

DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202	DATE FILED: May 20, 2019 9:51 AM FILING ID: ECBA733FDAB10 CASE NUMBER: 2018CV33011
Plaintiff: Chris Myklebust, Securities Commissioner for the State of Colorado v. Defendants: Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, LLC	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Attorneys for Receiver: Patrick D. Vellone, #15284 Michael T. Gilbert, #15009 Rachel A. Sternlieb, #51404 ALLEN VELLONE WOLF HELFRICH & FACTOR P.C. 1600 Stout St., Suite 1100 Denver, Colorado 80202 Phone Number: (303) 534-4499 E-mail: pvellone@allen-vellone.com E-mail: mgilbert@allen-vellone.com E-mail: rsternlieb@allen-vellone.com	Case Number: 2018CV33011 Division/Courtroom: 424
<p style="text-align: center;">RECEIVER’S SECOND MOTION FOR ORDER AUTHORIZING SALE OF SUMMIT MARKETPLACE AND MOTION TO APPROVE INCREASED COMMISSION AT CLOSING</p>	

Harvey Sender, the duly-appointed receiver (“Receiver”) for Gary Dragul (“Dragul”), GDA Real Estate Services, LLC, GDA Real Estate Management, LLC, and related entities (collectively, “Dragul and the GDA Entities”), asks the Court to enter an order approving the sale of real property known as the Summit Marketplace,

located at 385 Crossing Drive, Lafayette, CO 80026 (the “Property”) to Michael Manwaring and Rand Lewis (“Buyers”) for \$4.6 million pursuant to the Contract submitted as **Exhibit 1** with this motion (the “Summit Contract”). The Receiver also requests approval to pay an increased commission of an additional 1.5% (\$69,000) from the sales proceeds to the Receiver’s selling broker, Marcus & Millichap.

I. The Receivership Order authorizes the Receiver to sell the Property.

1. On August 15, 2018, Gerald Rome, Securities Commissioner for the State of Colorado (the “Commissioner”), filed his Complaint for Injunctive and Other Relief against Dragul and the GDA Entities.

2. On August 29, 2018, the Commissioner, Dragul and the GDA Entities filed a Stipulated Motion for Appointment of Receiver, consenting to the appointment of a receiver over Dragul and the GDA Entities pursuant to COLO. REV. STAT. § 11-51-602(1), C.R.C.P. 66.

3. On August 30, 2018, the Court entered a Stipulated Order Appointing Receiver (the “Receivership Order”), appointing Harvey Sender of Sender & Smiley, LLC as receiver for Dragul and the GDA Entities, their respective properties and assets, interests and management rights in related affiliated and subsidiary businesses, and any assets of any kind or of any nature related in any manner, or directly or indirectly derived from investor funds from the solicitation or sale of securities as described in the Commissioner’s complaint in this case (the “Receivership Estate” or the “Estate”). Receivership Order at 3, ¶ 9.

4. The Receivership Order grants the Receiver the authority to sell or otherwise dispose of Estate property and obtain Court approval for any sale for greater than \$10,000 (Receivership Order at 12, ¶ 13(t)).

5. Pursuant to paragraph 10 of the Receivership Order, Court approval of any motion filed by the Receiver shall be given as a matter of course within 10 days after the motion is filed and served. As reflected by the certificate of service below, this Motion is being served on all parties who have appeared in this case and on interested parties as authorized by this Court's February 1, 2019, Order Granting the Receiver's Motion to, among other things, Clarify Ongoing Notice Procedure. Upon acceptance, this Motion will also be posted on the Receiver's website, <http://dragulreceivership.com>.

II. Summit Marketplace: ownership, management, and debt

6. The Summit Marketplace is a retail shopping mall located at 385 Crossing Drive, Lafayette, CO 80026. It has 7 separate units and approximately 14,000 s.f. of gross leasable space. The Property is 90% leased and is adjacent to a King Soopers.

7. Summit 06 A, LLC ("Summit 06") purchased Summit Marketplace on January 10, 2006, for \$4,700,000. Summit 06 is a single purpose entity ("SPE") whose members are Dragul (13.38%) and 36 other individual investors. These include a number of insiders such as Dragul's parents, GDA employees and former employees, and a promoter. The Receiver has not as yet determined what these purported

members contributed to Summit 06 or verified their purported membership interests. Summit 06 is managed by GDA Real Estate Management, Inc., whose president and sole shareholder is Dragul.

8. The Property was purchased in part with funds from a \$3,500,000.00 loan made by Countrywide Commercial Real Estate Finance, Inc. to Summit 06 that was secured by a deed of trust, and in part with funds Dragul solicited from individual investors. On November 6, 2016, Dragul refinanced the Property and obtained a loan from Rialto Mortgage Finance (“Rialto”) for \$3,600,000.00, which he personally guaranteed (the “Rialto Loan”). The Property is property of the Estate the Receiver is authorized to sell.

III. Sale of the Property is in the best interests of the Estate and its creditors.

9. There exists little Colorado authority with respect to factors the Court should consider regarding whether to approve a Receiver’s proposed sale. In analogous bankruptcy contexts, approval of a sale of property pursuant to Section 363 of the Bankruptcy Code is warranted where there exists a “sound business reason.” *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983). “In evaluating whether a sound business purpose justifies the use, sale or lease of property under Section 363(b), courts consider a variety of factors, which essentially represent a ‘business judgment test.’” *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999).

10. Factors bearing on whether a sound business reason or purpose supports a proposed sale of estate property include (where applicable): (1) the proportionate value of the asset to the estate as a whole; (2) the amount of elapsed time since the filing; (3) the likelihood that a plan of reorganization will be proposed and confirmed in the near future; (4) the effect of the proposed disposition on the future plans of reorganization; (5) the proceeds to be obtained from the disposition vis-à-vis any appraisals of the property; (6) which of the alternatives of use, sale or lease the proposal envisions; and (7) most importantly perhaps, whether the asset is increasing or decreasing in value. *In re Medical Software Solutions*, 286 B.R. 431, 441 (Bankr. D. Utah 2002) (quoting *Lionel*, 722 F.2d at 1071) (emphasis omitted). Bankruptcy courts are granted considerable discretion in evaluating proposed sales. *Montgomery Ward*, 242 B.R. at 153; see *Moldo v. Clark (In re Clark)*, 266 B.R. 163, 168 (B.A.P. 9th Cir. 2001) (recognizing that “[r]ulings on motions to sell property of the estate other than in the ordinary course of business pursuant to section 363 are reviewed for abuse of discretion”).

11. In the Receiver’s Judgment the proposed sale of the Property is in the best interest of the Estate and its creditors. The Receiver has hired the nationally-recognized firm of Marcus & Millichap to market the Property and has negotiated with the Buyer and believes the proposed sales price is fair and reasonable.

12. This is the second contract the Receiver has entered into for the Summit Property. As set forth in the Receiver’s March 1, 2019, Motion for Order Authorizing

Sale of Summit Marketplace, the original purchase contract called for payment to the Receiver of \$4.4 million. Under that agreement, the buyer also agreed to pay off the first lien on the Property at closing, which would have required paying a \$495,000 exit fee to Rialto. The Court approved the sale on March 21, 2019. On March 25, 2019, the initial buyer terminated its contract. Since this termination, the Receiver's brokers have continued to market the Property, leading to the present Summit Contract.

13. Under the Summit Contract, Buyers are to assume the Rialto Loan and closing is scheduled to occur no later than 30 days after Rialto approves assumption of the Loan. Rialto has declared its Loan in default due to non-payment, among other things, and the Loan has been accruing interest at the default rate since August 30, 2018. Rialto previously indicated it intends to begin sweeping the rental income from the Property to service its loan and tendered a proposed forbearance agreement to the Receiver that would require the Estate to pay substantial up-front fees to forestall foreclosure.

14. Under the Summit Contract, the Receiver may entertain and accept any competing offer he deems to be a higher and better offer until this Motion is granted. And under the Contract, neither Dragul nor any of his former employees shall have any ownership or management interest with respect to the Property or the Buyers going forward.

15. If the Court approves the increased commission to Marcus & Millichap as requested, the Receiver estimates the proposed sale will net approximately \$600,000 to the Estate. Given the uncertainty concerning the ownership interests in Summit 06 and the extensive co-mingling of funds among Estate entities, the Receiver anticipates depositing the net sales proceeds into the general Receivership account. The sale is in the best interest of the Estate because absent a timely sale, the Property is at risk of being lost to foreclosure with no return to the Estate.

IV. Motion to Pay Increased Commission at Closing

16. As set forth in the Receiver's November 15, 2018, Notice Concerning Employment of Marcus & Millichap, Marcus & Millichap was hired to market and sell various Estate properties, including the Summit Property. The Notice indicated the Receiver agreed to pay Marcus & Millichap 3% of the gross purchase price from the Summit sale. The Notice also indicated the Receiver agreed to pay Marcus & Millichap 3% of the gross sales proceeds from the sale of the Ash & Bellaire Development site and 1.5% of the gross sales proceeds from the sale Happy Canyon Shoppes.

17. To facilitate the closing of the Happy Canyon Shoppes on April 15, 2019, Marcus & Millichap reduced its commission by approximately \$75,000. To facilitate the sale of the Ash & Bellaire property (for which a contract is being finalized), Marcus & Millichap has agreed to reduce its commission by \$15,000. Marcus & Millichap has also agreed to waive marketing fees of approximately \$75,000.

18. To date, Marcus & Millichap has performed extraordinary work for the Estate and benefited the Estate by reducing its fees by approximately \$165,000. To partially compensate Marcus & Millichap, the Receiver requests Court approval to increase Marcus & Millichap's commission on the Summit sale by 1.5% (\$68,000). The benefit provided to the Estate substantially outweighs this increase, and in fairness, the Receiver asks the Court to approve the increased commission.

WHEREFORE, the Receiver asks the Court to: (1) grant this Motion and approve the proposed sale of the Summit Property in accordance with the terms of the Summit Contract; and (2) approve an increase of 1.5% in Marcus & Millichap's commission and authorize the Receiver to pay that commission at closing of the Property.

Dated: May 20, 2019.

ALLEN VELLONE WOLF HELFRICH & FACTOR P.C.



By: /s/ Michael T. Gilbert

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ATTORNEYS FOR THE RECEIVER

CERTIFICATE OF SERVICE

I certify that on May 20, 2019, I served a true and correct copy of the foregoing **RECEIVER'S SECOND MOTION FOR ORDER AUTHORIZING SALE OF SUMMIT MARKETPLACE AND MOTION TO APPROVE INCREASED COMMISSION AT CLOSING** via CCE to the following:

Robert W. Finke
Sueanna P. Johnson
Matthew J. Bouillon Mascareñas
Ralph L. Carr Judicial Building
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Denver, Colorado 80203

*Counsel for Chris Myklebust, Colorado
Securities Commissioner*

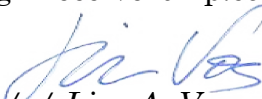
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LLC*

A copy of the foregoing is also being served by electronic mail in accordance with the Court's February 1, 2019, Order Clarifying Notice Procedure and will be posted to the Receiver's website, <http://dragulreceivership.com/>


By: /s/ Lisa A. Vos
Allen Vellone Wolf Helfrich & Factor P.C.



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The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission. (CBS3-6-18) (Mandatory 1-19)

DATE FILED: May 20, 2019 9:51 AM
FILE NO: EGBA733FDAB10
CASE NUMBER: 2018CV33011

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

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

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

Date: 5/14/2019

AGREEMENT

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

2. PARTIES AND PROPERTY.

2.1. Buyer. Buyer, *Michael Manwaring and Rand Lewis* (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. *Harvey Sender in his capacity as Receiver of the Gary Dragul Receivership Estate* (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 Boulder, Colorado:

LOT 2 SUMMIT MARKETPLACE

known as No. **385 Crossing Drive, Lafayette, CO 80026,**

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

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

2.5.1. Inclusions - Attached. If attached to the Property on the date of this Contract, the following items are included unless excluded under **Exclusions:** lighting, heating, plumbing, ventilating and air conditioning units, TV antennas, inside telephone, network and coaxial (cable) wiring and connecting blocks/jacks, plants, mirrors, floor coverings, intercom systems, built-in kitchen appliances, sprinkler systems and controls, built-in vacuum systems (including accessories) and garage door openers (including n/a remote controls). If checked, the following are owned by the Seller and included (leased items should be listed under **Due Diligence Documents**): **None** **Solar Panels** **Water Softeners** **Security Systems** **Satellite Systems** (including satellite dishes). 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. Inclusions - Not Attached. If on the Property, whether attached or not, on the date of this Contract, the following items are included unless excluded under **Exclusions:** storm windows, storm doors, window and porch shades, awnings, blinds, screens, window coverings and treatments, curtain rods, drapery rods, fireplace inserts, fireplace screens, fireplace grates, heating stoves, storage sheds, carbon

71 monoxide alarms, smoke/fire detectors and all keys.

72 **2.5.3. Personal Property - Conveyance.** Any personal property must be conveyed at Closing by
73 Seller free and clear of all taxes (except personal property taxes for the year of Closing), liens and
74 encumbrances, except n/a.

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

76 **2.5.4. Other Inclusions.** The following items, whether fixtures or personal property, are also
77 included in the Purchase Price: n/a

78 **2.5.5. Parking and Storage Facilities.** The use or ownership of the following parking facilities:
79 n/a; and the use or ownership of the following storage facilities:
80 **Any associated with the Property.**

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

83 **2.5.6. Trade Fixtures.** With respect to trade fixtures, Seller and Buyer agree as follows: n/a.

84 The trade fixtures to be conveyed at Closing will be conveyed by Seller free and clear of all taxes
85 (except personal property taxes for the year of Closing), liens and encumbrances, except n/a. Conveyance will
86 be by bill of sale or other applicable legal instrument.

87 **2.6. Exclusions.** The following items are excluded (Exclusions): **Tenant's Personal &**
88 **Business Property**

89 **2.7. Water Rights/Well Rights.**

90 **2.7.1. Deeded Water Rights.** The following legally described water rights:

91 n/a

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

93 **2.7.2. Other Rights Relating to Water.** The following rights relating to water not included in
94 §§ 2.7.1, 2.7.3, and 2.7.4, will be transferred to Buyer at Closing: n/a

95 **2.7.3. Well Rights.** Seller agrees to supply required information to Buyer about the well.
96 Buyer understands that if the well to be transferred is a "Small Capacity Well" or a "Domestic Exempt Water
97 Well" used for ordinary household purposes, Buyer must, prior to or at Closing, complete a Change in
98 Ownership form for the well. If an existing well has not been registered with the Colorado Division of Water
99 Resources in the Department of Natural Resources (Division), Buyer must complete a registration of existing
100 well form for the well and pay the cost of registration. If no person will be providing a closing service in
101 connection with the transaction, Buyer must file the form with the Division within sixty days after Closing. The
102 Well Permit # is n/a.

103 **2.7.4. Water Stock Certificates.** The water stock certificates to be transferred at Closing are
104 as follows: n/a

105 **2.7.5. Conveyance.** If Buyer is to receive any rights to water pursuant to § 2.7.2 (Other
106 Rights Relating to Water), § 2.7.3 (Well Rights), or § 2.7.4 (Water Stock Certificates), Seller agrees to convey
107 such rights to Buyer by executing the applicable legal instrument at Closing.

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

109 **3.1 Dates and Deadlines.**

Item No.	Reference	Event	Date or Deadline
1	§ 4.3	Alternative Earnest Money Deadline	3 Days After Court Approval
		Title	
2	§ 8.1, § 8.4	Record Title Deadline	7 Days After MEC
3	§ 8.2, § 8.4	Record Title Objection Deadline	14 Days After MEC
4	§ 8.3	Off-Record Title Deadline	7 Days After MEC
5	§ 8.3	Off-Record Title Objection Deadline	14 Days After MEC
6	§ 8.5	Title Resolution Deadline	21 Days After MEC

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7	§ 8.6	Right of First Refusal Deadline	<i>n/a</i>	
		Owners' Association		
8	§ 7.2	Association Documents Deadline	<i>14 Days After MEC</i>	
9	§ 7.4	Association Documents Termination Deadline	<i>21 Days After MEC</i>	
		Seller's Disclosures		
10	§ 10.1	Seller's Property Disclosure Deadline	<i>n/a</i>	
11	§ 10.10	Lead-Based Paint Disclosure Deadline	<i>n/a</i>	
		Loan and Credit		
12	§ 5.1	New Loan Application Deadline	<i>n/a</i>	
13	§ 5.2	New Loan Termination Deadline	<i>n/a</i>	
14	§ 5.3	Buyer's Credit Information Deadline	<i>n/a</i>	
15	§ 5.3	Disapproval of Buyer's Credit Information Deadline	<i>n/a</i>	
16	§ 5.4	Existing Loan Deadline	<i>7 After After MEC</i>	
17	§ 5.4	Existing Loan Termination Deadline	<i>45 After Court Approval</i>	
18	§ 5.4	Loan Transfer Approval Deadline	<i>60 After Court Approval</i>	
19	§ 4.7	Seller or Private Financing Deadline	<i>n/a</i>	
		Appraisal		
20	§ 6.2	Appraisal Deadline	<i>30 Days Court Approval</i>	
21	§ 6.2	Appraisal Objection Deadline	<i>35 Days Court Approval</i>	
22	§ 6.2	Appraisal Resolution Deadline	<i>40 Days Court Approval</i>	
		Survey		
23	§ 9.1	New ILC or New Survey Deadline	<i>30 Days After MEC</i>	
24	§ 9.3	New ILC or New Survey Objection Deadline	<i>35 Days After MEC</i>	
25	§ 9.3	New ILC or New Survey Resolution Deadline	<i>35 Days After MEC</i>	
		Inspection and Due Diligence		
26	§ 10.3	Inspection Objection Deadline	<i>30 Days After MEC</i>	
27	§ 10.3	Inspection Termination Deadline	<i>35 Days After MEC</i>	
28	§ 10.3	Inspection Resolution Deadline	<i>35 Days After MEC</i>	
29	§ 10.5	Property Insurance Termination Deadline	<i>30 Days After MEC</i>	
30	§ 10.6	Due Diligence Documents Delivery Deadline	<i>5 Days After MEC</i>	
31	§ 10.6	Due Diligence Documents Objection Deadline	<i>21 Days After MEC</i>	
32	§ 10.6	Due Diligence Documents Resolution Deadline	<i>25 Days After MEC</i>	
33	§ 10.6	Environmental Inspection Termination Deadline	<i>35 Days After MEC</i>	
34	§ 10.6	ADA Evaluation Termination Deadline	<i>n/a</i>	
35	§ 10.7	Conditional Sale Deadline	<i>n/a</i>	
36	§ 10.10	Lead-Based Paint Termination Deadline	<i>n/a</i>	
37	§ 11.1, 11.2	Estoppel Statements Deadline	<i>7 Prior to Closing</i>	
38	§ 11.3	Estoppel Statements Termination Deadline	<i>5 Prior to Closing</i>	
		Closing and Possession		

39	§ 12.3	Closing Date	No Later than 30 days after Loan Approva	
40	§ 17	Possession Date	Deliver of Deed	
41	§ 17	Possession Time	Deliver of Deed	
39	§ 28	Acceptance Deadline Date	5/17/2019	Friday
42	§ 28	Acceptance Deadline Time	3pm	
43	<i>n/a</i>	<i>n/a</i>		
44	<i>n/a</i>	<i>n/a</i>		

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

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

4. PURCHASE PRICE AND TERMS.

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

Item No.	Reference	Item	Amount	Amount
1	§ 4.1	Purchase Price	\$4,600,000.00	
2	§ 4.3	Earnest Money		\$50,000.00
3	§ 4.5	New Loan		
4	§ 4.6	Assumption Balance		\$3,600,000.00
5	§ 4.7	Private Financing		
6	§ 4.7	Seller Financing		
7	<i>n/a</i>	<i>n/a</i>		
8	<i>n/a</i>	<i>n/a</i>		
9	§ 4.4	Cash at Closing		\$950,000.00
10		TOTAL	\$4,600,000.00	\$4,600,000.00

4.2. Seller Concession. At Closing, Seller will credit to Buyer \$ **50,000** (Seller Concession). The Seller Concession may be used for any Buyer fee, cost, charge or expenditure to the extent the amount is allowed by the Buyer's lender and is included in the Closing Statement or Closing Disclosure at Closing. Examples of allowable items to be paid for by the Seller Concession include, but are not limited to: Buyer's closing costs, loan discount points, loan origination fees, prepaid items and any other fee, cost, charge, expense or expenditure. Seller Concession is in addition to any sum Seller has agreed to pay or credit Buyer elsewhere in this Contract.

4.3. Earnest Money. The Earnest Money set forth in this Section, in the form of a **Check Or Wire Transfer**, will be payable to and held by **TBD at sellers choice** (Earnest Money Holder), in its trust account, on behalf of both Seller and Buyer. The Earnest Money deposit must be tendered, by Buyer, with this Contract unless the parties mutually agree to an **Alternative Earnest Money Deadline** for its payment. The parties authorize delivery of the Earnest Money deposit to the company conducting the Closing (Closing Company), if any, at or before Closing. In the event Earnest Money Holder has agreed to have interest on Earnest Money deposits transferred to a fund established for the purpose of providing affordable housing to Colorado residents, Seller and Buyer acknowledge and agree that any interest accruing on the Earnest Money

281 deposited with the Earnest Money Holder in this transaction will be transferred to such fund.

282 **4.3.1. Alternative Earnest Money Deadline.** The deadline for delivering the Earnest
283 Money, if other than at the time of tender of this Contract, is as set forth as the **Alternative Earnest Money**
284 **Deadline.**

285 **4.3.2. Return of Earnest Money.** If Buyer has a Right to Terminate and timely
286 terminates, Buyer is entitled to the return of Earnest Money as provided in this Contract. If this Contract is
287 terminated as set forth in § 25 and, except as provided in § 24 (Earnest Money Dispute), if the Earnest Money
288 has not already been returned following receipt of a Notice to Terminate, Seller agrees to execute and return to
289 Buyer or Broker working with Buyer, written mutual instructions (e.g., Earnest Money Release form), within
290 three days of Seller's receipt of such form.

291 **4.4. Form of Funds; Time of Payment; Available Funds.**

292 **4.4.1. Good Funds.** All amounts payable by the parties at Closing, including any loan
293 proceeds, Cash at Closing and closing costs, must be in funds that comply with all applicable Colorado laws,
294 including electronic transfer funds, certified check, savings and loan teller's check and cashier's check (Good
295 Funds).

296 **4.4.2. Time of Payment; Available Funds.** All funds, including the Purchase Price to be
297 paid by Buyer, must be paid before or at Closing or as otherwise agreed in writing between the parties to allow
298 disbursement by Closing Company at Closing **OR SUCH NONPAYING PARTY WILL BE IN DEFAULT.** Buyer
299 represents that Buyer, as of the date of this Contract, **Does** **Does Not** have funds that are immediately
300 verifiable and available in an amount not less than the amount stated as Cash at Closing in § 4.1.

301 **4.5. New Loan.** (Omitted as inapplicable)

302 **4.6. Assumption.** Buyer agrees to assume and pay an existing loan in the approximate
303 amount of the Assumption Balance set forth in § 4.1 (Price and Terms), presently payable at \$ 242659 per
304 year including principal and interest presently at the rate of 4.94 % per annum and also including escrow for
305 the following as indicated: **Real Estate Taxes** **Property Insurance Premium** **Mortgage**
306 **Insurance Premium**
307 and n/a.

308 Buyer agrees to pay a loan transfer fee not to exceed \$.25% Of Princi. At the time of assumption,
309 the new interest rate will not exceed 4.94 % per annum and the new payment will not exceed \$ 242659 per
310 year principal and interest, plus escrow, if any. If the actual principal balance of the existing loan at Closing is
311 less than the Assumption Balance, which causes the amount of cash required from Buyer at Closing to be
312 increased by more than \$ 20000, or if any other terms or provisions of the loan change, Buyer has the Right to
313 Terminate under § 25.1 on or before **Closing Date**.

314 Seller **Will** **Will Not** be released from liability on said loan. If applicable, compliance with the
315 requirements for release from liability will be evidenced by delivery on or before **Loan Transfer Approval**
316 **Deadline** **at Closing** of an appropriate letter of commitment from lender. Any cost payable for release of
317 liability will be paid by Buyer in an amount not to exceed \$ n/a.

318 **4.7. Seller or Private Financing.** (Omitted as inapplicable)

319 **TRANSACTION PROVISIONS**

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

321 **5.3. Credit Information.** If an existing loan is not to be released at Closing, this Contract is conditional
322 (for the sole benefit of Seller) upon Seller's approval of Buyer's financial ability and creditworthiness, which
323 approval will be in Seller's sole subjective discretion. Accordingly: (1) Buyer must supply to Seller by **Buyer's**
324 **Credit Information Deadline**, at Buyer's expense, information and documents (including a current credit
325 report) concerning Buyer's financial, employment and credit condition; (2) Buyer consents that Seller may
326 verify Buyer's financial ability and creditworthiness; and (3) any such information and documents received by
327 Seller must be held by Seller in confidence and not released to others except to protect Seller's interest in this
328 transaction. If the Cash at Closing is less than as set forth in § 4.1 of this Contract, Seller has the Right to
329

351 Terminate under § 25.1, on or before Closing. If Seller disapproves of Buyer's financial ability or
352 creditworthiness, in Seller's sole subjective discretion, Seller has the Right to Terminate under § 25.1, on or
353 before **Disapproval of Buyer's Credit Information Deadline** .
354

355 **5.4. Existing Loan Review.** If an existing loan is not to be released at Closing, Seller must deliver
356 copies of the loan documents (including note, deed of trust and any modifications) to Buyer by **Existing Loan**
357 **Deadline**. For the sole benefit of Buyer, this Contract is conditional upon Buyer's review and approval of the
358 provisions of such loan documents. Buyer has the Right to Terminate under § 25.1, on or before **Existing**
359 **Loan Termination Deadline**, based on any unsatisfactory provision of such loan documents, in Buyer's sole
360 subjective discretion. If the lender's approval of a transfer of the Property is required, this Contract is
361 conditional upon Buyer obtaining such approval without change in the terms of such loan, except as set forth in
362 § 4.6. If lender's approval is not obtained by **Loan Transfer Approval Deadline**, this Contract will terminate on
363 such deadline. Seller has the Right to Terminate under § 25.1, on or before Closing, in Seller's sole subjective
364 discretion, if Seller is to be released from liability under such existing loan and Buyer does not obtain such
365 compliance as set forth in § 4.6.
366
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370 **6. APPRAISAL PROVISIONS.**

371 **6.1. Appraisal Definition.** An "Appraisal" is an opinion of value prepared by a licensed or certified
372 appraiser, engaged on behalf of Buyer or Buyer's lender, to determine the Property's market value (Appraised
373 Value). The Appraisal may also set forth certain lender requirements, replacements, removals or repairs
374 necessary on or to the Property as a condition for the Property to be valued at the Appraised Value.
375

376 **6.2. Appraisal Condition.** The applicable appraisal provision set forth below applies to the respective
377 loan type set forth in § 4.5.3, or if a cash transaction (i.e. no financing), § 6.2.1 applies.
378

379 **6.2.1. Conventional/Other.** Buyer has the right to obtain an Appraisal. If the Appraised Value
380 is less than the Purchase Price, or if the Appraisal is not received by Buyer on or before **Appraisal Deadline**
381 Buyer may, on or before **Appraisal Objection Deadline**:

382 **6.2.1.1. Notice to Terminate.** Notify Seller in writing, pursuant to § 25.1, that this
383 Contract is terminated; or
384

385 **6.2.1.2. Appraisal Objection.** Deliver to Seller a written objection accompanied by
386 either a copy of the Appraisal or written notice from lender that confirms the Appraised Value is less than the
387 Purchase Price (Lender Verification).
388

389 **6.2.1.3. Appraisal Resolution.** If an Appraisal Objection is received by Seller, on or
390 before **Appraisal Objection Deadline** and if Buyer and Seller have not agreed in writing to a settlement
391 thereof on or before **Appraisal Resolution Deadline**, this Contract will terminate on the **Appraisal Resolution**
392 **Deadline**, unless Seller receives Buyer's written withdrawal of the Appraisal Objection before such termination,
393 i.e., on or before expiration of **Appraisal Resolution Deadline**.
394

395 **6.3. Lender Property Requirements.** If the lender imposes any written requirements, replacements,
396 removals or repairs, including any specified in the Appraisal (Lender Requirements) to be made to the Property
397 (e.g., roof repair, repainting), beyond those matters already agreed to by Seller in this Contract, this Contract
398 terminates on the earlier of three days following Seller's receipt of the Lender Requirements, or Closing, unless
399 prior to termination: (1) the parties enter into a written agreement to satisfy the Lender Requirements; (2) the
400 Lender Requirements have been completed; or (3) the satisfaction of the Lender Requirements is waived in
401 writing by Buyer.
402

403 **6.4. Cost of Appraisal.** Cost of the Appraisal to be obtained after the date of this Contract must be
404 timely paid by Buyer Seller. The cost of the Appraisal may include any and all fees paid to the appraiser,
405 appraisal management company, lender's agent or all three.
406

407 **7. OWNERS' ASSOCIATION.** This Section is applicable if the Property is located within a Common
408 Interest Community and subject to the declaration (Association).
409

410 **7.1. Common Interest Community Disclosure. THE PROPERTY IS LOCATED WITHIN A**
411 **COMMON INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR THE COMMUNITY.**
412 **THE OWNER OF THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE OWNERS'**
413 **ASSOCIATION FOR THE COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES AND**
414 **REGULATIONS OF THE ASSOCIATION. THE DECLARATION, BYLAWS AND RULES AND REGULATIONS**
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421 **WILL IMPOSE FINANCIAL OBLIGATIONS UPON THE OWNER OF THE PROPERTY, INCLUDING AN**
422 **OBLIGATION TO PAY ASSESSMENTS OF THE ASSOCIATION. IF THE OWNER DOES NOT PAY THESE**
423 **ASSESSMENTS, THE ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY AND POSSIBLY SELL**
424 **IT TO PAY THE DEBT. THE DECLARATION, BYLAWS AND RULES AND REGULATIONS OF THE**
425 **COMMUNITY MAY PROHIBIT THE OWNER FROM MAKING CHANGES TO THE PROPERTY WITHOUT AN**
426 **ARCHITECTURAL REVIEW BY THE ASSOCIATION (OR A COMMITTEE OF THE ASSOCIATION) AND**
427 **THE APPROVAL OF THE ASSOCIATION. PURCHASERS OF PROPERTY WITHIN THE COMMON**
428 **INTEREST COMMUNITY SHOULD INVESTIGATE THE FINANCIAL OBLIGATIONS OF MEMBERS OF THE**
429 **ASSOCIATION. PURCHASERS SHOULD CAREFULLY READ THE DECLARATION FOR THE COMMUNITY**
430 **AND THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION.**

431
432
433
434 **7.2. Association Documents to Buyer.** Seller is obligated to provide to Buyer the Association
435 Documents (defined below), at Seller's expense, on or before **Association Documents Deadline**. Seller
436 authorizes the Association to provide the Association Documents to Buyer, at Seller's expense. Seller's
437 obligation to provide the Association Documents is fulfilled upon Buyer's receipt of the Association Documents,
438 regardless of who provides such documents.

439
440 **7.3. Association Documents.** Association documents (Association Documents) consist of the
441 following:

442
443 **7.3.1.** All Association declarations, articles of incorporation, bylaws, articles of
444 organization, operating agreements, rules and regulations, party wall agreements and the Association's
445 responsible governance policies adopted under § 38-33.3-209.5, C.R.S.;

446
447 **7.3.2.** Minutes of: (1) the annual owners' or members' meeting and (2) any executive
448 boards' or managers' meetings; such minutes include those provided under the most current annual disclosure
449 required under § 38-33.3-209.4, C.R.S. (Annual Disclosure) and minutes of meetings, if any, subsequent to the
450 minutes disclosed in the Annual Disclosure. If none of the preceding minutes exist, then the most recent
451 minutes, if any (§§ 7.3.1 and 7.3.2, collectively, Governing Documents); and

452
453 **7.3.3.** List of all Association insurance policies as provided in the Association's last Annual
454 Disclosure, including, but not limited to, property, general liability, association director and officer professional
455 liability and fidelity policies. The list must include the company names, policy limits, policy deductibles,
456 additional named insureds and expiration dates of the policies listed (Association Insurance Documents);

457
458 **7.3.4.** A list by unit type of the Association's assessments, including both regular and
459 special assessments as disclosed in the Association's last Annual Disclosure;

460
461 **7.3.5.** The Association's most recent financial documents which consist of: (1) the
462 Association's operating budget for the current fiscal year, (2) the Association's most recent annual financial
463 statements, including any amounts held in reserve for the fiscal year immediately preceding the Association's
464 last Annual Disclosure, (3) the results of the Association's most recent available financial audit or review, (4) list
465 of the fees and charges (regardless of name of title of such fees or charges) that the Association's community
466 association manager or Association will charge in connection with the Closing including, but not limited to, any
467 fee incident to the issuance of the Association's statement of assessments (Status Letter), any rush or update
468 fee charged for the Status Letter, any record change fee or ownership record transfer fees (Record Change
469 Fee), fees to access documents, (5) list of all assessments required to be paid in advance, reserves or working
470 capital due at Closing and (6) reserve study, if any (§§ 7.3.4 and 7.3.5, collectively, Financial Documents);

471
472 **7.3.6.** Any written notice from the Association to Seller of a "construction defect action"
473 under § 38-33.3-303.5, C.R.S. within the past six months and the result of whether the Association approved or
474 disapproved such action (Construction Defect Documents). Nothing in this Section limits the Seller's obligation
475 to disclose adverse material facts as required under § 10.2 (Disclosure of Adverse Material Facts; Subsequent
476 Disclosure; Present Condition) including any problems or defects in the common elements or limited common
477 elements of the Association property.

478
479 **7.4. Conditional on Buyer's Review.** Buyer has the right to review the Association Documents.
480 Buyer has the Right to Terminate under § 25.1, on or before **Association Documents Termination Deadline**,
481 based on any unsatisfactory provision in any of the Association Documents, in Buyer's sole subjective
482 discretion. Should Buyer receive the Association Documents after **Association Documents Deadline**, Buyer,
483 at Buyer's option, has the Right to Terminate under § 25.1 by Buyer's Notice to Terminate received by Seller on
484 or before ten days after Buyer's receipt of the Association Documents. If Buyer does not receive the
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491 Association Documents, or if Buyer's Notice to Terminate would otherwise be required to be received by Seller
492 after **Closing Date**, Buyer's Notice to Terminate must be received by Seller on or before Closing. If Seller does
493 not receive Buyer's Notice to Terminate within such time, Buyer accepts the provisions of the Association
494 Documents as satisfactory and Buyer waives any Right to Terminate under this provision, notwithstanding the
495 provisions of § 8.6 (Right of First Refusal or Contract Approval).
496
497

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

499 **8.1. Evidence of Record Title.**

500 **8.1.1. Seller Selects Title Insurance Company.** If this box is checked, Seller will select the
501 title insurance company to furnish the owner's title insurance policy at Seller's expense. On or before **Record**
502 **Title Deadline**, Seller must furnish to Buyer, a current commitment for an owner's title insurance policy (Title
503 Commitment), in an amount equal to the Purchase Price, or if this box is checked, an **Abstract of Title**
504 certified to a current date. Seller will cause the title insurance policy to be issued and delivered to Buyer as
505 soon as practicable at or after Closing.
506

507 **8.1.2. Buyer Selects Title Insurance Company.** If this box is checked, Buyer will select the
508 title insurance company to furnish the owner's title insurance policy at Buyer's expense. On or before **Record**
509 **Title Deadline**, Buyer must furnish to Seller, a current commitment for owner's title insurance policy (Title
510 Commitment), in an amount equal to the Purchase Price.
511

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

513 **8.1.3. Owner's Extended Coverage (OEC).** The Title Commitment **Will** **Will Not**
514 contain Owner's Extended Coverage (OEC). If the Title Commitment is to contain OEC, it will commit to delete
515 or insure over the standard exceptions which relate to: (1) parties in possession, (2) unrecorded easements,
516 (3) survey matters, (4) unrecorded mechanics' liens, (5) gap period (period between the effective date and time
517 of commitment to the date and time the deed is recorded) and (6) unpaid taxes, assessments and unredeemed
518 tax sales prior to the year of Closing. Any additional premium expense to obtain OEC will be paid by **Buyer**
519 **Seller** **One-Half by Buyer and One-Half by Seller** **Other** **No Other**.
520

521 Regardless of whether the Contract requires OEC, the Title Insurance Commitment may not provide OEC or
522 delete or insure over any or all of the standard exceptions for OEC. The Title Insurance Company may require
523 a New Survey or New ILC, defined below, among other requirements for OEC. If the Title Insurance
524 Commitment is not satisfactory to Buyer, Buyer has a right to object under § 8.5 (Right to Object to Title,
525 Resolution).
526

527 **8.1.4. Title Documents.** Title Documents consist of the following: (1) copies of any plats,
528 declarations, covenants, conditions and restrictions burdening the Property and (2) copies of any other
529 documents (or, if illegible, summaries of such documents) listed in the schedule of exceptions (Exceptions) in
530 the Title Commitment furnished to Buyer (collectively, Title Documents).
531

532 **8.1.5. Copies of Title Documents.** Buyer must receive, on or before **Record Title Deadline**,
533 copies of all Title Documents. This requirement pertains only to documents as shown of record in the office of
534 the clerk and recorder in the county where the Property is located. The cost of furnishing copies of the
535 documents required in this Section will be at the expense of the party or parties obligated to pay for the
536 owner's title insurance policy.
537

538 **8.1.6. Existing Abstracts of Title.** Seller must deliver to Buyer copies of any abstracts of title
539 covering all or any portion of the Property (Abstract of Title) in Seller's possession on or before **Record Title**
540 **Deadline**.
541

542 **8.2. Record Title.** Buyer has the right to review and object to the Abstract of Title or Title
543 Commitment and any of the Title Documents as set forth in § 8.5 (Right to Object to Title, Resolution) on or
544 before **Record Title Objection Deadline**. Buyer's objection may be based on any unsatisfactory form or
545 content of Title Commitment or Abstract of Title, notwithstanding § 13, or any other unsatisfactory title
546 condition, in Buyer's sole subjective discretion. If the Abstract of Title, Title Commitment or Title Documents are
547 not received by Buyer on or before the **Record Title Deadline**, or if there is an endorsement to the Title
548 Commitment that adds a new Exception to title, a copy of the new Exception to title and the modified Title
549 Commitment will be delivered to Buyer. Buyer has until the earlier of Closing or ten days after receipt of such
550 documents by Buyer to review and object to: (1) any required Title Document not timely received by Buyer, (2)
551 any change to the Abstract of Title, Title Commitment or Title Documents, or (3) any endorsement to the Title
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561 Commitment. If Seller receives Buyer's Notice to Terminate or Notice of Title Objection, pursuant to this § 8.2
562 (Record Title), any title objection by Buyer is governed by the provisions set forth in § 8.5 (Right to Object to
563 Title, Resolution). If Seller has fulfilled all Seller's obligations, if any, to deliver to Buyer all documents required
564 by § 8.1 (Evidence of Record Title) and Seller does not receive Buyer's Notice to Terminate or Notice of Title
565 Objection by the applicable deadline specified above, Buyer accepts the condition of title as disclosed by the
566 Abstract of Title, Title Commitment and Title Documents as satisfactory.
567

569 **8.3. Off-Record Title.** Seller must deliver to Buyer, on or before **Off-Record Title Deadline**, true
570 copies of all existing surveys in Seller's possession pertaining to the Property and must disclose to Buyer all
571 easements, liens (including, without limitation, governmental improvements approved, but not yet installed) or
572 other title matters (including, without limitation, rights of first refusal and options) not shown by public records,
573 of which Seller has actual knowledge (Off-Record Matters). This Section excludes any **New ILC** or **New**
574 **Survey** governed under § 9 (New ILC, New Survey). Buyer has the right to inspect the Property to investigate
575 if any third party has any right in the Property not shown by public records (e.g., unrecorded easement,
576 boundary line discrepancy or water rights). Buyer's Notice to Terminate or Notice of Title Objection of any
577 unsatisfactory condition (whether disclosed by Seller or revealed by such inspection, notwithstanding § 8.2
578 (Record Title) and § 13 (Transfer of Title)), in Buyer's sole subjective discretion, must be received by Seller on
579 or before **Off-Record Title Objection Deadline**. If an Off-Record Matter is received by Buyer after the
580 **Off-Record Title Deadline**, Buyer has until the earlier of Closing or ten days after receipt by Buyer to review
581 and object to such Off-Record Matter. If Seller receives Buyer's Notice to Terminate or Notice of Title Objection
582 pursuant to this § 8.3 (Off-Record Title), any title objection by Buyer is governed by the provisions set forth in §
583 8.5 (Right to Object to Title, Resolution). If Seller does not receive Buyer's Notice to Terminate or Notice of Title
584 Objection by the applicable deadline specified above, Buyer accepts title subject to such Off-Record Matters
585 and rights, if any, of third parties not shown by public records of which Buyer has actual knowledge.
586

587 **8.4. Special Taxing Districts. SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL**
588 **OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES**
589 **ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS**
590 **MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND TAX TO SUPPORT THE SERVICING OF**
591 **SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO**
592 **DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYERS**
593 **SHOULD INVESTIGATE THE SPECIAL TAXING DISTRICTS IN WHICH THE PROPERTY IS LOCATED BY**
594 **CONTACTING THE COUNTY TREASURER, BY REVIEWING THE CERTIFICATE OF TAXES DUE FOR THE**
595 **PROPERTY AND BY OBTAINING FURTHER INFORMATION FROM THE BOARD OF COUNTY**
596 **COMMISSIONERS, THE COUNTY CLERK AND RECORDER, OR THE COUNTY ASSESSOR.**
597

598 A tax certificate from the respective county treasurer listing any special taxing districts that effect the
599 Property (Tax Certificate) must be delivered to Buyer on or before **Record Title Deadline**. If the Property is
600 located within a special taxing district and such inclusion is unsatisfactory to Buyer, in Buyer's sole subjective
601 discretion, Buyer may object, on or before **Record Title Objection Deadline**. If the Tax Certificate shows that
602 the Property is included in a special taxing district and is received by Buyer after the **Record Title Deadline**,
603 Buyer has until the earlier of Closing or ten days after receipt by Buyer to review and object to the Property's
604 inclusion in a special taxing district as unsatisfactory to Buyer.
605

606 **8.5. Right to Object to Title, Resolution.** Buyer's right to object, in Buyer's sole subjective
607 discretion, to any title matters includes those matters set forth in § 8.2 (Record Title), § 8.3 (Off-Record Title), §
608 8.4 (Special Taxing District) and § 13 (Transfer of Title). If Buyer objects to any title matter, on or before the
609 applicable deadline, Buyer has the following options:
610

611 **8.5.1. Title Objection, Resolution.** If Seller receives Buyer's written notice objecting to any
612 title matter (Notice of Title Objection) on or before the applicable deadline and if Buyer and Seller have not
613 agreed to a written settlement thereof on or before **Title Resolution Deadline**, this Contract will terminate on
614 the expiration of **Title Resolution Deadline**, unless Seller receives Buyer's written withdrawal of Buyer's
615 Notice of Title Objection (i.e., Buyer's written notice to waive objection to such items and waives the Right to
616 Terminate for that reason), on or before expiration of **Title Resolution Deadline**. If either the Record Title
617 Deadline or the Off-Record Title Deadline, or both, are extended pursuant to § 8.2 (Record Title), § 8.3
618 (Off-Record Title) or § 8.4 (Special Taxing Districts), the Title Resolution Deadline also will be automatically
619 extended to the earlier of Closing or fifteen days after Buyer's receipt of the applicable documents; or
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631 **8.5.2. Title Objection, Right to Terminate.** Buyer may exercise the Right to Terminate under
632 § 25.1, on or before the applicable deadline, based on any title matter unsatisfactory to Buyer, in Buyer's sole
633 subjective discretion.
634

635 **8.6. Right of First Refusal or Contract Approval.** If there is a right of first refusal on the Property
636 or a right to approve this Contract, Seller must promptly submit this Contract according to the terms and
637 conditions of such right. If the holder of the right of first refusal exercises such right or the holder of a right to
638 approve disapproves this Contract, this Contract will terminate. If the right of first refusal is waived explicitly or
639 expires, or the Contract is approved, this Contract will remain in full force and effect. Seller must promptly
640 notify Buyer in writing of the foregoing. If expiration or waiver of the right of first refusal or approval of this
641 Contract has not occurred on or before **Right of First Refusal Deadline**, this Contract will then terminate.
642

643 **8.7. Title Advisory.** The Title Documents affect the title, ownership and use of the Property and
644 should be reviewed carefully. Additionally, other matters not reflected in the Title Documents may affect the
645 title, ownership and use of the Property, including, without limitation, boundary lines and encroachments,
646 set-back requirements, area, zoning, building code violations, unrecorded easements and claims of
647 easements, leases and other unrecorded agreements, water on or under the Property, and various laws and
648 governmental regulations concerning land use, development and environmental matters.
649

650 **8.7.1. OIL, GAS, WATER AND MINERAL DISCLOSURE. THE SURFACE ESTATE OF THE**
651 **PROPERTY MAY BE OWNED SEPARATELY FROM THE UNDERLYING MINERAL ESTATE AND**
652 **TRANSFER OF THE SURFACE ESTATE MAY NOT NECESSARILY INCLUDE TRANSFER OF THE**
653 **MINERAL ESTATE OR WATER RIGHTS. THIRD PARTIES MAY OWN OR LEASE INTERESTS IN OIL, GAS,**
654 **OTHER MINERALS, GEOTHERMAL ENERGY OR WATER ON OR UNDER THE SURFACE OF THE**
655 **PROPERTY, WHICH INTERESTS MAY GIVE THEM RIGHTS TO ENTER AND USE THE SURFACE OF THE**
656 **PROPERTY TO ACCESS THE MINERAL ESTATE, OIL, GAS OR WATER.**
657

658 **8.7.2. SURFACE USE AGREEMENT. THE USE OF THE SURFACE ESTATE OF THE**
659 **PROPERTY TO ACCESS THE OIL, GAS OR MINERALS MAY BE GOVERNED BY A SURFACE USE**
660 **AGREEMENT, A MEMORANDUM OR OTHER NOTICE OF WHICH MAY BE RECORDED WITH THE**
661 **COUNTY CLERK AND RECORDER.**
662

663 **8.7.3. OIL AND GAS ACTIVITY. OIL AND GAS ACTIVITY THAT MAY OCCUR ON OR**
664 **ADJACENT TO THE PROPERTY MAY INCLUDE, BUT IS NOT LIMITED TO, SURVEYING, DRILLING,**
665 **WELL COMPLETION OPERATIONS, STORAGE, OIL AND GAS, OR PRODUCTION FACILITIES,**
666 **PRODUCING WELLS, REWORKING OF CURRENT WELLS AND GAS GATHERING AND PROCESSING**
667 **FACILITIES.**
668

669 **8.7.4. ADDITIONAL INFORMATION. BUYER IS ENCOURAGED TO SEEK ADDITIONAL**
670 **INFORMATION REGARDING OIL AND GAS ACTIVITY ON OR ADJACENT TO THE PROPERTY,**
671 **INCLUDING DRILLING PERMIT APPLICATIONS. THIS INFORMATION MAY BE AVAILABLE FROM THE**
672 **COLORADO OIL AND GAS CONSERVATION COMMISSION.**
673

674 **8.7.5. Title Insurance Exclusions.** Matters set forth in this Section and others, may be
675 excepted, excluded from, or not covered by the owner's title insurance policy.
676

677 **8.8. Consult an Attorney.** Buyer is advised to timely consult legal counsel with respect to all such
678 matters as there are strict time limits provided in this Contract (e.g., **Record Title Objection Deadline** and
679 **Off-Record Title Objection Deadline**).
680

681 **9. NEW ILC, NEW SURVEY.**

682 **9.1. New ILC or New Survey.** If the box is checked, a: 1) **New Improvement Location Certificate**
683 **(New ILC);** or, 2) **New Survey** in the form of Alta Survey, is required and the following will apply:
684

685 **9.1.1. Ordering of New ILC or New Survey.** **Seller** **Buyer** will order the New ILC or New
686 Survey. The New ILC or New Survey may also be a previous ILC or survey that is in the above-required form,
687 certified and updated as of a date after the date of this Contract.
688

689 **9.1.2. Payment for New ILC or New Survey.** The cost of the New ILC or New Survey will be
690 paid, on or before Closing, by: **Seller** **Buyer** or: No Other
691

692 **9.1.3. Delivery of New ILC or New Survey.** Buyer, Seller, the issuer of the Title Commitment (or
693 the provider of the opinion of title if an Abstract of Title) and Buyers Attorney will receive a New ILC or New
694 Survey on or before **New ILC or New Survey Deadline**.
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701 **9.1.4. Certification of New ILC or New Survey.** The New ILC or New Survey will be certified by
702 the surveyor to all those who are to receive the New ILC or New Survey.

703 **9.2. Buyer's Right to Waive or Change New ILC or New Survey Selection.** Buyer may select a
704 New ILC or New Survey different than initially specified in this Contract if there is no additional cost to Seller or
705 change to the **New ILC or New Survey Objection Deadline**. Buyer may, in Buyer's sole subjective discretion,
706 waive a New ILC or New Survey if done prior to Seller incurring any cost for the same.
707

708 **9.3. New ILC or New Survey Objection.** Buyer has the right to review and object to the **New ILC or**
709 **New Survey**. If the New ILC or New Survey is not timely received by Buyer or is unsatisfactory to Buyer, in
710 Buyer's sole subjective discretion, Buyer may, on or before **New ILC or New Survey Objection Deadline**,
711 notwithstanding § 8.3 or § 13:
712

713 **9.3.1. Notice to Terminate.** Notify Seller in writing, pursuant to § 25.1, that this Contract is
714 terminated; or
715

716 **9.3.2. New ILC or New Survey Objection.** Deliver to Seller a written description of any matter that
717 was to be shown or is shown in the New ILC or New Survey that is unsatisfactory and that Buyer requires
718 Seller to correct.
719

720 **9.3.3. New ILC or New Survey Resolution.** If a **New ILC or New Survey Objection** is received
721 by Seller, on or before **New ILC or New Survey Objection Deadline** and if Buyer and Seller have not agreed
722 in writing to a settlement thereof on or before **New ILC or New Survey Resolution Deadline**, this Contract will
723 terminate on expiration of the **New ILC or New Survey Resolution Deadline**, unless Seller receives Buyer's
724 written withdrawal of the New ILC or New Survey Objection before such termination, i.e., on or before
725 expiration of **New ILC or New Survey Resolution Deadline**.
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DISCLOSURE, INSPECTION AND DUE DILIGENCE

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732 **10. PROPERTY DISCLOSURE, INSPECTION, INDEMNITY, INSURABILITY, DUE DILIGENCE, AND**
733 **SOURCE OF WATER.**
734

735 ~~**10.1. Seller's Property Disclosure.** On or before **Seller's Property Disclosure Deadline**, Seller~~
736 ~~agrees to deliver to Buyer the most current version of the applicable Colorado Real Estate Commission's~~
737 ~~Seller's Property Disclosure form completed by Seller to Seller's actual knowledge and current as of the date of~~
738 ~~this Contract.~~
739

740 **10.2. Disclosure of Adverse Material Facts; Subsequent Disclosure; Present Condition.** Seller
741 must disclose to Buyer any adverse material facts actually known by Seller as of the date of this Contract.
742 Seller agrees that disclosure of adverse material facts will be in writing. In the event Seller discovers an
743 adverse material fact after the date of this Contract, Seller must timely disclose such adverse fact to Buyer.
744 Buyer has the Right to Terminate based on the Seller's new disclosure on the earlier of Closing or five days
745 after Buyer's receipt of the new disclosure. Except as otherwise provided in this Contract, Buyer acknowledges
746 that Seller is conveying the Property to Buyer in an "**As Is**" condition, "**Where Is**" and "**With All Faults.**"
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748 **10.3. Inspection.** Unless otherwise provided in this Contract, Buyer, acting in good faith, has the right
749 to have inspections (by one or more third parties, personally or both) of the Property and Inclusions
750 (Inspection), at Buyer's expense. If (1) the physical condition of the Property, including, but not limited to, the
751 roof, walls, structural integrity of the Property, the electrical, plumbing, HVAC and other mechanical systems of
752 the Property, (2) the physical condition of the Inclusions, (3) service to the Property (including utilities and
753 communication services), systems and components of the Property (e.g., heating and plumbing), (4) any
754 proposed or existing transportation project, road, street or highway, or (5) any other activity, odor or noise
755 (whether on or off the Property) and its effect or expected effect on the Property or its occupants is
756 unsatisfactory, in Buyer's sole subjective discretion, Buyer may:
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758 **10.3.1. Inspection Objection.** On or before the **Inspection Objection Deadline**, deliver to
759 Seller a written description of any unsatisfactory condition that Buyer requires Seller to correct; or
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761 **10.3.2. Terminate.** On or before the **Inspection Termination Deadline**, notify Seller in writing,
762 pursuant to § 25.1, that this Contract is terminated due to any unsatisfactory condition. **Inspection**
763 **Termination Deadline will be on the earlier of Inspection Resolution Deadline or the date specified in §**
764 **3.1 for Inspection Termination Deadline.**
765

766 **10.3.3. Inspection Resolution.** If an Inspection Objection is received by Seller, on or before
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771 **Inspection Objection Deadline** and if Buyer and Seller have not agreed in writing to a settlement thereof on
772 or before **Inspection Resolution Deadline**, this Contract will terminate on **Inspection Resolution Deadline**
773 unless Seller receives Buyer's written withdrawal of the Inspection Objection before such termination, i.e., on or
774 before expiration of **Inspection Resolution Deadline**.
775

776 **10.4. Damage, Liens and Indemnity.** Buyer, except as otherwise provided in this Contract or other
777 written agreement between the parties, is responsible for payment for all inspections, tests, surveys,
778 engineering reports, or other reports performed at Buyer's request (Work) and must pay for any damage that
779 occurs to the Property and Inclusions as a result of such Work. Buyer must not permit claims or liens of any
780 kind against the Property for Work performed on the Property. Buyer agrees to indemnify, protect and hold
781 Seller harmless from and against any liability, damage, cost or expense incurred by Seller and caused by any
782 such Work, claim, or lien. This indemnity includes Seller's right to recover all costs and expenses incurred by
783 Seller to defend against any such liability, damage, cost or expense, or to enforce this Section, including
784 Seller's reasonable attorney fees, legal fees and expenses. The provisions of this Section survive the
785 termination of this Contract. This § 10.4 does not apply to items performed pursuant to an Inspection
786 Resolution.
787

790 **10.5. Insurability.** Buyer has the right to review and object to the availability, terms and conditions of
791 and premium for property insurance (Property Insurance). Buyer has the Right to Terminate under § 25.1, on or
792 before **Property Insurance Termination Deadline**, based on any unsatisfactory provision of the Property
793 Insurance, in Buyer's sole subjective discretion.
794

795 **10.6. Due Diligence.**

796 **10.6.1. Due Diligence Documents.** If the respective box is checked, Seller agrees to deliver
797 copies of the following documents and information pertaining to the Property (Due Diligence Documents) to
798 Buyer on or before **Due Diligence Documents Delivery Deadline**:
799

800 **10.6.1.1.** All contracts relating to the operation, maintenance and management of the
801 Property;
802

803 **10.6.1.2.** Property tax bills for the last 3 years;
804

805 **10.6.1.3.** As-built construction plans to the Property and the tenant improvements,
806 including architectural, electrical, mechanical, and structural systems, engineering reports, and permanent
807 Certificates of Occupancy, to the extent now available;
808

809 **10.6.1.4.** A list of all Inclusions to be conveyed to Buyer;
810

811 **10.6.1.5.** Operating statements for the past 3 years;
812

813 **10.6.1.6.** A rent roll accurate and correct to the date of this Contract;
814

815 **10.6.1.7.** All current leases, including any amendments or other occupancy
816 agreements, pertaining to the Property. Those leases or other occupancy agreements pertaining to the
817 Property that survive Closing are as follows (Leases): **Summit Wine & Spirits, Colorado Wok,**
Supercuts (US), Advance America, Adesso Pizzeria.& Elite Nails.

818 **10.6.1.8.** A schedule of any tenant improvement work Seller is obligated to complete
819 but has not yet been completed and capital improvement work either scheduled or in process on the date of
820 this Contract;
821

822 **10.6.1.9.** All insurance policies pertaining to the Property and copies of any claims
823 which have been made for the past 3 years;
824

825 **10.6.1.10.** Soils reports, surveys and engineering reports or data pertaining to the
826 Property (if not delivered earlier under § 8.3);
827

828 **10.6.1.11.** Any and all existing documentation and reports regarding Phase I and II
829 environmental reports, letters, test results, advisories and similar documents respective to the existence or
830 nonexistence of asbestos, PCB transformers, or other toxic, hazardous or contaminated substances, and/or
831 underground storage tanks and/or radon gas. If no reports are in Seller's possession or known to Seller, Seller
832 warrants that no such reports are in Seller's possession or known to Seller;
833

834 **10.6.1.12.** Any *Americans with Disabilities Act* reports, studies or surveys concerning
835 the compliance of the Property with said Act;
836

837 **10.6.1.13.** All permits, licenses and other building or use authorizations issued by any
838 governmental authority with jurisdiction over the Property and written notice of any violation of any such
839 permits, licenses or use authorizations, if any; and
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10.6.1.14. Other documents and information:

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

10.6.2.1. Notice to Terminate. Notify Seller in writing, pursuant to § 25.1, that this Contract is terminated; or

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

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

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

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

If Buyer's Phase I Environmental Site Assessment recommends a Phase II Environmental Site Assessment, the **Environmental Inspection Termination Deadline** will be extended by 7 days (Extended Environmental Inspection Objection Deadline) and if such Extended Environmental Inspection Objection Deadline extends beyond the **Closing Date**, the **Closing Date** will be extended a like period of time. In such event, Seller Buyer must pay the cost for such Phase II Environmental Site Assessment.

Notwithstanding Buyer's right to obtain additional environmental inspections of the Property in this § 10.6.4, Buyer has the Right to Terminate under § 25.1, on or before **Environmental Inspection Termination Deadline**, or if applicable, the Extended Environmental Inspection Objection Deadline, based on any unsatisfactory results of Environmental Inspection, in Buyer's sole subjective discretion.

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

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

10.8. Source of Potable Water (Residential Land and Residential Improvements Only).
[Intentionally Deleted]

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

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

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

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

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

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

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

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

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

11.3. Estoppel Statements Termination. Buyer has the Right to Terminate under § 25.1, on or before **Estoppel Statements Termination Deadline**, based on any unsatisfactory Estoppel Statement, in Buyer's sole subjective discretion, or if Seller fails to deliver the Estoppel Statements on or before **Estoppel Statements Deadline**. Buyer also has the unilateral right to waive any unsatisfactory Estoppel Statement.

CLOSING PROVISIONS

12. CLOSING DOCUMENTS, INSTRUCTIONS AND CLOSING.

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

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

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

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

13. TRANSFER OF TITLE. Subject to Buyer's compliance with the terms and provisions of this Contract, including the tender of any payment due at Closing, Seller, provided another deed is not selected, must execute and deliver a good and sufficient special warranty deed to Buyer, at Closing. However, if the box is checked, the parties agree to use the corresponding deed instead:

general warranty deed bargain and sale deed quit claim deed personal representative's deed
 n/a deed.

13.1. Special Warranty Deed and General Warranty Deed Exceptions. If title will be conveyed using a special warranty deed or a general warranty deed, title will be conveyed subject to:

13.1.1. General taxes for the year of Closing,

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- 13.1.2. Distribution utility easements (including cable TV),
- 13.1.3. Those specifically described rights of third parties not shown by the public records of which Buyer has actual knowledge and which were accepted by Buyer in accordance with with § 8.3 (Off-Record Title) and § 9 (New ILC or New Survey),
- 13.1.4. Inclusion of the Property within any special taxing district,
- 13.1.5. Any special assessment if the improvements were not installed as of the date of Buyer's signature hereon, whether assessed prior to or after Closing and
- 13.1.6. Other No Other.

13.2. **Special Warranty Deed.** In addition to the requirements of § 13.1, if title will be conveyed by a special warranty deed, Seller will warrant title against all persons claiming by, through or under Seller subject to those specific recorded exceptions, if any, created during Seller's ownership of the Property and described by reference to recorded documents shown as Exceptions in the Title Documents that are accepted by Buyer in accordance with § 8.2 (Record Title) and described in the deed by reference to the specific recording information for each recorded document.

13.3. **General Warranty Deed.** In addition to the requirements of § 13.1, if title will be conveyed by a general warranty deed, Seller will warrant the title subject to those specific recorded exceptions described by reference to recorded documents shown as Exceptions in the Title Documents that are accepted by Buyer in accordance with § 8.2 (Record Title) and described in the deed by reference to the specific recording information for each recorded document.

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

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

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

15.2. **Closing Services Fee.** The fee for real estate closing services must be paid at Closing by Buyer Seller One-Half by Buyer and One-Half by Seller Other No Other

15.3. **Status Letter and Record Change Fees.** At least fourteen days prior to **Closing Date**, Seller agrees to promptly request the Association to deliver to Buyer a current Status Letter. Any fees incident to the issuance of Association's Status Letter must be paid by None Buyer Seller One-Half by Buyer and One-Half by Seller. Any Record Change Fee must be paid by None Buyer Seller One-Half by Buyer and One-Half by Seller .

15.4. **Local Transfer Tax.** The Local Transfer Tax of n/a % of the Purchase Price must be paid at Closing by None Buyer Seller One-Half by Buyer and One-Half by Seller.

15.5. **Private Transfer Fee.** Private transfer fees and other fees due to a transfer of the Property, payable at Closing, such as community association fees, developer fees and foundation fees, must be paid at Closing by None Buyer Seller One-Half by Buyer and One-Half by Seller. The Private Transfer fee, whether one or more, is for the following association(s): n/a in the total amount of % of the Purchase Price or \$.

15.6. **Water Transfer Fees.** The Water Transfer Fees can change. The fees, as of the date of this Contract, do not exceed \$n/a for:

Water Stock/Certificates Water District
 Augmentation Membership Small Domestic Water Company n/a and must be paid at Closing by None Buyer Seller One-Half by Buyer and One-Half by Seller

15.7. **Sales and Use Tax.** Any sales and use tax that may accrue because of this transaction must be paid when due by None Buyer Seller One-Half by Buyer and One-Half by Seller.

1051 **15.8. FIRPTA and Colorado Withholding.**

1052 **15.8.1. FIRPTA.** The Internal Revenue Service (IRS) may require a substantial portion of
1053 the Seller's proceeds be withheld after Closing when Seller is a foreign person. If required withholding does not
1054 occur, the Buyer could be held liable for the amount of the Seller's tax, interest and penalties. If the box in this
1055 Section is checked, Seller represents that Seller **IS** a foreign person for purposes of U.S. income taxation. If
1056 the box in this Section is not checked, Seller represents that Seller is not a foreign person for purposes of U.S.
1057 income taxation. Seller agrees to cooperate with Buyer and Closing Company to provide any reasonably
1058 requested documents to verify Seller's foreign person status. If withholding is required, Seller authorizes
1059 Closing Company to withhold such amount from Seller's proceeds. Seller should inquire with Seller's tax
1060 advisor to determine if withholding applies or if an exemption exists.

1061 **15.8.2. Colorado Withholding.** The Colorado Department of Revenue may require a
1062 portion of the Seller's proceeds be withheld after Closing when Seller will not be a Colorado resident after
1063 Closing, if not otherwise exempt. Seller agrees to cooperate with Buyer and Closing Company to provide any
1064 reasonably requested documents to verify Seller's status. If withholding is required, Seller authorizes Closing
1065 Company to withhold such amount from Seller's proceeds. Seller should inquire with Seller's tax advisor to
1066 determine if withholding applies or if an exemption exists.

1067 **16. PRORATIONS AND ASSOCIATION ASSESSMENT.** The following will be prorated to the **Closing**
1068 **Date**, except as otherwise provided:

1069 **16.1. Taxes.** Personal property taxes, if any, special taxing district assessments, if any and
1070 general real estate taxes for the year of Closing, based on **Taxes for the Calendar Year Immediately**
1071 **Preceding Closing** **Most Recent Mill Levy and Most Recent Assessed Valuation**, adjusted by any
1072 applicable qualifying seniors property tax exemption, qualifying disabled veteran exemption or **Other** No
1073 Other.

1074 **16.2. Rents.** Rents based on **Rents Actually Received** **Accrued**. At Closing, Seller will
1075 transfer or credit to Buyer the security deposits for all Leases assigned, or any remainder after lawful
1076 deductions and notify all tenants in writing of such transfer and of the transferee's name and address. Seller
1077 must assign to Buyer all Leases in effect at Closing and Buyer must assume Seller's obligations under such
1078 Leases.

1079 **16.3. Association Assessments.** Current regular Association assessments and dues
1080 (Association Assessments) paid in advance will be credited to Seller at Closing. Cash reserves held out of the
1081 regular Association Assessments for deferred maintenance by the Association will not be credited to Seller
1082 except as may be otherwise provided by the Governing Documents. Buyer acknowledges that Buyer may be
1083 obligated to pay the Association, at Closing, an amount for reserves or working capital. Any special
1084 assessment assessed prior to **Closing Date** by the Association will be the obligation of **Buyer** **Seller**.
1085 Except however, any special assessment by the Association for improvements that have been installed as of
1086 the date of Buyer's signature hereon, whether assessed prior to or after Closing, will be the obligation of Seller.
1087 Seller represents there are no unpaid regular or special assessments against the Property except the current
1088 regular assessments and *n/a*. Association Assessments are subject to change as provided in the Governing
1089 Documents.

1090 **16.4. Other Prorations.** Water and sewer charges, propane, interest on continuing loan and **No**
1091 **Other**.

1092 **16.5. Final Settlement.** Unless otherwise agreed in writing, these prorations are final.

1093 **17. POSSESSION.** Possession of the Property will be delivered to Buyer on **Possession Date** at
1094 **Possession Time**, subject to the Leases as set forth in § 10.6.1.7.

1095 If Seller, after Closing, fails to deliver possession as specified, Seller will be subject to eviction and
1096 will be additionally liable to Buyer for payment of \$ *n/a* per day (or any part of a day notwithstanding § 18.1)
1097 from **Possession Date** and **Possession Time** until possession is delivered.

1098 **GENERAL PROVISIONS**

1121 **18. DAY; COMPUTATION OF PERIOD OF DAYS, DEADLINE.**

1122 **18.1. Day.** As used in this Contract, the term “day” means the entire day ending at 11:59 p.m., United
1123 States Mountain Time (Standard or Daylight Savings, as applicable).

1124 **18.2. Computation of Period of Days, Deadline.** In computing a period of days (e.g., three days after
1125 MEC), when the ending date is not specified, the first day is excluded and the last day is included. If any
1126 deadline falls on a Saturday, Sunday or federal or Colorado state holiday (Holiday), such deadline **Will**
1127 **Will Not** be extended to the next day that is not a Saturday, Sunday or Holiday. Should neither box be
1128 checked, the deadline will not be extended.
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1132 **19. CAUSES OF LOSS, INSURANCE; DAMAGE TO INCLUSIONS AND SERVICES; CONDEMNATION;**
1133 **AND WALK-THROUGH.** Except as otherwise provided in this Contract, the Property, Inclusions or both will be
1134 delivered in the condition existing as of the date of this Contract, ordinary wear and tear excepted.

1135 **19.1. Causes of Loss, Insurance.** In the event the Property or Inclusions are damaged by fire, other
1136 perils or causes of loss prior to Closing (Property Damage) in an amount of not more than ten percent of the
1137 total Purchase Price and if the repair of the damage will be paid by insurance (other than the deductible to be
1138 paid by Seller), then Seller, upon receipt of the insurance proceeds, will use Seller’s reasonable efforts to
1139 repair the Property before **Closing Date**. Buyer has the Right to Terminate under § 25.1, on or before **Closing**
1140 **Date**, if the Property is not repaired before **Closing Date**, or if the damage exceeds such sum. Should Buyer
1141 elect to carry out this Contract despite such Property Damage, Buyer is entitled to a credit at Closing for all
1142 insurance proceeds that were received by Seller (but not the Association, if any) resulting from damage to the
1143 Property and Inclusions, plus the amount of any deductible provided for in the insurance policy. This credit may
1144 not exceed the Purchase Price. In the event Seller has not received the insurance proceeds prior to Closing,
1145 the parties may agree to extend the **Closing Date** to have the Property repaired prior to Closing or, at the
1146 option of Buyer, (1) Seller must assign to Buyer the right to the proceeds at Closing, if acceptable to Seller’s
1147 insurance company and Buyer’s lender; or (2) the parties may enter into a written agreement prepared by the
1148 parties or their attorney requiring the Seller to escrow at Closing from Seller’s sale proceeds the amount Seller
1149 has received and will receive due to such damage, not exceeding the total Purchase Price, plus the amount of
1150 any deductible that applies to the insurance claim.
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1158 **19.2. Damage, Inclusions and Services.** Should any Inclusion or service (including utilities and
1159 communication services), system, component or fixture of the Property (collectively Service) (e.g., heating or
1160 plumbing), fail or be damaged between the date of this Contract and Closing or possession, whichever is
1161 earlier, then Seller is liable for the repair or replacement of such Inclusion or Service with a unit of similar size,
1162 age and quality, or an equivalent credit, but only to the extent that the maintenance or replacement of such
1163 Inclusion or Service is not the responsibility of the Association, if any, less any insurance proceeds received by
1164 Buyer covering such repair or replacement. If the failed or damaged Inclusion or Service is not repaired or
1165 replaced on or before Closing or possession, whichever is earlier, Buyer has the Right to Terminate under §
1166 25.1, on or before **Closing Date**, or, at the option of Buyer, Buyer is entitled to a credit at Closing for the repair
1167 or replacement of such Inclusion or Service. Such credit must not exceed the Purchase Price. If Buyer receives
1168 such a credit, Seller’s right for any claim against the Association, if any, will survive Closing.
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1172 **19.3. Condemnation.** In the event Seller receives actual notice prior to Closing that a pending
1173 condemnation action may result in a taking of all or part of the Property or Inclusions, Seller must promptly
1174 notify Buyer, in writing, of such condemnation action. Buyer has the Right to Terminate under § 25.1, on or
1175 before **Closing Date**, based on such condemnation action, in Buyer’s sole subjective discretion. Should Buyer
1176 elect to consummate this Contract despite such diminution of value to the Property and Inclusions, Buyer is
1177 entitled to a credit at Closing for all condemnation proceeds awarded to Seller for the diminution in the value of
1178 the Property or Inclusions but such credit will not include relocation benefits or expenses, or exceed the
1179 Purchase Price.
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1182 **19.4. Walk-Through and Verification of Condition.** Buyer, upon reasonable notice, has the right to
1183 walk through the Property prior to Closing to verify that the physical condition of the Property and Inclusions
1184 complies with this Contract.
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1187 **20. RECOMMENDATION OF LEGAL AND TAX COUNSEL.** By signing this Contract, Buyer and Seller
1188 acknowledge that the respective broker has advised that this Contract has important legal consequences and
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1191 has recommended the examination of title and consultation with legal and tax or other counsel before signing
1192 this Contract.
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1195 **21. TIME OF ESSENCE, DEFAULT AND REMEDIES.** Time is of the essence for all dates and deadlines
1196 in this Contract. This means that all dates and deadlines are strict and absolute. If any payment due, including
1197 Earnest Money, is not paid, honored or tendered when due, or if any obligation is not performed timely as
1198 provided in this Contract or waived, the non-defaulting party has the following remedies:
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1200 **21.1. If Buyer is in Default:**

1201 **21.1.1. Specific Performance.** Seller may elect to cancel this Contract and all Earnest
1202 Money (whether or not paid by Buyer) will be paid to Seller and retained by Seller. It is agreed that the Earnest
1203 Money is not a penalty and the Parties agree the amount is fair and reasonable. Seller may recover such
1204 additional damages as may be proper. Alternatively, Seller may elect to treat this Contract as being in full force
1205 and effect and Seller has the right to specific performance or damages, or both.
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1208 **21.1.2. Liquidated Damages, Applicable. This § 21.1.2 applies unless the box in § 21.1.1.**
1209 **is checked.** Seller may cancel this Contract. All Earnest Money (whether or not paid by Buyer) will be paid to
1210 Seller and retained by Seller. It is agreed that the Earnest Money specified in § 4.1 is LIQUIDATED DAMAGES
1211 and not a penalty, which amount the parties agree is fair and reasonable and (except as provided in §§ 10.4,
1212 22, 23 and 24), said payment of Earnest Money is SELLER'S ONLY REMEDY for Buyer's failure to perform
1213 the obligations of this Contract. Seller expressly waives the remedies of specific performance and additional
1214 damages.
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1217 **21.2. If Seller is in Default:** Buyer may elect to treat this Contract as canceled, in which case all
1218 Earnest Money received hereunder will be returned to Buyer and Buyer may recover such damages as may be
1219 proper. ~~Alternatively, Buyer may elect to treat this Contract as being in full force and effect and Buyer has the~~
1220 ~~right to specific performance or damages, or both.~~
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1223 **22. LEGAL FEES, COST AND EXPENSES.** Anything to the contrary herein notwithstanding, in the event
1224 of any arbitration or litigation relating to this Contract, prior to or after **Closing Date**, the arbitrator or court must
1225 award to the prevailing party all reasonable costs and expenses, including attorney fees, legal fees and
1226 expenses.
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1229 ~~**23. MEDIATION.** If a dispute arises relating to this Contract (whether prior to or after Closing) and is not
1230 resolved, the parties must first proceed, in good faith, to mediation. Mediation is a process in which the parties
1231 meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot
1232 impose binding decisions. Before any mediated settlement is binding, the parties to the dispute must agree to
1233 the settlement, in writing. The parties will jointly appoint an acceptable mediator and will share equally in the
1234 cost of such mediation. The obligation to mediate, unless otherwise agreed, will terminate if the entire dispute
1235 is not resolved within thirty days of the date written notice requesting mediation is delivered by one party to the
1236 other at that party's last known address (physical or electronic as provided in § 27). Nothing in this Section
1237 prohibits either party from filing a lawsuit and recording a *lis pendens* affecting the Property, before or after the
1238 date of written notice requesting mediation. This Section will not alter any date in this Contract, unless
1239 otherwise agreed.~~
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1245 **24. EARNEST MONEY DISPUTE.** Except as otherwise provided herein, Earnest Money Holder must
1246 release the Earnest Money following receipt of written mutual instructions, signed by both Buyer and Seller. In
1247 the event of any controversy regarding the Earnest Money, Earnest Money Holder is not required to release the
1248 Earnest Money. Earnest Money Holder, in its sole subjective discretion, has several options: (1) wait for any
1249 proceeding between Buyer and Seller; (2) interplead all parties and deposit Earnest Money into a ~~court of~~
1250 ~~competent jurisdiction~~ (Earnest Money Holder is entitled to recover court costs and reasonable attorney and
1251 legal fees incurred with such action); or (3) provide notice to Buyer and Seller that unless Earnest Money
1252 Holder receives a copy of the Summons and Complaint or Claim (between Buyer and Seller) containing the
1253 case number of the lawsuit (Lawsuit) within one hundred twenty days of Earnest Money Holder's notice to the
1254 parties, Earnest Money Holder is authorized to return the Earnest Money to Buyer. In the event Earnest Money
1255 Holder does receive a copy of the Lawsuit and has not interpleaded the monies at the time of any Order, Earnest
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Money Holder must disburse the Earnest Money pursuant to the Order of the Court. The parties reaffirm the obligation of § 23 (Mediation). This Section will survive cancellation or termination of this Contract.

25. TERMINATION.

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

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

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

27. NOTICE, DELIVERY AND CHOICE OF LAW.

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

27.2. Electronic Notice. As an alternative to physical delivery, any notice, may be delivered in electronic form to Buyer or Seller, any individual named in this Contract to receive documents or notices for such party, Broker or Brokerage Firm of Broker working with such party (except any notice or delivery after Closing must be received by the party, not Broker or Brokerage Firm) at the electronic address of the recipient by facsimile, email or [CTMe Contracts](#).

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

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

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

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

ADDITIONAL PROVISIONS AND ATTACHMENTS

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

30.1 Re Para 4.6. Buyer agrees to pay a loan assumption fee of .25% of the Principal Balance.

30.2 Re Para 24. - (2) Strikethrough section to be replaced with "Receivership Court"

30.3 Re Para 2.2. No Assignability. This Contract may be assigned by the Buyer.

30.4 Re Para 4.6. Assumption. Buyer shall pay and/or assume any and all fees, costs, expenses, delinquencies, penalties, consideration or other remuneration associated with any existing loan assumption. Seller shall be released from liability from any existing loan secured by the Property. Buyer is required to use professional advisors experienced in the assumption of CMBS loans, at Buyer's expense, to facilitate and/or expedite the loan assumption process.

30.5 Re Para 21.2. If Seller is in Default: Buyer may elect to treat this Contract as canceled, in which case Earnest Money received hereunder will be returned to Buyer and Buyer may recover such damages as may be proper. Buyer shall not have the right for specific performance.

30.6 Re Para 23. Mediation. Section 23 requiring Mediation is deleted in the entirety.

30.7 Re Para 24. Earnest Money Dispute. Notwithstanding Section 24, the Receivership Court shall have exclusive jurisdiction to hear and determine all disputes, claims, or other actions arising from or relating to the Contract, including any dispute regarding earnest money.

30.8 Re Para 32/33. Broker's Acknowledgements and Compensation Disclosure. Seller discloses that Allen Vellone Wolf Helfrich & Factor, PC ("Allen Vellone") is the law firm representing the Seller/Receiver. Matthew J. Roth, Esq. is an attorney with Allen Vellone who prepared this Contract. Attorney Roth is a licensed real estate broker in the State of Colorado but is not acting as a broker in this transaction.

31. ATTACHMENTS.

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

See attached "ADDENDUM TO CONTRACT TO BUY AND SELL REAL ESTATE"

31.2. The following documents have been provided but are **attached** but are **not** a part of this Contract:

n/a

SIGNATURES

Michael Manwaring

Date: **5/16/2019**

Buyer: **Michael Manwaring**

Rand Lewis

Date: **5/15/2019**

Buyer: **Rand Lewis**

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

Harvey Sender, in his capacity as Receiver Date: 5/16/2019

Seller: **Harvey Sender in his capacity as Receiver of the Gary Dragul Receivership Estate**
By: **Harvey Sender, in his capacity as Receiver**

END OF CONTRACT TO BUY AND SELL REAL ESTATE

32. BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.

(To be completed by 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 § 24, if the Earnest Money has not already been returned following receipt of a Notice to Terminate or other written notice of termination, Earnest Money Holder will release the Earnest Money as directed by the written mutual instructions. Such release of Earnest Money will be made within five days of Earnest Money Holder's receipt of the executed written mutual instructions, provided the Earnest Money check has cleared.

Although Broker is not a party to the Contract, Broker agrees to cooperate, upon request, with any mediation requested under § 23.

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

Customer. Broker has no brokerage relationship with Buyer. See § 33 for Broker's brokerage relationship with Seller.

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

Brokerage Firm's Name: **Keller Williams Preferred Realty**

Brokerage Firm's License #: **EC 1000270**

Trinity Team



Date: 5/14/2019

Broker's Name: **Eric Fritzke**

Broker's License #: **ER 323964**

Address: **11859 Pecos St. #200 Westminster, CO 80234**

Ph: **303-539-7661** Fax: Email Address: **eric@trinityteamre.com; hope@trinityteamre.com**

33. BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.

(To be completed by 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 § 24, if the Earnest Money has not already been

returned following receipt of a Notice to Terminate or other written notice of termination, Earnest Money Holder will release the Earnest Money as directed by the written mutual instructions. Such release of Earnest Money will be made within five days of Earnest Money Holder's receipt of the executed written mutual instructions, provided the Earnest Money check has cleared.

Although Broker is not a party to the Contract, Broker agrees to cooperate, upon request, with any mediation requested under § 23.

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

Customer. Broker has no brokerage relationship with Seller. See § 32 for Broker's brokerage relationship with Buyer.

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

Brokerage Firm's Name: **Marcus & Millichap**

Brokerage Firm's License #:

Cory Gross

Date: **5/16/2019**

Broker's Name: **Cory Gross**

Broker's License #:

Address: **1225 17th St, STE 1800 Denver, CO 80202**

Ph: **303-328-2019** Fax: Email Address: **Cory.Gross@marcusmillichap.com**

CBS3-6-18. CONTRACT TO BUY AND SELL REAL ESTATE (COMMERCIAL)

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**ADDENDUM TO CONTRACT TO BUY AND SELL REAL ESTATE
(COMMERCIAL) DATED MAY 14, 2019 (“CONTRACT”) BETWEEN
HARVEY SENDER, IN HIS CAPACITY AS RECEIVER, OF THE GARY
DRAGUL RECEIVERSHIP ESTATE (“SELLER”)**

**AND MICHAEL MANWARING and RAND LEWIS (COLLECTIVELY
“BUYER”),**

**AND CONCERNING PROPERTY LOCATED AT 3580 CROSSING
DRIVE, LAFAYETTE, CO 80026 (“SUMMIT MARKETPLACE”)**

1. Authority of Seller. Gary Dragul owned and managed various companies (collectively “Dragul”) for which he solicited investors to acquire residential and commercial real estate. Gary Dragul was indicted for securities fraud by the Attorney General for the State of Colorado. Harvey Sender, the Seller, was appointed Receiver by a Court Order dated August 30, 2018 entered in Rome v. Dragul, et al., Case Number 2018 CV 33011, District Court, Denver, Colorado (the “Receivership Court” and the “Receivership Order”) to take control of all Dragul assets (referred to as “Receivership Property” or “Receivership Estate”). See Receivership Order attached as **EXHIBIT A**. The Receivership Property includes all the assets of: (i) GDA Real Estate Services, LLC (“GDA RES”); (ii) GDA Real Estate Management, LLC (“GDA REM”); and (iii) Summit 06 A, LLC; all being Colorado limited liability companies. The Receivership Order authorizes the Receiver to sell assets of the Receivership Estate subject to Court approval.

2. Conflicts. This Addendum (“Addendum”) is attached to and forms an integral part of that certain Contract to Buy and Sale Real Estate (Commercial) dated of even date herewith (the “Printed Form,” the Printed Form and this Addendum, collectively, hereinafter, the “Contract”). In the event of any conflict between the terms and provisions of the Printed Form and those of this Addendum, the terms and provisions of this Addendum shall govern and control.

3. Court Approval. Within five (5) business days of the Mutual Execution of Contract (“MEC”) between Buyer and Seller, Seller shall file a motion with the Receivership Court seeking approval of this Contract. The Receiver will use his reasonable efforts to obtain approval of and will support this Contract over the objection of any creditors or other interested parties; provided, however, the Receiver, consistent with his fiduciary duties in the Receivership Case, shall, until the Receivership Court enters an order approving this Contract (“Court Approval Date”), be free to entertain and to accept any competing offer that he deems in his sole and absolute discretion to be a higher or better offer. The Receiver’s foregoing right to entertain and/or accept competing offers shall immediately and automatically terminate upon the Receivership Court’s entry of an order approving this Contract. Closing of the sale of the Property shall occur on the first day of the month following Loan Transfer Approval. This Contract shall automatically expire in the event that the Receivership Court has not entered an order approving this

Contract within ninety (90) days after Seller has submitted its motion, the Earnest Money Deposit shall be immediately returned to Buyer, and the Parties hereto shall be released from all obligations hereunder, except for those obligations that specifically survive this Contract.

4. Exclusive Jurisdiction. The Parties agree the Receivership Court shall have exclusive jurisdiction to hear and determine all disputes, claims, or other actions arising from or relating to the Contract. Each Party consents to the Court entering final orders, judgments and/or decrees.

5. Prohibition of Dragul as Owner or Manager. Buyer agrees that, to its knowledge, neither Gary Dragul (“Dragul”) nor any former employees of Dragul, GDA Real Estate Services, LLC, or GDA Real Estate Management, Inc. (collectively, “Dragul and Dragul Employees”), shall have any ownership interest in the Property, or in any entity that has an ownership interest in the Property, or in any entity that is a property manager for Buyer, nor will Dragul or any of the Dragul Employees work with Buyer in any capacity or for any reason with respect to the Property. Dragul and the Dragul Employees shall not receive any compensation or remuneration of any kind whatsoever from Buyer or any successor relating to or arising from the Property. The Colorado Securities Commissioner shall have the right to obtain written assurances from Buyer or any successor entity to ensure Gary Dragul’s continued compliance with the Receivership Court’s August 30, 2018, Order of Preliminary Injunction entered in the Receivership Action and Buyer’s agreement concerning Dragul and the Dragul Employees future non-involvement with respect to the Property.

6. Other Rights. As part of the sale transaction, Seller shall convey to Buyer the following:

a) all interest of Seller in and to (i) all governmental permits, licenses, approvals and authorizations relating to the use, occupancy or operation of the Property (collectively the “Permits”) and (ii) all warranties, plans and specifications for the improvements (collectively the “Warranties, Plans and Specifications”);

b) all leases listed on a rent roll provided by Seller (collectively the “Leases”), and the security deposits and other similar deposits related thereto and shown on the Rent Roll (collectively the “Security Deposits”), all of which Buyer agrees to assume subject to the appropriate prorations or credits provided herein;

c) all tenant files, records, correspondence and other documents in Seller’s possession related to and used in the operation of the Property (collectively the “Records”).

d) The Leases and Security Deposits shall be assigned at Closing by Seller to Buyer. The Warranties, Plans and Specifications shall be conveyed at the Closing by Seller to Buyer by a general assignment. The Records shall be conveyed

by Seller to Buyer by a bill of sale. At Closing, Seller shall also deliver to Buyer, a notice letter to the tenants of the Property regarding the sale (“Tenant Notice Letter”).

7. Allocation of Rent Prorations. All rents and income of the Property received by Seller for the month of Closing shall be pro-rated between Seller and Buyer on the Closing Date. All rental and other amounts received by Seller during the month in which the Closing Date occurs shall be applied first to the month in which the Closing Date occurs prior to payment against any past due rents. Payments received from tenants from and after the Closing Date shall be immediately paid over to Buyer and applied in the following order of priority: (a) to rents then due for the month of Closing; (b) to delinquent rents and other sums due to Buyer after Closing; (c) to delinquent rents due to Seller as of the Closing Date; and (d) thereafter, on account of rents and other sums that may become due to Buyer after Closing.

8. Operating Expenses. Seller shall use commercially reasonable efforts to true up all operating expenses (including real estate taxes, insurance expenses, common area expenses and all other reimbursable tenant expenses) (collectively, the “Operating Expenses”) collected from the tenants for the period from January 1, 2019 to the Closing Date (the “Pre-Closing Period”) so that the same can be prorated at the Closing. Operating Expenses will be accounted for on an accrual basis. The parties understand that certain Operating Expenses for the month of Closing may be estimated or incomplete and to that end, Seller and Buyer shall, within 90 days of Closing, perform a reconciliation of all Operating Expenses that the parties were unable to reasonably calculate at the Closing. Seller shall provide Buyer with an accounting showing in reasonable detail the amount of all Operating Expenses collected from tenants during the Pre-Closing Period along with an accounting showing in reasonable detail the Operating Expenses actually incurred by Seller during the Pre-Closing Period. If the accountings show that Seller owes refunds to any of the tenants, then Seller agrees to pay the refunds to Buyer at the Closing or if determined post-Closing then within 30 days of the post-Closing reconciliation performed by Buyer and Seller. If the accountings show that Seller is owed money from any of the tenants, then Buyer agrees to pay such amounts to Seller at the Closing or if determined post-Closing then within 30 days of the post-Closing reconciliation performed by Buyer and Seller. The provisions of this Section shall survive the Closing and the delivery of any conveyance documentation.

9. Covenants. Until the earlier of Closing or the termination of this Contract, Seller undertakes and agrees as follows: (a) not to do anything, nor permit anything to be done, that would impair or modify the status of title as shown on the Title Commitment; (b) not to attempt to change the zoning designation of the Property, unless requested to do so by Buyer; (c) not to permit any transfer of any of Seller’s interest in the Property, or permit any encumbrance of the same by any obligations; (d) not to make any material changes in the physical condition of the Property; (e) to maintain any insurance coverage relating to the Property that is currently maintained by Seller, in the amounts and coverages currently in effect; (f) not to seek or consent to any re-platting of the Property or any amendment of the existing plat; (g) to manage the Property in the same manner in which it is currently managed; (h) not to remove any personal property from the Property unless the same is replaced by similar personal property of the same or better quality and

condition; (i) to keep, maintain, and repair the Property in as good or better condition as exists on the date of this Contract (normal wear and tear excepted), and comply in all material respects with all laws, regulations and codes affecting the Property; and (j) not to make any change to the declaration or other covenants affecting the Property without the prior written consent of Buyer.

10. Notifications. Until the earlier of Closing or the termination of this Contract, Seller agrees to notify Buyer promptly receiving actual notice of any (a) violation of any law, ordinance, or regulation that would or might materially affect the Property; (b) proposed change in any zoning or law affecting the use or development of the Property or any part thereof; (c) pending or threatened litigation that affects the Property or that would affect the transaction contemplated hereby; (d) pending or threatened condemnation affecting the Property or any part thereof; (e) pending or threatened proceedings in bankruptcy or insolvency that would affect the Property or any person or entity owning any interest therein; (f) damage or destruction (excluding normal wear and tear) to the Property or any part thereof; (g) release of hazardous materials at the Property; (h) emergency or other material change in the normal course of the operation of the Property (including the filing of any litigation, the existence of any material dispute with any person or entity, any tax claims, governmental or third party complaints, investigations or hearings or communications indicating that the same may be contemplated); or (i) any tenant that vacates its premises or any default under any lease or contract affecting the Property, or any act or omission which, with passage of time or the giving of notice, or both, would constitute a default under any lease or contract affecting the Property.

11. Buyer's Condition to Closing. Notwithstanding anything in this Contract to the contrary, Buyer shall not be obligated to close hereunder unless each of the following conditions is satisfied on or prior to the Closing Date: (a) the Title Company shall be prepared to issue (or prepared to unconditionally commit to issue) the Title Policy; (b) Seller shall have performed all covenants and obligations and complied with all material conditions required by this Contract to be performed or complied with by Seller; (c) no part of the Property shall be about to be acquired, or shall previously have been acquired, by authority of any governmental agency in the exercise of its power of eminent domain or by purchase in lieu thereof; (d) from the expiration of the Inspection Objection Deadline to the Closing Date, there shall be no material change in the physical or environmental condition of the Property; (e) Buyer shall have received the Estoppel Statements; and (f) from the expiration of the Inspection Objection Deadline to the Closing Date, (1) to Seller's actual knowledge, no tenant shall be in default of its lease (without regard to whether it has the right to cure such default under its lease), , and (2) no tenant shall have declared bankruptcy or had a bankruptcy petition filed against it. If any of the conditions set forth above are not satisfied as of the Closing Date, Buyer may, in its sole and absolute discretion, terminate this Contract by written notice to Seller, in which case the Title Company is instructed to return to Buyer all of the Earnest Money, regardless of whether any portion thereof had previously become non-refundable, and Seller and Buyer shall be relieved from any further obligation under this Contract, except those that expressly survive termination of this Contract.

7. Property Documents. Seller shall be required to deliver to Buyer only those Off-Record Title Documents, Association Documents and Due Diligence Documents (collectively "Document") pursuant to the Printed Form Contract, in Seller's actual possession. Buyer acknowledges and agrees that any Document in connection with the transaction contemplated by this Contract are provided to Buyer by Seller as a convenience only and that any reliance on or use of such Document by Buyer shall be at the sole risk and expense of Buyer. Without limiting the generality of the foregoing, Buyer acknowledges and agrees that any Document shall be for general information purposes only, and there shall be no liability to Seller for any inaccuracy in or omission from any Document. In the event this Contract is canceled or fails to close for any reason other than Seller's default, Buyer shall promptly return to Seller any Document delivered to Buyer by or on behalf of Seller. Buyer shall further deliver to Seller, without warranty of any kind or nature, a copy of any document, study, report, data or otherwise that Buyer independently obtains relating to the Property.

8. Superseding Contract. Upon execution of this Contract by the Buyer and Seller, this Contract shall supersede all previous contracts and agreements by and between the parties hereto relating to the Property.

9. AS-IS. Except as expressly set forth herein or in any Closing document, Seller makes no representations or warranties of any kind to Buyer. Seller and Buyer acknowledge and agree:

a) That all Property, real and personal, is to be conveyed by Seller "AS IS, WHERE IS" and in its present condition; and

b) That Seller has not made, does not hereby make and shall not make, and specifically disclaims, any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past or present, of, as to, concerning or with respect to the Property (except as set forth in this Contract or in any Closing documents including the warranty of title set forth in the deed with respect to the real property) including but not limited to the following and without limiting the generality of the foregoing:

- i) the nature, quality or condition;
- ii) the income to be derived therefrom;
- iii) reports, reconciliations, allocations and accountings relating to the Property.
- iv) suitability for any and all activities and uses which Buyer may conduct thereon;
- v) compliance with any laws, rules, ordinances or regulations;
- vi) habitability merchantability or fitness for a particular purpose;
- vii) good and workmanlike construction;

- viii) design;
- ix) the nature or quality of the construction, structural design and/or engineering thereof;
- x) the quality thereof and the composition of the materials included therein; or
- xi) any other matter with respect thereto.

Except as set forth in this Contract and any Closing document, it is the intention of the Seller expressly to negate and exclude all warranties, including without limitation, the implied warranties of merchantability and fitness for any particular purpose from and after the Closing Date. Buyer shall assume all risks relating in any manner to any defects, if any, in the Property (or any part thereof) of any type or nature whatsoever and shall be solely and completely responsible for the repair and/or removal of all such defects and the payment of all costs and expenses related thereto. It is expressly agreed that Buyer is being provided the opportunity to investigate and inspect the Property.

10. RECEIVER (SELLER) DISCLAIMER. NOTWITHSTANDING ANY LANGUAGE IN THIS CONTRACT TO THE CONTRARY, EXCEPT AS SET FORTH IN THIS CONTRACT AND ANY CLOSING DOCUMENT, THE SELLER MAKES NO REPRESENTATION OR WARRANTY TO THE BUYER CONCERNING THE PROPERTY, EXPRESS OR IMPLIED, AND ANY SUCH OTHER OR ADDITIONAL REPRESENTATIONS OR WARRANTIES ARE HEREBY SPECIFICALLY AND EXPRESSLY DISCLAIMED. WITHOUT LIMITING THE GENERALITY OF THE PREVIOUS SENTENCE, THE RECEIVER EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY RELATED OR WITH RESPECT TO THE VALUE OF THE PROPERTY.

11. DEFAULT BY BUYER. IF THE SALE IS NOT CONSUMMATED DUE TO ANY DEFAULT BY BUYER BEYOND APPLICABLE NOTICE AND CURE PERIODS HEREUNDER, THEN SELLER'S SOLE REMEDY SHALL BE THE RIGHT TO RETAIN THE DEPOSIT AS LIQUIDATED DAMAGES. THE PARTIES HAVE AGREED THAT SELLER'S ACTUAL DAMAGES, IN THE EVENT OF A FAILURE TO CONSUMMATE THIS SALE DUE TO BUYER'S DEFAULT, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. AFTER NEGOTIATION, THE PARTIES HAVE AGREED THAT, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS CONTRACT, THE AMOUNT OF THE DEPOSIT IS A REASONABLE ESTIMATE OF THE DAMAGES THAT SELLER WOULD INCUR IN SUCH EVENT. THE FOREGOING IN NO WAY LIMITS SELLER FROM SEEKING INDEMNIFICATION FROM BUYER UNDER THE TERMS OF THE CONTRACT.

12. DEFAULT BY SELLER. IN THE EVENT THAT SELLER DEFAULTS OR FAILS TO CONSUMMATE THIS CONTRACT FOR ANY REASON, BUYER'S SOLE REMEDY SHALL BE THE RIGHT TO THE RETURN OF THE DEPOSIT, WHICH RETURN OF THE DEPOSIT SHALL OPERATE TO TERMINATE THIS CONTRACT.

13. Captions. The captions in this Contract are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this Contract or any of the provisions hereof.

14. Validity. If any provision of this Contract shall be held to be invalid or unenforceable, the same shall not affect in any respect whatsoever the validity or enforceability of the remainder of this Contract.

15. Interpretation. Whenever the context so requires, the singular number shall include the plural and the plural the singular, and the use of any gender shall include all genders.

16. Broker. Seller has engaged Marcus & Millichap as the Brokerage Firm of Seller under a separate Exclusive Right-To-Sell Listing Contract. Cory Gross and Jake Shirek are the individual brokers designated by Seller's Brokerage Firm to perform services for Seller pursuant to Seller's Listing Contract. Seller agrees to indemnify, defend and hold Buyer harmless from and against any and all claims, loss, liability, costs and expenses (including reasonable attorneys' fees) resulting from any claims that may be made against Buyer by any other party claiming a commission, fee or other compensation by reason of the transaction contemplated hereby if the same shall arise by, through or on account of Seller. Buyer has engaged Keller Williams Preferred Realty as the Brokerage Firm of Buyer under a separate Exclusive Right-To-Buy Listing Contract. Eric Fritzke is the broker designated by Buyer's Brokerage Firm to perform services for Buyer. Seller's Brokerage Firm agrees to pay Buyer's Brokerage Firm a commission in the amount of 1.5% of the gross purchase price as the cooperative broker compensation. Buyer agrees to indemnify, defend and hold Seller harmless from and against any and all claims, loss, liability, costs and expenses (including reasonable attorneys' fees) resulting from any claims that may be made against Seller by any other party claiming a commission, fee or other compensation by reason of the transaction contemplated hereby if the same shall arise by, through or on account of Buyer. The terms and provisions of this paragraph shall survive the Closing Date or the earlier termination of this Contract.

Signature page:

**Addendum to Contract to Buy and Sell Real Estate (Commercial)
re: 3580 Crossing Drive, Lafayette, CO 80026**

BUYER:

Michael Manwaring 05/15/2019

Michael Manwaring, Individually

Rand Lewis 05/15/2019

Rand Lewis, Individually

SELLER:

HARVEY SENDER, in his capacity as
Receiver of the Gary Dragul Receivership
Estate

DocuSigned by:
Harvey Sender 05/16/2019 | 12:22:31 PDT

2494E37B34E843C
Harvey Sender, as Receiver

DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202	DATE FILED: May 20, 2019 9:51 AM FILING ID: ECBA733FDAB10 CASE NUMBER: 2018CV33011
Plaintiff: Chris Myklebust, Securities Commissioner for the State of Colorado v. Defendant: Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, LLC	▲ COURT USE ONLY ▲
	Case Number: 2018CV33011 Division/Courtroom: 424
ORDER GRANTING RECEIVER'S SECOND MOTION FOR ORDER AUTHORIZING SALE OF SUMMIT MARKETPLACE AND MOTION TO APPROVE INCREASED COMMISSION AT CLOSING	

THIS MATTER is before the Court on the Receiver's Second Motion for Order Authorizing Sale of Summit Marketplace and Motion to Approve Increased Commission at Closing (the "Motion") filed by Harvey Sender, the duly-appointed Receiver in this case (the "Receiver"). The Court has reviewed the Motion and the file and is otherwise advised.

THE COURT HEREBY FINDS THAT: On August 30, 2018, the Court entered a Stipulated Order Appointing Receiver (the "Receivership Order") appointing Harvey Sender of Sender & Smiley, LLC as receiver for Gary Dragul ("Dragul"), GDA Real Estate Services, LLC, GDA Real Estate Management, LLC, and related entities, their respective properties and assets, interests and management rights in related affiliated and subsidiary businesses, and any assets of any kind or of any nature related in any manner, or directly or indirectly derived from investor funds from the solicitation or sale of securities as described in the Commissioner's complaint in this case (the "Receivership Estate" or the "Estate"). The owner of the Summit

Marketplace (the “Property”) that is the subject of the Motion is Summit 06 A, LLC, which is managed by GDA Real Estate Management, Inc., whose president and sole owner is Dragul, and which was financed in part with investor funds. The Property is therefore property of the Estate the Receiver is authorized to sell under the Receivership Order.

THE COURT FURTHER FINDS THAT sale of the Property is in the best interest of the Estate and its creditors, and accordingly the

COURT HEREBY ORDERS that the Motion is GRANTED. Harvey Sender, as Receiver for Summit 06 A, LLC, pursuant to the Receivership Order, is hereby authorized to sell the Property to the Buyers under the Summit Contract (as those terms are defined in the Motion) on the terms and conditions set forth in the Motion and its Exhibit, and to take any and all further actions necessary to consummate the sale including, but not limited to, executing the deed conveying title and taking all actions necessary to remove all monetary liens and encumbrances from the Property pursuant to the Motion. With respect to the Property, this Order supersedes any restriction, limitation, or injunction imposed by this Court’s August 15, 2018, Temporary Restraining Order, Order Freezing Assets, Order of Non-Destruction of Records.

THE COURT FURTHER ORDERS that the Motion to approve an increase of 1.5% in Marcus & Millichap’s commission from the sale of the Property is granted, and the Receiver is authorized to pay Marcus & Millichap’s entire commission at closing of the Property.

Dated: _____, 2019.

BY THE COURT:

Hon. District Court Judge