



**Garden
Spot of
Colorado**

**MEETING OF THE TOWN BOARD
Town Board Room
807 Mountain Avenue
Town of Berthoud, Colorado
Tuesday, October 22, 2024, 6:30 p.m.**

This is an IN-PERSON meeting at the location and time noted above.
You may also join virtually using Zoom: Phone: 1-346-248-7799 or 301-715-8592
Web: www.zoom.us/join Use this Meeting ID: 210 035 9423

The Town Board may take action on any of the following agenda items as presented or modified prior to or during the meeting and items necessary or convenient to effectuate the agenda items.

1. Meeting Called To Order - Mayor William Karspeck
2. Pledge Of Allegiance - Mayor William Karspeck
3. Roll Call - Mayor William Karspeck
4. Citizen Participation
5. Scheduled Items And Estimated Time For Discussion
 - 5.I. Consent Agenda
Introduction by: Christian Samora

Documents:

[MEMO RE CONSENT AGENDA.PDF](#)
[A. OCTOBER 22, 2024, MEETING MINUTES.PDF](#)
[B. OCTOBER 8, 2024, MEETING MINUTES.PDF](#)
[C. OCTOBER 2024 BOARD REPORT.PDF](#)
[D. WELD COUNTY ROAD 5 OPEN SPACE PURCHASE.PDF](#)

- 5.II. LETA 911 Update - Presentation
Introduction by: LETA 911

Documents:

[MEMO RE LETA PRESENTATION.PDF](#)

5.III. Water Basics And Portfolio Resources - Presentation

Introduction by: Ken Matthews

Documents:

[MEMO RE WATER SUPPLY DEMAND UPDATE AND WATER RIGHTS AND PROJECTS UPDATE.PDF](#)

5.IV. Water And Wastewater Projects Update - Presentation

Introduction by: Ken Matthews

Documents:

[MEMO RE WATER AND WASTEWATER PROJECTS UPDATE.PDF](#)

5.V. Lake Lawn Water Rights Purchase

Presented by: Chris Kirk

Documents:

[MEMO RE LAWN LAKE WATER PURCHASE.PDF](#)
[20241007 CONTRACT TO BUY AND SELL WATER RIGHTS \(LAWN RESERVOIR\)\(CLEAN\).PDF](#)
[20241007 ESCROW AGREEMENT \(LAWN RESERVOIR\)\(CLEAN\).PDF](#)

5.VI. Correction Of Section 3 And 6 Of Chapter 30 - Public Hearing

Introduction by: Christian Samora

Documents:

[MEMO RE CHAPTER 30 CORRECTIONS.PDF](#)
[ORDINANCE 1346 CORRECTING SECTION 3 AND 6 OF CHAPTER 30.PDF](#)
[EXHIBIT A CLEAN.PDF](#)
[EXHIBIT A REDLINE.PDF](#)

6. Elected Official Reports

1. Town Board - Tim Hardy, May Albrecht, Sean Murphy, Karl Ayers, Chris Kurtz, and Brett Wing
2. Mayor - William Karspeck
3. Staff - Town Administrator, Attorney

7. Adjourn

The order of agenda items listed above is approximate and intended as a guideline for the

Town Board. Individuals needing special accommodation may request assistance by contacting the Town Clerk 807 Mountain Avenue, Berthoud, Colorado 80513, 970-532-

2643 at least 24 hours in advance.

BOARD OF TRUSTEES INFORMATION



ADMINISTRATION DEPARTMENT

Meeting Date:	October 22, 2024
Agenda Title/Subject:	Consent Agenda
Type of Item:	Regular Item
Purpose:	The Consent Agenda contains routine items that can be approved with a single action by the Board.
Presented by:	Christian Samora

ATTACHMENTS:

- a) October 22, 2024, Meeting Agenda
- b) October 8, 2024, Meeting Minutes
- c) October 2024 Board Report
- d) Weld County Road 5 Open Space Purchase

BACKGROUND:

The Consent Agenda is a group of routine matters to be acted on with a single motion and vote. The mayor will ask if any Board Member wishes to remove an item for separate discussion. Items removed from the consent agenda should be considered immediately following adoption of the amended Consent Agenda.

UPDATE/NEXT STEPS:

Any updates or next steps for the items on the Consent Agenda will be articulated in the information sheet provided for each item on the Consent Agenda.

FISCAL IMPACT AND FUND SOURCE:

Any fiscal information for the items on the Consent Agenda will be articulated in the information sheet provided for each item on the Consent Agenda.

COMMUNITY TOUCHSTONES:

Any Community Touchstones for the items on the Consent Agenda will be articulated in the information sheet provided for each item on the Consent Agenda.

RECOMMENDED ACTION(S):

“Move to combine and approve the items on the Consent Agenda.”

Followed by a second and a vote.



MEETING OF THE TOWN BOARD

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Web: www.zoom.us/join

Use this Meeting ID: 210 035 9423

Please note that you will need to call into the meeting if you wish to speak and do not have a microphone on your computer. If you are using a mobile device, it is highly recommended that you download the Zoom app.

The Town Board may take action on any of the following agenda items as presented or modified prior to or during the meeting and items necessary or convenient to effectuate the agenda items.

- I. REGULAR MEETING CALLED TO ORDER** – Mayor William Karspeck
- II. PLEDGE OF ALLEGIANCE** – Mayor William Karspeck
- III. ROLL CALL** – Mayor William Karspeck
- IV. CITIZEN PARTICIPATION**
- V. SCHEDULED ITEMS and ESTIMATED TIMES FOR DISCUSSION**
 - 1. Consent Agenda** (Christian Samora) (5 Min)
Consent Agenda items are considered to be routine by the Town Board and will be enacted with a single vote. There will be no separate discussion of these items. If discussion is deemed necessary, that item should be removed from the Consent Agenda and considered separately.
 - a) October 22, 2024, Meeting Agenda
 - b) October 8, 2024, Meeting Minutes
 - c) October 2024 Board Report
 - d) Weld County Road 5 Open Space Purchase
 - 2. LETA 911 Update – Presentation** (LETA) (15 Min)
 - 3. Water Basics and Portfolio Resources – Presentation** (Ken Matthews) (30 Min)
 - 4. Lawn Lake Water Rights Purchase** (Chris Kirk) (15 Min)
 - 5. Water and Wastewater Projects Update – Presentation** (Ken Matthews) (15 Min)
 - 6. Correction of Section 3 and 6 of Chapter 30 – Public Hearing** (Christian Samora) (10 Min)
Ordinance 1346 – An ordinance of the Town of Berthoud, Colorado repealing and reenacting certain Sections of the Berthoud Municipal Code regarding Use by Special Review and Site Plans and the requirements thereof
- VI. ELECTED OFFICIAL REPORTS** (10 Min)
 1. Town Board – Tim Hardy, May Albrecht, Sean Murphy, Karl Ayers, Chris Kurtz, and Brett Wing
 2. Mayor – William Karspeck
 3. Staff – Town Administrator, Attorney

October 22, 2024, Meeting Agenda

The order of agenda items listed above is approximate and intended as a guideline for the Town Board. Individuals needing special accommodation may request assistance by contacting the Town Clerk 807 Mountain Avenue, Berthoud, Colorado 80513, 970-532-2643 at least 24 hours in advance.

VII. ADJOURN

Town Clerk or Deputy Town Clerk

William Karspeck, Mayor



MEETING MINUTES OF THE TOWN BOARD

**Town Board Room
807 Mountain Avenue
Town of Berthoud, Colorado
Tuesday, October 8, 2024, 6:30 p.m.**

10/8/2024 - Minutes

1. Meeting Called To Order - Mayor William Karspeck

Mayor Karspeck called the meeting to order at 6:32 pm.

2. Pledge Of Allegiance - Mayor William Karspeck

Mayor Karspeck led the Pledge of Allegiance.

3. Roll Call - Mayor William Karspeck

The following Board members were present:

Brett Wing, Trustee
Tim Hardy, Trustee
May Albrecht, Trustee
Chris Kurtz, Trustee
Karl Ayers, Trustee
Sean Murphy, Mayor Pro-Tem
Will Karspeck, Mayor

The following staff members were present:

Erin Smith, Town Attorney
Chris Kirk, Town Administrator
Christian Samora, Town Clerk
Lexi Weissman, Deputy Town Clerk
Sergeant Justin Williamson, Larimer County Sheriff
Paul Furnas, Town Forester
Cindy Leach, Director of Finance

4. Citizen Participation

No one spoke during Citizen Participation.

5. Scheduled Items And Estimated Time For Discussion

5.1. Consent Agenda

Items:

- a) October 8, 2024, Meeting Agenda
- b) September 24, 2024, Meeting Minutes
- c) August 2024 Financial Information

- d) Meganhardt Handy Ditch Water Purchase
- e) Golden Links Agreement

Trustee Kurtz moved to combine and approve the items on the Consent Agenda. Trustee Ayers seconded the motion. In a 7-0 roll call vote, THE MOTION CARRIED.

5.II. Draft 2025 Annual Budget Presentation

Administrator Kirk provided information on the 2025 Draft Budget.

Trustee Wing moved to schedule a Public Hearing on December 10, 2024 at the hour of 6:30 pm, or as soon thereafter as practicable, to consider the adoption of the 2025 Annual Budget and associated ordinances for the Town of Berthoud, and to direct staff to publish a notice for the same in accordance with the Local Government Budget Law of Colorado. Trustee Hardy seconded the motion. In a 7-0 roll call vote, THE MOTION CARRIED.

5.III. Tree Advisory Committee Annual Update

Town Forester, Paul Furnas, provided an introduction on the Tree Advisory Committee Annual Update.

Kathy Mitchell, Tree Advisory Committee Chair, gave a presentation.

6. Elected Official Reports

Trustee Hardy:

Hardy reported on a concern about camping at Town parks and inquired about transient issues. Hardy reported on the recent Oktoberfest event.

Trustee Wing:

Wing reported on a Larimer County Sheriff training. Wing inquired about public access to a trail in Heron Lakes and lighting at the roundabout east of I-25.

Trustee Kurtz:

Kurtz reported on the recent Oktoberfest event.

Trustee Albrecht:

Albrecht reported on the recent Oktoberfest event. Albrecht reported the Youth Advisory Committee and their feedback on Town projects. Albrecht would like to see updated statuses on current projects and reported on community feedback on the short-term rental application process.

Trustee Ayers:

Ayers reported on the Larimer County Sheriff training. Ayers reported on PORT Committee discussions on the Jaskowski property and the Arboretum, as well as a vacancy on the committee. Ayers provided an update on the North Berthoud Parkway Trail and inquired about lighting at the pickleball courts.

Mayor Pro-Tem Murphy:

Murphy inquired about Arboretum plans and reported on the Oktoberfest event. Murphy inquired about the on-site power at Town Park and about a consulting services agreement.

Mayor Karspeck:

Karspeck reported on the Oktoberfest event and pickleball games. Karspeck discussed Administrator Kirk's annual evaluation. Karspeck reported on an Affordable Housing seminar, a CML Meeting and a rail meeting. Karspeck discussed a thank you card from the Daughters of the American revolution. Karspeck inquired about entrances to the Arboretum and inquired about zoning for a potential apartment complex.

Administrator Kirk:

Kirk inquired about scheduling an economic development focused study session, as well as a community development focused study session.

7. Adjourn

The meeting was adjourned at 8:38 pm.

Town Clerk or Deputy Town Clerk

William Karspeck, Mayor

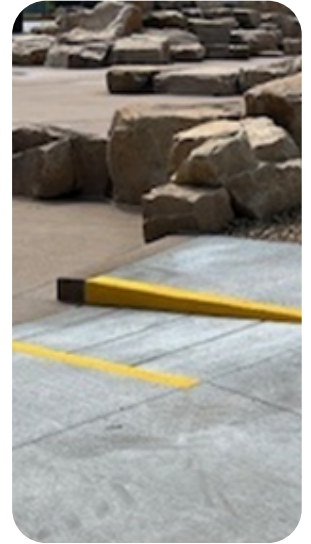
Berthoud Board Update

October 2024



Speeches were given, the ribbon was cut, and just like that, our historic Town Park will once again be the backdrop to so many fond memories of growing up in Berthoud.

Every department played a part in the creation of this beautiful park, so we hope everyone feels an immense sense of pride when they spend time there.



FORESTRY / OPEN SPACE

Submitted By Paul Furnas, Town Forester

September was a productive month for Forestry. Forestry staff turned their attention to planting trees for the fall planting season, mainly targeting the failed trees at the Waggener Recreation Center. Forestry staff planted 31 trees through September. Outside of tree planting, Forestry staff helped prep the new Town Park for opening day with some last minute tree pruning, and kept up on keeping our town trees well watered. Open Space staff helped with some additions to Town Park after opening day by adding a new walking trail to connect to Ivy Stockwell school grounds through an ornamental bed in the park, as well as some last minute weed management before the opening weekend.



Forestry Staff started the fall planting season with a trip to a local nursery to tag trees for planting over the month. A total of 18 great quality trees were tagged for planting around town. 13 trees were pulled from the Hillsdale Tree Nursery and planted around town.

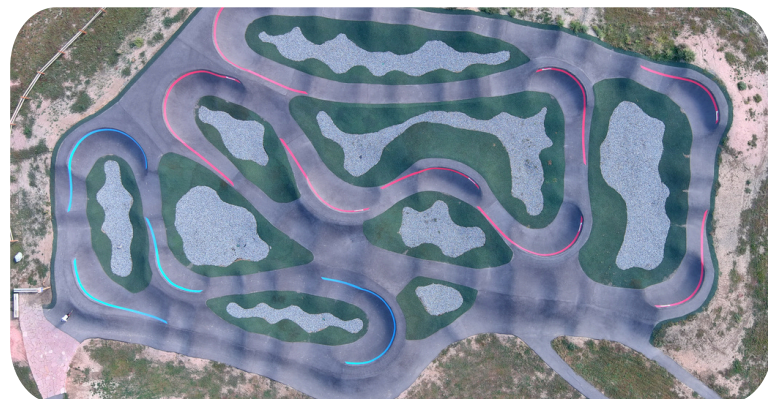


Before



After

Fall sucker pruning

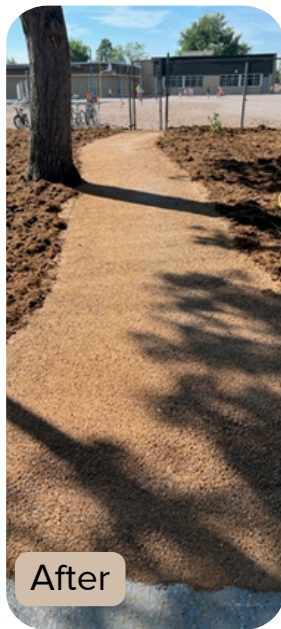


A small portion of the pump track at the bike park had the lines painted blue to indicate a separate, smaller loop that should hopefully improve traffic flow on the pump track.





Before



After

A small new trail was added from the sidewalk to the Ivy Stockwell school gate for students being dropped off at Town Park



Before



After

Open Space kept up on mowing throughout September to continue to fight weeds and mowed established native grasses in hopes of revitalizing native areas for next year.



Weeds and trail repair



Before



After

Weed management around the new pickleball courts as native grass establishes.



Before



After

Forestry staff tackled some light trimming projects around town, one was to clear up some branches over the fence line at town park to give some newly planted trees some sun.



RECREATION

Submitted By Amanda Gustafson, Director of Recreation | Cultural Services

Operations, Memberships & Marketing

We have made significant strides in improving the safety, functionality, and overall experience at the Recreation Center. In terms of event management, we successfully hosted a record-breaking Father-Daughter Dance with 250 attendees and filled our Winter Craft Event with 65 vendors. On the administrative side, we are preparing for future growth by meeting with each team member to discuss 2025 budget requests and reviewing Q3 goals to align our staff with our long-term vision.

Sports & Programs

As September wraps up so does a number of our programs. All of our youth sports programs will be wrapping up by mid-October with adult sports programs starting playoffs. September was a busy month where we hosted 176 youth and adult sports games throughout the week running Monday through Saturdays for practices and games. To get games ready to run, the sports team organized, inventoried, and distributed over 500 jerseys while ensuring that all equipment and coaches were properly prepared for the start of games.



Fitness & Active Adults

Between our fitness classes and specialty fitness classes, the fitness team had over 1,400 attendees during the month of September.



ACTIVE ADULTS (50+)



We have completed our first full Women's Pickleball League. It was a successful season and all of the women who played had positive feedback and were very excited to do it again.



Aquatics

Staff training was held for the entire aquatics team on September 8th. The head guards did leadership training with water beads with some clarification and refreshing on how to calculate and add chemicals to the pools when needed. Swim instructors continued their training on professionalism and how to apply it to their swim lessons. The lifeguard team spent a lot of their time in the water perfecting their water skills. The head guards did their second training of the month towards the end of the month to learn about the new splash pad that had opened. Training was conducted on operations, expectations and how to do regular maintenance.

September 10th Aquatics took over operation of the new splash pad at Town Park with the collaboration and support of parks. The two teams worked together to learn the splash pad and identified and divided out duties between the two departments minimizing the workload for each area. Successful shutdown came at the end of the month with a winterization soon to come.



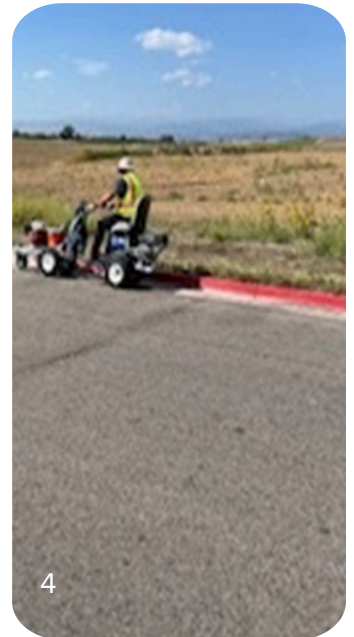
STREETS DEPARTMENT

Submitted By Brandon Keegan, Streets Supervisor

In September, the Streets Department was busy installing new thermoplastic markings around town. We also uncovered a storm lid at the cemetery and cleared the storm line for better flow. Regular maintenance like painting curbs, street sweeping, and mowing was done as well.



1 & 2 Streets crew uncovered a manhole in the cemetery drive. We proceeded to jet to the southwest to unclog the storm drain line. 3 & 4 - CR6C & 1st street-Streets crew assisted the water department by saw-cutting the asphalt and locating the sewer lid.

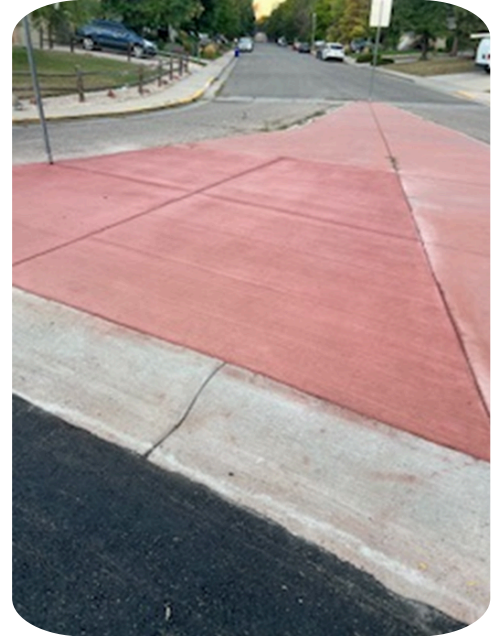


New thermoplastics installed at 1 - Lissa Dr & CR14 2 & 3 - Recreation Center
4) Red paint added at Travel Center Dr to discourage semi trucks from parking on the road





3rd and Indiana- Lucero concrete removed and replaced the concrete median as well as the curb and gutter



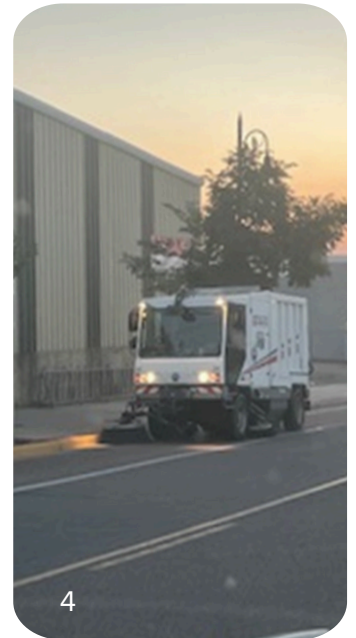
1



2



3



4

- 1 - Nielsen Trail- Lucero Concrete tore out the cracked sidewalk and replaced it with a new and improved sidewalk with a curb so the parks department can safely go around the corner when plowing the snow off the sidewalk.
- 2 & 3 - Town Park- Streets Department painted the curb ledge to alert everyone that there is a drop-off
- 4 - Mountain Avenue- Streets crew street sweeping early morning to clean up the road debris.



COMMUNITY DEVELOPMENT

Submitted By Anne Johnson, Planning Director

Building Division data for September, 2024:



New Residential
12 in September, 2024



New Commercial
0 in September, 2024



Number of "Other"
235 in September, 2024



Total Valuation
\$ 13,724,862.26



Engineering

Construction Site Inspections: 52
Town Projects Inspected: 72
Response to Citizen Questions: 1
MS4 Inspections: 5
ROW Inspections: 12
Other: Meetings / Inspections: 39

Planning



Public Assistance

Walk-ins : 9
Emails : 3044
Phone calls : 92
Site Visits : 3



Pre-Application meetings : 8
Public Hearings/Applications presented : 8
Codes/Comp Plan Action Items in-process: 1
Applications in Process: 24



PARKS / CEMETERY

Submitted By Sami Kouns, Parks Supervisor

Parks/Cemetery

September served as a month of transition. Both the Parks Department and the Cemetery Department's focus was to wrap up smaller project from the to-do list to make time for bigger upcoming projects. Parks installed a bench and trail, base plug markers, and bought materials for the installation of the new irrigation and raised beds at the Pioneer Park Community Garden. Larger irrigation issues were addressed across both the cemetery and various parks in preparation for blowouts next month. The colder temperatures led to a slower grass growth, which allowed members of the mow crew to jump in on some of the smaller project we had going on this month. With Oktoberfest being held at the new Town Park the first Saturday of October, then with the ongoing community garden project and anticipated irrigation blowouts, October is already looking to be a busy and productive month for everyone involved.



During the month of September, a sponsorship bench was installed on the north side of Pioneer Pond and a trail was constructed to allow access for everyone to the bench through the native grass area.



Greenlawn Cemetery staff and the Parks Department worked together during September to stay on top of the mowing and weed whipping. These two groups also worked together to troubleshoot some irrigation issues and make repairs as necessary. They also made repairs to the roads running through the cemetery grounds. Ruts were identified and filled with road base to create a once again smooth driving surface.





The Parks Department installed different colored markers on the fence lines at each ballfield in town, that coordinate to the base plug color. These fence markers should make it easier to pinpoint where base plugs should be located even if they are covered by dirt. White markers were also installed on fencing to help locate home plate and base plugs down each baseline. As long as the base plugs get put back correctly, and the markers don't get moved, anyone should be able to find any base plug at any time.



As per usual, mowing in the parks continued on a regular schedule with minor adjustments for small projects. Irrigation repairs were made based on a running list that is put together each week. This month, the Parks and Cemetery staff were able to demo a commercial size robotic mower from Scythe out of Longmont, CO.

WATER / WASTEWATER

Submitted By Marie Mitchell, Administrative Tech / Water



The year 2024 marks an achievement for the Water Utilities department as it relates to grants. On September 10, 2024, the Colorado Water Conservation Board Director approved a grant of \$41,423 for the Town of Berthoud's Water Efficiency Plan. This funding will support the development of an updated plan aimed at promoting sustainable water use as Berthoud continues to grow. 🌱



Additionally, Water Utilities secured a Technical Assistance grant from the Colorado Department of Public Health and Environment (CDPHE). This grant aided small water systems like ours in conducting lead service line inventories, mailing surveys to our water customers and developing replacement plans in compliance with the EPA's Lead and Copper Rule Revisions. Thanks to the diligent efforts of engineering consultants WSP and Sunrise Engineering, Berthoud successfully submitted its inventory and replacement plan to the CDPHE. The consultants compiled extensive historical and current data, transforming it into a unified format for tracking and inventory. Our team now has a solid reference for managing lead and copper service lines.

Tech Talk: Enhancing Backflow Management Software

In collaboration with the Billing department, our Water Utilities team recently participated in a hands-on demonstration of the Caselle utility billing backflow module. Led by staff from Little Thompson Water Utilities and attended Cindy and Hayes from Berthoud Billing and by Milliken water utilities, this demonstration was vital as Water Utilities explore new software applications to enhance backflow prevention management and meet state and local requirements. Given that our current system is outdated, we are evaluating improved tracking and reporting features from current vendors. Additionally, Water Utilities visited the City of Fort Collins' water utilities department to review the BSI program, which is well-regarded by neighboring public water utilities. A proposal outlining our findings will be presented to Ken Matthews, with implementation planned for CY 2025.





Have you heard about David Bouy lately?

Ramey Environmental Compliance (REC) staff members, Hannah and Ashlee, along with LG Sonic representative Brian, were recently out replacing communication equipment on our beloved buoy, affectionately named after the famed performer David Bowie. Rest assured, David Bouy is in top form! The REC team makes monthly visits to clean the probes and ultrasonic heads, ensuring optimal readings and the most effective algae treatment. During their outings, they often encounter curious residents who want to know more about the buoy's fan club—mostly checking that we're supposed to be there and asking fun questions about our aquatic star, David Bouy.

September Metrics and Pilot Study update from the Water Ops field Team:

Key Metrics:

- New Building Water Meter Installs: 14 meters
- Final Water Inspections Passed: 25
- Service Calls Completed: 23
- BRAC Calls Responded To: 3
- Locates Completed: 352
- Emergency Locates Completed: 9

Pilot Study Update:

Kamstrup AMI Smart Meter Pilot:

- Completed installations of smart meters.
- Initiated tracking of usage data and Acoustic Leak Data (ALD).
- Staff actively investigating on-site to learn and apply technology for:
 - Identifying sources of water loss.
 - Enhancing system efficiency.



Welcome

WELCOME



The Streets Department is excited to welcome our newest team member, Jesus Rodriguez-Vaquera. He is a Berthoud local, and has a background as an automotive technician.



We're excited to welcome Taylor Huffman to the Recreation Center's personal training team.



Brenton Thompson joins the Community Development Department as a Building Permit Technician. He has a bachelor's degree in education and has experience in project management and customer service.



The Recreation team is excited to welcome Trey Oglesby as our new Recreation Coordinator – Sports

BOARD OF TRUSTEES INFORMATION



ADMINISTRATION DEPARTMENT

Meeting Date:	October 22, 2024
Agenda Title/Subject:	Potential WCR 5 Property Purchase
Type of Item:	Consent Agenda
Purpose:	Consider the purchase of an active farm on WCR 5 for future use as open space and recreational land
Presented by:	Chris Kirk

ATTACHMENTS:

- Map of Property
- Contract to Buy and Sell Real Estate

BACKGROUND:

Town staff has been working to negotiate a contract for the potential acquisition of open space on WCR 5, just east of the Town's current Town limits, and adjacent to the Little Thompson River. This effort is part of a larger effort to purchase and preserve large areas of current agricultural land along the river for future agriculture, public open space, or recreational use. This property is approximately 105 acres and is currently an active farm with 57 shares of Rockwell Ditch Company water used to irrigate the farm.

The attached contract and supplemental addendum outline the terms of the proposed purchase which are summarized as follows:

- The purchase price for the property and water is \$2,400,000. This is consistent with the appraised value of the Befus farm, which the Town recently acquired nearby.
- An initial escrow deposit of \$20,000 is required. An additional \$80,000 escrow deposit is required by November 28, 2024. At the time of the additional deposit, the total amount of the deposit (\$100,000) becomes non-refundable.
- Closing is scheduled for April 1, 2025.

FISCAL IMPACT

Funding for the purchase of the land will come from the Town's open space funds, including the Larimer County Open Space Fund, the Park and Open Space

Dedication Fund, the 1998 1% Fund, and the Source of Supply fund (for the water portion of the acquisition).

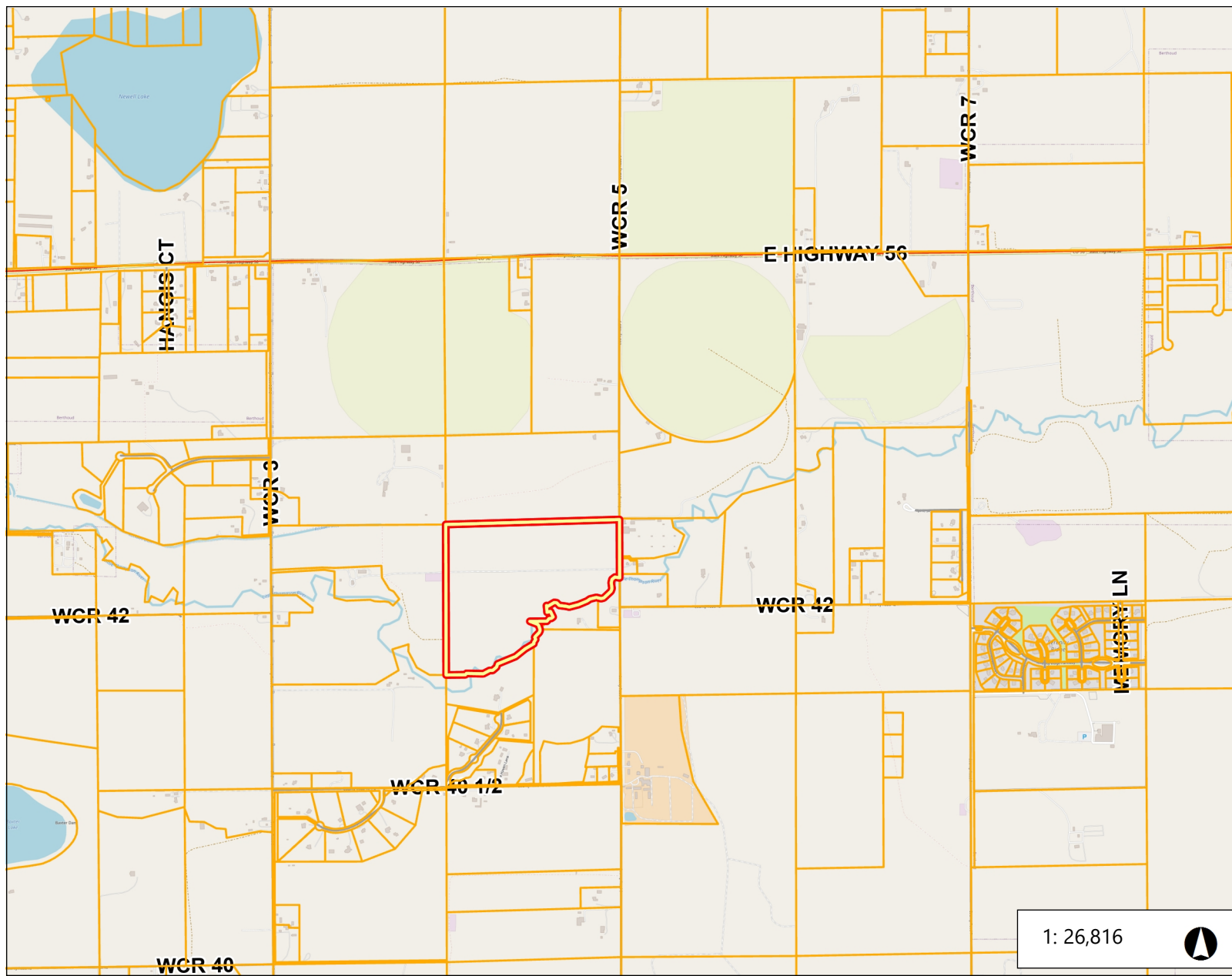
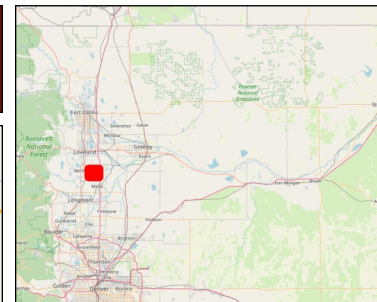
While the proposed 2025 Town Budget will include funds to cover the total purchase price, Town Staff have submitted a grant application to Great Outdoors Colorado (GOCO) for \$1 Million to support the acquisition. Staff expects to have a solid response from GOCO before the November 28 escrow deposit deadline. Regardless of whether the Town is able to secure grant funds for the purchase, staff recommends completing the acquisition with Town funds as part of the Town's larger open space preservation strategy.

TOUCHSTONES

The Town's *Community Identity* is rooted in the small town, rural atmosphere that we enjoy. Preserving large tracts of open space will help to ensure that *Community Identity* is preserved in the long term. Controlling significant lengths of Little Thompson River frontage will also improve long-term *Sustainability* of the river by giving the Town more control and influence over the environmental aspects of river corridor management.

RECOMMENDED ACTION(S):

RATIFY THE EXECUTION OF THE CONTRACT TO BUY AND SELL REAL ESTATE AND AUTHORIZE THE TOWN ADMINISTRATOR TO COMPLETE NECESSARY ACTIONS TO ACQUIRE THE PROPERTY



Legend

- Parcels
- Highway
- Road
- County Boundary

Notes

4,469.4 0 2,234.68 4,469.4 Feet

WGS_1984_Web_Mercator_Auxiliary_Sphere
© Weld County Colorado

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

THIS MAP IS NOT TO BE USED FOR NAVIGATION

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission.
(CBS4-6-24) (Mandatory 8-24)

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

CONTRACT TO BUY AND SELL REAL ESTATE (LAND)

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

Date: 10/10/2024

AGREEMENT

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

2. PARTIES AND PROPERTY.

2.1. **Buyer.** Town of Berthoud, a Colorado Statutory Town (Buyer) will take title to the Property described below as ☐ Joint Tenants ☐ Tenants In Common ☐ Other N/A.

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

2.3. **Seller.** LAS Properties, LLC a Colorado limited liability company; and JGS Properties, LLC a Colorado limited liability company (Seller) is the current owner of the Property described below.

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

14 25806 PT S2SE4 20 4 68 & PT N2NE4 29 4 68 BEG NE COR S2SE4 SEC 20 S0D02'W ALG E LN SEC 20 TO C/L LITTLE THOMPSON CREEK BEING N0D02'E 439.74' OF SE COR SEC 20 N81DW 78' S52DW 56' S13DW 52' S08DE 88' S19DW 44' S47DW 151' S76DW 42' N76DW 74' S76DW 98' S55DW 55' S67DW 140' S75DW 147' N76DW 44' N83DW 109' N44DW 55' N82DW 37' S59DW 108' N74DW 27' S06DE 105' N74DE 66' S18DE 93' S53DW 33' S83DW 35.25' THENCE LEAVING C/L LITTLE THOMPSON CREEK S38D55'W 61.32' S88D28'W 260.34' S69D59'E 129.9' S33D13'E 30.7' S20D11'E 51.35' S01D10'W 20.53' S24D27'W 30.6' S43D38'W 75.4' S35D02'W 22.6' S23D24'E 34.5' S31D30'W 86.95' TO W LN E2NE4 SEC 29 S39.66' TO PT 2093.32'N OF SW COR E2NE4 SEC 29 S65D13'W 168.76' TO EXISTING FENCE S60D35'W 135.98' S67D07'W 158.24' S56D12'W 205.43' S11D53'W 55.02' S49D49'W 156.58' N81D11'W 57.12' S79D19'W 87.67' N78D54'W 165.24' S44D04'W 34.82' S88D53'W TO N-S C/L SEC 29 THENCE NLY TO N4 COR SEC 29 THENCE NLY TO NW COR S2SE4 SEC 20 THENCE ELY TO BEG (.58R)

Weld County Parcel No. 106120000056

known as: <u>20101 COUNTY ROAD 5</u>	<u>BERTHOUD</u>	<u>Colorado</u>	<u>80513</u>
Street Address	City	State	Zip

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

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

2.5.1. **Inclusions.** The following items, whether fixtures or personal property, are included in the Purchase Price unless excluded under **Exclusions: See Section 30 Addendum**.

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

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

N/A

Buyer ☐ Will ☐ Will Not assume the debt and obligations on the Encumbered Inclusions subject to Buyer's review under §10.6. (Encumbered Inclusion Documents) and Buyer's receipt of written approval by such lender before Closing. If Buyer does not receive such approval this Contract terminates.

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

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

N/A

Buyer ☐ Will ☐ Will Not assume Seller's debt and obligations under such leases for the Leased Items subject to Buyer's review under §10.6. (Leased Items Documents) and Buyer's receipt of written approval by such lender before Closing. If Buyer does not receive such approval this Contract terminates.

☐ **2.5.5. Solar Power Plan.** If the box is checked, Seller has entered into a solar power purchase agreement, regardless of the name or title, to authorize a third-party to operate and maintain a photovoltaic system on the Property and provide electricity (Solar Power Plan) that will remain in effect after Closing. Buyer ☐ Will ☐ Will Not assume Seller's obligations under such Solar Power Plan subject to Buyer's review under §10.6. (Solar Power Plan) and Buyer's receipt of written approval by the third-party before Closing. If Buyer does not receive such approval this Contract terminates.

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

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

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

57 Shares of the Rockwell Distch Company as further described in the attached Section 30 Addendum

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

☐ **2.7.2. Other Rights Relating to Water.** The following rights relating to water not included in §§ 2.7.1., 2.7.3., 2.7.4. and 2.7.5., will be transferred to Buyer at Closing:

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

☒ **2.7.4. Water Stock.** The water stock to be transferred at Closing are as follows:
As described in the Section 30 Addendum

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

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

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

2.7.7. Water Rights Review. Buyer has a Right to Terminate if examination of the Water Rights is unsatisfactory to Buyer on or before the **Water Rights Examination Deadline**.

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

3. DATES, DEADLINES AND APPLICABILITY.

3.1. Dates and Deadlines.

Item No.	Reference	Event	Date or Deadline
1	§ 3	Time of Day Deadline	5 pm
2	§ 4	Alternative Earnest Money Deadline	See Section 30 Addendum
		Title	
3	§ 8	Record Title Deadline (and Tax Certificate)	14 days after MEC
4	§ 8	Record Title Objection Deadline	180 days after MEC

5	§ 8	Off-Record Title Deadline	14 days after MEC
6	§ 8	Off-Record Title Objection Deadline	180 days after MEC
7	§ 8	Title Resolution Deadline	190 days after MEC
8	§ 8	Third Party Right to Purchase/Approve Deadline	N/A
		Owners' Association	
9	§ 7	Association Documents Deadline	N/A
10	§ 7	Association Documents Termination Deadline	N/A
		Seller's Disclosures	
11	§ 10	Seller's Property Disclosure Deadline	N/A
12	§ 10	Lead-Based Paint Disclosure Deadline (if Residential Addendum attached)	N/A
		Loan and Credit	
13	§ 5	New Loan Application Deadline	N/A
14	§ 5	New Loan Terms Deadline	N/A
15	§ 5	New Loan Availability Deadline	N/A
16	§ 5	Buyer's Credit Information Deadline	N/A
17	§ 5	Disapproval of Buyer's Credit Information Deadline	N/A
18	§ 5	Existing Loan Deadline	N/A
19	§ 5	Existing Loan Termination Deadline	N/A
20	§ 5	Loan Transfer Approval Deadline	N/A
21	§ 4	Seller or Private Financing Deadline	N/A
		Appraisal	
22	§ 6	Appraisal Deadline	160 days after MEC
23	§ 6	Appraisal Objection Deadline	180 days after MEC
24	§ 6	Appraisal Resolution Deadline	190 days after MEC
		Survey	
25	§ 9	New ILC or New Survey Deadline	160 days after MEC
26	§ 9	New ILC or New Survey Objection Deadline	180 days after MEC
27	§ 9	New ILC or New Survey Resolution Deadline	190 days after MEC
		Inspection and Due Diligence	
28	§ 2	Water Rights Examination Deadline	180 days after MEC
29	§ 8	Mineral Rights Examination Deadline	N/A
30	§ 10	Inspection Termination Deadline	170 days after MEC
31	§ 10	Inspection Objection Deadline	180 days after MEC
32	§ 10	Inspection Resolution Deadline	190 days after MEC
33	§ 10	Property Insurance Termination Deadline	N/A
34	§ 10	Due Diligence Documents Delivery Deadline	14 days after MEC
35	§ 10	Due Diligence Documents Objection Deadline	180 days after MEC
36	§ 10	Due Diligence Documents Resolution Deadline	190 days after MEC
37	§ 10	Environmental Inspection Termination Deadline	180 days after MEC
38	§ 10	ADA Evaluation Termination Deadline	N/A
39	§ 10	Conditional Sale Deadline	N/A
40	§ 10	Lead-Based Paint Termination Deadline (if Residential Addendum attached)	N/A
41	§ 11	Estoppel Statements Deadline	N/A
42	§ 11	Estoppel Statements Termination Deadline	N/A
		Closing and Possession	
43	§ 12	Closing Date	April 1, 2025
44	§ 17	Possession Date	April 1, 2025
45	§ 17	Possession Time	12 pm
46	§ 27	Acceptance Deadline Date	October 10, 2024
47	§ 27	Acceptance Deadline Time	5 pm

3.2. Applicability of Terms. If any deadline blank in § 3.1. (Dates and Deadlines) is left blank or completed with "N/A", or the word "Deleted," such deadline is not applicable and the corresponding provision containing the deadline is deleted. Any box

checked in this Contract means the corresponding provision applies. If no box is checked in a provision that contains a selection of "None", such provision means that "None" applies.

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

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

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

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

3.3.3. Deadlines. If any deadline falls on a Saturday, Sunday or federal or Colorado state holiday (Holiday), such deadline ☒ **Will** ☐ **Will Not** be extended to the next day that is not a Saturday, Sunday or Holiday. Should neither box be checked, the deadline will not be extended.

4. PURCHASE PRICE AND TERMS.

4.1. Price and Terms. The Purchase Price set forth below is payable in U.S. Dollars by Buyer as follows: **SEE SECTION 30 ADDENDUM**

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

4.3. Earnest Money. The Earnest Money and Additional Earnest Money, as set forth in the Section 30 Addendum, in the form of a Check, will be payable to and held by Title Company (Earnest Money Holder), in its trust account, on behalf of both Seller and Buyer. The Earnest Money and Additional Earnest Money deposit must be tendered, by Buyer, as set forth in the Section 30 Addendum. The parties authorize delivery of the Earnest Money and Additional Earnest Money deposit to the company conducting the Closing (Closing Company), if any, at or before Closing. In the event Earnest Money Holder has agreed to have interest on Earnest Money and Additional Earnest Money deposits transferred to a fund established for the purpose of providing affordable housing to Colorado residents, Seller and Buyer acknowledge and agree that any interest accruing on the Earnest Money and Additional Earnest Money deposited with the Earnest Money Holder in this transaction will be transferred to such fund.

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

4.3.2. Disposition of Earnest Money. If Buyer has a Right to Terminate and timely terminates, Buyer is entitled to the return of Earnest Money as provided in this Contract. If this Contract is terminated as set forth in § 24 and, except as provided in § 23 (Earnest Money Dispute), if the Earnest Money has not already been returned following receipt of a Notice to Terminate, Seller agrees to execute and return to Buyer or Broker working with Buyer, written mutual instructions (e.g., Earnest Money Release form), within three days of Seller's receipt of such form. If Seller is entitled to the Earnest Money, and, except as provided in § 23 (Earnest Money Dispute), if the Earnest Money and Additional Earnest Money has not already been paid to Seller, following receipt of an Earnest Money Release form, Buyer agrees to execute and return to Seller or Broker working with Seller, written mutual instructions (e.g., Earnest Money Release form), within three days of Buyer's receipt.

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

4.3.2.2. Buyer Failure to Timely Release Earnest Money. If Buyer fails to timely execute and return the Earnest Money Release Form, or other written mutual instructions, Buyer is in default and liable to Seller as set forth in "If Buyer is in Default", § 20.1. and § 21, unless Buyer is entitled to the Earnest Money due to a Seller Default.

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

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

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

161 4.4.3. **Available Funds.** Buyer represents that Buyer, as of the date of this Contract, ☒ **Does** ☐ **Does Not** have
162 funds that are immediately verifiable and available in an amount not less than the amount stated as Cash at Closing in § 4.1.

163 4.5. **New Loan. Omitted as Inapplicable.**

164 4.6. **Assumption. Omitted as Inapplicable.**

165 4.7. **Seller or Private Financing. Omitted as Inapplicable.**

166
167
168

TRANSACTION PROVISIONS

169 5. **FINANCING CONDITIONS AND OBLIGATIONS. Omitted as Inapplicable.**

170
171 6. **APPRAISAL PROVISIONS.**

172 6.1. **Appraisal Definition.** An "Appraisal" is an opinion of value prepared by a licensed or certified appraiser, engaged on
173 behalf of Buyer or Buyer's lender, to determine the Property's market value (Appraised Value). The Appraisal may also set forth
174 certain lender requirements, replacements, removals or repairs necessary on or to the Property as a condition for the Property to be
175 valued at the Appraised Value.

176 6.2. **Appraised Value.** The applicable appraisal provision set forth below applies to the respective loan type set forth in
177 § 4.5.3., or if a cash transaction (i.e., no financing), § 6.2.1. applies.

178 6.2.1. **Conventional/Other.** Buyer has the right to obtain an Appraisal. If the Appraised Value is less than the
179 Purchase Price, or if the Appraisal is not received by Buyer on or before **Appraisal Deadline** Buyer may, on or before **Appraisal**
180 **Objection Deadline:**

181 6.2.1.1. **Notice to Terminate.** Notify Seller in writing, pursuant to § 24.1., that this Contract is terminated;
182 or

183 6.2.1.2. **Appraisal Objection.** Deliver to Seller a written objection accompanied by either a copy of the
184 Appraisal or written notice from lender that confirms the Appraised Value is less than the Purchase Price (Lender Verification).

185 6.2.1.3. **Appraisal Resolution.** If an Appraisal Objection is received by Seller, on or before **Appraisal**
186 **Objection Deadline** and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **Appraisal Resolution**
187 **Deadline**, this Contract will terminate on the **Appraisal Resolution Deadline**, unless Seller receives Buyer's written withdrawal of
188 the Appraisal Objection before such termination, (i.e., on or before expiration of **Appraisal Resolution Deadline**).

189 6.3. **Lender Property Requirements.** If the lender imposes any written requirements, replacements, removals or repairs,
190 including any specified in the Appraisal (Lender Property Requirements) to be made to the Property (e.g., roof repair, repainting),
191 beyond those matters already agreed to by Seller in this Contract, this Contract terminates on the earlier of three days following
192 Seller's receipt of the Lender Property Requirements, or Closing, unless prior to termination: (1) the parties enter into a written
193 agreement to satisfy the Lender Property Requirements; (2) the Lender Property Requirements have been completed; or (3) the
194 satisfaction of the Lender Property Requirements is waived in writing by Buyer.

195 6.4. **Cost of Appraisal.** Cost of the Appraisal to be obtained after the date of this Contract must be timely paid by ☒ **Buyer**
196 ☐ **Seller.** The cost of the Appraisal may include any and all fees paid to the appraiser, appraisal management company, lender's
197 agent or all three.

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

200 7.1. **Common Interest Community Disclosure.** THE PROPERTY IS LOCATED WITHIN A COMMON
201 INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR THE COMMUNITY. THE OWNER OF
202 THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE OWNERS' ASSOCIATION FOR THE
203 COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES AND REGULATIONS OF THE
204 ASSOCIATION. THE DECLARATION, BYLAWS AND RULES AND REGULATIONS WILL IMPOSE FINANCIAL
205 OBLIGATIONS UPON THE OWNER OF THE PROPERTY, INCLUDING AN OBLIGATION TO PAY ASSESSMENTS
206 OF THE ASSOCIATION. IF THE OWNER DOES NOT PAY THESE ASSESSMENTS, THE ASSOCIATION COULD
207 PLACE A LIEN ON THE PROPERTY AND POSSIBLY SELL IT TO PAY THE DEBT. THE DECLARATION, BYLAWS
208 AND RULES AND REGULATIONS OF THE COMMUNITY MAY PROHIBIT THE OWNER FROM MAKING
209 CHANGES TO THE PROPERTY WITHOUT AN ARCHITECTURAL REVIEW BY THE ASSOCIATION (OR A
210 COMMITTEE OF THE ASSOCIATION) AND THE APPROVAL OF THE ASSOCIATION. PURCHASERS OF
211 PROPERTY WITHIN THE COMMON INTEREST COMMUNITY SHOULD INVESTIGATE THE FINANCIAL
212 OBLIGATIONS OF MEMBERS OF THE ASSOCIATION. PURCHASERS SHOULD CAREFULLY READ THE
213 DECLARATION FOR THE COMMUNITY AND THE BYLAWS AND RULES AND REGULATIONS OF THE
214 ASSOCIATION.

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

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

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

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

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

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

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

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

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

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

8.1. Evidence of Record Title.

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

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

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

Regardless of whether the Contract requires OEC, the Title Insurance Commitment may not provide OEC or delete or insure over any or all of the standard exceptions for OEC. The Title Insurance Company may require a New Survey or New ILC, defined below, among other requirements for OEC. If the Title Insurance Commitment is not satisfactory to Buyer, Buyer has a right to object under § 8.7. (Right to Object to Title, Resolution).

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

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

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

8.2. Record Title. Buyer has the right to review and object to the Abstract of Title or Title Commitment and any of the Title Documents as set forth in § 8.7. (Right to Object to Title, Resolution) on or before **Record Title Objection Deadline**. Buyer's objection may be based on any unsatisfactory form or content of Title Commitment or Abstract of Title, notwithstanding § 13, or any other unsatisfactory title condition, in Buyer's sole subjective discretion. If the Abstract of Title, Title Commitment or Title Documents are not received by Buyer on or before the **Record Title Deadline**, or if there is an endorsement to the Title Commitment that adds a new Exception to title, a copy of the new Exception to title and the modified Title Commitment will be delivered to Buyer. Buyer has until the earlier of Closing or ten days after receipt of such documents by Buyer to review and object to: (1) any required Title Document not timely received by Buyer, (2) any change to the Abstract of Title, Title Commitment or Title Documents, or (3) any endorsement to the Title Commitment. If Seller receives Buyer's Notice to Terminate or Notice of Title Objection, pursuant to this § 8.2. (Record Title), any title objection by Buyer is governed by the provisions set forth in § 8.7. (Right to Object to Title, Resolution). If Seller has fulfilled all Seller's obligations, if any, to deliver to Buyer all documents required by § 8.1. (Evidence of Record Title) and Seller does not receive Buyer's Notice to Terminate or Notice of Title Objection by the applicable deadline specified above, Buyer accepts the condition of title as disclosed by the Abstract of Title, Title Commitment and Title Documents as satisfactory.

8.3. Off-Record Title. Seller must deliver to Buyer, on or before **Off-Record Title Deadline**, true copies of all existing surveys in Seller's possession pertaining to the Property and must disclose to Buyer all easements, liens (including, without limitation, governmental improvements approved, but not yet installed) or other title matters not shown by public records, of which Seller has actual knowledge (Off-Record Matters). This Section excludes any **New ILC** or **New Survey** governed under § 9 (New ILC, New Survey). Buyer has the right to inspect the Property to investigate if any third party has any right in the Property not shown by public records (e.g., unrecorded easement, boundary line discrepancy or water rights). Buyer's Notice to Terminate or Notice of Title Objection of any unsatisfactory condition (whether disclosed by Seller or revealed by such inspection, notwithstanding § 8.2. (Record Title) and § 13 (Transfer of Title)), in Buyer's sole subjective discretion, must be received by Seller on or before **Off-Record Title Objection Deadline**. If an Off-Record Matter is received by Buyer after the **Off-Record Title Deadline**, Buyer has until the earlier of Closing or ten days after receipt by Buyer to review and object to such Off-Record Matter. If Seller receives Buyer's Notice to Terminate or Notice of Title Objection pursuant to this § 8.3. (Off-Record Title), any title objection by Buyer is governed by the provisions set forth in § 8.7. (Right to Object to Title, Resolution). If Seller does not receive Buyer's Notice to Terminate or Notice of Title Objection by the applicable deadline specified above, Buyer accepts title subject to such Off-Record Matters and rights, if any, of third parties not shown by public records of which Buyer has actual knowledge.

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

8.5. Tax Certificate. A tax certificate paid for by ☐ Seller ☐ Buyer, for the Property listing any special taxing or metropolitan districts that affect the Property (Tax Certificate) must be delivered to Buyer on or before **Record Title Deadline**. If the content of the Tax Certificate is unsatisfactory to Buyer, in Buyer's sole subjective discretion, Buyer may terminate, on or before **Record Title Objection Deadline**. Should Buyer receive the Tax Certificate after **Record Title Deadline**, Buyer, at Buyer's option, has the Right to Terminate under § 24.1. by Buyer's Notice to Terminate received by Seller on or before ten days after Buyer's receipt of the Tax Certificate. If Buyer does not receive the Tax Certificate, or if Buyer's Notice to Terminate would otherwise be required to be received by Seller after **Closing Date**, Buyer's Notice to Terminate must be received by Seller on or before Closing.

If Seller does not receive Buyer's Notice to Terminate within such time, Buyer accepts the content of the Tax Certificate as satisfactory and Buyer waives any Right to Terminate under this provision. If Buyer's loan specified in §4.5.3. (Loan Limitations) prohibits Buyer from paying for the Tax Certificate, the Tax Certificate will be paid for by Seller.

8.6. Third Party Right to Purchase/Approve. If any third party has a right to purchase the Property (e.g., right of first refusal on the Property, right to purchase the Property under a lease or an option held by a third party to purchase the Property) or a right of a third party to approve this Contract, Seller must promptly submit this Contract according to the terms and conditions of such right. If the third-party holder of such right exercises its right this Contract will terminate. If the third party's right to purchase is waived explicitly or expires, or the Contract is approved, this Contract will remain in full force and effect. Seller must promptly notify Buyer in writing of the foregoing. If the third party right to purchase is exercised or approval of this Contract has not occurred on or before **Third Party Right to Purchase/Approve Deadline**, this Contract will then terminate. Seller will supply to Buyer, in writing, details of any Third Party Right to Purchase the Property on or before the Record Title Deadline.

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

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

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

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

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

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

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

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

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

8.9. Mineral Rights Review. *Omitted as Inapplicable.*

9. NEW ILC, NEW SURVEY.

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

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

390 **9.1.2. Payment for New ILC or New Survey.** The cost of the New ILC or New Survey will be paid, on or before
391 Closing, by: ☐ Seller ☒ Buyer or:
392 N/A

393 **9.1.3. Delivery of New ILC or New Survey.** Buyer, Seller, the issuer of the Title Commitment (or the provider of
394 the opinion of title if an Abstract of Title) and N/A will receive a New ILC or New Survey on or before **New**
395 **ILC or New Survey Deadline.**

396 **9.1.4. Certification of New ILC or New Survey.** The New ILC or New Survey will be certified by the surveyor to
397 all those who are to receive the New ILC or New Survey.

398 **9.2. Buyer's Right to Waive or Change New ILC or New Survey Selection.** Buyer may select a New ILC or New
399 Survey different than initially specified in this Contract if there is no additional cost to Seller or change to the **New ILC or New**
400 **Survey Objection Deadline.** Buyer may, in Buyer's sole subjective discretion, waive a New ILC or New Survey if done prior to
401 Seller incurring any cost for the same.

402 **9.3. New ILC or New Survey Objection.** Buyer has the right to review and object based on the New ILC or New Survey.
403 If the New ILC or New Survey is not timely received by Buyer or is unsatisfactory to Buyer, in Buyer's sole subjective discretion,
404 Buyer may, on or before **New ILC or New Survey Objection Deadline**, notwithstanding § 8.3. or § 13:

405 **9.3.1. Notice to Terminate.** Notify Seller in writing, pursuant to § 24.1, that this Contract is terminated; or

406 **9.3.2. New ILC or New Survey Objection.** Deliver to Seller a written description of any matter that was to be
407 shown or is shown in the New ILC or New Survey that is unsatisfactory and that Buyer requires Seller to correct.

408 **9.3.3. New ILC or New Survey Resolution.** If a **New ILC or New Survey Objection** is received by Seller, on or
409 before **New ILC or New Survey Objection Deadline** and if Buyer and Seller have not agreed in writing to a settlement thereof on
410 or before **New ILC or New Survey Resolution Deadline**, this Contract will terminate on expiration of the **New ILC or New Survey**
411 **Resolution Deadline**, unless Seller receives Buyer's written withdrawal of the New ILC or New Survey Objection before such
412 termination (i.e., on or before expiration of **New ILC or New Survey Resolution Deadline**).

DISCLOSURE, INSPECTION AND DUE DILIGENCE

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

416 **10.1. Seller's Property Disclosure.** On or before **Seller's Property Disclosure Deadline**, Seller agrees to deliver to Buyer
417 the most current version of the applicable Colorado Real Estate Commission's Seller's Property Disclosure form completed by Seller
418 to Seller's actual knowledge and current as of the date of this Contract.

419 **10.2. Disclosure of Adverse Material Facts; Subsequent Disclosure; Present Condition.** Seller must disclose to Buyer
420 any adverse material facts actually known by Seller as of the date of this Contract. Seller agrees that disclosure of adverse material
421 facts will be in writing. In the event Seller discovers an adverse material fact after the date of this Contract, Seller must timely
422 disclose such adverse fact to Buyer. Buyer has the Right to Terminate based on the Seller's new disclosure on the earlier of Closing
423 or five days after Buyer's receipt of the new disclosure. Except as otherwise provided in this Contract, Buyer acknowledges that
424 Seller is conveying the Property and Inclusions to Buyer in an "**As Is**" condition, "**Where Is**" and "**With All Faults.**"

425 **10.3. Inspection.** Unless otherwise provided in this Contract, Buyer, acting in good faith, has the right to have inspections
426 (by one or more third parties, personally or both) of the Property, Leased Items, and Inclusions (Inspection), at Buyer's expense. If
427 (1) the physical condition of the Property, including, but not limited to, the roof, walls, structural integrity of the Property, the
428 electrical, plumbing, HVAC and other mechanical systems of the Property, (2) the physical condition of the Inclusions and Leased
429 Items, (3) service to the Property (including utilities and communication services), systems and components of the Property (e.g.,
430 heating and plumbing), (4) any proposed or existing transportation project, road, street or highway, or (5) any other activity, odor or
431 noise (whether on or off the Property) and its effect or expected effect on the Property or its occupants is unsatisfactory, in Buyer's
432 sole subjective discretion, Buyer may:

433 **10.3.1. Inspection Termination.** On or before the **Inspection Termination Deadline**, notify Seller in writing,
434 pursuant to § 24.1., that this Contract is terminated due to any unsatisfactory condition, provided the Buyer did not previously deliver
435 an Inspection Objection. Buyer's Right to Terminate under this provision expires upon delivery of an Inspection Objection to Seller
436 pursuant to § 10.3.2.; or

437 **10.3.2. Inspection Objection.** On or before the **Inspection Objection Deadline**, deliver to Seller a written
438 description of any unsatisfactory condition that Buyer requires Seller to correct.

439 **10.3.3. Inspection Resolution.** If an Inspection Objection is received by Seller, on or before **Inspection Objection**
440 **Deadline** and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **Inspection Resolution Deadline**,
441 this Contract will terminate on **Inspection Resolution Deadline** unless Seller receives Buyer's written withdrawal of the Inspection
442 Objection before such termination (i.e., on or before expiration of **Inspection Resolution Deadline**). Nothing in this provision
443 prohibits the Buyer and the Seller from mutually terminating this Contract before the Inspection Resolution Deadline passes by
444 executing an Earnest Money Release.

445 **10.4. Damage, Liens and Indemnity.** Buyer, except as otherwise provided in this Contract or other written agreement
446 between the parties, is responsible for payment for all inspections, tests, surveys, engineering reports, or other reports performed at
447 Buyer's request (Work) and must pay for any damage that occurs to the Property and Inclusions as a result of such Work. Buyer
448 must not permit claims or liens of any kind against the Property for Work performed on the Property. The provisions of this Section
449 survive the termination of this Contract. This § 10.4. does not apply to items performed pursuant to an Inspection Resolution.

450 **10.5. Insurability.** Buyer has the Right to Terminate under § 24.1., on or before **Property Insurance Termination**
451 **Deadline**, based on any unsatisfactory provision of the availability, terms and conditions and premium for property insurance
452 (Property Insurance) on the Property, in Buyer's sole subjective discretion.

453 **10.6. Due Diligence.**

454 **10.6.1. Due Diligence Documents.** Seller agrees to deliver copies of the following documents and information
455 pertaining to the Property and Leased Items (Due Diligence Documents) to Buyer on or before **Due Diligence Documents Delivery**
456 **Deadline**:

457 **10.6.1.1. Occupancy Agreements.** All current leases, including any amendments or other occupancy
458 agreements, pertaining to the Property. Those leases or other occupancy agreements pertaining to the Property that survive Closing
459 are as follows (Leases):

460 N/A

461 **10.6.1.2. Leased Items Documents.** If any lease of personal property (§ 2.5.4., Leased Items) will be
462 transferred to Buyer at Closing, Seller agrees to deliver copies of the leases and information pertaining to the personal property to
463 Buyer on or before **Due Diligence Documents Delivery Deadline**.

464 **10.6.1.3. Encumbered Inclusions Documents.** If any Inclusions owned by Seller are encumbered
465 pursuant to § 2.5.2. (Encumbered Inclusions) above, Seller agrees to deliver copies of the evidence of debt, security and any other
466 documents creating the encumbrance to Buyer on or before **Due Diligence Documents Delivery Deadline**.

467 **10.6.1.4. Solar Power Plan.** Copy of any Solar Power Plan not included in Leased Items (regardless of
468 its name or title).

469 **10.6.1.5. Septic Use Permit.** If required by the local health department or other applicable government
470 entity, on or before the local health department's applicable deadline, Seller must pay for and furnish to Buyer a Septic Use Permit.

471 **10.6.1.6. Other Documents.** If the respective box is checked, Seller agrees to additionally deliver copies
472 of the following:

473 ☐ **10.6.1.6.1.** All contracts relating to the operation, maintenance and management of the
474 Property;

475 ☐ **10.6.1.6.2.** Property tax bills for the last _____ years;

476 ☐ **10.6.1.6.3.** As-built construction plans to the Property and the tenant improvements, including
477 architectural, electrical, mechanical and structural systems; engineering reports; and permanent Certificates of Occupancy, to the
478 extent now available;

479 ☐ **10.6.1.6.4.** A list of all Inclusions to be conveyed to Buyer;

480 ☐ **10.6.1.6.5.** Operating statements for the past _____ years;

481 ☐ **10.6.1.6.6.** A rent roll accurate and correct to the date of this Contract;

482 ☐ **10.6.1.6.7.** A schedule of any tenant improvement work Seller is obligated to complete
483 but has not yet completed and capital improvement work either scheduled or in process on the date of this Contract;

484 ☐ **10.6.1.6.8.** All insurance policies pertaining to the Property and copies of any claims which
485 have been made for the past _____ years;

486 ☐ **10.6.1.6.9.** Soils reports, surveys and engineering reports or data pertaining to the Property (if
487 not delivered earlier under § 8.3.);

488 ☐ **10.6.1.6.10.** Any and all existing documentation and reports regarding Phase I and II
489 environmental reports, letters, test results, advisories and similar documents respective to the existence or nonexistence of asbestos,
490 PCB transformers, or other toxic, hazardous or contaminated substances and/or underground storage tanks and/or radon gas. If no
491 reports are in Seller's possession or known to Seller, Seller warrants that no such reports are in Seller's possession or known to
492 Seller;

493 ☐ **10.6.1.6.11.** Any *Americans with Disabilities Act* reports, studies or surveys concerning the
494 compliance of the Property with said Act;

495 ☐ **10.6.1.6.12.** All permits, licenses and other building or use authorizations issued by any
496 governmental authority with jurisdiction over the Property and written notice of any violation of any such permits, licenses or use
497 authorizations, if any; and

498 ☐ **10.6.1.6.13.** Other:

500 **10.6.2. Due Diligence Documents Review and Objection.** Buyer has the right to review and object based on the Due
501 Diligence Documents. If the Due Diligence Documents are not supplied to Buyer or are unsatisfactory, in Buyer's sole subjective
502 discretion, Buyer may, on or before **Due Diligence Documents Objection Deadline**:

503 **10.6.2.1. Notice to Terminate.** Notify Seller in writing, pursuant to § 24.1., that this Contract is
504 terminated; or

505 **10.6.2.2. Due Diligence Documents Objection.** Deliver to Seller a written description of any
506 unsatisfactory Due Diligence Documents that Buyer requires Seller to correct.

507 **10.6.2.3. Due Diligence Documents Resolution.** If a Due Diligence Documents Objection is received
508 by Seller, on or before **Due Diligence Documents Objection Deadline** and if Buyer and Seller have not agreed in writing to a
509 settlement thereof on or before **Due Diligence Documents Resolution Deadline**, this Contract will terminate on **Due Diligence**
510 **Documents Resolution Deadline** unless Seller receives Buyer's written withdrawal of the Due Diligence Documents Objection
511 before such termination (i.e., on or before expiration of **Due Diligence Documents Resolution Deadline**).

512 **10.6.2.4. Automatic Due Diligence Extension.** If a Due Diligence Document is not delivered on or
513 before the Due Diligence Documents Deadline, Buyer has until the earlier of Closing or ten days after receipt by Buyer to review
514 and object to such Due Diligence Document. If Buyer's right to review and object to such Due Diligence Document is extended due
515 to such Due Diligence Document not being delivered on or before the Due Diligence Documents Deadline, the Due Diligence
516 Document Resolution Deadline will also be extended to the earlier of Closing or fifteen days after Buyer's receipt of such Due
517 Diligence Document.

518 **10.6.3. Zoning.** Buyer has the Right to Terminate under § 24.1., on or before Due Diligence Documents **Objection**
519 **Deadline**, based on any unsatisfactory zoning and any use restrictions imposed by any governmental agency with jurisdiction over
520 the Property, in Buyer's sole subjective discretion.

521 **10.6.4. Due Diligence – Environmental.** Buyer has the right to obtain environmental inspections of the Property
522 including a Phase I Environmental Site Assessment. ☐ Seller ☒ Buyer will order or provide a current Phase I Environmental
523 Site Assessment (compliant with the most current version of the applicable ASTM E1527 standard practices for Environmental Site
524 Assessments) and/or N/A, at the expense of ☐ Seller ☒ Buyer (Environmental Inspection).

525 If the Phase I Environmental Site Assessment recommends a Phase II Environmental Site Assessment, the **Environmental**
526 **Inspection Termination Deadline** will be extended by 30 days (Extended Environmental Inspection
527 Termination Deadline) and if such Extended Environmental Inspection Termination Deadline extends beyond the Closing **Date**, the
528 **Closing Date** will be extended a like period of time. In such event, ☐ Seller ☒ Buyer must pay the cost for such Phase II
529 Environmental Site Assessment.

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

534 **10.6.5. Due Diligence – ADA.** Buyer, at Buyer's expense, may also conduct an evaluation whether the Property
535 complies with the *Americans with Disabilities Act* (ADA Evaluation). All such inspections and evaluations must be conducted at
536 such times as are mutually agreeable to minimize the interruption of Seller's and any Seller's tenants' business uses of the Property,
537 if any.

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

540 **10.7. Conditional Upon Sale of Property.** This Contract is conditional upon the sale and closing of that certain property
541 owned by Buyer and commonly known as N/A. Buyer has
542 the Right to Terminate under § 24.1. effective upon Seller's receipt of Buyer's Notice to Terminate on or before **Conditional Sale**
543 **Deadline** if such property is not sold and closed by such deadline. This Section is for the sole benefit of Buyer. If Seller does not
544 receive Buyer's Notice to Terminate on or before **Conditional Sale Deadline**, Buyer waives any Right to Terminate under this
545 provision.

546 **10.8. Source of Potable Water (Residential Land and Residential Improvements Only).** Buyer ☐ Does ☒ Does Not
547 acknowledge receipt of a copy of Seller's Property Disclosure or Source of Water Addendum disclosing the source of potable water for
548 the Property. ☐ There is No Well. Buyer ☐ Does ☒ Does Not acknowledge receipt of a copy of the current well permit.
549 **Note to Buyer: SOME WATER PROVIDERS RELY, TO VARYING DEGREES, ON NONRENEWABLE GROUND**
550 **WATER. YOU MAY WISH TO CONTACT YOUR PROVIDER (OR INVESTIGATE THE DESCRIBED SOURCE) TO**
551 **DETERMINE THE LONG-TERM SUFFICIENCY OF THE PROVIDER'S WATER SUPPLIES.**

552 **10.9. Existing Leases; Modification of Existing Leases; New Leases.** Seller states that none of the Leases to be assigned
553 to the Buyer at the time of Closing contain any rent concessions, rent reductions or rent abatements except as disclosed in the Lease
554 or other writing received by Buyer. Seller will not amend, alter, modify, extend or cancel any of the Leases nor will Seller enter into
555 any new leases affecting the Property without the prior written consent of Buyer, which consent will not be unreasonably withheld
556 or delayed.

557 **10.10. Lead-Based Paint.** [Intentionally Deleted - See Residential Addendum if applicable]

558 **10.11. Carbon Monoxide Alarms.** [Intentionally Deleted - See Residential Addendum if applicable]

559 **10.12. Methamphetamine Disclosure.** [Intentionally Deleted - See Residential Addendum if applicable]

560 **11. TENANT ESTOPPEL STATEMENTS.**

561 **11.1. Estoppel Statements Conditions.** Buyer has the right to review and object to any Estoppel Statements. Seller must
562 request from all tenants of the Property and if received by Seller, deliver to Buyer on or before **Estoppel Statements Deadline**,
563 statements in a form and substance reasonably acceptable to Buyer, from each occupant or tenant at the Property (Estoppel Statement)
564 attached to a copy of the Lease stating:
565 **11.1.1.** The commencement date of the Lease and scheduled termination date of the Lease;
566 **11.1.2.** That said Lease is in full force and effect and that there have been no subsequent modifications or
567 amendments;
568 **11.1.3.** The amount of any advance rentals paid, rent concessions given and deposits paid to Seller;
569 **11.1.4.** The amount of monthly (or other applicable period) rental paid to Seller;
570 **11.1.5.** That there is no default under the terms of said Lease by landlord or occupant; and
571 **11.1.6.** That the Lease to which the Estoppel Statement is attached is a true, correct and complete copy of the Lease
572 demising the premises it describes.
573 **11.2. Seller Estoppel Statement.** In the event Seller does not receive from all tenants of the Property a completed signed
574 Estoppel Statement, Seller agrees to complete and execute an Estoppel Statement setting forth the information and documents
575 required in §11.1. above and deliver the same to Buyer on or before **Estoppel Statements Deadline**.

576 **11.3. Estoppel Statements Termination.** Buyer has the Right to Terminate under § 24.1., on or before **Estoppel**
577 **Statements Termination Deadline**, based on any unsatisfactory Estoppel Statement, in Buyer's sole subjective discretion, or if
578 Seller fails to deliver the Estoppel Statements on or before **Estoppel Statements Deadline**. Buyer also has the unilateral right to
579 waive any unsatisfactory Estoppel Statement.

CLOSING PROVISIONS

581 12. CLOSING DOCUMENTS, INSTRUCTIONS AND CLOSING.

582 **12.1. Closing Documents and Closing Information.** Seller and Buyer will cooperate with the Closing Company to enable
583 the Closing Company to prepare and deliver documents required for Closing to Buyer and Seller and their designees. If Buyer is
584 obtaining a loan to purchase the Property, Buyer acknowledges Buyer's lender is required to provide the Closing Company, in a
585 timely manner, all required loan documents and financial information concerning Buyer's loan. Buyer and Seller will furnish any
586 additional information and documents required by Closing Company that will be necessary to complete this transaction. Buyer and
587 Seller will sign and complete all customary or reasonably required documents at or before Closing.

588 **12.2. Closing Instructions.** Colorado Real Estate Commission's Closing Instructions ☐ Are ☒ Are Not executed with
589 this Contract.

590 **12.3. Closing.** Delivery of deed from Seller to Buyer will be at closing (Closing). Closing will be on the date specified as
591 the **Closing Date** or by mutual agreement at an earlier date. At Closing, Seller must provide Buyer with the ability to access the
592 Property. The hour and place of Closing will be as designated by agreement between Seller and Buyer.

593 **12.4. Disclosure of Settlement Costs.** Buyer and Seller acknowledge that costs, quality and extent of service vary between
594 different settlement service providers (e.g., attorneys, lenders, inspectors and title companies).

595 **12.5. Assignment of Leases.** Seller must assign to Buyer all Leases at Closing that will continue after Closing and Buyer
596 must assume Seller's obligations under such Leases. Further, Seller must transfer to Buyer all Leased Items and assign to Buyer such
597 leases for the Leased Items accepted by Buyer pursuant to § 2.5.4. (Leased Items).

598 **13. TRANSFER OF TITLE.** Subject to Buyer's compliance with the terms and provisions of this Contract, including the tender
599 of any payment due at Closing, Seller must execute and deliver the following good and sufficient deed to Buyer, at Closing: ☐
600 special warranty deed ☒ general warranty deed ☐ bargain and sale deed ☐ quit claim deed ☐ personal representative's deed
601 ☐ _____ deed. Seller, provided another deed is not selected, must execute and deliver a good and
602 sufficient special warranty deed to Buyer, at Closing.

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

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

609 15. CLOSING COSTS, FEES, ASSOCIATION STATUS LETTER AND DISBURSEMENTS, TAXES AND 610 WITHHOLDING.

611 **15.1. Closing Costs.** Buyer and Seller must pay, in Good Funds, their respective closing costs and all other items required
612 to be paid at Closing, except as otherwise provided herein.

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

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

15.3.1. Status Letter Fee. Any fee incident to the issuance of Association's Status Letter must be paid by Seller.

15.3.2. Record Change Fee. Any Record Change Fee must be paid by ☐ Buyer ☐ Seller ☐ One-Half by Buyer and One-Half by Seller ☒ N/A.

15.3.3. Reserves or Working Capital. Unless agreed to otherwise, all reserves or working capital due (or other similar cost not addressed in § 16.2. (Association Assessments)) at Closing must be paid by ☐ Buyer ☐ Seller ☐ One-Half by Buyer and One-Half by Seller ☒ N/A.

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

15.4. Local Transfer Tax. Any Local Transfer Tax must be paid at Closing by ☐ Buyer ☐ Seller ☐ One-Half by Buyer and One-Half by Seller ☒ N/A.

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

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

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

☐ Water District/Municipality

☐ Water Stock

☐ Augmentation Membership

☐ Small Domestic Water Company

☐ _____

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

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

15.9. FIRPTA and Colorado Withholding.

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

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

16. PRORATIONS AND ASSOCIATION ASSESSMENTS.

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

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

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

16.1.3. Other Prorations. Water and sewer charges, propane, interest on continuing loan and N/A _____.

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

16.2. Association Assessments. Current regular Association assessments and dues (Association Assessments) paid in advance will be credited to Seller at Closing. All Association Assessments accrued before Closing must be paid by Seller and all Association Assessments accrued after Closing must be paid by Buyer. Cash reserves held out of the regular Association Assessments for deferred maintenance by the Association will not be credited to Seller except as may be otherwise provided by the Governing Documents. Any special assessment assessed prior to **Closing Date** by the Association will be the obligation of ☐ Buyer ☐ Seller. Except however, any special assessment by the Association for improvements that have been installed as of the date of Buyer's signature hereon, whether assessed prior to or after Closing, will be the obligation of Seller unless otherwise specified in

671 Additional Provisions. Seller represents there are no unpaid regular or special assessments against the Property except the current
672 regular assessments and N/A. Association Assessments are subject to change as provided in the
673 Governing Documents.

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

676 If Seller, after Closing occurs, fails to deliver possession as specified, Seller will be subject to eviction and will be additionally
677 liable to Buyer, notwithstanding § 20.2. (If Seller is in Default), for payment of \$ _____ per day (or any part of a day
678 notwithstanding § 3.3., Day) from **Possession Date** and **Possession Time** until possession is delivered. Additionally, Buyer may
679 pursue a claim against Seller for any of Buyer's actual additional damages incurred by Buyer in excess of such amount.

680

GENERAL PROVISIONS

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

684 **18.1. Causes of Loss, Insurance.** In the event the Property or Inclusions are damaged by fire, other perils or causes of loss
685 prior to Closing (Property Damage) in an amount of not more than ten percent of the total Purchase Price and if the repair of the
686 damage will be paid by insurance (other than the deductible to be paid by Seller), then Seller, upon receipt of the insurance proceeds,
687 will use Seller's reasonable efforts to repair the Property before **Closing Date**. Buyer has the Right to Terminate under § 24.1., on
688 or before **Closing Date**, if the Property is not repaired before **Closing Date**, or if the damage exceeds such sum. Should Buyer elect
689 to carry out this Contract despite such Property Damage, Buyer is entitled to a credit at Closing for all insurance proceeds that were
690 received by Seller (but not the Association, if any) resulting from damage to the Property and Inclusions, plus the amount of any
691 deductible provided for in the insurance policy. This credit may not exceed the Purchase Price. In the event Seller has not received
692 the insurance proceeds prior to Closing, the parties may agree to extend the **Closing Date** to have the Property repaired prior to
693 Closing or, at the option of Buyer, (1) Seller must assign to Buyer the right to the proceeds at Closing, if acceptable to Seller's
694 insurance company and Buyer's lender; or (2) the parties may enter into a written agreement prepared by the parties or their attorney
695 requiring the Seller to escrow at Closing from Seller's sale proceeds the amount Seller has received and will receive due to such
696 damage, not exceeding the total Purchase Price, plus the amount of any deductible that applies to the insurance claim.

697 **18.2. Damage, Inclusions and Services.** Should any Inclusion or service (including utilities and communication services),
698 system, component or fixture of the Property (collectively Service) (e.g., heating or plumbing), fail or be damaged between the date
699 of this Contract and Closing or possession, whichever is earlier, then Seller is liable for the repair or replacement of such Inclusion
700 or Service with a unit of similar size, age and quality, or an equivalent credit, but only to the extent that the maintenance or
701 replacement of such Inclusion or Service is not the responsibility of the Association, if any, less any insurance proceeds received by
702 Buyer covering such repair or replacement. If the failed or damaged Inclusion or Service is not repaired or replaced on or before
703 Closing or possession, whichever is earlier, Buyer has the Right to Terminate under § 24.1., on or before **Closing Date**, or, at the
704 option of Buyer, Buyer is entitled to a credit at Closing for the repair or replacement of such Inclusion or Service. Such credit must
705 not exceed the Purchase Price. If Buyer receives such a credit, Seller's right for any claim against the Association, if any, will survive
706 Closing.

707 **18.3. Condemnation.** In the event Seller receives actual notice prior to Closing that a pending condemnation action may
708 result in a taking of all or part of the Property or Inclusions, Seller must promptly notify Buyer, in writing, of such condemnation
709 action. Buyer has the Right to Terminate under § 24.1., on or before **Closing Date**, based on such condemnation action, in Buyer's
710 sole subjective discretion. Should Buyer elect to consummate this Contract despite such diminution of value to the Property and
711 Inclusions, Buyer is entitled to a credit at Closing for all condemnation proceeds awarded to Seller for the diminution in the value
712 of the Property or Inclusions, but such credit will not include relocation benefits or expenses or exceed the Purchase Price.

713 **18.4. Walk-Through and Verification of Condition.** Buyer, upon reasonable notice, has the right to walk through the
714 Property prior to Closing to verify that the physical condition of the Property and Inclusions complies with this Contract.

715 **18.5. Risk of Loss – Growing Crops.** The risk of loss for damage to growing crops by fire or other casualty will be borne
716 by the party entitled to the growing crops as provided in § 2.8. and such party is entitled to such insurance proceeds or benefits for
717 the growing crops.

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

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

20.1. If Buyer is in Default:

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

20.1.2. Liquidated Damages, Applicable. This § 20.1.2. applies unless the box in § 20.1.1. is checked. Seller may cancel this Contract. All Earnest Money (whether or not paid by Buyer) will be paid to Seller and retained by Seller. It is agreed that the Earnest Money amount specified in § 4.1. is LIQUIDATED DAMAGES and not a penalty, which amount the parties agree is fair and reasonable and (except as provided in §§ 10.4. and 21), such amount is SELLER'S ONLY REMEDY for Buyer's failure to perform the obligations of this Contract. Seller expressly waives the remedies of specific performance and additional damages.

20.2. If Seller is in Default:

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

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

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

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

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

24. TERMINATION.

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

779 and waives the Right to Terminate under such provision. Any Notice to Terminate delivered after the applicable deadline specified
780 in the Contract is ineffective and does not terminate this Contract.

781 **24.2. Effect of Termination.** In the event this Contract is terminated, all Earnest Money received hereunder must be timely
782 returned to Buyer and the parties are then relieved of all obligations hereunder, subject to §§ 10.4. and 21.

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

789 **26. NOTICE, DELIVERY AND CHOICE OF LAW.**

790 **26.1. Physical Delivery and Notice.** Any document or notice to Buyer or Seller must be in writing, except as provided in
791 § 26.2. and is effective when physically received by such party, any individual named in this Contract to receive documents or
792 notices for such party, Broker, or Brokerage Firm of Broker working with such party (except any notice or delivery after Closing
793 must be received by the party, not Broker or Brokerage Firm).

794 **26.2. Electronic Notice.** As an alternative to physical delivery, any notice may be delivered in electronic form to Buyer or
795 Seller, any individual named in this Contract to receive documents or notices for such party, Broker or Brokerage Firm of Broker
796 working with such party (except any notice or delivery after Closing, cancellation or Termination must be received by the party, not
797 Broker or Brokerage Firm) at the electronic address of the recipient by facsimile, email or N/A.

798 **26.3. Electronic Delivery.** Electronic Delivery of documents and notice may be delivered by: (1) email at the email address
799 of the recipient, (2) a link or access to a website or server provided the recipient receives the information necessary to access the
800 documents, or (3) facsimile at the facsimile number (Fax No.) of the recipient.

801 **26.4. Choice of Law.** This Contract and all disputes arising hereunder are governed by and construed in accordance with
802 the laws of the State of Colorado that would be applicable to Colorado residents who sign a contract in Colorado for real property
803 located in Colorado.

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

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

813 **29. BUYER'S BROKERAGE FIRM COMPENSATION.** *Omitted as Inapplicable.*

814

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

817 *See attached Addendum to Contract to Buy and Sell Real Estate Between the Town of Berthoud ("Buyer") and LAS Properties,*
818 *LLC and JGS Properties, LLC ("Seller").*

819 **31. OTHER DOCUMENTS.**

820 **31.1. Documents Part of Contract.** The following documents are a part of this Contract:
821 Section 30 Addendum ; Residential Addendum

822 **31.2. Documents Not Part of Contract.** The following documents have been provided but are **not** a part of this Contract:
823 Seller's Property Disclosures
824

825

SIGNATURES

826

Buyer's Name: Town of Berthoud

Buyer's Name: _____

10/10/2024

Chris Kirk, Town Administrator

Date

Buyer's Signature

Date

Address:

807 Mountain Ave

Address:

Berthoud CO 80513

Phone No.:

970-532-2643

Phone No.:

Fax No.:

Fax No.:

Email Address:

ckirk@berthoud.org

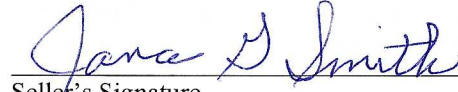
Email Address:

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

Seller's Name: LAS Properties, LLCSeller's Name: JGS Properties, LLC

Seller's Signature

Date



Seller's Signature

Date

Address:

3546 Ghost Dance Dr
Castle Rock CO 80108

Address:

1230 43RD AVE
GREELEY CO 80634

Phone No.:

303-328-8424

Phone No.:

307-340-0669

Fax No.:

Fax No.:

Email Address:

Email Address:

828

829

END OF CONTRACT TO BUY AND SELL REAL ESTATE

BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.

A. Broker Working With Buyer

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

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

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

Brokerage Firm's compensation or commission is to be paid as specified in §29 above.

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

Brokerage Firm's Name: _____

Brokerage Firm's License #: _____

Broker's Name: _____

Broker's Signature
Date

B. Broker Working with Seller

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

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

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

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

This Broker's Acknowledgments and Compensation Disclosure is for disclosure purposes only and does NOT create any claim for compensation. Any agreement to pay compensation must be entered into separately and apart from this provision.

Broker's Signature
Date

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission.
(RA33-8-24) (Mandatory 8-24)

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

RESIDENTIAL ADDENDUM TO CONTRACT TO BUY AND SELL REAL ESTATE

Date: 10/10/2024

1. ADDENDUM TO CONTRACT TO BUY AND SELL REAL ESTATE. This Residential Addendum (Addendum) is made a part of the following contract that is checked:

☒ **Contract to Buy and Sell Real Estate (Land)** between Seller and Buyer (Contract) dated _____ relating to the sale of the Property, or;
☐ **Contract to Buy and Sell Real Estate (Commercial)** between Seller and Buyer (Contract) dated _____ relating to the sale of the Property

known as 20101 County Road 5 Berthoud Colorado 80513 (Property).
Street Address City State Zip

This Addendum shall control in the event of any conflict with the Contract. Except as modified, all other terms and provisions of the Contract shall remain the same. Terms used herein shall have the same meaning as in the Contract.

2. PURPOSE. The Property contains, in part, one or more residences but the Contract does not contain required provisions that are set forth in this Addendum. The Contract provisions are added or amended as follows:

2.5.4. Home Warranty. Seller and Buyer are aware of the existence of pre-owned home warranty programs that may be purchased and may cover the repair or replacement of such Inclusions.

4.5.3. Loan Limitations. Buyer may purchase the Property using any of the following types of loan: ☐ Conventional ☐ FHA ☐ VA ☐ Bond ☒ Other ^{N/A} _____.

If either or both of the FHA or VA boxes are checked, and Buyer closes the transaction using one of those loan types, Seller agrees to pay those closing costs and fees that Buyer is not allowed by law to pay not to exceed \$^{N/A} _____.

4.5.4. Loan Estimate – Monthly Payment and Loan Costs. Buyer is advised to review the terms, conditions and costs of Buyer's New Loan carefully. If Buyer is applying for a residential loan, the lender generally must provide Buyer with a Loan Estimate within three days after Buyer completes a loan application. Buyer also should obtain an estimate of the amount of Buyer's monthly mortgage payment.

6.2.2. FHA. It is expressly agreed that, notwithstanding any other provisions of this Contract, the purchaser (Buyer) shall not be obligated to complete the purchase of the Property described herein or to incur any penalty by forfeiture of Earnest Money deposits or otherwise unless the purchaser (Buyer) has been given, in accordance with HUD/FHA or VA requirements, a written statement issued by the Federal Housing Commissioner, Department of Veterans Affairs, or a Direct Endorsement lender, setting forth the appraised value of the Property of not less than \$^{N/A} _____. The purchaser (Buyer) shall have the privilege and option of proceeding with the consummation of this Contract without regard to the amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value nor the condition of the Property. The purchaser (Buyer) should satisfy himself/herself/themselves that the price and condition of the Property are acceptable.

6.2.3. VA. It is expressly agreed that, notwithstanding any other provisions of this Contract, the purchaser (Buyer) shall not incur any penalty by forfeiture of Earnest Money or otherwise or be obligated to complete the purchase of the Property described herein, if the Contract Purchase Price or cost exceeds the reasonable value of the Property established by the Department of Veterans Affairs. The purchaser (Buyer) shall, however, have the privilege and option of proceeding with the consummation of this Contract without regard to the amount of the reasonable value established by the Department of Veterans Affairs.

8.4. Special Taxing/Metropolitan Districts. SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND TAX TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYERS SHOULD INVESTIGATE THE SPECIAL TAXING DISTRICTS IN WHICH THE PROPERTY IS LOCATED BY CONTACTING THE COUNTY

TREASURER, BY REVIEWING THE CERTIFICATE OF TAXES DUE FOR THE PROPERTY AND BY OBTAINING FURTHER INFORMATION FROM THE BOARD OF COUNTY COMMISSIONERS, THE COUNTY CLERK AND RECORDER, OR THE COUNTY ASSESSOR. The official website for the Metropolitan District, if any, is: _____.

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

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

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

10.10. Lead-Based Paint.

10.10.1. Lead-Based Paint Disclosure. Unless exempt, if the Property includes one or more residential dwellings constructed or a building permit was issued prior to January 1, 1978, for the benefit of Buyer, Seller and all required real estate licensees must sign and deliver to Buyer a completed Lead-Based Paint Disclosure (Sales) form on or before the **Lead-Based Paint Disclosure Deadline**. If Buyer does not timely receive the Lead-Based Paint Disclosure, Buyer may waive the failure to timely receive the Lead-Based Paint Disclosure, or Buyer may exercise Buyer's Right to Terminate under § 24.1. by Seller's receipt of Buyer's Notice to Terminate on or before the expiration of the **Lead-Based Paint Termination Deadline**.

10.10.2. Lead-Based Paint Assessment. If Buyer elects to conduct or obtain a risk assessment or inspection of the Property for the presence of Lead-Based Paint or Lead-Based Paint hazards, Buyer has a Right to Terminate under § 24.1. by Seller's receipt of Buyer's Notice to Terminate on or before the expiration of the **Lead-Based Paint Termination Deadline**. Buyer may elect to waive Buyer's right to conduct or obtain a risk assessment or inspection of the Property for the presence of Lead-Based Paint or Lead-Based Paint hazards. If Seller does not receive Buyer's Notice to Terminate within such time, Buyer accepts the condition of the Property relative to any Lead-Based Paint as satisfactory, and Buyer waives any Right to Terminate under this provision.

10.11. Carbon Monoxide Alarms. Note: If the improvements on the Property have a fuel-fired heater or appliance, a fireplace, or an attached garage and include one or more rooms lawfully used for sleeping purposes (Bedroom), the parties acknowledge that Colorado law requires that Seller assure the Property has an operational carbon monoxide alarm installed within fifteen feet of the entrance to each Bedroom or in a location as required by the applicable building code.

10.12. Methamphetamine Disclosure. If Seller knows that methamphetamine was ever manufactured, processed, cooked, disposed of, used or stored at the Property, Seller is required to disclose such fact. No disclosure is required if the Property was remediated in accordance with state standards and other requirements are fulfilled pursuant to § 25-18.5-102, C.R.S. Buyer further acknowledges that Buyer has the right to engage a certified hygienist or industrial hygienist to test whether the Property has ever been used as a methamphetamine laboratory. Buyer has the Right to Terminate under § 24.1., upon Seller's receipt of Buyer's written Notice to Terminate, notwithstanding any other provision of this Contract, based on Buyer's test results that indicate the Property has been contaminated with methamphetamine, but has not been remediated to meet the standards established by rules of the State Board of Health promulgated pursuant to § 25-18.5-102, C.R.S. Buyer must promptly give written notice to Seller of the results of the test.

10.13. Radon Disclosure. THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT STRONGLY RECOMMENDS THAT ALL HOME BUYERS HAVE AN INDOOR RADON TEST PERFORMED BEFORE PURCHASING RESIDENTIAL REAL PROPERTY AND RECOMMENDS HAVING THE RADON LEVELS MITIGATED IF ELEVATED RADON CONCENTRATIONS ARE FOUND. ELEVATED RADON CONCENTRATIONS CAN BE REDUCED BY A RADON MITIGATION PROFESSIONAL.

RESIDENTIAL REAL PROPERTY MAY PRESENT EXPOSURE TO DANGEROUS LEVELS OF INDOOR RADON GAS THAT MAY PLACE THE OCCUPANTS AT RISK OF DEVELOPING RADON-INDUCED LUNG CANCER. RADON, A CLASS A HUMAN CARCINOGEN, IS THE LEADING CAUSE OF LUNG CANCER IN NONSMOKERS AND THE SECOND LEADING CAUSE OF LUNG CANCER OVERALL. THE SELLER OF RESIDENTIAL REAL PROPERTY IS REQUIRED TO PROVIDE THE BUYER WITH ANY KNOWN INFORMATION ON RADON TEST RESULTS OF THE RESIDENTIAL REAL PROPERTY.

116 AN ELECTRONIC COPY OF THE MOST RECENT BROCHURE PUBLISHED BY THE DEPARTMENT OF
117 PUBLIC HEALTH AND ENVIRONMENT IN ACCORDANCE WITH C.R.S. §25-11-114(2)(A) THAT PROVIDES
118 ADVICE ABOUT "RADON AND REAL ESTATE TRANSACTIONS IN COLORADO" IS AVAILABLE AT:
119 [HTTPS://CDPHE.COLORADO.GOV/RADON-AND-REAL-ESTATE](https://cdphe.colorado.gov/radon-and-real-estate).
120
121
122
123
124



Buyer

10/10/2024
Date

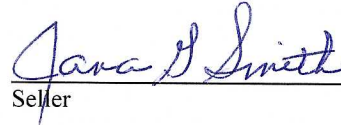
Buyer

Date



Seller

10-10-2024
Date



Seller

10/10/2024
Date

125

ADDENDUM
TO
CONTRACT TO BUY AND SELL REAL ESTATE

This Addendum to Contract to Buy and Sell Real Estate (the "Addendum") forms a part of the Contract to Buy and Sell Real Estate (Land) (the "Base Form Contract") made by the Town of Berthoud ("Buyer") and LAS Properties, LLC and JGS Properties, LLC (collectively, "Seller") as though it were printed out in full under Section 30 of the Base Form Contract. All capitalized terms not otherwise defined herein shall have the meanings given to them in the Base Form Contract. In the event of any conflict between this Addendum and the Base Form Contract, this Addendum shall control. The Base Form Contract as modified by this Addendum and the Residential Addendum is referred to herein as the "Contract".

- A. **Contract Approval Contingent on Buyer's Board Approval; MEC.** Notwithstanding Section 26 (Notice, Delivery and Choice of Law) and Section 27 (Notice of Acceptance, Counterparts), this Contract shall not be binding upon Buyer until this Contract signed by Seller has been received by and approved in writing by Buyer's Board of Trustees. If this Contract signed by Seller is approved in writing by Buyer's Board of Trustees, this Contract signed by Seller shall become a contract between Seller and Buyer. If, within twenty business days after Buyer's receipt of the Contract signed by Seller, Buyer does not deliver to Seller written notice of the approval by Buyer's Board of Trustees of the Contract signed by Seller, the Contract signed by Seller shall not be binding upon Seller and Buyer. Further, notwithstanding Section 3.2 (Applicability of Terms), the mutual execution of this Contract ("MEC") shall be the date this Contract becomes a contract between Seller and Buyer as provided above in this Section 30.A.
- B. **Notices.** The party to receive notices for the Buyer under Section 26.2 of the Base Form Contract is Chris Kirk, ckirk@berthoud.org. The parties to receive notices for the Seller are _____ and _____.
- C. **Water Rights.** Seller shall convey the following water rights described in section D.1 ("Water Rights") to Buyer at Closing:
1. **Description of Water Rights.** Fifty-Seven (57) shares of Rockwell Ditch Company Stock, represented by Stock Certificate Number 20 ("Rockwell Shares").
 2. **Terms and Conditions for Conveyance of Water Rights.**
 - i. **Evidence of Title.** Seller shall furnish to Buyer, at Buyer's expense, an Ownership and Encumbrance Report ("O&E Report") for the lands which have historically been irrigated by the Water Rights, on or before the Record Title Deadline, to determine whether any encumbrances on the Water Rights are set forth therein. Buyer may require of Seller that copies of instruments (or abstracts of instruments) listed in the schedule of exceptions (Exceptions) in the O&E Report also be furnished to Buyer at Buyer's expense. This requirement shall pertain only to instruments shown of record in the office of the clerk and recorder of the designated county or counties. The

Buyer may also conduct a search of the records of the Colorado Secretary of State to determine whether encumbrances on the Water Rights exist, at Buyer's expense ("UCC Report"). The O&E Report and UCC Report, together with any copies or abstracts of instruments furnished pursuant to this Paragraph 2 constitute the Water Rights Title Documents. Buyer, or Buyer's designee, must request Sellers, in writing, to furnish copies or abstracts of instruments listed in the schedule of exceptions no later than 5 calendar days after Record Title Deadline.

- ii. **Water Rights Conveyance Documents.** Seller shall provide the following documents to effectuate the conveyance of the Water Rights at Closing:
 - a. A fully executed Special Warranty Deed (Water Rights), in the form attached to this Addendum as **Exhibit A**; and
 - b. The endorsed, original Stock Certificate No. 20, dated January 15, 2024, for the Rockwell Shares; and
 - c. A Stock Assignment for the Rockwell Shares, in the form to be provided by Buyer.
- iii. **Water Rights Diligence Documents.** On or before the Due Diligence Documents Delivery Deadline, Seller shall furnish to Buyer, at Seller's expense, the following documents (collectively, "Water Rights Diligence Documents"):
 - a. All evidence of liens or encumbrances, UCC filings with the Colorado Secretary of State, or other instruments affecting title to the Water Rights, if any, that are in the possession or otherwise reasonably available to Seller;
 - b. A copy, front and back, of Rockwell Ditch Company Stock Certificate No. 20;
 - c. A written statement from the Rockwell Ditch Company that: Seller is the owner of record of Stock Certificate No. 20 on the books of the Rockwell Ditch Company, all outstanding assessments have been paid, the Shares represented by Stock Certificate No. 20 are in good standing, and that there are no liens, mortgages, encumbrances or adverse claims on the certificate in the Rockwell Ditch Company's records;
 - d. Copies of information or materials in Seller's possession, if any, pertaining to the historical use of the Water Rights on the historically irrigated lands or on any other property, and the use of any other water rights on such property; and
 - e. Copies of all documents in Seller's possession, if any, pertaining to the Water Rights of which Seller has actual knowledge but are not shown in public records.
 - f. Delivery of Diligence Documents. All documents listed above will be delivered or otherwise made available to Pete Johnson, electronically at pcj@vrlaw.com.
- iv. **Ditch Company Records.** Seller hereby appoints and authorizes Buyer to perform any research at the Rockwell Ditch Company offices regarding the historic use of, ownership of, and change of title to the Water Rights that Buyer may desire to the same extent that Seller is entitled to perform such research as the shareholder of record.

- v. **Stock Certificates.** Before Closing, Seller shall be responsible for ensuring that the stock certificate(s) associated with the Rockwell Shares are of good condition and freely transferrable, including but not limited to that the certificates are issued solely in the name of the Seller.

- D. **Purchase Price and Terms.** The Purchase Price set forth below shall be payable in U.S. Dollars by Buyer as follows:

Item No.	Item	Amount
1	Purchase Price	\$ 2,400,000.00
2	Earnest Money	\$ 20,000.00
3	Additional Earnest Money	\$ 80,000.00
4	Cash at Closing	\$ 2,300,000.00
5	Total	\$ 2,400,000.00

- E. **Earnest Money.** Within three (3) business days of MEC, Buyer shall deliver to the title company, \$20,000.00 in good funds ("Earnest Money"). The Earnest Money shall be refundable to Buyer except to the extent specifically provided otherwise in this Contract and in an agreement with the Escrow Money Holder. An additional nonrefundable deposit of \$80,000.00 in good funds shall be delivered to the title company on November 28, 2024 (the "Additional Earnest Money"). At the time of the delivery of the Additional Earnest Money deposit, the Earnest Money deposit will also become nonrefundable. The Earnest Money Holder shall deposit the Earnest Money and the Additional Earnest Money into a separate, interest-bearing trust account insured by the Federal Deposit Insurance Corporation. All interest earned on the Earnest Money and Additional Earnest shall be added to and become part of the Earnest Money. The title company shall hold such Earnest Money and Additional Earnest Money in trust and shall not distribute the Earnest Money or the Additional Earnest Money except in accordance with this Agreement.
- F. **No Brokers.** Buyer and Seller each represent to the other that it has not dealt with any person, agent, finder, realtor or broker with regard to this transaction. Each party indemnifies the other from any commission claimed by any person, agent, finder, realtor or broker claiming through such party.
- G. **Diligence Period and Payments.** During the period commencing on MEC and continuing thereafter to and including 180 days after MEC ("Diligence Period"), Buyer may investigate the Property. In addition to all other rights of Buyer under this Contract, Buyer may, in Buyer's sole, absolute and subjective discretion, terminate this Contract by Buyer's written notice delivered to Seller prior to the expiration of the Diligence Period. In the event the Buyer terminates this Contract as provided in the preceding sentence, all Earnest Money shall be forthwith returned to Buyer, and Seller and Buyer shall be relieved of all obligations hereunder.

H. Disclosure of Defects; Seller's Documents.

a. Seller shall provide the Seller's Disclosure Statement as set forth in the Base Form Contract.

b. Seller's Documents in General. On or before the Off-Record Matters Deadline described in Section 3.1 (Dates and Deadlines), Seller shall furnish to Buyer the following but only if in the possession of Seller (or in the case of information, only to the extent known by Seller): information and documents requested by Buyer or firm retained by Buyer to perform environmental audits; information based on Seller's actual knowledge regarding the current or prior existing locations of underground and aboveground storage tanks and endangered species on the Property; and, to the extent not previously provided by Seller to Buyer, complete and legible copies of all documents or reports in the possession of Seller, or Seller's agents, engineers and/or consultants, or under Seller's control, or otherwise reasonably available to Seller or Seller's agents, engineers and/or consultants, including but not limited to the following items (whether in document or electronic form), if any, relating to the Property (collectively, "Seller's Documents"): all surveys; plats; engineering studies and reports; deeds; soil, geologic, drainage, and water reports; environmental studies, reports and audits; documentation regarding prior usage; maps; contracts; documents; leases; agreements with governmental entities; notices from governmental entities; other agreements; permits; licenses; title insurance policies and commitments; documents related to minerals, mineral rights, and mineral estates; water court decrees; well permits, tests and other reports; ditch stock and other written evidence of such rights; reports; and data pertaining to and/or affecting the Property.

I. Deed. The Warranty Deed that Seller shall deliver at Closing shall be substantially in the form attached to this Addendum as **Exhibit B**.

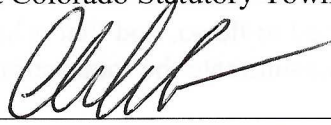
J. Farming. Seller shall be permitted to plant and harvest crops on the Property, as agreed to between the parties, so long as the crops are planted prior to Closing and harvested before December 31, 2025.

K. Not a Multiple Fiscal Year Obligation. Notwithstanding any other provision of this Contract, this Contract shall be subject to annual appropriation of funds therefor by the Buyer, unless terminated as provided herein. Seller acknowledges and agrees that the act of appropriating funds is a legislative act solely within the discretion of the governing body of the Buyer and, as such, that any decision to decline to appropriate the necessary funds to perform any of the obligations set forth in this Contract in any ensuing fiscal year shall not result in the imposition of any penalty or liability, whatsoever upon the Board. It is the intent of both Parties that no provision of this Contract shall be construed or interpreted as creating multiple-fiscal year direct or indirect debt or other financial obligation whatsoever, or a general obligation or other indebtedness of the Buyer within the meaning of any constitutional or statutory debt limitation, or as pledging or creating a lien on any class or source of Buyer moneys.

- L. **Authority.** Each party represents and warrants to the other that each of the persons executing this Contract and other documents required in connection therewith on such party's behalf is duly authorized to do so, and that it has full right, power, and authority to enter into this Contract and to consummate the transactions described therein.
- M. **Attorneys' Fees.** If any action is instituted between the parties in connection with the Contract, the prevailing party shall be awarded its reasonable costs and expenses, including court costs and reasonable attorneys' fees. In connection with the negotiation and performance of this Contract, each of the parties will be solely responsible for the payment of any legal costs and expenses it incurs.
- N. **Indemnification; No Waiver of Governmental Immunity.** To the extent any provision of this Contract requires Buyer to indemnify any person or party, such indemnification shall be to the extent permitted by applicable law. Nothing contained in this Contract shall be construed as a waiver, in whole or in part, of the protection afforded Buyer under the Colorado Governmental Immunity Act, 24-10-101 *et seq.*, C.R.S., as the same may be amended from time to time.
- O. **Captions and Pronouns.** The captions and headings of the various sections of this Contract are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Wherever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall be freely interchangeable.
- P. **Forum Selection, Jurisdiction and Venue and Damages.** Any litigation for any claim (contract or tort) arising out of this Contract shall be exclusively instituted or brought in the Colorado District Court for the County in which the Property is located, or in the United States District Court for the District of Colorado, and no where else.
- Q. **Waiver of Jury Trial.** The Parties hereby waive any right to jury trial of any claim, cross-claim or counterclaim relating to or arising out of or in connection with this Contract.
- R. **Severability.** If any term, provision, covenant or condition hereof or any application thereof is held by a court of competent jurisdiction to be invalid, void or unenforceable, all other terms, provisions, covenants and conditions shall continue in full force and effect and in no way shall be affected, impaired or invalidated.
- S. **Advice of Counsel; Language Not to be Construed Against Drafter.** Each of the Parties has had the advice of legal counsel of its own choosing in negotiations for and the preparation of this Contract. No portion of this Contract shall be construed against either of the Parties owing to such party having drafted such portion of this Contract.

END OF ADDENDUM

Buyer: Town of Berthoud,
a Colorado Statutory Town



By: CHRIS KIRK

Title: TOWN ADMINISTRATOR

Date: 10/10/2024

Attest: _____

By: _____

Seller: LAS Properties, LLC,
a Colorado limited liability company

By: Linda A Schmalzried
Name: Linda A Schmalzried
Title: CO-OWNER

Seller: JGS Properties, LLC,
a Colorado limited liability company

By: JANA G SMITH
Name: Jana G Smith
Title: CO-OWNER

EXHIBIT A

Special Warranty Deed (Water Rights)

SPECIAL WARRANTY DEED

THIS DEED is made this ____ day of _____, 2025, between **LAS Properties, LLC** a Colorado limited liability company whose principal address is 3546 Ghost Dance Drive, Castle Rock, Colorado 80108 and **JGS Properties, LLC** a Colorado limited liability company whose principal address is 1203 43rd Avenue, Greeley, Colorado 808634 (collectively "Grantor") and the Town of Berthoud, a Colorado statutory town whose principal address is 807 Mountain Avenue, Town of Berthoud, County of Larimer and State of Colorado ("Grantee"):

WITNESSETH, that Grantors, for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, have granted, sold, and conveyed, and do hereby grant, sell, convey, and confirm unto Grantee, its successors and assigns forever, all the water rights situate, lying and being in the County of Larimer, State of Colorado, described as follows (the "Water Rights"):

- (1) All water and water rights represented by the following shares of stock (the "Shares"):

Fifty-seven (57) shares of stock in the Rockwell Ditch Company,
represented by Stock Certificate No. 20.

- (2) All beneficial right, title and interest, if any, in all water, water rights, ditches, ditch rights, reservoirs, reservoir rights, canals, canal rights, headgates, siphons, and all other assets, rights, title, or interests represented by the Shares.

TOGETHER with all and singular the hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of the Grantor, either in law or equity, of, in and to the Water Rights, with the hereditaments and appurtenances.

TO HAVE AND TO HOLD the Water Rights with the appurtenances, unto the Grantee, its successors and assigns forever. The Grantor, for the Grantor and its heirs, successors, and assigns, does covenant and agree that Grantor shall and will WARRANT AND FOREVER DEFEND the Water Rights in the quiet and peaceable possession of the Grantee, and the Grantee's successors and assigns, against all and every person or persons claiming the whole or any part thereof, by, through, or under the Grantor.

IN WITNESS WHEREOF, Grantor has executed this Deed on the date set forth above.

GRANTOR:

LAS PROPERTIES, LLC

By:

Title:

Address:

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing SPECIAL WARRANTY DEED was acknowledged before me this _____ day of _____, 2025 on behalf of **LAS Properties, LLC**, a Colorado limited liability company, by _____, its _____.

Witness my hand and official seal.

Notary Public

My Commission Expires: _____

SEAL

GRANTOR:

JGS PROPERTIES, LLC

By:

Title:

Address:

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing SPECIAL WARRANTY DEED was acknowledged before me this ____ day of _____, 2025, on behalf of **JGS Properties, LLC**, a Colorado limited liability company, by _____, its _____.

Witness my hand and official seal.

Notary Public
My Commission Expires: _____

SEAL

EXHIBIT B

Warranty Deed (Land)

WARRANTY DEED

THIS WARRANTY DEED is made effective this ____ day of _____, 2025, between **LAS Properties, LLC**, a Colorado limited liability company whose principal address is 3546 Ghost Dance Drive, Castle Rock, Colorado 80108 and **JGS Properties, LLC**, a Colorado limited liability company whose principal address is 1203 43rd Avenue, Greeley, Colorado 808634 (collectively "Grantor") and the **Town of Berthoud**, a Colorado statutory town whose principal address is 807 Mountain Avenue, Town of Berthoud, County of Larimer and State of Colorado ("Grantee"):

WITNESSETH, that the Grantor, for and in consideration of the sum of Ten and 00/100 dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell, convey and confirm, unto the Grantee, and Grantee's successors and assigns forever, all the real property, together with all improvements thereon, if any, situate, lying and being in the County of WELD, State of Colorado, described as follows:

[legal description to be added when title commitment is received]

For information only:

Address: 20101 County Road 5, Berthoud, Weld County, Colorado 80513

Parcel No: 106120000056

TOGETHER WITH all and singular the hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, claim and demand whatsoever of the Grantor, either in law or in equity, of, in and to the above bargained premises, with the hereditaments and appurtenances.

TO HAVE AND TO HOLD the said premises above bargained and described, with the appurtenances, unto the Grantee, and Grantee's heirs, successors and assigns forever. And the Grantor, for Grantor and Grantor's heirs and personal representatives, does covenant, grant, bargain and agree to and with Grantees and Grantee's heirs, successors, and assigns, that at the time of the ensealing and delivery of these presents, Grantor is well seized of the premises above conveyed, has good, sure, perfect, absolute, and indefeasible estate of inheritance, in law, in fee simple, and has good right, full power, and lawful authority to grant, bargain, sell and convey the same in manner and form as aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, encumbrances and restrictions of whatever kind or nature soever, except easements, restrictions, reservations, and rights of way of record.

Grantor shall and will WARRANT AND FOREVER DEFEND the above bargained premises in the quiet and peaceable possession of Grantee, and Grantee's heirs, successors, and assigns, against all and every person or persons claiming the whole or any part thereof, subject to Statutory Exceptions as defined in §38-30-113(5)(a), C.R.S.

IN WITNESS WHEREOF, the Grantor has executed this deed on the date and year first written above.

LAS Properties, LLC,
a Colorado limited liability company

By: _____
Name: _____
Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this ____ day of _____,
2025, on behalf of **LAS Properties, LLC**, a Colorado limited liability company, by
_____, its _____.

Witness my hand and official seal. My Commission Expires: _____

Notary Public

JGS Properties, LLC,
a Colorado limited liability company

By: _____
Name: _____
Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this ____ day of _____,
2025, on behalf of **JGS Properties, LLC**, a Colorado limited liability company, by
_____, its _____.

Witness my hand and official seal. My Commission Expires: _____

Notary Public

BOARD OF TRUSTEES INFORMATION



ADMINISTRATION DEPARTMENT

Meeting Date:	October 22, 2024
Agenda Title/Subject:	LETA Presentation
Type of Item:	Presentation
Purpose:	Overview of Larimer Emergency Telephone Authority (LETA)
Presented by:	Valarie Turner / Stephanie Horvath

ATTACHMENTS:

N/A

BACKGROUND:

LETA is the governing authority for 9-1-1 in Larimer County. It coordinated information and sent emergency alerts during the Alexander Mountain fire.

FISCAL IMPACT AND FUND SOURCE:

There is no fiscal impact as this is an informative presentation only.

COMMUNITY TOUCHSTONES:

LETA represents our county's resiliency in emergency situations

RECOMMENDED ACTION(S):

Our hope is that after this presentation, there will be a deeper understanding of the role LETA plays in local disruptive events.

BOARD OF TRUSTEES INFORMATION



UTILITIES

Meeting Date:	October 22, 2024
Agenda Title/Subject:	Updated Water Supply-Demand Outlook
Type of Item:	Presentation
Purpose:	To updates the Town Board on the Town's current water supply and demand outlook
Presented by:	Ken Matthews and Pete Johnson

BACKGROUND:

The Town of Berthoud Board of Trustees requested that Staff provide a periodic update on the Town's water supply and demand outlook so the Board can continue to evaluate the Town's water dedication requirements for new development. As requested, the Town's water resources engineers have updated their water supply and demand outlook, with the most significant updates being the inclusion of updated water demand and water commitment data, as well as updated growth projection data based on the Town's recent Water and Wastewater Master Plan.

Using this updated data, the outlook now projects that under the most conservative water supply assumptions (zero yield from the Town's interest in the Windy Gap Project), the Town's current water supply would support the addition of new water taps and water service commitments at the same average rate as the past ten years until 2028. However, the Town has already made water service commitments for much of the currently planned growth within Town boundaries, so this estimate may over-estimate the demand for new water taps in the coming years. The Town's ability to serve additional taps and commitments increases significantly once it firms the yield of its Windy Gap Units, which underscores the importance of firming the Town's Windy Gap Units to provide an additional future water supply. Town Staff will continue efforts to firm the supply from its Windy Gap Units, and may continue with additional water rights acquisitions if it can negotiate favorable terms. In light of the updated water supply and demand outlook, Town Staff does not recommend changes to the Town's water dedication policy at this time.

Town Staff and Water Counsel will also present a brief overview of the Town's water resources portfolio and water supply projects, including near-term action items.

FISCAL IMPACT AND FUND SOURCE:

There is no fiscal impact to this item.

COMMUNITY TOUCHSTONES:

Having a strong and diverse water portfolio is critical to ensuring the Town's long-term *Resiliency and Sustainability*.

BOARD OF TRUSTEES INFORMATION



UTILITIES

Meeting Date:	October 22, 2024
	Water Utility Department Project Updates
Type of Item:	Presentation
Purpose:	Provide updates on the active Water Utility projects
Presented by:	Ken Matthews, Director of Water Utilities

The following is an overview of ongoing projects within the Water Utility Department. The projects will be briefly described during the presentation and items such as schedule will be addressed:

1. Campion Lift Station Upgrades

This project addresses outdated infrastructure at the Campion Lift Station. The project will involve a complete reconstruction of this sanitary sewer lift station. The current system is limited by an aging equipment, electrical issues, and capacity constraints. Upgrades will include improving backup power and upgrading controls to ensure operational reliability and support future growth.

2. Carter Lake Pipeline Improvement

This project aims to enhance the reliability and efficiency of Berthoud's raw water delivery system by implementing cathodic protection, and capacity improvements.

3. Heron Lakes Lift Station Upgrades

To accommodate future development, the Heron Lakes subdivision is performing improvements to two lift stations. There will be a new lift station serving the Marina development. Also, the existing Heron Lakes Lift Station will be undergoing capacity upgrades.

4. Selenium Mitigation and Management

To mitigate selenium-related issues caused by infiltration and inflow (I/I) of selenium-rich groundwater into the Prairie Star subdivision, Berthoud is implementing source control measures, including grouting and lining of compromised infrastructure. These efforts will help the Water Reclamation Facility to regain compliance with selenium permit requirements. In addition, sampling efforts are underway in the Little Thompson River upstream and downstream of the WRF. The goal is to collect data on seasonal variations in selenium and propose a site-specific selenium standard to the Colorado Water Quality Control Commission.

5. Automatic Meter Infrastructure Pilot Study

The pilot study is being done to test a specific water meter that has Acoustic Leak Detection (ALD) technologies. The goal is to enhance real-time water data collection and improve leak detection, which will aid in water conservation and reduce water loss.

6. **Lead & Copper Compliance Program**

Updates to the Lead and Copper Rule require Berthoud to manage compliance through a comprehensive lead service line inventory. This inventory has been submitted to regulatory agencies to ensure Berthoud complies with new lead and copper regulations.

7. **Phase 1AA & 1A Wastewater Reclamation Facility Upgrades**

Upgrades are being made to the WRF to meet state nutrient limits for nitrogen and phosphorus. These improvements include Biological Nutrient Removal (BNR) upgrades and selenium removal enhancements to ensure compliance with environmental standards.

8. **Stormwater Pond Upgrades at Berthoud Reservoir**

Stormwater management improvements are being implemented to prevent discharge of stormwater into Berthoud Reservoir.

9. **1st Street Trunk Sewer/Bacon Lake Interceptor Project**

This project increases the wastewater system's capacity by adding an interceptor to accommodate future growth. It will prevent overloading the existing infrastructure and ensure efficient wastewater transport for residential and commercial developments.

10. **Valve Replacement at 5th and Bimson**

The valve replacement project is focused on addressing aging valves to improve water distribution reliability.

BOARD OF TRUSTEES INFORMATION



ADMINISTRATION DEPARTMENT

Meeting Date:	October 22, 2024
Agenda Title/Subject:	Lawn Lake Water Rights Purchase
Type of Item:	Regular Item
Purpose:	To consider a Contract to Buy and Sell Water Rights
Presented by:	Chris Kirk

ATTACHMENTS:

- Draft Contract to Buy and Sell Water (Lawn Reservoir aka Lawn Lake)
- Draft Escrow Agreement

BACKGROUND:

Town staff, and the Town's water attorneys, have been working to negotiate a contract for the potential acquisition of water rights referred to as the Lawn Reservoir Storage Right and the Lawn Reservoir Storage Refill right. The two rights represent 759.6 acre-feet of water. In order to complete the sale, there is a significant amount of due diligence and legal work necessary. In particular, the Town would need to identify and obtain storage rights, and the Town will need to receive a water court decree allowing for a change in use and place of use for the water.

The seller, Lawn Lake Investments LLC, has agreed to cover all costs associated with obtaining the court decree, and will work collaboratively with the Town on identifying and obtaining a suitable storage location.

The Town's water attorney, Pete Johnson, will be in attendance at the October 22 meeting to provide a more comprehensive overview of the potential acquisition and to answer questions about the process and the potential outcomes.

FISCAL IMPACT

There are no specific costs identified at this time, though there will be expense associated with identifying and obtaining a storage location for the water right, as well as staff time costs associated with the water court proceedings.

Rather than purchasing the water with cash, the agreement states that the Town will issue water certificates pursuant to the Town's code in the amount of one (1) single-family equivalent (SFE) for every four tenths (0.4) of an acre foot of water

changes in water court for the Town's municipal use. Those certificates can then be applied to building projects on any lot in Town.

TOUCHSTONES

The Town's long-term *Sustainability* is dependent on a robust and diverse water portfolio. This water right has the potential to add a significant amount of water to the Town's portfolio via unique rights.

RECOMMENDED ACTION(S):

APPROVE THE CONTRACT TO BUY AND SELL WATER FOR THE LAWN LAKE WATER RIGHT AND THE ASSOCIATED ESCROW AGREEMENT; AND AUTHORIZE THE TOWN ADMINISTRATOR TO TAKE ACTIONS NECESSARY TO COMPLETE THE ACQUISITION

CONTRACT TO BUY AND SELL WATER RIGHTS
(Lawn Reservoir a/k/a Lawn Lake)

1. PARTIES AND WATER RIGHTS. The Town of Berthoud, a municipal corporation, ("Buyer") agrees to buy, and the undersigned seller, Lawn Lake Investments, LLC, a Colorado limited liability company with an address of 2435 Heron Lakes Parkway, Berthoud, Colorado 80513, ("Seller") agrees to sell, on the terms and conditions set forth in this Contract to Buy and Sell Water Rights ("Contract"), the following described water rights:

- A. Seller's Lawn Reservoir water storage right decreed in Case No. CA-4862, entered by the District Court, County of Boulder, on March 18, 1912, for storage in the amount of 759.6 acre-feet ("AF"), with a June 10, 1902 priority date; and
- B. Seller's Lawn Reservoir (Reservoir No. 11) storage refill right decreed in Case No. CA-10077, entered by the District Court, County of Boulder, on November 14, 1939, for a storage refill right in the amount of 759.6 AF, with an August 31, 1931 priority date.

The Lawn Reservoir storage right and Lawn Reservoir storage refill right are referred to jointly as the "Water Rights." The Buyer and Seller may also be referred to herein individually as a "Party" and collectively as "Parties."

2. CONDITIONS FOR PURCHASE AND SALE. The purchase and sale of the Water Rights is conditioned and contingent on the following:

- A. Buyer and Seller shall cooperate to identify and obtain a right(s) for storage of the Water Rights at a location and structure that is acceptable to Buyer, in Buyer's sole discretion. Buyer and Seller acknowledge and agree that the storage location for the subject water rights is paramount, and completion of this condition may require extension of the deadlines referenced herein.
- B. Seller shall convey to the Buyer good title to the Water Rights, free and clear of any and all liens and/or encumbrances other than the Seller's Lien described

below.

- C. Buyer shall receive a final, non-appealable decree adjudicating a change of the Water Rights ("Change Decree") in the District Court, Water Division 1 ("Water Court"), which Change Decree shall, among other things: (i) change the use and the place of use of the Water Rights to include the Buyer's municipal and other uses within the Buyer's service area and any extraterritorial areas served by the Buyer, as that service area may be expanded or modified from time to time; (ii) quantify the historical consumptive use of the Water Rights available for changed uses by the Buyer in terms of AF available per year; and (iii) identify place(s) of storage for the Water Rights that are acceptable to the Buyer.
- D. Seller shall be responsible for all costs associated with obtaining the Change Decree, and Seller shall cooperate with Buyer to obtain the Change Decree. The Buyer shall be responsible for and shall prosecute the change case before the Water Court. Seller shall execute any affidavits or other documents that the Buyer believes are reasonably necessary to obtain the Change Decree, and Seller shall work in good faith with the Buyer to successfully prosecute the change application and obtain the Change Decree. Seller shall not participate in the change case before the Water Court, unless requested by the Buyer.
- E. Buyer's obligations shall be expressly limited to the items described in the closings in Paragraph 9 below, and Buyer shall have no obligation whatsoever to any party other than Seller, including without limitation any claimant, party, or other entity related to the failure of the Lawn Reservoir dam and any case, claim, action, or lawsuit related thereto.

3. NOT ASSIGNABLE. This Contract shall not be assignable by Buyer without Seller's prior written consent. Except as so restricted, this Contract shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties.

4. EVIDENCE OF TITLE. As part of its due diligence process further described below in Paragraph 5, Buyer may obtain, at Seller's expense, an Ownership and Encumbrance Report ("O&E Report") or any other title work deemed appropriate by Buyer, in its sole discretion, to determine whether any encumbrances on the Water Rights are set forth therein. Buyer may require of Seller that copies of instruments (or abstracts

of instruments) listed in the schedule of exceptions in the O&E Report also be furnished to Buyer at Buyer's expense. This requirement shall pertain only to instruments shown of record in the office of the clerk and recorder of the designated county or counties. The Buyer may also conduct a search of the records of the Colorado Secretary of State to determine whether encumbrances on the Water Rights exist, at Buyer's expense ("UCC Report").

In addition, within thirty (30) days of execution of this Agreement, Seller shall provide true copies of all lease(s) in Seller's possession pertaining to the Water Rights and shall disclose to Buyer all liens or other title matters not shown by the public records of which Seller has actual knowledge.

5. DUE DILIGENCE. Buyer shall have six (6) months following mutual execution of this Contract to complete physical, legal, and engineering inspections, conduct physical testing, review title work, review records and documents, and conduct all other investigations it may deem necessary or desirable concerning the Subject Water Rights (the "Due Diligence Period"). Upon reasonable notice to Seller, and subject to any and all limitations on Seller's right to grant access, Buyer, its agents and subcontractors, will be granted access to Lawn Reservoir as needed to conduct its assessments and testing. If Buyer, for any reason whatsoever and in its sole and absolute discretion (a) is dissatisfied with the results of its due diligence investigations, including but not limited to the title matter discussed in Paragraph 4, or (b) finds the Water Rights to be otherwise unacceptable to Buyer, Buyer may provide written notice to Seller to terminate this Contract prior to expiration of the Due Diligence Period. Buyer's written notice of termination of this Contract shall be signed by or on behalf of the Buyer and delivered to Seller prior to expiration of the Due Diligence Period. Upon Seller's receipt of said notice, this Contract shall terminate.

6. WARRANTIES AND ASSESSMENTS. Seller warrants that it has good and sufficient title to the Water Rights, the right, privilege, and authority to sell the same, that there are no liens or encumbrances of any kind against the Water Rights.

7. TRANSFER OF TITLE TO WATER RIGHTS. Subject to compliance by Buyer with the terms and provisions hereof, Seller shall execute and deliver a good and sufficient Special Warranty Deed to Buyer conveying the Water Rights free and clear of all liens and encumbrances and past assessments, in substantially the form attached hereto as **Exhibit 1**.

8. **ESCROW.** The following shall be deposited into escrow within fourteen (14) days of execution of this Contract (jointly, the “Escrow Deposits”):

- A. The executed Special Warranty Deed referenced in Paragraph 7; and
- B. The executed Seller’s Lien, in substantially the same form as attached hereto as **Exhibit 2** (“Seller’s Lien”).

The Escrow Agent shall be Stewart Title Company (“Escrow Agent”), and the Escrow Deposits shall be held by Escrow Agent pursuant to the terms of the Escrow Agreement attached hereto as **Exhibit 3**.

9. **CLOSING.** Buyer and Seller will implement a two-phased closing for the acquisition and sale of the Water Rights.

- A. **First Closing.** The First Closing shall occur within forty-five (45) days following expiration of the Due Diligence Period unless this Contract is sooner terminated. The First Closing shall consist of the Escrow Agent releasing the following Escrow Deposits: (A) Release of the executed Special Warranty Deed, as described in Paragraph 7 above, to Buyer; and (B) Release of the executed Seller’s Lien to Seller. The Water Rights shall be conveyed to the Buyer free and clear of all encumbrances, except for the Seller’s Lien.
- B. **Second Closing.** Within ninety (90) days after entry of a final, non-appealable Change Decree, the Parties shall perform the Second Closing. The Second Closing shall consist of: (A) Buyer’s issuance of a Water Certificate to Seller, as described below in Paragraph 9.B.i; and (B) Seller’s execution of a Release of the Seller’s Lien, in substantially the form attached hereto as **Exhibit 4**, and delivery of said executed Release to Buyer.

- i. **Water Certificate.** Buyer shall issue to Seller a water certificate pursuant to Section 30-10-114(J) of the Berthoud Town Code, which certificate shall grant to Seller one (1) Single Family Equivalent water credit for each four tenths (0.4) AF per year of water changed and approved for the Buyer’s municipal use in the Change Decree. The water credits in said water certificate shall be transferrable to any property within the Town of Berthoud that has an approved final plat.

- ii. **Seller's Right to Foreclose.** If the Second Closing does not occur, then the Seller shall have the right to foreclose on the Seller's Lien.

11. PAYMENT OF ENCUMBRANCES. Any encumbrance required to be paid shall be paid within thirty (30) days of execution of this Contract, unless otherwise agreed to in writing by the Parties.

12. CLOSING COSTS, DOCUMENTS, AND SERVICES. Seller shall pay all transfer fees for the conveyance of the Water Rights to Buyer. The Parties shall split the \$1,500 escrow fee evenly in the amount of \$750 each.

13. TIME OF ESSENCE/REMEDIES. Time is of the essence hereof. If any obligation hereunder is not performed or waived as herein provided, there shall be the following remedies:

(a) If Buyer is in Default:

Seller may elect to treat this Contract as canceled, in which case all payments and things of value received hereunder shall be forfeited and retained on behalf of Seller, and Seller may recover such damages as may be proper, or Seller may elect to treat this Contract as being in full force and effect and Seller shall have the right to specific performance or damages, or both.

(b) If Seller is in Default:

Buyer may elect to treat this Contract as canceled, in which case all payments and things of value received hereunder shall be returned and Buyer may recover such damages as may be proper, or Buyer may elect to treat this Contract as being in full force and effect and Buyer shall have the right to specific performance or damages, or both.

(c) Costs and Expenses.

Anything to the contrary herein notwithstanding, in the event of any arbitration or litigation arising out of this Contract, the arbitrator or court

shall award to the prevailing party all reasonable costs and expenses, including attorney fees.

14. RECOMMENDATION OF LEGAL COUNSEL. By signing this document, Buyer and Seller acknowledge that this document has important legal consequences and that the examination of title and consultation with legal and tax or other counsel is recommended before signing this Contract.

15. TERMINATION. In the event this Contract is terminated, all payments and things of value received hereunder shall be returned and the Parties shall be relieved of all obligations hereunder.

16. NOTICE TO BUYER. Any notice to Buyer shall be effective when received by Buyer.

17. NOTICE TO SELLER. Any notice to Seller shall be effective when received by Seller.

18. MODIFICATION OF THIS CONTRACT. No subsequent modification of any of the terms of this Contract shall be valid, binding upon the parties, or enforceable unless made in writing and signed by the parties.

19. INDEMNIFICATION. Neither Buyer nor Seller has retained any broker to whom a commission is owed in connection with the sale of the Water Rights executed in this Contract. Each Party indemnifies and holds harmless the other Party from any commissions claimed by, through, or under the indemnifying party.

20. ENTIRE AGREEMENT. This Contract constitutes the entire Contract between the parties relating to the subject hereof, and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Contract.

21. BOARD APPROVAL. The Berthoud Board of Trustees approved this Contract when it affirmatively ratified the execution of this Contract through a motion approved on October 22.

BUYER: TOWN OF BERTHOUD

By: _____
Christopher Kirk, Town Administrator

Date of Buyer's Signature: _____

Buyer's Address: 807 Mountain Avenue, P.O. Box 1229, Berthoud, Colorado, 80513

SELLER: LAWN LAKE INVESTMENTS, LLC

By: _____
Jim Birdsall

Title: Member/Manager

Date of Seller's Signature: _____

Seller's Address: 2435 Heron Lakes Parkway, Berthoud, Colorado 80513

EXHIBIT 1

SPECIAL WARRANTY DEED

THIS DEED is made this ____ day of _____, 2024, between **LAWN LAKE INVESTMENTS, LLC**, a Colorado limited liability company with an address of 2435 Heron Lakes Parkway, Berthoud, Colorado 80513, ("Grantor") and the **TOWN OF BERTHOUD**, a Colorado municipal corporation, having an address of 807 Mountain Avenue, Berthoud, CO 80513 ("Grantee").

WITNESSETH, that Grantor, for and in consideration of certain Town of Berthoud water certificates representing water credits and other consideration, the receipt and sufficiency of which is hereby acknowledged, has granted, sold, and conveyed, and does hereby grant, sell, convey, and confirm unto Grantee, its successors and assigns forever, all the water rights situate, lying and being in the County of Larimer, State of Colorado, described as follows (the "Water Rights"):

- (1) The Lawn Reservoir water storage right decreed in Case No. CA-4862, entered by the District Court, County of Boulder, on March 18, 1912, for storage in the amount of 759.6 acre-feet ("AF"), with a June 10, 1902 priority date; and
- (2) The Lawn Reservoir (Reservoir No. 11) storage refill right decreed in Case No. CA-10077, entered by the District Court, County of Boulder, on November 14, 1939, for a storage refill right in the amount of 759.6 AF, with an August 31, 1931 priority date.

TOGETHER with all and singular the hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of the Grantor, either in law or equity, of, in and to the Water Rights, with the hereditaments and appurtenances.

TO HAVE AND TO HOLD the Water Rights with the appurtenances, unto the Grantee, its successors and assigns forever. The Grantor, for the Grantor and its heirs, successors, and assigns, does covenant and agree that Grantor shall and will

WARRANT AND FOREVER DEFEND the Water Rights in the quiet and peaceable possession of the Grantee, and the Grantee's successors and assigns, against all and every person or persons claiming the whole or any part thereof, by, through, or under the Grantor.

IN WITNESS WHEREOF, Grantor has executed this Deed on the date set forth above.

GRANTOR: LAWN LAKE INVESTMENTS, LLC

By: _____
Jim Birdsall

Title: Member/Manager

Address: 2435 Heron Lakes Parkway, Berthoud, Colorado 80513

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The foregoing SPECIAL WARRANTY DEED was acknowledged before me this ____ day of _____, 2024, by Jim Birdsall, Member / Manager of Lawn Lake Investments, LLC, a Colorado limited liability company.

Witness my hand and official seal.

Notary Public
My Commission Expires: _____

SEAL

EXHIBIT 2

SELLER'S LIEN

This Seller's Lien on Water Rights is made and entered as of the _____ day of _____, 2024, by the Town of Berthoud, a municipal corporation, ("Grantor"), and Lawn Lake Investments, LLC, a Colorado limited liability company with an address of 2435 Heron Lakes Parkway, Berthoud, Colorado 80513 ("Beneficiary")(together, the "Parties").

RECITALS

A. The Parties entered into that certain Contract to Buy and Sell Water Rights, dated _____, executed by the Parties ("Agreement"). The Agreement is attached as **Exhibit A**.

B. The Agreement concerns the purchase of the Lawn Reservoir storage right and Lawn Reservoir storage refill right, which are defined jointly by Paragraph 1 of the Agreement as the "Water Rights" and referred to herein as the "Lien Property."

C. This Seller's Lien shall be interpreted consistent with the Agreement, and any defined terms used but not defined herein shall have the meanings ascribed to them under the Agreement.

D. Under the terms of the Agreement, the Grantor is the record owner of the Lien Property; however, Grantor will issue, and Beneficiary will hold, a lien against the Lien Property. Said lien will be used to secure Beneficiary's right to foreclose on the Lien Property consistent with the terms and conditions of the Agreement.

AGREEMENT

NOW, THEREFORE, and in consideration of the premises set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby grants to Beneficiary, a lien on all of Grantor's estate, right, title, and interest, in, to, and under any and all of the following described property:

1. Lien Property.

a. The Lien Property was conveyed to Grantor through that Special Warranty Deed, dated _____, 2024, and recorded in the records of the Larimer County Clerk and Recorder under Rec. No. _____ on _____, 2024, and consists of the following:

(i) Seller's Lawn Reservoir water storage right decreed in Case No. CA-4862, entered by the District Court, County of Boulder, on March 18, 1912, for storage in the amount of 759.6 acre-feet ("AF"), with a June 10, 1902 priority date; and

(ii) Seller's Lawn Reservoir (Reservoir No. 11) storage refill right decreed in Case No. CA-10077, entered by the District Court, County of Boulder, on November 14, 1939, for a storage refill right in the amount of 759.6 AF, with an August 31, 1931 priority date; and

(iii) Together with all of Grantor's right, title, and interest in the Lien Property, and hereby declared to be subject to the liens and security interests of this Lien.

TO HAVE AND TO HOLD the Lien Property, together with the rights, privileges, and appurtenances belonging thereto, Grantor hereby binds itself and its successors and assigns, and covenants and agrees as follows:

2. Security Interest. This Lien is executed, acknowledged, and delivered to secure performance of the obligations of Grantor under the Agreement. When the Parties complete the Second Closing, as defined in the Agreement, the Beneficiary shall execute a Release of this Lien, in accordance with the Agreement. If the Second Closing does not occur, then the Seller shall have the right to foreclose on this Lien.

3. Covenants and Agreements.

a. Representations and Covenants of Grantor. In addition to all other representations, warranties, covenants, and agreements of Grantor in this Lien, Grantor hereby represents, warrants, covenants, and agrees as follows:

(i) This Lien is and will remain a valid and enforceable first-position lien on the Lien Property.

(ii) Grantor is a validly existing municipal corporation and has lawful authority to encumber the Lien Property in the manner and form set forth in this Lien.

(iii) Grantor will not offer for sale or sell or transfer or otherwise dispose of any of the Lien Property or any interest therein.

b. Change Case. Grantor and Beneficiary acknowledge and agree that, under the terms of the Agreement, Grantor will institute legal proceedings with the Water Division One Water Court that relate to and affect the Lien Property. Grantor and Beneficiary have agreed that Grantor shall have sole responsibility and control over all aspects of the prosecution of these proceedings. Consequently, nothing herein shall prevent Grantor from taking any actions which may alter, diminish, abandon, or otherwise lessen the value and/or utility of the Lien Property to Beneficiary, which may include but is not limited to a reduction in the historical consumptive use associated with the Lien Property. Consequently, Beneficiary will not have any cause of action against Grantor arising from any change to and effects on the Lien Property resulting from such proceedings, so long as Grantor is acting in compliance with the terms of the Agreement.

4. General Provisions.

a. Notices. All notices hereunder shall be in writing and shall be deemed to have been delivered and received for all purposes when delivered in person or delivered by a nationally-recognized overnight delivery service, to either Party at the address listed above. A party shall notify the other party of any change in address.

b. Captions. The captions or headings of the paragraphs of this Lien are for the purposes of convenience only and are not intended to be a part of the Lien and shall not be deemed to modify, explain, enlarge, or restrict any of the provisions hereof.

c. Severability. Any provision of this Lien that is legally prohibited or unenforceable be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

d. Amendment. This Lien cannot be altered, amended, modified, or discharged orally, and no executory agreement shall be effective to modify or discharge this Lien in whole or in part, unless such modification, alternation,

amendment, or discharge is in writing and signed by the party against whom enforcement of the modification, alteration, amendment, or discharge is sought.

e. Construction of this Document. This document may be construed as a mortgage, deed of trust, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, fixture filing, hypothecation, or contract, or any one or more of the foregoing, in order to fully effectuate the liens and security interests created hereby and the purposes and agreements herein set forth.

f. Integrated Agreement. This Lien, together with the Agreement, contain the final and complete integration of all prior expressions by the Parties with respect to the subject matter hereof, superseding all prior oral or written understandings.

g. Time. Time is of the essence.

h. Acceptance. The acceptance of this Lien by Beneficiary shall be evidenced when this Lien, duly executed and acknowledged, is made a public record as provided by law. The lien of this Lien created hereby is irrevocable by Grantor.

i. Conflict of Documents. In the event of any conflict between this Lien and the Agreement, the Agreement shall take precedence.

j. Counterparts. This Lien may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

k. Choice of Law, Venue. This Lien shall be governed and construed in accordance with the laws of the State of Colorado. All actions or proceedings with respect to this Lien may be instituted in the District Court for Larimer County, Colorado.

IN WITNESS WHEREOF, the undersigned has executed this Lien on Water Rights this _____ day of _____, 20____.

[Signature Pages Follow]

GRANTOR: TOWN OF BERTHOUD

By: _____
Christopher Kirk, Town Administrator

Date of Buyer's Signature: _____

Buyer's Address: 807 Mountain Avenue, P.O. Box 1229, Berthoud, Colorado, 80513

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The foregoing SELLER'S LIEN was acknowledged before me this ____ day of _____, 2024, by Christopher Kirk, as Town Administrator of the Town of Berthoud, a municipal corporation.

Witness my hand and official seal.

Notary Public
My Commission Expires: _____

SEAL

BENEFICIARY: LAWN LAKE INVESTMENTS, LLC

By: _____
Jim Birdsall

Title: Member/Manager

Address: 2435 Heron Lakes Parkway, Berthoud, Colorado 80513

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The foregoing SELLER'S LIEN was acknowledged before me this ____ day of _____, 2024, by Jim Birdsall, as Member / Manager of Lawn Lake Investments, LLC, a Colorado limited liability company.

Witness my hand and official seal.

Notary Public
My Commission Expires: _____

SEAL

EXHIBIT 3

ESCROW AGREEMENT

1. **PARTIES.** The parties to this Escrow Agreement are the **Town of Berthoud** ("Purchaser"), **Lawn Lake Investments, LLC** ("Seller"), and **Stewart Title Company** ("Escrow Agent").
2. **RECITAL.** The Seller and Purchaser have entered into a Contract to Buy and Sell Water Rights for (1) Seller's Lawn Reservoir water storage right decreed in Case No. CA-4862, entered by the District Court, County of Boulder, on March 18, 1912, for storage in the amount of 759.6 acre-feet ("AF"), with a June 10, 1902 priority date; and (2) Seller's Lawn Reservoir (Reservoir No. 11) storage refill right decreed in Case No. CA-10077, entered by the District Court, County of Boulder, on November 14, 1939, for a storage refill right in the amount of 759.6 AF, with an August 31, 1931 priority date ("Water Rights"), attached hereto as **EXHIBIT 1** ("Sales Agreement").
3. **DEFINITIONS AND INTERPRETATION.** Any defined (capitalized) term used but not defined herein shall have the meaning ascribed to it in the Sales Agreement. This Escrow Agreement is intended to be interpreted in a manner consistent with the Sales Agreement.
4. **DEPOSIT INTO ESCROW BY PURCHASER.** The Purchaser shall deposit the executed Seller's Lien into escrow with Escrow Agent within fourteen (14) days of execution of the Sales Agreement.
5. **DEPOSIT INTO ESCROW BY SELLER.** The Seller shall deposit the executed Special Warranty Deed for the Water Rights into escrow with Escrow Agent within fourteen (14) days of execution of the Sales Agreement.
6. **ESCROW ACCOUNT FEES.** The escrow account fees assessed for this transaction shall be \$1,500.00. Purchaser and Seller agree to each pay \$750 of the escrow account fees.
7. **RECORDING FEES.** Purchaser and Seller shall be responsible for payment of all recording fees for documents issued in their names.

8. **TWO-PHASED CLOSING.** There shall be two phases of closing, as set forth below.

- a. **First Closing.** The First Closing shall occur within forty-five (45) days of completion of Purchaser's Due Diligence Period. At the First Closing, the Escrow Agent shall release the Seller's Lien referenced in Paragraph 4 above to Seller and release the Special Warranty Deed referenced in Paragraph 5 above to Purchaser.
- b. **Second Closing.** Within ninety (90) days after entry of a final, non-appealable Change Decree, the Second Closing shall occur. The Second Closing shall consist of: (A) Purchaser's issuance of a Water Certificate to Seller, as described below in Paragraph 8.c and (B) Seller's execution of the Release of the Seller's Lien and delivery of said Release to Purchaser.
- c. **Water Certificate.** Purchaser shall issue to Seller a water certificate pursuant to Section 30-10-114(J) of the Berthoud Town Code, which certificate shall grant to Seller one (1) Single Family Equivalent water credit for each four tenths (0.4) AF per year of water changed and approved for the Purchaser's municipal use in the Change Decree.
- d. **Termination of Sales Agreement.** In the event that the Sales Agreement is terminated for any reason, Escrow Agent shall deliver the Seller's Lien to Purchaser and shall deliver the executed Special Warranty Deed for the Water Rights to Seller and this Contract shall terminate and all rights and obligations hereunder shall become null and void.

C. **INDEMNIFICATIONS.** In the event of any conflicting demand made upon it in connection with this Escrow Agreement, Escrow Agent may continue to hold the escrowed funds until receipt of instructions from both parties or until a final order by a court of competent jurisdiction resolving the subject dispute. Escrow Agent shall be entitled to rely upon any such final order. If for any reason the parties fail to resolve a dispute, Escrow Agent may, at its discretion, commence a civil action to interplead any conflicting demands made upon it. Escrow Agent's deposit with a

court of competent jurisdiction of the escrowed funds shall relieve Escrow Agent from all further liability and responsibility hereunder. The parties agree to indemnify and save Escrow Agent harmless against all costs, damages, attorneys' fees, expenses, and liabilities which Escrow Agent may incur or sustain in connection with this Escrow Agreement, including any interpleader action brought by Escrow Agent. Escrow Agent shall not be liable for any act it may do or omit to do hereunder while acting in good faith and in the exercise of its reasonable judgment, and any act done or omitted by Escrow Agent pursuant to the advice of its attorney shall be conclusive evidence of such good faith and reasonable judgment.

D. **NOTICES.** Any notice required or permitted by this Escrow Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified or registered mail, postage and fees prepaid, addressed to the party to whom such notice is intended to be given at the address set forth on the signature page below, or at such other address as has been previously furnished in writing to the other party or parties. Such notice shall be deemed to have been given when deposited in the U.S. Mail.

E. **TIME OF THE ESSENCE.** Time is of the essence to all performance required by this Escrow Agreement.

F. **PARAGRAPH CAPTIONS.** The captions of the paragraphs are set forth only for convenience and reference, and are not intended in any way to define, limit, or describe the scope or intent of this Escrow Agreement.

DATED: _____, 2024

[Signature page(s) follow]

PURCHASER:

TOWN OF BERTHOUD

By: _____
Christopher Kirk, Town Administrator

Address: 807 Mountain Avenue
P.O. Box 1229
Berthoud, Colorado, 80513

SELLER:

LAWN LAKE INVESTMENTS, LLC

By:

Jim Birdsall

Title: Member/Manager

Address: 2435 Heron Lakes Parkway, Berthoud,
Colorado 80513

ESCROW AGENT:

STEWART TITLE COMPANY

By: _____

Gina Cruz

Address: 12110 North Pecos Street, Suite 150
Westminster, CO 80234

EXHIBIT 4
RELEASE OF SELLER'S LIEN

THIS RELEASE OF SELLER'S LIEN is made as of _____, 20____, between the Town of Berthoud, a municipal corporation, ("Grantor"), and Lawn Lake Investments, LLC, a Colorado limited liability company with an address of 2435 Heron Lakes Parkway, Berthoud, Colorado 80513 ("Beneficiary")(together, the "Parties").

RECITALS

A. The Parties entered into that certain Contract to Buy and Sell Water Rights, dated _____, concerning the purchase and sale of certain water rights ("Agreement"), attached hereto as **Exhibit 1**.

B. Any defined (capitalized) term used but not defined herein shall have the meaning ascribed to it in the Agreement, and this Release is intended to be interpreted consistent with the Agreement.

C. Pursuant to Paragraph 8(B) of the Agreement, Grantor executed the Seller's Lien attached hereto as **Exhibit 2** for the Beneficiary.

E. Paragraph 9(B) of the Agreement provides that within ninety (90) days after entry of a final, non-appealable Change Decree, the Parties shall perform the Second Closing, which shall consist of: (A) Buyer's issuance of a Water Certificate to Seller, as described therein and (B) Buyer's execution of this Release of the Seller's Lien.

C. The aforementioned conditions for the Release of the Seller's Lien have been satisfied, and the Parties desire to execute this Release for the Seller's Lien to terminate and become of no further force or effect.

RELEASE

IN CONSIDERATION of the foregoing and other good and valuable consideration, the Beneficiary hereby releases, in full, that certain Seller's Lien, dated _____ and recorded with the Clerk and Recorder of Larimer County, Colorado under Reception No. _____ on _____, and it is of no further force or effect. The Water Rights that were encumbered by the aforementioned Seller's Lien are no longer so encumbered.

BENEFICIARY: LAWN LAKE INVESTMENTS, LLC

By: _____
Jim Birdsall

Title: Member/Manager

Address: 2435 Heron Lakes Parkway, Berthoud, Colorado 80513

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The foregoing RELEASE OF SELLER'S LIEN was acknowledged before me this ____ day of _____, 2024, by Jim Birdsall, as Member / Manager of Lawn Lake Investments, LLC, a Colorado limited liability company.

Witness my hand and official seal.

Notary Public
My Commission Expires: _____

SEAL

GRANTOR: TOWN OF BERTHOUD

By: _____
Christopher Kirk, Town Administrator

Date of Buyer's Signature: _____

Buyer's Address: 807 Mountain Avenue, P.O. Box 1229, Berthoud, Colorado, 80513

STATE OF COLORADO)

COUNTY OF LARIMER) ss.
)

The foregoing RELEASE OF SELLER'S LIEN was acknowledged before me this ____ day of _____, 2024, by Christopher Kirk, as Town Administrator of the Town of Berthoud, a municipal corporation.

Witness my hand and official seal.

Notary Public

My Commission Expires: _____

SEAL

ESCROW AGREEMENT

1. **PARTIES.** The parties to this Escrow Agreement are the **Town of Berthoud** ("Purchaser"), **Lawn Lake Investments, LLC** ("Seller"), and **Stewart Title Company** ("Escrow Agent").

2. **RECITAL.** The Seller and Purchaser have entered into a Contract to Buy and Sell Water Rights for (1) Seller's Lawn Reservoir water storage right decreed in Case No. CA-4862, entered by the District Court, County of Boulder, on March 18, 1912, for storage in the amount of 759.6 acre-feet ("AF"), with a June 10, 1902 priority date; and (2) Seller's Lawn Reservoir (Reservoir No. 11) storage refill right decreed in Case No. CA-10077, entered by the District Court, County of Boulder, on November 14, 1939, for a storage refill right in the amount of 759.6 AF, with an August 31, 1931 priority date ("Water Rights"), attached hereto as **EXHIBIT 1** ("Sales Agreement").

3. **DEFINITIONS AND INTERPRETATION.** Any defined (capitalized) term used but not defined herein shall have the meaning ascribed to it in the Sales Agreement. This Escrow Agreement is intended to be interpreted in a manner consistent with the Sales Agreement.

4. **DEPOSIT INTO ESCROW BY PURCHASER.** The Purchaser shall deposit the executed Seller's Lien into escrow with Escrow Agent within fourteen (14) days of execution of the Sales Agreement.

5. **DEPOSIT INTO ESCROW BY SELLER.** The Seller shall deposit the executed Special Warranty Deed for the Water Rights into escrow with Escrow Agent within fourteen (14) days of execution of the Sales Agreement.

6. **ESCROW ACCOUNT FEES.** The escrow account fees assessed for this transaction shall be \$1,500.00. Purchaser and Seller agree to each pay \$750 of the escrow account fees.

7. **RECORDING FEES.** Purchaser and Seller shall be responsible for payment of all recording fees for documents issued in their names.

8. **TWO-PHASED CLOSING.** There shall be two phases of closing, as set forth below.

- a. **First Closing.** The First Closing shall occur within forty-five (45) days of completion of Purchaser's Due Diligence Period. At the First Closing, the Escrow Agent shall release the Seller's Lien referenced in Paragraph 4 above to Seller and release the Special Warranty Deed referenced in Paragraph 5 above to Purchaser.
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- c. **Water Certificate.** Purchaser shall issue to Seller a water certificate pursuant to Section 30-10-114(J) of the Berthoud Town Code, which certificate shall grant to Seller one (1) Single Family Equivalent water credit for each four tenths (0.4) AF per year of water changed and approved for the Purchaser's municipal use in the Change Decree.
- d. **Termination of Sales Agreement.** In the event that the Sales Agreement is terminated for any reason, Escrow Agent shall deliver the Seller's Lien to Purchaser and shall deliver the executed Special Warranty Deed for the Water Rights to Seller and this Contract shall terminate and all rights and obligations hereunder shall become null and void.

B. **INDEMNIFICATIONS.** In the event of any conflicting demand made upon it in connection with this Escrow Agreement, Escrow Agent may continue to hold the escrowed funds until receipt of instructions from both parties or until a final order by a court of competent jurisdiction resolving the subject dispute. Escrow Agent shall be entitled to rely upon any such final order. If for any reason the parties fail to resolve a dispute, Escrow Agent may, at its discretion, commence a civil action to interplead any conflicting demands made upon it. Escrow Agent's deposit with a

court of competent jurisdiction of the escrowed funds shall relieve Escrow Agent from all further liability and responsibility hereunder. The parties agree to indemnify and save Escrow Agent harmless against all costs, damages, attorneys' fees, expenses, and liabilities which Escrow Agent may incur or sustain in connection with this Escrow Agreement, including any interpleader action brought by Escrow Agent. Escrow Agent shall not be liable for any act it may do or omit to do hereunder while acting in good faith and in the exercise of its reasonable judgment, and any act done or omitted by Escrow Agent pursuant to the advice of its attorney shall be conclusive evidence of such good faith and reasonable judgment.

C. **NOTICES.** Any notice required or permitted by this Escrow Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified or registered mail, postage and fees prepaid, addressed to the party to whom such notice is intended to be given at the address set forth on the signature page below, or at such other address as has been previously furnished in writing to the other party or parties. Such notice shall be deemed to have been given when deposited in the U.S. Mail.

D. **TIME OF THE ESSENCE.** Time is of the essence to all performance required by this Escrow Agreement.

E. **PARAGRAPH CAPTIONS.** The captions of the paragraphs are set forth only for convenience and reference, and are not intended in any way to define, limit, or describe the scope or intent of this Escrow Agreement.

DATED: _____, 2024

[Signature page(s) follow]

PURCHASER:

TOWN OF BERTHOUD

By: _____
Christopher Kirk, Town Administrator

Address: 807 Mountain Avenue
P.O. Box 1229
Berthoud, Colorado, 80513

SELLER:

LAWN LAKE INVESTMENTS, LLC

By:

Jim Birdsall

Title: Member/Manager

Address: 2435 Heron Lakes Parkway, Berthoud,
Colorado 80513

ESCROW AGENT:

STEWART TITLE COMPANY

By: _____

Gina Cruz

Address: 12110 North Pecos Street, Suite 150
Westminster, CO 80234

BOARD OF TRUSTEES INFORMATION



ADMINISTRATION DEPARTMENT

Meeting Date:	October 22, 2024
Agenda Title/Subject:	Correction of Section 3 and 6 of Chapter 30
Type of Item:	Public Hearing
Purpose:	To adopt an ordinance repealing and reenacting certain portions of the Municipal Code regarding Use by Special Review and Site Plans and the Requirements thereof
Presented by:	Christian Samora

ATTACHMENTS:

- Ordinance 1346 – An ordinance of the Town of Berthoud, Colorado repealing and reenacting certain Sections of the Berthoud Municipal Code regarding Use by Special Review and Site Plans and the requirements thereof
- Exhibit A to Ordinance 1346
- Exhibit A to Ordinance 1346 – Redline

BACKGROUND:

The purpose of the ordinance is to correct Sections 30-3-106 and 30-6-112 of the Berthoud Municipal code. The referenced sections were amended by three prior ordinances that were enacted by the Board of Trustees. The overlapping changes contained within these ordinances do not align correctly when incorporated into the Municipal Code.

The attached Exhibit A contains complete language for two code sections that are the subject of this ordinance. The language contained within the exhibit is consistent with the ordinances that were previously approved by the Board of Trustees. Additionally, there is an attached redline document to illustrate the changes made by each of the prior ordinances.

The proposed ordinance combines changes from the prior ordinances into a single ordinance. To update these code sections in the most efficient way, both sections are entirely repealed and replaced to ensure the final changes to the code are accurate. The ordinance also memorializes the prior approvals to ensure they can easily be referenced in the future.

RECOMMENDED ACTION(S):

Following a public hearing, a Board Member may move to approve Ordinance 1346, an ordinance of the Town of Berthoud, Colorado repealing and reenacting certain Sections of the Berthoud Municipal Code regarding Use by Special Review and Site Plans and the requirements thereof. Followed by a second and a roll call vote.

**TOWN OF BERTHOUD ORDINANCE
NUMBER 1346
(SERIES 2023)**

**AN ORDINANCE OF THE TOWN OF BERTHOUD, COLORADO REPEALING AND
REENACTING SECTION 30-3-106 and 30-6-112 OF THE BERTHOUD MUNICIPAL CODE
REGARDING USE BY SPECIAL REVIEW AND SITE PLANS AND THE REQUIREMENTS
THEREOF.**

WHEREAS, the Town of Berthoud is a municipal corporation possessing all powers granted to a statutory town by Title 31 of the Colorado Revised Statutes; and

WHEREAS, the Town previously amended sections of the Municipal Code to remain consistent with the intent of the 2021 Comprehensive Plan update, to maintain consistency with State and Federal regulations, and to clarify the intent of application requirements and development standards; and

WHEREAS, the Planning Commission, after proper notice, held public hearings on August 24, 2023, September 28, 2023, and June 13, 2024 on ordinances 1322, 1326, and 1346 respectively and provided for a recommendation of approval from the Town Board of Trustees; and

WHEREAS, the Board of Trustees, after proper notice, held public hearings on September 26, 2024, November 28, 2024, and September 10, 2024 on ordinances 1322, 1326, and 1343 respectively providing for the adoption of said code amendments pursuant to C.R.S. Section 31-16-203; and

WHEREAS, this ordinance contains the changes to the Berthoud Municipal Code that were approved by the aforementioned ordinances; and

WHEREAS, the sole purpose of this ordinance is to combine said changes, specifically in Section 30-3-106, and readopt said Section to ensure that the intent of the changes is properly reflected in the Berthoud Municipal Code: and

WHEREAS, the Development Code and amendments thereto have been submitted to the Board of Trustees in writing and the Board of Trustees has determined that such code and amendments thereto should be adopted as herein set forth; and

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN BOARD OF TRUSTEES OF THE TOWN OF BERTHOUD, COLORADO:

Section 1. That Chapter 30 regarding land use application processing requirements as set forth in Exhibit A, attached is hereby adopted;

Section 2. If any section, paragraph, sentence, clause, or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance.

Section 3. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

Section 4. The repeal or modification of any provision of the Municipal Code of the Town of Berthoud by this ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and

each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all property actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

Section 5. The provisions of this ordinance shall take effect thirty days after publication as required by law, and shall apply to all development and construction permitted after such date.

READ, ADOPTED, AND APPROVED on this 22nd day of October, 2024.

TOWN OF BERTHOUD

By _____
William Karspeck, Mayor

ATTEST:

By: _____
Christian Samora, Town Clerk

30-3-106 - Use by Special Review

- A. *Purpose.* In order to provide flexibility and to help diversify uses within a zoning district, specified uses are permitted in certain districts subject to the granting of a conditional use or use by special review permit. Refer to Table 3.3 for uses that may be contemplated through the Use by Special Review permit process. For purposes of this Section, the term conditional use applies to both conditional uses and uses by special review.

Because of their unusual or special characteristics, conditional uses require review and evaluation so that they may be located properly with respect to their effects on surrounding properties. The review process prescribed in this Section is intended to assure compatibility and harmonious development between conditional uses, surrounding properties and the Town at large. Conditional uses may be permitted subject to such conditions and limitations as the Town may prescribe to ensure that the location and operation of the conditional uses will be in accordance with the conditional use criteria. The scope and elements of any conditional use may be limited or qualified by the conditions applicable to the specific property. Where conditions cannot be devised to achieve these objectives, applications for conditional use permits shall be denied.

- B. *Use by Special Review process.*

1. The procedures found in Table 3.10 shall be followed.
2. Notice shall be given in accordance with the public hearing and general notice provisions found in this Chapter.
3. Unless otherwise stated in the Resolution, all Use by Special Review applications shall be commenced within six (6) months of the time of such approval, otherwise the Use by Special Review shall be null and void.
4. Use by Special Review application submittal. The applicant shall submit the complete application package to the Town and shall request that the application be reviewed by the Planning Commission and Board.
 - a. Land use application form.
 - b. Title commitment. The title commitment must be current and dated no more than 30 days from the date of conditional use application submittal.
 - c. Written statement and any graphics necessary to describe the precise nature of the proposed use and its operating characteristics and to illustrate how all conditional use review criteria have been satisfied.
 - d. A map showing the proposed development of the site, including topography, building locations, parking, traffic circulation, usable open space, landscaped area and utilities and drainage features.
 - e. Preliminary building plans and elevations sufficient to indicate the dimensions, general appearance and scale of all buildings.
 - f. Such additional material as the Town may prescribe or the applicant may submit pertinent to the application.

- g. Surrounding and interested property ownership report — Provide the Town with a current set of mailing labels (not more than 30 days old) of the names and addresses of the surrounding property owners (within 300 feet of the property), mineral interest owners and mineral and oil and gas lessees of record for the property, and appropriate ditch companies. The applicant shall certify that the report is complete and accurate.
- C. *Use by Special Review criteria.* The Town may approve a conditional use application if it finds that each of the following criteria are satisfied:
 - 1. The conditional use will satisfy all applicable provisions of the zoning code and subdivision regulations unless a variance is being requested.
 - 2. The conditional use will conform with or further the goals, policies and strategies set forth in the Town of Berthoud Comprehensive Plan.
 - 3. The conditional use will be adequately served with public utilities, services, and facilities (i.e. water, sewer, electric, schools, street system, fire protection, public transit, storm drainage, refuse collection, parks system, etc.) and not impose an undue burden above and beyond those of the permitted uses of the district.
 - 4. The conditional use will not substantially alter the basic character of the district in which it is in or impair the development or redevelopment potential of the district.
 - 5. The conditional use will result in efficient on- and off-site traffic circulation which will not have a significant adverse impact on the adjacent uses or result in hazardous conditions for pedestrians or vehicles in or adjacent to the site.
 - 6. Potential negative impacts of the conditional use on the rest of the neighborhood or of the neighborhood on the conditional use have been mitigated through setbacks, architecture, screen walls, landscaping, site arrangement or other methods. The applicant shall, at a minimum, satisfactorily address impacts including: traffic; activity levels; light; noise; odor; building type, style and scale; hours of operation; dust; and erosion control.
 - 7. The applicant has submitted evidence that all applicable local, state and federal permits have been or will be obtained.

30-6-112 - Site plan

- A. *Site Plan Purpose.* Approval of a site plan review application is a prerequisite to applying for a building permit for all multi-family (excluding duplexes), commercial, and industrial developments. The site plan shows how the lot will be developed so that the Town can ensure that the site design will be in compliance with all Town regulations and this Code. Refer to Table 3.3 for uses that may be contemplated through the Use by Special Review permit process.
- B. *Site Plan process.*
 - 1. The procedures found in Table 3.10 shall be followed.
 - 2. Notice shall be given in accordance with the public hearing and general notice provisions found in this Chapter.
 - 3. *Site Plan application.*
 - a. Land use application form.
 - b. Application fee and fee agreement.
 - c. Site Plan map — The site plan map shall be a minimum of 18 inches by 24 inches and shall provide the following information:

- h. Title of project.
 - ii. North arrow, scale (no greater than one inch equals 50 feet) and date of preparation.
 - iii. Vicinity map.
 - iv. Address of project.
 - v. Legal description of property.
 - vi. Name, address and phone number of property owner.
 - vii. Name, address and phone number of person or firm responsible for plan.
 - viii. Lot size (square footage).
 - ix. Bearings and distances of all lot lines.
 - x. Existing and proposed easements and rights-of-way.
 - xi. Existing and proposed paved areas and sidewalks on the site and in the adjacent rights-of-way, all dimensioned, showing how pedestrians will have access to the site and buildings.
 - xii. Gathering areas for people.
 - xiii. Existing and proposed curb cuts on the site and in the adjacent rights-of-way (on both sides of perimeter streets), all dimensioned.
 - xiv. Existing and proposed two-foot contours.
 - xv. Existing waterways on or adjacent to the site.
 - xvi. Finished floor elevations for all structures.
 - xvii. Footprint (including roof overhangs and eaves, decks, balconies, outside stairs and landings) of all proposed structures and their use with their dimensions and locations noted with respect to the property lines.
 - xviii. Existing structures and their use.
 - xix. Square footage of the proposed building(s) and the footprint of the proposed building(s).
 - xx. Proposed structure height.
 - xxi. For commercial and industrial uses, the type of activity and number of employees.
 - xxii. For multi-family residential, the number of residential units and bedrooms per unit.
 - xxiii. Location of proposed signs and lights.
 - xxiv. Specifications for the signs and lights, including type, height and general conformance to the Code. For commercial and industrial uses, a photometric plan prepared by a qualified electrical or lighting engineer shall be submitted that depicts all lighting fixtures and the light spread (in footcandles) of these fixtures across the site to all property boundaries.
 - xxv. Proposed traffic controls and striping for parking areas (all lanes, driveways, and parking spaces must be dimensioned).
 - xxvi. Trash disposal areas and enclosures including specifications for enclosures.
 - xxvii. Location and size of existing and proposed water and sewer service connections and tap sizes (including those for irrigation systems).
 - xxviii. Location and size of water and sewer lines to which the service connections will be or are made.
 - xxix. Location and size of water meter(s).
 - xxx. Location and size of backflow-prevention devices.

- xxxvi. Location of all fire hydrants. If none exist on site, note distance and direction of the closest hydrant adjacent to the site within 500 feet.
- xxxvii. Location of detention/retention areas and storm sewer infrastructure with the required drainage easements.
- xxxviii. The distance from the proposed building(s) or structure(s) to adjacent lot lines, easements, and adjacent structures.
- xxxix. A land use chart (table).
- xl. Certificate blocks for signatures of owner, surveyor, utility providers, and Town approval, as applicable.

LEGAL DESCRIPTION

(LEGAL DESCRIPTION)

OWNER and PROFESSIONAL INFORMATION:

OWNER	ENGINEER	ARCHITECT	OTHER
Name	"	"	"
Address	"	"	"
Phone #	"	"	"

RIGHT TO FARM STATEMENT: The Town of Berthoud has adopted a "Right to Farm" policy. All new and existing residents are expected to read and understand the policy. For a copy of the policy, please contact the Town of Berthoud.

APPROVAL CERTIFICATES:

Approved by the Town Administrator of the Town of Berthoud, Colorado, this _____ day of _____, A.D., 20____.

Town Administrator

Approved by the Engineer of the Town of Berthoud, Colorado, this _____ day of _____, A.D., 20____.

Engineer

The foregoing plan is approved for filing and accepted by the Town of Berthoud, Colorado, this _____ day of _____, A.D., 20____.

ATTEST:

Community Development Director

SITE SPECIFIC DEVELOPMENT PLAN:

This plan constitutes a site specific development plan as defined in Article 68 of Title 24, C.R.S., as amended, and Chapter 30 of the Berthoud Development Code available at the Berthoud Town Hall, 328 Massachusetts Avenue, Berthoud, Colorado 80513.

- d. Community design standards — Demonstrate in written or graphic form how the proposed structure(s) is consistent with Chapter 30, Section 2 of this Code.
 - e. Certified drainage report — A certified drainage report, including an erosion control study and plan, as applicable, must be reviewed and approved by the appropriate sanitation district (if applicable) prior to submittal of the report to the Town as part of the site plan application.
 - f. Final landscape and open space plan. Provide an existing and proposed landscape and open space plan consistent with this Section.
 - ~~g.~~ Exterior elevations of proposed structures/graphic visual aids. Provide complete building elevations, drawn to scale, with illustrations of all colors and identifying major materials to be used in the structure(s). In addition, Staff may require building floor plans, sectional drawings, perspective drawings, models, and/or computer visualizations when the impacts of a proposal warrant such information.
4. *Review and action.* The Town Administrator and Planner shall be responsible for processing all applications for Site Plan Reviews within the Town of Berthoud. The Town Administrator and Planner shall also have the responsibility of ensuring that all applications and submittal requirements are met prior to initiating any official action as listed above. The authority and responsibility for making the decision to approve, disapprove or approve with conditions all requests for a site plan review will rest with the Town Administrator.

The Town Administrator may refer a site plan application to the Planning Commission for the Commission's review and action, based on a determination that the proposed development's complexity, projected impacts, or proximity to conflicting land uses merits such action. The application and notice of the referral shall be sent to the Planning Commission for its review within a Public Hearing and action. Appeals of any Planning Commission final decision may be made to the Town Board acting as the Board of Appeals using the appeal procedures found in Section 30-3-108.B. and C.

5. *Board consideration of appeals.* The Board of Trustees shall consider any appeal within 45 days of the close of the 14-day appeal period, except an appeal associated with a concurrent development application requiring Board review or approval, shall be considered with final action on the concurrent development application. The Board shall apply the site plan review criteria to uphold, modify, or reverse an earlier decision.
6. *Post approval actions.*
 - a. *Building Permit.* A building permit shall be issued only when a site plan has been approved. However, with the approval of the Town, an applicant may submit a building permit application concurrent with the site plan application. Building permits shall not be issued for any development that is not in conformance with the approved site plan.
 - b. *Phasing and expiration of approval.* The site plan shall be effective for a period of three years from the date of approval, unless stated otherwise in the written site plan approval. Building permits shall not be issued based on site plans that have an

approval date more than three years old. For multi-phased plans, building permits shall not be issued based on an approval date more than three years from the date of Phase I approval.

C. *Site Plan review criteria.* In addition to all requirements of this Code, the site plan must meet the following review criteria:

1. Application materials are complete.
2. The proposed land use will satisfy all applicable provisions of the zoning code, overlay districts, and subdivision regulation unless a variance is being concurrently requested.
3. The proposed land use will conform with or further the goals, policies and strategies set forth in the Town of Berthoud Comprehensive Plan.
4. The proposed land use will be adequately served with public utilities, services, and facilities (i.e. water, sewer, electric, schools, street system, fire protection, public transit, storm drainage, refuse collection, parks system, etc.) and not impose an undue burden above and beyond those of the permitted uses of the district.
5. The proposed land use will not substantially alter the basic character of the district in which it is in or impair the development or redevelopment potential of the district.
6. The proposed land use will result in efficient on- and off-site traffic circulation which will not have a significant adverse impact on the adjacent uses or result in hazardous conditions for pedestrians or vehicles in or adjacent to the site.
7. Potential negative impacts of the proposed land use on the rest of the neighborhood or of the neighborhood on the proposed land use have been mitigated through setbacks, architecture, screening, landscaping, site arrangement or other methods. The applicant shall, at a minimum, satisfactorily address impacts including: traffic; activity levels; light; noise; odor; building type, style and scale; hours of operation; dust; and erosion control.
8. The applicant has submitted evidence that all applicable local, state and federal permits have been or will be obtained.

D. *Amendments to approved Site Plans.*

1. Minor variations in the location of structures, improvements, or open space areas caused by engineering or other unforeseen difficulties may be reviewed and approved by the Town Staff. Such changes shall not exceed ten percent of any measurable standard or modify the use, character, or density of an approved site plan. All plans so modified shall be revised to show the authorized changes and shall become a part of the permanent records of the Town.
2. Changes to approved site plans that exceed the ten percent threshold, or other major modifications (such as changes in building size or footprint, relocation of access points, changes to required parking, etc.), shall be considered as a new site plan application. A complete site plan application shall be prepared and submitted in compliance with the requirements set forth in this Section.

Color Coding to demonstrate intent of previously passed ordinances.

- *Ordinance 1322*
- *Ordinance 1326*
- *Ordinance 1343*

Exhibit A: Ordinance 1346 (2024)

30-3-106 - ~~Conditional uses,~~ use Use by Special Review

- A. *Purpose.* In order to provide flexibility and to help diversify uses within a zoning district, specified uses are permitted in certain districts subject to the granting of a conditional use or use by special review permit. *Refer to Table 3.3 for uses that may be contemplated through the Use by Special Review permit process.* For purposes of this Section, the term conditional use applies to both conditional uses and uses by special review.

Because of their unusual or special characteristics, conditional uses require review and evaluation so that they may be located properly with respect to their effects on surrounding properties. The review process prescribed in this Section is intended to assure compatibility and harmonious development between conditional uses, surrounding properties and the Town at large. Conditional uses may be permitted subject to such conditions and limitations as the Town may prescribe to ensure that the location and operation of the conditional uses will be in accordance with the conditional use criteria. The scope and elements of any conditional use may be limited or qualified by the conditions applicable to the specific property. Where conditions cannot be devised to achieve these objectives, applications for conditional use permits shall be denied.

- B. *Conditional Use review Use by Special Review process.*
1. The procedures found in Table 3.10 shall be followed.
 2. Notice shall be given in accordance with the public hearing and general notice provisions found in this Chapter. ~~Optional pre-application conference. The applicant may attend a pre-application conference with a representative from the Town. The purpose of the meeting is to discuss the conditional use submittal requirements and review process.~~
 3. Unless otherwise stated in the Resolution, all Use by Special Review applications shall be commenced within six (6) months of the time of such approval, otherwise the Use by Special Review shall be null and void.
 4. ~~Conditional Use application submittal~~ Use by Special Review application submittal. The applicant shall submit the complete ~~conditional use~~ application package to the Town and shall request that the application be reviewed by the Planning Commission and Board. ~~Conditional use requests shall include:~~
 - a. Land use application form.
 - b. Title commitment. The title commitment must be current and dated no more than 30 days from the date of conditional use application submittal.

- c. Written statement and any graphics necessary to describe the precise nature of the proposed use and its operating characteristics and to illustrate how all conditional use review criteria have been satisfied.
 - d. A map showing the proposed development of the site, including topography, building locations, parking, traffic circulation, usable open space, landscaped area and utilities and drainage features.
 - e. Preliminary building plans and elevations sufficient to indicate the dimensions, general appearance and scale of all buildings.
 - f. Such additional material as the Town may prescribe or the applicant may submit pertinent to the application.
 - g. Surrounding and interested property ownership report — Provide the Town with a current set of mailing labels (not more than 30 days old) of the names and addresses of the surrounding property owners (within 300 feet of the property), mineral interest owners and mineral and oil and gas lessees of record for the property, and appropriate ditch companies. The applicant shall certify that the report is complete and accurate.
- ~~5. *Conditional Use application certification of completion.* Within a reasonable period of time, Staff shall either certify the application is complete and in compliance with all submittal requirements or reject it as incomplete and notify the applicant of any deficiencies. Applicant shall then correct any deficiencies in the application package, if necessary, and submit the required number of copies of the application to the Town. The original application and all documents requiring a signature shall be signed in blue ink.~~
- ~~6. *Set Conditional Use public meeting and hearing dates and notify public.* The Town shall send notice of the public meeting with the Planning Commission and public hearing with the Town Board to the applicant, all property owners of record within 300 feet of the property in question, all mineral interest owners of record, oil and gas lessees for the property, and to the appropriate referral agencies per this Code. The referral information shall include the time and place of the public meeting and hearing, the nature of the meeting/hearing, the location of the subject property, appropriate background information and the applicant's name. The Town shall publish notice for both the meeting and hearing in a newspaper of general circulation. The Town shall also prepare a notification sign to be posted on the property by the applicant. If the conditional use request is accompanying another application which is scheduled for a public meeting or hearing, such public meeting or hearing may be combined on both applications.~~
- ~~7. *Planning Commission review of the Conditional Use application.* The Planning Commission shall hold a meeting to review the application and determine if the application complies with the conditional use review criteria. The Planning Commission will then recommend to the Board approval, approval with conditions or denial.~~
- ~~8. *Board public hearing and action on the Conditional Use.* The Board shall hold a public hearing on the conditional use application. Following the public hearing, the Board may approve, conditionally approve or deny the conditional use application based on the conditional use review criteria. A conditional use permit may be revocable, may be granted for a limited time period, and may be granted subject to~~

~~such other conditions as the Board may prescribe. Conditions may include, but shall not be limited to: requiring special setbacks, open spaces, fences or walls, landscaping or screening, street dedication and improvement, regulation of vehicular access and parking, signs, illumination, hours and methods of operation, control of potential nuisances, any standards for maintenance of buildings and grounds, and any development schedules.~~

- C. *Use by Special Review* ~~Conditional Use review~~ *criteria*. The Town may approve a conditional use application if it finds that each of the following criteria are satisfied:
1. The conditional use will satisfy all applicable provisions of the zoning code and subdivision regulations unless a variance is being requested.
 2. The conditional use will conform with or further the goals, policies and strategies set forth in the Town of Berthoud Comprehensive Plan.
 3. The conditional use will be adequately served with public utilities, services, and facilities (i.e. water, sewer, electric, schools, street system, fire protection, public transit, storm drainage, refuse collection, parks system, etc.) and not impose an undue burden above and beyond those of the permitted uses of the district.
 4. The conditional use will not substantially alter the basic character of the district in which it is in or impair the development or redevelopment potential of the district.
 5. The conditional use will result in efficient on- and off-site traffic circulation which will not have a significant adverse impact on the adjacent uses or result in hazardous conditions for pedestrians or vehicles in or adjacent to the site.
 6. Potential negative impacts of the conditional use on the rest of the neighborhood or of the neighborhood on the conditional use have been mitigated through setbacks, architecture, screen walls, landscaping, site arrangement or other methods. The applicant shall, at a minimum, satisfactorily address impacts including: traffic; activity levels; light; noise; odor; building type, style and scale; hours of operation; dust; and erosion control.
 7. The applicant has submitted evidence that all applicable local, state and federal permits have been or will be obtained.

30-6-112 - Site plan

- A. *Site Plan Purpose*. ~~Approval of a site plan review application~~ ~~The site plan~~ is a prerequisite to ~~applying for~~ a building permit for all multi-family (excluding duplexes), commercial, and industrial developments. The site plan shows how the lot will be developed so that the Town can ensure that the site design will be in compliance with all Town regulations and this Code. ~~Refer to Table 3.3 for uses that may be contemplated through the Use by Special Review permit process.~~
- B. *Site Plan process*.
1. ~~The procedures found in Table 3.10 shall be followed.~~
 2. ~~Notice shall be given in accordance with the public hearing and general notice provisions found in this Chapter.~~
 3. *Site Plan application*.
 - a. Land use application form.
 - b. Application fee and fee agreement.
 - c. Site Plan map — The site plan map shall be a minimum of 18 inches by 24 inches and shall provide the following information:

- h. Title of project.
 - ii. North arrow, scale (no greater than one inch equals 50 feet) and date of preparation.
 - iii. Vicinity map.
 - iv. Address of project.
 - v. Legal description of property.
 - vi. Name, address and phone number of property owner.
 - vii. Name, address and phone number of person or firm responsible for plan.
 - viii. Lot size (square footage).
 - ix. Bearings and distances of all lot lines.
 - x. Existing and proposed easements and rights-of-way.
 - xi. Existing and proposed paved areas and sidewalks on the site and in the adjacent rights-of-way, all dimensioned, showing how pedestrians will have access to the site and buildings.
 - xii. Gathering areas for people.
 - xiii. Existing and proposed curb cuts on the site and in the adjacent rights-of-way (on both sides of perimeter streets), all dimensioned.
 - xiv. Existing and proposed two-foot contours.
 - xv. Existing waterways on or adjacent to the site.
 - xvi. Finished floor elevations for all structures.
 - xvii. Footprint (including roof overhangs and eaves, decks, balconies, outside stairs and landings) of all proposed structures and their use with their dimensions and locations noted with respect to the property lines.
 - xviii. Existing structures and their use.
 - xix. Square footage of the proposed building(s) and the footprint of the proposed building(s).
 - xx. Proposed structure height.
 - xxi. For commercial and industrial uses, the type of activity and number of employees.
 - xxii. For multi-family residential, the number of residential units and bedrooms per unit.
 - xxiii. Location of proposed signs and lights.
 - xxiv. Specifications for the signs and lights, including type, height and general conformance to the Code. For commercial and industrial uses, a photometric plan prepared by a qualified electrical or lighting engineer shall be submitted that depicts all lighting fixtures and the light spread (in footcandles) of these fixtures across the site to all property boundaries.
 - xxv. Proposed traffic controls and striping for parking areas (all lanes, driveways, and parking spaces must be dimensioned).
 - xxvi. Trash disposal areas and enclosures including specifications for enclosures.
 - xxvii. Location and size of existing and proposed water and sewer service connections and tap sizes (including those for irrigation systems).
 - xxviii. Location and size of water and sewer lines to which the service connections will be or are made.
 - xxix. Location and size of water meter(s).
 - xxx. Location and size of backflow-prevention devices.

- xxxvi. Location of all fire hydrants. If none exist on site, note distance and direction of the closest hydrant adjacent to the site within 500 feet.
- xxxvii. Location of detention/retention areas and storm sewer infrastructure with the required drainage easements.
- xxxviii. The distance from the proposed building(s) or structure(s) to adjacent lot lines, easements, and adjacent structures.
- xxxix. A land use chart (table).
- xl. Certificate blocks for signatures of owner, surveyor, utility providers, and Town approval, as applicable.

LEGAL DESCRIPTION

(LEGAL DESCRIPTION)

OWNER and PROFESSIONAL INFORMATION:

OWNER	ENGINEER	ARCHITECT	OTHER
Name	"	"	"
Address	"	"	"
Phone #	"	"	"

RIGHT TO FARM STATEMENT: The Town of Berthoud has adopted a "Right to Farm" policy. All new and existing residents are expected to read and understand the policy. For a copy of the policy, please contact the Town of Berthoud.

APPROVAL CERTIFICATES:

Approved by the Town Administrator of the Town of Berthoud, Colorado, this _____ day of _____, A.D., 20____.

Town Administrator

Approved by the Engineer of the Town of Berthoud, Colorado, this _____ day of _____, A.D., 20____.

Engineer

The foregoing plan is approved for filing and accepted by the Town of Berthoud, Colorado, this _____ day of _____, A.D., 20____.

ATTEST:

Community Development Director

SITE SPECIFIC DEVELOPMENT PLAN:

This plan constitutes a site specific development plan as defined in Article 68 of Title 24, C.R.S., as amended, and [Chapter 30](#) of the Berthoud Development Code available at the Berthoud Town Hall, 328 Massachusetts Avenue, Berthoud, Colorado 80513.

- d. Community design standards — Demonstrate in written or graphic form how the proposed structure(s) is consistent with [Chapter 30, Section 2](#) of this Code.
 - e. Certified drainage report — A certified drainage report, including an erosion control study and plan, as applicable, must be reviewed and approved by the appropriate sanitation district (if applicable) prior to submittal of the report to the Town as part of the site plan application.
 - f. Final landscape and open space plan. Provide an existing and proposed landscape and open space plan consistent with this Section.
 - g. Exterior elevations of proposed structures/graphic visual aids. Provide complete building elevations, drawn to scale, with illustrations of all colors and identifying major materials to be used in the structure(s). In addition, Staff may require building floor plans, sectional drawings, perspective drawings, models, and/or computer visualizations when the impacts of a proposal warrant such information.
- ~~4. *Application certification of completion.* Within a reasonable period of time, Staff shall either certify the application is complete and in compliance with all submittal requirements or reject it as incomplete and notify the applicant of any deficiencies. Applicant shall then correct any deficiencies in the application package, if necessary, and submit the required number of copies of the application to the Town Clerk. The original application and all documents requiring a signature shall be signed in blue ink.~~
- ~~5. *Staff reviews application and prepares comments.* Staff will review the site plan map to ensure it is consistent with the site plan review criteria. Following the review, Staff will prepare a written report outlining any changes that the applicant must make before the site plan can be recommended for approval. This report will be forwarded to the applicant.~~
- ~~6. *Applicant addresses staff comments.* Applicant shall make all necessary changes to the site plan and resubmit a revised copy to the Town.~~
- ~~7. *Development Agreement.* Staff may require that the applicant execute a Development Agreement as detailed in [Section 30-6-114](#) of this Code to assure the construction of on-site and off-site improvements as a condition of approval of the site plan.~~
4. *Review and action.* The Town Administrator and Planner shall be responsible for processing all applications for Site Plan Reviews within the Town of Berthoud. The Town Administrator and Planner shall also have the responsibility of ensuring that all applications and submittal requirements are met prior to initiating any official action as listed above. The authority and responsibility for making the decision to approve, disapprove or approve with conditions all requests for a site plan review will rest with the Town Administrator.

The Town Administrator may refer a site plan application to the Planning Commission for the Commission's review and action, based on a determination that the proposed development's complexity, projected impacts, or proximity to conflicting land uses merits such action. The application and notice of the referral shall be sent to the Planning Commission for its review within a Public Hearing and action. Appeals of any Planning Commission final decision may

be made to the Town Board acting as the Board of Appeals using the appeal procedures found in Section 30-3-108.B. and C.

5. *Board consideration of appeals.* The Board of Trustees shall consider any appeal within 45 days of the close of the 14-day appeal period, except an appeal associated with a concurrent development application requiring Board review or approval, shall be considered with final action on the concurrent development application. The Board shall apply the site plan review criteria to uphold, modify, or reverse an earlier decision.
6. *Post approval actions.*
 - a. *Building Permit.* A building permit shall be issued only when a site plan has been approved. However, with the approval of the Town, an applicant may submit a building permit application concurrent with the site plan application. Building permits shall not be issued for any development that is not in conformance with the approved site plan.
 - b. *Phasing and expiration of approval.* The site plan shall be effective for a period of three years from the date of approval, unless stated otherwise in the written site plan approval. Building permits shall not be issued based on site plans that have an approval date more than three years old. For multi-phased plans, building permits shall not be issued based on an approval date more than three years from the date of Phase I approval.
- C. *Site Plan review criteria.* In addition to all requirements of this Code, the site plan must meet the following review criteria:
 - ~~1. All of the information required on a site plan is shown.~~
 - ~~2. The lot size and lot dimensions are consistent with what is shown on the approved final plat.~~
 - ~~3. No buildings or structures infringe on any easements.~~
 - ~~4. The proposed site grading is consistent with the requirements of any applicable adopted storm drainage criteria or master drainage plans.~~
 - ~~5. The density and dimensions shown conform to Section 3: Zoning.~~
 - ~~6. The applicable provisions of this Chapter have been met and the proposed improvements conform to this Chapter and the Comprehensive Plan.~~
 1. Application materials are complete.
 2. The proposed land use will satisfy all applicable provisions of the zoning code, overlay districts, and subdivision regulation unless a variance is being concurrently requested.
 3. The proposed land use will conform with or further the goals, policies and strategies set forth in the Town of Berthoud Comprehensive Plan.
 4. The proposed land use will be adequately served with public utilities, services, and facilities (i.e. water, sewer, electric, schools, street system, fire protection, public transit, storm drainage, refuse collection, parks system, etc.) and not impose an undue burden above and beyond those of the permitted uses of the district.
 5. The proposed land use will not substantially alter the basic character of the district in which it is in or impair the development or redevelopment potential of the district.
 6. The proposed land use will result in efficient on- and off-site traffic circulation which will not have a significant adverse impact on the adjacent uses or result in hazardous conditions for pedestrians or vehicles in or adjacent to the site.

7. Potential negative impacts of the proposed land use on the rest of the neighborhood or of the neighborhood on the proposed land use have been mitigated through setbacks, architecture, screening, landscaping, site arrangement or other methods. The applicant shall, at a minimum, satisfactorily address impacts including: traffic; activity levels; light; noise; odor; building type, style and scale; hours of operation; dust; and erosion control.
8. The applicant has submitted evidence that all applicable local, state and federal permits have been or will be obtained.

D. *-Amendments to approved Site Plans.*

1. Minor variations in the location of structures, improvements, or open space areas caused by engineering or other unforeseen difficulties may be reviewed and approved by the Town Staff. Such changes shall not exceed ten percent of any measurable standard or modify the use, character, or density of an approved site plan. All plans so modified shall be revised to show the authorized changes and shall become a part of the permanent records of the Town.
2. Changes to approved site plans that exceed the ten percent threshold, or other major modifications (such as changes in building size or footprint, relocation of access points, changes to required parking, etc.), shall be considered as a new site plan application. ~~Such amendments shall require Planning Commission review and approval to become effective.~~ A complete site plan application shall be prepared and submitted in compliance with the requirements set forth in this Section.