer may, in Buyer's sole subjective
605 discretion, waive a New ILC or New Survey if done prior to Seller incurring any cost for the same.
606

607 **9.3. New ILC or New Survey Objection.** Buyer has the right to review and object based on the New
608 ILC or New Survey. If the New ILC or New Survey is not timely received by Buyer or is unsatisfactory to
609 Buyer, in Buyer's sole subjective discretion, Buyer may, on or before **New ILC or New Survey Objection**
610 **Deadline**, notwithstanding § 8.3. or § 13:

611 **9.3.1. Notice to Terminate.** Notify Seller in writing, pursuant to § 24.1, that this Contract is
612 terminated; or

613 **9.3.2. New ILC or New Survey Objection.** Deliver to Seller a written description of any matter
614 that was to be shown or is shown in the New ILC or New Survey that is unsatisfactory and that Buyer
615 requires Seller to correct.

616 **9.3.3. New ILC or New Survey Resolution.** If a **New ILC or New Survey Objection** is received
617 by Seller, on or before **New ILC or New Survey Objection Deadline** and if Buyer and Seller have not
618 agreed in writing to a settlement thereof on or before **New ILC or New Survey Resolution Deadline**, this
619 Contract will terminate on expiration of the **New ILC or New Survey Resolution Deadline**, unless Seller
620 receives Buyer's written withdrawal of the New ILC or New Survey Objection before such termination (i.e., on
621 or before expiration of **New ILC or New Survey Resolution Deadline**).
622
623

624 **DISCLOSURE, INSPECTION AND DUE DILIGENCE**
625
626

627 **10. PROPERTY DISCLOSURE, INSPECTION, INDEMNITY, INSURABILITY AND DUE DILIGENCE.**
628

629 **10.1. Seller's Property Disclosure.** On or before **Seller's Property Disclosure Deadline**, Seller
630 agrees to deliver to Buyer the most current version of the applicable Colorado Real Estate Commission's
631 Seller's Property Disclosure form completed by Seller to Seller's actual knowledge and current as of the date
632 of this Contract.

633 **10.2. Disclosure of Adverse Material Facts; Subsequent Disclosure; Present Condition.** Seller
634 must disclose to Buyer any adverse material facts actually known by Seller as of the date of this Contract.
635 Seller agrees that disclosure of adverse material facts will be in writing. In the event Seller discovers an
636 adverse material fact after the date of this Contract, Seller must timely disclose such adverse fact to Buyer.
637 Buyer has the Right to Terminate based on the Seller's new disclosure on the earlier of Closing or five days
638 after Buyer's receipt of the new disclosure. Except as otherwise provided in this Contract, Buyer
639
640

641 acknowledges that Seller is conveying the Property to Buyer in an “**As Is**” condition, “**Where Is**” and “**With All**
642 **Faults.**”

643 **10.3. Inspection.** Unless otherwise provided in this Contract, Buyer, acting in good faith, has the right
644 to have inspections (by one or more third parties, personally or both) of the Property, Leased Items, and
645 Inclusions (Inspection), at Buyer’s expense. If (1) the physical condition of the Property, including, but not
646 limited to, the roof, walls, structural integrity of the Property, the electrical, plumbing, HVAC and other
647 mechanical systems of the Property, (2) the physical condition of the Inclusions and Leased Items, (3) service
648 to the Property (including utilities and communication services), systems and components of the Property
649 (e.g., heating and plumbing), (4) any proposed or existing transportation project, road, street or highway, or
650 (5) any other activity, odor or noise (whether on or off the Property) and its effect or expected effect on the
651 Property or its occupants is unsatisfactory, in Buyer’s sole subjective discretion, Buyer may:

652 **10.3.1. Inspection Termination.** On or before the **Inspection Termination Deadline**, notify
653 Seller in writing, pursuant to § 24.1., that this Contract is terminated due to any unsatisfactory condition,
654 provided the Buyer did not previously deliver an Inspection Objection. Buyer’s Right to Terminate under this
655 provision expires upon delivery of an Inspection Objection to Seller pursuant to § 10.3.2.; or

656 **10.3.2. Inspection Objection.** On or before the **Inspection Objection Deadline**, deliver to
657 Seller a written description of any unsatisfactory condition that Buyer requires Seller to correct.

658 **10.3.3. Inspection Resolution.** If an Inspection Objection is received by Seller, on or before
659 **Inspection Objection Deadline** and if Buyer and Seller have not agreed in writing to a settlement thereof on
660 or before **Inspection Resolution Deadline**, this Contract will terminate on **Inspection Resolution Deadline**
661 unless Seller receives Buyer’s written withdrawal of the Inspection Objection before such termination (i.e., on
662 or before expiration of **Inspection Resolution Deadline**). Nothing in this provision prohibits the Buyer and
663 the Seller from mutually terminating this Contract before the Inspection Resolution Deadline passes by
664 executing an Earnest Money Release.

665 **10.4. Damage, Liens and Indemnity.** Buyer, except as otherwise provided in this Contract or other
666 written agreement between the parties, is responsible for payment for all inspections, tests, surveys,
667 engineering reports, or other reports performed at Buyer’s request (Work) and must pay for any damage that
668 occurs to the Property and Inclusions as a result of such Work. Buyer must not permit claims or liens of any
669 kind against the Property for Work performed on the Property. Buyer agrees to indemnify, protect and hold
670 Seller harmless from and against any liability, damage, cost or expense incurred by Seller and caused by any
671 such Work, claim, or lien. This indemnity includes Seller’s right to recover all costs and expenses incurred by
672 Seller to defend against any such liability, damage, cost or expense, or to enforce this Section, including
673 Seller’s reasonable attorney fees, legal fees and expenses. The provisions of this Section survive the
674 termination of this Contract. This § 10.4. does not apply to items performed pursuant to an Inspection
675 Resolution.

676 **10.5. Insurability.** Buyer has the Right to Terminate under § 24.1., on or before **Property Insurance**
677 **Termination Deadline**, based on any unsatisfactory provision of the availability, terms and conditions and
678 premium for property insurance (Property Insurance) on the Property, in Buyer’s sole subjective discretion.

679 **10.6. Due Diligence.**

680 **10.6.1. Due Diligence Documents.** Seller agrees to deliver copies of the following documents
681 and information pertaining to the Property and Leased Items (Due Diligence Documents) to Buyer on or
682 before **Due Diligence Documents Delivery Deadline**:

683 **10.6.1.1. Occupancy Agreements.** All current leases, including any amendments or other
684 occupancy agreements, pertaining to the Property. Those leases or other occupancy agreements pertaining
685 to the Property that survive Closing are as follows (Leases):

686 None

687 **10.6.1.2. Leased Items Documents.** If any lease of personal property (§ 2.5.7., Leased
688 Items) will be transferred to Buyer at Closing, Seller agrees to deliver copies of the leases and information
689 pertaining to the personal property to Buyer on or before **Due Diligence Documents Delivery Deadline**.
690 Buyer **Will** **Will Not** assume the Seller’s obligations under such leases for the Leased Items (§ 2.5.7.,
691 Leased Items).

699 **10.6.1.3. Encumbered Inclusions Documents.** If any Inclusions owned by Seller are
700 encumbered pursuant to § 2.5.4. (Encumbered Inclusions) above, Seller agrees to deliver copies of the
701 evidence of debt, security and any other documents creating the encumbrance to Buyer on or before **Due**
702 **Diligence Documents Delivery Deadline.** Buyer **Will** **Will Not** assume the debt on the Encumbered
703 Inclusions (§ 2.5.4., Encumbered Inclusions).
704

705 **10.6.1.4. Other Documents.** If the respective box is checked, Seller agrees to additionally
706 deliver copies of the following:

707 **10.6.1.4.1.** All contracts relating to the operation, maintenance and management of the
708 Property;

709 **10.6.1.4.2.** Property tax bills for the last years;

710 **10.6.1.4.3.** As-built construction plans to the Property and the tenant improvements,
711 including architectural, electrical, mechanical and structural systems; engineering reports; and permanent
712 Certificates of Occupancy, to the extent now available;

713 **10.6.1.4.4.** A list of all Inclusions to be conveyed to Buyer;

714 **10.6.1.4.5.** Operating statements for the past years;

715 **10.6.1.4.6.** A rent roll accurate and correct to the date of this Contract;

716 **10.6.1.4.7.** A schedule of any tenant improvement work Seller is obligated to complete
717 but has not yet completed and capital improvement work either scheduled or in process on the date of this
718 Contract;

719 **10.6.1.4.8.** All insurance policies pertaining to the Property and copies of any claims
720 which have been made for the past years;

721 **10.6.1.4.9.** Soils reports, surveys and engineering reports or data pertaining to the
722 Property (if not delivered earlier under § 8.3.);

723 **10.6.1.4.10.** Any and all existing documentation and reports regarding Phase I and II
724 environmental reports, letters, test results, advisories and similar documents respective to the existence or
725 nonexistence of asbestos, PCB transformers, or other toxic, hazardous or contaminated substances and/or
726 underground storage tanks and/or radon gas. If no reports are in Seller's possession or known to Seller,
727 Seller warrants that no such reports are in Seller's possession or known to Seller;

728 **10.6.1.4.11.** Any *Americans with Disabilities Act* reports, studies or surveys concerning
729 the compliance of the Property with said Act;

730 **10.6.1.4.12.** All permits, licenses and other building or use authorizations issued by any
731 governmental authority with jurisdiction over the Property and written notice of any violation of any such
732 permits, licenses or use authorizations, if any; and

733 **10.6.1.4.13.** Other:

734 **Due Diligence previously preformed by the City of Fruita to be assigned and/ or released to**
735 **FARM, LLC or assigns.**
736

737 **10.6.2. Due Diligence Documents Review and Objection.** Buyer has the right to review and
738 object based on the Due Diligence Documents. If the Due Diligence Documents are not supplied to Buyer or
739 are unsatisfactory, in Buyer's sole subjective discretion, Buyer may, on or before **Due Diligence Documents**
740 **Objection Deadline:**

741 **10.6.2.1. Notice to Terminate.** Notify Seller in writing, pursuant to § 24.1., that this Contract
742 is terminated; or

743 **10.6.2.2. Due Diligence Documents Objection.** Deliver to Seller a written description of
744 any unsatisfactory Due Diligence Documents that Buyer requires Seller to correct.

745 **10.6.2.3. Due Diligence Documents Resolution.** If a Due Diligence Documents Objection
746 is received by Seller, on or before **Due Diligence Documents Objection Deadline** and if Buyer and Seller
747 have not agreed in writing to a settlement thereof on or before **Due Diligence Documents Resolution**
748 **Deadline**, this Contract will terminate on **Due Diligence Documents Resolution Deadline** unless Seller
749 receives Buyer's written withdrawal of the Due Diligence Documents Objection before such termination (i.e.,
750 on or before expiration of **Due Diligence Documents Resolution Deadline**.
751
752
753
754
755
756

757 **10.6.3. Zoning.** Buyer has the Right to Terminate under § 24.1., on or before **Due Diligence**
758 **Documents Objection Deadline**, based on any unsatisfactory zoning and any use restrictions imposed by
759 any governmental agency with jurisdiction over the Property, in Buyer's sole subjective discretion.
760

761 **10.6.4. Due Diligence – Environmental, ADA.** Buyer has the right to obtain environmental
762 inspections of the Property including Phase I and Phase II Environmental Site Assessments, as applicable.
763 Seller Buyer will order or provide **Phase I Environmental Site Assessment**, **Phase II**
764 **Environmental Site Assessment** (compliant with most current version of the applicable ASTM E1527
765 standard practices for Environmental Site Assessments) and/or , at the expense of Seller Buyer
766 (Environmental Inspection). In addition, Buyer, at Buyer's expense, may also conduct an evaluation whether
767 the Property complies with the *Americans with Disabilities Act* (ADA Evaluation). All such inspections and
768 evaluations must be conducted at such times as are mutually agreeable to minimize the interruption of
769 Seller's and any Seller's tenants' business uses of the Property, if any.
770

771 If Buyer's Phase I Environmental Site Assessment recommends a Phase II Environmental Site
772 Assessment, the **Environmental Inspection Termination Deadline** will be extended by days (Extended
773 Environmental Inspection Objection Deadline) and if such Extended Environmental Inspection Objection
774 Deadline extends beyond the **Closing Date**, the **Closing Date** will be extended a like period of time. In such
775 event, Seller Buyer must pay the cost for such Phase II Environmental Site Assessment.
776

777 Notwithstanding Buyer's right to obtain additional environmental inspections of the Property in this §
778 10.6.4., Buyer has the Right to Terminate under § 24.1., on or before **Environmental Inspection**
779 **Termination Deadline**, or if applicable, the Extended Environmental Inspection Objection Deadline, based on
780 any unsatisfactory results of Environmental Inspection, in Buyer's sole subjective discretion.
781

782 Buyer has the Right to Terminate under § 24.1., on or before **ADA Evaluation Termination Deadline**,
783 based on any unsatisfactory ADA Evaluation, in Buyer's sole subjective discretion.
784

785 **10.7. Conditional Upon Sale of Property.** This Contract is conditional upon the sale and closing of
786 that certain property owned by Buyer and commonly known as . Buyer has the Right to Terminate under §
787 24.1. effective upon Seller's receipt of Buyer's Notice to Terminate on or before **Conditional Sale Deadline** if
788 such property is not sold and closed by such deadline. This Section is for the sole benefit of Buyer. If Seller
789 does not receive Buyer's Notice to Terminate on or before **Conditional Sale Deadline**, Buyer waives any
790 Right to Terminate under this provision.
791

792 **10.8. Source of Potable Water (Residential Land and Residential Improvements Only).**
793 **[Intentionally Deleted - See Residential Addendum if applicable]**
794

795 **10.9. Existing Leases; Modification of Existing Leases; New Leases.** Seller states that none of
796 the Leases to be assigned to the Buyer at the time of Closing contain any rent concessions, rent reductions
797 or rent abatements except as disclosed in the Lease or other writing received by Buyer. Seller will not amend,
798 alter, modify, extend or cancel any of the Leases nor will Seller enter into any new leases affecting the
799 Property without the prior written consent of Buyer, which consent will not be unreasonably withheld or
800 delayed.
801

802 **10.10. Lead-Based Paint.** **[Intentionally Deleted - See Residential Addendum if applicable]**
803

804 **10.11. Carbon Monoxide Alarms.** **[Intentionally Deleted - See Residential Addendum if**
805 **applicable]**
806

807 **10.12. Methamphetamine Disclosure.** **[Intentionally Deleted - See Residential Addendum if**
808 **applicable]**
809

810 **11. TENANT ESTOPPEL STATEMENTS.**

811 **11.1. Estoppel Statements Conditions.** Buyer has the right to review and object to any Estoppel
812 Statements. Seller must request from all tenants of the Property and if received by Seller, deliver to Buyer on
813 or before **Estoppel Statements Deadline**, statements in a form and substance reasonably acceptable to
814 Buyer, from each occupant or tenant at the Property (Estoppel Statement) attached to a copy of the Lease
815 stating:

816 **11.1.1.** The commencement date of the Lease and scheduled termination date of the Lease;

817 **11.1.2.** That said Lease is in full force and effect and that there have been no subsequent
818 modifications or amendments;
819

816 11.1.3. The amount of any advance rentals paid, rent concessions given and deposits paid to
817 Seller;
818 11.1.4. The amount of monthly (or other applicable period) rental paid to Seller;
819 11.1.5. That there is no default under the terms of said Lease by landlord or occupant; and
820 11.1.6. That the Lease to which the Estoppel Statement is attached is a true, correct and
821 complete copy of the Lease demising the premises it describes.

822 11.2. **Seller Estoppel Statement.** In the event Seller does not receive from all tenants of the Property
823 a completed signed Estoppel Statement, Seller agrees to complete and execute an Estoppel Statement
824 setting forth the information and documents required §11.1. above and deliver the same to Buyer on or
825 before **Estoppel Statements Deadline**.
826

827 11.3. **Estoppel Statements Termination.** Buyer has the Right to Terminate under § 24.1., on or
828 before **Estoppel Statements Termination Deadline**, based on any unsatisfactory Estoppel Statement, in
829 Buyer's sole subjective discretion, or if Seller fails to deliver the Estoppel Statements on or before **Estoppel**
830 **Statements Deadline**. Buyer also has the unilateral right to waive any unsatisfactory Estoppel Statement.
831

832 CLOSING PROVISIONS

833 12. CLOSING DOCUMENTS, INSTRUCTIONS AND CLOSING.

834 12.1. **Closing Documents and Closing Information.** Seller and Buyer will cooperate with the
835 Closing Company to enable the Closing Company to prepare and deliver documents required for Closing to
836 Buyer and Seller and their designees. If Buyer is obtaining a loan to purchase the Property, Buyer
837 acknowledges Buyer's lender is required to provide the Closing Company, in a timely manner, all required
838 loan documents and financial information concerning Buyer's loan. Buyer and Seller will furnish any
839 additional information and documents required by Closing Company that will be necessary to complete this
840 transaction. Buyer and Seller will sign and complete all customary or reasonably required documents at or
841 before Closing.
842

843 12.2. **Closing Instructions.** Colorado Real Estate Commission's Closing Instructions **Are**
844 **Are Not** executed with this Contract.
845

846 12.3. **Closing.** Delivery of deed from Seller to Buyer will be at closing (Closing). Closing will be on the
847 date specified as the **Closing Date** or by mutual agreement at an earlier date. At Closing, Seller agrees to
848 deliver a set of keys for the Property to Buyer. The hour and place of Closing will be as designated by
849 [Sellers & Buyers mutual agreement](#).
850

851 12.4. **Disclosure of Settlement Costs.** Buyer and Seller acknowledge that costs, quality and extent
852 of service vary between different settlement service providers (e.g., attorneys, lenders, inspectors and title
853 companies).
854

855 12.5. **Assignment of Leases.** Seller must assign to Buyer all Leases at Closing that will continue
856 after Closing and Buyer must assume Seller's obligations under such Leases. Further, Seller must transfer to
857 Buyer all Leased Items and assign to Buyer such leases for the Leased Items accepted by Buyer pursuant to
858 § 2.5.7. (Leased Items).
859

860 13. **TRANSFER OF TITLE.** Subject to Buyer's compliance with the terms and provisions of this Contract,
861 including the tender of any payment due at Closing, Seller must execute and deliver the following good and
862 sufficient deed to Buyer, at Closing: special warranty deed general warranty deed
863 bargain and sale deed quit claim deed personal representative's deed deed. Seller, provided
864 another deed is not selected, must execute and deliver a good and sufficient special warranty deed to Buyer,
865 at Closing.
866

867 Unless otherwise specified in § 29 (Additional Provisions), if title will be conveyed using a special
868 warranty deed or a general warranty deed, title will be conveyed "subject to statutory exceptions" as defined
869 in §38-30-113(5)(a), C.R.S.
870

871 14. **PAYMENT OF LIENS AND ENCUMBRANCES.** Unless agreed to by Buyer in writing, any amounts
872
873

874 owed on any liens or encumbrances securing a monetary sum against the Property and Inclusions, including
875 any governmental liens for special improvements installed as of the date of Buyer's signature hereon,
876 whether assessed or not, and previous years' taxes, will be paid at or before Closing by Seller from the
877 proceeds of this transaction or from any other source.
878

879 **15. CLOSING COSTS, FEES, ASSOCIATION STATUS LETTER AND DISBURSEMENTS, TAXES AND**
880 **WITHHOLDING.**
881

882 **15.1. Closing Costs.** Buyer and Seller must pay, in Good Funds, their respective closing costs and all
883 other items required to be paid at Closing, except as otherwise provided herein.

884 **15.2. Closing Services Fee.** The fee for real estate closing services must be paid at Closing by
885 Buyer Seller One-Half by Buyer and One-Half by Seller Other .
886

887 **15.3. Association Fees and Required Disbursements.** At least fourteen days prior to **Closing Date**,
888 Seller agrees to promptly request that the Closing Company or the Association deliver to Buyer a current
889 Status Letter, if applicable. Any fees associated with or specified in the Status Letter will be paid as follows:

890 **15.3.1. Status Letter Fee.** Any fee incident to the issuance of Association's Status Letter must
891 be paid by Buyer Seller One-Half by Buyer and One-Half by Seller N/A.

892 **15.3.2. Record Change Fee.** Any Record Change Fee must be paid by Buyer Seller
893 One-Half by Buyer and One-Half by Seller N/A.
894

895 **15.3.3. Assessments, Reserves or Working Capital.** All assessments required to be paid in
896 advance (other than Association Assessments as defined in § 16.2. (Association Assessments), reserves or
897 working capital due at Closing must be paid by Buyer Seller
898 One-Half by Buyer and One-Half by Seller N/A.

899 **15.3.4. Other Fees.** Any other fee listed in the Status Letter as required to be paid at Closing will
900 be paid by Buyer Seller One-Half by Buyer and One-Half by Seller N/A.

901 **15.4. Local Transfer Tax.** Any Local Transfer Tax must be paid at Closing by Buyer Seller
902 One-Half by Buyer and One-Half by Seller N/A.
903

904 **15.5. Sales and Use Tax.** Any sales and use tax that may accrue because of this transaction must be
905 paid when due by Buyer Seller One-Half by Buyer and One-Half by Seller N/A.

906 **15.6. Private Transfer Fee.** Any private transfer fees and other fees due to a transfer of the Property,
907 payable at Closing, such as community association fees, developer fees and foundation fees, must be paid at
908 Closing by Buyer Seller One-Half by Buyer and One-Half by Seller N/A.

909 **15.7. Water Transfer Fees.** Water Transfer Fees can change. The fees, as of the date of this
910 Contract, do not exceed \$ for:

911 Water Stock/Certificates Water District
912 Augmentation Membership Small Domestic Water Company

913 and must be paid at Closing by Buyer Seller One-Half by Buyer and One-Half by Seller N/A.
914

915 **15.8. Utility Transfer Fees.** Utility transfer fees can change. Any fees to transfer utilities from Seller to
916 Buyer must be paid by Buyer Seller One-Half by Buyer and One-Half by Seller N/A.

917 **15.9. FIRPTA and Colorado Withholding.**

918 **15.9.1. FIRPTA.** The Internal Revenue Service (IRS) may require a substantial portion of the
919 Seller's proceeds be withheld after Closing when Seller is a foreign person. If required withholding does not
920 occur, the Buyer could be held liable for the amount of the Seller's tax, interest and penalties. If the box in
921 this Section is checked, Seller represents that Seller IS a foreign person for purposes of U.S. income
922 taxation. If the box in this Section is not checked, Seller represents that Seller is not a foreign person for
923 purposes of U.S. income taxation. Seller agrees to cooperate with Buyer and Closing Company to provide
924 any reasonably requested documents to verify Seller's foreign person status. If withholding is required, Seller
925 authorizes Closing Company to withhold such amount from Seller's proceeds. Seller should inquire with
926 Seller's tax advisor to determine if withholding applies or if an exemption exists.
927

928 **15.9.2. Colorado Withholding.** The Colorado Department of Revenue may require a portion of
929 the Seller's proceeds be withheld after Closing when Seller will not be a Colorado resident after Closing, if
930 not otherwise exempt. Seller agrees to cooperate with Buyer and Closing Company to provide any
931

reasonably requested documents to verify Seller's status. If withholding is required, Seller authorizes Closing Company to withhold such amount from Seller's proceeds. Seller should inquire with Seller's tax advisor to determine if withholding applies or if an exemption exists.

16. PRORATIONS AND ASSOCIATION ASSESSMENTS.

16.1. Prorations. The following will be prorated to the **Closing Date**, except as otherwise provided:

16.1.1. Taxes. Personal property taxes, if any, special taxing district assessments, if any, and general real estate taxes for the year of Closing, based on

Taxes for the Calendar Year Immediately Preceding Closing

Most Recent Mill Levy and Most Recent Assessed Valuation, adjusted by any applicable qualifying seniors property tax exemption, qualifying disabled veteran exemption or **Other**

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

16.1.3. Other Prorations. Water and sewer charges, propane, interest on continuing loan and

16.1.4. Final Settlement. Unless otherwise specified in Additional Provisions, these prorations are final.

16.2. 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 unless otherwise specified in Additional Provisions. Seller represents there are no unpaid regular or special assessments against the Property except the current regular assessments and // Association Assessments are subject to change as provided in the Governing Documents.

17. POSSESSION. Possession of the Property and Inclusions will be delivered to Buyer on **Possession Date at Possession Time**, subject to the Leases as set forth in § 10.6.1.1.

If Seller, after Closing occurs, fails to deliver possession as specified, Seller will be subject to eviction and will be additionally liable to Buyer, notwithstanding § 20.2. (If Seller is in Default), for payment of \$ per day (or any part of a day notwithstanding § 3.3., Day) from **Possession Date** and **Possession Time** until possession is delivered.

General Provisions

18. 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.

18.1. Causes of Loss, Insurance. In the event the Property or Inclusions are damaged by fire, other perils or causes of loss prior to Closing (Property Damage) in an amount of not more than ten percent of the total Purchase Price and if the repair of the damage will be paid by insurance (other than the deductible to be paid by Seller), then Seller, upon receipt of the insurance proceeds, will use Seller's reasonable efforts to repair the Property before **Closing Date**. Buyer has the Right to Terminate under § 24.1., on or before **Closing Date**, if the Property is not repaired before **Closing Date**, or if the damage exceeds such sum. Should Buyer elect to carry out this Contract despite such Property Damage, Buyer is entitled to a credit at Closing for all insurance proceeds that were received by Seller (but not the Association, if any) resulting from damage to the Property and Inclusions, plus the amount of any deductible provided for in the insurance policy. This credit may not exceed the Purchase Price. In the event Seller has not received the insurance

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

18.2. 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 § 24.1., 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.

18.3. 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 § 24.1., 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.

18.4. 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. RECOMMENDATION OF LEGAL AND TAX COUNSEL. By signing this Contract, Buyer and Seller acknowledge that their respective broker has advised that this Contract has important legal consequences and has recommended: (1) legal examination of title; (2) consultation with legal and tax or other counsel before signing this Contract as this Contract may have important legal and tax implications; (3) to consult with their own attorney if Water Rights, Mineral Rights or Leased Items are included or excluded in the sale; and (4) to consult with legal counsel if there are other matters in this transaction for which legal counsel should be engaged and consulted. Such consultations must be done timely as this Contract has strict time limits, including deadlines, that must be complied with.

20. 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:

20.1. If Buyer is in Default:

20.1.1. 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.

20.1.2. Liquidated Damages, Applicable. This § 20.1.2. applies unless the box in § 20.1.1. 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 amount specified in § 4.1. is LIQUIDATED

1049 DAMAGES and not a penalty, which amount the parties agree is fair and reasonable and (except as provided
1050 in §§ 10.4. and 21), such amount is SELLER'S ONLY REMEDY for Buyer's failure to perform the obligations
1051 of this Contract. Seller expressly waives the remedies of specific performance and additional damages.

1052 **20.2. If Seller is in Default:**

1053 **20.2.1. Specific Performance, Damages or Both.** Buyer may elect to treat this Contract as
1054 canceled, in which case all Earnest Money received hereunder will be returned to Buyer and Buyer may
1055 recover such damages as may be proper. Alternatively, in addition to the per diem in § 17 (Possession) for
1056 failure of Seller to timely deliver possession of the Property after Closing occurs, Buyer may elect to treat this
1057 Contract as being in full force and effect and Buyer has the right to specific performance or damages, or
1058 both.
1059

1060 **20.2.2. Seller's Failure to Perform.** In the event Seller fails to perform Seller's obligations under
1061 this Contract, to include, but not limited to, failure to timely disclose Association violations known by Seller,
1062 failure to perform any replacements or repairs required under this Contract or failure to timely disclose any
1063 known adverse material facts, Seller remains liable for any such failures to perform under this Contract after
1064 Closing. Buyer's rights to pursue the Seller for Seller's failure to perform under this Contract are reserved and
1065 survive Closing.
1066

1067 **21. LEGAL FEES, COST AND EXPENSES.** Anything to the contrary herein notwithstanding, in the event
1068 of any arbitration or litigation relating to this Contract, prior to or after **Closing Date**, the arbitrator or court
1069 must award to the prevailing party all reasonable costs and expenses, including attorney fees, legal fees and
1070 expenses.
1071

1072 **22. MEDIATION.** If a dispute arises relating to this Contract (whether prior to or after Closing) and is not
1073 resolved, the parties must first proceed, in good faith, to mediation. Mediation is a process in which the
1074 parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators
1075 cannot impose binding decisions. Before any mediated settlement is binding, the parties to the dispute must
1076 agree to the settlement, in writing. The parties will jointly appoint an acceptable mediator and will share
1077 equally in the cost of such mediation. The obligation to mediate, unless otherwise agreed, will terminate if the
1078 entire dispute is not resolved within thirty days of the date written notice requesting mediation is delivered by
1079 one party to the other at that party's last known address (physical or electronic as provided in § 26). Nothing
1080 in this Section prohibits either party from filing a lawsuit and recording a *lis pendens* affecting the Property,
1081 before or after the date of written notice requesting mediation. This Section will not alter any date in this
1082 Contract, unless otherwise agreed.
1083
1084
1085

1086 **23. EARNEST MONEY DISPUTE.** Except as otherwise provided herein, Earnest Money Holder must
1087 release the Earnest Money following receipt of written mutual instructions, signed by both Buyer and Seller.
1088 In the event of any controversy regarding the Earnest Money, Earnest Money Holder is not required to
1089 release the Earnest Money. Earnest Money Holder, in its sole subjective discretion, has several options: (1)
1090 wait for any proceeding between Buyer and Seller; (2) interplead all parties and deposit Earnest Money into a
1091 court of competent jurisdiction (Earnest Money Holder is entitled to recover court costs and reasonable
1092 attorney and legal fees incurred with such action); or (3) provide notice to Buyer and Seller that unless
1093 Earnest Money Holder receives a copy of the Summons and Complaint or Claim (between Buyer and Seller)
1094 containing the case number of the lawsuit (Lawsuit) within one hundred twenty days of Earnest Money
1095 Holder's notice to the parties, Earnest Money Holder is authorized to return the Earnest Money to Buyer. In
1096 the event Earnest Money Holder does receive a copy of the Lawsuit and has not interpleaded the monies at the
1097 time of any Order, Earnest Money Holder must disburse the Earnest Money pursuant to the Order of the
1098 Court. The parties reaffirm the obligation of § 22 (Mediation). This Section will survive cancellation or
1099 termination of this Contract.
1100
1101

1102 **24. TERMINATION.**

1103 **24.1. Right to Terminate.** If a party has a right to terminate, as provided in this Contract (Right to
1104 Terminate), the termination is effective upon the other party's receipt of a written notice to terminate (Notice to
1105
1106

1107 Terminate), provided such written notice was received on or before the applicable deadline specified in this
1108 Contract. If the Notice to Terminate is not received on or before the specified deadline, the party with the
1109 Right to Terminate accepts the specified matter, document or condition as satisfactory and waives the Right
1110 to Terminate under such provision.
1111

1112 **24.2. Effect of Termination.** In the event this Contract is terminated, and all Earnest Money received
1113 hereunder is timely returned to Buyer, the parties are relieved of all obligations hereunder, subject to §§ 10.4.
1114 and 21.
1115

1116 **25. ENTIRE AGREEMENT, MODIFICATION, SURVIVAL; SUCCESSORS.** This Contract, its exhibits and
1117 specified addenda, constitute the entire agreement between the parties relating to the subject hereof and any
1118 prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this
1119 Contract. No subsequent modification of any of the terms of this Contract is valid, binding upon the parties, or
1120 enforceable unless made in writing and signed by the parties. Any right or obligation in this Contract that, by
1121 its terms, exists or is intended to be performed after termination or Closing survives the same. Any successor
1122 to a party receives the predecessor's benefits and obligations of this Contract.
1123

1124
1125 **26. NOTICE, DELIVERY AND CHOICE OF LAW.**

1126 **26.1. Physical Delivery and Notice.** Any document or notice to Buyer or Seller must be in writing,
1127 except as provided in § 26.2. and is effective when physically received by such party, any individual named in
1128 this Contract to receive documents or notices for such party, Broker, or Brokerage Firm of Broker working
1129 with such party (except any notice or delivery after Closing must be received by the party, not Broker or
1130 Brokerage Firm).
1131

1132 **26.2. Electronic Notice.** As an alternative to physical delivery, any notice may be delivered in
1133 electronic form to Buyer or Seller, any individual named in this Contract to receive documents or notices for
1134 such party, Broker or Brokerage Firm of Broker working with such party (except any notice or delivery after
1135 Closing, cancellation or Termination must be received by the party, not Broker or Brokerage Firm) at the
1136 electronic address of the recipient by facsimile, email or .
1137

1138 **26.3. Electronic Delivery.** Electronic Delivery of documents and notice may be delivered by: (1) email
1139 at the email address of the recipient, (2) a link or access to a website or server provided the recipient
1140 receives the information necessary to access the documents, or (3) facsimile at the facsimile number (Fax
1141 No.) of the recipient.

1142 **26.4. Choice of Law.** This Contract and all disputes arising hereunder are governed by and construed
1143 in accordance with the laws of the State of Colorado that would be applicable to Colorado residents who sign
1144 a contract in Colorado for real property located in Colorado.
1145

1146 **27. NOTICE OF ACCEPTANCE, COUNTERPARTS.** This proposal will expire unless accepted in writing,
1147 by Buyer and Seller, as evidenced by their signatures below and the offering party receives notice of such
1148 acceptance pursuant to § 26 on or before **Acceptance Deadline Date** and **Acceptance Deadline Time**. If
1149 accepted, this document will become a contract between Seller and Buyer. A copy of this Contract may be
1150 executed by each party, separately and when each party has executed a copy thereof, such copies taken
1151 together are deemed to be a full and complete contract between the parties.
1152

1153
1154 **28. GOOD FAITH.** Buyer and Seller acknowledge that each party has an obligation to act in good faith
1155 including, but not limited to, exercising the rights and obligations set forth in the provisions of **Financing**
1156 **Conditions and Obligations; Title Insurance, Record Title and Off-Record Title; New ILC, New Survey;**
1157 **and Property Disclosure, Inspection, Indemnity, Insurability and Due Diligence.**
1158

1159
1160 **ADDITIONAL PROVISIONS AND ATTACHMENTS**
1161

1162
1163 **29. ADDITIONAL PROVISIONS.** (The following additional provisions have not been approved by the
1164 Colorado Real Estate Commission.)
1165

- 1166 1. Buyer has the right to assign this contract to a related party at any point up to 3 days
- 1167 before closing.
- 1168 2. Buyer and Seller acknowledge that the value of the Property is \$640,000.00 and that
- 1169 non-monetary consideration, as
- 1170 outlined in the Development Agreement Terms of Exhibit A, will be exchanged between
- 1171 Buyer and Seller for the
- 1172 difference between the Purchase Price and value of the Property. Title Insurance shall be
- 1173 issued for the full value of
- 1174 the Property, in the amount of \$640,000.00.
- 1175 3. Seller and Buyer to split the cost of the title insurance and closing costs equally.
- 1176 4. Sale of said property is contingent upon approval of City Council.
- 1177 5. In the event dates need to be extended, both parties agree to extend not to exceed 60 days.

1180 **30. OTHER DOCUMENTS.**

1181 **30.1. Documents Part of Contract.** The following documents are a part of this Contract:

1182 Development Agreement Terms Exhibit A

1183

1184

1185

1186

1187

1188 **30.2. Documents Not Part of Contract.** The following documents have been provided but are not a

1189 part of this Contract:

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Signatures

Alleghany Meadows, Member

Date: 1/16/2024

Buyer: **FARM, LLC**

By: Alleghany Meadows, Member

Gavin Brooke, Member

Date: 1/16/2024

Buyer: **FARM, LLC**

By: Gavin Brooke, Member

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

Date: _____

1224 Seller: **City of Fruita**
1225 **By: Mike Bennett, City Manager**
1226
1227
1228
1229

1230 **END OF CONTRACT TO BUY AND SELL REAL ESTATE**
1231
1232
1233

1234
1235 **BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.**
1236

1237 **A. Broker Working With Buyer**
1238

1239 Broker **Does** **Does Not** acknowledge receipt of Earnest Money deposit. Broker agrees that if
1240 Brokerage Firm is the Earnest Money Holder and, except as provided in § 23, if the Earnest Money has not
1241 already been returned following receipt of a Notice to Terminate or other written notice of termination, Earnest
1242 Money Holder will release the Earnest Money as directed by the written mutual instructions. Such release of
1243 Earnest Money will be made within five days of Earnest Money Holder's receipt of the executed written
1244 mutual instructions, provided the Earnest Money check has cleared.
1245
1246

1247 Broker is working with Buyer as a **Buyer's Agent** **Transaction-Broker** in this transaction.
1248

1249 **Customer.** Broker has no brokerage relationship with Buyer. See § B for Broker's brokerage relationship
1250 with Seller.
1251

1252 Brokerage Firm's compensation or commission is to be paid by **Listing Brokerage Firm** **Buyer**
1253 **Other \$1,000.00.**
1254
1255

1256 This Broker's Acknowledgements and Compensation Disclosure is for disclosure purposes only and does
1257 NOT create any claim for compensation. Any compensation agreement between the brokerage firms must be
1258 entered into separately and apart from this provision.
1259

1260 Brokerage Firm's Name: **Chesnick Realty, LLC**
1261

1262 Brokerage Firm's License #: **EC100010148**
1263

1264 
1265
1266
1267

Date: **1/16/2024**

1268 Broker's Name: **Lori Chesnick**
1269

1270 Broker's License #: **ER1320802**
1271

1272 Address: **137 N Peach St Fruita, CO 81521**
1273

1274 Phone No.: **970-858-8238**
1275

1276 Fax No.: **970-858-8266**
1277

1278 Email Address: **lori@chesnickrealtyllc.com**
1279
1280
1281

1282 **B. Broker Working with Seller**
1283

1284 Broker Does **Does Not** acknowledge receipt of Earnest Money deposit. Broker agrees that if
1285 Brokerage Firm is the Earnest Money Holder and, except as provided in § 23, if the Earnest Money has not
1286 already been returned following receipt of a Notice to Terminate or other written notice of termination, Earnest
1287 Money Holder will release the Earnest Money as directed by the written mutual instructions. Such release of
1288 Earnest Money will be made within five days of Earnest Money Holder's receipt of the executed written
1289 mutual instructions, provided the Earnest Money check has cleared.
1290

1291
1292 Broker is working with Seller as a **Seller's Agent** **Transaction-Broker** in this transaction.
1293

1294 **Customer**. Broker has no brokerage relationship with Seller. See § A for Broker's brokerage relationship
1295 with Buyer.
1296

1297 Brokerage Firm's compensation or commission is to be paid by **Seller** **Buyer** **Other** **\$1,000.00**.
1298

1299 This Broker's Acknowledgements and Compensation Disclosure is for disclosure purposes only and does
1300 NOT create any claim for compensation. Any compensation agreement between the brokerage firms must be
1301 entered into separately and apart from this provision.
1302
1303
1304
1305

1306 Brokerage Firm's Name: **Chesnick Realty, LLC**
1307

1308 Brokerage Firm's License #: **EC100010148**
1309

1310 Broker:

1311 
1312

1313 Date: **1/16/2024**
1314

1315 Broker's License #: **ER1320802**

1316 Address: **137 N Peach St Fruita, CO 81521**
1317

1318 Phone No.: **970-858-8238**

1319 Fax No.: **970-858-8266**
1320

1321 Email Address: **lori@chesnickrealtyllc.com**
1322

1323 **CBS3-6-23. CONTRACT TO BUY AND SELL REAL ESTATE (COMMERCIAL)**
1324

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The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission. (CP40-6-21) (Mandatory 1-22)

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

COUNTERPROPOSAL

Date: 1/25/2024

1. This Counterproposal supersedes and replaces any previous counterproposal. This Counterproposal amends the proposed contract dated 1/16/2024 (Contract) between **City of Fruita** (Seller) and **FARM, LLC** (Buyer) relating to the sale and purchase of the following legally described real estate in the County of **Mesa**, Colorado (insert legal description):

LOTS 12 AND 13 BLK 13 TOWN OF FRUITA SUB LOCATED IN SEC 17 1N 2W UM RECD 7/23/1884 RN-1968 MESA CO RECDS-.28 AC
TAX PARCEL # 2697-172-22-029
AND

LOT 14 BLK 13 TOWN OF FRUITA SUB LOCATED IN SEC 17 1N 2W UM RECD 7/23/1884 RN-1968 MESA CO RECDS - .11 AC
TAX PARCEL # 2697-172-22-030
TITLE COMPANY TO VERIFY LEGAL DESCRIPTION

known as: **169 S Mulberry St, Fruita, CO 81521** (Property).

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

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

Item No.	Reference	Event	Date or Deadline	No Change	Deleted
1	§ 3	Time of Day Deadline			
2	§ 3	Alternative Earnest Money Deadline			
		Title			
3	§ 8	Record Title Deadline (and Tax Certificate)			
4	§ 8	Record Title Objection Deadline			
5	§ 8	Off-Record Title Deadline			
6	§ 8	Off-Record Title Objection Deadline			
7	§ 8	Title Resolution Deadline			
8	§ 8	Third Party Right to Purchase/Approve Deadline			
		Owners' Association			
9	§ 7	Association Documents Deadline			
10	§ 7	Association Documents Termination Deadline			
		Seller's Disclosures			
11	§ 10	Seller's Property Disclosure Deadline			
12	§ 10	Lead-Based Paint Disclosure Deadline			
		Loan and Credit			
13	§ 5	New Loan Application Deadline			
14	§ 5	New Loan Terms Deadline			
15	§ 5	New Loan Availability Deadline			
16	§ 5	Buyer's Credit Information Deadline			
17	§ 5	Disapproval of Buyer's Credit Information Deadline			

18	§ 5	Existing Loan Deadline			
19	§ 5	Existing Loan Termination Deadline			
20	§ 5	Loan Transfer Approval Deadline			
21	§ 4	Seller or Private Financing Deadline			
		Appraisal			
22	§ 6	Appraisal Deadline			
23	§ 6	Appraisal Objection Deadline			
24	§ 6	Appraisal Resolution Deadline			
		Survey			
25	§ 9	New ILC or New Survey Deadline			
26	§ 9	New ILC or New Survey Objection Deadline			
27	§ 9	New ILC or New Survey Resolution Deadline			
		Inspection and Due Diligence			
28	§ 2	Water Rights Examination Deadline			
29	§ 8	Mineral Rights Examination Deadline			
30	§ 10	Inspection Termination Deadline	3/22/2024	Friday	
31	§ 10	Inspection Objection Deadline	3/22/2024	Friday	
32	§ 10	Inspection Resolution Deadline	3/29/2024	Friday	
33	§ 10	Property Insurance Termination Deadline			
34	§ 10	Due Diligence Documents Delivery Deadline			
35	§ 10	Due Diligence Documents Objection Deadline			
36	§ 10	Due Diligence Documents Resolution Deadline			
37	§ 10	Environmental Inspection Objection Deadline (CBS2, 3, 4)	3/29/2024	Friday	
38	§ 10	ADA Evaluation Termination Deadline (CBS2, 3, 4)			
39	§ 10	Conditional Sale Deadline			
40	§ 10	Lead-Based Paint Termination Deadline			
41	§ 11	Estoppel Statements Deadline (CBS2, 3, 4)			
42	§ 11	Estoppel Statements Termination Deadline (CBS2,3,4)			
		Closing and Possession			
43	§ 12	Closing Date			
44	§ 17	Possession Date			
45	§ 17	Possession Time			
46					
47					

19

20 **3. § 4. PURCHASE PRICE AND TERMS.** [Note: This table may be deleted if inapplicable.]

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

23

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Item No.	Reference	Item	Amount	Amount
1	§ 4.1	Purchase Price	\$640,000.00	
2	§ 4.3	Earnest Money		\$11,505.00
3	§ 4.5	New Loan		
4	§ 4.6	Assumption Balance		
5	§ 4.7	Private Financing		
6	§ 4.7	Seller Financing		
7		Nonmonetary Contribution (ExA)		\$409,885.00
8				
9	§ 4.4	Cash at Closing		\$218,610.00
10		TOTAL	\$640,000.00	\$640,000.00

25

26 **4. ATTACHMENTS.** The following are a part of this Counterproposal:

27

28 **Note:** The following documents have been provided but are **not** a part of this Counterproposal:

29

CP40-6-21. COUNTERPROPOSAL

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Chesnick Realty, LLC

137 N Peach St Fruita, CO 81521

Lori Chesnick Broker/Owner lori@chesnickrealtyllc.com

Ph: 970-858-8238 Fax: 970-858-8266

EXHIBIT A TERMS FOR DEVELOPMENT AGREEMENT

Date: 1/16/2024

Property Address: **169 S Mulberry St, Fruita, CO 81521**

EXHIBIT A

At Closing, the Buyer and the City will enter into a Development Agreement including at least the general terms outlined in this Exhibit A.

Buyer and Seller agree to negotiate in good faith and enter into a Development Agreement for the Property on or before March 22, 2024, which shall include all material terms contained herein. If no Development Agreement is entered into on or before March 22, 2024, either party shall have the right to terminate under § 24 of the Contract.

I. BUILDING REDVELOPMENT

A. Buyer shall obtain a letter of credit on or before March 22, 2024, that can be drawn on by the City to complete the improvements to the Powder Coating Building in the event that the Buyer defaults in its obligations to redevelop the Powder Coating Building under the Parking and Redevelopment Agreement.

B. Buyer will provide to Seller on or before March 22, 2024 an estimate of costs associated with the redevelopment of the Powder Coating Building in accordance with subsection C, below.

C. Buyer, at its sole expense, will redevelop the Power Coating Building, which redevelopment shall include:

- a. Removal of the jumble of lean-to additions along the alley;**
- b. A new metal roof on the original building;**
- c. Replacement of the skylights;**
- d. New garage doors to Mulberry and McCune;**
- e. New exterior lighting; and**
- f. New exterior paint.**

D. Upon Buyer's obtainment of a certificate of occupancy for the redeveloped Powder Coating Building, and the seal coating and striping of the 20 initial parking spaces, as described in Section II(A)(a), below, the City will grant to Buyer use of the City's right of way along McCune for parking, patio, and/or outdoor improvements.

II. PARKING AGREEMENT

A., a. and b. are replaced with:

At closing, the Buyer and the City shall enter into a lease agreement whereby the City lease 20 parking spaces for public use on the Property which Buyer shall maintain with seal coating, striping and parking bumpers. On or before the end of the lease, Buyer shall permanently dedicate 20 public parking spaces to the City on either the Property as

described in the lease or an any property owned by the Buyer on Mulberry Street between E. Aspen Avenue and E. McCune Avenue in a location approved by the City Manager, in writing, which approval shall not be unreasonably withheld.

c. Upon the dedication of the permanent location for the 20 public parking spaces, the parking area shall be improved and maintained, at the sole expense of the City, to meet the then-current parking standards for the City of Fruita. These improvements shall include paving, lighting and landscaping.

d. City shall at all times carry insurance for all public parking spaces described and designated herein at its cost.

e. Additional parking will not be required of the Buyer as a result of the redevelopment.

f. The 24 existing parking spaces north of the FARM property and south of E. Aspen Avenue shall remain without private signage and available for use as public parking until the dedication of the 20 permanent public parking spaces is completed. Buyer shall be responsible for all costs and maintenance obligations of the 24 existing parking spaces described in this subsection.

Date: _____
Seller: **City of Fruita**
By: Mike Bennett, City Manager

Alleghany Meadows, Member

Date: **1/30/2024**
Buyer: **FARM, LLC**
By: Alleghany Meadows, Member

Gavin Brooke, Member

Date: **1/31/2024**
Buyer: **FARM, LLC**
By: Gavin Brooke, Member