

DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202 720.865.8612	DATE FILED: October 18, 2019 12:51 PM FILING ID: 3D9AF5802E9BA CASE NUMBER: 2018CV33011
<p><b>Plaintiff:</b> David S. Cheval, Acting Securities Commissioner for the State of Colorado</p> <p>v.</p> <p><b>Defendants:</b> Gary Dragul; GDA Real Estate Services, LLC; and GDA Real Estate Management, LLC</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Attorneys for Receiver:</p> <p>Patrick D. Vellone, #15284          Michael T. Gilbert, #15009          Rachel A. Sternlieb, #51404          ALLEN VELLONE WOLF HELFRICH &amp; 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</p>	<p>Case Number: 2018CV33011</p> <p>Division/Courtroom: 424</p>
<p style="text-align: center;"><b>RECEIVER’S MOTION FOR ORDER AUTHORIZING SALE OF REAL PROPERTY (3555 S. Holly Street, Denver, Colorado 80237)</b></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 located 3555 S. Holly Street, Denver, Colorado 80237 (the “Property”).

## **I. Background**

1. On August 15, 2018, the 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 and 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 receiver for Dragul and the GDA Entities, and their respective properties and assets, and interests and management rights in related affiliated and subsidiary businesses (the “Receivership Estate” or the “Estate”). Receivership Order at 2, ¶ 5.

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)).

## **II. The proposed sale**

5. The Property is a single-story, single-family ranch home with approximately 2,700 finished square feet. The Property was listed for sale for

\$549,000 on July 26, 2019, and the list price was reduced to \$537,500 on September 17, 2019, and further reduced on October 8, 2019, to \$529,000.

6. On October 14, 2019, Robert Lee Danielson and Mary Tamara Johnston (“Buyers”) offered to buy the Property for \$500,000. Buyers are arms-length purchasers with no affiliation to Dragul or the Dragul Entities.

7. On October 17, 2019, Buyers accepted the Receiver’s counteroffer of \$525,000 and have agreed to close on the Property within 26 days after the Court approves the transaction. A copy of the fully-executed contract (which is comprised of the Contract to Buy and Sell, Counterproposal, and Addendum) is attached as **Exhibit 1** (the “Contract”). Based on the listing broker’s market valuation, \$525,000 is a fair market price for the Property.

8. The Property is titled in the name of 3555 South Leyden 15, LLC, whose sole member is X12 Housing, LLC (f/k/a GDA Housing, LLC) (“X12 Housing”). The sole member of X12 Housing is Gary Dragul. The Property is therefore property of the Receivership Estate the Receiver is authorized to sell.

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

9. The Property was purchased on December 9, 2015, for \$473,530.00 by 3555 South Leyden 15, LLC. The Property is encumbered by a first mortgage in favor of Velocity Commercial Capital, LLC (“Velocity”). Through October 31, 2019, the payoff amount for that mortgage is \$431,585.30. Velocity has previously declared that loan in default for non-payment.

10. On or about March 21, 2018, WBF/CT Associates, LLC (“WBF”) extended a line of credit of up to \$1,200,000.00 to Dragul (the “LOC”). The LOC was evidenced by a March 21, 2018, Promissory Note and Loan Agreement, and was secured and cross-collateralized by 11 residential properties, including the 3555 South Holly Property (collectively, the “Collateral”). Accordingly, on April 26, 2018, WBF recorded a \$1.2 million second deed of trust (which is dated March 27, 2018) against the Property.

11. On November 1, 2018, the Court entered an Order approving a Settlement Agreement between the Receiver and WBF resolving a dispute as to how net sales proceeds from the sale of the Collateral would be distributed. Pursuant to the Settlement Agreement, WBF agreed to accept 70% of the net sales proceeds from the sale of the Collateral and the remaining 30% would be paid to the Estate. WBF also agreed to release its second deed of trust on the Property at closing.

12. The table below estimates the sales proceeds and ultimate distribution to the Estate:

Sale Price	\$525,000
1st Mortgage (Velocity)	(\$431,585)
Estimated additional interest on 1st Mortgage (\$210 per diem)	(\$6,293)
Broker Commission (5.5%)	(\$28,875)
Estimated Closing Costs (1.5%)	(\$7,875)
Estimated Unpaid Taxes, 2017 – 2018	(\$5,775)
<b>NET SALE PROCEEDS</b>	<b>\$44,597</b>
2 <sup>nd</sup> Mortgage (WBF/CT) (70% of net)	(\$31,218)
<b>Proceeds to Receiver (30% of net)</b>	<b>\$13,379</b>

13. In the Receiver’s reasonable business judgment, the proposed sale is in the best interest of the Estate and its creditors. The Property is not presently leased and the purchase price is reasonable. If the Estate continues to hold the Property, the Velocity Loan will continue to accrue default interest, and the Estate will continue to incur management fees and have to pay insurance and maintenance for the Property, further eroding any equity.

14. 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 all currently known creditors of the Estate.

WHEREFORE, the Receiver asks the Court to grant this Motion and approve the proposed sale of the Property in accordance with the terms of the Contract.

Dated: October 18, 2019.

ALLEN VELLONE WOLF HELFRICH & FACTOR P.C.



By: /s/ Rachel A. Sternlieb

Patrick D. Vellone

Michael T. Gilbert

Rachel A. Sternlieb

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E-mail: rsternlieb@allen-vellone.com

ATTORNEYS FOR THE RECEIVER

**CERTIFICATE OF SERVICE**

I hereby certify that on October 4, 2019, I served a true and correct copy of the foregoing **RECEIVER'S MOTION FOR ORDER AUTHORIZING SALE OF REAL PROPERTY (3555 S. Holly Street, Denver, Colorado 80237)** via CCE or first-class mail, postage prepaid, to the following:

Robert W. Finke  
Sueanna P. Johnson  
Ralph L. Carr Judicial Building  
1300 Broadway, 8th Floor  
Denver, Colorado 80203  
Sueanna.Johnson@coag.gov  
Robert.Finke@coag.gov

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Colorado***

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Denver, CO 80237  
dbarber@sbbolaw.com

***Counsel for WBF CT Associates, LLC,  
Chad Hurst, and Tom Jordan***

**CERTIFICATION OF E-SERVICE ON KNOWN CREDITORS**

In accordance with this Court's February 1, 2019 Order clarifying notice procedures for this case, I also certify that a copy of the foregoing is being served by electronic mail on all currently known creditors of the Receivership Estate to the addresses set forth on the service list maintained in the Receiver's records.



s/Teresa Silcox

Allen Vellone Wolf Helfrich & Factor P.C.



Keller Williams Realty Downtown, LLC  
 917 Auraria Parkway Denver, CO 80204  
 Erin M. Brumleve e.brumleve@kw.com;  
 Annalisa@innov8properties.com  
 Ph: 303.681.7913

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission. (CBS1-5-19) (Mandatory 7-19)

DATE FILED: October 18, 2019 12:51 PM  
 FILING ID: 3D9AF5802E9BA  
 CASE NUMBER: 1678CV9304

**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  
 (RESIDENTIAL)**

Date: 10/14/2019

**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.** *Robert Lee Danielson and Mary Tamara Johnston* (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.** *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 Denver, Colorado:

***L 18 BLK 8 BELMONT HEIGHTS FLG NO 2***

known as No. ***3555 S Holly Street, Denver, CO 80237,***

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

**2.5.3. Personal Property - Conveyance.** Any personal property must be conveyed at Closing by



67 Seller free and clear of all taxes (except personal property taxes for the year of Closing), liens and  
68 encumbrances, except n/a.

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

70 **2.5.4. Other Inclusions.** The following items, whether fixtures or personal property, are also  
71 included in the Purchase Price: Washer and Dryer

72  If the box is checked, Buyer and Seller have concurrently entered into a separate  
73 agreement for additional personal property outside of this Contract.

74 **2.5.5. Parking and Storage Facilities.** The use or ownership of the following parking  
75 facilities: 2 car attached garage; and the use or ownership of the following storage facilities:  
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77 Note to Buyer: If exact rights to the parking and storage facilities is a concern to Buyer, Buyer should  
78 investigate. **2.6. Exclusions.** The following items are excluded (Exclusions): None

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83 **2.7. Water Rights/Well Rights.**

84  **2.7.1. Deeded Water Rights.** The following legally described water rights:

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

86  **2.7.2. Other Rights Relating to Water.** The following rights relating to water not included in  
87 §§ 2.7.1, 2.7.3 and 2.7.4, will be transferred to Buyer at Closing: n/a

88  **2.7.3. Well Rights.** Seller agrees to supply required information to Buyer about the well.  
89 Buyer understands that if the well to be transferred is a "Small Capacity Well" or a "Domestic Exempt Water  
90 Well" used for ordinary household purposes, Buyer must, prior to or at Closing, complete a Change in  
91 Ownership form for the well. If an existing well has not been registered with the Colorado Division of Water  
92 Resources in the Department of Natural Resources (Division), Buyer must complete a registration of existing  
93 well form for the well and pay the cost of registration. If no person will be providing a closing service in  
94 connection with the transaction, Buyer must file the form with the Division within sixty days after Closing. The  
95 Well Permit # is .

96  **2.7.4. Water Stock Certificates.** The water stock certificates to be transferred at Closing are  
97 as follows: n/a

98 **2.7.5. Conveyance.** If Buyer is to receive any rights to water pursuant to § 2.7.2 (Other  
99 Rights Relating to Water), § 2.7.3 (Well Rights), or § 2.7.4 (Water Stock Certificates), Seller agrees to convey  
100 such rights to Buyer by executing the applicable legal instrument at Closing.

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

105 **3.1 Dates and Deadlines.**

Item No.	Reference	Event	Date or Deadline	
1	§ 4.3	Alternative Earnest Money Deadline	10/18/2019	Friday
		<b>Title</b>		
2	§ 8.1, § 8.4	Record Title Deadline	10/24/2019	Thursday
3	§ 8.2, § 8.4	Record Title Objection Deadline	10/28/2019	Monday
4	§ 8.3	Off-Record Title Deadline	10/24/2019	Thursday
5	§ 8.3	Off-Record Title Objection Deadline	10/28/2019	Monday
6	§ 8.5	Title Resolution Deadline	10/28/2019	Monday
7	§ 8.6	Right of First Refusal Deadline		
		<b>Owners' Association</b>		
8	§ 7.2	Association Documents Deadline		
9	§ 7.4	Association Documents Termination Deadline		
		<b>Seller's Disclosures</b>		
10	§ 10.1	Seller's Property Disclosure Deadline	10/17/2019	Thursday
11	§ 10.10	Lead-Based Paint Disclosure Deadline		

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		<b>Loan and Credit</b>		
12	§ 5.1	New Loan Application Deadline	<b>Complete</b>	
13	§ 5.2	New Loan Termination Deadline	<b>11/6/2019</b>	Wednesday
14	§ 5.3	Buyer's Credit Information Deadline		
15	§ 5.3	Disapproval of Buyer's Credit Information Deadline		
16	§ 5.4	Existing Loan Deadline		
17	§ 5.4	Existing Loan Termination Deadline		
18	§ 5.4	Loan Transfer Approval Deadline		
19	§ 4.7	Seller or Private Financing Deadline		
		<b>Appraisal</b>		
20	§ 6.2	Appraisal Deadline	<b>11/1/2019</b>	Friday
21	§ 6.2	Appraisal Objection Deadline	<b>11/4/2019</b>	Monday
22	§ 6.2	Appraisal Resolution Deadline	<b>11/5/2019</b>	Tuesday
		<b>Survey</b>		
23	§ 9.1	New ILC or New Survey Deadline	<b>10/25/2019</b>	Friday
24	§ 9.3	New ILC or New Survey Objection Deadline	<b>10/28/2019</b>	Monday
25	§ 9.3	New ILC or New Survey Resolution Deadline	<b>10/29/2019</b>	Tuesday
		<b>Inspection and Due Diligence</b>		
26	§ 10.3	Inspection Objection Deadline	<b>10/24/2019</b>	Thursday
27	§ 10.3	Inspection Termination Deadline	<b>10/24/2019</b>	Thursday
28	§ 10.3	Inspection Resolution Deadline	<b>10/29/2019</b>	Tuesday
29	§ 10.5	Property Insurance Termination Deadline	<b>11/5/2019</b>	Tuesday
30	§ 10.6	Due Diligence Documents Delivery Deadline	<b>10/21/2019</b>	Monday
31	§ 10.6	Due Diligence Documents Objection Deadline	<b>10/23/2019</b>	Wednesday
32	§ 10.6	Due Diligence Documents Resolution Deadline	<b>10/24/2019</b>	Thursday
33	§ 10.7	Conditional Sale Deadline	<b>None</b>	
34	§ 10.10	Lead-Based Paint Termination Deadline	<b>10/24/2019</b>	Thursday
		<b>Closing and Possession</b>		
35	§ 12.3	Closing Date	<b>11/12/2019</b>	Tuesday
36	§ 17	Possession Date	<b>11/12/2019</b>	Tuesday
37	§ 17	Possession Time	<b>Immediately Upon Closing and Funding</b>	
38	§ 28	<b>Acceptance Deadline Date</b>	<b>10/16/2019</b>	Wednesday
39	§ 28	<b>Acceptance Deadline Time</b>	<b>5 pm</b>	
40	<b>n/a</b>	<b>n/a</b>		
41	<b>n/a</b>	<b>n/a</b>		

**Note:** If **FHA** or **VA** loan boxes are checked in § 4.5.3 (Loan Limitations), the **Appraisal** deadlines **DO NOT** apply to **FHA** insured or **VA** guaranteed loans.

**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	<b>\$500,000.00</b>	
2	§ 4.3	Earnest Money		<b>\$7,500.00</b>
3	§ 4.5	New Loan		<b>\$387,500.00</b>
4	§ 4.6	Assumption Balance		
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		<b>\$105,000.00</b>
10		<b>TOTAL</b>	<b>\$500,000.00</b>	<b>\$500,000.00</b>

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

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

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

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

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

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

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

265 represents that Buyer, as of the date of this Contract,  Does  Does Not have funds that are immediately  
266 verifiable and available in an amount not less than the amount stated as Cash at Closing in § 4.1.

267 **4.5. New Loan.**

268 **4.5.1. Buyer to Pay Loan Costs.** Buyer, except as otherwise permitted in § 4.2 (Seller  
269 Concession), if applicable, must timely pay Buyer's loan costs, loan discount points, prepaid items and loan  
270 origination fees as required by lender.

271 **4.5.2. Buyer May Select Financing.** Buyer may pay in cash or select financing  
272 appropriate and acceptable to Buyer, including a different loan than initially sought, except as restricted in §  
273 4.5.3 (Loan Limitations) or § 30 (Additional Provisions).

274 **4.5.3. Loan Limitations.** Buyer may purchase the Property using any of the following  
275 types of loans:  Conventional  FHA  VA  Bond  Other *n/a*.

276 **4.5.4. Loan Estimate – Monthly Payment and Loan Costs.** Buyer is advised to review  
277 the terms, conditions and costs of Buyer's New Loan carefully. If Buyer is applying for a residential loan, the  
278 lender generally must provide Buyer with a Loan Estimate within three days after Buyer completes a loan  
279 application. Buyer also should obtain an estimate of the amount of Buyer's monthly mortgage payment.

280 **4.6. Assumption.** (Omitted as inapplicable)

281 **4.7. Seller or Private Financing.** (Omitted as inapplicable)

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<b>TRANSACTION PROVISIONS</b>
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290 **5. FINANCING CONDITIONS AND OBLIGATIONS.**

291 **5.1. New Loan Application.** If Buyer is to pay all or part of the Purchase Price by obtaining one or  
292 more new loans (New Loan), or if an existing loan is not to be released at Closing, Buyer, if required by such  
293 lender, must make an application verifiable by such lender, on or before **New Loan Application Deadline** and  
294 exercise reasonable efforts to obtain such loan or approval.

295 **5.2. New Loan Review.** If Buyer is to pay all or part of the Purchase Price with a New Loan, this  
296 Contract is conditional upon Buyer determining, in Buyer's sole subjective discretion, whether the New Loan is  
297 satisfactory to Buyer, including its availability, payments, interest rate, terms, conditions and cost. This  
298 condition is for the sole benefit of Buyer. Buyer has the Right to Terminate under § 25.1, on or before **New**  
299 **Loan Termination Deadline**, if the New Loan is not satisfactory to Buyer, in Buyer's sole subjective discretion.  
300 Buyer does not have a Right to Terminate based on the New Loan if the objection is based on the Appraised  
301 Value (defined below) or the Lender Requirements (defined below). **IF SELLER IS NOT IN DEFAULT AND**  
302 **DOES NOT TIMELY RECEIVE BUYER'S WRITTEN NOTICE TO TERMINATE, BUYER'S EARNEST MONEY**  
303 **WILL BE NONREFUNDABLE**, except as otherwise provided in this Contract (e.g., Appraisal, Title, Survey).

304 **5.3. Credit Information and Buyer's New Senior Loan.** (Omitted as inapplicable)

305 **5.4. Existing Loan Review.** (Omitted as inapplicable)

306 **6. APPRAISAL PROVISIONS.**

307 **6.1. Appraisal Definition.** An "Appraisal" is an opinion of value prepared by a licensed or certified  
308 appraiser, engaged on behalf of Buyer or Buyer's lender, to determine the Property's market value (Appraised  
309 Value). The Appraisal may also set forth certain lender requirements, replacements, removals or repairs  
310 necessary on or to the Property as a condition for the Property to be valued at the Appraised Value.

311 **6.2. Appraisal Condition.** The applicable appraisal provision set forth below applies to the respective  
312 loan type set forth in § 4.5.3, or if a cash transaction (i.e. no financing), § 6.2.1 applies.

313 **6.2.1. Conventional/Other.** Buyer has the right to obtain an Appraisal. If the Appraised Value  
314 is less than the Purchase Price, or if the Appraisal is not received by Buyer on or before **Appraisal Deadline**  
315 Buyer may, on or before **Appraisal Objection Deadline**:

316 **6.2.1.1. Notice to Terminate.** Notify Seller in writing, pursuant to § 25.1, that this  
317 Contract is terminated; or

318 **6.2.1.2. Appraisal Objection.** Deliver to Seller a written objection accompanied by  
319 either a copy of the Appraisal or written notice from lender that confirms the Appraised Value is less than the  
320 Purchase Price (Lender Verification).  
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331 **6.2.1.3. Appraisal Resolution.** If an Appraisal Objection is received by Seller, on or  
332 before **Appraisal Objection Deadline** and if Buyer and Seller have not agreed in writing to a settlement  
333 thereof on or before **Appraisal Resolution Deadline**, this Contract will terminate on the **Appraisal Resolution**  
334 **Deadline**, unless Seller receives Buyer's written withdrawal of the Appraisal Objection before such termination,  
335 i.e., on or before expiration of **Appraisal Resolution Deadline**.  
336

337 **6.2.2. FHA.** It is expressly agreed that, notwithstanding any other provisions of this Contract,  
338 the purchaser (Buyer) shall not be obligated to complete the purchase of the Property described herein or to  
339 incur any penalty by forfeiture of Earnest Money deposits or otherwise unless the purchaser (Buyer) has been  
340 given, in accordance with HUD/FHA or VA requirements, a written statement issued by the Federal Housing  
341 Commissioner, Department of Veterans Affairs, or a Direct Endorsement lender, setting forth the appraised  
342 value of the Property of not less than \$ n/a. The purchaser (Buyer) shall have the privilege and option of  
343 proceeding with the consummation of this Contract without regard to the amount of the appraised valuation.  
344 The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and  
345 Urban Development will insure. HUD does not warrant the value nor the condition of the Property. The  
346 purchaser (Buyer) should satisfy himself/herself that the price and condition of the Property are acceptable.  
347

348 **6.2.3. VA.** It is expressly agreed that, notwithstanding any other provisions of this Contract,  
349 the purchaser (Buyer) shall not incur any penalty by forfeiture of Earnest Money or otherwise or be obligated to  
350 complete the purchase of the Property described herein, if the Contract Purchase Price or cost exceeds the  
351 reasonable value of the Property established by the Department of Veterans Affairs. The purchaser (Buyer)  
352 shall, however, have the privilege and option of proceeding with the consummation of this Contract without  
353 regard to the amount of the reasonable value established by the Department of Veterans Affairs.  
354

355 **6.3. Lender Property Requirements.** If the lender imposes any written requirements, replacements,  
356 removals or repairs, including any specified in the Appraisal (Lender Requirements) to be made to the Property  
357 (e.g., roof repair, repainting), beyond those matters already agreed to by Seller in this Contract, this Contract  
358 terminates on the earlier of three days following Seller's receipt of the Lender Requirements, or Closing, unless  
359 prior to termination: (1) the parties enter into a written agreement to satisfy the Lender Requirements; (2) the  
360 Lender Requirements have been completed; or (3) the satisfaction of the Lender Requirements is waived in  
361 writing by Buyer.  
362

363 **6.4. Cost of Appraisal.** Cost of the Appraisal to be obtained after the date of this Contract must be  
364 timely paid by Buyer Seller. The cost of the Appraisal may include any and all fees paid to the appraiser,  
365 appraisal management company, lender's agent or all three.  
366

367 **7. OWNERS' ASSOCIATION.** This Section is applicable if the Property is located within a Common  
368 Interest Community and subject to the declaration (Association).  
369

370 **7.1. Common Interest Community Disclosure. THE PROPERTY IS LOCATED WITHIN A**  
371 **COMMON INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR THE COMMUNITY.**  
372 **THE OWNER OF THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE OWNERS'**  
373 **ASSOCIATION FOR THE COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES AND**  
374 **REGULATIONS OF THE ASSOCIATION. THE DECLARATION, BYLAWS AND RULES AND REGULATIONS**  
375 **WILL IMPOSE FINANCIAL OBLIGATIONS UPON THE OWNER OF THE PROPERTY, INCLUDING AN**  
376 **OBLIGATION TO PAY ASSESSMENTS OF THE ASSOCIATION. IF THE OWNER DOES NOT PAY THESE**  
377 **ASSESSMENTS, THE ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY AND POSSIBLY SELL**  
378 **IT TO PAY THE DEBT. THE DECLARATION, BYLAWS AND RULES AND REGULATIONS OF THE**  
379 **COMMUNITY MAY PROHIBIT THE OWNER FROM MAKING CHANGES TO THE PROPERTY WITHOUT AN**  
380 **ARCHITECTURAL REVIEW BY THE ASSOCIATION (OR A COMMITTEE OF THE ASSOCIATION) AND**  
381 **THE APPROVAL OF THE ASSOCIATION. PURCHASERS OF PROPERTY WITHIN THE COMMON**  
382 **INTEREST COMMUNITY SHOULD INVESTIGATE THE FINANCIAL OBLIGATIONS OF MEMBERS OF THE**  
383 **ASSOCIATION. PURCHASERS SHOULD CAREFULLY READ THE DECLARATION FOR THE COMMUNITY**  
384 **AND THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION.**  
385

386 **7.2. Association Documents to Buyer.** Seller is obligated to provide to Buyer the Association  
387 Documents (defined below), at Seller's expense, on or before **Association Documents Deadline**. Seller  
388 authorizes the Association to provide the Association Documents to Buyer, at Seller's expense. Seller's  
389 obligation to provide the Association Documents is fulfilled upon Buyer's receipt of the Association Documents,  
390  
391  
392  
393  
394  
395  
396

397 regardless of who provides such documents.

398 **7.3. Association Documents.** Association documents (Association Documents) consist of the  
399 following:

400 **7.3.1.** All Association declarations, articles of incorporation, bylaws, articles of  
401 organization, operating agreements, rules and regulations, party wall agreements and the Association's  
402 responsible governance policies adopted under § 38-33.3-209.5, C.R.S.;

403 **7.3.2.** Minutes of: (1) the annual owners' or members' meeting and (2) any executive  
404 boards' or managers' meetings; such minutes include those provided under the most current annual disclosure  
405 required under § 38-33.3-209.4, C.R.S. (Annual Disclosure) and minutes of meetings, if any, subsequent to the  
406 minutes disclosed in the Annual Disclosure. If none of the preceding minutes exist, then the most recent  
407 minutes, if any (§§ 7.3.1 and 7.3.2, collectively, Governing Documents); and

408 **7.3.3.** List of all Association insurance policies as provided in the Association's last Annual  
409 Disclosure, including, but not limited to, property, general liability, association director and officer professional  
410 liability and fidelity policies. The list must include the company names, policy limits, policy deductibles,  
411 additional named insureds and expiration dates of the policies listed (Association Insurance Documents);

412 **7.3.4.** A list by unit type of the Association's assessments, including both regular and  
413 special assessments as disclosed in the Association's last Annual Disclosure;

414 **7.3.5.** The Association's most recent financial documents which consist of: (1) the  
415 Association's operating budget for the current fiscal year, (2) the Association's most recent annual financial  
416 statements, including any amounts held in reserve for the fiscal year immediately preceding the Association's  
417 last Annual Disclosure, (3) the results of the Association's most recent available financial audit or review, (4) list  
418 of the fees and charges (regardless of name of title of such fees or charges) that the Association's community  
419 association manager or Association will charge in connection with the Closing including, but not limited to, any  
420 fee incident to the issuance of the Association's statement of assessments (Status Letter), any rush or update  
421 fee charged for the Status Letter, any record change fee or ownership record transfer fees (Record Change  
422 Fee), fees to access documents, (5) list of all assessments required to be paid in advance, reserves or working  
423 capital due at Closing and (6) reserve study, if any (§§ 7.3.4 and 7.3.5, collectively, Financial Documents);

424 **7.3.6.** Any written notice from the Association to Seller of a "construction defect action"  
425 under § 38-33.3-303.5, C.R.S. within the past six months and the result of whether the Association approved or  
426 disapproved such action (Construction Defect Documents). Nothing in this Section limits the Seller's obligation  
427 to disclose adverse material facts as required under § 10.2 (Disclosure of Adverse Material Facts; Subsequent  
428 Disclosure; Present Condition) including any problems or defects in the common elements or limited common  
429 elements of the Association property.

430 **7.4. Conditional on Buyer's Review.** Buyer has the right to review the Association Documents.  
431 Buyer has the Right to Terminate under § 25.1, on or before **Association Documents Termination Deadline**,  
432 based on any unsatisfactory provision in any of the Association Documents, in Buyer's sole subjective  
433 discretion. Should Buyer receive the Association Documents after **Association Documents Deadline**, Buyer,  
434 at Buyer's option, has the Right to Terminate under § 25.1 by Buyer's Notice to Terminate received by Seller on  
435 or before ten days after Buyer's receipt of the Association Documents. If Buyer does not receive the  
436 Association Documents, or if Buyer's Notice to Terminate would otherwise be required to be received by Seller  
437 after **Closing Date**, Buyer's Notice to Terminate must be received by Seller on or before Closing. If Seller does  
438 not receive Buyer's Notice to Terminate within such time, Buyer accepts the provisions of the Association  
439 Documents as satisfactory and Buyer waives any Right to Terminate under this provision, notwithstanding the  
440 provisions of § 8.6 (Right of First Refusal or Contract Approval).

## 441 **8. TITLE INSURANCE, RECORD TITLE AND OFF-RECORD TITLE.**

### 442 **8.1. Evidence of Record Title.**

443  **8.1.1. Seller Selects Title Insurance Company.** If this box is checked, Seller will select the  
444 title insurance company to furnish the owner's title insurance policy at Seller's expense. On or before **Record**  
445 **Title Deadline**, Seller must furnish to Buyer, a current commitment for an owner's title insurance policy (Title  
446 Commitment), in an amount equal to the Purchase Price, or if this box is checked,  an **Abstract of Title**  
447 certified to a current date. Seller will cause the title insurance policy to be issued and delivered to Buyer as  
448 soon as practicable at or after Closing.

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

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

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

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

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

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

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

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

**8.3. Off-Record Title.** Seller must deliver to Buyer, on or before **Off-Record Title Deadline**, true copies of all existing surveys in Seller's possession pertaining to the Property and must disclose to Buyer all easements, liens (including, without limitation, governmental improvements approved, but not yet installed) or other title matters (including, without limitation, rights of first refusal and options) not shown by public records, of which Seller has actual knowledge (Off-Record Matters). This Section excludes any **New ILC** or **New Survey** governed under § 9 (New ILC, New Survey). Buyer has the right to inspect the Property to investigate if any third party has any right in the Property not shown by public records (e.g., unrecorded easement, boundary line discrepancy or water rights). Buyer's Notice to Terminate or Notice of Title Objection of any

529 unsatisfactory condition (whether disclosed by Seller or revealed by such inspection, notwithstanding § 8.2  
530 (Record Title) and § 13 (Transfer of Title)), in Buyer's sole subjective discretion, must be received by Seller on  
531 or before **Off-Record Title Objection Deadline**. If an Off-Record Matter is received by Buyer after the  
532 **Off-Record Title Deadline**, Buyer has until the earlier of Closing or ten days after receipt by Buyer to review  
533 and object to such Off-Record Matter. If Seller receives Buyer's Notice to Terminate or Notice of Title Objection  
534 pursuant to this § 8.3 (Off-Record Title), any title objection by Buyer is governed by the provisions set forth in §  
535 8.5 (Right to Object to Title, Resolution). If Seller does not receive Buyer's Notice to Terminate or Notice of Title  
536 Objection by the applicable deadline specified above, Buyer accepts title subject to such Off-Record Matters  
537 and rights, if any, of third parties not shown by public records of which Buyer has actual knowledge.  
538

539 **8.4. Special Taxing Districts. SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL**  
540 **OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES**  
541 **ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS**  
542 **MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND TAX TO SUPPORT THE SERVICING OF**  
543 **SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO**  
544 **DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYERS**  
545 **SHOULD INVESTIGATE THE SPECIAL TAXING DISTRICTS IN WHICH THE PROPERTY IS LOCATED BY**  
546 **CONTACTING THE COUNTY TREASURER, BY REVIEWING THE CERTIFICATE OF TAXES DUE FOR THE**  
547 **PROPERTY AND BY OBTAINING FURTHER INFORMATION FROM THE BOARD OF COUNTY**  
548 **COMMISSIONERS, THE COUNTY CLERK AND RECORDER, OR THE COUNTY ASSESSOR.**  
549

550 A tax certificate from the respective county treasurer listing any special taxing districts that effect the  
551 Property (Tax Certificate) must be delivered to Buyer on or before **Record Title Deadline**. If the Property is  
552 located within a special taxing district and such inclusion is unsatisfactory to Buyer, in Buyer's sole subjective  
553 discretion, Buyer may object, on or before **Record Title Objection Deadline**. If the Tax Certificate shows that  
554 the Property is included in a special taxing district and is received by Buyer after the **Record Title Deadline**,  
555 Buyer has until the earlier of Closing or ten days after receipt by Buyer to review and object to the Property's  
556 inclusion in a special taxing district as unsatisfactory to Buyer.  
557

558 **8.5. Right to Object to Title, Resolution.** Buyer's right to object, in Buyer's sole subjective  
559 discretion, to any title matters includes those matters set forth in § 8.2 (Record Title), § 8.3 (Off-Record Title), §  
560 8.4 (Special Taxing District) and § 13 (Transfer of Title). If Buyer objects to any title matter, on or before the  
561 applicable deadline, Buyer has the following options:

562 **8.5.1. Title Objection, Resolution.** If Seller receives Buyer's written notice objecting to any  
563 title matter (Notice of Title Objection) on or before the applicable deadline and if Buyer and Seller have not  
564 agreed to a written settlement thereof on or before **Title Resolution Deadline**, this Contract will terminate on  
565 the expiration of **Title Resolution Deadline**, unless Seller receives Buyer's written withdrawal of Buyer's  
566 Notice of Title Objection (i.e., Buyer's written notice to waive objection to such items and waives the Right to  
567 Terminate for that reason), on or before expiration of **Title Resolution Deadline**. If either the Record Title  
568 Deadline or the Off-Record Title Deadline, or both, are extended pursuant to § 8.2 (Record Title), § 8.3  
569 (Off-Record Title) or § 8.4 (Special Taxing Districts), the Title Resolution Deadline also will be automatically  
570 extended to the earlier of Closing or fifteen days after Buyer's receipt of the applicable documents; or

571 **8.5.2. Title Objection, Right to Terminate.** Buyer may exercise the Right to Terminate under  
572 § 25.1, on or before the applicable deadline, based on any title matter unsatisfactory to Buyer, in Buyer's sole  
573 subjective discretion.  
574

575 **8.6. Right of First Refusal or Contract Approval.** If there is a right of first refusal on the Property  
576 or a right to approve this Contract, Seller must promptly submit this Contract according to the terms and  
577 conditions of such right. If the holder of the right of first refusal exercises such right or the holder of a right to  
578 approve disapproves this Contract, this Contract will terminate. If the right of first refusal is waived explicitly or  
579 expires, or the Contract is approved, this Contract will remain in full force and effect. Seller must promptly  
580 notify Buyer in writing of the foregoing. If expiration or waiver of the right of first refusal or approval of this  
581 Contract has not occurred on or before **Right of First Refusal Deadline**, this Contract will then terminate.  
582

583 **8.7. Title Advisory.** The Title Documents affect the title, ownership and use of the Property and  
584 should be reviewed carefully. Additionally, other matters not reflected in the Title Documents may affect the  
585 title, ownership and use of the Property, including, without limitation, boundary lines and encroachments,  
586 set-back requirements, area, zoning, building code violations, unrecorded easements and claims of  
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594



595 easements, leases and other unrecorded agreements, water on or under the Property, and various laws and  
596 governmental regulations concerning land use, development and environmental matters.

597 **8.7.1. OIL, GAS, WATER AND MINERAL DISCLOSURE. THE SURFACE ESTATE OF THE**  
598 **PROPERTY MAY BE OWNED SEPARATELY FROM THE UNDERLYING MINERAL ESTATE AND**  
600 **TRANSFER OF THE SURFACE ESTATE MAY NOT NECESSARILY INCLUDE TRANSFER OF THE**  
601 **MINERAL ESTATE OR WATER RIGHTS. THIRD PARTIES MAY OWN OR LEASE INTERESTS IN OIL, GAS,**  
602 **OTHER MINERALS, GEOTHERMAL ENERGY OR WATER ON OR UNDER THE SURFACE OF THE**  
603 **PROPERTY, WHICH INTERESTS MAY GIVE THEM RIGHTS TO ENTER AND USE THE SURFACE OF THE**  
604 **PROPERTY TO ACCESS THE MINERAL ESTATE, OIL, GAS OR WATER.**

606 **8.7.2. SURFACE USE AGREEMENT. THE USE OF THE SURFACE ESTATE OF THE**  
607 **PROPERTY TO ACCESS THE OIL, GAS OR MINERALS MAY BE GOVERNED BY A SURFACE USE**  
608 **AGREEMENT, A MEMORANDUM OR OTHER NOTICE OF WHICH MAY BE RECORDED WITH THE**  
609 **COUNTY CLERK AND RECORDER.**

611 **8.7.3. OIL AND GAS ACTIVITY. OIL AND GAS ACTIVITY THAT MAY OCCUR ON OR**  
612 **ADJACENT TO THE PROPERTY MAY INCLUDE, BUT IS NOT LIMITED TO, SURVEYING, DRILLING,**  
613 **WELL COMPLETION OPERATIONS, STORAGE, OIL AND GAS, OR PRODUCTION FACILITIES,**  
614 **PRODUCING WELLS, REWORKING OF CURRENT WELLS AND GAS GATHERING AND PROCESSING**  
615 **FACILITIES.**

617 **8.7.4. ADDITIONAL INFORMATION. BUYER IS ENCOURAGED TO SEEK ADDITIONAL**  
618 **INFORMATION REGARDING OIL AND GAS ACTIVITY ON OR ADJACENT TO THE PROPERTY,**  
619 **INCLUDING DRILLING PERMIT APPLICATIONS. THIS INFORMATION MAY BE AVAILABLE FROM THE**  
620 **COLORADO OIL AND GAS CONSERVATION COMMISSION.**

622 **8.7.5. Title Insurance Exclusions.** Matters set forth in this Section and others, may be  
623 excepted, excluded from, or not covered by the owner's title insurance policy.

624 **8.8. Consult an Attorney.** Buyer is advised to timely consult legal counsel with respect to all such  
625 matters as there are strict time limits provided in this Contract (e.g., **Record Title Objection Deadline** and  
626 **Off-Record Title Objection Deadline**).  
627  
628

## 629 **9. NEW ILC, NEW SURVEY.**

630 **9.1. New ILC or New Survey.** If the box is checked, a: 1)  **New Improvement Location Certificate**  
631 **(New ILC);** or, 2)  **New Survey** in the form of n/a; is required and the following will apply:

632 **9.1.1. Ordering of New ILC or New Survey.**  **Seller**  **Buyer** will order the New ILC or New  
633 Survey. The New ILC or New Survey may also be a previous ILC or survey that is in the above-required form,  
634 certified and updated as of a date after the date of this Contract.  
635

636 **9.1.2. Payment for New ILC or New Survey.** The cost of the New ILC or New Survey will be  
637 paid, on or before Closing, by:  **Seller**  **Buyer** or: n/a  
638

639 **9.1.3. Delivery of New ILC or New Survey.** Buyer, Seller, the issuer of the Title Commitment (or  
640 the provider of the opinion of title if an Abstract of Title) and n/a will receive a New ILC or New Survey on or  
641 before **New ILC or New Survey Deadline**.  
642

643 **9.1.4. Certification of New ILC or New Survey.** The New ILC or New Survey will be certified by  
644 the surveyor to all those who are to receive the New ILC or New Survey.  
645

646 **9.2. Buyer's Right to Waive or Change New ILC or New Survey Selection.** Buyer may select a  
647 New ILC or New Survey different than initially specified in this Contract if there is no additional cost to Seller or  
648 change to the **New ILC or New Survey Objection Deadline**. Buyer may, in Buyer's sole subjective discretion,  
649 waive a New ILC or New Survey if done prior to Seller incurring any cost for the same.  
650

651 **9.3. New ILC or New Survey Objection.** Buyer has the right to review and object to the **New ILC or**  
652 **New Survey**. If the New ILC or New Survey is not timely received by Buyer or is unsatisfactory to Buyer, in  
653 Buyer's sole subjective discretion, Buyer may, on or before **New ILC or New Survey Objection Deadline**,  
654 notwithstanding § 8.3 or § 13:  
655

656 **9.3.1. Notice to Terminate.** Notify Seller in writing, pursuant to § 25.1, that this Contract is  
657 terminated; or  
658

659 **9.3.2. New ILC or New Survey Objection.** Deliver to Seller a written description of any matter that  
660 was to be shown or is shown in the New ILC or New Survey that is unsatisfactory and that Buyer requires

661 Seller to correct.

662 **9.3.3. New ILC or New Survey Resolution.** If a **New ILC or New Survey Objection** is received  
663 by Seller, on or before **New ILC or New Survey Objection Deadline** and if Buyer and Seller have not agreed  
664 in writing to a settlement thereof on or before **New ILC or New Survey Resolution Deadline**, this Contract will  
665 terminate on expiration of the **New ILC or New Survey Resolution Deadline**, unless Seller receives Buyer's  
666 written withdrawal of the New ILC or New Survey Objection before such termination, i.e., on or before  
667 expiration of **New ILC or New Survey Resolution Deadline**.  
668  
669

670  
671 **DISCLOSURE, INSPECTION AND DUE DILIGENCE**  
672

673 **10. PROPERTY DISCLOSURE, INSPECTION, INDEMNITY, INSURABILITY, DUE DILIGENCE, AND**  
674 **SOURCE OF WATER.**  
675

676 **10.1. Seller's Property Disclosure.** On or before **Seller's Property Disclosure Deadline**, Seller  
677 agrees to deliver to Buyer the most current version of the applicable Colorado Real Estate Commission's  
678 Seller's Property Disclosure form completed by Seller to Seller's actual knowledge and current as of the date of  
679 this Contract.  
680

681 **10.2. Disclosure of Adverse Material Facts; Subsequent Disclosure; Present Condition.** Seller  
682 must disclose to Buyer any adverse material facts actually known by Seller as of the date of this Contract.  
683 Seller agrees that disclosure of adverse material facts will be in writing. In the event Seller discovers an  
684 adverse material fact after the date of this Contract, Seller must timely disclose such adverse fact to Buyer.  
685 Buyer has the Right to Terminate based on the Seller's new disclosure on the earlier of Closing or five days  
686 after Buyer's receipt of the new disclosure. Except as otherwise provided in this Contract, Buyer acknowledges  
687 that Seller is conveying the Property to Buyer in an "**As Is**" condition, "**Where Is**" and "**With All Faults**."  
688

689 **10.3. Inspection.** Unless otherwise provided in this Contract, Buyer, acting in good faith, has the right  
690 to have inspections (by one or more third parties, personally or both) of the Property and Inclusions  
691 (Inspection), at Buyer's expense. If (1) the physical condition of the Property, including, but not limited to, the  
692 roof, walls, structural integrity of the Property, the electrical, plumbing, HVAC and other mechanical systems of  
693 the Property, (2) the physical condition of the Inclusions, (3) service to the Property (including utilities and  
694 communication services), systems and components of the Property (e.g., heating and plumbing), (4) any  
695 proposed or existing transportation project, road, street or highway, or (5) any other activity, odor or noise  
696 (whether on or off the Property) and its effect or expected effect on the Property or its occupants is  
697 unsatisfactory, in Buyer's sole subjective discretion, Buyer may:  
698

699 **10.3.1. Inspection Objection.** On or before the **Inspection Objection Deadline**, deliver to  
700 Seller a written description of any unsatisfactory condition that Buyer requires Seller to correct; or  
701

702 **10.3.2. Terminate.** On or before the **Inspection Termination Deadline**, notify Seller in writing,  
703 pursuant to § 25.1, that this Contract is terminated due to any unsatisfactory condition. **Inspection**  
704 **Termination Deadline will be on the earlier of Inspection Resolution Deadline or the date specified in §**  
705 **3.1 for Inspection Termination Deadline.**  
706

707 **10.3.3. Inspection Resolution.** If an Inspection Objection is received by Seller, on or before  
708 **Inspection Objection Deadline** and if Buyer and Seller have not agreed in writing to a settlement thereof on  
709 or before **Inspection Resolution Deadline**, this Contract will terminate on **Inspection Resolution Deadline**  
710 unless Seller receives Buyer's written withdrawal of the Inspection Objection before such termination, i.e., on or  
711 before expiration of **Inspection Resolution Deadline**.  
712

713 **10.4. Damage, Liens and Indemnity.** Buyer, except as otherwise provided in this Contract or other  
714 written agreement between the parties, is responsible for payment for all inspections, tests, surveys,  
715 engineering reports, or other reports performed at Buyer's request (Work) and must pay for any damage that  
716 occurs to the Property and Inclusions as a result of such Work. Buyer must not permit claims or liens of any  
717 kind against the Property for Work performed on the Property. Buyer agrees to indemnify, protect and hold  
718 Seller harmless from and against any liability, damage, cost or expense incurred by Seller and caused by any  
719 such Work, claim, or lien. This indemnity includes Seller's right to recover all costs and expenses incurred by  
720 Seller to defend against any such liability, damage, cost or expense, or to enforce this Section, including  
721 Seller's reasonable attorney fees, legal fees and expenses. The provisions of this Section survive the  
722 termination of this Contract. This § 10.4 does not apply to items performed pursuant to an Inspection  
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726

727 Resolution.

728 **10.5. Insurability.** Buyer has the right to review and object to the availability, terms and conditions of  
729 and premium for property insurance (Property Insurance). Buyer has the Right to Terminate under § 25.1, on or  
730 before **Property Insurance Termination Deadline**, based on any unsatisfactory provision of the Property  
731 Insurance, in Buyer's sole subjective discretion.

732 **10.6. Due Diligence.**

733 **10.6.1. Due Diligence Documents.** If the respective box is checked, Seller agrees to deliver  
734 copies of the following documents and information pertaining to the Property (Due Diligence Documents) to  
735 Buyer on or before **Due Diligence Documents Delivery Deadline**:

736  **10.6.1.1.** All current leases, including any amendments or other occupancy  
737 agreements, pertaining to the Property. Those leases or other occupancy agreements pertaining to the  
738 Property that survive Closing are as follows (Leases):

739  **10.6.1.2.** Other documents and information:

740 ***Seller shall provide any certifications, damage reports, repair receipts, insurance claims,  
741 warranties, manuals, and any other documents related to damage and repair/remodel of the  
742 property and its inclusions in Seller's possession. Additionally, Seller shall provide any  
743 current or prior surveys, engineer reports, inspection reports, and sewer line reports in the  
744 Seller's possession.***

745 **10.6.2. Due Diligence Documents Review and Objection.** Buyer has the right to review and  
746 object to Due Diligence Documents. If the Due Diligence Documents are not supplied to Buyer or are  
747 unsatisfactory, in Buyer's sole subjective discretion, Buyer may, on or before **Due Diligence Documents  
748 Objection Deadline**:

749 **10.6.2.1. Notice to Terminate.** Notify Seller in writing, pursuant to § 25.1, that this  
750 Contract is terminated; or

751 **10.6.2.2. Due Diligence Documents Objection.** Deliver to Seller a written description  
752 of any unsatisfactory Due Diligence Documents that Buyer requires Seller to correct.

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

759 **10.7. Conditional Upon Sale of Property.** This Contract is conditional upon the sale and closing of  
760 that certain property owned by Buyer and commonly known as . Buyer has the Right to Terminate under § 25.1  
761 effective upon Seller's receipt of Buyer's Notice to Terminate on or before **Conditional Sale Deadline** if such  
762 property is not sold and closed by such deadline. This Section is for the sole benefit of Buyer. If Seller does not  
763 receive Buyer's Notice to Terminate on or before **Conditional Sale Deadline**, Buyer waives any Right to  
764 Terminate under this provision.

765 **10.8. Source of Potable Water (Residential Land and Residential Improvements Only).** Buyer  
766  Does  Does Not acknowledge receipt of a copy of Seller's Property Disclosure or Source of  
767 Water Addendum disclosing the source of potable water for the Property.  There is **No Well**. Buyer  Does  
768  Does Not acknowledge receipt of a copy of the current well permit.

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

772 **10.9. Existing Leases; Modification of Existing Leases; New Leases. [Intentionally Deleted]**

773 **10.10. Lead-Based Paint**

774 **10.10.1. Lead-Based Paint Disclosure.** Unless exempt, if the Property includes one or  
775 more residential dwellings constructed or a building permit was issued prior to January 1, 1978, for the benefit  
776 of Buyer, Seller and all required real estate licensees must sign and deliver to Buyer a completed Lead-Based  
777 Paint Disclosure (Sales) form on or before the **Lead-Based Paint Disclosure Deadline**. If Buyer does not  
778 timely receive the Lead-Based Paint Disclosure, Buyer may waive the failure to timely receive the Lead-Based

793 Paint Disclosure, or Buyer may exercise Buyer's Right to Terminate under § 25.1 by Seller's receipt of Buyer's  
794 Notice to Terminate on or before the expiration of the **Lead-Based Paint Termination Deadline**.

795 **10.10.2. Lead-Based Paint Assessment.** If Buyer elects to conduct or obtain a risk  
796 assessment or inspection of the Property for the presence of Lead-Based Paint or Lead-Based Paint hazards,  
797 Buyer has a Right to Terminate under § 25.1 by Seller's receipt of Buyer's Notice to Terminate on or before the  
798 expiration of the **Lead-Based Paint Termination Deadline**. If Buyer's Notice to Terminate would otherwise be  
799 required to be received by Seller after **Closing Date**, Buyer's Notice to Terminate must be received by Seller  
800 on or before Closing. Buyer may elect to waive Buyer's right to conduct or obtain a risk assessment or  
801 inspection of the Property for the presence of Lead-Based Paint or Lead-Based Paint hazards. If Seller does  
802 not receive Buyer's Notice to Terminate within such time, Buyer accepts the condition of the Property relative to  
803 any Lead-Based Paint as satisfactory and Buyer waives any Right to Terminate under this provision.

804 **10.11. Carbon Monoxide Alarms. Note:** If the improvements on the Property have a fuel-fired  
805 heater or appliance, a fireplace, or an attached garage and include one or more rooms lawfully used for  
806 sleeping purposes (Bedroom), the parties acknowledge that Colorado law requires that Seller assure the  
807 Property has an operational carbon monoxide alarm installed within fifteen feet of the entrance to each  
808 Bedroom or in a location as required by the applicable building code.

809 **10.12. Methamphetamine Disclosure.** If Seller knows that methamphetamine was ever  
810 manufactured, processed, cooked, disposed of, used or stored at the Property, Seller is required to disclose  
811 such fact. No disclosure is required if the Property was remediated in accordance with state standards and  
812 other requirements are fulfilled pursuant to § 25-18.5-102, C.R.S., Buyer further acknowledges that Buyer has  
813 the right to engage a certified hygienist or industrial hygienist to test whether the Property has ever been used  
814 as a methamphetamine laboratory. Buyer has the Right to Terminate under § 25.1, upon Seller's receipt of  
815 Buyer's written Notice to Terminate, notwithstanding any other provision of this Contract, based on Buyer's test  
816 results that indicate the Property has been contaminated with methamphetamine, but has not been remediated  
817 to meet the standards established by rules of the State Board of Health promulgated pursuant to §  
818 25-18.5-102, C.R.S. Buyer must promptly give written notice to Seller of the results of the test.

826 **11. TENANT ESTOPPEL STATEMENTS. [Intentionally Deleted]**

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<b>CLOSING PROVISIONS</b>
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830  
831 **12. CLOSING DOCUMENTS, INSTRUCTIONS AND CLOSING.**

832 **12.1. Closing Documents and Closing Information.** Seller and Buyer will cooperate with the Closing  
833 Company to enable the Closing Company to prepare and deliver documents required for Closing to Buyer and  
834 Seller and their designees. If Buyer is obtaining a loan to purchase the Property, Buyer acknowledges Buyer's  
835 lender is required to provide the Closing Company, in a timely manner, all required loan documents and  
836 financial information concerning Buyer's loan. Buyer and Seller will furnish any additional information and  
837 documents required by Closing Company that will be necessary to complete this transaction. Buyer and Seller  
838 will sign and complete all customary or reasonably-required documents at or before Closing.

839 **12.2. Closing Instructions.** Colorado Real Estate Commission's Closing Instructions  Are  Are  
840 Not executed with this Contract.

841 **12.3. Closing.** Delivery of deed from Seller to Buyer will be at closing (Closing). Closing will be on the  
842 date specified as the **Closing Date** or by mutual agreement at an earlier date. The hour and place of Closing  
843 will be as designated by [Listing Broker](#).

844 **12.4. Disclosure of Settlement Costs.** Buyer and Seller acknowledge that costs, quality and extent of  
845 service vary between different settlement service providers (e.g., attorneys, lenders, inspectors and title  
846 companies).

847 **13. TRANSFER OF TITLE.** Subject to Buyer's compliance with the terms and provisions of this Contract,  
848 including the tender of any payment due at Closing, Seller must execute and deliver the following good and  
849 sufficient deed to Buyer, at Closing:

850  special warranty deed  general warranty deed  bargain and sale deed  quit claim deed  personal  
851 representative's deed  deed. Seller, provided another deed is not selected, must execute and deliver a good  
852

859 and sufficient special warranty deed to Buyer, at Closing.

860 Unless otherwise specified in §30 (Additional Provisions), if title will be conveyed using a special  
861 warranty deed or a general warranty deed, title will be conveyed "subject to statutory exceptions" as defined in  
862 §38-30-113(5)(a), C.R.S.  
863

864  
865 **14. PAYMENT OF LIENS AND ENCUMBRANCES.** Unless agreed to by Buyer in writing, any amounts  
866 owed on any liens or encumbrances securing a monetary sum, including, but not limited to, any governmental  
867 liens for special improvements installed as of the date of Buyer's signature hereon, whether assessed or not  
868 and previous years' taxes, will be paid at or before Closing by Seller from the proceeds of this transaction or  
869 from any other source.  
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873 **15. CLOSING COSTS, CLOSING FEE, ASSOCIATION FEES AND TAXES.**

874 **15.1. Closing Costs.** Buyer and Seller must pay, in Good Funds, their respective closing costs  
875 and all other items required to be paid at Closing, except as otherwise provided herein.

876 **15.2. Closing Services Fee.** The fee for real estate closing services must be paid at Closing by

877  Buyer  Seller  One-Half by Buyer and One-Half by Seller

878  Other n/a

880 **15.3. Status Letter and Record Change Fees.** At least fourteen days prior to **Closing Date**,  
881 Seller agrees to promptly request the Association to deliver to Buyer a current Status Letter. Any fees incident  
882 to the issuance of Association's Status Letter must be paid by  None  Buyer  Seller  One-Half by  
883 Buyer and One-Half by Seller. Any Record Change Fee must be paid by  None  Buyer  Seller  
884  One-Half by Buyer and One-Half by Seller .

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886 **15.4. Local Transfer Tax.**  The Local Transfer Tax of n/a % of the Purchase Price must  
887 be paid at Closing by  None  Buyer  Seller  One-Half by Buyer and One-Half by Seller.

888 **15.5. Private Transfer Fee.** Private transfer fees and other fees due to a transfer of the Property,  
889 payable at Closing, such as community association fees, developer fees and foundation fees, must be paid at  
890 Closing by  None  Buyer  Seller  One-Half by Buyer and One-Half by Seller. The Private Transfer  
891 fee, whether one or more, is for the following association(s): n/a in the total amount of % of the Purchase Price  
892 or \$.  
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895 **15.6. Water Transfer Fees.** The Water Transfer Fees can change. The fees, as of the date of  
896 this Contract, do not exceed \$ for:

897  Water Stock/Certificates  Water District

898  Augmentation Membership  Small Domestic Water Company  n/a and must be paid at Closing by

899  None  Buyer  Seller  One-Half by Buyer and One-Half by Seller

900  
901 **15.7. Sales and Use Tax.** Any sales and use tax that may accrue because of this transaction  
902 must be paid when due by  None  Buyer  Seller  One-Half by Buyer and One-Half by Seller.

903  
904 **15.8. FIRPTA and Colorado Withholding.**

905 **15.8.1. FIRPTA.** The Internal Revenue Service (IRS) may require a substantial portion of  
906 the Seller's proceeds be withheld after Closing when Seller is a foreign person. If required withholding does not  
907 occur, the Buyer could be held liable for the amount of the Seller's tax, interest and penalties. If the box in this  
908 Section is checked, Seller represents that Seller  IS a foreign person for purposes of U.S. income taxation. If  
909 the box in this Section is not checked, Seller represents that Seller is not a foreign person for purposes of U.S.  
910 income taxation. Seller agrees to cooperate with Buyer and Closing Company to provide any reasonably  
911 requested documents to verify Seller's foreign person status. If withholding is required, Seller authorizes  
912 Closing Company to withhold such amount from Seller's proceeds. Seller should inquire with Seller's tax  
913 advisor to determine if withholding applies or if an exemption exists.  
914

915 **15.8.2. Colorado Withholding.** The Colorado Department of Revenue may require a  
916 portion of the Seller's proceeds be withheld after Closing when Seller will not be a Colorado resident after  
917 Closing, if not otherwise exempt. Seller agrees to cooperate with Buyer and Closing Company to provide any  
918 reasonably requested documents to verify Seller's status. If withholding is required, Seller authorizes Closing  
919 Company to withhold such amount from Seller's proceeds. Seller should inquire with Seller's tax advisor to  
920 determine if withholding applies or if an exemption exists.  
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925 **16. PRORATIONS AND ASSOCIATION ASSESSMENTS.** The following will be prorated to the **Closing**  
926 **Date**, except as otherwise provided:

927 **16.1. Taxes.** Personal property taxes, if any, special taxing district assessments, if any and  
928 general real estate taxes for the year of Closing, based on  **Taxes for the Calendar Year Immediately**  
929 **Preceding Closing**  **Most Recent Mill Levy and Most Recent Assessed Valuation**, adjusted by any  
930 applicable qualifying seniors property tax exemption, qualifying disabled veteran exemption or  **Other** *n/a*.

931 **16.2. Rents.** Rents based on  **Rents Actually Received**  **Accrued**. At Closing, Seller will  
932 transfer or credit to Buyer the security deposits for all Leases assigned, or any remainder after lawful  
933 deductions and notify all tenants in writing of such transfer and of the transferee's name and address. Seller  
934 must assign to Buyer all Leases in effect at Closing and Buyer must assume Seller's obligations under such  
935 Leases.

936 **16.3. Association Assessments.** Current regular Association assessments and dues  
937 (Association Assessments) paid in advance will be credited to Seller at Closing. Cash reserves held out of the  
938 regular Association Assessments for deferred maintenance by the Association will not be credited to Seller  
939 except as may be otherwise provided by the Governing Documents. Buyer acknowledges that Buyer may be  
940 obligated to pay the Association, at Closing, an amount for reserves or working capital. Any special  
941 assessment assessed prior to **Closing Date** by the Association will be the obligation of  **Buyer**  **Seller**.  
942 Except however, any special assessment by the Association for improvements that have been installed as of  
943 the date of Buyer's signature hereon, whether assessed prior to or after Closing, will be the obligation of Seller.  
944 Seller represents there are no unpaid regular or special assessments against the Property except the current  
945 regular assessments and . Association Assessments are subject to change as provided in the Governing  
946 Documents.

947 **16.4. Other Prorations.** Water and sewer charges, propane, interest on continuing loan and *n/a*.

948 **16.5. Final Settlement.** Unless otherwise agreed in writing, these prorations are final.

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

951 If Seller, after Closing, fails to deliver possession as specified, Seller will be subject to eviction and  
952 will be additionally liable to Buyer for payment of \$ 350 per day (or any part of a day notwithstanding § 18.1)  
953 from **Possession Date** and **Possession Time** until possession is delivered.

954 Buyer represents that Buyer will occupy the Property as Buyer's principal residence unless the  
955 following box is checked, then Buyer  **Does Not** represent that Buyer will occupy the Property as Buyer's  
956 principal residence.

957  If the box is checked, Buyer and Seller agree to execute a Post-Closing Occupancy Agreement.

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**GENERAL PROVISIONS**

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

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

**18.2. Computation of Period of Days, Deadline.** In computing a period of days (e.g., three days after MEC), when the ending date is not specified, the first day is excluded and the last day is included. If any deadline falls on a Saturday, Sunday or federal or Colorado state holiday (Holiday), such deadline  **Will**  **Will Not** be extended to the next day that is not a Saturday, Sunday or Holiday. Should neither box be checked, the deadline will not be extended.

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

**19.1. Causes of Loss, Insurance.** In the event the Property or Inclusions are damaged by fire, other perils or causes of loss prior to Closing (Property Damage) in an amount of not more than ten percent of the

991 total Purchase Price and if the repair of the damage will be paid by insurance (other than the deductible to be  
992 paid by Seller), then Seller, upon receipt of the insurance proceeds, will use Seller's reasonable efforts to  
993 repair the Property before **Closing Date**. Buyer has the Right to Terminate under § 25.1, on or before **Closing**  
994 **Date**, if the Property is not repaired before **Closing Date**, or if the damage exceeds such sum. Should Buyer  
995 elect to carry out this Contract despite such Property Damage, Buyer is entitled to a credit at Closing for all  
996 insurance proceeds that were received by Seller (but not the Association, if any) resulting from damage to the  
997 Property and Inclusions, plus the amount of any deductible provided for in the insurance policy. This credit may  
998 not exceed the Purchase Price. In the event Seller has not received the insurance proceeds prior to Closing,  
999 the parties may agree to extend the **Closing Date** to have the Property repaired prior to Closing or, at the  
1000 option of Buyer, (1) Seller must assign to Buyer the right to the proceeds at Closing, if acceptable to Seller's  
1001 insurance company and Buyer's lender; or (2) the parties may enter into a written agreement prepared by the  
1002 parties or their attorney requiring the Seller to escrow at Closing from Seller's sale proceeds the amount Seller  
1003 has received and will receive due to such damage, not exceeding the total Purchase Price, plus the amount of  
1004 any deductible that applies to the insurance claim.

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1008 **19.2. Damage, Inclusions and Services.** Should any Inclusion or service (including utilities and  
1009 communication services), system, component or fixture of the Property (collectively Service) (e.g., heating or  
1010 plumbing), fail or be damaged between the date of this Contract and Closing or possession, whichever is  
1011 earlier, then Seller is liable for the repair or replacement of such Inclusion or Service with a unit of similar size,  
1012 age and quality, or an equivalent credit, but only to the extent that the maintenance or replacement of such  
1013 Inclusion or Service is not the responsibility of the Association, if any, less any insurance proceeds received by  
1014 Buyer covering such repair or replacement. If the failed or damaged Inclusion or Service is not repaired or  
1015 replaced on or before Closing or possession, whichever is earlier, Buyer has the Right to Terminate under §  
1016 25.1, on or before **Closing Date**, or, at the option of Buyer, Buyer is entitled to a credit at Closing for the repair  
1017 or replacement of such Inclusion or Service. Such credit must not exceed the Purchase Price. If Buyer receives  
1018 such a credit, Seller's right for any claim against the Association, if any, will survive Closing.

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1021 **19.3. Condemnation.** In the event Seller receives actual notice prior to Closing that a pending  
1022 condemnation action may result in a taking of all or part of the Property or Inclusions, Seller must promptly  
1023 notify Buyer, in writing, of such condemnation action. Buyer has the Right to Terminate under § 25.1, on or  
1024 before **Closing Date**, based on such condemnation action, in Buyer's sole subjective discretion. Should Buyer  
1025 elect to consummate this Contract despite such diminution of value to the Property and Inclusions, Buyer is  
1026 entitled to a credit at Closing for all condemnation proceeds awarded to Seller for the diminution in the value of  
1027 the Property or Inclusions but such credit will not include relocation benefits or expenses, or exceed the  
1028 Purchase Price.

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1031 **19.4. Walk-Through and Verification of Condition.** Buyer, upon reasonable notice, has the right to  
1032 walk through the Property prior to Closing to verify that the physical condition of the Property and Inclusions  
1033 complies with this Contract.

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1035 **19.5. Home Warranty.** Seller and Buyer are aware of the existence of pre-owned home warranty  
1036 programs that may be purchased and may cover the repair or replacement of such Inclusions.

1037  
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1039 **20. RECOMMENDATION OF LEGAL AND TAX COUNSEL.** By signing this Contract, Buyer and Seller  
1040 acknowledge that the respective broker has advised that this Contract has important legal consequences and  
1041 has recommended the examination of title and consultation with legal and tax or other counsel before signing  
1042 this Contract.

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1045 **21. TIME OF ESSENCE, DEFAULT AND REMEDIES.** Time is of the essence for all dates and deadlines  
1046 in this Contract. This means that all dates and deadlines are strict and absolute. If any payment due, including  
1047 Earnest Money, is not paid, honored or tendered when due, or if any obligation is not performed timely as  
1048 provided in this Contract or waived, the non-defaulting party has the following remedies:

1049  
1050 **21.1. If Buyer is in Default:**

1051  **21.1.1. Specific Performance.** Seller may elect to cancel this Contract and all Earnest  
1052 Money (whether or not paid by Buyer) will be paid to Seller and retained by Seller. It is agreed that the Earnest  
1053 Money is not a penalty and the Parties agree the amount is fair and reasonable. Seller may recover such  
1054 additional damages as may be proper. Alternatively, Seller may elect to treat this Contract as being in full force  
1055 and effect.

1057 and effect and Seller has the right to specific performance or damages, or both.

1058 **21.1.2. Liquidated Damages, Applicable. This § 21.1.2 applies unless the box in § 21.1.1.**  
1059 **is checked.** Seller may cancel this Contract. All Earnest Money (whether or not paid by Buyer) will be paid to  
1060 Seller and retained by Seller. It is agreed that the Earnest Money specified in § 4.1 is LIQUIDATED DAMAGES  
1061 and not a penalty, which amount the parties agree is fair and reasonable and (except as provided in §§ 10.4,  
1062 22, 23 and 24), said payment of Earnest Money is SELLER'S ONLY REMEDY for Buyer's failure to perform  
1063 the obligations of this Contract. Seller expressly waives the remedies of specific performance and additional  
1064 damages.  
1065

1066 **21.2. If Seller is in Default:** Buyer may elect to treat this Contract as canceled, in which case all  
1067 Earnest Money received hereunder will be returned to Buyer and Buyer may recover such damages as may be  
1068 proper. Alternatively, Buyer may elect to treat this Contract as being in full force and effect and Buyer has the  
1069 right to specific performance or damages, or both.  
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1073 **22. LEGAL FEES, COST AND EXPENSES.** Anything to the contrary herein notwithstanding, in the event  
1074 of any arbitration or litigation relating to this Contract, prior to or after **Closing Date**, the arbitrator or court must  
1075 award to the prevailing party all reasonable costs and expenses, including attorney fees, legal fees and  
1076 expenses.  
1077

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1079 **23. MEDIATION.** If a dispute arises relating to this Contract (whether prior to or after Closing) and is not  
1080 resolved, the parties must first proceed, in good faith, to mediation. Mediation is a process in which the parties  
1081 meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot  
1082 impose binding decisions. Before any mediated settlement is binding, the parties to the dispute must agree to  
1083 the settlement, in writing. The parties will jointly appoint an acceptable mediator and will share equally in the  
1084 cost of such mediation. The obligation to mediate, unless otherwise agreed, will terminate if the entire dispute  
1085 is not resolved within thirty days of the date written notice requesting mediation is delivered by one party to the  
1086 other at that party's last known address (physical or electronic as provided in § 27). Nothing in this Section  
1087 prohibits either party from filing a lawsuit and recording a *lis pendens* affecting the Property, before or after the  
1088 date of written notice requesting mediation. This Section will not alter any date in this Contract, unless  
1089 otherwise agreed.  
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1093 **24. EARNEST MONEY DISPUTE.** Except as otherwise provided herein, Earnest Money Holder must  
1094 release the Earnest Money following receipt of written mutual instructions, signed by both Buyer and Seller. In  
1095 the event of any controversy regarding the Earnest Money, Earnest Money Holder is not required to release the  
1096 Earnest Money. Earnest Money Holder, in its sole subjective discretion, has several options: (1) wait for any  
1097 proceeding between Buyer and Seller; (2) interplead all parties and deposit Earnest Money into a court of  
1098 competent jurisdiction (Earnest Money Holder is entitled to recover court costs and reasonable attorney and  
1099 legal fees incurred with such action); or (3) provide notice to Buyer and Seller that unless Earnest Money  
1100 Holder receives a copy of the Summons and Complaint or Claim (between Buyer and Seller) containing the  
1101 case number of the lawsuit (Lawsuit) within one hundred twenty days of Earnest Money Holder's notice to the  
1102 parties, Earnest Money Holder is authorized to return the Earnest Money to Buyer. In the event Earnest Money  
1103 Holder does receive a copy of the Lawsuit and has not interpled the monies at the time of any Order, Earnest  
1104 Money Holder must disburse the Earnest Money pursuant to the Order of the Court. The parties reaffirm the  
1105 obligation of § 23 (Mediation). This Section will survive cancellation or termination of this Contract.  
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1111 **25. TERMINATION.**

1112 **25.1. Right to Terminate.** If a party has a right to terminate, as provided in this Contract (Right to  
1113 Terminate), the termination is effective upon the other party's receipt of a written notice to terminate (Notice to  
1114 Terminate), provided such written notice was received on or before the applicable deadline specified in this  
1115 Contract. If the Notice to Terminate is not received on or before the specified deadline, the party with the Right  
1116 to Terminate accepts the specified matter, document or condition as satisfactory and waives the Right to  
1117 Terminate under such provision.  
1118  
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1120 **25.2. Effect of Termination.** In the event this Contract is terminated, all Earnest Money received  
1121 hereunder will be returned to Buyer and the parties are relieved of all obligations hereunder, subject to §§ 10.4,  
1122



1123 22, 23 and 24.  
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1125 **26. ENTIRE AGREEMENT, MODIFICATION, SURVIVAL; SUCCESSORS.** This Contract, its exhibits and  
1126 specified addenda, constitute the entire agreement between the parties relating to the subject hereof and any  
1127 prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this  
1128 Contract. No subsequent modification of any of the terms of this Contract is valid, binding upon the parties, or  
1129 enforceable unless made in writing and signed by the parties. Any right or obligation in this Contract that, by its  
1130 terms, exists or is intended to be performed after termination or Closing survives the same. Any successor to a  
1131 party receives the predecessor's benefits and obligations of this Contract.  
1132  
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1135 **27. NOTICE, DELIVERY AND CHOICE OF LAW.**  
1136

1137 **27.1. Physical Delivery and Notice.** Any document, or notice to Buyer or Seller must be in writing,  
1138 except as provided in § 27.2 and is effective when physically received by such party, any individual named in  
1139 this Contract to receive documents or notices for such party, Broker, or Brokerage Firm of Broker working with  
1140 such party (except any notice or delivery after Closing must be received by the party, not Broker or Brokerage  
1141 Firm).  
1142

1143 **27.2. Electronic Notice.** As an alternative to physical delivery, any notice, may be delivered in  
1144 electronic form to Buyer or Seller, any individual named in this Contract to receive documents or notices for  
1145 such party, Broker or Brokerage Firm of Broker working with such party (except any notice or delivery after  
1146 Closing must be received by the party, not Broker or Brokerage Firm) at the electronic address of the recipient  
1147 by facsimile, email or none other.  
1148

1149 **27.3. Electronic Delivery.** Electronic Delivery of documents and notice may be delivered by: (1) email  
1150 at the email address of the recipient, (2) a link or access to a website or server provided the recipient receives  
1151 the information necessary to access the documents, or (3) facsimile at the facsimile number (Fax No.) of the  
1152 recipient.  
1153

1154 **27.4. Choice of Law.** This Contract and all disputes arising hereunder are governed by and construed  
1155 in accordance with the laws of the State of Colorado that would be applicable to Colorado residents who sign a  
1156 contract in Colorado for real property located in Colorado.  
1157

1158  
1159 **28. NOTICE OF ACCEPTANCE, COUNTERPARTS.** This proposal will expire unless accepted in writing,  
1160 by Buyer and Seller, as evidenced by their signatures below and the offering party receives notice of such  
1161 acceptance pursuant to § 27 on or before **Acceptance Deadline Date** and **Acceptance Deadline Time**. If  
1162 accepted, this document will become a contract between Seller and Buyer. A copy of this Contract may be  
1163 executed by each party, separately and when each party has executed a copy thereof, such copies taken  
1164 together are deemed to be a full and complete contract between the parties.  
1165  
1166

1167  
1168 **29. GOOD FAITH.** Buyer and Seller acknowledge that each party has an obligation to act in good faith  
1169 including, but not limited to, exercising the rights and obligations set forth in the provisions of **Financing**  
1170 **Conditions and Obligations; Title Insurance, Record Title and Off-Record Title; New ILC, New Survey;**  
1171 **and Property Disclosure, Inspection, Indemnity, Insurability, Due Diligence and Source of Water.**  
1172

1173  
1174 **ADDITIONAL PROVISIONS AND ATTACHMENTS**  
1175

1176 **30. ADDITIONAL PROVISIONS.** (The following additional provisions have not been approved by the  
1177 Colorado Real Estate Commission.)  
1178

1179 **1. Seller understands and acknowledges that the following licensed agents at Keller Williams**  
1180 **Realty Downtown, LLC will represent the Buyer in this transaction and be bound by all terms**  
1181 **of this Agreement: Erin Brumleve, Laura Fritz.**  
1182

1183  
1184 **2. Buyer and Seller understand that Annalisa Ambrose (“Coordinator”) will be helping Broker**  
1185 **throughout this transaction. Buyer authorizes Coordinator to receive Buyer and Seller’s**  
1186 **personal information. The Broker is solely responsible for paying Coordinator.**  
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**31. OTHER DOCUMENTS.**

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

***Closing Instructions, Lead-Based Paint Disclosure (Sales)***

**31.1.1.** Post-Closing Occupancy Agreement. If the Post-Closing Occupancy Agreement box is checked in § 17 the Post-Closing Occupancy Agreement is a part of this Contract.

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

***Seller's Property Disclosure (Residential), Square Footage Disclosure***

**SIGNATURES**

*Robert Lee Danielson*

Date: 10/14/2019

Buyer: ***Robert Lee Danielson***

*Mary Tamara Johnston*

Date: 10/14/2019

Buyer: ***Mary Tamara Johnston***

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

Date: \_\_\_\_\_

Seller: ***Gary Dragul Receivership Estate***  
***By: Harvey Sender, 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** .

Brokerage Firm's Name: **Keller Williams Realty Downtown, LLC**

Brokerage Firm's License #: **EC 10002727**

**Innov8 Properties at Keller Williams Realty Downtown, LLC**



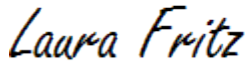
Date: **10/14/2019**

Broker's Name: **Erin M. Brumleve**

Broker's License #: **051402**

Address: **917 Auraria Parkway Denver, CO 80204**

Ph: **303.681.7913** Fax: Email Address: **e.brumleve@kw.com; Annalisa@innov8properties.com**



Date: **10/15/2019**

Broker's Name: **Laura Fritz**

BrokerLicense #: **100075299**

Brokerage Firms Name: **Keller Williams Realty Downtown Denver, LLC**

Brokerage Firm's License #: **EC 10002727**

Address: **917 Auraria Pkwy Denver CO 80204**

Ph: **(303) 539-5700** Fax: Email: **laurafritz@kw.com; Annalisa@Innov8Properties.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: **Madison & Company Properties**

Brokerage Firm's License #: **EC 100025694**

*BRENDAN MORAN*

Date: 10/15/2019

Broker's Name: **BRENDAN MORAN**

Broker's License #: **FA-40006027**

Address: **5975 S. Quebec St., Suite 100 Greenwood Village, CO 80111**

Ph: **303-771-3850** Fax: Email Address: [Brendan@Realtor.com](mailto:Brendan@Realtor.com)

---

CBS1-5-19. CONTRACT TO BUY AND SELL REAL ESTATE (RESIDENTIAL)

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The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission. (CP40-6-18) (Mandatory 1-19)

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

**COUNTERPROPOSAL**

Date: 10/17/2019

1. This Counterproposal supersedes and replaces any previous counterproposal. This Counterproposal amends the proposed contract dated 10/14/2019 (Contract), between **Gary Dragul Receivership Estate** (Seller), and **Robert Lee Danielson and Mary Tamara Johnston** (Buyer), relating to the sale and purchase of the following legally described real estate in the County of **Denver**, Colorado:  
**L 18 BLK 8 BELMONT HEIGHTS FLG NO 2**  
 known as No. **3555 S Holly Street, Denver, CO 80237** (Property).

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

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

Item No.	Reference	Event	Date or Deadline	No Change	Deleted
1	§ 4.3	Alternative Earnest Money Deadline	<b>C.A. + 2 days</b>		
<b>Title</b>					
2	§ 8.1, § 8.4	Record Title Deadline	<b>C.A. + 6 days</b>		
3	§ 8.2, § 8.4	Record Title Objection Deadline	<b>C.A. + 9 days</b>		
4	§ 8.3	Off-Record Title Deadline	<b>C.A. + 6 days</b>		
5	§ 8.3	Off-Record Title Objection Deadline	<b>C.A. + 9 days</b>		
6	§ 8.5	Title Resolution Deadline	<b>C.A. + 10 days</b>		
7	§ 8.6	Right of First Refusal Deadline	<b>no change</b>	<input checked="" type="checkbox"/>	
<b>Owners' Association</b>					
8	§ 7.2	Association Documents Deadline	<b>no change</b>	<input checked="" type="checkbox"/>	
9	§ 7.4	Association Documents Termination Deadline	<b>no change</b>	<input checked="" type="checkbox"/>	
<b>Seller's Disclosures</b>					
10	§ 10.1	Seller's Property Disclosure Deadline	<b>N/A</b>		
11	§ 10.10	Lead-Based Paint Disclosure Deadline CBS 1, 2, F1	<b>C.A. + 2 days</b>		
<b>Loan and Credit</b>					
12	§ 5.1	Loan Application Deadline	<b>no change</b>		
13	§ 5.2	Loan Termination Deadline	<b>C.A. + 21 days</b>	<input checked="" type="checkbox"/>	
14	§ 5.3	Buyer's Credit Information Deadline	<b>no change</b>		
15	§ 5.3	Disapproval of Buyer's Credit Information Deadline	<b>no change</b>		
16	§ 5.4	Existing Loan Documents Deadline	<b>no change</b>		
17	§ 5.4	Existing Loan Documents Termination Deadline	<b>no change</b>		
18	§ 5.4	Loan Transfer Approval Deadline	<b>no change</b>		

19	§ 4.7	Seller or Private Financing Deadline	<i>no change</i>			
<b>Appraisal</b>						
20	§ 6.2	Appraisal Deadline	<i>C.A. + 16 days</i>		<input checked="" type="checkbox"/>	
21	§ 6.2	Appraisal Objection Deadline			<input checked="" type="checkbox"/>	
22	§ 6.2	Appraisal Resolution Deadline	<i>C.A. + 18 days</i>		<input checked="" type="checkbox"/>	
<b>Survey</b>						
23	§ 9.1	New ILC or New Survey Deadline	<i>C.A. + 16 days</i>		<input checked="" type="checkbox"/>	
24	§ 9.3	New ILC or New Survey Objection Deadline	<i>C.A. + 17 days</i>		<input checked="" type="checkbox"/>	
25	§ 9.3	New ILC or New Survey Resolution Deadline	<i>C.A. + 18 days</i>		<input checked="" type="checkbox"/>	
<b>Inspection and Due Diligence</b>						
26	§ 10.3	Inspection Objection Deadline	<i>C.A. + 8 days</i>		<input checked="" type="checkbox"/>	
27	§ 10.3	Inspection Termination Deadline	<i>C.A. + 8 days</i>		<input checked="" type="checkbox"/>	
28	§ 10.3	Inspection Resolution Deadline	<i>C.A. + 12days</i>		<input checked="" type="checkbox"/>	
29	§ 10.5	Property Insurance Termination Deadline	<i>C.A. + 12 days</i>		<input checked="" type="checkbox"/>	
30	§ 10.6	Due Diligence Documents Delivery Deadline	<i>N/A</i>			
31	§ 10.6	Due Diligence Documents Objection Deadline	<i>N/A</i>			
32	§ 10.6	Due Diligence Documents Resolution Deadline	<i>N/A</i>			
33	§ 10.6	Environmental Inspection Objection Deadline CBS2, 3, 4	<i>no change</i>		<input checked="" type="checkbox"/>	
34	§ 10.6	ADA Evaluation Objection Deadline CBS2, 3, 4	<i>no change</i>		<input checked="" type="checkbox"/>	
35	§ 10.7	Conditional Sale Deadline	<i>no change</i>		<input checked="" type="checkbox"/>	
36	§ 10.10	Lead-Based Paint Termination Deadline CBS 1, 2, F1	<i>C.A. + 8 days</i>			
37	§ 11.1, 11.2	Estoppel Statements Deadline CBS2, 3, 4	<i>no change</i>		<input checked="" type="checkbox"/>	
38	§ 11.3	Estoppel Statements Termination Deadline CBS2,3,4	<i>no change</i>		<input checked="" type="checkbox"/>	
<b>Closing and Possession</b>						
39	§ 12.3	Closing Date	<i>C.A. + 26 days</i>			
40	§ 17	Possession Date	<i>C.A. + 26 days</i>			
41	§ 17	Possession Time	<i>Upon Funding &amp; Delivery of Deed</i>			
42	<i>n/a</i>	<i>n/a</i>	<i>no change</i>		<input checked="" type="checkbox"/>	
43	<i>n/a</i>	<i>n/a</i>	<i>no change</i>		<input checked="" type="checkbox"/>	

19  
20 **3. § 4. PURCHASE PRICE AND TERMS. [Note: This table may be deleted if inapplicable.]**

21  
22 The Purchase Price set forth below is payable in U.S. Dollars by Buyer as follows:

23  
24

Item No.	Reference	Item	Amount	Amount
1	§ 4.1	Purchase Price	<i>\$525,000.00</i>	
2	§ 4.3	Earnest Money		<i>\$7,500.00</i>
3	§ 4.5	New Loan		<i>\$400,000.00</i>
4	§ 4.6	Assumption Balance		
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		<i>\$117,500.00</i>
10		<b>TOTAL</b>	<i>\$525,000.00</i>	<i>\$525,000.00</i>

25  
26 **4. ATTACHMENTS.** The following are a part of this Counterproposal:

27 **ADDENDUM - 3555 S Holly St (Danielson - Johnston)**  
**Exhibit A - 20180830 Receivership Order**

28 **Note:** The following documents have been provided but are **not** a part of this Counterproposal:  
29 **no change**

30  
31 **5. OTHER CHANGES.**

**C.A. in 3.1 Dates and Deadlines table is "Court Approval". Seller and Buyer agree to execute an Amend/Extend to clarify Contract deadlines once Court Approval has been granted.**

**2.3**

**Seller**

**Harvey Sender, in his capacity as RECEIVER of the Gary Dragul RECEIVER ESTATE**

**10.6.1.2. Seller does not have any Due Diligence Documents in their possession other than what may be found at the Property.**

**13. Transfer of Title. Title shall be conveyed by Special Warranty Deed.**

**17. Possession: \$100 per day if Seller fails to deliver possession.**

32 **18.1. Day. As used in this Contract, the term "day" means the entire day ending at 6:00 p.m. & not 11:59 p.m., United States Mountain Time (Standard or Daylight Savings as applicable).**

**18.2. Computation of Period of Days, Deadline. If any deadline falls on a Saturday, Sunday or federal or Colorado state holiday (Holiday), such deadline WILL be extended to the next day that is not a Saturday, Sunday or Holiday.**

**21.1.1. No specific performance by Seller – provision to be struck in the entirety.**

**21.2. No specific performance by Buyer – Buyer is entitled to return of earnest money deposit. Buyer is not entitled to damages or specific performance.**

**23. No Mediation – provision to be struck in the entirety.**

33 **6. ACCEPTANCE DEADLINE.** This Counterproposal expires unless accepted in writing by Seller  
34 and Buyer as evidenced by their signatures below and the offering party to this document receives notice  
35 of such acceptance on or before 10/18/2019 10:00 AM MT.

Date Time

36 If accepted, the Contract, as amended by this Counterproposal, will become a contract between Seller and  
37 Buyer. All other terms and conditions of the Contract remain the same.

38 *Harvey Sender, Receiver*

Date: 10/17/2019

Seller: **Gary Dragul Receivership Estate**  
**By: Harvey Sender, Receiver**

Address:

39

40 Seller: \_\_\_\_\_ Date: \_\_\_\_\_

41 Address:

42

43 *Robert Lee Danielson*

Date: 10/17/2019

Buyer: **Robert Lee Danielson**

Address:

44

45 *Mary Tamara Johnston*

Date: 10/17/2019

Buyer: **Mary Tamara Johnston**

Address:

46 **Note:** When this Counterproposal form is used, the Contract is **not** to be signed by the party initiating this Counterproposal. Brokers must complete and sign the Broker's Acknowledgments and Compensation Disclosure portion of the Contract.

---

**CP40-6-18. COUNTERPROPOSAL**

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## ADDENDUM TO CONTRACT

This Addendum (“Addendum”) to Contract to Buy and Sell Real Estate (Residential) dated October 14, 2019, (the “Printed Form Contract”), and, if applicable Counterproposal dated October 16, 2019, (the “Counterproposal”), for property located at **3555 S. Holly St., Denver, CO 80237** (the “Property”), is dated as of the last day signed below, between **Robert Lee Danielson and Mary Tamara Johnston (“Buyer”)** and **Harvey Sender, in his capacity as RECEIVER of the Gary Dragul RECEIVERSHIP ESTATE (“Seller”)**. This Addendum is separately attached to and made a part of the Printed Form Contract and Counterproposal. The Printed Form Contract, Counterproposal (if applicable) and this Addendum, together, shall be referred to as the “Contract”.

1. Conflicts. In the event of any conflict between the terms and provisions of the Printed Form Contract and this Addendum, the terms of this Addendum shall govern and control.

2. 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. By Court Order dated August 30, 2018, Harvey Sender, was appointed Receiver (alternately referred to as “Receiver” or “Seller”), 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**. For purposes of this transaction, the Receivership Estate includes all the assets of GDA Real Estate Services, LLC (“GDA RES”), a Colorado limited liability company; GDA Real Estate Management, LLC (“GDA REM”), a Colorado limited liability company and 3555 South Holly 15, LLC, a Colorado limited liability company. 3555 South Holly 15, LLC is the Grantee of the Warranty Deed recorded December 30, 2015 (the vesting deed) to the Property. The Receivership Order authorizes the Receiver to sell assets of the Receivership Estate subject to Court approval.

3. Court Approval. Within three (3) days of mutual execution of this Contract (“MEC”), Seller shall file a motion with the Receivership Court seeking approval of this Contract. Seller will notify Buyer in writing within two (2) business days of receipt of a Court order approving this Contract (“Court Approval Date”). 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, that the Receiver, consistent with his fiduciary duties in the Receivership Case, shall, until the Receivership Court enters an order approving this Contract, be free to entertain and to accept any competing offer that he deems in his reasonable business judgement 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.

4. Exclusive Court Jurisdiction. This Contract shall be null and void if it is not approved by an order of the Receivership Court on or before thirty (30) days from MEC. The Parties agree that 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, judgements and/or decrees.

5. 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 that all Property, real and personal, is to be conveyed by Seller "AS IS, WHERE IS" and in its present condition and 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 and the warranty of title set forth in the deed with respect to the real property). 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.

6. SELLER DISCLAIMER. NOTWITHSTANDING ANY LANGUAGE IN THIS CONTRACT TO THE CONTRARY, THE RECEIVER 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.

7. 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 SHALL OPERATE TO TERMINATE THIS CONTRACT. SECTION 21.2 AND OF THE CONTRACT, CAPTIONED "IF SELLER IS IN DEFAULT", IS DELETED IN THE ENTIRETY AND SHALL BE OF NO FORCE OR EFFECT.

8. DEFAULT BY BUYER. IF THE SALE IS NOT CONSUMMATED DUE TO ANY DEFAULT BY BUYER 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.

**[SIGNATURE PAGE ON NEXT PAGE]**

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**BUYER:**

I

\_\_\_\_\_  
Robert Lee Danielson

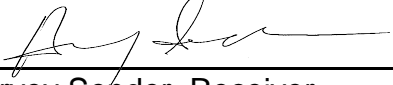
\_\_\_\_\_  
Date

\_\_\_\_\_  
Mary Tamara Johnston

\_\_\_\_\_  
Date

**SELLER:**

Harvey Sender, in his capacity as  
RECEIVERr of the Garary Dragul  
RECEIVERSHIP ESTATE

  
\_\_\_\_\_  
Harvey Sender, Receiver

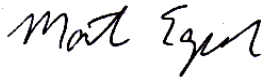
10/16/2019  
Date

**EXHIBIT A**  
**Receivership Order**

DISTRICT COURT, DENVER COUNTY, COLORADO	
Court Address: 1437 Bannock Street, Rm 256, Denver, CO, 80202	
Plaintiff(s) GERALD ROME SECURITIES COM FOR THE ST OF v. Defendant(s) GARY DRAGUL et al.	<p style="text-align: right;">DATE FILED: August 30, 2018 8:27 AM CASE NUMBER: 2018CV33011</p> <p style="text-align: center;"><b>△ COURT USE ONLY △</b></p> <p>Case Number: 2018CV33011 Division: 424      Courtroom:</p>
<b>Order: (Proposed) Stipulated Order Appointing Receiver also filed on behalf of Defendants Gary Dragul and GDA Real Estate Service, and GDA Real Estate Management LLC)</b>	

The motion/proposed order attached hereto: SO ORDERED.

Issue Date: 8/30/2018



MARTIN FOSTER EGELHOFF  
District Court Judge

<p>DISTRICT COURT, DENVER COUNTY, COLORADO</p> <p>1437 Bannock Street Denver, CO 80202</p> <hr/> <p>GERALD ROME, Securities Commissioner for the State of Colorado,</p> <p>Plaintiff,</p> <p>v.</p> <p>GARY DRAGUL, GDA REAL ESTATE SERVICES, LLC, and GDA REAL ESTATE MANAGEMENT, LLC</p> <p>Defendants.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>BY THE COURT</p>	<p>Case No.: 2018 CV 33011</p> <p>Courtroom: 424</p>
<p><b>STIPULATED ORDER APPOINTING RECEIVER</b></p>	

THIS MATTER having come before this Court on the Stipulated Motion to Appoint Receiver (the “Motion”) filed by the Plaintiff Gerald Rome, Securities Commissioner for the State of Colorado and Defendants Gary Dragul (“Dragul”), GDA Real Estate Services, LLC (“GDARES”), and GDA Real Estate Management, Inc. (“GDAREM”), and the Court, being otherwise fully advised in the premises,

HEREBY FINDS:

1. The Court has jurisdiction and venue is proper pursuant to C.R.C.P. 98(a).
2. Dragul is an individual and a resident of Colorado, and the manager of

GDARES and GDAREM, among other businesses.

3. GDARES is a Colorado limited liability company with its principal place of business at 5690 DTC Blvd., Suite 515, Greenwood Village, Colorado 80111.

4. GDAREM is a Colorado corporation with its principal place of business at 5690 DTC Blvd., Suite 515, Greenwood Village, Colorado 80111.

5. The Parties have stipulated to the appointment of a Receiver without bond or other security for Dragul, GDARES, and GDAREM, as well as for their respective properties and assets, and interests and management rights in related affiliated and subsidiary businesses as set forth herein.

6. The appointment of a receiver is reasonable and necessary for the protection of the assets and the rights of the parties in this case. Based on the standards set forth in C.R.C.P. 66 and case law thereunder, the Parties have stipulated that the Commissioner is entitled to entry of this Order.

7. Nothing in this stipulated Order shall be deemed an admission by Dragul to any allegations or as a waiver of any defenses thereto or limit Dragul's 4th, 5th, or 6th Amendment rights or other Constitutional and statutory protections and privileges afforded to any criminal defendant, or prevent him from invoking such rights in his personal capacity. Nothing in this Order operates as a waiver or an abrogation of the attorney-client privilege held by Dragul in his personal capacity.

8. Harvey Sender of Sender & Smiley LLC, has been determined to be suitable to serve as Receiver for Dragul (as such term is defined below in this



Order), GDARES and GDAREM, as set forth in this Order. Mr. Sender's business address is 600 17<sup>th</sup> Street, Suite 2800, Denver, Colorado 80202.

IT IS THEREFORE ORDERED THAT:

9. Harvey Sender ("the Receiver") is hereby appointed as Receiver for Dragul (limited to the definition of the "Receivership Property" or "Receivership Estate" as defined herein), GDARES, GDAREM, and all of their assets, including, but not limited to, all real and personal property, including tangible and intangible assets, their interests in any subsidiaries or related companies, management and control rights, claims, and causes of action, wherever located, including without limitation the "LLC Entities" identified in the Commissioner's Motion and Complaint for Injunctive and Other Relief, or assets (including those of Dragul) of any kind or of any nature whatsoever related in any manner, or directly or indirectly derived, from investor funds from the solicitation or sale of securities as described in the Complaint, or derived indirectly or indirectly from investor funds (the "Receivership Property," and altogether this "Receivership Estate"). Except that the personal residence of Dragul, located at 10 Cherry Vale Drive, Englewood, Colorado 80113, shall not be considered "Receivership Property" or part of the "Receivership Estate," unless the Receiver determines that an improvement to or increase in equity in such residence is directly related to the proceeds from the sale of the securities or matters referenced in the Complaint, in which case the improvements or equity shall be considered "Receivership Property" or part of the "Receivership Estate." Consistent with

Colorado's dissolution statutes and applicable law, and as set forth in greater detail below, the Receiver may, in the exercise of his reasonable judgment, investigate any claims and causes of action which may be pursued for the benefit of Dragul, GDARES, GDAREM, their creditors, members, and equity holders, and make recommendations to interested parties and this Court regarding the prosecution of any such claims and causes of action; establish a process for the assertion of claims against the Receivership Estate; make recommendations to this Court for the allowance and payment of such claims; and investigate and make recommendations to this Court for the ongoing operation, sale or distribution of any remaining Receivership Property, or the proceeds thereof, pursuant to the terms hereof.

10. Dragul, GDARES, and GDAREM, and all persons in active participation them, including without limitation, their officers and directors, partners, managers, employees, agents, representatives, attorneys, accountants, banks, contractors, subcontractors, and all who claim under them (collectively, the "Representatives"), are hereby ordered to deliver immediately to the Receiver or his agents all of the Receivership Property and to fully cooperate with the Receiver including, but not limited to, providing the Receiver all reasonably requested documents, records, bank accounts, trust accounts, deposit accounts, savings accounts, money market accounts, and all other demand deposit accounts, inventory, supplies, contracts, accounts receivable, computer databases, sales and marketing materials; together with stock certificates or other indicia of

ownership of any subsidiaries or related companies, and any and all reasonably requested documents, records, bank accounts, trust accounts, deposit accounts, savings accounts, money market accounts, and all other demand deposit accounts, inventory, supplies, contracts, accounts receivable, computer databases, sales and marketing materials, related to the operation of any subsidiaries or related companies. Dragul, GDARES, and GDAREM and their Representatives, when necessary or when requested (subject to Dragul's Constitutional protections, including the Fifth Amendment), shall explain the operation, maintenance and management of the Receivership Property, including any subsidiaries or related entities or companies, to the Receiver or his agents, without compensation therefor. Any claims for nonpayment for services shall not be used as a defense to turning over Receivership Property. All privileges in connection with professional representation of GDARES and GDAREM shall accrue to the sole benefit of the Receiver and the Receivership Estate and may only be waived by the Receiver, except that Dragul maintains all such privileges in his personal capacity. The Receiver may request supplemental authority from this Court upon proper motion, if necessary, to obtain the cooperation of any Representatives or any other foregoing persons acting on behalf of or for Dragul, GDARES and GDAREM, to comply fully and completely with this Order.

11. Any creditors of Dragul, GDARES or GDAREM that are in the possession of, or have taken any action to seize any books, records, or assets of the Receivership Estate (hereinafter called "Creditors") and all persons in active

participation with such Creditors, including without limitation, such Creditors' officers, managers, members, employees, agents, representatives, attorneys, accountants, banks, contractors, subcontractors, and all who claim under them (hereafter called "Creditors' Representatives") are hereby ordered to deliver immediately to the Receiver all of the Receivership Property in such Creditors' or Creditors' Representatives' possession, and to fully cooperate with the Receiver in connection with such turnover. Any claims against Dragul, GDARES or GDAREM shall not be used as a defense to turning over as set forth in this paragraph. The Receiver may request supplemental authority from this Court upon proper motion, if necessary, to obtain the cooperation of Creditors or Creditors' Representatives or any other foregoing persons acting on behalf of or for the Creditors to comply fully and completely with this Order.

12. If the Receiver determines, after reasonable inquiry that a person or entity is in violation of the turnover provisions set forth in Paragraphs 9 and 10 of this Order, the Receiver is instructed to give written notice thereof to the person or entity violating such provisions, with a copy of this Order attached, demanding turnover of such Receivership Property. If the person or entity in possession fails or refuses to turn over the Receivership Property after receiving notice, the Receiver shall file a Request for an Order to Show Cause with this Court.

13. The Receiver shall have all the powers and authority usually held by equity receivers and reasonably necessary to accomplish the purposes stated

herein, including, but not limited to, the following powers which the Receiver may execute without further order of this Court, except as expressly provided herein:

(a) To take from Dragul's, GDARES' and GDAREM's Representatives, and all persons acting in participation with Dragul, GDARES and GDAREM, and from Creditors and Creditors' Representatives, immediate possession and control of all of the assets of Dragul, GDARES and GDAREM, including the Receivership Property, to the exclusion of Dragul, GDARES and GDAREM, and their Representatives or all persons acting in participation with Dragul, GDARES and GDAREM, and Creditors and Creditors' Representatives;

(b) To exercise such control over all subsidiaries and related companies owned or managed by Dragul, GDARES and GDAREM, consistent with the governance documents or operating agreements applicable to the subsidiaries and related companies, including to exercise all rights of Dragul, GDARES and GDAREM to elect new officers, directors, or management of the subsidiaries and related companies, in their respective capacities and not as an assignee;

(c) To take charge of the subject Receivership Property, regardless of where such property is located, including, but not limited to, bank accounts, cash, checks, drafts, notes, security deposits, bonds, books, records, contracts, claims, leases, files, furniture, certificates, licenses, fixtures and equipment, property located in any real property either owned or leased by Dragul, GDARES and GDAREM and any personal property located in storage facilities;

(d) As appropriate, to take possession of offices of Dragul, GDARES

and GDAREM and to change any and all locks on such offices and to limit access to such offices to the Receiver and his agents, subject to any privileges maintained by Dragul in his personal capacity;

(e) To collect in a timely fashion all accounts receivable and other obligations due to Dragul, GDARES and GDAREM, including, as necessary to negotiate and deposit checks made payable to them into accounts maintained by the Receiver and as necessary to review mail directed to Dragul, GDARES and GDAREM and their Representatives in order to collect incoming accounts receivable and other obligations due and owing to Dragul, GDARES and GDAREM;

(f) To contract for and obtain such services as utilities, supplies, equipment and goods as is reasonably necessary to manage, preserve, and protect the Receivership Property as the Receiver may reasonably deem necessary; however, no contract shall extend beyond the termination of the Receivership without the permission of the Court;

(g) To obtain, review and analyze Dragul, GDARES and GDAREM books and records relating to the Receivership Property, including without limitation accounting records, banking records, tax records, and any other books or documents necessary to perform the duties of the Receiver;

(h) To pay, at the Receiver's discretion, any obligations incurred by Dragul, GDARES and GDAREM prior to the appointment of the Receiver that are deemed by the Receiver to be necessary or advisable for the preservation or protection of the Receivership Property;

(i) To borrow from third parties on such reasonable terms as may be acceptable to the Receiver, such funds that may be required for the fulfillment of the Receiver's obligations hereunder, and to meet the needs of the Receivership Estate in excess of the income from the Receivership Estate. The Receiver may issue Receiver's Certificates secured by all assets of the Receivership Estate, including, but not limited to, all claims on insurance policies, surety bonds, and similar assets of the Receivership Estate, in exchange for funds advanced during the term of this receivership, and such Receiver Certificates shall be a first and prior lien and preference claim upon the Receivership Property or a portion of it at the Receiver's election;

(j) To open and maintain accounts at a financial institution insured by the federal government in the name of the Receiver and to deposit all sums received by the Receiver into such account and to make such withdrawals as are necessary to pay the reasonable costs and expenses incurred by the Receiver;

(k) To exercise all rights of an owner incidental to the ownership of the Receivership Property;

(l) To hire and pay general counsel, accounting, and other professionals as may be reasonably necessary to the proper discharge of the Receiver's duties, and to hire, pay and discharge the personnel necessary to fulfill the obligations of the Receiver hereunder, including the retention of companies affiliated with the Receiver, or other third parties to assist the Receiver in the performance of its duties hereunder, all within the Receiver's discretion;

(m) In the Receiver's discretion as appropriate, to hire and pay employees with the necessary skills and experience to operate GDARES and GDAREM efficiently and with least amount of cost or expense, and to preserve the assets of GDARES and GDAREM and the Receivership Estate.

(n) After consultation with the Commissioner and agreement on the amount and funding of a budget related thereto, to institute such legal actions as the Receiver deems reasonably necessary, including actions necessary to enforce this Order to protect the Receivership Property, and to prosecute causes of action of Dragul, GDARES and GDAREM against third parties in this or any other jurisdictions, including foreign countries;

(o) After consultation with the Commissioner and agreement on the amount and funding of a budget related to anticipated out of pocket expenses related thereto, to retain special counsel, and other professionals as needed, on a contingency fee basis containing commercially reasonable terms, as determined by the Receiver in the exercise of his reasonable business judgment, to recover possession of the Receivership Property from any persons who may now or in the future be wrongfully possessing Receivership Property or any part thereof, including claims premised on fraudulent transfer or similar theories, in this or any other jurisdictions, including foreign countries;

(p) To notify any and all insurers under insurance policies and issuers of surety bonds affecting the Receivership Property of the pendency of these proceedings, and that any proceeds paid under any such insurance policy or surety



bond shall be paid to the Receiver to be administered for the benefit of all creditors of Dragul, GDARES and GDAREM;

(q) To pay, at the Receiver's discretion, any obligations incurred by Dragul, GDARES and GDAREM prior to the appointment of the Receiver that are deemed by the Receiver to be necessary or advisable for the preservation or protection of the Receivership Property;

(r) To notify and make demands on any insurers under insurance policies and issuers of any such policies or surety bonds affecting Receivership Property for the turnover and payment of proceeds to the Receiver for the benefit of Creditors, and as necessary, and after consultation with Plaintiffs and agreement on the amount and funding of a budget related thereto, commence litigation against such insurers and/or sureties in order to recover the proceeds of such insurance policies and surety bonds for the benefit of Dragul, GDARES and GDAREM and their creditors; and further provided that, in connection with any such claims or causes of action, the Receiver shall not be deemed to be asserting claims of Dragul, GDARES and GDAREM pursuant to any "insured vs. insured" exclusions that may be set forth in such insurance policies or surety bonds, but rather shall, in accordance with subparagraph (p) below, be deemed to be prosecuting claims of creditors of Dragul, GDARES and GDAREM in connection therewith;

(s) To prosecute claims and causes of actions held by Creditors of Dragul, GDARES and GDAREM, and any subsidiary entities for the benefit of

Creditors, in order to assure the equal treatment of all similarly situated Creditors:

(t) In the Receiver's discretion as appropriate, to consider the potential sale of assets of Dragul, GARDES, and GARDEM to a third-party or to sell or otherwise dispose of any personal property of the Receivership Estate, provided that Court approval shall not be required of any sale or disposition of any property being sold for a sales price of less than \$10,000;

(u) To establish a procedure for the assertion of claims against Dragul, GDARES and GDAREM or the Receivership Property, for the resolution of any disputes regarding such claims, and for the distribution of the proceeds of the Receivership Property;

(v) To issue subpoenas, institute, prosecute, defend, compromise, or adjust such actions or proceedings in state or federal courts now pending and hereafter instituted, as may in his discretion be advisable or proper for the protection, preservation and maintenance of the Receivership Assets or proceeds therefrom;

(w) To do such other and further lawful acts as the Receiver reasonably deems necessary for the effective recovery of the Receivership Property, and to perform such other functions and duties as may from time to time be required and authorized by this Court, by the laws of the State of Colorado, or the laws of the United States; and

(x) To do any and all acts necessary, convenient or incidental to the foregoing provisions of this Order and this equity receivership.

14. The Receiver is further directed to review the books and records of Dragul, GDARES and GDAREM, to account for receipts and disbursements of their funds, and to provide a report and accounting of their operations, for a period of time determined by the Receiver to be reasonable under the circumstances, to this Court and to the Commissioner, and any parties that have filed an entry of appearance herein. An initial report shall be filed with the Court within ninety (90) days of entry of this Order. In such report, the Receiver shall identify any claims and causes of action of Dragul, GDARES and GDAREM, identified as of the date of such report, including under insurance policies, on surety bonds, against any of their representatives or third parties, or arising under the Uniform Fraudulent Transfer Act, or any similar statute; and the Receiver's recommendations related thereto. The Receiver shall be authorized to act on his recommendations upon agreement with the Commissioner regarding budgets related to the prosecution thereof, and funding of such litigation, as set forth in this Order.

15. To the extent they have not already done so, Dragul, GDARES and GDAREM and their representatives, Creditors, and Creditors' Representatives, and their agents, are ordered to deliver over immediately to the Receiver, or his agents, all Receivership Property, including, but not limited to, unpaid bills, bank accounts, cash, checks, drafts, notes, security deposits, books, records, contracts, claims, leases, deeds, files, furniture, certificates, licenses, fixtures, escrow, sales contracts, equipment, and stock certificates or other evidence of ownership related to the Subsidiaries, relating to the Receivership Property and shall continue to

deliver immediately to the Receiver any such property received at any time in the future.

16. Any parties holding claims against Dragul, GDARES and GDAREM or the Receivership Estate shall not be entitled to participate as creditors in the distribution of recoveries from the Receiver's administration of the Receivership Estate and collection and liquidation of the assets thereof, unless such parties: (I) agree not to file or prosecute independent claims such parties may have (a) on insurance policies and surety bonds issued in connection with Dragul, GDARES and GDAREM operations, or (b) against Dragul, GDARES and GDAREM or any of their Representatives, and (II) promptly dismiss any lawsuits currently pending in connection therewith.

17. If necessary, the Receiver may request of this Court letters rogatory or commissions or supplemental orders as necessary to require out-of-state directors, officers, employees, agents, representatives, managers, attorneys, accountants, banks, contractors, or any other person acting in t participation with Dragul, GDARES and GDAREM and their Representatives, through the appropriate court of appropriate jurisdiction, to comply with any of the Orders of this Court.

18. The Receiver shall be compensated for his services at the rate of \$400 per hour, together with reimbursement for all reasonable costs and expenses incurred in connection with his duties, which compensation and reimbursement shall be paid from the assets of the Receivership Estate, proceeds of the disposition of Receivership Property, or the proceeds of loans secured by the Receiver.

19. Except as may be expressly authorized by the Court, Dragul, GDARES and GDAREM and all persons in active participation them, including without limitation, their officers and directors, partners, managers, employees, agents, representatives, attorneys, accountants, banks, contractors, subcontractors, and all who claim under them, are enjoined from:

(a) Collecting any revenues from the Receivership Property, or withdrawing funds from any bank or other depository account relating to the Receivership Property;

(b) Binding, or purporting to bind, Dragul, GDARES and GDAREM or the Receivership Estate, to any contract or other obligation;

(c) Holding themselves out as, or acting or attempting to take any and all actions of any kind or nature as Representatives of Dragul, GDARES and GDAREM, or subsidiary entities they own or control, or in any other purported capacity, except with the permission of the Receiver or by further order of this Court; and

(d) Otherwise interfering with the operation of the Receivership Property, or the Receiver's discharge of his duties hereunder.

20. Upon receipt of a copy of this Order, or upon actual knowledge of the entry of this Order, any other person or business entity shall also be bound by this Order.

21. Should the Receiver determine that tax returns were not filed for periods prior to the entry of this Order for which tax returns were required of

Dragul, GDARES and GDAREM, as funds are available in the Receivership Estate, the Receiver shall use reasonable efforts to have prepared and filed tax returns for any missing periods prior to the entry of this Order. To the extent it is determined that any outstanding tax obligations are due to the Internal Revenue Service, the Colorado Department of Revenue, or any other taxing authorities for any period of time prior to the entry of this Order, such taxes shall be paid, as funds are available in the Receivership Estate. The Receiver shall not be considered a responsible person, or otherwise have any personal liability, for any unpaid tax obligations of Dragul, GDARES and GDAREM (including for any trust fund taxes, such as payroll or sales tax) withheld but not paid to the proper taxing authority for any period prior to the entry of this Order. The Receiver shall file tax returns for periods commencing on the date of the entry of this Order through completion of the dissolution of Dragul, GDARES and GDAREM and discharge of the Receiver, as required by applicable federal, state, or local law.

22. The Receiver is directed and empowered to apply revenues, incomes and sales proceeds collected by the Receiver:

(a) First, to payment of costs and expenses of the Receivership Estate, and including the costs and expenses of preserving and liquidating the Receivership Property, taxes incurred from the appointment of the Receiver through the conclusion of the Receivership Proceeding and discharge of the Receiver, and to compensation due the Receiver and any employees, consultants, or professionals retained by the Receiver or employed by the Receiver to operate

GDARES or GDAREM;

(b) Second, to the payment of any outstanding Receiver's

Certificates;

(c) Third, to creditors holding obligations secured by the Receivership Property, in the order of their priority of record;

(d) Fourth, to the payment of any unsecured tax obligations determined to be due for periods prior to the entry of this Order, pursuant to the tax filing obligations imposed on the Receiver;

(e) Fifth, to the payment of unsecured creditors determined to hold legitimate claims against Dragul, GDARES and GDAREM pursuant to the claims administration procedure adopted by the Receiver, in their legal order of priority; and

(f) Sixth, to the preferred and common partners, members, or other equity interest holders of Dragul, GDARES and GDAREM, as their rights are defined in their governing documents, with the exception of any rights or interests held or owned by or for the benefit of Dragul, GDARES or GDAREM, or any insiders or related parties, with all such rights or interests to be determined by the Court.

23. The debts or liabilities incurred by the Receiver in the course of his operation and management of the Receivership Property, whether in the Receiver's name or in the name of the Receivership Property, shall be the debts and

obligations of the Receivership Estate only, and not of the Receiver in a personal capacity.

24. The Receiver shall enjoy and have the judicial immunity usually applicable to receivers in law and equity. All who are acting, or have acted, on behalf of the Receiver at the request of the Receiver are protected and privileged with the same judicial immunity as the Receiver has under this Order.

25. Nothing herein contained shall be construed as interfering with or invalidating any lawful lien or claim by any person or entity.

26. It is further Ordered that all actions in equity or at law against the Receiver, Dragul, GDARES and GDAREM, or the Receivership Estate are hereby enjoined (and any actions already pending are hereby stayed), pending further action by this Court. The Receiver is instructed to file a request for an Order to Show Cause if any business, entity, or person commences or continues the prosecution of any action in any other court seeking relief in equity or at law against the Receiver, Dragul, GDARES and GDAREM or the Receivership Estate without first seeking relief from this stay of proceedings.

27. The Receiver shall continue in possession of the Receivership Property until the completion of the disposition of this litigation which may anticipate the wind-up of the affairs of Dragul, GDARES and GDAREM.

28. Dragul, GDARES and GDAREM, and their Representatives, or anyone else in possession of records related to the Receivership Property, shall respond in a timely fashion to requests and inquiries from the Receiver concerning



such records, record keeping protocols, filing systems, information sources, algorithms and processes used to store, compile, organize, or manipulate data, and similar matters. With respect to any information or records stored in computer-readable form or located on computers Dragul, GDARES and GDAREM, and their Representatives, the person in possession of such information or records shall provide the Receiver full access to all media on which such records are located and all computers and the necessary application, system, and other software necessary to review, understand, print, and otherwise deal with such computerized records and all passwords and security codes necessary to access such computerized records, regardless of whether such records are separate or commingled with other information, except that information subject to the attorney-client privilege held by Dragul in his personal capacity shall remain privileged. Any such claimed privileged information, or information that may reasonably be considered to be privileged information, obtained by Receiver or commingled with other information shall be disgorged by the Receiver and notice given to Dragul regarding the privileged information and its disposition by the Receiver. In the event that the Receiver questions or disputes that any such information is privileged, the dispute shall be submitted to the Court, together with the disputed information for in camera review.

29. The Receiver may at any time, on proper and sufficient notice to all parties who have appeared in this action, apply to this Court for further

instructions whenever such instructions shall be deemed to be necessary to enable the Receiver to perform the duties of his office properly.

30. Notwithstanding anything to the contrary contained in this Order, the Receiver shall not take any action with regard to ownership, operation, control, storage, generation, or disposal of (a) any substance deemed a "hazardous substance", "pollutant," "contaminant", or similar substance under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675, the Conservation and Recovery Act of 1976, the Solid Waste Amendments of 1984, the Superfund Amendments and Reauthorization Act of 1986, and any other amendments; or (b) any other chemical, toxin, pollutant or substance defined as hazardous or dangerous to human health under any other federal, state or local law, regulation, rule or ordinance, including, without limitation thereto, petroleum, crude oil, or any fraction thereof (all collectively referred to herein as "Hazardous Substances"), without first applying for an obtaining an Order of this Court specifically setting forth the action or actions proposed to be taken and to be taken by the Receiver. Without first applying for and obtaining such an Order of this Court, the Receiver shall have no ownership, control, authority or power (neither shall receiver have any obligation to exercise ownership, control, authorize or power) over the operation, storage, generation or disposal of any Hazardous Substance. All decisions relating to the ownership, operation, control, storage, generation and disposal of any Hazardous Substances shall be resolved by this Court.

31. The Receiver shall take appropriate action as necessary with respect to the January 20, 2015 "CDPHE Stipulation and Order," as defined and with background provided in the Motion Appointing Receiver.

32. Pursuant to C.R.C.P. 66(d)(3), the Receiver shall provide written notice of this action and entry of this Order to any persons in possession of Receivership Property or otherwise affected by this Order, including all known Creditors of Dragul, GDARES and GDAREM, subsidiaries and any their respective Representatives.

33. After the initial report required pursuant to this Order, the Receiver shall make periodic reports of the condition of the Receivership Estate on intervals to be agreed to by the Receiver and the Commissioner as is reasonably necessary to provide timely reporting of the operations of the Receivership Estate to all interested parties, without imposing undue burden and expense on the Receivership Estate. The Receiver shall not be required to, but as reasonably necessary, may follow generally accepted accounting principles or use auditors or accountants in the preparation of his reports to the Court.

34. Court approval of any motion filed by the Receiver shall be given as a matter of course, unless any party objects to the request for Court approval within ten (10) days after service by the Receiver or written notice of such request. Service of motions by facsimile and electronic transmission is acceptable.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this action for all purposes. The Receiver is hereby authorized, empowered and

directed to apply to this Court, with notice to the Commissioner for issuance of such other Orders as may be necessary and appropriate in order to carry out the mandate of this Court.

IT IS FURTHER ORDERED that this Order shall be effective immediately and will remain in effect until terminated or modified by further Order of this Court.

DATED this \_\_\_\_\_ day of August, 2018.

BY THE COURT:

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MARTIN F. EGELHOFF  
Denver District Court Judge

Attachment to Order - 2018CV32011