

E RECORDED DATE 3/29/24

COUNTY Mesa

REC. NO. 3089191

PARTIAL RELEASE AND TERMINATION OF REPURCHASE AGREEMENT

This Partial Release and Termination of Repurchase Agreement ("Agreement") dated this 28 day of March 2024 (the "Effective Date"), is by and between CITY OF GRAND JUNCTION, a Colorado home-rule municipal corporation (the "City"), DR LOT 7 LLC, a Colorado limited liability company ("Owner"). Collectively the City and the Owner may be referred to as the Parties.

RECITALS

A. Owner purchased the following real property from the City:

LOT 7 OF RIVERFRONT AT DOS RIOS FILING 3,
COUNTY OF MESA, STATE OF COLORADO

(the "Property"). Pursuant to that certain Declaration of Repurchase Right dated June 9, 2021, and recorded on June 11, 2021, in the real property records of Mesa County, Colorado as Reception No. 2985241 ("Repurchase Agreement"), the City reserved the right to repurchase the Property under certain conditions, as described in the Repurchase Agreement.

B. The Parties wish to terminate the rights the City has or may have to repurchase the Property or to exercise a right of first offer for the Property under the Repurchase Agreement, effective as of the Effective Date, in accordance with the terms and provisions set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing Recitals, which are expressly incorporated herein, the mutual promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Partial Termination and Release of Repurchase Right. Subject to the terms and provisions of this Agreement, effective as of the Effective Date, any and all rights that the City may have to repurchase the Property or to exercise a right of first offer for the Property under the Repurchase Agreement is hereby released, terminated and of no further force and effect and the Repurchase Agreement shall no longer constitute a covenant running with the land as to the Property.

2. Further Assurances. The Parties agree to cooperate, sign, and deliver this Agreement and such other and further documents, if any, as may be reasonably required, necessary or appropriate to effectuate the terms, conditions and transactions contemplated by this Agreement.

3. Miscellaneous. This Agreement constitutes the entire agreement between the Parties relating to the release and termination of the Repurchase Agreement with respect to the Property and may not be modified except by a document in writing signed by the Parties. This Agreement will be governed by and construed in accordance with the Colorado law. In the event of any action or suit between the Parties hereto for any breach, any threatened breach or for the enforcement of this Agreement the prevailing party in such action or dispute, whether by final

judgment or out-of-court settlement, will recover from the other party, all costs and expenses of suit, including reasonable attorneys' fees. This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which taken together will constitute one and the same document. The Parties waive their right to a trial by jury in any dispute arising from the enforcement or interpretation of this Agreement.

4. This Agreement shall be recorded in the real estate records of the Mesa County Clerk and Recorder and shall run with the Property and shall inure to the benefit of the Owner and its successor(s) and assign(s).

IN WITNESS HEREOF, the Parties hereto have executed or caused to be executed this Agreement as of the day and year first above written.

OWNER:

By: _____

Printed Name: _____

Title _____

STATE OF Colorado)

) ss.

COUNTY OF Route)



The foregoing was acknowledged before me this 28 day of March, 2024, by Kevin Riegler as Manager of DR LOT 7 LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: March 10, 2026

Notary Public

CITY:

By: _____

Printed Name: _____

Title: _____

STATE OF COLORADO)

) ss.

COUNTY OF MESA)

The foregoing was acknowledged before me this ____ day of _____, 2024 by _____, as _____ of the CITY OF GRAND JUNCTION, a Colorado home-rule municipal corporation.

Witness my hand and official seal.

My commission expires: _____

judgment or out-of-court settlement, will recover from the other party, all costs and expenses of suit, including reasonable attorneys' fees. This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which taken together will constitute one and the same document. The Parties waive their right to a trial by jury in any dispute arising from the enforcement or interpretation of this Agreement.

4. This Agreement shall be recorded in the real estate records of the Mesa County Clerk and Recorder and shall run with the Property and shall inure to the benefit of the Owner and its successor(s) and assign(s).

IN WITNESS HEREOF, the Parties hereto have executed or caused to be executed this Agreement as of the day and year first above written.

OWNER:

By: _____

Printed Name: _____ Title _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing was acknowledged before me this _____ day of _____, 2024, by _____ as _____ of DR LOT 7 LLC, a _____ limited liability company.

Witness my hand and official seal.

My commission expires: _____

Notary Public

CITY:

By: _____

Printed Name: Greg Caton

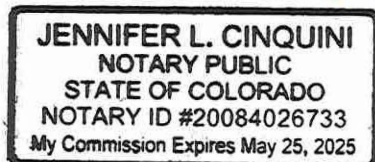
Title: City Manager

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing was acknowledged before me this 26th day of March, 2024 by Greg Caton, as City Manager of the CITY OF GRAND JUNCTION, a Colorado home-rule municipal corporation.

Witness my hand and official seal.

My commission expires: May 25, 2025



Jennifer L. Cinquini
Notary Public

SEVENTH AMENDMENT TO PURCHASE AND SALE AGREEMENT

This Seventh Amendment to Purchase and Sale Agreement (“Seventh Amendment”) amends the PURCHASE AND SALE AGREEMENT dated September 30, 2020 (as previously amended) (“PSA”) between the City of Grand Junction, a Colorado home-rule municipal corporation (together with its successors and assigns “Seller”), and DR LAND LLC (f/k/a DR DEVCO LLC) a Colorado limited liability company (together with its successors and assigns “Purchaser”), as amended, and relating to the purchase and sale of the Property together with the improvements and appurtenances as described in the PSA.

(1) **Effective Date.** The Effective Date of this Seventh Amendment shall be the date of its mutual execution by the Parties below.

(2) **Partial Acquisition in Multiple Closings Allowed.** The Property, pursuant to the PSA, as amended, is to be acquired in parts in at least two closings, but with more than two closings on portions of the Property is allowed. Seller and Purchaser desire to schedule a closing for that portion of the Property legally described as follows: in Paragraph 3 below and for the consideration set forth in Paragraph 4 below:

Lot 7 of the Riverfront at Dos Rios Filing Three, according to the plat thereof filed for record September 16, 2020, under Reception No. 2942736 in the Mesa County land records (“Lot 7”) together with all appurtenances and improvements therein and thereon.

(3) **Lot 7 Closing Date.** The closing shall occur on or before March 25, 2024 (“Closing Date”) at a time and place designated by the Title Company. At Closing the City shall tender a Special Warranty Deed in the form of Exhibit D to the PSA, with the following exception: Exception 3.5, relating to the Declaration of Repurchase Right, shall be deleted; see (5) below.

(4) **Purchase Price.** As set forth in the Third Amendment to the Purchase and Sale Agreement, the total purchase price for the property is \$4,259,982.00. Of that amount, \$1,842,435.54 was paid by the Purchaser to the Seller at the closing on the Part I land leaving a balance of \$2,417,546.46 to be paid for the Part II land. As set forth in the Sixth Amendment to the Purchase and Sale Agreement, \$100,000 was paid by the Purchaser to the Seller for the conveyance of Lot 6A and B. The purchase price of Lot 7 shall be **Three Hundred Ninety-Five, Five Hundred Fifty-one and 00/100 Dollars (\$395,551.81)**

The balance of the purchase price for the remaining Part II land (after the closing on Lot 7) will be \$1,921,994.65, which is equal to the Part II Purchase Price less \$495,551.81. The remaining Part II Land to be acquired and transferred after the Lot 7 closing is Lot 1 and Lot 5, Riverfront at Dos Rios Filing Three.

(5) **Release of Repurchase Right.** Seller shall, at Closing, release the repurchase right relating to Lot 7, as that right is set forth in that certain instrument recorded on June 11, 2021, under Reception No. 2985241 in the Mesa County land records, to enable the Purchaser to obtain construction funding for commercial improvements to Lot 7, which will occur promptly after the closing on Lot 7.

(6) **Assignment by Buyer.** Lot 7 will be conveyed to and acquired by the following named affiliate of DR Land LLC, **DR Lot 7 LLC**, a Colorado limited liability company.

No other provisions of the PSA are modified or amended hereby.

IN WITNESS WHEREOF, the Parties have caused this Seventh Amendment to be executed effective as of the date last signed by a party below.

SELLER:

CITY OF GRAND JUNCTION, a Colorado home rule municipal corporation

By: _____ Date: _____
Greg Caton, City Manager

PURCHASER:

DR LAND LLC, a Colorado limited liability company

By: _____ Date: _____
Kevin Riegler, Manager

ASSIGNEE:

DR LOT & LLC, a _____ limited liability company

By: _____ Date: _____
_____, Manager

1 **FIFTH AGREEMENT TO AMEND/EXTEND PURCHASE AND SALE AGREEMENT**

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3 This agreement ("Fifth Amendment") amends the PURCHASE AND SALE
4 AGREEMENT ("PSA") dated September 30, 2020 ("PSA") between the CITY OF GRAND
5 JUNCTION, a Colorado home-rule municipal corporation (together with its successors and
6 assigns, "Seller") and DR DEVCO LLC, a Colorado limited liability company (together with its
7 successors and permitted assigns, "Purchaser"), as amended, and relating to the purchase and sale
8 of the Property together with the improvements and appurtenances as described in the PSA and
9 the amendments thereto.

10
11 (1) **Effective Date.** The Effective Date of this Fifth Amendment shall be the date of
12 its mutual execution.

13
14 (2) **Development Plan and Exhibit F.** The Purchaser has submitted a Development
15 Plan as required by the PSA, as amended, which has been accepted by the City. The parties desire
16 to amend Exhibit F to conform to the Development Plan. The Amended Exhibit F is attached
17 hereto and incorporated herein by this reference.

18
19 (3) **Initial Closing.** Initial Closing date shall be June 2, 2021.

20
21 **No other provisions of the PSA are amended, modified or extended hereby.**

22
23 IN WITNESS WHEREOF, the Parties acknowledge and agree that there is sufficient consideration
24 for the making and enforcement of Fifth Agreement to Amend/Extend Purchase and Sale
25 Agreement do hereby cause it to be made, executed and effective as of the date last signed by a
26 party below:

27
28 **SELLER:**

29
30 CITY OF GRAND JUNCTION, a Colorado home rule municipal corporation

31
32 By: C.B.McD 05/25/2021
33

34 Chuck McDaniel date
35 President of the City Council

36
37 By: [Signature] 5/25/2021
38 Greg Caton, City Manager date

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40 **ATTEST:**

41
42 W Winkelmann 05/25/2021
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44 Wanda Winkelmann date
45 City Clerk
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48 **PURCHASER:**

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50 DR LAND LLC, I/k/a DR DEVCO LLC, a Colorado limited liability company

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Jacques Machol III, Manager

date

5-25-21

EXHIBIT F
to
PSA
Form of Declaration of Repurchase Right

The Purchaser has submitted an ODP/PD plan ("Development Plan") to the City. The Development Plan includes the following elements:

- 269 residential dwelling units;
- 69,800 square feet of commercial; and
- 80 hotel rooms.

As required by the City Zoning and Development Code ("Code") each component of the Development Plan includes City approval (and satisfaction of any approval conditions) of a Major Site Plan or Preliminary/Final Subdivision Plan as necessary to satisfy the Code. Purchaser shall complete development in accordance with the Development Plan by the following deadlines:

- Phase 1: Submit and receive City approval of Certificate(s) of Occupancy for a minimum of 20 dwelling units and 10,000 square feet of retail, office and/or light industrial by December 31, 2022. Initial assessment value of such development must be greater than or equal to \$1,975,000.00.
- Phase 2: Submit and receive City approval of Certificate(s) of Occupancy for a minimum of 20 additional dwelling units and 10,000 additional square feet of retail, office and/or light industrial by December 31, 2023. Initial assessment value of such development must be greater than or equal to \$4,616,000.00.
- Phase 3: Submit and receive City approval of Certificate(s) of Occupancy for a minimum of 20 additional dwelling units and 15,000 additional square feet of retail, office and/or light industrial by December 31, 2024. Initial assessment value of such development must be greater than or equal to \$3,964,000.00.
- Phase 4: Submit and receive City approval of Certificate(s) of Occupancy for a minimum of 40 additional dwelling units and 15,000 additional square feet of retail, office and/or light industrial by December 31, 2025. Initial assessment value of such development must be greater than or equal to \$1,997,000.00.
- Phase 5: Submit and receive City approval of Certificate(s) of Occupancy for a minimum of 40 additional dwelling units, 25,000 additional square feet of retail, office and/or light industrial by December 31, 2026. Initial assessment value of such development must be greater than or equal to \$1,021,926.
- Phase 6: Submit and receive City approval of Certificate(s) of Occupancy for a minimum of 40 additional dwelling units and 25,000 additional square feet

of retail, office and/or light industrial by December 31, 2027. Initial assessment value of such development must be greater than or equal to \$0.00.

Phase 7: Submit and receive City approval of Certificate(s) of Occupancy for a minimum of 50 additional dwelling units and 47,000 additional square feet of retail, office and/or light industrial and 80 rooms of hotel space by December 31, 2028. Initial assessment value of such development must be greater than or equal to \$271,000.00.

Total assessed value of the Property upon completion of development must be at least \$7.27 million for residential and \$6.57 million for commercial development.

If Purchaser fails to meet any of the foregoing deadlines, or otherwise fails to develop the Property in accordance with the Development Plan, Seller may elect to repurchase any portion of the Property remaining undeveloped at the time of such failure in accordance with the following terms and conditions:

- Notwithstanding anything else contained herein, "Property remaining undeveloped" for the purposes of this repurchase provision shall exclude any Property for which an active building permit has been issued and substantial construction work is ongoing. Further, should the approval process for the design and permit application for any Lot exceed ninety (90) days from initial Planning and Zoning application to final approval, such that a Building Permit may be obtained, such additional approval process time period beyond ninety (90) days shall be added to each of the foregoing dates.
- In addition and, notwithstanding anything else contained herein, in order to facilitate construction lending for each and any Phase(s) of the project, Seller agrees to release the Repurchase Right for each Phase of the property subject to the Initial Closing at the time the Purchaser closes and the construction loan is funded for that Phase or if the Purchaser's lender requests that the Seller agree in writing to subordinate the Repurchase Right to all the rights and remedies of the construction lender, which do not cause or create a claim against the Seller, Seller agrees it will do so. The Purchaser shall endeavor to secure construction financing for each Phase of the property subject to the Final Closing that does not require the Seller to release or subordinate the Repurchase Right, but in the event such is necessary to secure financing the Seller reasonably agrees to consider in good faith the release or subordination as provided for the Initial Closing to facilitate the Buyer's ability to obtain construction financing for each Phase of the project to be constructed on the property named for the Final Closing. In the event the Seller determines in good faith, based on Purchaser's failure to meet milestones as set forth above, not to release or subordinate the Repurchase Right on the property subject to the Final Closing, the Purchaser shall have no claim or cause of action against the Seller; however, that notwithstanding, Seller agrees that it will not exercise or use the Repurchase Right to frustrate the Purchaser's ability to obtain financing for construction or to reclaim and resell the property for a higher price, acknowledging Purchaser's contribution to the increase in value of the property.

- Seller will deliver to Purchaser written notice of such failure, whereupon Purchaser will have 30 days to propose corrective measures (e.g., new timeline, unit count, square footage, etc.) to Seller;
- Seller will have 90 days to accept or reject the proposed corrective measures;
- If Seller does not accept the proposed corrective measures, Seller may elect to repurchase the applicable portion(s) of the Property on the same general terms as Purchaser's acquisition from Seller, including the Purchase Price allocated to such portion of the Property based on the acreage of the repurchase property to the total acreage of the Property.
- Any square footage or value minimum that is exceeded in any phase shall be banked and able to use in any future phase requirement.

The Declaration of Repurchase Right will run with the land. The foregoing repurchase right will apply as a right of first offer to any sale or proposed sale of the Property or any portion thereof prior to completion of Phase 2.

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**FOURTH AGREEMENT TO AMEND/EXTEND
PURCHASE AND SALE AGREEMENT**

This agreement ("Fourth Amendment") amends the PURCHASE AND SALE AGREEMENT ("PSA") dated September 30, 2020 ("PSA") between the CITY OF GRAND JUNCTION, a Colorado home-rule municipal corporation (together with its successors and assigns, "Seller") and DR DEVCO LLC, a Colorado limited liability company (together with its successors and permitted assigns, "Purchaser"), as amended by that certain AGREEMENT TO AMEND/EXTEND PURCHASE AND SALE AGREEMENT executed by the parties on or about December 29, 2020 ("First Amendment") and that certain SECOND AGREEMENT TO AMEND/EXTEND PURCHASE AND SALE AGREEMENT executed by the parties on or about January 25, 2021 ("Second Amendment"), and THIRD AGREEMENT TO AMEND/EXTEND PURCHASE AND SALE AGREEMENT ("Third Amendment") executed by the parties on or about March 3, 2021, relating to the purchase and sale of the Property together with the improvements, appurtenances and the additional land ("Inholding Parcels"), all to be sold/purchased in accordance with the PSA as amended by the First, Second, Third and this Fourth Amendment to the PSA.

Effective Date. The Effective Date of this Fourth Amendment shall be the later of the following: (1) date of approval or ratification of the same, if at all, by action of the Grand Junction City Council, or (2) date of mutual execution hereof by the Manager of the Purchaser and the City Manager.

Development Plan. The Purchaser shall provide the Development Plan referenced in paragraph 2 of the First Amendment on or before April 21, 2021 and as necessary or required by the revised Development Plan the Parties agree to amend Exhibit F of the PSA to reflect, address and incorporate the revised Development Plan into the PSA.

Initial Closing. Initial Closing date shall be May 12, 2021 at a time and location to be mutually agreed upon by the Parties. The Initial Closing shall be postponed and rescheduled by mutual agreement of the Parties in the event of a protest of Ordinance 4992 in accordance with the mode of protesting as provided by City Charter paragraph 136.

Final Closing. Final Closing date shall be May 12, 2024 or such earlier date as may be mutually agreed upon by the Parties, or Purchaser may acquire the Part 2 Land in one or more Partial Closings as provided in the Third Amendment so long as the Part 2 Land is sold and conveyed in total on or before May 12, 2024.

No other provisions of the PSA are amended, modified or extended hereby.

IN WITNESS WHEREOF, the Parties acknowledge and agree that there is sufficient consideration for the making and enforcement of this Fourth Agreement to Amend/Extend Purchase and Sale Agreement and do hereby cause it to be made, executed and effective as of the date last signed by a party below.

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48
49 **SELLER:**

50
51 CITY OF GRAND JUNCTION, a Colorado home rule municipal corporation

52
53 By: C.E. "Duke" Wortmann 04/07/2021

54 C.E. "Duke" Wortmann date

55 President of the City Council

56
57 By: Greg Caton 4/7/2021

58 Greg Caton, City Manager date

59
60 ATTEST:

61
62 W. Winkelmann 04/07/2021

63 Wanda Winkelmann date

64 City Clerk



65
66
67
68
69 **PURCHASER:**

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71 DR DEVCO LLC, a Colorado limited liability company

72
73 Jacques Machol III 4-6-21

74 Jacques Machol III, Manager date

1 **THIRD AGREEMENT TO AMEND/EXTEND PURCHASE AND SALE AGREEMENT**
2

3 This agreement ("Third Amendment") amends the PURCHASE AND SALE AGREEMENT
4 ("PSA") dated September 30, 2020 ("PSA") between the CITY OF GRAND JUNCTION, a
5 Colorado home-rule municipal corporation (together with its successors and assigns, "Seller") and
6 DR DEVCO LLC, a Colorado limited liability company (together with its successors and
7 permitted assigns, "Purchaser"), as amended by that certain AGREEMENT TO
8 AMEND/EXTEND PURCHASE AND SALE AGREEMENT executed by the parties on or about
9 December 29, 2020 ("First Amendment") and that certain SECOND AGREEMENT TO
10 AMEND/EXTEND PURCHASE AND SALE CONTRACT executed by the parties on or about
11 January 25, 2021 ("Second Amendment"), relating to the purchase and sale of the Property
12 together with the improvements and appurtenances as described in the PSA and the additional
13 land ("Inholding Parcels") described herein as an addition to the Property, all to be sold/purchased
14 in accordance with the PSA and the First, Second and this Third Amendment to the PSA.
15

16 **Effective Date.** The Effective Date of this Third Amendment shall be the date of
17 ratification of the same, if at all, by action of the Grand Junction City Council. Upon mutual
18 execution hereof by the Manager of the Purchaser and the City Manager, this Third Amendment
19 shall be scheduled for consideration by the City Council at its next regularly scheduled meeting.
20

21 **Inholding Parcels.** The Seller has recently acquired several "inholdings" legally described
22 as Lots 8, 9, 10, 11 and 12 of O'Boyle's Subdivision as depicted on that plat recorded under
23 Reception No. 61369 in the official land records of Mesa County ("Inholding Parcels"). Seller
24 will convey the Inholding Parcels to Buyer for Four Hundred Seventy-Six Thousand Two Hundred
25 Sixty-Eight and 92/100 Dollars (\$476,268.92) ("Additional Purchase Price"). The total purchase
26 price for the Property (Phase 1 Land, Phase 2 Land and the Inholding Parcels) shall be
27 \$4,259,982.00; at the Initial Closing conveying the Phase 1 land, Purchaser will pay \$1,842,435.54
28 (as provided in Section 1.2.2 of the PSA); the balance of the total purchase price shall be paid at
29 Final Closing, or in partial payments in earlier "partial closings" as described herein below.

30 The Seller shall plat the Inholding Parcels and accordingly, EXHIBIT A-2 to PSA, Legal
31 Description of the Part 2 Land, shall be amended to include the Inholdings Parcels.
32

33 Seller and Purchaser shall cooperate in the replat work and as mutually agreed upon in that process
34 there may be adjustment(s) to boundaries such that some portion of the Inholding Parcels may be
35 included within Part 1 Land to be acquired at Initial Closing, to accommodate Purchaser's
36 development plan for the residential areas along Hale Avenue in the area of Lot 6. Following the
37 recording of said replat, the legal description of the Property shall be amended in accordance with
38 this Third Amendment and the replat. The plat of the Inholding Parcels shall be drawn such that
39 the northernmost portion of Lot 6 of the Riverfront at Dos Rios Filing Three abutting Hale Avenue,
40 as depicted in the sketch attached as **Exhibit G** ("Lot 6A"), shall be conveyed at the Initial Closing
41 rather than at Final Closing. Accordingly, EXHIBIT A-1 to PSA, Legal Description of the Part 1
42 Land, shall be amended to add Lot 6A, and EXHIBIT A-2 to PSA, Legal Description of the Part
43 2 Land, shall be amended to remove Lot 6A. See attached **EXHIBIT A-1 TO PSA, Legal**
44 **Description of Part 1 Land (AMENDED)**, and **EXHIBIT A-2 to PSA, Legal Description of**
45 **the Part 2 Land (AMENDED)**.

The parties agree that the legal descriptions for Lots 6A and 6B shall be changed to conform to the legal description thereof set forth in the updated title commitment, in the event of any discrepancy.

Additional Public Improvements. In addition to the Seller's Improvement Work set forth in Section 3.2 of the PSA, Seller conditionally agrees to financially contribute to Purchaser's design and the construction of the Additional Public Improvements described in this section.

Seller's contribution to fund the Additional Public Improvements as provided in this section is and shall be wholly contingent upon a) the Phase I (also known as the Initial Closing) occurring on or before April 30, 2021; and b) the Purchaser submitting for and receiving City approval of the design of and construction plans for the Additional Public Improvements on or before October 31, 2021, which approval the City shall not unreasonably withhold; and c) conveyance to the City of any and all property, utility, access and any and all other easements and/or property rights necessary or required for the construction of the Additional Public Improvements together with conveyance to the City of any and all perpetual rights to and for public access and use of the Additional Public Improvements; and d) the determination of mutually acceptable terms for the operation and maintenance of the Additional Public Improvements after construction, which the parties agree to negotiate in good faith.

The Seller's financial participation in the Additional Public Improvements shall be at cost and without markup, and is and shall be wholly contingent upon the action of the Grand Junction City Council acting as provided herein. The Purchaser or any successor(s) or assign(s) shall dedicate the property necessary for the construction of the Additional Public Improvements as required by the City's Zoning and Development Code. The dedication shall occur contemporaneously with and as a function of the development review/approval process. Neither the Purchaser nor any successor(s) or assign(s) of the Purchaser shall claim that the Additional Public Improvements satisfy its or any other person's or entity's obligations to provide parks, open space or that the same shall be credited for or in lieu of applicable City impact fees and/or Code(s).

The Purchaser understands and agrees that portions of the Additional Public Improvements may require permitting, consent and/or approval of state and/or federal agencies. Permitting delays(s) and/or the imposition of conditions that the Purchaser, for itself or in consultation with the Seller, deems unreasonable may delay commencement and/or completion of the Additional Public Improvements. Such event(s) shall not constitute an event of default or breach of this agreement and/or the PSA. The Seller agrees to reasonably assist the Purchaser with the state and/or federal agencies permitting processes.

Subject to the foregoing, the Purchaser and the Seller agree to complete, or cause to be completed, by December 31, 2022 at and only at, the expense to the Seller of not to exceed \$1,000,000, the construction of the Additional Public Improvements. The Purchaser may expend an additional sum(s) of money over and above the Seller's financial participation on the Additional Public Improvements.

The Additional Public Improvements are generally described as follows and conceptually depicted in Exhibit H. As necessary the parties agree to cooperate to fully determine the design, scope and

88 extent of the proposed Additional Public Improvements and to amend Exhibit H and Section 3 of
89 the PSA to establish those terms. The parties intend that the Additional Public Improvements, and
90 the operation and maintenance thereof by the Purchaser thereafter, will provide:

91
92 Central Green Space, consisting of approximately 35,000 square feet of green space
93 within Lot 4; and,
94 Splash Park, consisting of water features for recreation within Lot 3; and
95 Riverside Steps and River Takeout. The Riverside Steps and River Takeout may
96 be designed to include improvements to the channel and/or waterway as determined
97 by a mutually agreeable design and budget.

98
99 The foregoing are collectively the "Additional Public Improvements."

100
101 All design of the Additional Public Improvements shall be at the Purchaser's sole expense and
102 shall be in addition to the Purchaser's financial obligations set forth in Article IV, Article VII and
103 Article IX of the PSA.

104
105 The Purchaser and Seller shall separately determine the contribution, if any, by Seller to maintain
106 the completed Additional Public Improvements.

107
108 **Development Plan.** The Purchaser shall provide the Development Plan referenced in
109 paragraph 2 of the First Amendment on or before 30 days from the Effective Date of this Third
110 Amendment and as necessary or required by the revised plan to amend Exhibit F of the PSA to
111 reflect/address the revised plan. Purchaser will use commercially reasonable efforts to provide
112 said Development Plan within 21 days of the Effective Date hereof.

113
114 **Deposit.** Because the Feasibility Period as established by PSA Section 2.8 (September 30,
115 2020 – December 29, 2020) together with the 60-day extension thereof as provided by the Second
116 Amendment have expired and the Purchaser has not terminated the PSA in writing on the basis of
117 dissatisfaction with the Property, the Deposit (\$189,187.83) is and shall be nonrefundable at 5:00
118 p.m. MDT on February 27, 2021, as provided in the First Amendment. Furthermore, the
119 Amend/Extend Deposit (\$10,000.00) is and shall be non-refundable as of February 15, 2021, as
120 provided in the Second Amendment.

121
122 **Initial Closing.** Initial Closing date shall be April 30, 2021, or sooner if mutually agreed
123 upon by the parties.

124
125 **Final Closing.** Final Closing date shall be April 30, 2024 or such earlier date as may be
126 mutually agreed upon by the Parties. Purchaser may, in Purchaser's sole discretion, acquire the
127 Part 2 Land in whole or in part at one or more closing(s) prior to Final Closing ("Partial Closing"),
128 by giving Seller at least thirty (30) days' prior written notice of its intent to close on those lots that
129 are a portion of the Part 2 Land. The Purchaser shall pay the Seller at each such Partial Closing
130 an amount determined as follows: the total amount due at Final Closing shall be multiplied by a
131 fraction whose numerator is the acreage of the subpart being acquired/conveyed at the Partial
132 Closing, and whose denominator is the total acreage of the Phase 2 Land.

134 No other provisions of the PSA are amended, modified or extended hereby.

135
136
137 IN WITNESS WHEREOF, the Parties acknowledge and agree that there is sufficient consideration
138 for the making and enforcement of Third Agreement to Amend/Extend Purchase and Sale
139 Agreement do hereby cause it to be made, executed and effective as of the date last signed by a
140 party below:

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146 **SELLER:**

147
148 CITY OF GRAND JUNCTION, a Colorado home rule municipal corporation

149
150 By: C.E. "Duke" Wortmann 03/03/2021
151 C.E. "Duke" Wortmann date

152 President of the City Council

153
154 By: Greg Caton 3/3/2021
155 Greg Caton, City Manager date



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157 ATTEST:

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159 Wanda Winkelmann 03/03/2021
160 Wanda Winkelmann date
161 City Clerk

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166 **PURCHASER:**

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168 DR DEVCO LLC, a Colorado limited liability company

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170 Jacques Machol III 3-3-2021
171 Jacques Machol III, Manager date

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EXHIBIT G
Conceptual Depiction of Lot 6A

(the northeasternmost part of the area indicated as “Phase 1”)



180 **EXHIBIT A-1**

181 **to PSA**

182 **Legal Description of the Part 1 Land**

183 **(AMENDED)**

184 *Lots 3, 4, 8 and 9 of the Riverfront at Dos Rios Filing Three as shown on the plat thereof*
185 *recorded in Mesa County land records with Reception # 2942736*

186 **and**

187 *Lot 6A of the Riverfront at Dos Rios Filing Four as shown on the plat thereof recorded in Mesa*
188 *County land records with Reception # _____*

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EXHIBIT H

Central Green, Splash Park, Riverside Steps and River Takeout



Central Green

February 20, 2021

4



DOS RIOS GRAND JUNCTION'S BASECAMP



• May Riegler Companies • Grand Junction, Colorado

SECOND AGREEMENT TO AMEND/EXTEND PURCHASE AND SALE AGREEMENT

This agreement amends the attached Agreement to Amend/Extend Purchase and Sale Agreement ("Amend/Extend") between the CITY OF GRAND JUNCTION, a Colorado home-rule municipal corporation (together with its successors and assigns, "Seller") and DR DEVCO LLC, a Colorado limited liability company (together with its successors and permitted assigns, "Purchaser") relating to the purchase and sale of the following real property:

Lots 3, 4, 9 and 9 of the Riverfront at Dos Rios Filing Three as shown on the plat thereof recorded in Mesa County land records under Reception No. 2942736 ("Part 1 Land")

and

Lots 1, 5, 6, and 7 of the Riverfront at Dos Rios Filing Three shown on the plat thereof recorded in Mesa County land records under Reception No. 2942736 ("Part 2 Land")

together with the improvements, appurtenances, and other property as described in the Purchase and Sale Agreement ("PSA"), which PSA is incorporated by reference as if fully set forth.

The Amend/Extend agreement requires that the Purchaser, on or before 5:00 p.m. Mountain Standard Time, January 25, 2021 provide to Seller a Development Plan (aka Site Sketch) in accordance with the City SSID manual (pages v-25 - v27) for the development of the Property as described in Exhibit F to the PSA, which Development Plan demonstrates to the reasonable satisfaction of the Seller that the Purchaser's development will comply and conform with the planned development zoning of the Property or proposes a specific zoning amendment(s) that would, if adopted by the governing body of the City of Grand Junction, allow the proposed development and/or modification thereto, and, demonstrates to the reasonable satisfaction of the Seller that the Purchaser's development will comply and conform with the minimum requirements of Exhibit F or proposes a specific modification thereto.

The Purchaser has submitted a Site Sketch which the Seller has reviewed to determine compliance with paragraphs 2a and 2b of the Amend/Extend. As of this writing, the Site Sketch does not reasonably satisfy the Seller as called for in paragraphs 2a and 2b of the Amend/Extend; however, the Seller is willing to provide the Purchaser additional time to respond to the Sellers concerns and endeavor to satisfy the Seller that the conditions will be met. Accordingly, this agreement amends Paragraph 3 of the Amend/Extend as follows:

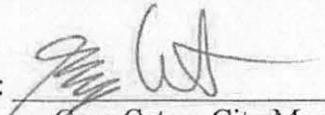
3. The Amend/Extend Deposit will become non-refundable and due and payable to the Seller on February 15, 2021 if (a) Purchaser has not satisfied the requirements of paragraphs 2a and 2b of the attached Agreement to Amend/Extend Purchase and Sale Agreement or (b) if Purchaser has not, by 5:00 p.m. Mountain Standard Time on January 29, 2021, informed Seller in writing that it has elected to terminate the Feasibility Period and proceed to closing on the Part 1 Land.

No other provisions of the Amend/Extend or the PSA are modified or amended hereby.

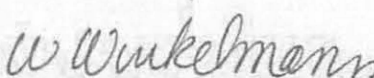
IN WITNESS WHEREOF, the Parties have caused this Second Agreement to Amend/Extend Purchase and Sale Agreement to be executed effective as of the date last signed by a party below:

SELLER:

CITY OF GRAND JUNCTION, a Colorado home rule municipal corporation

By:  1/25/2021
Greg Caton, City Manager date

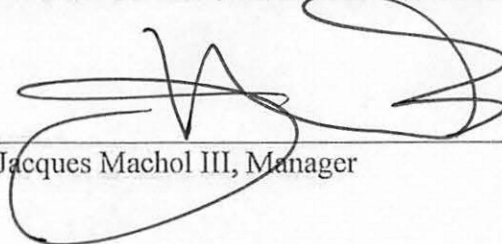
ATTEST:


City Clerk



PURCHASER:

DR DEVCO LLC, a Colorado limited liability company

 1-26-2021
Jacques Machol III, Manager date

AGREEMENT TO AMEND/EXTEND PURCHASE AND SALE AGREEMENT

This agreement amends the Purchase and Sale Agreement dated September 30, 2020 ("PSA") between the CITY OF GRAND JUNCTION, a Colorado home-rule municipal corporation (together with its successors and assigns, "Seller") and DR DEVCO LLC, a Colorado limited liability company (together with its successors and permitted assigns, "Purchaser") relating to the purchase and sale of the following real property:

Lots 3, 4, 9 and 9 of the Riverfront at Dos Rios Filing Three as shown on the plat thereof recorded in Mesa County land records under Reception No. 2942736 ("Part 1 Land")

and

Lots 1, 5, 6, and 7 of the Riverfront at Dos Rios Filing Three shown on the plat thereof recorded in Mesa County land records under Reception No. 2942736 ("Part 2 Land")

together with the improvements, appurtenances, and other property as described in the PSA ("the Property").

Section 2.8 of the PSA establishes a Feasibility Period of ninety (90) days (until December 29, 2020) for the Purchaser to inspect the Property and evaluate the suitability of the Property for Purchaser's intended use, during which time the Purchaser can terminate the PSA on the basis of dissatisfaction with the Property with return of the Deposit to Purchaser.

The Feasibility Period is hereby extended an additional sixty (60) days, or until February 27, 2021, with the following terms, conditions and understandings:

1. Purchaser will deposit ten thousand dollars (\$10,000.00) ("Amend/Extend Deposit") with Colorado Title which will be held in trust pursuant to this agreement and either applied toward the purchase price at closing in accordance with Section 1.2.1 and related provisions of the PSA or paid to the Seller in the event Purchaser does not satisfy the terms of this agreement.
2. Purchaser will, on or before 5:00 p.m. Mountain Standard time, January 25, 2021, provide to Seller a Development Plan (aka Site Sketch) in accordance with the City SSID manual (pages v-25 - v-27) for the development of the Property, as described in Exhibit F to the PSA, which Development Plan:
 - a. Demonstrates to the reasonable satisfaction of the Seller that the Purchaser's development will comply and conform with the planned development zoning of the Property or proposes a specific zoning amendment(s) that would, if adopted by the governing body of the City of Grand Junction, allow the proposed development and/or modification thereto; and,
 - b. Demonstrates to the reasonable satisfaction of the Seller that the Purchaser's development will comply and conform with the minimum requirements of Exhibit F or proposes a specific modification thereto.

3. The Amend/Extend Deposit will become non-refundable and due and payable to the Seller on February 1, 2021 if (a) Purchaser has not satisfied the requirements of paragraph 2a and 2b of this agreement or (b) if Purchaser has not, by 5:00 p.m. Mountain Standard Time on January 29, 2021, informed Seller in writing that it has elected to terminate the Feasibility Period and proceed to closing on the Part 1 Land.
4. The Deposit of \$189,187.83 as provided by the PSA is and will be refundable until the termination of the Feasibility Period, as extended to February 27, 2021 hereby.

The Initial Closing Date (PSA Section 8.1.1) will be calculated based on the termination of the extended Feasibility Period.

No other provisions of the PSA are modified or amended hereby.

IN WITNESS WHEREOF, the Parties have caused this Agreement to Amend/Extend Purchase and Sale Agreement to be executed effective as of the date last signed by a party below:

SELLER:

CITY OF GRAND JUNCTION, a Colorado home rule municipal corporation

By: _____

Greg Caton, City Manager

ATTEST:

Wanda Winkelman

City Clerk



PURCHASER:

DR DEVCO LLC, a Colorado limited liability company

Jacques Machol III, Manager

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (together with the Exhibits, this "PSA") is made as of the 20th day of September 2020 (the "Effective Date"), by and between the CITY OF GRAND JUNCTION, a Colorado home-rule municipal corporation (together with its successors and assigns, "Seller"), and DR DEVCO LLC, a Colorado Limited Liability Company (together with its successors and permitted assigns, "Purchaser").

Recitals

This PSA is made with reference to the following facts:

A. Seller is the Owner of approximately 23 acres of vacant land located in the City of Grand Junction, State of Colorado (the "City"), as legally described in Exhibit A-1 attached hereto and incorporated herein by this reference (the "Part 1 Land") and Exhibit A-2 attached hereto and incorporated herein by this reference (the "Part 2 Land" and collectively with the Part 1 Land, the "Land"), which is intended for development of a mixed-use project known as Riverfront at Dos Rios ("Dos Rios").

B. Subject to the terms and conditions of this PSA, Seller desires to sell, and Purchaser desires to purchase, the following described property (collectively, the "Property"):

(1) The following real property (collectively, the "Real Property"):

(a) The Land; and

(b) To the extent appurtenant to or historically used in connection with the Land, any and all improvements and fixtures that Seller owns and which are located in, upon and under the Land (the "Improvements").

(2) To the extent the same relates to the Real Property and may be lawfully assigned to Purchaser, and only to the extent of Seller's interest in the same as a property owner, and not as a governmental entity, which rights will be reserved solely to Seller, a partial, nonexclusive interest in the following intangible personal property (collectively, the "Intangible Property"); provided, however, that Seller makes and will be required to make no express or implied warranty as to the accuracy, completeness, validity or reliability of any information contained therein:

(a) All right, title and interest of Seller in and to any agreements affecting the Real Property, including without limitation, contracts for the repair or maintenance of, or provision of services to, the Real Property (collectively, the "Agreements");

(b) All right, title and interest of Seller in and to all governmental permits, licenses, certificates and authorizations, including, without limitation, certificates of occupancy, relating to the construction, use or operation of the Real Property (collectively, the "Permits");

(c) All right, title and interest of Seller in and to all unexpired warranties, guarantees and bonds, including, without limitation, contractors' and manufacturers' warranties or guarantees, relating to the Real Property (the "**Warranties**"); and

(d) All surveys, plans, specifications, reports and studies that relate to the Real Property (the "**Plans**").

(3) Provided, however, that the following will be excluded from the Property, will not be conveyed to Purchaser, and Purchaser will acquire no right, title and interest in and to such exclusions:

(a) Any and all right, title and interest in and to subsurface estates and mineral rights located in, upon and/or under the Land, including, without limitation, any rights to explore for and/or extract, or to be paid royalties in connection therewith, oil, natural gas, hydrocarbon products, gravel, sand, coal, and/or hard rock minerals; provided however, the surface of the Land to a depth of 500 feet below the surface of the Land may not be used or accessed in connection with the exercise of any rights related to the foregoing reserved mineral rights, including without limitation, exploration, drilling and extraction activities; and

(b) To the extent appurtenant to or historically used in connection with the Land, any and all right, title and interest in and to tributary, non-tributary and not-nontributary water rights that Seller owns or may own, whether decreed or undecried, including, without limitation, all groundwater underlying the Land, all surface water located within or used in connection with the Land, and/or ditch shares or ditch rights used in connection with the Land.

C. Upon and subject to the terms and conditions set forth in this PSA, Seller desires to sell the Property to Purchaser and Purchaser desires to acquire the Property from Seller and, in furtherance thereof, Seller and Purchaser (individually, a "**Party**," and, collectively, the "**Parties**") desire to enter into this PSA with respect to the Property.

Agreement

NOW, THEREFORE, for the mutual covenants and agreements set forth in this PSA, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I

Purchase and Sale; Purchase Price

1.1 **Purchase and Sale.** Subject to the terms and conditions set forth in this PSA, Seller agrees to sell, assign and convey to Purchaser, and Purchaser agrees to purchase from Seller, the Property.

1.2 **Purchase Price.** The total purchase price for the Property (the "**Purchase Price**") is Three Million Seven Hundred Eighty-three Thousand Seven Hundred Thirteen Dollars and Eight Cents (\$3,783,713.08), and is payable as follows:

1.2.1 **Deposit.** Not later than three (3) business days after the Effective Date, Purchaser will deposit One Hundred Eighty-nine Thousand One Hundred Eighty-seven Dollars and Eighty-three Cents (\$189,187.83) (together with all interest earned thereon, the "**Deposit**"), with Colorado Land Title Company (the "**Title Company**") by wire transfer of immediately available funds. Title Company will place the Deposit in an interest-bearing account will any and all interest payable to the Seller. If Purchaser terminates this PSA for any reason prior to expiration of the Feasibility Period (defined in Section 2.8), the Title Company will refund the Deposit to Purchaser. If either Party terminates this PSA after expiration of the Feasibility Period pursuant to any express right of termination pursuant to a provision of this PSA, the Title Company will disburse the Deposit to the Party(ies) entitled to receive the Deposit, or applicable portion thereof, upon a termination pursuant to such provision of this PSA.

1.2.2 **Balance.** At the Initial Closing (defined in Section 8.1.1), Purchaser will pay One Million Eight Hundred Forty-Two Thousand Four Hundred Thirty-five Dollars and Fifty-four Cents (\$1,842,435.54) of the Purchase Price to Title Company, for disbursement to Seller at the Initial Closing, by wire transfer of immediately available funds, subject to the prorations and adjustments set forth in Article IX. The Deposit will not be applied to the Purchase Price at the Initial Closing and will continue to be held by the Title Company in accordance with this PSA. At the Final Closing (defined in Section 8.1.2), Purchaser will pay One Million Nine Hundred Forty-one Thousand Two Hundred Seventy-seven Dollars and Fifty-four Cents (\$1,941,277.54) of the Purchase Price to Title Company, for disbursement to Seller at the Final Closing, by wire transfer of immediately available funds, less the Deposit and subject to the prorations and adjustments set forth in Article IX.

1.2.3 **Application and Disbursement of Deposit.** Except in the event of a default by Seller hereunder or as otherwise provided in this PSA, the Deposit will become non-refundable to Purchaser upon the expiration of the Feasibility Period; provided, however, the Deposit will be applied against the portion of the Purchase Price to be paid at the Final Closing pursuant to Section 1.2.1, or, if the Initial Closing and/or the Final Closing do not occur, the Deposit will be delivered to Seller or Purchaser as expressly set forth in this PSA.

ARTICLE II

Purchaser's Investigations of the Property; Feasibility Period

2.1 **Seller's Deliveries.** Not later than ten (10) business days after the Effective Date, Seller will make available to Purchaser for Purchaser's review and, if desired, copying, all pertinent materials currently in Seller's possession relative to the Property as set forth in **Exhibit B** attached hereto and incorporated herein by this reference (collectively, the "**Seller's Document Deliveries**") in order to facilitate Purchaser's due diligence of the Property. Delivery of copies of

the Seller's Document Deliveries to Purchaser may be accomplished by making them available for Purchaser's inspection and review in electronic form or at a location to be designated by Seller.

2.2 Title Commitment. Not later than ten (10) business days after the Effective Date (subject to the Title Company's ability to provide such commitment in a timely fashion), Seller will cause delivery to Purchaser of a current title insurance commitment issued by the Title Company, together with legible copies of all recorded exceptions to title referred to therein (collectively, as may be updated or revised from time to time, the "**Title Commitment**"), committing to insure such title to the Land in Purchaser by the issuance of an ALTA policy of owner's title insurance in the amount of the Purchase Price. Purchaser will review the Title Commitment as part of its investigations pursuant to this PSA and will have the right to negotiate with Title Company in order to cause Title Company to modify the Title Commitment to reflect only those exceptions to title that are acceptable to Purchaser. Notwithstanding anything set forth herein to the contrary, Seller will satisfy all Schedule B-1 requirements set forth in the Title Commitment applicable to Seller, including, without limitation, causing all liens arising by, through or under Seller to be released at each Closing (defined in Section 8.1), as applicable, providing all transaction authorization documentation of Seller required by the Title Company, providing the Existing Survey (defined in Section 2.4), and providing an owner's affidavit in form to delete or insure over the standard printed exceptions contemplated in Section 2.5.3(c); provided, however, that in no event will Seller be obligated to deliver any so-called "survey affidavit."

2.3 Subsequent Title Defects. After the Effective Date, Seller will not consent to any encumbrance, encroachment or other matter to be recorded against the Real Property that *materially and adversely* affects the Real Property (collectively, "**New Matters**"), except for (a) any New Matter that will be released at or before the Initial Closing as to the Part 1 Land, or at or before the Final Closing as to the Part 2 Land; (b) New Matters of which Purchaser has approved in writing; and (c) New Matters described in Article IV (collectively, "**Permitted New Matters**"). Seller or Purchaser may cause the Title Commitment to be updated from time to time. If, subsequent to expiration of the Feasibility Period and prior to each Closing, Purchaser notifies Seller of the existence of any New Matters affecting any portion of the Real Property not yet conveyed to Purchaser that are not Permitted New Matters or Permitted Exceptions, other than any delinquent taxes or assessments or any monetary liens or encumbrances created by, through or under Seller which Seller is obligated to remove at or prior to the applicable Closing, pursuant to Section 9.2 (a "**Subsequent Defect**"), Seller may use such efforts and may expend such amount as, in its sole judgment, Seller deems appropriate to remove or cure such Subsequent Defect prior to the applicable Closing. Seller will have no obligation, however, to cure any Subsequent Defect. If Seller does not or is unable to so remove or cure all or any such Subsequent Defects prior to the applicable Closing, Purchaser may (i) waive all such uncured Subsequent Defects, which matters will be deemed Permitted Exceptions, and accept such title as Seller is able to convey as of the applicable Closing, without an abatement of the Purchase Price; or (ii) terminate this PSA as to the portion of the Property not yet conveyed by providing written notice thereof to Seller, in which event the Deposit will be returned to Purchaser by the Title Company, and the Parties will be relieved of any further obligations hereunder, except for those obligations which expressly survive any termination of this PSA.

2.4 Surveys. In connection with the Seller's Document Deliveries, Seller will deliver the more current ALTA Land Title Survey(s) of the Property in Seller's possession (the "**Existing**

Survey"). Purchaser may, at its sole cost and expense, obtain an update to the Existing Survey (or obtain a new survey), as required by the Title Company to delete the standard printed "survey" exceptions, which updated survey shall be prepared by a surveyor licensed by the State of Colorado and certified to Seller, Purchaser and the Title Company as having been made in compliance with applicable law, land survey standards and ALTA requirements (the "Updated Survey").

2.5 Permitted Exceptions. The "Permitted Exceptions" will consist of:

2.5.1 any state of facts which is revealed in the Existing Survey or, as applicable, the Updated Survey, or by an inspection of the Land;

2.5.2 taxes and assessments for the year of the applicable Closing, and subsequent years, a lien not yet due and payable;

2.5.3 the exceptions disclosed in Schedule B, Part II of the Title Commitment as of the expiration of the Feasibility Period and any Subsequent Defects that are deemed Permitted Exceptions pursuant to clause (i) of Section 2.3, excluding, however:

(a) any delinquent taxes or assessments,

(b) any monetary liens or monetary encumbrances created by, through or under Seller,

(c) any standard printed exceptions concerning parties in possession, unrecorded easements, encroachments or other matters of survey (subject to Purchaser's obligation to obtain any Updated Survey, as applicable), mechanics' liens or claims therefor to the extent arising by, through or under Seller, together with coverage for matters first appearing as recorded in the real property records of the clerk and recorder of Mesa County, Colorado (the "Records") after the date of the final Title Commitment but before the applicable Closing, and

(d) any matters which Purchaser causes to be deleted or removed prior to the applicable Closing;

2.5.4 the PILOT Covenant (defined in Section 4.1);

2.5.5 the Declaration of Repurchase Right (defined in Section 4.2); and

2.5.6 any matter created by, or at the request or with the approval of, Purchaser or its employees, contractors, agents and representatives.

2.6 Seller's Obligations Regarding Title and Survey Matters. Seller will have no obligation to cause the removal or otherwise cure any title matter or any matter disclosed by the Existing Survey or, as applicable, the Updated Survey, but will reasonably cooperate (at no cost or expense to Seller, other than removal of monetary liens and encumbrances arising by, through or under Seller) with Purchaser in such efforts as Purchaser may elect to pursue to obtain the removal of such matters and/or to obtain endorsements to the Title Policy (defined in Section 8.3.4) addressing such matters.

2.7 "As Is" Purchase. Purchaser (for itself and its successors and assigns) acknowledges and agrees that the Property will be conveyed in its **"AS IS, WHERE IS, AND WITH ALL FAULTS"** condition as of each Closing Date (defined in Section 8.1), and Purchaser accepts and agrees to bear all risks regarding all attributes and conditions, latent or otherwise, of the Property. Provided that Seller makes no express or implied warranty as to the accuracy, completeness, validity or reliability of any information contained therein, Seller has made available to Purchaser for inspection all documents comprising the Intangible Property, including, but not limited to, Seller's Document Deliveries. Purchaser has or will prior to each Closing conduct its own review and evaluation of the information contained in such Intangible Property and Seller's Document Deliveries, and will rely solely on such independent evaluation. Purchaser has made or will make prior to each Closing its own inspection and investigation of the Real Property, including, without limitation, the subsurface, soil, engineering, environmental and other conditions and requirements, whether there are any eminent domain or other public or quasi-public takings of the applicable Real Property contemplated, and all zoning and regulatory matters pertinent to the applicable Real Property. Purchaser will purchase the Property upon Purchaser's own inspection and investigation and not in reliance on any statement, representation, inducement or agreement of Seller except as specifically provided in this PSA. Purchaser acknowledges that neither Seller nor anyone acting on behalf of Seller has made (or has an obligation to Purchaser to make) any representation, guarantee or warranty whatsoever, either written or oral, concerning the Property except as specifically set forth in this PSA. Except for conditions caused by, and only to the extent caused by, Seller or its employees, contractors, agents or representatives (Purchaser and its employees, contractors, agents or representatives being expressly excluded from any of the foregoing), Seller will have no responsibility, liability or obligation subsequent to each Closing with respect to any conditions, including, without limitation, environmental conditions, soils conditions, or as to any other matters whatsoever respecting in any way the Property, and Purchaser (for itself and its successors and assigns) hereby fully and forever releases and indemnifies Seller and its employees, contractors, agents and representatives (except in their respective capacities, if any, as employees, contractors, agents or representatives of Purchaser) with respect to such conditions, which release and indemnification obligations of Purchaser will survive each Closing pursuant to, or any termination of, this PSA. Accordingly:

2.7.1 Opportunity to Inspect. Purchaser acknowledges and agrees, for Purchaser and Purchaser's successors and assigns, that: (i) Purchaser is being given a reasonable opportunity to inspect and investigate the Property and all aspects relating thereto, either independently or through agents, contractors, engineers or consultants of Purchaser's choosing; (ii) Purchaser will inspect and investigate the Property and engage such qualified agents, contractors, engineers or consultants, including, without limitation, environmental consultants, as Purchaser deems necessary to make all appropriate inquiry regarding the condition of the Property and adjacent property, including, without limitation, the presence thereon, or the condition thereof with respect to, any Hazardous Materials (defined in Section 2.7.4); and (iii) if Purchaser does not terminate this PSA pursuant to a termination right of Purchaser under this PSA, then at the applicable Closing, Purchaser will acquire and accept the Property in its then-existing condition on an **"AS IS, WHERE IS, AND WITH ALL FAULTS"** basis, with no right of set-off or reduction in the Purchase Price.

2.7.2 No Implied Representations. Purchaser acknowledges and agrees that, except for Seller's express representations and warranties set forth in Article V or in any

instrument of conveyance signed by Seller and delivered to Purchaser at each Closing (collectively, "**Seller's Express Representations**"), NEITHER SELLER NOR ANY AGENT, EMPLOYEE, OFFICER, DIRECTOR, BROKER, CONTRACTOR OR REPRESENTATIVE OF SELLER HAS MADE, AND SELLER SPECIFICALLY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO THE PROPERTY, INCLUDING, WITHOUT LIMITATION: (A) THE NATURE, QUANTITY, QUALITY OR CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE AREA, OR THE CONDITION WITH RESPECT TO WATER, SOILS OR GEOLOGY, OF THE LAND OR OF ANY IMPROVEMENTS INCLUDED IN THE PROPERTY, OR THE FITNESS OF ANY IMPROVEMENTS INCLUDED IN THE PROPERTY; (B) THE COSTS OF OWNING, OPERATING, REPAIRING OR MAINTAINING THE PROPERTY; (C) THE MARKETABILITY OF THE PROPERTY, THE EXISTENCE OR AVAILABILITY OF ANY ENTITLEMENTS OR GOVERNMENTAL APPROVALS WITH RESPECT TO THE PROPERTY OR ANY POTENTIAL TO DEVELOP, SUBDIVIDE, ZONE, CONSTRUCT OR ALTER IMPROVEMENTS ON, OR LEASE OR SELL THE REAL PROPERTY; (E) THE HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE REAL PROPERTY; OR (F) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY, INCLUDING, WITHOUT LIMITATION, ANY ENVIRONMENTAL LAW; AND THAT, EXCEPT FOR SELLER'S EXPRESS REPRESENTATIONS, NEITHER SELLER NOR ANY AGENT, EMPLOYEE, OFFICER, DIRECTOR, BROKER, CONTRACTOR OR REPRESENTATIVE OF SELLER HAS MADE, AND SELLER SPECIFICALLY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES CONCERNING HAZARDOUS MATERIALS. PURCHASER ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR SELLER'S EXPRESS REPRESENTATIONS, PURCHASER IS RELYING SOLELY UPON ITS OWN INSPECTION OF THE PROPERTY AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF, OR TO BE PROVIDED BY OR ON BEHALF OF, SELLER OR UPON ANY REPRESENTATIONS MADE TO IT BY SELLER OR ANY AGENT, EMPLOYEE, OFFICER, DIRECTOR, BROKER, CONTRACTOR OR REPRESENTATIVE OF SELLER. PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE PROPERTY WAS OR MAY BE OBTAINED FROM A VARIETY OF SOURCES AND THAT SELLER HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION.

2.7.3 Waiver and Release. Except to the extent caused by a breach of any of Seller's Express Representations, Purchaser, for Purchaser and Purchaser's successors and assigns, releases Seller and Seller's agents, employees, officers, directors, shareholders, partners, members, managers, brokers, contractors and representatives from, and waives any and all causes of action or claims against any of such persons for: (i) any and all

liability attributable to any physical condition of or at the Property, including, without limitation, the presence on, under or about the Real Property of any Hazardous Materials; (ii) any and all liability resulting from the failure of the Property to comply with any applicable laws, including, without limitation, any Environmental Law; and (iii) any liabilities, damages or injury arising from, connected with or otherwise caused by statements, opinions or information obtained from any of such persons with respect to the Property.

2.7.4 Definitions. As used in this PSA, "**Hazardous Materials**" means any hazardous or toxic substances, materials or wastes, defined or regulated as such in or under any Environmental Law, including, without limitation, asbestos, gasoline and any other petroleum products (including crude oil or any fraction thereof), polychlorinated biphenyls and ureaformaldehyde insulation. As used in this PSA, "**Environmental Law**" means any and all federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any governmental authority or requirements of law (including common law) relating to or imposing liability or standards of conduct concerning the protection of human health, the environment or natural resources, or to releases or threatened releases of Hazardous Materials into the environment, including, without limitation, ambient air, surface water, groundwater or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, as now or may hereafter be in effect.

2.7.5 Survival. The provisions of this Section 2.7 will survive each Closing or any termination of this PSA.

2.8 Feasibility Period; Purchaser's Investigations. Purchaser will have a period for physical inspection of the Property and evaluation of the Property's suitability for Purchaser's intended use which commences on the Effective Date and terminates at 5:00 p.m. Grand Junction (Mountain) time on the date which is ninety (90) days thereafter (the "**Feasibility Period**"). Prior to the expiration of the Feasibility Period, Purchaser will, at its sole cost, investigate the Property and all matters relevant to its acquisition, ownership and operation. Such right of investigation will include, without limitation, the right to have made, at Purchaser's expense, any studies or inspections of the Property that Purchaser may deem necessary or appropriate. After expiration of the Feasibility Period, without Purchaser having terminated this PSA pursuant to Section 2.10, Purchaser will have no right to terminate this PSA on the basis of its dissatisfaction with the Property; provided, however, that Purchaser will have the right to terminate this PSA as otherwise expressly set forth herein.

2.9 Access to the Property. During the Term (defined in Section 11.1) (and thereafter to the extent required to perform any post-termination obligation required of Purchaser pursuant to this PSA) Purchaser (together with its employees, contractors, subcontractors, consultants and invitees, "**Licensee(s)**") will have a license to access and enter upon the Real Property for purpose of ongoing investigation, which may include, without limitation, the right to have made, at Purchaser's expense, any surveys, studies or inspections of the Real Property as Purchaser may deem necessary or appropriate (the "**License**"). Purchaser will provide to Seller not less than one (1) business days' notice to Seller prior to any entry upon the Real Property, which notice may be given telephonically or via email, regardless of other notice delivery requirements set forth in

this PSA. Seller will cooperate reasonably with any such investigations, inspections, surveys or studies made by or at Purchaser's direction so long as such cooperation is at no expense to Seller. Seller will have the right to be present during any such entry upon or investigation of the Real Property. Following any such activities by Purchaser, Purchaser will restore the Real Property to its preexisting condition. Purchaser will have no right to terminate this PSA and receive a refund of the Deposit or any other amounts by reason of its investigation activities under this Section 2.9, except as other provisions of this PSA otherwise expressly provide.

2.10 Termination. If Purchaser is not satisfied with the results of Purchaser's analysis and/or investigation for any reason whatsoever, Purchaser may, on or before the expiration of the Feasibility Period (pursuant to Section 2.8), give Seller and Title Company written notice of Purchaser's unequivocal election to terminate this PSA. Upon receipt of Purchaser's termination notice pursuant to this Section 2.10: (i) the Title Company will return the Deposit to Purchaser; and (ii) Purchaser will, as consideration for the investigation privileges afforded to Purchaser by Seller hereunder, deliver to Seller copies of all non-confidential, nonproprietary, third party reports made for Purchaser by third parties engaged by Purchaser to do so during the Feasibility Period concerning the Property, whereupon this PSA will terminate and both Parties will be relieved of any further obligations hereunder, except for those obligations which expressly survive any termination of this PSA. If Purchaser does not give such termination notice prior to expiration of the Feasibility Period, this PSA will remain in full force and effect in accordance with its terms and the Deposit will become nonrefundable to Purchaser for any reason whatsoever, except to the extent expressly provided to the contrary in a provision of this PSA.

2.11 Indemnity. Purchaser will indemnify, defend, and hold harmless Seller from any and all claims, demands, liens, costs, expenses, damages and liabilities, including reasonable attorneys' fees and costs, that are asserted against Seller or the Property, or which Seller may suffer or incur, to the extent arising out of any claims for property damage or personal injury, or claims from materialmen or laborers, which in turn arise from Purchaser's investigations and other activities under this PSA; provided, however, that the foregoing indemnity will not apply to damages resulting from the discovery of adverse property conditions, including, without limitation, environmental contamination or "hot" soils to the extent not exacerbated by Purchaser or its agents. Purchaser will pay Seller all reasonable costs and expenses, including reasonable attorneys' fees, incurred in defending any such matter. Purchaser will promptly repair any damages resulting to the Real Property due to Purchaser's investigations and other activities pursuant to this PSA, and will reimburse Seller, within thirty (30) days after receipt of invoices therefor, for all reasonable out-of-pocket expenses Seller incurs in repairing such damages if Purchaser does not promptly repair such damages within thirty (30) days after receipt of written notice from Seller. Purchaser's obligations pursuant to this Section 2.11 will survive any termination of this PSA and/or each Closing under this PSA for a period of six (6) years.

ARTICLE III **Infrastructure Improvements**

3.1 Improvements. The Parties acknowledge that certain public improvement and infrastructure construction obligations relating to the Real Property will be Seller's obligation to cause to be satisfied, at no expense to Purchaser (except as it relates to Purchaser's financial obligations set forth in Section 9.1 and Section 4.1), as more fully set forth in Section 3.2.

Purchaser acknowledges that the City of Grand Junction Dos Rios General Improvement District (the "**GID**") may undertake construction and installation of all or any portion of Seller's Improvements Work (as defined in Section 3.2). Purchaser will be responsible, at Purchaser's sole expense, for any infrastructure and improvements obligations on or within the Land, except as expressly included in the Seller's Improvements Work, including without limitation (a) sidewalks a minimum of 15 feet wide on all public rights-of-way, and (b) street lighting for the plaza area and across Lot 3 and Lot 4 (as such lots are defined on the Riverfront at Dos Rios Filing Three, Reception #2942736 the "**Plat**") in the utility and pedestrian easement or equivalent space set forth on the Plat. Purchaser will be responsible for payment of any impact fees, fees-in-lieu and/or land dedications, including without limitation the transportation capacity fee, imposed by the City in connection with development of the Land. Purchaser will pay all water, raw water and sewer and tap fees required to obtain service to the Land.

3.2 **Seller's Improvement Work.** Seller will complete, or cause to be completed, at no expense to Purchaser (except as it relates to Purchaser's financial obligations set forth in Section 9.1 and Section 4.1), the following work (collectively, the "**Seller's Improvements Work**");

3.2.1 Placement of compacted fill on Lots 1, 5, 6, 7, 8 and 9 (as defined on the Plat) to establish an elevation one foot below the 100-year flood plain,

3.2.2 Placement of compacted fill on Lots 3 and 4 (as defined on the Plat) to establish an elevation equal to the 100-year flood plain,

3.2.3 Construction of sewer mains and services to the perimeter of each lot created by the Plat,

3.2.4 Construction of water mains and services to the perimeter of each lot created by the Plat,

3.2.5 Construction of raw water irrigation and services to the perimeter of each lot created by the Plat,

3.2.6 Construction of storm drainage conveyance infrastructure and stormwater quality facility; provided, however, that Purchaser will construct all surface collection and conveyances facilities for approved development,

3.2.7 Gas and electric power will be made available to each lot created by the Plat within the multi-purpose easement set forth on the Plat; provided, however, that Purchaser is responsible for extension of utilities to each and every building site,

3.2.8 For all public road rights-of-way dedicated by the Plat, infrastructure construction including asphalt, curb, gutter, sidewalk to City standards,

3.2.9 Street lighting adjacent to public road rights-of-way dedicated by the Plat and the Colorado Riverfront Trail to City standards,

3.2.10 City maintained park space to include restrooms, shelters and a bike playground on Lot 2 (as defined in the Plat);

3.2.11 Relocation of Xcel 230kv electrical facilities into Hale Avenue median,

3.2.12 Extension of Xcel gas service to the Project, and

3.2.13 Construction of left turn lane for westbound Riverside Parkway onto Dos Rios Way.

3.3 **Completion.** Seller will commence construction of the Seller's Improvement Work promptly following the later to occur of (a) issuance of the bonds described in Section 4.1 or (b) approval by applicable governing body of the City of construction contracts therefore. Seller will achieve completion the Seller's Improvement Work within 12 months of the applicable commencement date. For purposes of "completion" of the Seller's Improvements Work under this PSA, Seller's Improvements Work will be deemed complete and accepted by Purchaser upon the City's "preliminary acceptance" of such Seller's Improvements Work, or, if City acceptance is not applicable to such Seller's Improvements Work or any portion thereof, upon the City's written notice to Purchaser that such Seller's Improvements Work has been completed. Seller's obligations pursuant to this Article III will survive each Closing under this PSA.

ARTICLE IV **Additional Encumbrances**

4.1 **PILOT Covenant.** In connection with the GID's acquisition, construction, installation, operation and maintenance of certain public improvements and services within Dos Rios, and in connection with the GID's anticipated issuance of certain bonds to finance such improvements and services, in whole or in part, Purchaser acknowledges and agrees it is material part of the consideration for Seller entering into this PSA and conveying the Property to Purchaser that Purchaser execute and deliver for recording in the Records against the Real Property at the Initial Closing a so-called "payment-in-lieu-of-taxes" covenant materially consistent with the form attached as **Exhibit C** and incorporated herein by this reference ("**PILOT Covenant**"). Purchaser acknowledges and agrees that the PILOT Covenant will encumber and be binding on the Real Property, will be a Permitted Exception and will be binding on Purchaser in accordance with its terms.

4.2 **Repurchase Right.** In connection with the GID's acquisition, construction, installation, operation and maintenance of certain public improvements and services within Dos Rios, and in connection with the GID's anticipated issuance of certain bonds to finance such improvements and services, in whole or in part, Purchaser acknowledges and agrees it is material part of the consideration for Seller entering into this PSA and conveying the Property to Purchaser that Purchaser commit to develop the Property as contemplated by the Planned Development (PD) and Outline Development Plan (ODP) for The Riverfront At Dos Rios, as approved by the City and amended from time to time. Accordingly, the parties have agreed to execute and deliver at the Initial Closing a declaration of repurchase right, together with a memorandum of the same for recording in the Records against the Real Property, materially consistent with **Exhibit F** and incorporated herein by this reference ("**Declaration of Repurchase Right**"). Purchaser

acknowledges and agrees that the Declaration of Repurchase Right will encumber and be binding on the Real Property, will be a Permitted Exception and will be binding on Purchaser in accordance with its terms.

4.3 Survival. Article IV will survive each Closing.

ARTICLE V

Seller's Representations and Warranties

5.1 Representations and Warranties. Except as disclosed in Seller's Document Deliveries, the Title Commitment, the Survey or as otherwise stated in or qualified by other provisions of this PSA, Seller represents and warrants to Purchaser as follows:

5.1.1 Authority. Seller has the full right and authority to enter into this PSA and consummate the transactions contemplated by this PSA. All requisite action has been taken by Seller in connection with the entering into of this PSA, the instruments referenced in this PSA, and the consummation of the transactions contemplated by this PSA. Each of the persons and entities signing this PSA on behalf of Seller is authorized to do so.

5.1.2 No Third-Party Interests. Seller has not granted to any third party and will not grant to any third party any option, contract or other agreement with respect to a purchase or sale of the Real Property or any portion thereof or any interest therein.

5.1.3 No Possessory Rights. Except for any rights of possession under the Permitted Exceptions and any rights contemplated by this PSA or any other agreement between the Parties, Seller has not granted or permitted and will not grant or permit any possessory rights in any of the Real Property.

5.1.4 Defaults. To Seller's knowledge, no default exists with respect to the Real Property under any of the Permits and Agreements.

5.1.5 Condemnation. To Seller's knowledge, there is no pending or threatened condemnation, expropriation, eminent domain or similar proceeding affecting all or any portion of the Real Property.

5.1.6 Violations. To Seller's knowledge, there is no existing material violation of any law, code, ordinance, rule or regulation of any governmental authority having jurisdiction over the Real Property with respect to the Real Property or its operation.

5.1.7 Special Assessments. To Seller's knowledge, the Real Property is not situated within any special assessment district other than the districts revealed by the most recent statement for real property taxes for the Real Property. Seller makes the following disclosure to Purchaser, which disclosure is required in certain circumstances by Colorado law: SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND EXCESSIVE TAX BURDENS TO

SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. PURCHASERS SHOULD INVESTIGATE THE DEBT FINANCING REQUIREMENTS OF THE AUTHORIZED GENERAL OBLIGATION INDEBTEDNESS OF SUCH DISTRICTS, EXISTING MILL LEVIES OF SUCH DISTRICT SERVICING SUCH INDEBTEDNESS, AND THE POTENTIAL FOR AN INCREASE IN SUCH MILL LEVIES.

5.1.8 Litigation. Seller has no knowledge, and Seller has not received notice, of any actions, suits, proceedings or claims pending or threatened with respect to or in any manner affecting Seller's interest in the Property or the ability of Seller to consummate the transaction contemplated by this PSA.

5.1.9 Consents; Binding Obligations; Violations. All consents and approvals which may be required in order for Seller to enter into this PSA or consummate the transaction contemplated hereby have been obtained. This PSA and all documents required hereby to be executed by Seller are and will be valid, legally binding obligations of and enforceable against Seller in accordance with their terms. Neither the execution of this PSA nor the consummation of the transaction contemplated hereby will be in violation of any judgment, order, permit, writ, injunction or decree of any court, commission, bureau or agency to which Seller is subject or by which Seller is bound, or constitute a breach or default under any agreement or other obligation to which Seller is a party or otherwise bound.

5.2 Seller's Knowledge. Whenever phrases such as "to Seller's knowledge" or "Seller has no knowledge" are used in the foregoing representations and warranties, they will be deemed to refer exclusively to matters within the current actual (as opposed to constructive) knowledge of John Shaver and Trent Prall, in their capacities as City Attorney and Public Works Director, respectively, of the Seller ("Seller's Representative"). No duty of inquiry or investigation on the part of Seller or Seller's Representative will be implied by the making of any representation or warranty which is so limited to matters within Seller's knowledge.

5.3 Omissions; Indemnity. All of Seller's representations and warranties made in Section 5.1 are free from any untrue statement of material fact and do not omit to state any material facts necessary to make the statements contained in Section 5.1 not misleading. Each of the representations and warranties contained in Section 5.1 are acknowledged by Seller to be material and to be relied upon by Purchaser in proceeding with this transaction. To the extent permitted by law, Seller will indemnify and hold Purchaser harmless and defend Purchaser from any loss, liability or expense, including reasonable attorneys' fees, incurred by Purchaser, and any claim made against Purchaser by reason of the breach of any of foregoing representations or warranties made in Section 5.1 (as may be made subject to subsequent changes pursuant to Section 5.4).

5.4 Effective Date and Changes. All of the representations and warranties made by Seller pursuant to Section 5.1 are made as of the Effective Date and will be deemed remade as of each Closing Date, provided that Seller may deliver to Purchaser a certificate to reflect any changes to such representations and warranties of which Seller has become aware prior to each Closing. In

the event that such certificate indicates any material changes to the foregoing representations and warranties, Seller will not be deemed in default hereunder, *so long as such representations and warranties were true and correct as of the Effective Date*, and Purchaser's sole remedy will be to terminate this PSA as to the portion of the Property not yet conveyed by providing written notice thereof to Seller, whereupon the Title Company will return the Deposit to Purchaser and both Parties will be relieved of any further obligations hereunder, except for those obligations which expressly survive any termination of this PSA. In the event any such certificate does indicate any such changes and Purchaser does not elect to terminate this PSA, the representations and warranties made by Seller to Purchaser pursuant to this PSA as of the date of each Closing will be deemed made subject to any such changes reflected in such certificate. Between the Effective Date and each Closing Date, (i) Purchaser will notify Seller of any breach or violation of the foregoing representations and warranties discovered by Purchaser; and (ii) Seller will have the right to deliver to Purchaser supplemental statements indicating any changes to the foregoing representations and warranties that Seller has discovered to date. Purchaser will have a period of seven (7) days from and after receipt of any such supplemental statement (or, if the applicable Closing Date is less than seven days from the day on which Purchaser receives any such supplemental statement, the period from Purchaser's receipt until the applicable Closing) to notify Seller in writing of Purchaser's election to terminate this PSA as to the portion of the Property not yet conveyed, whereupon the Title Company will return the Deposit to Purchaser and both Parties will be relieved of any further obligations hereunder, except for those obligations which expressly survive any termination of this PSA. In the event Purchaser does not so terminate this PSA within such period, Purchaser will be deemed to have accepted any changes to the foregoing representations and warranties set forth in the supplemental statement delivered by Seller and Purchaser will have no further right to object to such changes when the same are reflected in the above-described certificate.

5.5 Survival. All of the foregoing representations and warranties of Seller will survive the applicable Closing, and will not be deemed merged into any instrument of conveyance delivered at such Closing, for a period of twelve (12) months after the Closing Date of such Closing (the "**Warranty Survival Period**"). No claim for a breach of any representation or warranty of Seller will be actionable or payable if the breach in question results from or is based on a condition, state of facts or other matter which was known to Purchaser prior to the applicable Closing. Seller will have no liability to Purchaser for a breach of any representation or warranty unless written notice containing a description of the specific nature of such breach is given by Purchaser to Seller within the Warranty Survival Period, and any suit by Purchaser for any breach by Seller of any representation, warranty or covenant contained herein must be filed within the Warranty Survival Period or on or before the date that is sixty (60) days after expiration of the Warranty Survival Period, or will be forever barred.

ARTICLE VI

Purchaser's Representations and Warranties

6.1 Representations and Warranties. Purchaser represents and warrants to Seller as follows:

6.1.1 Authority. Purchaser is a Colorado Limited Liability Company duly organized, validly existing and in good standing under the laws of the State of Colorado.

Purchaser has the full right and authority to enter into this PSA and consummate the transactions contemplated by this PSA. All requisite corporate action has been taken by Purchaser in connection with the entering into of this PSA, the instruments referenced in this PSA, and the consummation of the transactions contemplated by this PSA. Each of the persons signing this PSA on behalf of Purchaser is authorized to do so. Purchaser will furnish to Seller any and all documents to evidence such authority as Seller will reasonably request.

6.1.2 Litigation. Purchaser has no knowledge, and Purchaser has not received notice, of any actions, suits, proceedings or claims pending or threatened with respect to or in any manner affecting the ability of Purchaser to consummate the transaction contemplated by this PSA.

6.1.3 Consents; Binding Obligations; Violations. All consents and approvals which may be required in order for Purchaser to enter into this PSA or consummate the transaction contemplated hereby have been obtained. This PSA and all documents required hereby to be executed by Purchaser are and will be valid, legally binding obligations of and enforceable against Purchaser in accordance with their terms. Neither the execution of this PSA nor the consummation of the transaction contemplated by this PSA will be in violation of any judgment, order, permit, writ, injunction or decree of any court, commission, bureau or agency to which Purchaser is subject or by which Purchaser is bound, or constitute a breach or default under any agreement or other obligation to which Purchaser is a party or otherwise bound.

6.2 Omissions; Indemnity. All representations and warranties made by Purchaser in Section 6.1 are free from any untrue statement of material fact and do not omit to state any material facts necessary to make the statements contained in this PSA not misleading. Each of the representations and warranties contained in Section 6.1 are acknowledged by Purchaser to be material and to be relied upon by Seller in proceeding with this transaction. Purchaser will indemnify and hold Seller harmless and defend Seller from any loss, liability or expense, including reasonable attorneys' fees, incurred by Seller or any claim made against Seller by reason of the breach of any of the representations or warranties made in Section 6.1.

6.3 Effective Date. The representations and warranties of Purchaser pursuant to Section 6.1 will be continuing and will be deemed remade by Purchaser as of each Closing Date with the same force and effect as if made at and as of that time.

6.4 Survival. All of the representations and warranties of Purchaser pursuant to Section 6.1 will survive each Closing, and will not be deemed merged into any instrument of conveyance delivered at each Closing, for the Warranty Survival Period. No claim for a breach of any representation or warranty of Purchaser will be actionable or payable if the breach in question results from or is based on a condition, state of facts or other matter which was known to Seller prior to each Closing. Purchaser will have no liability to Seller for a breach of any representation or warranty unless written notice containing a description of the specific nature of such breach is given by Seller to Purchaser within the Warranty Survival Period, and any suit by Seller for any breach by Purchaser of any representation, warranty or covenant contained herein must be filed

within the Warranty Survival Period or on or before the date that is sixty (60) days after expiration of the Warranty Survival Period, or will be forever barred.

ARTICLE VII

Purchaser's Obligations and Expenses

7.1 **Insurance.** During the Term (defined in Section 11.1), Purchaser will, at its sole expense, or will cause its consultants performing inspections on the Property to, procure and maintain commercial general liability insurance against claims for bodily injury, death or property damage, occurring in, on or about the Real Property, or resulting from the use or maintenance thereof, in an amount of at least \$1,000,000 for each occurrence and \$3,000,000 in the general aggregate. The liability policy will: (i) name Seller and any other parties designated by Seller as additional named insureds; (ii) be issued by an insurance company authorized to do business in the state in which the Real Property is located and otherwise approved by Seller, which approval will not be unreasonably withheld or conditioned; (iii) provide that no cancellation, alteration or non-renewal of said insurance will be effective unless the insurance company issuing such policy gives Seller at least 30 days prior written notice thereof; (iv) provide that it will be primary to any insurance policy otherwise purchased by Seller; and (v) provide for a waiver of subrogation of claims. During the Term, Purchaser will also, at its sole expense, or will cause its consultants performing inspections on the Property to, procure and maintain employer's liability insurance for worker's compensation in an amount not less than the statutory limits of coverage. Purchaser will deliver to Seller evidence of such insurance in a form reasonably satisfactory to Seller, on the date of this PSA and upon any modification, renewal or replacement of coverage.

7.2 **Indemnity.** To the fullest extent permitted by law, Purchaser does and will indemnify, defend and hold harmless, and hereby releases and discharges, Seller and its managers, members, employees, agents, affiliates, successors and assigns, except to the extent caused by the gross negligence or willful misconduct of any such indemnified parties, for, from and against all claims, demands, liabilities, losses, damages, costs and expenses, including but not limited to court costs and reasonable attorneys' fees and costs, arising out of or in connection with: (i) Purchaser's use or occupancy of the Real Property, or any portion thereof; (ii) any work, occurrence, conduct, act or omission maintained, performed, permitted or suffered by Purchaser or any representative, subcontractor or supplier of Purchaser, or any employee, agent, invitee or licensee of any of the foregoing, on or about or pertaining to the Real Property or any portion thereof; (iii) any claim pertaining or relating to the Real Property, specifically including, without limitation, any claims arising as a result of the condition of the surface and sub-surface of the Real Property or any portion thereof existing, created or arising prior to or during the Term, and/or the failure of the Real Property or any portion thereof to be properly graded and compacted as necessary to minimize all risks of subsidence and any other settlement or movement of the soils; (iv) any condition of or on the Real Property, or any portion thereof, or of or on any street, curb or sidewalk thereon or adjacent thereto or any improvement constructed or to be constructed thereon existing, created or arising prior to or during the Term; (v) Purchaser's failure to perform Purchaser's obligations, or Purchaser's breach of Purchaser's obligations, representations or warranties, under this PSA; (vi) any act, omission, negligence or misconduct of Purchaser or its representatives, subcontractors, suppliers, employees, agents, invitees or licensees; (vii) any accident, injury or damage whatsoever caused to any person, firm or corporation in or about the Real Property or any sidewalk, street or land adjacent thereto arising as a result of any act or omission during the Term;

(viii) the physical condition of the Real Property or any portion thereof existing, created or arising prior to or during the Term, and the impact of any federal, state or local law, common law, statute, ordinance, regulation, administrative rule, policy or order, now in effect or at any time hereafter enacted which pertains or is applicable to or governs: hazardous materials or substances, or the use, permitting and/or environmental condition of the Real Property (including the subsurface thereof) existing, created or arising prior to or during the Term; and (ix) any claim made against Seller relating to impact fees or other fees or charges and/or real property taxes arising for any time periods during and before the Term. The covenants contained in this Section 7.2 will survive any Closing or the termination of this PSA.

7.3 Fee Payments.

7.3.1 Timing and Prorations. Purchaser acknowledges and agrees it is material part of the consideration for Seller entering into this PSA and conveying the Property to Purchaser that commencing with Initial Closing, Purchaser will pay, or cause to be paid, to Seller a monthly fee calculated in accordance with Section 7.3.3 (each a “**Fee Payment**” and collectively the “**Fee Payments**”). Purchaser and Seller acknowledge that the amount of the Fee Payment is intended to be generally equivalent to the taxes that would be assessed against the Property if Purchaser had owned the Property as of the Effective Date, payable on a monthly basis. For the avoidance of doubt, the Fee Payments are not a part of the Deposit, are immediately earned by Seller on the applicable Due Date (defined below), will be paid or disbursed to Seller on or before the applicable Due Date and, except as expressly provided in this Section 7.3, will be immediately non-refundable to Purchaser upon payment or disbursement to Seller. Each Fee Payment will be due to Seller not later than the fifth day of each calendar month (the “**Due Date**”) during the pendency of this Agreement. Notwithstanding the foregoing, the Due Date of the first Fee Payment will be not later than five business days after the Effective Date and, if the Effective Date is not the first day of the subject calendar month, the Fee Payment will be prorated for such partial calendar month accordingly. If a partial calendar month applies to the last Fee Payment applicable to either the Part 1 Land or the Part 2 Land (if the Initial Closing Date or the Final Closing Date, as applicable, does not occur on the last day of the subject calendar month), such Fee Payment will initially be paid or disbursed in its entirety; provided however, (i) at the Initial Closing, the Fee Payment applicable to the Part 1 Land will be prorated as of the Initial Closing Date for the partial calendar month and Purchaser will receive a corresponding credit against the portion of the Purchase Price to be paid at such Initial Closing pursuant to Section 1.2.2; and (ii) at the Final Closing, the Fee Payment applicable to the Part 2 Land will be prorated as of the Final Closing Date for the partial calendar month and Purchaser will receive a corresponding credit against the portion of the Purchase Price to be paid at such Final Closing pursuant to Section 1.2.2.

7.3.2 Deposit; Termination. Purchaser will deposit with the Title Company by check, subject to collection, or by wire transfer of immediately available funds, each Fee Payment on or before the applicable Due Date and the Title Company will deliver by check, subject to collection, or by wire transfer of immediately available funds such Fee Payment to Seller on or before the applicable Due Date. Not later than two business days after the Effective Date, Seller will deliver wire instructions to the Title Company to facilitate such payments, and, notwithstanding any contrary provision of this Section 7.3, Seller

acknowledges and agrees that delivery of such wire instructions to the Title Company will be a condition precedent to Purchaser's obligation to pay, or cause to be paid, any Fee Payments. If Purchaser fails to pay, or cause to be paid, any Fee Payment on or before applicable Due Date, subject to the notice and cure period set forth in Section 10.1, Seller may terminate this Agreement in accordance with Section 10.4 by the giving of termination notice to Purchaser any time prior to such Fee Payment being paid to Seller, in which event this Agreement will terminate and the parties have no further obligations under this Agreement except those that expressly survive termination of this Agreement. If Purchaser does not pay, or cause to be paid, a Fee Payment on or before the applicable Due Date but thereafter cures such failure prior to Seller terminating this Agreement in accordance with the preceding sentence, this Agreement will remain in full force and effect and Seller will not have a termination right with respect to such failure.

7.3.3 Calculation of Fee Payments. For purposes of this Agreement, the Fee Payment for the Property or any portion thereof will be a monthly payment in an amount equal to most current (as of the Due Date for the subject Fee Payment) aggregate ad valorem property tax mill levies imposed by the governing bodies of the various taxing jurisdictions within or overlapping the Property, or any portion thereof (as adjusted from time to time, the "**Mill Levy**"), that would be imposed on and apply to the Property, or applicable portion thereof, if it were not exempt from ad valorem property taxation as disclosed by the records of the Mesa County Assessor (the "**Assessor**"), multiplied by the Purchaser Price divided by 12 and rounded to the nearest dollar. [For illustrative purposes only, if the Mill Levy for the applicable tax year is 100 mills and the Purchaser Price is \$3,783,756.60, each Fee Payment would be \$31,531: $\$3,783,756.60 \times (100 \text{ mills} \times .001 \text{ mill levy multiplier}) \div 12 = \$31,531$]. Following the Initial Closing, the Fee Payment will be calculated by applying the assessment ratio to the Purchase Price for the entirety of the Property, and prorated based on the ratio of the acreage of the Part 2 Land and any other portion of the Property not previously acquired by Purchaser at the Initial Closing to the entirety of the Property.

ARTICLE VIII

Closing

8.1 Closing; Closing Date. Purchaser will acquire the applicable portion of the Property contemplated by this PSA in accordance with the following schedule (each, a "**Closing**", and the date of each such Closing, a "**Closing Date**"):

8.1.1 Initial Closing. Purchaser will acquire the Part 1 Land and the portion of the Property associated with the Part 1 Land (the "**Initial Closing**") on the date that is ninety (90) days after the expiration of the Feasibility Period, or such earlier date as may be mutually agreed upon by the Parties (the "**Initial Closing Date**").

8.1.2 Final Closing. Purchaser will acquire the Part 2 Land and all Property not previously acquired by Purchaser at the Initial Closing (the "**Final Closing**") on the date that is seven hundred thirty (730) days after the Initial Closing Date, or such earlier date as may be mutually agreed upon by the Parties (the "**Final Closing Date**").

8.2 Time of Closing. Each Closing will take place in escrow at the offices of the Title Company, or at such other place as may be mutually agreed upon by the Parties.

8.3 Deliveries; Closing Documents. Seller and Purchaser will deliver or cause to be delivered to each other at each Closing, as appropriate, the following items (all documents will be duly executed and acknowledged where required):

8.3.1 Payment. Purchaser will pay to Seller the applicable portion of the Purchase Price as provided in Section 1.2, subject to the adjustments and prorations described in Article IX, which payments will be made in the form of cash or other immediately available funds.

8.3.2 Land Deed. Seller will deliver to Purchaser a special warranty deed, in form and substance materially consistent with the form of deed attached as Exhibit D and incorporated herein by this reference (“**Land Deed**”), conveying to Purchaser all of Seller’s right, title and interest in and to the applicable portion of the Real Property, subject to the Permitted Exceptions.

8.3.3 Assignment; Intangible Property. Seller and Purchaser will execute and deliver a partial, nonexclusive assignment of the Intangible Property associated with the Part 1 Land or the Part 2 Land, as applicable, in form and substance materially consistent with that attached as Exhibit E and incorporated herein by this reference. To the extent not previously delivered with Seller’s Document Deliveries, Seller will deliver to Purchaser the originals or copies of all Plans, Warranties, Permits and Agreements in Seller’s possession relating to the development, improvement and ownership of such Real Property.

8.3.4 PILOT Covenant. Seller and Purchaser will execute and deliver the PILOT Covenant at the Initial Closing.

8.3.5 Declaration of Repurchase Right. Seller and Purchaser will execute and deliver the Declaration of Repurchase Right at the Initial Closing.

8.3.6 Issuance of Title Policy. The Title Company will issue to Purchaser, or unconditionally commit to issue to Purchaser after each Closing, at the Title Company’s normal and customary rates, an extended coverage ALTA owner’s policy of title insurance conforming to the then-current Title Commitment and insuring title to the Part 1 Land or the Part 2 Land, as applicable, subject to the Closing in Purchaser in the amount of the applicable portion of the Purchase Price, subject only to the Permitted Exceptions (the “**Title Policy**”). At or before each Closing, Seller will satisfy all reasonable and customary requirements contained in Schedule B, Part I of the Title Commitment, including any requirements for Seller to execute mechanics lien/final affidavits to the Title Company, except those which by their nature can only be satisfied by Purchaser. Any title insurance endorsement premium for extended coverage will be paid by Purchaser, and all premium charges for any other endorsement(s) that Purchaser elects to obtain pursuant to Section 2.2, will be paid by Purchaser.

8.3.7 Non-Foreign Certificate. Seller will execute and deliver to Purchaser and the Title Company an affidavit that Seller is exempt from the withholding requirements of Section 1445 of the Internal Revenue Code.

8.3.8 Conveyance Information. A Colorado Form DR-1083, in form required by law and signed by Seller, concerning information with respect to a conveyance of a Colorado real property interest.

8.3.9 Transfer Declaration. A real property transfer declaration, in form required by law and signed by Purchaser, concerning the transaction contemplated by this PSA.

8.3.10 Settlement Sheets and Funds. Settlement statements reflecting the applicable portion of the Purchase Price and all adjustments and prorations to be made thereto pursuant to this PSA including, without limitation, Article IX, together with any amounts, in immediately available funds, required to be paid by either Party thereunder.

8.3.11 Possession. Possession of the applicable portion of the Real Property will be delivered to Purchaser.

8.3.12 Miscellaneous Documents. Seller will, whenever and as often as it will be reasonably requested so to do by Purchaser or Title Company, and Purchaser will, whenever and as often as it will be reasonably requested so to do by Seller or Title Company, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any and all conveyances, assignments and all other instruments and documents as may be reasonably necessary in order to complete each Closing and to otherwise carry out the intent and purposes of this PSA.

ARTICLE IX

Prorations and Closing Expenses

9.1 Taxes and Assessments. At each Closing, all *ad valorem* real estate taxes and assessments, metropolitan and special improvement district fees and charges (if any), owners association assessments and fees (if any) and personal property taxes (if any) attributable to the applicable portion of the Property for the year of each Closing (or other applicable period) will be prorated at each Closing, effective as of each Closing Date (with Purchaser being responsible for such costs as of, and Seller being responsible for such costs prior to, the Effective Date, subject to Purchaser's obligation to pay the Fee Payments pursuant to Section 7.3), irrespective of when the same are payable. If the applicable tax rate and assessments for the applicable portion of the Property have not been established for the year in which each Closing occurs, the proration of real estate and/or personal property taxes, as the case may be, will be based upon the rate and assessments for the preceding year. If the Part 1 Land and the Part 2 Land are not separate tax parcels at the time of the Initial Closing, *ad valorem* real estate taxes and assessments for the Part 1 Land will be apportioned based on the acreage of the Part 1 Land as the percentage of the acreage of the overall tax parcel of which it is a part. All taxes imposed as of each Closing Date and subsequent to each Closing Date will be paid by Purchaser.

9.2 Liens and Encumbrances. At each Closing, the amount of any lien, deed of trust or other monetary encumbrance securing and/or otherwise then affecting the Real Property, including

all prepayment penalties, will be paid from the applicable portion of the Purchase Price to which Seller is otherwise entitled. If such funds are insufficient to pay all such encumbrances, Seller will pay the deficiency.

9.3 Closing Costs. The costs of each Closing will be allocated between the Parties as follows:

9.3.1 Seller's Costs. Seller will pay for: (i) the base premium for the Title Policy, excluding the cost, if any, of "extended coverage" or deleting the "standard printed exceptions," and excluding the cost of any endorsements Purchaser elects to obtain; (ii) any recording fees necessary to remove of record any monetary liens or encumbrances required to be paid by Seller; (iii) one-half of any closing or escrow fees charged by the Title Company; (iv) Seller's attorney's fees; (v) one-half the cost of the Existing Survey, if not previously paid by Seller; and (vi) any other closing costs customarily paid by a seller in Mesa County, Colorado.

9.3.2 Purchaser's Costs. Purchaser will pay for: (i) all costs of conducting its investigation of the Property; (ii) the additional premium, if any, charged by the Title Company to make Purchaser's title policy "extended coverage" or to delete the "standard printed exceptions" therefrom and the additional premium for any endorsements requested by Purchaser; (iv) any recording fees not required to be paid by Seller pursuant to Section 9.3.1; (v) one-half of any closing or escrow fees charged by the Title Company; (vi) Purchaser's attorney's fees; (vi) any local or state transfer or sales taxes; (vii) the premium for the lender's policy of title insurance, if any, and any endorsements thereto; (viii) \$7,500, which amount represents approximately one-half the cost of the Existing Survey, together with one-half of Seller's costs and expenses incurred in connection with the approval of the Plat and any approvals related thereto, including without limitation any easement vacations; (ix) the cost of any Updated Survey; and (x) any other closing costs customarily paid by a purchaser in Mesa County, Colorado.

9.4 Settlement Statement. At each Closing, Seller and Purchaser will execute a closing settlement statement to reflect the credits, prorations, and adjustments contemplated by or specifically provided for in this PSA.

9.5 Date of Prorations; Prorations Final. The prorations and adjustments provided for in this Article IX will be made so that Purchaser will receive the income of the Property for each Closing Date, and will be charged with the expense of the operation of the Property for, and following, the Effective Date. All apportionment and allocation of taxes, assessments and other fees and costs as between Seller and Purchaser pursuant to this Article IX will be final as of each Closing Date. The provisions of this Article IX will survive each Closing and the payment of any consideration and the delivery of all Closing instruments, for a period of one (1) year only.

ARTICLE X

Remedies

10.1 Defaults. A non-performing Party will be deemed to be in default under this PSA if such Party fails to: (i) pay any sum of money when due as provided in this PSA and such failure

continues for a period of at least fourteen (14) business days after the delivery of Notice (defined in Section 11.8) thereof by the other Party; or (ii) perform any other covenant, agreement or condition as provided in this PSA and such failure continues for a period of at least thirty five (35) days after the delivery of Notice thereof by the other Party. Notwithstanding the foregoing, in no event will Notice be required with respect to or will there be a cure period applicable to an Acquisition Default.

10.2 Remedies for Seller Default. Subject to the applicable cure provision set forth in Section 10.1, if Seller defaults in the performance of its obligations under this PSA, Purchaser will have the following remedies: (i) if Seller defaults in its obligation to close after Purchaser has tendered full performance of its obligation to close, Purchaser will be entitled to: (a) terminate this PSA as to the portion of the Property not yet conveyed by providing written notice thereof to Seller, in which event the Deposit will be returned to Purchaser by the Title Company, and the Parties will be relieved of any further obligations hereunder, except for those obligations which expressly survive any termination of this PSA; or (b) treat this PSA as being in full force and effect and to seek specific performance; and (ii) with respect to any Seller default other than a default of the nature described in the foregoing clause (i), this PSA will remain in full force and effect and Purchaser will be entitled to seek specific performance of Seller's unperformed obligation.

10.3 Remedy for Acquisition Default by Purchaser. If Purchaser defaults in its obligation to close after Seller has tendered full performance of its obligation to close (an "Acquisition Default"), Seller may terminate this PSA as to the portion of the Property not yet conveyed by providing written notice thereof to Purchaser and, as its sole and exclusive remedy, will be entitled to retain the Deposit as liquidated damages and the Parties will be relieved of any further obligations hereunder, except for those obligations which expressly survive any termination of this PSA. Upon any termination under this Section 10.3, Purchaser will promptly assign to Seller Purchaser's interest in any plans, drawings, studies and similar work product which relates to the Real Property not yet conveyed, excluding Purchaser's architectural plans, elevations and drawings for vertical improvements, marketing and financial studies, analyses and information, and other proprietary information of Purchaser.

10.4 Remedies for Other Purchaser Defaults. With respect to any Purchaser default other than an Acquisition Default, and subject to the applicable cure provision set forth in Section 10.1, Seller will be entitled to: (i) terminate this PSA as to the portion of the Property not yet conveyed by providing written notice thereof to Purchaser, and retain the Deposit as liquidated damages, and the Parties will be relieved of any further obligations hereunder, except for those obligations which expressly survive any termination of this PSA or (ii) treat this PSA as being in full force and effect and seek specific performance of and/or damages with respect to any of Purchaser's representations, warranties, covenants or indemnification obligations contained in any provision of this PSA. Upon any termination under the foregoing clause (i), Purchaser will promptly assign to Seller Purchaser's interest in any plans, drawings, studies and similar work product which relates to the Real Property not yet conveyed, excluding Purchaser's architectural plans, elevations and drawings for vertical improvements, marketing and financial studies, analyses and information, and other proprietary information of Purchaser.

10.5 Basis of Liquidated Damages. The Parties hereby acknowledge that the amount of the Deposit, together with the remedies expressly granted to Seller pursuant to Sections 10.3 or

10.4, is a fair and reasonable estimate of the total detriment that Seller would suffer in the event of Purchaser's Acquisition Default or other default hereunder.

10.6 Attorneys' Fees. Notwithstanding any contrary provision contained in this PSA, in the event of any litigation or legal action arising out of this PSA, the court will award the prevailing Party its reasonable costs and expenses incurred in connection with such litigation or legal action, including, without limitation, its reasonable attorneys' fees and costs.

10.7 Indemnities; Defaults after Closing or Termination. The limitations on the Parties' remedies set forth in this Article X will not be deemed to prohibit either Party from: (i) seeking indemnification from the other Party for any matter with respect to which such other Party is obligated under this PSA to provide indemnification or from seeking damages from such other Party in the event such other Party fails or refuses to provide such indemnification; (ii) subject to Sections 5.5 and 6.4, seeking damages incurred during the period of time after each Closing that a representation or warranty given as of the applicable Closing Date by the other Party survives Closing, for the other Party's breach of such representation or warranty discovered after such Closing; (iii) seeking damages or such equitable relief as may be available for the other Party's failure to perform after each Closing any obligation under this PSA which expressly survives such Closing; or (iv) seeking damages or such equitable relief as may be available for the other Party's failure to perform after any termination of this PSA any obligation under this PSA which expressly survives such termination; provided, however, that in no event will either Party be entitled to recover from the other Party any punitive, consequential or speculative damages.

ARTICLE XI

General Provisions

11.1 Term. The "**Term**" means the period commencing on the Effective Date and ending on the earliest of: (i) the date on which this PSA is terminated for any reason; (ii) the Final Closing Date; or (iii) the date on which an Acquisition Default occurs.

11.2 Brokers. Seller represents that it has not authorized any broker or finder to act on its behalf in connection with the purchase and sale contemplated hereby. Purchaser represents that it has not authorized any broker or finder to act on its behalf in connection with the purchase and sale contemplated hereby. Seller and Purchaser agree to save and hold each other free, clear and harmless from any claim, cost or expense, including reasonable attorneys' fees, for or in connection with any claims for commissions or compensation claimed or asserted by or through each respective Party in connection with the transaction contemplated in this PSA.

11.3 Further Assurances. Each Party undertakes and agrees to execute and deliver such documents, writings and further assurances as may be requisite to carry out the intent and purpose of this PSA.

11.4 Entire Agreement. No change or modification of this PSA will be valid unless the same is in writing and signed by each Party. No waiver of any of the provisions of this PSA will be valid unless in writing and signed by the Party against whom it is sought to be enforced. This PSA contains the entire agreement between the Parties relating to the subject matter of this PSA. All prior negotiations between the Parties relating to the subject matter of this PSA are merged in

this PSA; and there are no promises, agreements, conditions, undertakings, warranties or representations, oral or written, express or implied, between the Parties other than as set forth in this PSA.

11.5 Survival. All of the Parties' representations, warranties, covenants and agreements hereunder, to the extent not fully performed or discharged by or through a termination or the applicable Closing pursuant to the PSA, will be deemed not merged into any instrument delivered at such Closing and will survive and remain fully enforceable thereafter, except as expressly limited in this PSA.

11.6 Time and Dates. Time is of the essence of this PSA and Seller's and Purchaser's obligations hereunder. If any date set forth in this PSA for the delivery of any document or the happening of any event (such as, for example, a Closing Date) should, under the terms of this PSA, fall on a weekend or holiday, then such date will be automatically extended to the next succeeding weekday that is not a holiday.

11.7 Governing Law; Venue. This PSA will be construed and enforced in accordance with the laws of the State of Colorado. Venue for any litigation pertaining to this PSA will be in the District Court for the County of Mesa, State of Colorado.

11.8 Notices. Any notice required or permitted to be sent pursuant to this PSA ("Notice(s)") will be in writing and will be deemed given, sent, delivered and received upon the earlier of: (i) when personally or actually delivered; or (ii) three (3) business days after having been deposited in a U.S. Postal Service depository and sent by registered or certified mail, return receipt requested, with all required postage prepaid; or (iii) upon confirmed email transmission; provided, however, that any email sent after 5:00 p.m. on a business day or sent on a non-business day will be deemed received on the next business day; or (iv) one (1) business day after being deposited with a commercial overnight courier and sent by overnight delivery with all required charges prepaid; and addressed:

If to Seller:

City of Grand Junction
250 N. 5th Street
Grand Junction, Colorado 81501
John Shaver, City Attorney
Telephone: 970.244.1508
Email: johns@gjcity.org

If to Purchaser:

DR Devco LLC
Attn: Jacques Machol III
Telephone No.: 303 (229)-1950
Email: jm@mjfirm.com

With a required copy to:

Davis & Ceriani, P.C.
Attn: John W. Baker, Esq.
Telephone No.: (303) 534-9000
Email: jbak@dvandceriani.com

Any address set forth above may be changed by the addressee by Notice given pursuant to this Section 11.8.

11.9 Severability. If any provision of this PSA is declared invalid, illegal or unenforceable by a court of competent jurisdiction, it will not affect or impair the validity or enforceability of any other provision of this PSA, and there will be substituted for the affected provision a valid and enforceable provision as similar as possible to the invalid provision.

11.10 Negotiated Provisions. This PSA will not be construed more strictly against one Party than against the other Party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, each Party expressly acknowledging that it has contributed substantially and materially to the preparation of this PSA.

11.11 No Recording. This PSA (or any memorandum thereof) will not be recorded in the Records by either Party and any violation of this provision by Purchaser will, at the option of Seller to be exercised by written notice from Seller to Purchaser, cause this PSA to be terminated, null and void except as to those obligations, representations, warranties and covenants of Purchaser which expressly survive termination of this PSA.

11.12 Headings. The paragraph headings which appear in some of the Sections of this PSA are for purposes of convenience and reference and are not in any sense to be construed as modifying the Sections in which they appear.

11.13 Condemnation. Immediately upon obtaining knowledge of a pending or threatened condemnation or similar proceeding (a "**Condemnation**") or any other proceedings arising out of injury or damage to the Property, or any portion thereof, Seller will notify Purchaser of the pendency of such proceedings. If any Condemnation proceedings affecting any portion of the Real Property are commenced or threatened prior to each Closing, Purchaser may, at its option: (i) terminate this PSA by Notice to Seller and receive back the Deposit, and the Parties will be released from any further obligation under this PSA, except such obligations as expressly survive termination of this PSA, or (ii) proceed to close this transaction and receive at each Closing all of the right, title and interest of Seller in and to any condemnation proceeds or awards or sales price in lieu of condemnation.

11.14 Assignment; Permitted Conveyances by Seller. Purchaser will have the right to assign or transfer its interests in and to the PSA, in whole or in part, to an affiliate without the consent of Seller. Such an assignment will not discharge any of the duties and obligations of Purchaser thereunder. Any other assignment by Purchaser will require Seller's prior written consent.

11.15 Successors and Assigns. This PSA will be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, successors and permitted assigns.

11.16 Governmental Immunity. Seller, its officers, and its employees are relying on, and do not waive or intend to waive, by any provision of this PSA, any rights, protections, or privileges provided by the Colorado Governmental Immunity Act, C.R.S. §§ 24 10 101 *et seq.*, as it is from time to time amended.

11.17 Facsimile/pdf Signatures. The facsimile or .pdf signature of any Party on this PSA (and on any instrument required or permitted to be delivered to a Party pursuant to this PSA) will be deemed an original for all purposes.

11.18 Counterparts. This PSA may be executed in counterparts, each of which (or any combination of which) will be deemed a duplicate original.

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IN WITNESS WHEREOF, the Parties have caused this PSA to be executed effective as of the Effective Date.



SELLER:

CITY OF GRAND JUNCTION,
a Colorado home-rule municipal corporation

By: _____

Name: _____

Title: _____

Greg Caton
Greg Caton
City Manager

ATTEST:

Wanda Winkelmann

City Clerk

PURCHASER:

DR Devco LLC

By: _____

Jacques Machol III
Jacques Machol III, Manager

Title Company Acknowledgement and Agreement

By its execution of this PSA, Title Company agrees to receive, invest and apply the Deposit in accordance with the terms and provisions of the PSA. In the event of any dispute between Purchaser and Seller as to the proper application of the Deposit, Title Company may commence an action in the District Court in and for the County of Mesa, pay the Deposit to such Court and interplead Purchaser and Seller to such action, whereupon Title Company will be dismissed from such action and relieved of any further obligations with respect to the Deposit. Purchaser and Seller hereby agree to submit to the jurisdiction of such Court for the purpose of any such action.

TITLE COMPANY:

Colorado Title & Closing Services
136 N 7th Street
Grand Junction, CO 81501

Date: _____, 2020

By: _____
Title: _____

Title Company Acknowledgement and Agreement to
Purchase and Sale Agreement

EXHIBIT A-1
to PSA
Legal Description of the Part 1 Land

*Lots 3, 4, 8 and 9 of the Riverfront at Dos Rios Filing Three as shown on the plat thereof
recorded in Mesa County land records with Reception # 2942736*

EXHIBIT A-2
to PSA
Legal Description of the Part 2 Land

*Lots 1, 5, 6 and 7 of the Riverfront at Dos Rios Filing Three as shown on the plat thereof
recorded in Mesa County land records with Reception # 2942736*

EXHIBIT B
to PSA
Seller's Document Deliveries

[previously provided and to be appended at execution]

EXHIBIT C
to PSA
Form of PILOT Covenant

[previously provided and to be appended at execution]

When Recorded Return To:
Otten Johnson Robinson
Neff and Ragonetti, P.C.
Attn: Kimberly Martin
950 17th Street, Suite 1600
Denver, Colorado 80202

EXHIBIT C

DECLARATION OF COVENANTS CONCERNING PAYMENT IN LIEU OF TAXES

THIS DECLARATION OF COVENANTS CONCERNING PAYMENT IN LIEU OF TAXES (this "**Declaration**") is made as of the "**Effective Date**" (as defined in Section 1(k)), by _____, a _____ (together with its successors and assigns, "**Declarant**"), for the benefit of the THE CITY OF GRAND JUNCTION DOS RIOS GENERAL IMPROVEMENT DISTRICT, a public or quasi-municipal subdivision of the State of Colorado and a body corporate (together with its successors and assigns, the "**District**"), with the consent of the City of Grand Junction, a Colorado home-rule municipal corporation (the "**City**"), as indicated by execution of this Declaration below.

RECITALS

A. Capitalized terms used in this Declaration have the meanings given them in Section 1 unless otherwise dictated by the context.

B. Declarant is the owner of that certain real property located in the City, as referred to and more particularly described in Attachment 1 attached hereto and incorporated herein by this reference as the "Declarant Property" (the "**Declarant Property**").

C. The City is the owner of that certain real property located in the City adjacent to the Declarant Property, as referred to and more particularly described in Attachment 1 as the "City Property" (the "**City Property**," and collectively with the Declarant Property, the "**Property**").

D. The District has been organized pursuant to Colorado law to acquire, construct, install, operate and/or to provide public improvements and services within and without its boundaries, including, without limitation, all utilities to include gas, electric, water, storm sewer and sanitary sewer, drainage, all communications facilities such as cable, fiber and broadband, roadways and alleyways, trails and sidewalks, environmental remediation, fill, street lights, landscaping, irrigation, public parking areas, signage, parks and open space, together with land, easements and extensions of, and improvements to, such facilities, and services serving and benefiting the Property (collectively, the "**Public Improvements and Services**").

E. As of the Effective Date, the Property is within the District's boundaries. **[NOTE: To be confirmed..]**

F. Pursuant to Section 31-25-611, C.R.S., it is contemplated that the District may borrow money and incur general obligation indebtedness, as evidenced by bonds, and may enter into agreements with other governmental entities affecting the affairs of the District, to include the repayment of such bonds.

G. For purposes of financing the Public Improvements and Services, or any portion thereof, the District intends to (i) issue its Special Revenue Bonds, Series 20__ (together with any refundings thereof, the "**Series 20__ Bonds**") pursuant to an Indenture of Trust to be dated _____, 20__ and entered into between Zions Bancorporation, National Association, as trustee for the Series 20__ Bonds ("**Trustee**") and the District (the "**Trust Indenture**"); and (ii) enter into a Public Financing Agreement with the City dated as of _____, 20__ (as may be amended or supplemented from time to time, the "**Public Financing Agreement**").

H. Pursuant to the Trust Indenture and the Public Financing Agreement, as applicable, (i) the District will issue the Series 20__ Bonds and, in order to provide security for the payment of the Series 20__ Bonds, the District will undertake certain obligations to repay the Series 20__ Bonds, and will pledge, *inter alia*, to impose an *ad valorem* mill levy upon all taxable property within the District, and (ii) to assist in repayment of the Series 20__ Bonds, the City has agreed to pay to or share with the District certain revenues of the City, as more particularly set forth in the Public Financing Agreement.

I. Declarant and the City acknowledge, and each Owner acquiring an Interest in any portion of the Property will be deemed to have acknowledged, that the Property and improvements thereon will benefit directly from the construction, installation, operation, maintenance, repair, replacement and provision of the Public Improvements and Services and other improvements and services provided by the District; however, the Property, or portions thereof, may in the future be exempt from property taxation, as may be disclosed by the records of the Mesa County Assessor (the "**County Assessor**"), and not subject to the *ad valorem* property tax mill levies imposed by the Taxing Entities.

J. Subject to and in accordance with the provisions of this Declaration, Declarant desires to impose this Declaration (and the City desires to consent to the imposition of this Declaration) to provide that if the Property, or any portion thereof, is not subject to the requirement to pay the Mill Levy because such Property, or applicable portion thereof, for any period of time, is not subject to, or is exempt from, the imposition of the Mill Levy, the Owner of the Property, or applicable portion thereof, will be required to pay to the District (or its designee, as applicable) certain amounts as set forth herein.

DECLARATION

NOW THEREFORE, in consideration of the facts set forth in the Recitals and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by Declarant, Declarant hereby declares and agrees as follows:

1. Defined Terms. Except as otherwise expressly provided herein, defined terms used in this Declaration will have the following meanings:

(a) “**Act**” means the Colorado Common Interest Ownership Act, Sections 38-33.3-101, *et seq.*, C.R.S.

(b) “**Annual Fee**” means, with respect to any Exempt Property, an annual payment in lieu of taxes in an amount equal to the Mill Levy for the applicable calendar year that would be imposed on and apply to the Property, or applicable portion thereof, if it were not Exempt Property, multiplied by the County Assessor’s most recent certified assessed valuation of such Exempt Property *[for illustrative purposes only, if the Mill Levy for the applicable tax year is 100 mills and the County Assessor’s most recent assessed valuation of such Exempt Property is \$1,000,000, the Annual Fee would be \$100,000: $\$1,000,000 \text{ assessed value} \times (100 \text{ mills} \times .001 \text{ mill levy multiplier}) = \$100,000$]*. If there is no recent certified assessed valuation for any Exempt Property, then the Annual Fee will be calculated by applying the applicable assessment ratio to the County Assessor’s most recent certified actual valuation. If neither a recent certified assessed valuation or a recent certified actual valuation is available, the District may retain an appraiser to calculate an assessed valuation using the same standards as set forth in the County Assessor’s Reference Library, and such determination of assessed valuation shall be binding on the Owners until thereafter modified or revised in accordance with this Section 1(b). For purposes of this Section 1(b), “recent,” with respect to any certified assessed valuation or certified actual valuation, means any such valuation certified within the two years of January 1 of the calendar year in which the Annual Fee would be payable pursuant to Section 3.

(c) “**Bond Documents**” means, collectively, the Public Financing Agreement, the ordinances, resolutions, indentures (including without limitation, the Trust Indenture), reimbursement agreements, loan agreements and other contracts and instruments under which the District issues the Bonds for the purpose of financing or refinancing the Public Improvements and Services, in whole or in part.

(d) “**Bonds**” means the Series 20__ Bonds, together with any future bonds, notes, loans, contracts, intergovernmental agreements, reimbursement agreements, acquisition agreements, advances or other obligations, including the refunding thereof, issued from time to time by the District or an assignee of the District pursuant to Section 10, the proceeds of which are used for the purpose of financing or refinancing the Public Improvements and Services, in whole or in part.

(e) “**City**” is defined in the introductory paragraph.

(f) “**City Property**” is defined in Recital C.

(g) “**County Assessor**” is defined in Recital I.

(h) “**Declarant**” is defined in the introductory paragraph.

(i) “**Declarant Property**” is defined in Recital A.

(j) “**District**” is defined in the introductory paragraph.

(k) **“Effective Date”** means the date on which this Declaration is recorded in the Records.

(l) **“Exempt Property”** means any portion of the Property that would be subject to imposition and/or payment of the Mill Levy, but is exempt from *ad valorem* property taxation as disclosed by the County Assessor’s records, and therefore such property is not subject to, or is exempt from, the imposition and/or payment of the Mill Levy; provided however, “Exempt Property” expressly excludes any portion of the Property owned by (i) the City to the extent such real property is only held by the City and is not developed, improved, used or enjoyed for any use whatsoever; or (ii) the District.

(m) **“Interest”** means a fee simple ownership interest, subject to matters recorded in the Records.

(n) **“Mill Levy”** means the aggregate *ad valorem* property tax mill levies imposed by the Taxing Entities from time to time.

(o) **“Owner(s)”** means a Person that owns an Interest in the Property, or any portion thereof, including without limitation, the Declarant, as applicable. If more than one Person owns an Interest in the applicable portion of the Property as joint tenants, tenants in common or otherwise, such Persons will be jointly and severally liable for the obligations imposed under this Declaration with respect to such portion of the Property, including without limitation, the obligation to pay the Annual Fee.

(p) **“Person(s)”** means any individual, partnership, corporation, limited liability company, association, trust or other type of entity or organization.

(q) **“Property”** is defined in Recital C.

(r) **“Public Financing Agreement”** is defined in Recital F.

(s) **“Public Improvements and Services”** is defined in Recital D.

(t) **“Records”** means the real property records of the Clerk and Recorder of Mesa County, Colorado.

(u) **“Series 20__ Bonds”** is defined in Recital G.

(v) **“Taxing Entities”** are the governing bodies of the various taxing jurisdictions within or overlapping the Property, or any portion thereof, as applicable, including without limitation, the City and the District.

(w) **“Term”** is defined in Section 7.

(x) **“Termination Date”** is defined in Section 3(a).

(y) **“Trustee”** is defined in Recital G.

(z) "Trust Indenture" is defined in Recital G.

2. Colorado Common Interest Ownership Act Not Applicable. Notwithstanding any provision of this Declaration to the contrary, including without limitation, Attachment 1, the Property does not include any real property described in Attachment 1 to the extent developed, improved, used or enjoyed for "residential use" (as such term is defined in the Act) from time to time, and any such real property will be wholly exempt from, and not subject to any of, the covenants, conditions and restrictions created by this Declaration.

3. Annual Fee.

(a) Declarant and the City acknowledge and agree, and each Owner acquiring an Interest in any portion of the Property will be deemed to have acknowledged and agreed, that the District may and will calculate and collect, and the Owners from time to time of Exempt Property will pay to the District, the Annual Fee in arrears as set forth below until the latest to occur of the following, upon which the Annual Fee will expire, terminate and be of no further force or effect (the "Termination Date"): (i) the date the Bonds are fully repaid; (ii) the date the District dissolves; or (iii) the date the District executes and records a termination of this Declaration in the Records.

(b) On or about January 15 of any calendar year following a calendar year in which the Property, or any portion thereof, is Exempt Property, the District will deliver written notice to the Owner of such Exempt Property of the Annual Fee due for the calendar year in which such Property, or the applicable portion thereof, is Exempt Property, together with instructions for payment of the Annual Fee to the District or the District's designee, as applicable, including without limitation, any trustee under any Bond Documents; provided however, delinquencies or failures in providing such notice will not affect the validity or collectability of such Annual Fee. The amount of such Annual Fee will be pro-rated, based on that portion of the calendar year during which such Property, or the applicable portion thereof, is Exempt Property.

(c) Each Annual Fee due for a calendar year will be due and payable in arrears on April 15 of the following calendar year.

(d) If an Owner fails to pay any amount due under this Declaration to the District on or prior to the date such amount becomes due, such Owner will (i) pay to the District interest on such unpaid amount from the due date thereof until paid at the rate of 12% annum simple interest; provided however, if such rate exceeds the maximum permitted by applicable law, such rate will be the maximum permitted by applicable law; and (ii) reimburse the District for any and all attorneys' fees and costs and expenses incurred by the District to collect such unpaid amounts.

4. Transfers of Interests.

(a) ANY OWNER TRANSFERRING AN INTEREST IN THE PROPERTY, OR ANY PORTION THEREOF, WILL PROVIDE WRITTEN NOTICE TO THE DISTRICT OF SUCH TRANSFER, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 5, NOT LATER THAN THE DATE SUCH TRANSFER OF INTEREST IS EFFECTIVE. SUCH NOTICE WILL IDENTIFY THE PROPERTY OR PORTION THEREOF SUBJECT TO THE

INTEREST BEING TRANSFERRED, THE NAME OF SUCH TRANSFEROR AND THE NAME OF THE TRANSFEREE.

(b) An Owner's failure to give any such notice of transfer will in no way affect or eliminate the obligation of a subsequent Owner to pay the Annual Fee, as applicable.

5. Notices.

(a) Notices given with respect to this Declaration will be in writing and will be delivered by hand-delivery, or by certified mail, return receipt requested, or overnight delivery service by a nationally-recognized overnight courier service such as Federal Express or UPS. Notice will be deemed given (i) when received if hand-delivered, (ii) on the third business day after mailed if given by certified mail, postage pre-paid, or (iii) the next business day following delivery by overnight courier service. Notice will be sent to the following addresses:

To Owners:	To the Owners at their addresses at the Property as set forth in the Records
To the District:	The City of Grand Junction Dos Rios General Improvement District c/o City of Grand Junction 250 N. 5th Street Grand Junction, Colorado 81501 Attn: City Attorney
with a copy to:	Collins Cockrel & Cole 390 Union Blvd. Suite 400 Denver, Colorado 80228 Attn: Bob Cole
To the City:	City of Grand Junction 250 N. 5 th Street Grand Junction, Colorado 81501 Attn: City Attorney
with a copy to:	Otten, Johnson, Robinson, Neff & Ragonetti, P.C. 950 Seventeenth Street, Suite 1600 Denver, Colorado 80202 Attention: Kimberly Martin

(b) The District and the City may change its respective address for purposes of this Section 5, at any time and from time to time, by delivering to the then-current Owners a notice of such change in accordance with the terms of this Section 5. An Owner may change its address for purposes of this Section 6, at any time and from time to time, by delivering to the District and the City a notice of such change in accordance with the terms of this Section 5.

6. Remedies; Attorneys' Fees. The District will have all rights and remedies available to it under this Declaration, at law and/or in equity, including without limitation, specific

enforcement, to enforce this Declaration against any Person in breach of its obligations hereunder. In the event of litigation in connection with the enforcement or interpretation of the terms of this Declaration, the prevailing party in such litigation will be entitled to its costs and reasonable attorneys' fees.

7. Term. The term of this Declaration will commence on the Effective Date and will continue through and including the Termination Date (the "**Term**"); provided, however, the obligations and liabilities of any Owners accruing during the Term, and the District's enforcement rights in connection therewith, will survive the expiration of the Term.

8. Binding Effect. During the Term, this Declaration will run with the land, and will be binding upon all Owners and Persons having an Interest in the Property, or any portion thereof, and their respective successors and assigns; provided, however, if and to the extent that any of the restrictions or covenants herein would otherwise be unlawful or void for violation of the rule against perpetuities, such restrictions and covenants will continue and endure only until the expiration of a period of ninety (90) years after the Effective Date. The Owners, by taking title to the Property, or any portion thereof, thereby acknowledge and agree that the covenants set forth herein are reasonable and necessary to facilitate the construction, financing, operation, maintenance, repair, replacement and provision of the Public Improvements and Services benefitting the Property, the Owners and Persons having an Interest in the Property.

9. Severability. Invalidation of any of the provisions contained in this Declaration, or of the application thereof to any Person, by judgment or court order, will in no way affect any of the other provisions of this Declaration or the application thereof to any other Person or circumstance, and the remainder of this Declaration will remain in effect and full force; provided, however, that in the event such invalidation would render the remaining portions of this Declaration ineffective to carry out the intentions of the Declarant or the City, as applicable, as expressed or implied by this Declaration, then the objectionable provision(s) hereof will be construed, and this Declaration will be presumed amended, as if such provision was replaced with an enforceable provision which effectuates, as nearly as possible, the intent of the Declarant or the City, as applicable, as expressed or implied herein.

10. Third-party Beneficiaries; Assignment. The District and trustees under any Bond Documents, including without limitation, the Trustee, are expressly hereby made third-party beneficiaries of the Owners' obligations under this Declaration, including without limitation, the payment of the Annual Fee. Declarant acknowledges, and each Owner, by acquiring an Interest in the Property or any portion thereof, will be deemed to have acknowledged, that the District and such trustees will have a direct cause of action and full right and authority to enforce each Owner's obligation under this Declaration. Except as provided in this Section 10, nothing contained in this Declaration will be construed to give any right of action by any other Person with respect to this Declaration. Notwithstanding the foregoing, any and all of the rights and powers of the District herein may be assigned (in whole or in part) by the District to any successor of the District with respect to its obligations under the Trust Indenture or other Bond Documents from time to time by an instrument executed by both the assignor and the assignee and recorded in the Records; upon any such assignment, the assignee, to the extent of such assignment, will have the same rights and powers of the District as provided for in this Declaration.

11. Amendment. This Declaration may be amended with the written consent of (a) the City, if the City is an Owner of any portion of the Property; (b) the Owners who hold a fee interest in more than 50% of the total acreage of the Property, but excluding any portion of the Property owned by the City, the District or any other governmental or quasi-governmental entity; (c) the District, and (d) such other consents as may be required pursuant to any Bond Documents. Any such amendment will (i) be executed by the City, if the City is an Owner of any portion of the Property; (ii) be executed by the District; (iii) include a certification of the District that the requisite consenting parties have given their written consent thereto; and (iv) be recorded in the Records by the District.

12. Exclusion of Property. With such consents as may be required pursuant to any Bond Documents, the District may exclude any real property from the Property by recording in the Records a notice of such exclusion describing the property to be excluded from the Property, and upon the recording of any such notice (or upon the effective date specified in the notice if different from the date of recording), the real property described in the notice will be excluded from the Property and will no longer be subject to the terms, obligations, covenants and requirements of this Declaration, except with respect to obligations arising prior to the effectiveness of such exclusion.

13. Inclusion of Property. With such consents as may be required pursuant to any Bond Documents, the District may include any additional real property in the Property by executing and recording in the Records a notice of such inclusion describing the real property to be included in the Property; provided, however, if such real property to be included in the Property is owned by a Person other than the District, any such inclusion will require the written consent of the Person owning such property as evidenced by such Person's execution of such notice. Upon the recording of any such notice (or upon the effective date specified in the notice if different from the date of recording), the real property described in the notice will be included in the Property and will be subject to the terms, obligations, covenants and requirements of this Declaration, except with respect to obligations arising prior to the effectiveness of such inclusion.

14. Merger. Notwithstanding that the Declarant and the City own all property subject to this Declaration, such ownership (or any future ownership of all of the Property by a single Person) will not act to merge the covenants, burdens and benefits created by this Declaration with the underlying real property. Any amendment or termination of this Declaration or the covenants, burdens and benefits created herein may only be effected pursuant to Section 11.

15. Governing Law. This Declaration will be governed by, and enforced in accordance with, the laws of the State of Colorado.

[Signature pages follow]

ATTACHMENT 1
LEGAL DESCRIPTION OF THE PROPERTY

Declarant Property:

[to be inserted]

City Property:

[to be inserted]

[STATUTORY FORM – C.R.S. § 38-30-113(b)]

Signed this ____ day of _____ 20__ to be made effective the ____ day of
20__.

By: _____
Name: _____
Title: _____

Notary Public

Exhibit A
to Special Warranty Deed

Description of the Land

[insert legal description of the Part 1 Land or the Part 2 Land, as applicable]

Exhibit B to Special Warranty Deed

PERMITTED EXCEPTIONS

Exclusions: Conveyance of the Land pursuant to the foregoing Special Warranty Deed is subject to the express exclusion of the following rights with respect to the Land:

1. Any and all right, title and interest in and to subsurface estates and mineral rights located in, upon and/or under the Land, including, without limitation, any rights to explore for and/or extract, or to be paid royalties in connection therewith, oil, natural gas, hydrocarbon products, gravel, sand, coal, and/or hard rock minerals; provided however, the surface of the Land to a depth of 500 feet below the surface of the Land may not be used or accessed in connection with the exercise of any rights related to the foregoing reserved mineral rights, including without limitation, exploration, drilling and extraction activities; and
2. To the extent appurtenant to or historically used in connection with the Land, any and all right, title and interest in and to tributary, nontributary and not-nontributary water rights that Grantor owns or may own, whether decreed or undeclared, including, without limitation, all groundwater underlying the Land, all surface water located within or used in connection with the Land, and/or ditch shares or ditch rights used in connection with the Land.

Exceptions: Conveyance of the Land pursuant to the foregoing Special Warranty Deed is subject to the following exceptions:

3. Permitted Exceptions. The "Permitted Exceptions" will consist of:

3.1 any state of facts which is revealed in the Existing Survey or, as applicable, the Updated Survey, or by an inspection of the Land;

3.2 taxes and assessments for the year of the applicable Closing, and subsequent years, a lien not yet due and payable;

3.3 the exceptions disclosed in Schedule B, Part II of the Title Commitment as of the expiration of the Feasibility Period and any Subsequent Defects that are deemed Permitted Exceptions pursuant to clause (i) of Section 2.3, excluding, however:

(a) any delinquent taxes or assessments,

(b) any monetary liens or monetary encumbrances created by, through or under Seller,

(c) any standard printed exceptions concerning parties in possession, unrecorded easements, encroachments or other matters of survey (subject to Purchaser's obligation to obtain any Updated Survey, as applicable), mechanics' liens or claims therefor to the extent arising by, through or under Seller, together with coverage for matters first appearing as recorded in the real property records of the clerk and recorder of Mesa County, Colorado (the "Records") after the date of the final Title Commitment but before the applicable Closing, and

(d) any matters which Purchaser causes to be deleted or removed prior to the applicable Closing;

3.4 the PILOT Covenant (defined in Section 4.1);

3.5 the Declaration of Repurchase Right (defined in Section 4.2); and

3.6 any matter created by, or at the request or with the approval of, Purchaser or its employees, contractors, agents and representatives.

EXHIBIT E
to
PSA
Form of General Assignment

GENERAL ASSIGNMENT

THIS GENERAL ASSIGNMENT (this “**Assignment**”) is made as of _____, 20____, by and between CITY OF THE GRAND JUNCTION, a Colorado home-rule municipal corporation (“**Assignor**”), and _____, a _____ (“**Assignee**”).

Recitals

This Assignment is made with respect to the following facts:

A. Assignee and Assignor are parties to that certain Purchase and Sale Agreement dated as of the ____ day of _____ 2020 (as amended, the “**PSA**”).

B. Pursuant to the PSA, Assignor has this date conveyed to Assignee the real property legally described in Exhibit A attached hereto (as defined in the PSA, the “**Real Property**” associated with the *insert “Part 1 Land” or “Part 2 Land” as applicable*).

C. In connection with its conveyance of the applicable portion of the Real Property to Assignee, Assignor has agreed to assign to Assignee all of Assignor’s right, title and interest in and to certain intangible personal property (as defined in the PSA, the “**Intangible Property**” associated with the *insert “Part 1 Land” or “Part 2 Land” as applicable*) as more fully described below.

Assignment

NOW, THEREFORE, for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged:

1. **Assignment.** To the extent the same are assignable and only to the extent they relate to the portion of the Real Property associated with the *insert “Part 1 Land” or “Part 2 Land” as applicable*, and only to the extent of Seller’s interest in the same as a property owner, and not as a governmental entity, which rights will be reserved solely to Seller, Assignor hereby transfers, grants, conveys and assigns to Assignee all of Assignor’s right, title and interest in and to the following Intangible Property:

- (a) The Agreements (as the PSA defines such term);
- (b) The Permits (as the PSA defines such term);
- (c) The Plans (as the PSA defines such term); and

(d) The Warranties (as the PSA defines such term), such Warranties comprising all unexpired warranties, guarantees and bonds, including, without limitation, contractors' and manufacturers' warranties or guarantees.

2. Assumption. Assignee hereby assumes all liability and obligations of Assignor under the Intangible Property which relate to the periods from and after the date hereof and agrees to perform all obligations of Assignor under the Agreements and the Permits which are to be performed or which become due on or after the date hereof.

3. Successors and Assigns. This Assignment will be binding upon and inure to the benefit of the parties' respective successors and assigns.

4. Counterparts. This Assignment may be executed in counterparts, each of which will be deemed a duplicate original.

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first set forth above.

ASSIGNOR:

CITY OF GRAND JUNCTION,
a Colorado home-rule municipal corporation

By: _____
Name: _____
Title: _____

ATTEST:

City Clerk

ASSIGNEE:

_____,
a _____
By: _____
Name: _____
Title: _____

Exhibit A
to General Assignment

Legal Description of the Real Property

[insert legal description of the Part 1 Land or the Part 2 Land, as applicable]

EXHIBIT F
to
PSA
Form of Declaration of Repurchase Right
[previously provided and to be appended at execution]

EXHIBIT F
to
PSA
Form of Declaration of Repurchase Right

The Purchaser shall be required to submit an ODP/PD plan (“Development Plan”) to the City by December 31, 2020. The Development Plan shall include a minimum of the following elements:

- 210 residential dwelling units;
- 100,000 square feet of retail/office;
- 90,000 square feet of light industrial; and
- 96 hotel rooms.

As required by the City Zoning and Development Code (“Code”) each component of the Development Plan includes City approval (and satisfaction of any approval conditions) of a Major Site Plan or Preliminary/Final Subdivision Plan as necessary to satisfy the Code. Purchaser shall complete development in accordance with the Development Plan by the following deadlines:

- Phase 1: Submit and receive City approval of Certificate(s) of Occupancy for a minimum of 20 dwelling units and 10,000 square feet of retail, office and/or light industrial by December 31, 2022. Initial assessment value of such development must be greater than or equal to \$5,720,000.00.
- Phase 2: Submit and receive City approval of Certificate(s) of Occupancy for a minimum of 20 additional dwelling units and 10,000 additional square feet of retail, office and/or light industrial by December 31, 2023. Initial assessment value of such development must be greater than or equal to \$5,720,000.00.
- Phase 3: Submit and receive City approval of Certificate(s) of Occupancy for a minimum of 20 additional dwelling units and 25,000 additional square feet of retail, office and/or light industrial by December 31, 2024. Initial assessment value of such development must be greater than or equal to \$8,300,000.00.
- Phase 4: Submit and receive City approval of Certificate(s) of Occupancy for a minimum of 40 additional dwelling units and 25,000 additional square feet of retail, office and/or light industrial by December 31, 2025. Initial assessment value of such development must be greater than or equal to \$8,300,000.00.
- Phase 5: Submit and receive City approval of Certificate(s) of Occupancy for a minimum of 40 additional dwelling units, 35,000 additional square feet of retail, office and/or light industrial by December 31, 2026. Initial assessment value of such development must be greater than or equal to \$14,020,000.00.

Phase 6: Submit and receive City approval of Certificate(s) of Occupancy for a minimum of 40 additional dwelling units and 35,000 additional square feet of retail, office and/or light industrial by December 31, 2027. Initial assessment value of such development must be greater than or equal to \$14,020,000.00.

Phase 7: Submit and receive City approval of Certificate(s) of Occupancy for a minimum of 50 additional dwelling units and 50,000 additional square feet of retail, office and/or light industrial and a 96 rooms of hotel space by December 31, 2028. Initial assessment value of such development must be greater than or equal to \$18,870,000.00.

TOTAL ASSESSED VALUE OF THE PROPERTY UPON COMPLETION OF DEVELOPMENT MUST BE AT LEAST \$42.2 MILLION FOR RESIDENTIAL AND \$32.75 MILLION FOR COMMERCIAL DEVELOPMENT.

If Purchaser fails to meet any of the foregoing deadlines, or otherwise fails to develop the Property in accordance with the Development Plan, Seller may elect to repurchase any portion of the Property remaining undeveloped at the time of such failure in accordance with the following terms and conditions:

- Notwithstanding anything else contained herein, “Property remaining undeveloped” for the purposes of this repurchase provision shall exclude any Property for which an active building permit has been issued and substantial construction work is ongoing. Further, should the approval process for the design and permit application for any Lot exceed ninety (90) days from initial Planning and Zoning application to final approval, such that a Building Permit may be obtained, such additional approval process time period beyond ninety (90) days shall be added to each of the foregoing dates.
- In addition and, notwithstanding anything else contained herein, in order to facilitate construction lending for each and any Phase(s) of the project, Seller agrees to release the Repurchase Right for each Phase of the property subject to the Initial Closing at the time the Purchaser closes and the construction loan is funded for that Phase or if the Purchaser’s lender requests that the Seller agree in writing to subordinate the Repurchase Right to all the rights and remedies of the construction lender, which do not cause or create a claim against the Seller, Seller agrees it will do so. The Purchaser shall endeavor to secure construction financing for each Phase of the property subject to the Final Closing that does not require the Seller to release or subordinate the Repurchase Right, but in the event such is necessary to secure financing the Seller reasonably agrees to consider in good faith the release or subordination as provided for the Initial Closing to facilitate the Buyer’s ability to obtain construction financing for each Phase of the project to be constructed on the property named for the Final Closing. In the event the Seller determines in good faith, based on Purchaser’s failure to meet milestones as set forth above, not to release or subordinate the Repurchase Right on the property subject to the Final Closing, the Purchaser shall have no claim or cause of action against the Seller; however, that notwithstanding, Seller agrees that it will not exercise or use the Repurchase Right to

frustrate the Purchaser's ability to obtain financing for construction or to reclaim and resell the property for a higher price, acknowledging Purchaser's contribution to the increase in value of the property.

- Seller will deliver to Purchaser written notice of such failure, whereupon Purchaser will have 30 days to propose corrective measures (e.g., new timeline, unit count, square footage, etc.) to Seller;
- Seller will have 90 days to accept or reject the proposed corrective measures;
- If Seller does not accept the proposed corrective measures, Seller may elect to repurchase the applicable portion(s) of the Property on the same general terms as Purchaser's acquisition from Seller, including the Purchase Price allocated to such portion of the Property based on the acreage of the repurchase property to the total acreage of the Property.
- Any square footage or value minimum that is exceeded in any phase shall be banked and able to use in any future phase requirement.

The Declaration of Repurchase Right will run with the land. The foregoing repurchase right will apply as a right of first offer to any sale or proposed sale of the Property or any portion thereof.
