The City of Durango encourages the participation of all its citizens in its public meetings. If an accommodation is needed, please contact the City of Durango ADA Coordinator at (970) 375-5005.

MISSION
The City of Durango and our employees provide efficient city services, effectively maintain city assets and manage growth, are accountable, ethical and fiscally responsible, and collaborate with regional partners to improve the quality of life for our entire community.

VISION
Durango is an authentic, diverse, multigenerational, and thriving community. Our residents value and enjoy our unique natural environment and benefit from the management of our city’s resources in a fiscally responsible, environmental, and socially sustainable manner.

VALUES
- Teamwork
- Dependability
- Professionalism
- Service
- Respect
- Innovation
- Well-Being

STRATEGIC GOALS
- Affordability & Economic Opportunity (AEO)
- Diversity, Equity, Inclusion (DEI)
- Effective Infrastructure Network (EIN)
- Enhanced Livability & Sense of Place (ELSP)
- Environmental Sustainability & Resilience (ESR)
- Financial Excellence & High Performing Government (FE)
- Engaged & Collaborative Governance (ECG)

AGENDA

MAYOR
Melissa Youssef

MAYOR PRO-TEM
Jessika Buell

CITY COUNCILORS
Olivier Bosmans – David Woodruff - Gilda Yazzie

CITY MANAGER
José Madrigal

ASSISTANT CITY MANAGER
Erin Hyder

MANAGING DIRECTOR
Bob Brammer, Public Safety

CITY ATTORNEY
Mark Morgan

CHIEF FINANCIAL OFFICER
Devon Schmidt

CITY CLERK
Faye Harmer

AIRPORT
Tony Vicari, Director

911 COMMUNICATIONS
Zeta Fail, Director

LIBRARY SERVICES
Luke Alvey-Henderson, Director

PARKS AND RECREATION
Kelly Schmidt, Director

TRANSPORTATION
Sarah Hill, Director

INFORMATION TECHNOLOGY
Justin Carlton, Director

PUBLIC WORKS
Allison Baker, Director

HUMAN RESOURCES
Bonnie Kling, Director

COMMUNITY DEVELOPMENT
Scott Shine, Director
1. CALL TO ORDER AND ROLL CALL 5:30 PM

2. INTRODUCTION OF TRANSLATOR

3. OPENING REMARKS BY MAYOR AND COUNCIL - Information Only

4. PRESENTATIONS/PROCLAMATIONS - Information Only 5:40 PM
   4.1. Proclamation Recognizing International Dark Sky Week

5. CITY MANAGER UPDATES - Information Only
   5.1. 2024 Employee Survey Update

6. COMMITTEE, BOARD AND LIAISON REPORTS - Information Only 5:50 PM

7. PUBLIC COMMENT ON AGENDA ITEMS ONLY (Items 8, 9 & 11) 6:00 PM

8. CONSENT AGENDA - Action Items without discussion 6:15 PM
   8.1. Approval of Meeting Minutes
       8.1.1. Approval of Minutes City Council Regular Meeting March 5, 2024
       8.1.2. Approval of Minutes City Council Regular Meeting March 12, 2024
       8.1.3. Approval of Minutes City Council Special Meeting March 12, 2024
       8.1.4. Approval of Minutes City Council Regular Meeting December 5, 2023
   8.2. Final Reading of Ordinances NO ITEMS
   8.3. Adoption of Resolution(s) by Consent NO ITEMS
   8.4. Approval of Other Administrative Items
       8.4.1. A Motion to Convene as the Durango Liquor Licensing Authority to Conduct a Hearing to Consider the Revocation of 8th Avenue Tavern’s Liquor License - HPG

This meeting is being held in a virtual/In Person format (Durango Resolution R 2022-00017 dated 4/5/2022). Link to the virtual meeting at http://durangegov.org/zoom. If this link fails, please copy and paste into your browser.
8.5. Land use and Development Action Items - NO ITEMS

8.6. Request For Public Hearing - NO ITEMS

9. ITEMS PULLED FROM THE CONSENT AGENDA - Action Item with discussion 6:10 PM

9.1. A Motion to Convene as the Durango Liquor Licensing Authority to Conduct a Hearing to Consider the Revocation of 8th Avenue Tavern’s Liquor License - HPG

10. LAND USE AND DEVELOPMENT - Action Items with Discussion NO ITEMS

11. RESOLUTIONS - CONSIDERATION OF ADOPTION - Action Items with discussion 6:45 PM

11.1. A Resolution to Make Amendments to the 2024 Adopted Budget for the Purpose of Increasing Personnel in the Airport Enterprise Fund - EIN - Submitted by Tony Vicari

11.2. A Resolution Authorizing the City Manager to Close on the Purchase of a Workforce Housing Unit at 166 East 33rd Street, As Directed by City Council on March 12, 2024, and Authorized by Ordinance 23-0020 - AEO - Submitted by Community Development

12. FIRST READING OF ORDINANCES - CONSIDERATION OF ADOPTION AND PUBLIC HEARING - Action items with discussion - NO ITEMS

13. PUBLIC COMMENT ON NON-AGENDA ITEMS - No discussion 7:00 PM

14. INTRODUCTION OF ORDINANCES AND REQUEST FOR PUBLIC HEARING - Action Item with limited discussion - NO ITEMS

15. OTHER NEW BUSINESS - Non-Dispositional with limited discussion 7:15 PM

15.1. Authorization for the Mayor to Sign a Support Letter for a Rural Economic Development Initiative (REDI) Grant in partnership with the La Plata Economic Development Alliance - AEO - Submitted by Community Development and Finance

16. REQUESTS FOR EXCUSED ABSENCES

17. ADJOURNMENT 7:25 PM

NOTE THAT ALL TIMES ARE APPROXIMATIONS

The public may view the meeting live on Zoom at durangogov.org/zoom or on YouTube at https://www.youtube.com/@CityofDurango6512. An email link for public comment is located at DurangoGov.org/meetings at the top of the page as well as on the agenda itself under Public Participation. Comments must be submitted no later than noon on the Monday preceding the meeting. Each email should contain the corresponding agenda item in the subject line of the email if there is one. The sender’s full name and address should be included for the record. If comment by email is not possible, comments may also be placed in the drop box located in front of City Hall no later than noon on the Monday preceding the meeting. All written comments will be provided to the Council for review. Written comments may be read into the record and/or attached to the minutes of the meeting at the direction/discretion of Council. Email comments should be directed to: PublicComment@durangogov.org.

This meeting is being held in a virtual/In Person format (Durango Resolution R 2022-00017 dated 4/5/2022). Link to the virtual meeting at http://durangogov.org/zoom. If this link fails, please copy and paste into your browser.
Members of the public who wish to provide verbal comments can use the Virtual Meeting Information at the top of this agenda to join the meeting. Please ensure you have the Zoom app installed on your computer or mobile device prior to the meeting (https://zoom.us/download). The mayor will provide additional details during the meeting when public comment is accepted.
INTERNATIONAL DARK SKY WEEK
April 06-13 2024

WHEREAS, the aesthetic beauty and wonder of a natural night sky is a shared heritage of all humankind; and

WHEREAS, the experience of standing beneath a starry night sky inspires feelings of wonder and awe, and encourages a growing interest in science and nature, especially among young people and out-of-area visitors within Durango; and

WHEREAS, Colorado currently has ten certified International Dark Sky Parks, and 5 International Dark Sky Communities, some of the most at any state level in the world; and

WHEREAS, Astrotourism within Colorado and Durango brings significant economic benefits to surrounding communities; and

WHEREAS, Durango is currently pursuing International Dark Sky Community certification through updating lighting policies and increasing education; and

WHEREAS, Durango is home to the Fort Lewis Observatory, which hosts several research grade telescopes; and

WHEREAS, light pollution has scientifically-established economic and environmental consequences, which result in significant impacts to the ecology and health of all communities; and

WHEREAS, 80 percent of the world’s population, including many people in Colorado, live under a dome of light pollution - excessive artificial lighting at night that disrupts natural Darkness and may never experience the visual wonder or ecological and health benefits of living under a dark sky. But living in Durango offers these opportunities; and

WHEREAS, the International Dark-Sky Association, headquartered in Tucson, Arizona, is the globally recognized authority on light pollution, and has created International Dark Sky Week to raise awareness of light pollution, and provide free education, resources, and solutions to the public to encourage the protection of and enjoyment of dark skies and responsible outdoor Lighting.

NOW, THEREFORE, I, Melissa Youssef, Mayor of Durango, Colorado, do hereby proclaim April 06-13, 2024, as International Dark Sky Week, in the City of Durango, Colorado, and ask each resident to join me not only in observing and pondering upon this important week, but also in raising awareness and support for protecting our precious dark skies resources.
Signed this April, 2nd 2024.

__________________________________________

Mayor Melissa Youssef
CALL TO ORDER AND ROLL CALL

Mayor Youssef called the meeting to order at 5:33 p.m. Present were Mayor Youssef, and Councilors Yazzie and Woodruff. Councilor Bosmans was present through Zoom. Also, present were City Manager José Madrigal, City Attorney Mark Morgan, and City Clerk Faye Harmer. Mayor Pro Tem Buell was absent.

INTRODUCTION OF TRANSLATOR

Diego Pons and Sam Guzman from CLC Translation provided translation services in Spanish.

OPENING REMARKS BY MAYOR AND COUNCIL

Mayor Youssef introduced the Unified Club for Unified Sports for special recognition. John Pearl introduced the team who came in uniform. All athletes have special needs and are paired with mentors. Josh Lemaire, president, and founder of the club spoke regarding the opportunities provided for special needs high school students. Mentors give up their study period to work with the team. Council members commended the students for their work and collaboration.

PRESENTATIONS/PROCLAMATIONS

Update Regarding the City of Durango’s Current Marijuana Regulations and Methodology for Measuring Buffer Areas

Lily Oswald with Community Development provided a presentation regarding the current methodology and the changes required by new legislation. The state has changed how participating jurisdictions may measure buffer areas from property-to-property line to a direct “pedestrian access” methodology this was passed by a house bill 19-1230. This regulation allows municipalities to opt for a stricter establishment requirement than the state. Staff has not pursued updating code or land use and development code to reflect newer methodology because it has the potential to increase the number of retail marijuana facilities which was not wanted during the initial community feedback when these regulations were put into place. The presentation was done as a follow up to a request by Councilor Yazzie. Both Mayor Youssef and Councilor Yazzie thanked Lily for her presentation and better understanding of the matter.

Mayor Youssef noted that there is a new public process for electronic sign up for public participation and comment. She mentions the digital format through the tablet and the sign up must be done through this portal.

CITY MANAGER UPDATES

911 Dispatcher Recognition

Zeta Fail and Kati Fox recognized Jennifer Rivera for her dispatch work in delivering two babies in a single hour. Jennifer is a brand-new dispatcher. Dispatch assisted births, without fire department support, are very rare. Council commended Ms. Rivera for her work.

Government Finance Officers Association Award to the City of Durango

Devon Schmidt announced the Government Finance Officers Association award received by the City of Durango Finance department. City Council congratulated and commended Devon and her team for their work.

Animas View Drive Update

Devin King, Multimodal manager, provided an update on the improvements underway on Animas View Drive. Flashing signs are being installed, lights are being repaired, speed limit sign flags are being replaced and the Durango PD is watching for automated speed enforcement. Staff will also work on sharrows, shrub removal, crosswalks at transit stops and creating pedestrian and cyclist space. Councilor Yazzie commended the quick staff
response. Mr. King said that the Mild to Wild project is proposing sidewalks as part of their area.

Councilor Woodruff moved to table item 11.1 A Resolution Establishing a Policy of the Durango City Council Prohibiting the Consideration of Legislation Concerning Matters of International Political Controversy, Ideological or Religious Beliefs, or Individual Conviction, Matters Directly Impacting the Governance of the City of Durango Excepted. Mayor Youssef seconded the motion.

Councilor Woodruff suggested that the Resolution would affect Councilor Buell’s potential term as Mayor and as she is not present, he would prefer she was able to weigh in on the vote. Mayor Youssef agreed and tabled item 11.1 to the March 12, 2024, City Council Meeting.

A roll call vote was taken, and the motion passed unanimously.
Passed: For 4; Against: 0; Abstain: 0; Absent: 1

Mayor Youssef called a recess on the meeting at 6:08 p.m.
Mayor Youssef reconvened the meeting at 6:14 pm

BUSINESS IMPROVEMENT DISTRICT QUARTERLY REPORT

Councilor Woodruff attended a roundtable with Natasha Hudson of Senator Bennett’s office and had gone to the recent La Plata Economic Development Alliance meeting, along with a meeting for local watershed protection from fires.
Councilor Yazzie updated the group on her attendance at a local Scout meeting where they discussed community involvement and civics. She also attended the Animas High School Winter Exhibit, noting the completion of recent construction. A Regional Housing Alliance meeting was also attended, along with the Fort Lewis College commencement. Lastly, she attended a Southern Ute Inauguration for the current Council.

Mayor Pro Tem Buell had recent office hours where she met with citizens and a Regional Housing Alliance Meeting where they reviewed housing development.

Councilor Bosmans had reviewed budget items at a recent Colorado Communities for Climate Action and Region 9 Southwest Colorado Council of Governments meetings.

Mayor Youssef commented on recent terminal construction at the Durango La Plata County Airport along with other development plans at the recent Airport Commission meeting.

PUBLIC COMMENT ON AGENDA ITEMS ONLY (Items 8, 9 & 11)

There was no one in person or virtually to comment on the agenda items. There were two public comments received through email. Elliot Fladen spoke in favor of adopting a resolution limiting discussion on internal affairs, based on too much misinformation on war in Gaza and feeling it would be difficult for council to get expertise on this topic. The second email was from Elliot Fladen clarifying his last name, with no additional comments present.

CONSENT AGENDA

City Clerk Faye Harmer read the consent agenda as follows:

Approval of Meeting Minutes
• Approval of Minutes City Council Regular Meeting February 20, 2024

Final Reading of Ordinances
• An Ordinance Approving the Elk Grove Annexation Ordinance and Declaring an Effective Date O 2024 0004 -AEO- Submitted by Community Development

Adoption of Resolution(s) by Consent
• No Items.

Approval of Other Administrative Items
LAND USE AND DEVELOPMENT

Twin Buttes Housing Compliance Agreement and Amendments to the Development Agreement AEO and FEHPG - Submitted by Community Development

Councilor Woodruff motioned to open the public hearing and Councilor Yazzie seconded the motion.

A roll call vote was taken, and the motion passed.

The motion passed: 4 in favor; 0 opposed; Abstain 0; Absent 1

Mark Williams introduced the Twin Buttes Housing Compliance Agreement and amendments to the Twin Buttes Development Agreement, which would help the city meet its development goals to support affordable housing. The agreement would require Twin Buttes to donate land at 271 Twin Buttes Ave, continued collection of real estate transfer fees, and partnership with Twin Buttes to find a developer. The project would have 30 for-sale units which would be affordable for individuals earning between 70 and 120% of area median income. Transfer fees would be used to support affordable housing units in the future in Durango. Mr. Williams reviewed conceptual site plans, including when permanent roads would be built.

There was no one in attendance to speak during public comment for this agenda item.

A Resolution Approving the Twin Buttes Housing Compliance Agreement and the First Amendment to the Third Amended and Restated Twin Buttes Development Agreement and Authorizing the Mayor and City Manager to Sign and Execute Documents R 2024 14

Councilor Woodruff motioned to approve the resolution and Councilor Yazzie seconded the motion.

Councilor discussion began and Councilor Bosmans appreciated the development updates and encouraged staff to look at connecting trails to the development in the long term. Mayor Youssef thought the resolution was a milestone agreement and would surely support affordable housing.

A roll call vote was taken, and the motion passed.

The motion passed: 4 in favor; 0 opposed; Abstain 0; Absent 1

RESOLUTIONS - CONSIDERATION OF ADOPTION

A Resolution Establishing a Policy of the Durango City Council Prohibiting the Consideration of Legislation Concerning Matters of International Political Controversy, Ideological or Religious Beliefs, or Individual Conviction, Matters Directly Impacting the Governance of the City of Durango Excepted (FEHPG) Submitted by City Attorney

This item was tabled previously in the meeting to the March 12th City Council Regular Meeting. There was no discussion.

A Resolution to Approve the Settlement of a Case Concerning the Application of Water Rights R 2024 0016 Filed by G&H, LLC, specifically 2020CW3004, in La Plata County District Court (FEHPG) Submitted by City Attorney
Councilor Woodruff made a motion to approve the resolution as read by the City Clerk and Mayor Youssef seconded it.

City Attorney Mark Morgan commented that Durango’s outside counsel that represented the city for water rights had recommended settlement. The water rights were near the Durango La Plata County Airport.

A roll call vote was taken, and the motion passed.

The motion passed: 4 in favor; 0 opposed; Abstain 0; Absent 1

FIRST READING OF ORDINANCES - CONSIDERATION OF ADOPTION AND PUBLIC HEARING

No Items.

PUBLIC COMMENT ON NON-AGENDA ITEMS

Mayor Youssef opened the public comment section and outlined requirements. She motioned to allow two minutes for individuals who wanted to speak regarding agenda item 11.2., A Resolution Establishing a Policy of the Durango City Council Prohibiting the Consideration of Legislation Concerning Matters of International Political Controversy, Ideological or Religious Beliefs, or Individual Conviction, Matters Directly Impacting the Governance of the City of Durango Excepted, which had been tabled. Councilor Yazzie seconded the motion.

A roll call vote was taken, and the motion passed.

The motion passed: 4 in favor; 0 opposed; Abstain 0; Absent 1

Jay Short, a county resident, spoke against the proposal to expand wakeless hours at Lake Nighthorse. He thought the current format was working well and thought more long-term studies were needed.

Tom DeHudy, a county resident, was in attendance representing two developments on La Posta Road. He said residential concerns had been largely ignored. He said the majority of homeowners were opposed to the current version of proposed development. He also requested more transparency.

Zachary Lawrence, Keaton Griffith, Gina Jannone, Chris McCarthy, Ed Rayzicki, Dahlia Davis, Christina Thorburn, Ellinore Porter, Karen Pontius, Ellis McNichol, Michael Fadil, and Adam Howell were in attendance opposing agenda item 11.2., A Resolution Establishing a Policy of the Durango City Council Prohibiting the Consideration of Legislation Concerning Matters of International Political Controversy, Ideological or Religious Beliefs, or Individual Conviction, Matters Directly Impacting the Governance of the City of Durango Excepted. The resolution had been tabled to the March 12th, 2024 meeting. The group said the resolution would limit participation at future meetings and limit free speech. Speakers suggested that Council support their constituents’ interests in international affairs. They also encouraged Council to instead approve a resolution for a ceasefire between Israel and Palestine.

Elliot Fladen submitted a comment via email prior to the meeting and supported the 11.2. resolution, indicating that local governments should not address international politics.

Mayor Youssef called for a recess at 7:24 p.m. due to the noise of the room.

The meeting was reconvened at 7:31 p.m.

INTRODUCTION OF ORDINANCES AND REQUEST FOR PUBLIC HEARING

No Items.

OTHER NEW BUSINESS - Non-Dispositive with limited discussion

No Items.

Requests for Excused Absences

Councilor Bosmans commented that he would not be able to attend the March 12th City Council Meeting because of travel plans.

Councilor Woodruff motioned to excuse Councilor Bosmans from the upcoming meeting and Councilor Yazzie seconded the motion. A roll call vote was taken, and the motion passed.

The motion passed: 4 in favor; 0 opposed; Abstain 0; Absent 1

EXECUTIVE SESSION
A Motion to Convene in Executive Session to Discuss the Purchase, Acquisition, Lease, Sale or Transfer of an Interest in Real Property, Known as Buckley Park That is Currently Owned by the 9R School District, and to Determine Positions Relative to Matters That May Be Subject to Negotiation and Direct Negotiators, as Permitted by C.R.S. 24-6-402 (4)(a) and (e)

Councilor Woodruff motioned to convene into the executive and Mayor Youssef seconded the motion.
A roll call vote was taken, and the motion passed.
The motion passed: 4 in favor; 0 opposed; Abstain 0; Absent 1

A Motion to Convene in Executive Session to Discuss the Purchase, Acquisition, Lease, Sale or Transfer of an Interest in Real Property Located in Downtown Durango that is Currently Leased to the Durango and Silverton Narrow Gauge Railroad Company for Parking and to Determine Positions Relative to Matters That May Be Subject to Negotiation and Direct Negotiators as Permitted by C.R.S. 24-6-402(4)(a) and (e)

Councilor Woodruff also motioned to convene into the executive session and Mayor Youssef seconded the motion.
A roll call vote was taken, and the motion passed.
The motion passed: 4 in favor; 0 opposed; Abstain 0; Absent 1

Council convened into executive session at 7:34 p.m. and returned from the two executive sessions at 8:26 p.m.

Mayor Youssef debriefed the Executive Session, noting that no decisions were made in the session and that the conversations remained in the scope of the session.

Councilor Woodruff motioned to authorize the city manager to negotiate a purchase price for Buckley Park as discussed in the executive session and Councilor Yazzie seconded the motion.
A roll call vote was taken, and the motion passed.
The motion passed: 4 in favor; 0 opposed; Abstain 0; Absent 1

Mayor Youssef debriefed the second executive session, noting that no decisions were made in the session and that the conversations remained in the scope of the session.

Councilor Woodruff motioned to authorize the city manager and city attorney to negotiate a purchase agreement with the Durango and Silverton Narrow Gauge Railroad for real property located in downtown Durango that is currently leased to the Durango and Silverton Narrow Gauge Railroad. Councilor Yazzie seconded the motion.

Councilor Bosmans said he would vote against the motion. He said the city did not need the revenue and said the transportation department had ample funding. He also noted that a request for proposals for development ideas had already been approved and thought the location was a valued asset for the community. He wanted to see more community involvement with long-term plans for the site.
A roll call vote was taken, and the motion passed.
The motion passed: 4 in favor; 0 opposed; Abstain 0; Absent 1

ADJOURNMENT
Mayor Youssef adjourned the meeting at 8:31 p.m.

APPROVED:
CALL TO ORDER AND ROLL CALL

Mayor Youssef called the meeting to order at 5:30 p.m. Present were Mayor Youssef, Mayor Pro-Tem Buell and Councilor Woodruff. Councilor Bosmans was not in attendance. Councilor Yazzie was not in attendance at roll call, however, joined the meeting at 6:52 p.m. virtually. Also, present were City Manager José Madrigal, City Attorney Mark Morgan and Chief Deputy Clerk Ben Florine.

INTRODUCTION OF TRANSLATOR

Diego Pons and Liz Torres from CLC Translation provided translation services in Spanish.

OPENING REMARKS BY MAYOR AND COUNCIL

Mayor Youssef briefly discussed why she ran for city council, focusing on the community of people and the importance of the right to assemble and speak freely in the public sphere. She spoke on the city’s long history of supporting activism and diverse opinions, noting that, as Mayor, she prides herself on upholding these values.

Mayor Youssef recognized the Durango High School Hockey Team for their achievement and emphasized her pride in a local team winning an esteemed accolade.

PRESENTATIONS/PROCLAMATIONS

No items.

CITY MANAGER UPDATES


City Manager José Madrigal welcomed Parks and Recreation Director Kelly Schmidt, who briefly spoke about an incident that took place at the Durango Recreation Center. A team of first responders saved the life of an 85-year-old man in cardiac arrest. Kim Ebner determined that the man was not breathing and had no pulse. Kim began performing chest compressions and applied the AED device while Karin Romero set up the bag valve mask and began ventilation. Emergency Services Chief Scott Sholes spoke about Heart Safe La Plata and the importance of early intervention and having life saving devices available in the event of an emergency.

COMMITTEE, BOARD AND LIAISON REPORTS

Mayor Youssef reported on a productive Strategic Planning Retreat. She said significant progress has been made since 2021 but that staff still have a substantial amount of work to do. She thanked the staff and council.

Mayor Youssef also noted that she participated as a panelist for the Citizen Complaint Review Committee for the City of Durango Police Department, which strives for transparency in conduct and focuses on holding officers accountable.

Mayor Pro-Tem Buell reported that she attended the Alliance Board Meeting as well as the Alliance General Membership where Durango Rocks Nonprofit was recognized. They discussed housing and the Regional Housing Alliance (RHA) strategy annual report. The Steering Committee held their second meeting, which they noted would help the RHA determine long-term funding. Mayor Pro-Tem Buell also said that the Catalyst Fund round three is to start in March and is a great program that helps close funding gaps for housing partners. She discussed the workforce and stated that the curriculum development team opened registration for Project Run, noting that the six-week program will launch in June.

Mayor Pro-Tem Buell also referenced the morning meeting where Brandon Mancini from Mercy Hospital (or Common Spirit) was in attendance and provided statistics about staffing and workforce shortages at the hospital. Additionally, she said that Region Nine gave a presentation on regional housing.

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Mayor Pro-Tem Buell reported that the Opioid Response District and Transit Connectivity has $1.8 million in loans in La Plata County. She also explained that a new Enterprise Zone had been opened in Midtown and that local businesses could potentially qualify for tax credits by contacting Region Nine. She noted that she was impressed by Nicole Killian of Bayfield when she gave an update regarding housing initiatives. Finally, Mayor Pro-Tem Buell noted that Sarah Tober gave an Regional Housing Alliance update.

Councilor Woodruff said that he did not have any meetings throughout the week but echoed Mayor Youssef by commenting on the Strategic Planning Meeting and its emphasis on fostering city growth over the next few years, noting that it was "good to have those conversations".

Mayor Youssef moved to interrupt public comment if the Durango Hockey Team joined the meeting, as attendants would be required to vacate to not violate maximum capacity. Mayor Pro-Tem Buell seconded the motion. A roll call was taken, and the motion passed unanimously.

The motion passed: 3 in favor; 0 opposed; Abstain 0; Absent 2

PUBLIC COMMENT ON AGENDA ITEMS ONLY (Items 8, 9 & 11)

Mayor Youssef opened the public comment section and outlined the requirements to participate. She stated that only individuals that had signed up in advance on the electronic portal would be called upon to speak. She noted that comments were limited to three minutes to establish fairness.

Jodi Underwood expressed encouragement for the City Council to pass a ceasefire resolution, and to voice her concern over the proposed Resolution 11.2, A Resolution Establishing a Policy Prohibiting the Consideration of Legislation Concerning Matters of International Political Controversy, Ideological or Religious Beliefs, or Individual Conviction, Matters Directly Impacting the Governance of the City of Durango Excepted (FEHPG) Submitted by City Attorney.

Mayor Pro-Tem Buell motioned for a recess. Dave Woodruff seconded the motion. A roll call was taken, and the motion passed unanimously.

The motion passed: 3 in favor; 0 opposed; Abstain 0; Absent 2

The meeting reconvened at 6:00 p.m.

Mayor Youssef stated that Underwood's comment did not correspond to Items 8, 9, or 11, and requested that all further public comments for agenda items not pertaining to these specific items be voiced under Item 13.

Laura Moore and Rachel Crawford spoke in opposition of Resolution 11.2, stating that the Resolution limits free speech and restricts constitutional rights. Some stated that the Resolution did not have well-defined boundaries and could potentially be abused.

Rick Cobb spoke in favor of Resolution 11.2, stating that the city should focus on matters that could be influenced and controlled, as opposed to being concerned about issues outside of the City's control. He stated that Resolution 11.2 would help to manage time, resources, and personnel.

The Durango High School Hockey Team arrived to allow the team to enter the Chambers.

Mayor Pro-Tem Buell made a motion to recess and Councilor Woodruff seconded the motion. A roll call was taken, and the motion passed unanimously.

The motion passed: 3 in favor; 0 opposed; Abstain 0; Absent 2

The Durango High School Hockey Team entered the Chambers and Mayor Youssef acknowledged their incredible achievement after winning the State Championship, which is the first time an accolade of this level has been accomplished since 2020. The Team's Coach expressed that the team only had the opportunity to practice several times throughout the entire season, but that the team grew every time they came together. Henry Howell, a young hockey player, spoke about the team coming together and overcoming challenges. He thanked the Council for recognizing their award.

Councilor Woodruff expressed how impressed he was by the team's caliber and ability to overcome obstacles. Mayor Pro-Tem Buell stated how proud she was of the team, and thanked the other Councilors for allowing her to be absent while she watched the team play.

The recess ended at 6:14 p.m. and public comment resumed.
Brian Crawford spoke in opposition to Resolution 11.2. He felt the Resolution was proposed hastily and without thorough review, stating that it restricts who can propose legislation. He said that he felt that the legislation undermines democratic principles. Katya Spiecker asked that the council “lead by example” and expressed that the City of Durango had participated in partisan issues addressing global efforts and concerns in the past, and that they shouldn’t limit their scope of participation. Christina Thorburn, a resident of Durango, also spoke in opposition, and asked that the Councilors use their powers and influence to take a stance and represent the interests of their constituents.

Sweetie Marbury, a resident of Durango, spoke in favor of Resolution 11.2. She stated that a symbolic resolution from the City of Durango wouldn’t have any impact but urged people to contact their senators regarding international issues, as she believes that’s the most powerful way to influence change.

Zach Lawrence and spoke in opposition of the Resolution 11.2, remarking that grassroots movements start “at home” and encouraged upholding a public dialogue so that residents could express their opinions and interests.

Joshua Craig, opposed to Resolution 11.2, stated his disapproval of federal tax dollars being spent to fund Israel’s movement. Jaymee Becktel, not a resident of Durango but a local teacher, also spoke in opposition of Resolution 11.2, and urged the Council to consider how the war in Gaza affected the lives of children.

There were no virtual comments.

CONSENT AGENDA

Ben Florine, Chief Deputy Clerk of the Clerk's office read the consent agenda as follows:

Approval of Meeting Minutes
- No items

Final Reading of Ordinances
- No items

Adoption of Resolution(s) by Consent
- Resolution Authorizing The City Manager To Execute An Intergovernmental Agreement For The Pass-Through Of Property Tax Backfill Funding To The Durango Fire Protection District

Approval of Other Administrative Items
- No items

Land Use and Development Action Items
- No items

Request for Public Hearing
- No Items.

Mayor Pro-Tem Buell motioned to approve the consent agenda. Councilor Woodruff seconded the motion.

A roll call was taken and the motion passed.

The motion passed: 3 in favor; 0 opposed; Abstain 0; Absent 2

ITEMS PULLED FROM THE CONSENT AGENDA

No items.

LAND USE AND DEVELOPMENT

Consideration of a Resolution Approving the US Eagle Credit Union Preliminary Planned Development, Parcel 566902300310 - AEO - Submitted by Community Development

Dan Armentano presented a proposed development and subdivision of an existing 2.2-acre vacant lot in the South Fork Character District. He listed the modifications that had been requested by Community Development of US Eagle Credit Union, including exterior color changes and a reduction in parking spaces with an expansion of landscaping. The
department also asked for implementation of sidewalks along the access easement to the north as well as along the Wilson Gulch frontage road. He demonstrated the potential for a floodplain conflict and noted that the bank would be required to undergo a separate process to receive a floodplain development permit before receiving a building permit.

Mr. Armentano provided a summary of the Community Development Commission’s review of the proposed development and stated that the Commission recommended approval on a 7-0 vote. He remarked that no public comment had been received by staff.

Being Mr. Armentano’s last presentation before Council, Scott Shine took the podium to acknowledge his talent and contributions to the city. He expressed that Mr. Armentano would be missed by everyone.

Mayor Pro-Tem Buell motioned to adopt the Resolution, as read by Chief Deputy Clerk. Councilor Woodruff seconded the motion.

There was no public comment.

Mayor Youssef opened Council discussion.

Dave Woodruff inquired about drainage. Mr. Armentano noted that engineering would review drainage during stage two.

A roll call was taken and the motion passed with all councilors voting in favor.

The motion passed: 3 in favor; 0 opposed; Abstain 0; Absent 2

Councillor Yazzie joined the meeting at 6:52 p.m.

RESOLUTIONS - CONSIDERATION OF ADOPTION

A Resolution to Approve a Destination Management Master Plan - (FEHPG) Submitted by the Public Information Office

Tom Sluis briefly described the Destination Management Master Plan and introduced Bethanie DeRose, Executive Vice President with JLL Tourism and Advisory Practice. Ms. DeRose gave an overview of the phases of the plan and explained its purpose. A task force was assembled, as well as multiple focus groups, individual interviews, and a town hall--all to gather community input. She touched on the economic impacts of tourism, including jobs and revenue generated. Key findings from the study included the prioritization of sustainability, management of visitor impacts, and the inclusion of the community. Ms. DeRose made multiple recommendations based off their findings.

In a response to a question from Mayor Pro-Tem Buell asking which department would be responsible for the execution of the Destination Management Master Plan, Tom Sluis responded that the plan needed in-depth discussions regarding proper staffing for its implementation. Mayor Pro-Tem Buell asked how the plan would adapt to changing market trends and Mr. Sluis responded that the plan had leeway built into it and contained flexibility to adapt to unforeseen changes. She also inquired about community involvement and Mr. Sluis reassured her that there would be extensive community outreach, polls, and forums to include residents.

Council Woodruff asked what the next step is in the implementation of the plan and briefly spoke about the importance of tourism, noting that it contributes to 30% of the local economy and that anybody that is interested in learning about how the city will be moving forward in the tourism sector should refer to the City Council Packet.

Mayor Youssef reiterated the importance of sustainability and managing visitor impacts, stating that she agreed that she wanted to keep the discussion of the Management Master Plan open to determine how to best implement the plan. She stressed the importance of the continuing development of Durango’s identity as well as maintaining communication with Visit Durango.

Mayor Pro-Tem Buell motioned to approve the resolution as read by the Chief Deputy Clerk. Councilor Woodruff seconded the motion. A roll call was taken, and the motion passed with all councilors voting in favor.

The motion passed: 4 in favor; 0 opposed; Abstain 0; Absent 1

A Resolution Establishing a Policy of the City of Durango City Council Prohibiting the Consideration of Legislation Concerning Matters of International Political Controversy, Ideological or Religious Beliefs, or Individual Conviction, Matters Directly Impacting the Governance of the City of Durango Excepted (FEHPG) Submitted by City Attorney
City Attorney Mark Morgan introduced the Resolution with a statement honoring freedom of expression and stated that he shares the emotion and conviction of Sweetie Marbury. He emphasized that the consideration of legislation during City Council regular meetings is a separate matter from freedom of expression. Mr. Morgan stated that legally, Council is only obligated to conduct public comment on matters that will be voted upon. He asked the Council to determine if they would adopt the status of a designated public forum or remain a limited public forum. Mr. Morgan noted that obstacles to conducting business may arise when public comment is not limited to strictly city business.

Mayor Pro-Tem Buell made a motion to approve the resolution as read by the Chief Deputy Clerk. Councilor Yazzie seconded the motion.

Mayor Youssef open Council discussion.

Mayor Pro-Buell stated that Durango's strengths lie in addressing the needs and concerns of the Durango community, not taking a stance on international matters. She stated that pronouncements on global affairs risk overstepping boundaries. Mayor Pro-Tem Buell noted that educating herself on every national and international affair is unattainable, and that her job is to understand matters affecting the City of Durango. She listed the reasons that she ran for City Council, mentioning that her intention has never been to silence citizens, but to address issues of affordable housing and to uphold the values of Durango. Mayor Pro-Tem Buell spoke on the diversity and inclusive spirit of Durango, acknowledging the strong spirit of activism and community engagement. She stressed that the role of Councilors was to vote in the best interests of the city.

Councilor Woodruff spoke about the important, and sometimes divisive, nature of policy making. He stated that the City is already divided on local issues, and Council taking a stance on international matters could deepen those divides. However, he stated that sound policy making is a collaborative effort between constituents, residents, subject matter experts, and civic leaders. Councilor Woodruff asserted that adopting the resolution would create a separation between policy makers and the local community and give the optics that Council is attempting to limit public participation. He referenced the First Amendment and emphasized the right to assemble and to petition the government for a redress of grievances.

Councilor Yazzie stated that she felt the resolution would allow City Government to be more effective and that the City has been working as a limited public forum. She noted that the public can still effectively navigate the proposal of resolutions through the proper processes.

Mayor Youssef stated that she appreciated the passionate public comments and that she felt the resolution was not an effort to stop public activism, and that the City would continue to support advocacy in the right forums. She said that she focuses on state issues regarding funding or legislation that affects residents. Mayor Youssef affirmed that the "resolution aligns public comment on non-agenda items with previously adopted ordinances and policies, allowing meetings to remain focused on matters that directly impact the city". She emphasized the importance of allowing for a space that both facilitates free speech and the ability to conduct official business.

A roll call was taken, and the motion passed with Councilor Woodruff voting against the resolution.

The motion passed: 3 in favor; 1 opposed; Abstain 0; Absent 1

Mayor Youssef opened the public hearing on non-agenda items.

FIRST READING OF ORDINANCES - CONSIDERATION OF ADOPTION AND PUBLIC HEARING
No Items.

PUBLIC COMMENT ON NON-AGENDA ITEMS
Mayor Youssef opened the public comment section and outlined the requirements, noting that everyone speaking needed to have signed up via electronic portal, and that they would be allowed three minutes to speak.

Keaton Griffith expressed his disappointment with the Council for referring residents to Congress and not addressing the issue locally. He stated that he did not feel that the City was listening to its residents.
Mayor Youssef motioned for a recess at 7:41 p.m. Mayor Pro-Tem Buell seconded.
A roll call was taken, and the motion passed.

The motion passed: 4 in favor; 0 opposed; Abstain 0; Absent 1
The recess concluded at 7:54 p.m.

Mayor Youssef requested that the public comment be cooperative and respectful.
Katya Spiecker, Christina Thorburn, Jodi Underwood, Jaymee Becktel, Whitney Lee, Nalin Saur, and Lee Dean expressed their disappointment in the ruling of Resolution 11.2. Some encouraged the Council to participate in educational teach-ins regarding the ceasefire movement. Lee noted that the Council could have refused to pass a ceasefire resolution without passing Resolution 11.2.

Mayor Youssef motioned for a recess. Mayor Pro-Tem Buell seconded the motion. A roll call was taken, and the motion passed.

The motion passed: 4 in favor; 0 opposed; Abstain 0; Absent 1
The recess concluded at 8:15 p.m.

INTRODUCTION OF ORDINANCES AND REQUEST FOR PUBLIC HEARING
No items.

Requests for Excused Absences
A roll call was taken to excuse Mayor Pro-Tem Buell from the March 5th, 2024 City Council Regular Meeting, and the motion passed.

The motion passed: 4 in favor; 0 opposed; Abstain 0; Absent 1
City Attorney Mark Morgan requested that it be documented that during the recess, City Council confirmed that all people that signed up for public comment were allowed to speak. He stated that if a name was not read from the public comment list, the person had not signed up by the time public comment for Item No. 13 had begun.

EXECUTIVE SESSION
A Motion to Convene in Executive Session to Discuss the Purchase, Acquisition, Lease, Sale or Transfer of an Interest in Real Property Located at 166 East 33rd Street and to Determine Positions Relative to Matters That May Be Subject to Negotiation By Direct Negotiators, as Permitted by C.R.S. 24-6-402(4)(a) and (e)
Mayor Pro Tem Buell moved to convene into Executive Session and Councilor Yazzie seconded the motion. A roll call was taken, and the motion passed with all council members in favor.

The motion passed: 4 in favor; 0 opposed; Abstain 0; Absent: 1
The meeting was reconvened at 8:43 p.m.

No decisions were made.

Individuals present in the Executive Session were Scott Shine, Councilor Woodruff, Mark Morgan, Mayor Pro-Tem Buell, Erin Hyder, Eva Henson, Councilor Youssef, and José Madrigal.

Mayor Youssef asked anyone who had participated in the Executive Session who believed the discussion had gone beyond the proper scope to state their objection. No objections were heard.

Mayor Pro-Tem Buell made a motion to authorize staff to execute all necessary documents to acquire the real property located at 166 E. 33rd Street. Councilor Woodruff seconded the motion.

Mayor Pro Tem Buell motioned to open the public hearing and Councilor Yazzie seconded the motion.

Ramona Gaylord spoke about her daughter, Soleil Gaylord, and asked the Council to not purchase the property so that her daughter could purchase it instead. She stated that they had signed and completed the contract for purchase with Heather Dawson-Agave.

Mayor Youseff opened Council discussion.
City Attorney Mark Morgan stated that if there’s a signed contract with another buyer, that Council could not execute the purchase. He noted that if Gaylord was the first person in line to purchase the property, then the City has no advantage to purchase the property unless the Gaylord deal fell through. He stated that the motion would not interfere with any private sale.

A roll call was taken, and the motion passed with all council members in favor.

The motion passed: 4 in favor; 0 opposed; Abstain 0; Absent: 1.

ADJOURNMENT

Mayor Youssef adjourned the meeting.

APPROVED:

__________________________________  ____________________________________
Melissa Youssef, Mayor                  Ben Fiorine, Chief Deputy Clerk
DURANGO CITY COUNCIL
SPECIAL MEETING MINUTES
TUESDAY MARCH 12, 2024
2:00 PM

CALL TO ORDER

Mayor Melissa Youssef called the meeting to order at 2:01 p.m.

PROCEDURES

Roll Call

Present virtually on behalf of the Durango City Council were Mayor Youseff, Mayor Pro Tem Buell and Councilor Woodruff. Councilors Yazzie and Bosmans were absent. Also present was Chief Deputy Clerk Ben Florine.

ACTION ITEMS

2.1. A Motion to Convene in Executive Session for the Purpose of Discussing a Personnel Matter, Specifically to Conduct the Quarterly Evaluation of the City Manager, as Permitted in C.R.S. 24-6-402(F)(II)

2.2. A Motion to Convene in Executive Session for the Purpose of Discussing a Personnel Matter, Specifically to Conduct the Quarterly Evaluation of the City Attorney, as Permitted in C.R.S. 24-6-402(F)(II)

2.3. A Motion to Convene in Executive Session for the Purpose of Discussing a Personnel Matter, Specifically to Conduct the Quarterly Evaluation of the Municipal Court Judge, as Permitted in C.R.S. 24-6-402(F)(II)

Councilor Woodruff moved to convene in executive sessions to conduct the quarterly evaluation of the City Manager, City Attorney and Municipal Court Judge. Mayor Pro Tem Buell seconded the motion. A roll call vote was taken, and the motion passed.

Passed: For 3; Against: 0; Abstain: 0; Absent: 2

The meeting reconvened at 4:07 p.m.

ADJOURNMENT

Mayor Youssef adjourned the meeting at 4:09 p.m.

APPROVED: ATTESTED:

Melissa Youssef, Mayor City Clerk
Item 8.1.4

Meeting Date: April 2, 2024

TO: DURANGO CITY COUNCIL
FROM: BEN FLORINE, CHIEF DEPUTY CLERK

SUBJECT: APPROVAL OF CITY COUNCIL REGULAR MINUTES OF DECEMBER 5, 2023

RECOMMENDATION:
Approve the Consent Agenda, including all prepared minutes

BACKGROUND SUMMARY:
During a routine departmental audit of minutes, City Clerk staff realized that the December 5th, 2023 Regular Meeting minutes were prepared, however, were not added to the consent agenda for approval at the January 2nd meeting. This addition to tonight's agenda corrects that situation and allows the minutes to be approved for the historical record.

STRATEGIC PLAN ALIGNMENT:
Engaged and Collaborative Governance

ALTERNATIVE OPTIONS CONSIDERED:
None

FISCAL IMPACT:
None

POTENTIAL ADVERSE IMPACTS:
None known

NEXT STEPS AND TIMELINE:
Approve and publish minutes from the 12/5/23 City Council regular meeting.
CALL TO ORDER AND ROLL CALL
Mayor Youssef called the meeting to order at 5:30 p.m. Present were Mayor Youssef, Mayor Pro Tem Buell and Councilors Yazzie, Woodruff, and Bosmans. Also present were José Madrigal, City Manager, Mark Morgan, City Attorney, Chief Bob Brammer, and City Clerk, Faye Harmer.

INTRODUCTION OF TRANSLATOR
Diego Pons and Sam Guzman of CLC translation provided translation in Spanish.

OPENING REMARKS BY MAYOR AND COUNCIL
Mayor Youssef invited Chief Brammer to speak regarding the recent police shooting in Cortez. The Durango Police Department has been assisting with the investigation and providing relief officers and officers to watch over the body until the funeral. Durango Police Department has also assisted with dispatch services. Durango Fire Department will also assist with fire services for Cortez.

CITY MANAGER UPDATES
2023 Strategic Plan Accomplishments Submitted by Devon Schmidt
Chief Financial Officer Devon Schmidt provided a slide presentation on the accomplishments by strategic goal plan items. She spoke on accomplishments in line with financial excellence and high performing government including the completion of the annual comprehensive financial report on time, and the investments made in buildings, including Durango fire protection district building swap for the civic center. She elaborated by including the housing opportunities to support multigenerational and mixed income members of the community within the affordable and economic opportunity goal. Under council goal enhanced livability and sense of place Chief Financial Officer Devon Schmidt noted the creation of the Open Space Ranger program to expand education and enforcement to broader reaches of the City. The Goal of effective infrastructure network included the implementation of the peak demand parking program, free parking pilot program, and DurangoGO! Also mentioned was the hiring of the community engagement coordinator and council restructuring of Boards and Commissions under the engaged and collaborative governance goal. The council’s diversity, equity, and inclusion accomplishments included translation services being implemented in the municipal court. Many more accomplishments were elaborated on and included in the presentation.

COMMITTEE, BOARD AND LIAISON REPORTS
Councilor Woodruff attended the Creative Economy Commission meeting and gave an update on the Common Threads art installation. Councilor Woodruff and Mayor Pro Tem Buell also met with the Secretary of State Jeanna Griswold, and Councilor Woodruff also attended the fire prevention meeting. Mayor Pro Tem Buell attended the Connect and Engage forum. Councilor Yazzie held office hours and met with the president of Fort Lewis college and had a discussion revolving around diversity between the college and the city. She also attended the Southern Ute going away ceremony. Mayor Youssef met with 9R and Fort Lewis college and heard about different programs they were offering at Pueblo Community college for Durango’s residents.

PUBLIC COMMENT ON AGENDA ITEMS ONLY
Rachel Brown, city resident and director of Visit Durango spoke regarding the year in review presentation that was sent out to Council. She also spoke in favor of the resolution to sign a 2024 contract with Visit Durango.

Blake Frederickson, city resident, spoke in opposition to the Community Development Commission, specifically the requirement for only two of the seven members being design professionals. He feels that a majority of the members should be professionals and said Mr. Shine’s comments offended him.
Emily Chastain, member of the Design Review board, spoke virtually and agreed with Mr. Frederickson.

CONSENT AGENDA
Approval of Meeting Minutes
Approval of Minutes City Council Regular Meeting November 21, 2023

Final Reading of Ordinances
Final Reading of Ordinance O-2023-0020 (the 2024 Annual Operating Appropriation Ordinance)

Final Reading of Ordinance O-2023-0021 (the 2024 Annual Capital Appropriation Ordinance)

Final Reading of Ordinance O-2023-0022 for Land Use and Development Code Text Amendments Regarding Commission Structure, Processes, and Accessory Dwelling Units- AEO & FE- Submitted by Community Development Department

Final Reading of Ordinance O-2023-0023 for Land Use and Development Code Text Amendments Regarding Fair Share Program- AEO and FE- Submitted by the Community Development Department

Approval of Other Administrative Items
A Resolution Approving the 2024 Pay and Classification Plans-FEHPG- Submitted by Bonnie Kling, Human Resources R-2023-0053

City Clerk Faye Harmer read the Consent Agenda.

Councilor Bosmans removed the two Consent Agenda Items for Final Reading of the Appropriation Ordinances.

Mayor Pro Tem Buell moved to approve the Consent Agenda except for Items 8.2.1 and 8.2.2 Councilor Woodruff seconded the motion. A roll call vote was taken, and the motion passed unanimously.

Passed: For 5; Against: 0; Abstain: 0; Absent: 0

Items Pulled from Consent Agenda
8.2.1 Final Reading of Ordinance O-2023-0020 (the 2024 Annual Operating Appropriation Ordinance) and 8.2.2 Final Reading of Ordinance O-2023-0021 (the 2024 Annual Capital Appropriation Ordinance) were removed from the consent agenda by Councilor Bosmans

Councilor Bosmans said as he commented at the last meeting, he would not support any of the items associated with these ordinances.

Mayor Youssef moved to approve the Consent Agenda 8.2.1 Final Reading of Ordinance O-2023-0020 (the 2024 Annual Operating Appropriation Ordinance). Mayor Pro Tem Buell seconded the motion. The motion passed with Councilor Bosmans voting in opposition.

Passed: For 4; Against: 1; Abstain: 0; Absent: 0

Mayor Youssef moved to approve the Consent Agenda 8.2.2 Final Reading of Ordinance O-2023-0021 (the 2024 Annual Capitol Appropriation Ordinance). Mayor Pro Tem Buell seconded the motion. The motion passed with Councilor Bosmans voting in opposition.

Passed: For 4; Against: 1; Abstain: 0; Absent: 0

Land Use and Development

The Public Hearing for 1943 West Second Avenue Minor Subdivision Preliminary Plan-AEO – Submitted by Community Development Department was withdrawn. This item will be rescheduled for an agenda in the future.

RESOLUTIONS - CONSIDERATION OF ADOPTION
A Resolution Authorizing an Applicant for the Borrowing of Funds by the Airport Enterprise Fund from the Colorado State Infrastructure Bank for Terminal Improvements at the Durango-La Plata County Airport – EIN- Submitted by Tony Vicari R-2023-0047

Tony Vicari, Aviation Director of the La Plata County airport, provided a presentation regarding the overall passenger traffic growth over the last two decades and the plans to add additional amenities to the facility. Mr. Vicari gave a short history of the project and the anticipated upcoming timelines with construction as well as anticipated financial mechanisms in relation to the borrowed funds and terms.

Vicari provided a list of what the project would deliver as well as additional space and significant renovations through the existing terminal. He elaborated on accommodating the growth, aging infrastructure, ADA compliance, and expanded accessibility. Mr. Vicari stated that no city or county funds are utilized for airport operations or capital projects. Overall Federal grant funding for the project is about sixty three percent of total costs with state grant funding at two to three percent with local funding just over thirty. Financing mechanisms were reviewed and approved by the Airport Advisory Commission as well as city and county elected officials. He asked for permission to complete the application, noting that the actual borrowing agreement would be brought back to council in the future. The application would be for a loan of $8 million over a ten-year term.

Councilor Woodruff made a motion to approve the resolution Authorizing an applicant for the Borrowing of Funds by the Airport Enterprise Fund from the Colorado State Infrastructure Bank for Terminal Improvements at the Durango-La Plata County Airport for this project. The motion was seconded by Mayor Pro Tem Buell.

Mayor Pro Tem Buell and Mayor Youssef thanked Mr. Vicari for all his work and commended him on his creativity within this financial strategy to acquire the necessary funds. Councilor Bosmans inquired about the yearly payments regarding the loan and commented on Mr. Vicari’s thoroughness.

The motion passed: 5 in favor; 0 opposed; Abstain 0; Absent 0

A Resolution Summarizing Expenditures and Revenues for Each Fund and Adopting an Operating Budget for The City Of Durango, Colorado, For The Calendar Year Beginning On The First Day Of January 2024 And Ending On The Last Day Of December 2024 Submitted by Devon Schmidt – FEHPG R-2023-0048

Chief Financial Officer Devon Schmidt provided a staff presentation on the Operating Budget for 2024. She noted that the total expenditure in the operating budget is $128,645,244 and this is what sets the annual appropriation.

Mayor Pro Tem Buell motioned to approve the resolution summarizing expenditures and revenues for each fund and adopting an operating budget for the city of Durango, Colorado, for the calendar year beginning on the first day of January 2024 and ending on the last day of December 2024. The motion was seconded by Councilor Woodruff. The motion passed with Councilor Bosmans voting in opposition.

Passed: For 4; Against: 1; Abstain: 0; Absent: 0

A Resolution Summarizing Expenditures and Revenues for Each Fund and Adopting a Capital Budget for The City Of Durango, Colorado, For The Calendar Year Beginning On The First Day Of January 2024 And Ending On The Last Day Of December 2024 Submitted by Devon Schmidt – FEHPG R-2023-0049

Chief Financial Officer Devon Schmidt provided a presentation on the Capitol Budget for 2024. She noted that the total expenditure for the appropriation and the capital budget is $101,417,445.

Mayor Pro Tem Buell motioned to approve the resolution summarizing expenditures and revenues for each fund and adopting a capital budget for the city of Durango, Colorado, for the calendar year beginning on the first day of January 2024 and ending on the last day of December 2024. The motion was seconded by Councilor Woodruff. The motion passed with Councilor Bosmans voting in opposition.

Passed: For 4; Against: 1; Abstain: 0; Absent: 0
A Resolution to Amend the 2023 Budget for the Purpose of Budget Adjustments to the 2023 Appropriations Submitted by Devon Schmidt- FHGP R-2023-0050

Chief Financial Officer Devon Schmidt provided a staff presentation incorporating unanticipated budget adjustments for the 2023 budget and outlining the requested changes. The changes included credit card fees, the Common Threads Project, and more.

Mayor Pro Tem Buell Motioned to approve the resolution to amend the 2023 Budget for the purpose of budget adjustments to the 2023 appropriations. The motion was seconded by Councilor Woodruff. A roll call vote was taken, and the motion passed unanimously.

The motion passed: 5 in favor; 0 opposed; Abstain 0; Absent 0

A Resolution Adopting the 2023 Multimodal Transportation Plan- submitted by Devin King- EIN R-2023 0051

Devin King, Multimodal Manager, provided a presentation noting a brief background of the plan, key elements as well as a timeline. He also included the 29 public meetings conducted during the process along with numerous other elements.

Mayor Pro Tem Buell Motioned to approve the resolution adopting the 2023 multimodal transportation plan. The motion was seconded by Councilor Woodruff.

Mayor Youssef thanked the staff for their extensive efforts of public of public outreach through the process.

The motion passed with Councilor Boschmans voting in opposition.

Passed: For 4; Against: 1; Abstain: 0; Absent: 0

A Resolution Authorizing the 2024 Contract with Visit Durango for Sustainable Marketing Efforts and Welcome Center Management submitted by Tom Sluis- FEHPG R-2023-0052

Tom Sluis, Public Information Officer, gave a presentation including the funds for the contract being available due to lodger’s tax that was approved by local voters in April of 2021. He also included that the contract is specifically listed to not exceed $2,180, 084. Mr. Sluis indicated that invoices may be adjusted quarterly depending on review of collection and variance. He also spoke on the key takeaway being the transparency and accountability through the new fee for services program.

Councilor Woodruff moved to approve the resolution authorizing the 2024 contract with Visit Durango for sustainable marketing efforts and welcome center management. Mayor Pro Tem Buell seconded the motion. A roll call vote was taken, and the motion passed unanimously.

The motion passed: 5 in favor; 0 opposed; Abstain 0; Absent 0

FIRST READING OF ORDINANCES - CONSIDERATION OF ADOPTION AND PUBLIC HEARING

A Public Hearing and First Reading of an Ordinance to Approve a License Agreement, including a Lease, Between Tesla, Inc. Regarding Electric Vehicle Superchargers at the Durango Transit Center-ESR Submitted by Marty Pool O-2023-0024

Sarah Hill, Transportation Director, standing in for Marty Pool, Sustainability Manager gave a presentation on the details of a license agreement, including a lease with Tesla, to install and operate electric vehicle superchargers in the Transit Center Parking lot. She elaborated on the grant awarded to our region and negotiation details.

Mayor Pro Tem Buell made a motion for a Public Hearing to approve a license agreement, including a lease, between Tesla, Inc. Regarding Electric Vehicle Superchargers at the Durango Transit Center. Councilor Woodruff seconded the motion. A roll call vote was taken, and the motion passed unanimously.

The motion passed: 5 in favor; 0 opposed; Abstain 0; Absent 0

Lauri Bryan, city resident, spoke in favor of the lease. She also thanked Tony Vicari and Bob Brammer for their service to the city. She also said more architects on the soon to be formed Community Development Commission is a good idea.
Steve Parker, city resident, spoke in favor of the lease.

No one commented virtually.

Mayor Pro Tem Buell made a motion to approve O-2023-0024 to approve a license agreement, including a lease, between Tesla, Inc. regarding electric vehicle superchargers at the Durango transit center. The motion was seconded by Councilor Woodruff.

Councilor Bosmans spoke in support of the electric charging stations, and asked if a grant was going to be written for $160,000 from sustainable marketing.

Ms. Hill responded, the money would not go to Tesla, that funding was separate, and Tesla is using their own money in the Nevi Award for this project. She clarified that the Lodger’s tax funding is for the charging infrastructure and the funding would be used to consolidate parking, sign installation, and to improve outside the project.

Mayor Youssef commented that this project is needed in the community and that it would help to put us on the map.

Councilor Woodruff asked if there was any ability for Tesla to share geographic data for the users.

Ian Snow with Tesla replied that Tesla has committed to providing some charging data along with the rest of the license agreement, but that it wouldn’t be geographic in terms of showing where everyone was coming from due to customer privacy protections.

Councilor Yazzie asked if the lines that were installed were able to provide 250 watts necessary to serve the plugs needed for the charging stations. She also inquired if there were adapters to enable use for different models of electric cars.

Ian Snow with Tesla replied yes that they had conducted feasibility studies with La Plata electric in conjunction with city staff and that there would be enough power to serve each plug. He also responded that as part of the state program that is required, the charging stations would be able to serve CCS cars as well and that between CCS and Tesla vehicles that most of the chargers are capable of fast charging.

Councilor Woodruff also asked if the city would have to provide insurance to offset anything or if there would be any liability that the city would incur.

Mr. Snow replied he wasn’t an expert, but he didn’t believe so.

Ms. Hill offered some clarity on a grant that was requested but not awarded for charging infrastructure.

Councilor Woodruff thanked Tesla for coming in and providing an infrastructure that wasn’t present previously.

Councilor Yazzie asked if the superchargers cost more per charge than regular chargers.

Mr. Snow commented he wasn’t sure but that generally Tesla tries to keep rates below the industry average.

Bryce Fletcher, the Tesla design manager in the Southwest, replied they are more expensive than charging at home but that it was to offset the cost of the company paying rent, maintaining, and upgrade costs, along with charging so much faster that what is available when charging at home.

A roll call vote was taken, and the motion passed unanimously.

The motion passed: 5 in favor; 0 opposed; Abstain 0; Absent 0

PUBLIC COMMENT ON NON-AGENDA ITEMS

Laurie Bryan, city resident, spoke about less Lodger’s tax being put towards tourism and that 30 percent should go to affordable housing.

INTRODUCTION OF ORDINANCES AND REQUEST FOR PUBLIC HEARING

A Request for a Public Hearing for the Road Naming of City Right of Way Dedicated as Part of the Downtown Fire Station- Powerhouse Subdivision (January 2, 2024) - ELSP – Submitted by Community Development Department

Mayor Pro Tem Buell made a motion to approve the request for the public hearing. The motion was seconded by Councilor Woodruff.

A roll call vote was taken, and the motion passed unanimously.

The motion passed: 5 in favor; 0 opposed; Abstain 0; Absent 0
OTHER NEW BUSINESS

Approval of 2024 City Council and Study Session Meeting Dates

The City Manager, José Madrigal spoke about the review and adjustment of the meeting calendar for 2024 with the help of the City Attorney, Mark Morgan. Mr. Madrigal indicated moving the September 3rd council meeting to the 4th of September (Wednesday) to accommodate vacations and preparation time following the Labor Day holiday.

He also spoke on moving the meeting in June from the 18th to the 17th (Monday) to accommodate the councilors and staff that would like to attend the Colorado Municipal League Conference that begins on the 18th.

Mr. Madrigal also noted that the December 17th meeting would not be a Regular Council meeting, but that it was on the calendar as a placeholder for annual evaluations for appointees.

Mayor Pro Tem Buell made a motion to approve the 2024 City Council Calendar. The motion was seconded by Councilor Woodruff. A roll call vote was taken, and the motion passed unanimously.

The motion passed: 5 in favor; 0 opposed; Abstain 0; Absent 0

An Update on the Resolution Levying General Property Taxes to Help Defray The Costs of Government For the City of Durango, Colorado for the 2024 Budget Year – FEHPG - Submitted by Devon Schmidt

Chief Financial Officer Devon Schimdt provided an update on the mill levy certification process. Ms. Schmidt spoke on the passage of Senate Bill 23 B-001 that affected the 2023 assessment calendar. Normally, the City would have until December 15th to approve the mill levy certification, but it has been moved to January 10th for 2023. Governor Polis has allowed additional time for the county. The city should receive the mill levy certifications on January 3rd and the council will have until January 10th to approve them. She indicated that a special meeting may be needed in January to approve the resolution which certifies mill levy for the city.

Councillor Yazzie asked where they’re at on the mill levies with the state.

CFO Devon Schmidt responded that she wasn’t sure where the state was at but that the City of Durango doesn’t have the mill levy certification, but that the changes that they made in accordance with the state special meeting that the process was delayed for the counties, municipalities, fire districts, and school districts. She said she would be happy to forward any additional information she receives to council.

A Resolution Reprimanding and Reproaching Councilor Olivier Bosmans for Acting in a Manner of Unbecoming of a Councilor, Bringing Disrepute to The Durango City Council and Issuing a Letter of Apology to the City Manager and His Staff- Submitted by Councillor Yazzie

Councilor Yazzie made a motion for a discussion on a future agenda regarding a Resolution Reprimanding and Reproaching Councilor Olivier Bosmans for Acting in a Manner of Unbecoming a Councilor, Bringing Disrepute to The Durango City Council and Issuing a Letter of Apology to the City Manager and His Staff. The motion was seconded by Mayor Pro Tem Buell.

Councilor Bosmans stated that he believed it would be appropriate for the city council as a body to issue an apology to the community for the lack of transparency and financial oversight. The motion passed with Councilor Bosmans voting in opposition.

The motion passed: 4 in favor; 1 opposed; Abstain 0; Absent 0

ADJOURNMENT

Mayor Youssef adjourned the meeting at 7:32 p.m.

APPROVED: ATTESTED:

___________________ ____________________________
Melissa Youssef, Mayor Faye Harmer, City Clerk

Page 6 of 4 ~ City Council Regular Meeting Minutes ~ December 5, 2023
AGENDA DOCUMENTATION

Item 8.4.1
Meeting Date: April 2, 2024

TO:  DURANGO CITY COUNCIL
FROM:  MARK MORGAN
CITY ATTORNEY

SUBJECT:  A MOTION TO CONVENE AS THE DURANGO LIQUOR LICENSING AUTHORITY TO CONDUCT A HEARING TO CONSIDER THE REVOCATION OF 8TH AVENUE TAVERN’S LIQUOR LICENSE - HPG

RECOMMENDATION:

It is recommended that the City Council, by motion,

Convene as the City of Durango Liquor Licensing Authority and conduct a hearing to consider the revocation of 8th Avenue Tavern’s liquor license.

BACKGROUND SUMMARY:

There is a need for the City Council to meet as City of Durango Liquor Licensing Authority and conduct a hearing to consider the revocation of 8th Avenue Tavern’s liquor license based on a report that was provided to the City Clerk’s Office and the City Attorney’s Office by the Durango Police Department of violations that have occurred associated with the aforementioned liquor license.

STRATEGIC PLAN ALIGNMENT:

High Performing Government

ALTERNATIVE OPTIONS CONSIDERED:

None

FISCAL IMPACT:

Unknown at this time

POTENTIAL ADVERSE IMPACTS:

Unknown at this time

NEXT STEPS AND TIMELINE:

Not Applicable
Recommendation of Revocation of 8th Avenue Tavern’s Liquor License

THIS MATTER comes for hearing before the City Council of the City of Durango, Colorado, sitting as the Local Liquor Licensing Authority (“Authority”).

The Administration having considered the matter, found probable cause to believe that the Licensee violated the terms, conditions, or provisions of the license, sufficient for revocation. See attached Exhibit 1.

Pursuant to C.R.S § 12-47-601, the Administration recommends that the Authority, after a hearing considering all of the evidence, revoke the license issued to 8th Avenue Tavern License #201402786.

By: /s/Mark Morgan
City Attorney
Upon submission for renewal of a liquor license, the Local Licensing Authority was notified by the Durango Police Department on March 11, 2024, that the liquor license associated with 8th Avenue Tavern received the following violations during 2022-2023:

- **P22-37612 Liquor Violation (sell to minor) on 10/27/2022.**
  - A patron of 8th Avenue Tavern was allowed to go behind the bar and serve a woman who was underage.
  - When approached by the police officers investigating this violation, Mr. Baehr, the owner, and manager of 8th Avenue Tavern, refused to identify himself and was notably intoxicated.

- **P23-16410 DUI on 5/14/2023**
  - Mr. Baehr’s neighbor called in to report that Mr. Baehr had passed out in his vehicle in his driveway after returning home.
  - Officers responded to the call and observed Mr. Baehr passed out in the driver’s seat of his vehicle with the keys in the ignition.
  - Officers further observed two empty open bottles of “99 Bananas” Shooters in Mr. Baehr’s vehicle and noticed a strong odor of an unidentified alcoholic beverage emanating from Mr. Baehr’s breath.
  - Officers were unable to wake Mr. Baehr from his sleep and called Emergency Medical Services (EMS) to assist.
  - Upon arrival, the EMS staff performed a sternum rub on Mr. Baehr, who then became alert and agitated.
  - Mr. Baehr refused further medical treatment but did admit to EMS staff that he had been drinking.
  - In addition to the scent of the alcoholic beverage on Mr. Baehr’s breath, the Officers observed Mr. Baehr’s slurred speech, inability to maintain a steadiness while standing or walking, watery and bloodshot eyes. This led them to arrest Mr. Baehr for Driving Under the Influence.

- **P23-30121 Warrant on 8/31/23**
  - Officers were dispatched to an altercation at 8th Avenue Tavern, where Mr. Baehr was questioned as a witness to the altercation.
  - Officers were informed that Mr. Baehr had a warrant out of La Plata County for Failure to Appear on August 16, 2023, in relation to his Driving Under the Influence arrest made on May 14, 2023.
  - Officers informed Mr. Baehr that he had a warrant and took him into custody.
LOCAL LICENSING AUTHORITY
NOTICE FOR APPEARANCE TO SHOW CAUSE BEFORE THE DURANGO CITY COUNCIL

To: Brian and Jessie Baehr
Baehr LTD
d/b/a 8th Ave Tavern
509 8th Avenue #8
1 East 6th Avenue #58
Durango, Colorado 81301

THIS MATTER comes on for hearing by the City Council of the City of Durango, Colorado, sitting as the Local Liquor Licensing Authority (“Authority”).

The Authority having considered such evidence as it deems appropriate,

FINDS there is probable cause to believe that the Licensee violated the terms, conditions, or provisions of the license, sufficient to issue and cause to be served a notice of show cause hearing why the license should not be suspended or revoked, on the grounds described in the attached Exhibit 1.

Pursuant to C.R.S § 12-47-601, the Authority ORDERS that a notice of hearing shall be issued to the Licensee to appear and show cause why the license should not be revoked. Said hearing shall take place at the following time, date, and place:

Tuesday, April 2, 2024, at 6:00 PM
Smith Chambers, Durango City Hall
949 E 2nd Avenue, Durango, CO 81301

Dated this 21st day of March 2024
LOCAL LIQUOR LICENSING AUTHORITY

By: /s/Mark Morgan
City Attorney
CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing Notice for Appearance Before the Durango City Council was placed in the United States Mail, postage prepaid, this 21st day of March 2024, addressed as follows:

Brian & Jessie Baehr
Baehr LTD
d/b/a 8th Ave Tavern
509 8th Avenue #8
1 East 6th Avenue #58
Durango, Colorado 81301

Mark Morgan
City of Durango Attorney
949 East 2nd Avenue
Durango, Colorado 81301

cc: City Clerk
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- **P22-37612 Liquor Violation (sell to minor) on 10/27/2022.**
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  - When approached by the police officers investigating this violation, Mr. Baehr, the owner, and manager of 8th Avenue Tavern, refused to identify himself and was notably intoxicated.

- **P23-16410 DUI on 5/14/2023**
  - Mr. Baehr’s neighbor called in to report that Mr. Baehr had passed out in his vehicle in his driveway after returning home.
  - Officers responded to the call and observed Mr. Baehr passed out in the driver’s seat of his vehicle with the keys in the ignition.
  - Officers further observed two empty open bottles of “99 Bananas” Shooters in Mr. Baehr’s vehicle and noticed a strong odor of an unidentified alcoholic beverage emanating from Mr. Baehr’s breath.
  - Officers were unable to wake Mr. Baehr from his sleep and called Emergency Medical Services (EMS) to assist.
  - Upon arrival, the EMS staff performed a sternum rub on Mr. Baehr, who then became alert and agitated.
  - Mr. Baehr refused further medical treatment but did admit to EMS staff that he had been drinking.
  - In addition to the scent of the alcoholic beverage on Mr. Baehr’s breath, the Officers observed Mr. Baehr’s slurred speech, inability to maintain a steadiness while standing or walking, watery and bloodshot eyes. This led them to arrest Mr. Baehr for Driving Under the Influence.

- **P23-30121 Warrant on 8/31/23**
  - Officers were dispatched to an altercation at 8th Avenue Tavern, where Mr. Baehr was questioned as a witness to the altercation.
  - Officers were informed that Mr. Baehr had a warrant out of La Plata County for Failure to Appear on August 16, 2023, in relation to his Driving Under the Influence arrest made on May 14, 2023.
  - Officers informed Mr. Baehr that he had a warrant and took him into custody.
Offense Codes: 4108

Nature: LIQUOR VIOL

Received By: GULICK A M

Address: 509 E 8TH AV; 8TH AVENUE TAVERN

How Received: O

Durango CO

Agency: DPD

Responding Officers: INGLE P, BALL D

Assigned To:

Disposition: INF 10/30/22

Status:

Occurred Between: 18:02:25 10/27/22 and 18:02:25 10/27/22

Detail: **/**/**

Date Assigned: **/**/**

Due Date: **/**/**

Complainant:

Last: 

DOB: **/**/**

Race: Race:

Sex: Sex:

First: First:

Dr Lic:

Address: Address:

City: City:

Offense Codes

Reported: 4102 LIQUOR VIOLATION

Observed: 4108 LIQUOR MISREPRESENT AGE/MINOR

Additional Offense: 4108 LIQUOR MISREPRESENT AGE/MINOR

Circumstances

BM88 No Bias

WNONE No Weapon Used

NIGHT Night (6 p.m. – 6 a.m.)

SUA Suspected, Alcohol Use

LT03 Bar or Nightclub

Responding Officers:

INGLE P

Unit: 124

BALL D

151

Responding Officer: INGLE P

Received By: GULICK A M

How Received: O Officer Report

Agency: DPD

Last Radio Log: 18:26:31 10/27/22 C

Clearance: 5 Inactive
<table>
<thead>
<tr>
<th>Date</th>
<th>Type</th>
<th>Description</th>
<th>Relationship</th>
</tr>
</thead>
<tbody>
<tr>
<td>10/30/22</td>
<td>Name</td>
<td>BAEHR, BRIAN RANDALL</td>
<td>Involved</td>
</tr>
<tr>
<td>10/30/22</td>
<td>Name</td>
<td>8TH AVENUE TAVERN,</td>
<td>Involved</td>
</tr>
<tr>
<td>10/27/22</td>
<td>Cad Call</td>
<td>18:02:25 10/27/22 LIQUOR VIOL</td>
<td>Initiating Call</td>
</tr>
</tbody>
</table>
On 10/27/2022 at approximately 1800 hours I was working a special assignment conducting a liquor enforcement operation in the City of Durango, County of La Plata, State of Colorado. I was wearing plain clothes, with my Durango Police Sergeant badge on my right hip next to my duty firearm and my Axon Body camera on my left hip. I had in hand my department issued radio.

The liquor enforcement operation consisted of sending a volunteer juvenile female, Anna Newman (DOB 04/25/2004, 18 years of age) into and establishment that sold alcoholic beverages, and check and see if they were checking identification prior to purchase of alcohol. These are called "compliance checks" they are used to ensure that local establishments are not selling alcohol to minors.

This Compliance Check was lead by Department of Revenue Liquor and Tobacco Investigator Noah Herrmann.

Anna went into 509 E. 8th Ave., 8th Avenue Tavern. According to Anna, who was recording the audio on her cellphone, she sat at the bar and a patron sitting next to her offered to make Anna a drink. The patron then went behind the bar made a drink and gave it to Anna. No transaction was made, no money exchanged hands. Anna informed us, via text, that this occurred and described the patron as a female wearing a black beanie.

Investigator Herrmann and I entered the bar. There was a white female wearing a black beanie standing behind the bar in front of Anna. There were also two females in front of the bar, both wearing black beansies.

Investigator Herrmann and I introduced ourselves to the female behind the bar and explained who we were and what we were doing. While doing this, the other patrons overheard our conversation and left the scene. It should also be noted that Anna was informed that when she saw us enter the establishment, this would be the queue for her to exit and head to the vehicle.

It was determined that the female we spoke to was not the one who served Anna the alcohol.

We began to speak to the bartender. The bartender, later identified by his Colorado identification card as Brian Baehr, refused to give us any information.
Baehr was swaying side to side, his eyelids were half open, his speech was slow, and I could smell an odor of an unknown alcoholic beverage emitting from his breath. Baehr told us that the video cameras in the establishment did not work. Baehr also refused to identify himself. These actions are not only a violation of Colorado Revised Statutes liquor code, failure to identify oneself to a law enforcement officer investigating a possible crime is in violation of Colorado Revised Statute 16-3-103.

I requested that a uniformed police officer come to my location in order to identify Baehr. Baehr later complied with my request for identification and provided me with his Colorado ID card. Prior to this Baehr attempted to give me a credit card, a debit card, and a business card to Alpine Bank.

It was determined that an employee did not provide alcohol to Anna, however, there is an issue with a patron who is allowed to go behind the bar and serve a minor an alcoholic beverage.

No citation was given to Baehr or any other individual. Further investigation will ensue.

Nothing further at this point

-------------------------------------------------

Responsible LEO:

-------------------------------------------------

Approved by:

-------------------------------------------------

Date

03/12/24
Name Involvements:

<table>
<thead>
<tr>
<th>Involved:</th>
<th>59421</th>
<th>Last: 8TH AVENUE TAVERN</th>
<th>First:</th>
<th>Mid:</th>
</tr>
</thead>
<tbody>
<tr>
<td>DOB: <strong>/</strong>/**</td>
<td>Dr Lic:</td>
<td>Address: 509 E 8TH AV; 8TH AVENUE TAVERN</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Race:</td>
<td>Sex:</td>
<td>Phone: ( ) -</td>
<td>City: DURANGO, CO 81301</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Involved:</th>
<th>7542</th>
<th>Last: BAEHR</th>
<th>First: BRIAN</th>
<th>Mid: RANDALL</th>
</tr>
</thead>
<tbody>
<tr>
<td>DOB: 01/09/82</td>
<td>Dr Lic: 033490300</td>
<td>Address: 1144 E 5TH AVE</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Race: W</td>
<td>Sex: M</td>
<td>Phone: (970)903-7810</td>
<td>City: DURANGO, CO 81301</td>
<td></td>
</tr>
</tbody>
</table>
I, Alex Robinson, a peace officer with the Durango Police Department, by signing my name below, before the notary public named below, solemnly, sincerely and truly declare and affirm that for the following facts and information establishing probable cause for the warrantless arrest of: Brian Randall Baehr; Date of Birth: 01/09/1982 on 5/14/2023 at 1454 hours, in case number: P23-16410 for the crimes(s) or offense(s) of:

Driving Under the Influence: C.R.S.: §42-4-1301(1)(a): a misdemeanor

Against victim: N/A, DOB: N/A, Race: N/A

are true and correct to the best of my knowledge, information and belief.

On 05/14/2023, at approximately 1434 hours, I responded to a call of a man down in front of 419 E 12th St in the City of Durango, County of La Plata, and State of Colorado. I was informed by Durango Dispatch that a male, later identified as Brian Baehr (DOB:01/09/1989 Race: Caucasian), was passed out in his vehicle unresponsive, but breathing.

I arrived on scene to find Brian Baehr in the driver’s seat of a silver Chevy Tahoe bearing CO/8AV ETA with the keys in the ignition. The brake lights on the vehicle were also illuminated indicating that Brian Baehr’s foot was on the brake pedal. I was flagged down by a neighbor who informed me that they had just returned home and noticed Brian Baehr passed out in the front seat of the vehicle. The neighbor informed me that she had been the reporting party for the call and returned inside. I attempted to contact the neighbor by phone later and learned that her name was Deb Rogers from her voicemail recording.

I then contacted Brian Baehr and shouted into the open window of the vehicle. The driver’s side window on Brian Baehr’s vehicle was all the way down, Brian Baehr did not wake up or move. I noticed that Brian Baehr was snoring and detected a strong odor of an unknown alcoholic beverage emanating from Brian Baehr’s breath. EMS personnel later arrived and performed a sternum rub on Brian Baehr through the open window. Brian Baehr took approximately twenty
seconds to wake up after receiving the sternum rub. I was able to overhear Brian Baehr’s conversation with EMS staff. Brian informed EMS staff of the following:

Brian Baehr was able to tell EMS staff that he was in the City of Durango but unable to inform them what day of the week it was. Brian Baehr also informed EMS staff that he had been drinking that day and stated that he did not have any other medical conditions. I heard Brian Baehr slurring his words heavily and saw that he had bloodshot, watery eyes while speaking with EMS staff. Brian Baehr refused any medical treatment and attempted to walk away from EMS staff. EMS staff then informed Brian Baehr that Officer Karr and I would like to speak with him.

Brian Baehr stated that he was just going home and continued to walk in the opposite direction of his home address of 1 E 6th Ave. I told Brian Baehr to stop walking and he continued. Brian Baehr was very unstable while walking and standing. I then grabbed Brian Baehr by the left arm and instructed him to stop. Brian Baehr then pulled his right hand back, balled his fist and pretended to punch at me. Ofc. Karr and I then placed Brian Baehr into handcuffs and sat him on the ground. Due to Brian Baehr’s aggressive actions, I did not ask him to perform voluntary roadside maneuvers. Brian Baehr stated that he did not understand his rights after I had read him his Miranda warning. Brian Baehr was then placed into the back seat of my patrol car. I then read Brian Baehr the Colorado Expressed Consent Law and he refused to provide a chemical sample of any kind. I then transported Brian Baehr to the La Plata County Jail where he was remanded into the custody of the staff therein. Ofc. Karr searched Brian Baehr’s vehicle incident to arrest and located two open shooter bottles of 99 Bananas liqueur on the passenger side floor.

Brian Baehr was in physical control of his vehicle with the keys in the ignition. Brian Baehr passed out and unconscious in the driver’s seat of the vehicle. I detected a strong odor of an unknown alcoholic beverage emanating from Brian Baehr’s breath and saw that he had bloodshot, watery eyes. Brian Baehr was swaying heavily while standing and very unsteady on his feet while walking. Brian Baehr also admitted to drinking to EMS staff and was unable to say what day it was. Brian was also slurring his words heavily. Ofc. Karr also opened containers of 99 Bananas Liqueur on the floor on the passenger side of Brian Baehr’s vehicle. Therefore, probable cause exists to charge Brian Baehr with Driving Under the Influence C.R.S. 42-4-1301(1)(a).

Your affiant states that the crime(s) of Driving Under the Influence C.R.S. 42-4-1301(1)(a) occurred in the City of Durango, County of La Plata, and State of Colorado.

Affiant's Signature

The foregoing affidavit was subscribed and sworn to before me this 14th of May, 2023 in the County of La Plata, State of Colorado.

Witness my hand and official seal.

Notary Public

Expiration Date of Commission

Reviewed by supervisor:
## INCIDENT
P23-16410

<table>
<thead>
<tr>
<th>DATE</th>
<th>OFFICER: Robinson</th>
<th>TIME OF STOP:</th>
<th>TIME OF ARREST:</th>
</tr>
</thead>
<tbody>
<tr>
<td>05/14/23</td>
<td>1434</td>
<td>1454</td>
<td></td>
</tr>
</tbody>
</table>

### SUSPECT NAME:
Brian Randall Baehr
DOB: 01/09/1982

### VEHICLE #
- **AXON BODY CAM**: YES ☒
- **AXON FLEET (FRONT)**: YES ☐
- **AXON FLEET (REAR)**: YES ☒
- **AXON CAPTURE PHOTOS**: YES ☐
- **AXON CAPTURE VIDEOS**: YES ☐

### QUANTITY:
- ☑ 1
- ☐
- ☐
- ☐
- ☐

### ENVIRONMENT CONDITIONS:

#### Road Conditions:
- ☒ Dry
- ☐ Wet
- ☐ Muddy
- ☐ Snowy
- ☐ Icy
- ☐ Slushy
- ☐ Foreign Material
- ☐ Dry w/visible icy road treatment
- ☐ Slushy w/visible icy road treatment
- ☐ Other

Comment:

#### Light Conditions:
- ☒ Daylight
- ☐ Dawn
- ☐ Dusk
- ☐ Dark-lighted
- ☐ Dark-Unlighted
- ☐ Other

Comment:

#### Weather Conditions:
- ☒ None
- ☐ Rain
- ☐ Snow
- ☐ Hail
- ☐ Fog
- ☐ Dust
- ☐ Wind
- ☐ Other

Comment:

### PHYSICAL ACTIONS/CONDITIONS/OBSERVATIONS OF DRIVER:

#### Exiting Vehicle:
- ☐ Normal
- ☒ Unsteady
- ☐ Staggers
- ☒ Needs Help
- ☐ Fell

Comment:
Brian needed assistance from EMS staff to exit his vehicle.

#### Walk to Roadsides:
- ☐ Normal
- ☒ Unsteady
- ☒ Staggers
- ☐ Needs Help
- ☐ Fell

Comment: Brian did not perform roadsides. However, he attempted to walk away from officers and was staggering and unsteady on his feet.

#### Standing:
- ☐ Normal
- ☒ Unsteady
- ☐ Staggers
- ☐ Needs Help
- ☐ Fell

Comment:
<table>
<thead>
<tr>
<th>Breath / Odor of alcoholic beverage:</th>
<th>None ☐</th>
<th>Slight ☐</th>
<th>Moderate ☐</th>
<th>Strong ☒</th>
<th>Other ☐</th>
</tr>
</thead>
<tbody>
<tr>
<td>Comment: Brian smelled very strongly of alcohol.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Face:</th>
<th>Apparently Normal ☒</th>
<th>Flushed ☐</th>
<th>Pale ☐</th>
<th>Other ☐</th>
</tr>
</thead>
<tbody>
<tr>
<td>Comment:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Eyes:</th>
<th>Apparently Normal ☐</th>
<th>Watery ☒</th>
<th>Glassy ☐</th>
<th>Bloodshot ☒</th>
<th>Other ☐</th>
</tr>
</thead>
<tbody>
<tr>
<td>Comment:</td>
<td></td>
<td></td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Clothing:</th>
<th>Orderly ☒</th>
<th>Soiled ☐</th>
<th>Disorderly ☐</th>
<th>Other ☐</th>
</tr>
</thead>
<tbody>
<tr>
<td>Comment:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Unusual Actions:</th>
<th>Hiccupping ☐</th>
<th>Belching ☐</th>
<th>Vomiting ☐</th>
<th>Fighting ☐</th>
<th>Crying ☐</th>
<th>Laughing ☐</th>
<th>Other ☐</th>
</tr>
</thead>
<tbody>
<tr>
<td>Comment: None</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Speech:</th>
<th>Apparently Normal ☐</th>
<th>Slurred ☒</th>
<th>Stuttering ☐</th>
<th>Confused ☐</th>
<th>Incoherent ☐</th>
<th>Mumbling ☐</th>
<th>Thick Tongued ☐</th>
<th>Other ☐</th>
</tr>
</thead>
<tbody>
<tr>
<td>Comment:</td>
<td></td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

| Attitude: | Polite ☐ | Excited ☐ | Hilarious ☐ | Talkative ☐ | Cocky ☐ | Cooperative ☐ | Indifferent ☐ | Antagonistic ☐ | Silent ☐ | Combative ☒ | Insulting ☐ | Reserved ☐ | Sarcastic ☐ | Profane ☐ | Carefree ☐ | Sleepy ☒ | Other ☐ |
|----------|--------|-------|-------------|-----------|--------|--------------|--------------|-------------|--------|------------|-----------|------------|---------|---------|-----------|------|-----|-------|
| Comment: Brian was passed out in the driver’s seat of his vehicle. Brian did not wake up after I shouted into his open window and squeezed his arm. EMS applied a sternum rub to Brian and he eventually woke up. Brian was able to say what town he was in but did not know what day of the week it was. Brian also attempted to walk away from me after I instructed him to stop. I grabbed Brian’s left arm, and he balled his fist and pretended to try to punch me while grunting. Brian was immediately placed into custody. |

<table>
<thead>
<tr>
<th>Did Officer visibly witness subject driving a vehicle?</th>
<th>Yes ☐</th>
<th>No ☒</th>
</tr>
</thead>
<tbody>
<tr>
<td>If ‘No’, describe:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Was subject asked if they were driving a vehicle?</th>
<th>Yes ☐</th>
<th>No ☒</th>
</tr>
</thead>
<tbody>
<tr>
<td>Was subject seen driving a vehicle by an independent witness?</td>
<td>Yes ☐</td>
<td>No ☒</td>
</tr>
<tr>
<td>If ‘Yes’, describe:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
**STANDARDIZED FIELD SOBRIETY MANEUVERS:**

<table>
<thead>
<tr>
<th>Maneuvers were performed voluntarily:</th>
<th>Were maneuvers completed satisfactorily:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes ☐ No ☒</td>
<td>Yes ☐ No ☒</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Did subject complete maneuvers?</th>
<th>Surface condition of maneuvers:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes ☐ No ☒</td>
<td></td>
</tr>
</tbody>
</table>

If ‘Yes’, describe: I did not offer Brian the opportunity to perform voluntary roadside maneuvers due to his uncompliant behavior.

**Horizontal Gaze Nystagmus:** ☒ Not Performed

- Declined

<table>
<thead>
<tr>
<th>Wearing Glasses?</th>
<th>Yes ☐ No ☐</th>
<th>Wearing Contacts?</th>
<th>Yes ☐ No ☐</th>
<th>Eye Problems?</th>
<th>Yes ☐ No ☐</th>
</tr>
</thead>
</table>

- Left eye:
  - Lack of smooth pursuit
  - Distinct and sustained nystagmus at maximum deviation
  - Nystagmus onset prior to 45 degrees

- Right eye:
  - Lack of smooth pursuit
  - Distinct and sustained nystagmus at maximum deviation
  - Nystagmus onset prior to 45 degrees

- Vertical Nystagmus

**Total Indicators:** 5

**Comment:**

**Walk and Turn:** ☒ Not Performed

- Declined

<table>
<thead>
<tr>
<th>Instruction Stage</th>
<th>Cannot keep balance</th>
<th>Starts too soon</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Walking Stage</th>
<th>Stops while walking</th>
<th>Does not touch heel to toe</th>
<th>Steps offline</th>
<th>Raises arms</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- Incorrect number of steps (# of steps taken 1st nine: ___) (# of steps taken 2nd nine: ___)
- Loses balance while turning/improper turn

**Total Indicators:**

**Comment:**

**One Leg Stand:** ☒ Not Performed

- Declined

<table>
<thead>
<tr>
<th>Sways while balancing</th>
<th>Raises arms</th>
<th>Hopping</th>
<th>Puts foot down</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Balance</th>
<th>Right foot</th>
<th>Left foot</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Type of shoes:</th>
</tr>
</thead>
</table>

**Total Indicators:**

**Comment:**
Rhomberg: ☐ Declined ☒ Not Performed
SWAY - Front to back: ☐ None ☐ Slight ☐ Moderate ☐ Heavy
SWAY – Side to side: ☐ None ☐ Slight ☐ Moderate ☐ Heavy
Internal clock: Estimated as 30 seconds
Other observations: ☐ Opened eyes during maneuver ☐ Failed to keep feet together during maneuver ☐ Failed to keep head back during maneuver
Comment:

Alphabet:
☐ Declined ☒ Not Performed

Counting: ☐ Declined ☒ Not Performed

CHEMICAL TESTING:

<table>
<thead>
<tr>
<th>BLOOD ☐</th>
<th>BREATH ☐</th>
</tr>
</thead>
<tbody>
<tr>
<td>Test location:</td>
<td>Test location: La Plata County Detention Center</td>
</tr>
<tr>
<td>Name of person drawing blood:</td>
<td>Instrument serial number: 90-000249</td>
</tr>
<tr>
<td>Qualifications: Doctor ☐ Nurse ☐ Paramedic ☐ EMT ☐ MTASCP ☐ Other:</td>
<td>Operator certification date:</td>
</tr>
<tr>
<td>Time of blood draw:</td>
<td>20 min observation: from to</td>
</tr>
</tbody>
</table>

Comment:

Was subject advised of Colorado Express Consent Law? Yes ☒ No ☐
Did subject refuse to offer chemical sample? Yes ☐ No ☒
Comment: Brian refused to provide any sort of chemical sample.
Was subject asked whether they consumed alcohol after last time of driving? Yes ☐ No ☒
Is there any evidence showing alcohol consumption after last time of driving? Yes ☒ No ☐
If ‘Yes’, describe: Ofc. Karr located two empty shooters of 99 Bananas liqueur on the passenger side floor of Brian’s vehicle.
On 05/14/2023, at approximately 1434 hours, I responded to a call of a man down in front of 419 E 12th St in the City of Durango, County of La Plata, and State of Colorado. I was informed by Durango Dispatch that a male, later identified as Brian Baehr (DOB:01/09/1989 Race: Caucasian), was passed out in his vehicle unresponsive, but breathing. I arrived on scene to find Brian Baehr in the driver’s seat of a silver Chevy Tahoe bearing CO/8AVETAVE with the keys in the ignition. The brake lights on the vehicle were also illuminated indicating that Brian Baehr’s foot was on the brake pedal. I was flagged down by a neighbor who informed me that they had just returned home and noticed Brian Baehr passed out in the front seat of the vehicle. The neighbor informed me that she had been the reporting party for the call and returned inside. I attempted to contact the neighbor by phone later and learned that her name was Deb Rogers from her voicemail recording. I then contacted Brian Baehr and shouted into the open window of the vehicle. The driver’s side window on Brian Baehr’s vehicle was all the way down. Brian Baehr did not wake up or move. I noticed that Brian Baehr was snoring and detected a strong odor of an unknown alcoholic beverage emanating from Brian Baehr’s breath. EMS personnel later arrived and performed a sternum rub on Brian Baehr through the open window. Brian Baehr took approximately twenty seconds to wake up after receiving the sternum rub. I was able to overhear Brian Baehr’s conversation with EMS staff. Brian informed EMS staff of the following: Brian Baehr was able to tell EMS staff that he was in the City of Durango but unable to inform them what day of the week it was. Brian Baehr also informed EMS staff that he had been drinking that day and stated that he did not have any other medical conditions. I heard Brian Baehr slurring his words heavily and saw that he had bloodshot, watery eyes while speaking with EMS staff. Brian Baehr refused any medical treatment and attempted to walk away from EMS staff. EMS staff then informed Brian Baehr that Officer Karr and I would like to speak with him. Brian Baehr stated that he was just going home and continued to walk in the opposite direction of his home address of 1 E 6th Ave. I told Brian Baehr to stop walking and he continued. Brian Baehr was very unstable while walking and standing. I then grabbed Brian Baehr by the left arm and instructed him to stop. Brian Baehr then pulled his right hand back, balled his fist and pretended to punch at me. Ofc. Karr and I then placed Brian Baehr into handcuffs and sat him on the ground. Due to Brian Baehr’s aggressive actions, I did not ask him to perform voluntary roadside maneuvers. Brian
Baehr stated that he did not understand his rights after I had read him his Miranda warning. Brian Baehr was then placed into the back seat of my patrol car. I then read Brian Baehr the Colorado Expressed Consent Law and he refused to provide a chemical sample of any kind. I then transported Brian Baehr to the La Plata County Jail where he was remanded into the custody of the staff therein. Ofc. Karr searched Brian Baehr’s vehicle incident to arrest and located two open shooter bottles of 99 Bananas liqueur on the passenger side floor. Brian Baehr was in physical control of his vehicle with the keys in the ignition. Brian Baehr passed out and unconscious in the driver’s seat of the vehicle. I detected a strong odor of an unknown alcoholic beverage emanating from Brian Baehr’s breath and saw that he had bloodshot, watery eyes. Brian Baehr was swaying heavily while standing and very unsteady on his feet while walking. Brian Baehr also admitted to drinking to EMS staff and was unable to say what day it was. Brian was also slurring his words heavily. Ofc. Karr also opened containers of 99 Bananas Liqueur on the floor on the passenger side of Brian Baehr’s vehicle. Therefore, probable cause exists to charge Brian Baehr with Driving Under the Influence C.R.S. 42-4-1301(1)(a).

Disposition of Offender:  ☒ Jail  ☐ Detox  ☐ Released to sober person
Durango Police Department
Officer Report for Incident P23-30121

Nature: Warrant
Address: 509 E 8TH AV; 8TH AVENUE
TAVERN
Durango CO 81301
Location: 3108

Offense Codes: 5015
Received By: BRECHNER E
How Received: O
Agency: DPD
Responding Officers: BARTHOLOMEW L, LUMPKIN T
Responsible Officer: BARTHOLOMEW L
Disposition: CAA 08/31/23
When Reported: 21:36:09 08/31/23
Occurred Between: 21:36:09 08/31/23 and 21:36:09 08/31/23

Assigned To: 
Status: 
Detail: **/**/**
Date Assigned: **/**/**
Due Date: **/**/**

Complainant:
Last: 
First: 
Mid: 
DOB: **/**/**
Dr Lie: 
Address: 
City: ,
Race: 
Sex: 
Phone: 

Offense Codes
Reported: 8910 ARREST WARRANT
Observed: 5015 FUGITIVE FROM JUSTICE (LOCAL)

Additional Offense: 5015 FUGITIVE FROM JUSTICE (LOCAL)

Circumstances
BM88 No Bias
WNONE No Weapon Used
NIGHT Night (6 p.m. - 6 a.m.)
LT03 Bar or Nightclub

Responding Officers: Unit :
BARTHOLOMEW L 152
LUMPKIN T 163

Responsible Officer: BARTHOLOMEW L
Received By: BRECHNER E
How Received: O Officer Report
Agency: DPD
Last Radio Log: 22:24:12 08/31/23 C
Clearance: 2 Arrest

03/12/24

46
Page 20 of 25
Involvements

<table>
<thead>
<tr>
<th>Date</th>
<th>Type</th>
<th>Description</th>
<th>Relationship</th>
</tr>
</thead>
<tbody>
<tr>
<td>09/01/23</td>
<td>Booking</td>
<td>Booking#: 231485</td>
<td>In Custody Arrest</td>
</tr>
<tr>
<td>08/31/23</td>
<td>Name</td>
<td>BAEHR, BRIAN RANDALL</td>
<td>Offender</td>
</tr>
<tr>
<td>08/31/23</td>
<td>Offense</td>
<td>Offense#: 77343 - 1M - 1 count</td>
<td>Charged With</td>
</tr>
<tr>
<td>08/31/23</td>
<td>Cad Call</td>
<td>21:36:09 08/31/23 Warrant Attempt</td>
<td>Initiating Call</td>
</tr>
</tbody>
</table>
Narrative

INCIDENT#: P23-30121
INCIDENT DATE: 08/31/23
TIME: 2136
OFFICER: L. Bartholomew
VEHICLE#: 251

**AXON EVIDENCE**
BODY CAM VIDEOS: 1
FRONT FLEET VIDEOS:
REAR FLEET VIDEOS: 1
CAPTURE PHOTOS:
CAPTURE VIDEOS:
CAPTURE AUDIO:
CITIZEN IMPORTS:

Offender's Name: Brian Randell Baehr
Warrant #: CO342023T 000352
CJIS (Yes/No): Yes
Originating Agency: La Plata County Sheriff’s Office
Bond amount: 0
Warrant Offense: FTC-DUI

On 08/31/23 at 2136 hours I arrived at 8th Avenue Tavern to conduct some follow up regarding an incident that occurred the previous night.

I talked to the owner, a male later identified as Brian Baehr, who witnessed the altercation.

Dispatch advised that Brian had a Warrant out of the La Plata County Sheriff's Office (PKT CO342023T 000352 DOW 08/16/2023, ORI: CO0340000, Failure to Comply-DUI). I advised Brian that he had a warrant and I placed him into handcuffs. I placed Brian in the back seat of my marked patrol vehicle and transported him to La Plata County Jail.

Nothing further.

---------------------------------------------

Responsible LEO:

---------------------------------------------

Approved by:

---------------------------------------------

03/12/24
Sentryx Booking Information:

Sentryx Booking Number: 231485
Name Number: 7542
Name: BAEHRR, BRIAN RANDALL
Phone: (970)903-7810
DOB: 01/09/82
Address: 1144 E 5TH AVE
DURANGO, CO 81301
Dr Lic: 033490300
Assigned Bed: 'LPCI-HOUSE GRP-200-200'
Current Location: 
Booking Date: 08/31/23

Sentryx Inmate Property Taken 22:40:35 08/31/23:

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Qty In</th>
<th>Location</th>
<th>Receipt#</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bag 83</td>
<td>83</td>
<td>1</td>
<td>083</td>
<td>0</td>
</tr>
</tbody>
</table>

Sentryx Bonds For Booking # 231485:

Bond Type: CASH
Judge:
Issue Date: 09/08/23
Clear Date: 09/08/23
Clearance Code: CASH
Ex Clearance: 
Optional Amount: $0.00
Cash Due: $0.00

Sentryx Inmate Holds On Booking # 231485:

Type: [PTS] PreTrial Services
Entered by: Norton J L
When Entered: 14:30:28 09/08/23
Cleared by: Burger J N
When Cleared: 15:59:18 09/08/23
Remarks: notified PTS

Sentryx Arrest # 46921

Time/Date: 21:49:00 08/31/23
Agency: DPD
Age at Arrest: 41
Location: 8th ave Tavern
Arrest Type: W
Area: Reference: C.Harrison
Disposition:

Sentryx Offense # 77343

Statute: RULE 107
NCIC: 5005
Offense: 5015 FUGITIVE FROM JUSTICE
Crime Class: 1M
(LOCAL)

Offense Reference: 23T352
Offense Type: CRS
Offense Area:
Related Incident: P23-30121
Law Jurisdiction: ST
Entry Code: 
Offense Location: 
Court Code: 3
Offense Time/Date: 21:58:00 08/31/23
Offense Disposition: PREM
Disposition Date: 00:00:00 07/02/23
Name Involvements:

<table>
<thead>
<tr>
<th>Offender</th>
<th>7542</th>
</tr>
</thead>
<tbody>
<tr>
<td>Last</td>
<td>BAEHR</td>
</tr>
<tr>
<td>First</td>
<td>BRIAN</td>
</tr>
<tr>
<td>Mid</td>
<td>RANDALL</td>
</tr>
<tr>
<td>DOB</td>
<td>01/09/82</td>
</tr>
<tr>
<td>Dr Lic</td>
<td>033490300</td>
</tr>
<tr>
<td>Race</td>
<td>W</td>
</tr>
<tr>
<td>Sex</td>
<td>M</td>
</tr>
<tr>
<td>Phone</td>
<td>(970)903-7810</td>
</tr>
<tr>
<td>Address</td>
<td>1144 E 5TH AVE</td>
</tr>
<tr>
<td>City</td>
<td>DURANGO, CO 81301</td>
</tr>
</tbody>
</table>
A Motion to Convene as the Durango Liquor Licensing...
TO: DURANGO CITY COUNCIL  
FROM: TONY VICARI, AVIATION DIRECTOR

SUBJECT: A RESOLUTION TO MAKE AMENDMENTS TO THE 2024 ADOPTED BUDGET FOR THE PURPOSE OF INCREASING PERSONNEL IN THE AIRPORT ENTERPRISE FUND

RECOMMENDATION:

It is recommended that City Council, by motion, approve the attached resolution authorizing amendments to the 2024 adopted budget.

BACKGROUND SUMMARY:

In advance of the busy spring/summer season, the Durango-La Plata County Airport (DRO) leadership team has assessed current staffing levels to ensure that personnel resources are sufficient to carry out the airport’s work plan and meet strategic plan goals. We have subsequently determined that the staffing strategy for the Aircraft Rescue Firefighting (ARFF)/Operations division would benefit from an adjustment.

The airport’s ARFF/Operations division currently maintains 10 full-time personnel. This includes a Fire Chief/Public Safety Manager, one ARFF/Operations Captain, two ARFF/Operations Lieutenants, and six ARFF/Operations Technicians. Shift coverage must be maintained for all commercial airline flights at DRO, and the division currently staffs 365 days per year with normal shift coverage between 0400-0030 daily.

The ARFF/Operations division is responsible for Aircraft Rescue Firefighting response and incident management, medical emergency response, airport security and TSA regulatory compliance, airfield operations, and FAA regulatory compliance. The division also manages the airport’s public parking system and associated customer service.

The airport proposes adding an 11th full-time position within our ARFF/Operations division. The additional position will allow the airport to better manage increasing daily demands in the areas of security badging, vendor and contractor escorts, airfield inspections and snow removal, parking lot management, and emergency preparedness which all increase as passenger and general aviation traffic grow at DRO. We also aim to increase our overall level of service to tenants and the traveling public with the added staff hours. An extra position will also help us to provide shift coverage more effectively during PTO, vacancies, and training. Vacancies disrupt the division significantly due to the longer initial training timeline, and an extra position will help us to navigate these with much less negative impact on our staff. Lastly, the added position will free up supervisory staff in the division to spend less time covering shifts and more time working in their areas of core responsibility.

The airport attempted to augment staffing within the ARFF/Operations division in 2022 through the implementation of part-time/reserve positions, but this trial program did not prove to be effective.

The airport added two full-time staff positions in May of 2023, one in our Maintenance division, and one in our Environmental/Utilities division. The addition of one staff member in the ARFF/Operations division will continue to balance our staff growth with overall growth being experienced at the airport. With passenger traffic continuing to increase (the first quarter of 2024 is on track to easily be the busiest Q1 in the history of the airport), terminal facility expansion in progress, and parking lot expansion planned in 2024, demands on airport staff continue to grow.

The Airport Advisory Commission reviewed this increase to airport personnel during their March 21st, 2024 meeting and approved it unanimously.

STRATEGIC PLAN ALIGNMENT:

Operations at the Durango-La Plata County Airport support the City of Durango’s Strategic Plan and its Effective Infrastructure Network goal. Specifically, increasing personnel at DRO supports the aviation strategy of maintaining airport facilities in a safe, efficient, and sustainable manner to support all forms of aviation services.

ALTERNATIVE OPTIONS CONSIDERED:
Prior personnel strategies included the hiring of part-time personnel to augment full-time staff within the ARFF/Operations division. This strategy has proven to no longer be effective.

**FISCAL IMPACT:**

Airport revenues are growing at healthy levels (as a result of both increased traffic and rates and charges adjustments), and the new proposed full-time position can be added without threatening the short or long-term fiscal sustainability of the airport enterprise fund. Additionally, the increased operating costs incurred through the addition of the new position can be mitigated in the future through natural attrition should traffic levels and revenues decline.

A pro-rated depiction of the budget impact for the remainder of 2024 is depicted below, reflecting a hire in April of 2024. Full annual fiscal impact during future budget cycles will total approximately $79,000, or a 1.7% increase in total airport operating expenses.

<table>
<thead>
<tr>
<th>Account Number</th>
<th>Project Number</th>
<th>Account Description</th>
<th>Budget Increase/(Decrease)</th>
</tr>
</thead>
<tbody>
<tr>
<td>95-8616-11199</td>
<td></td>
<td>Airport Fire Rescue/Operations - Salaries</td>
<td>38,199</td>
</tr>
<tr>
<td>95-8616-14399</td>
<td></td>
<td>Airport Fire Rescue/Operations - Insurance</td>
<td>13,292</td>
</tr>
<tr>
<td>95-8616-14599</td>
<td></td>
<td>Airport Fire Rescue/Operations - Retirement</td>
<td>4,276</td>
</tr>
<tr>
<td>95-8616-14799</td>
<td></td>
<td>Airport Fire Rescue/Operations - Medicare</td>
<td>554</td>
</tr>
<tr>
<td><strong>Net Effect on Fund Balance</strong></td>
<td></td>
<td></td>
<td><strong>56,324</strong></td>
</tr>
</tbody>
</table>

**POTENTIAL ADVERSE IMPACTS:**

None

**NEXT STEPS AND TIMELINE:**

If approved, airport staff will proceed with personnel hiring efforts with the support of the Human Resources department.
RESOLUTION R-2024-0020

A RESOLUTION TO AMEND THE 2024 BUDGET FOR THE PURPOSE OF BUDGET ADJUSTMENTS TO THE 2024 APPROPRIATIONS

WHEREAS, under the provisions of Article V, Section 10 of the Durango City Charter, the City Council may make additional appropriations during the budget year for unanticipated expenditures required by the city not exceeding, however, actual revenues and unappropriated surplus; and

WHEREAS, to accomplish the goals of City Council the airport enterprise fund proposes to increase full-time personnel staffing levels within its Aircraft Rescue Firefighting/Operations division; and

WHEREAS, there exists sufficient funds within fund balance of the airport enterprise fund;

NOW, THEREFORE, BE IT RESOLVED, as follows

Section 1. That the City Council of the City of Durango, in regular meeting assembled, that 2024 budget shall reflect the changes and the appropriations for 2024 are increasing, transferring, or amending according to the tables below:

<table>
<thead>
<tr>
<th>Account Number</th>
<th>Project Number</th>
<th>Account Description</th>
<th>One-Time</th>
<th>Recurring</th>
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<tr>
<td>95-6016-11199</td>
<td>95-6016-11199</td>
<td>Airport Fire Rescue/Operations - Salaries</td>
<td>38,199</td>
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<td>95-6016-11399</td>
<td>95-6016-11399</td>
<td>Airport Fire Rescue/Operations - Insurance</td>
<td>13,292</td>
<td></td>
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<tr>
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<td>95-6016-11599</td>
<td>Airport Fire Rescue/Operations - Retirement</td>
<td>4,278</td>
<td></td>
</tr>
</tbody>
</table>

Net Effect on Fund Balance: 56,324

Approved and adopted this 2nd day of April, 2024.

CITY OF DURANGO, COLORADO

By: ______________________________
Mayor

ATTEST:

By: ______________________________
Faye Harmer, City Clerk
A Resolution Authorizing Amendments to the 2024 Adopted Budget for the Purpose of Increasing Personnel in the Airport Enterprise Fund

Tony Vicari, Aviation Director

Strategic Plan goals:
Effective Infrastructure Network
Mission (Why we exist)
“The City of Durango and our employees provide, efficient city services, effectively maintain city assets and manage growth, are accountable, ethical, fiscally responsible, and collaborate with regional partners to improve the quality of life for our entire community.”

Vision (What we want to be)
“Durango is an authentic, diverse, multigenerational, and thriving community. Our Residents value and enjoy our unique natural environment and benefit from the management of our City’s resources in a fiscally responsible, environmental, and socially sustainable manner.”

Values (What we believe in)
Teamwork | Dependability | Professionalism | Service | Respect | Innovation | Well-Being

A Resolution Authorizing Amendments to the 2024 Adopted Budget for the Purpose of Increasing Personnel in the Airport Enterprise Fund
The airport proposes adding an 11th full-time staff position to its Aircraft Rescue Firefighting (ARFF)/Operations division.

Division responsibilities include aircraft rescue firefighting response, medical emergency response, airfield operations, airport security, TSA regulatory compliance, and FAA regulatory compliance.

With airline passenger traffic and general aviation traffic at record levels, demands on airport staff are increasing.

Airport Commission review and unanimous approval during their March meeting.
BENEFITS

- Increased service levels to the traveling public and airport tenants
- Improved flexibility with shift coverage during PTO and training
- Reduced staff schedule disruption during position vacancies
- Reduced shift coverage by supervisory staff
FISCAL IMPACT

- The added position will increase annual expenditures within the airport enterprise fund by approximately $79,000, or about 1.7% of total annual operating expenses.
- Pro-rated for the remainder of 2024, this additional appropriation to the 2024 budget totals $56,324.
- Airport revenues are growing at healthy levels, and the new position can be added without threatening the short or long-term fiscal sustainability of the airport enterprise fund.
“I move to approve resolution R-2024-0020 to make amendments to the 2024 budget for the purpose of increasing personnel in the airport enterprise fund.”
QUESTIONS?
RECOMMENDATION
It is the recommendation that the City Council, by motion, approve a

“Resolution Authorizing The City Manager To Close On The Purchase Of A Workforce Housing Unit At 166 East 33rd Street, As Directed By City Council On March 12, 2024, And Authorized By Ordinance 23-0020.”

SUMMARY
On March 12, 2024, following proper public notice and procedural steps, City Council convened in Executive Session to discuss the purchase, acquisition, lease, sale, or transfer of interest in real property located at 166 East 33rd Street and to determine positions relative to matters that may be subject to negotiation and direct negotiators as permitted by C.R.S. 24-6-402(4)(a) and (e). Following executive session, City Council reconvened in an open meeting and unanimously approved a motion authorizing City staff to execute all necessary documents to acquire real property located at 166 E 33rd Street.

Pursuant to the above direction from City Council, the City of Durango and ACPO, LLC have entered into a purchase sale agreement for the acquisition of Unit 501 at Animas City Park Overlook Townhomes for the purchase price of $547,000.

Ordinance O-2023-0020 appropriated sum of monies to the various funds and spending agencies in the amounts and for operating expenditures for the City of Durango, Colorado for the 2024 Budget Year. Pursuant to Ordinance O-2023-0020 funds were appropriated to the 2024 Housing Fund to use for workforce housing purposes. City Council unanimously approved the acquisition and gave direction to staff for the subject property to be used as an income deed restricted unit for local workforce earning at or below 125% Area Median Income for the benefit of the community. Similar to the other four (4) income restricted units in the development, and upon re-sale of the property to a qualified buyer, the funds from the transaction will be deposited back into the Housing Fund.

ATTACHMENTS
1. Resolution 24-XX
2. Income Deed Restriction template
3. Contract to Buy Sell
4. Agreement to Amend Extend Contract
5. Addendum to Contract
6. Interior Finishes
7. Floor Plan

STRATEGIC PLAN ALIGNMENT
The proposed use is in conformance with the Durango Strategic Plan’s Affordability and Economic Opportunity section:
1. Create housing opportunities to support a multigenerational & mixed-income community workforce and increase affordability to bridge the disparity between income and home/rental prices.
   1.1 Identify and commit resources and revenue towards implementing a long-term plan that encourages housing opportunities for mixed-income demographics with an emphasis on workforce housing.
   1.2 Support the production of a variety of housing types through incentives, partnerships, efficient review processes, and other mechanisms with a particular emphasis on middle-income housing.

ALTERNATIVE OPTIONS CONSIDERED
N/A

FISCAL IMPACTS
There will be a fiscal impact of approximately $550,000 as an expense (GL Account 19-4137-31499) from the Housing Innovation Fund utilizing ‘Other Contracted Services’ for the purchase and closing costs associated with the acquisition of Unit 501 located in the Animas City Park Overlook Townhome development.

When the City resells the unit as an income deed restricted unit priced at $399,999 to a local qualified household at or below 125% Area Median Income, the City would be reimbursed this amount minus associated costs of selling the unit. The difference of $547,000 purchase price to $399,999 deed restricted price is $147,001 of housing funds used to bridge the disparity from market price to below-market price for the community benefit of local workforce. The remaining North Main Gateway Urban Renewal Area funds (Account 29-4141-31499) that were not used for the Workforce Housing designation reimbursement to ACPO, LLC, $30,000 remaining ($10,000 a unit), will be re-appropriated back to the Housing Fund (Account 19-4137-31499) to offset this as well.

ADVERSE IMPACTS
N/A

NEXT STEPS AND TIMELINE
Staff will coordinate with ACPO, LLC on purchase/sale agreement and supporting documentation to Land Title Guarantee for the acquisition of Unit 501 with a targeted closing date of April 5, 2024.
RESOLUTION NO. R-2024-_____

A RESOLUTION AUTHORIZING THE CITY MANAGER TO CLOSE ON THE PURCHASE OF A WORKFORCE HOUSING UNIT AT 166 EAST 33RD STREET, AS DIRECTED BY CITY COUNCIL ON MARCH 12, 2024, AND AUTHORIZED BY ORDINANCE 23-0020.

WHEREAS, on March 12, 2024, following proper public notice and procedural steps, City Council convened in Executive Session to discuss the purchase, acquisition, lease, sale, or transfer of interest in real property located at 166 East 33rd Street and to determine positions relative to matters that may be subject to negotiation and direct negotiators as permitted by C.R.S. 24-6-402(4)(a) and (e);

WHEREAS, following executive session, City Council re-convened in an open meeting and unanimously approved a motion authorizing City staff to execute all necessary documents to acquire real property located at 166 E 33rd Street;

WHEREAS, pursuant to the above direction from City Council, the City of Durango and ACPO, LLC have entered into a purchase sale agreement for the acquisition of Unit 501 at Animas City Park Overlook Townhomes for the purchase price of $547,000;

WHEREAS, the property is addressed as 166 East 33rd Street, Unit 501 and the legal description is as follows: Animas City Park Overlook Townhomes Phase 2 As-Built Subdivision As Recorded December 7, 2023, Under Reception No. 1228146 And Surveyors’ Affidavit of Correction Recorded January 4, 2024, Under Reception No. 1228806 And Surveyor's Affidavit of Correction Recorded January 8, 2024, Under Reception No. 1228854 County Of La Plata, State Of Colorado;

WHEREAS, Ordinance O-2023-0020 appropriated sums of money to the various funds and spending agencies in the amounts and for operating expenditures for the City of Durango, Colorado for the 2024 Budget Year;

WHEREAS, pursuant to Ordinance O-2023-0020 funds were appropriated to the 2024 Housing Fund to use for workforce housing purposes;

WHEREAS, City Council now desires to purchase the Property;

WHEREAS, the subject property will be used as an income deed restricted unit for local workforce earning at or below 125% Area Median Income for the benefit of the community and, upon re-sale of the property to a qualified buyer, the funds from the transaction will be deposited back into the Housing Fund;

WHEREAS, the acquisition and intended use of the Property directly aligns with the 2018 Housing Plan and 2022 Strategic Plan’s Affordability and Economic Opportunity objectives; and

WHEREAS, the City Council has determined that the purchase of the Property is in the best interest of the citizens of the City; and therefore be it

RESOLVED, that the City Council of the City of Durango, in regular meeting assembled, that:

Section 1: The sum of $550,000 is already appropriated in the Housing Fund for this acquisition and the sum includes the purchase price and estimated closing costs that will be reflected in a Land Title closing settlement statement for acquisition on April 5, 2024;

Section 2: The City Manager of the City of Durango is hereby authorized to execute any and all documents necessary to close the transaction to take any other action reasonably necessary to complete the purchase of the Property as described in the Contract.

Approved and adopted this 2nd Day of April 2024.

CITY OF DURANGO COLORADO

by __________________________
Mayor

ATTEST:       CITY OF DURANGO, CO

City Clerk
DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE
SALE, OCCUPANCY, AND RESALE OF CERTAIN UNITS WITHIN ANIMAS CITY
PARK OVERLOOK (ACPO) PLANNED DEVELOPMENT, LA PLATA COUNTY,
COLORADO

THIS DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING
THE SALE, OCCUPANCY, AND RESALE CERTAIN UNITS WITHIN ANIMAS CITY PARK
OVERLOOK (“ACPO”) DEVELOPMENT, La Plata County, Colorado (“Agreement”) is made
and entered into this ________ day of ______________, 20___, by ACPO, LLC a Colorado
limited liability company, (the “Declarant”), for the benefit of the parties and enforceable by
HomesFund (“HomesFund”), a duly constituted nonprofit organization established pursuant to
Colorado law, its successor or agent, and the City of Durango, Colorado, a municipal corporation
established pursuant to Colorado law (the “City”). Collectively, Declarant, HomesFund, and the
City are referred to collectively as the “Parties.”

RE bâtALS AND DEFINITIONS

A. Declarant is the owner of, and is in the process of developing, a residential community
known as Animas City Park Overlook (ACPO), which is located in La Plata County, Colorado; and

B. Declarant desires and voluntarily agrees to set aside 4 (four) Units within Development,
for the purpose of providing affordable housing in accordance with the Animas City Park Overlook
Planned Unit Development Agreement, recorded in the office of the La Plata County Clerk and
Recorder at Reception No. 1213854 (“Compliance Agreement”). In the event of any conflict
between the terms of the Compliance Agreement and this Declaration and Agreement, this
Declaration and Agreement shall control.

C. The four (4) Units subject to this Agreement are identified in Exhibit A, attached hereto and by
reference incorporated herein. For purposes of this Declaration and Agreement, such real property
and all dwellings, appurtenances, improvements and fixtures associated therewith shall be referred
to herein individually as a Unit or collectively as Units; and

D. After completion of construction, each Unit, together with fixtures, equipment and
appurtenances thereto, shall be conveyed to “Qualified Buyers” as defined below on the terms and
conditions further set forth herein; and

E. The City and HomesFund, and their respective successors or assigns, collectively and
individually, have rights to enforce this Agreement as set forth herein; and

F. For purposes of this Agreement, the following terms shall have the meaning set forth herein:

1. “Agreement” means this Declaration of Deed Restriction and Agreement Concerning the
   Sale, Occupancy, and Resale of the Units.

2. “City” has the meaning provided in the preamble hereto and includes any future successors
   or assigns.
3. “Declarant” has the meaning provided in the preamble hereto and includes any future successors or assigns.

4. “Development” or “Property” means the Animas City Park Overlook Planned Development.

5. “First Deed of Trust” means a deed of trust or mortgage which is recorded senior to any other deed of trust or liens against the Unit to secure a loan used by a Qualified Buyer to purchase the Unit, or a deed of trust or lien against the Unit to refinance the initial loan and which is approved by the City or HomesFund.

6. “HomesFund” has the meaning provided in the preamble hereto and includes any future successors or assigns.

7. “Institutional Lender” means any bank, savings and loan association, or any other lender which is licensed to engage in the business of providing purchase money mortgage financing for residential real estate.

8. “Maximum Resale Price” means the maximum purchase price that shall be paid by any purchaser of the Property, other than the initial purchaser who acquires the Property from Declarant, as determined in accordance with the provisions of Section 3 of this Agreement. The Maximum Resale Price is not a guaranteed price, but merely the highest price an Owner may obtain for the sale of the Property.

9. “Non-Qualified Transferees” means an individual(s) or entity(ies) who are not Qualified Buyers.

10. “Notice of Election and Demand (NED)” means a notice of election and demand for sale related to a public trustee foreclosure in accordance with C.R.S., § 38-38-100.3, et seq.

11. “Owner” means the person(s), other than a Non-Qualified Transferee, who acquires an ownership interest in a Unit in compliance with the terms and provisions of this Agreement, it being understood that such person(s) shall be deemed an “Owner” hereunder during the period of his, her, or their ownership interest in the Unit and shall be obligated hereunder for the full and complete performance and observance of all covenants, conditions and restrictions contained herein during such period.

12. “Primary Residence” means a person’s principal place of abode that is the address at which the person will reside the majority of the calendar year, which shall not be less than nine (9) consecutive months of each calendar year.

13. “Purchaser” means the party electing to exercise the option set forth in subsection 9.6 below.

14. “Qualified Buyer” means natural persons meeting the income, residency, and all other qualifications, who must represent and agree pursuant to this Agreement to occupy the Unit as their sole and Primary Residence, and not use, sell, or otherwise transfer the Unit in any way prohibited by this Agreement.
15. “Unit” means one of the Units described in Exhibit A, and includes all fixtures, equipment, and appurtenances thereto, that qualifies as an affordable housing unit and as set forth in this Agreement.

NOW, THEREFORE, for value received, the receipt and sufficiency of which is hereby acknowledged, Declarant hereby declares, covenants, and agrees as follows:

SECTION 1
DECLARATION

1.1 For the purposes set forth herein, Declarant, for itself and its successors and assigns, hereby declares that the Units shall be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, improved, altered, and enjoyed subject to the covenants, conditions, restrictions, privileges, rights, and other provisions herein set forth, for the duration hereof, and all of which shall run with the Units and be binding upon all Owners, occupants, and other persons, including Non-Qualified Transferees, having or acquiring any right, title, or interest in or to the Units, and their respective heirs, personal representatives, successors, and assigns and shall be binding upon and inure to the benefit of HomesFund, the City, and its respective successors and assigns.

1.2 Declarant hereby restricts the acquisition or transfer of the Units to Qualified Buyers who fall within the qualifications established by this Agreement. In addition, Declarant agrees that this Agreement shall constitute a resale agreement setting forth the maximum resale price for which the Units may be sold (“Maximum Resale Price”), the amount of appreciation, and the terms and provisions controlling the resale of the Units. Declarant restricts the Units against use and occupancy inconsistent with the terms of this Agreement.

1.3 By the acceptance of any deed conveying any Unit subject hereto, the Owner of the Unit shall accept all of the terms, conditions, limitations, restrictions, and uses contained in this Agreement. Any deed conveying any Unit subject hereto shall contain language making the transfer of any rights to the Units subject to the terms, conditions, limitations, restrictions, and uses contained in this Agreement. In addition, prior to the delivery of a deed conveying any Unit to an Owner, such Owner shall execute a Memorandum of Acceptance in the form attached hereto as Exhibit B, evidencing Owner’s acknowledgment and agreement to the terms, conditions, limitations, restrictions, and uses contained in this Agreement.

1.4 Notwithstanding any provision of this Agreement to the contrary, it is expressly agreed and acknowledged that the terms, conditions, and restrictions of the Agreement with respect to the use and occupancy of any Unit thereof shall not apply to Declarant during the Declarant’s ownership thereof following the issuance of a Certificate of Occupancy for the Unit, provided, however, that the Declarant shall make no transfer of any Unit except to a Qualified Buyer.

1.5 The Parties agree that they intend to enter this Agreement to assure that the Units are maintained long term as affordable housing under the provisions of this Agreement. The Parties agree that they are sophisticated parties, have sought and received legal advice regarding terms and obligations set forth in this Agreement, and this Agreement is being entered into for
commercial purposes. No sale of any Unit may be made by an Owner in a manner other than to a Qualified Buyer for the Maximum Resale Price.

1.6 The parties agree that HomesFund may record any document it deems necessary as part of any sale of a Unit to secure the performance of the terms of this Agreement and to provide record notice of the obligations contained in this Agreement.

SECTION 2
USE AND OCCUPANCY OF UNIT; OWNER RESIDENCY REQUIRED

2.1 Except as otherwise provided herein, the ownership, use, and occupancy of any Unit shall henceforth be restricted exclusively to housing for natural persons who meet the definition of Qualified Buyer(s) and their families. Determination of whether or not a household meets the definition of Qualified Buyer(s) shall be conducted by HomesFund.

2.1.1 At the time of purchase of a Unit, Qualified Buyers must have a household income that does not exceed 125% of area median income, by household size, as determined by HomesFund.

2.1.2 At the time of purchase of a Unit, Qualified Buyers must have lived in the five counties of the Region 9 Economic Development District for 1 year prior to purchase, or currently work 32 hours per week in La Plata County.

2.1.3 Qualified Buyers must demonstrate that they have a sustainable household budget, as determined by a HomesFund Housing Counselor.

2.1.4 Qualified Buyers must meet the requirements for the HomesFund Mortgage Assistance Program, if they are utilizing the HomesFund Mortgage Assistance Program.

2.1.5 Qualified Buyers must meet the requirements for all sources of financing needed to purchase the Unit.

2.2 An Owner, in connection with the purchase and ownership of a Unit, must: (a) occupy the Unit as his, her, or their sole and Primary Residence during the time that such Unit is owned; (b) satisfy the residency and employment requirements set forth in this Agreement; and (c) sell, convey, or otherwise transfer such Unit only in accordance with this Agreement.

2.2.1 In the event an Owner ceases to utilize a Unit as his/her/their sole and Primary Residence, the Owner shall offer the Unit for sale pursuant to the provisions of subsection 3.1 of this Agreement.

2.2.2 Annually, HomesFund will conduct an occupancy audit to ensure that the Unit is the primary residence of the Owner. Owner shall participate in the survey and work in good faith with HomesFund to provide requested information to HomesFund regarding the audit.

2.3 The Owner shall also be subject to and shall abide by the terms and conditions of that certain Declaration of Covenants, Conditions and Restrictions for the Animas City Park Overlook Townhomes recorded _4/18/23___ in the La Plata County office of the clerk and recorder at Reception No. _1221086_ (the “CC&Rs”), as subsequently supplemented and amended.
2.3.1 No Permitted Capital improvements shall be made to a Unit unless said improvements comply with the CC&Rs and have been approved by HomesFund and the Animas City Park Overlook Townhomes Board of Directors as provided in the CC&Rs.

SECTION 3
SALE OF UNIT; MAXIMUM RESALE PRICE

3.1 The Owner must give written notice to HomesFund or the City at the addresses provided herein of the Owner’s intent to sell the Unit. The notice must be provided thirty (30) days (“Notice Period”) before the Owner enters into any agreement to list the Unit for Sale or sale or assign any interest in the Unit. During the Notice Period, the Owner shall consult with HomesFund to review the requirements of this Agreement, including the Maximum Resale Price. Following determination of the Maximum Resale Price by HomesFund and after the expiration of the Notice Period, the Owner may list such Unit for sale at a sales price not exceeding the Maximum Resale Price, determined at the time the Unit is listed for sale, and in accordance with the procedures set forth in this Agreement. To offer the Unit for sale at the Maximum Resale Price, the Unit must be professionally cleaned, all fixtures must be in working condition, and any damage to the Unit beyond normal wear and tear must be repaired. If these conditions are not satisfied, HomesFund may require that the Owner agree to escrow at closing a reasonable amount to achieve compliance with these requirements or reduce the Maximum Resale price accordingly. The Owner shall grant HomesFund reasonable access to the Unit for purposes of performing inspections to ensure compliance with this subsection 3.1.

3.2 An Owner Shall not sell a Unit in an amount in excess of the Maximum Resale Price. An Owner may not accept any monies, real or personal property, gifts, or other consideration of any type in exchange for the sale or transfer of a Unit that would result in the total compensation paid for a Unit exceeding the Maximum Resale Price.

The Maximum Resale Price of Property shall be no greater than the sum of:

1. The Purchase Price paid by the Owner of the Property as identified in the purchase and sale agreement entered into at the time of purchase by Owner-Seller;
2. Plus, a three percent (3%) increase from initial Purchase Price per year (prorated at the rate of 1/12th for each whole month) from the date of ownership transferred from Seller to the date of Seller’s listing of property within written notification to HomesFund or the City; such percentage increase shall be calculated as simple interest;
3. Plus, up to the cost of Permitted Capital Improvements as approved by HomesFund or the City;
4. Plus, if owner lists the unit for sale with a Colorado licensed realtor, the owner may add the amount paid in sales commission, up to two percent (2%) of the sales price, to the Maximum Resale Price.

Provided, however, that the sum of items 1-4 in this paragraph shall be no greater than the Maximum Resale Price for the property’s unit type and household AMI level at the time of sale.
NOTHING HEREIN SHALL BE CONSTRUED TO CONSTITUTE A REPRESENTATION OR GUARANTEE BY THE DECLARANT, HOMESFUND, OR THE CITY THAT UPON RESALE THE OWNER SHALL OBTAIN THE MAXIMUM RESALE PRICE.

3.3 The Owner may include Permitted Capital Improvements in the Maximum Resale Price, if approved by HomesFund, and such Permitted Capital Improvements are made in accordance with this Agreement, as provided in Exhibit C, attached hereto and by reference incorporated herein.

3.3 An Owner shall not permit any prospective buyer to assume any of the Owner’s customary closing costs nor accept any other consideration which could cause an increase in the purchase price above the Maximum Resale Price so as to induce the Owner to sell to such prospective buyer.

3.4 An Owner shall neither enter into a sales contract for the sale of his/her/their Unit with any person other than a Qualified Buyer or HomesFund or the City. Prior to Owner entering into a sales contract for the sale of his/her/their Unit to a prospective buyer, such prospective buyer shall submit an application to HomesFund pursuant to the requirements of this Agreement in effect prior to execution of a sales contract. HomesFund shall determine whether the prospective buyer is a Qualified Buyer. Documented proof of qualification shall be provided by the prospective buyer to HomesFund with the application.

3.5 An Owner shall not enter into any contract which provides for a sales price greater than the Maximum Resale Price, determined at the time the Unit is listed for sale, established in accordance with this Section. The Owner must accept a Maximum Resale Price offer and offers in excess of the Maximum Resale Price shall be countered at the Maximum Resale Price. Prior to execution by an Owner, all sales contracts for the sale of a Unit subject to this Agreement shall be submitted to HomesFund for its review and approval of the contract for consistency with this Agreement.

3.6 Owner shall comply with all applicable state and federal laws and regulations, including but not limited to, all Fair Housing rules and regulations, and this Agreement.

3.7 If a purchase offer from a Qualified Buyer to buy the Unit for ninety-five percent (95%) of the Maximum Resale Price is not received within 120 days of listing the Unit on the Multiple Listing Service (“MLS”), the Owner may request that HomesFund purchase the Unit. HomesFund shall have the right and option, but not the obligation, to purchase the Unit from the Owner. For HomesFund to agree to purchase the Unit, it must be in reasonably clean condition, and all necessary repairs must be paid-for by the Owner prior to sale. In order to purchase the Unit, HomesFund, in its sole discretion, will determine whether it has sufficient funds to purchase the Unit and whether the purchase of the Unit would otherwise meet with HomesFund’s mission and purposes.

3.8 Lease-to-purchase, contracts for deed, or other similar agreements involving the right to acquire title in the future are strictly prohibited.

SECTION 4
NON-QUALIFIED TRANSFEREE

4.1 An Owner may not sell, transfer, or assign a Unit to a Non-Qualified Transferee. In the event that title to a Unit transfers or vests to a Non-Qualified Transferee(s), and such individuals are not
approved by HomesFund as Qualified Buyers within thirty (30) days after obtaining title to the Unit, the Unit shall immediately be listed for sale or advertised for sale by the Non-Qualified Transferee(s) in the same manner as provided for Owners in subsection 3.1 above; provided such action does not otherwise conflict with applicable law. The highest offer by a Qualified Buyer, for ninety-five percent (95%) of the Maximum Resale Price shall be accepted. If all such offers are below ninety-five percent (95%) of the Maximum Resale Price the Unit shall continue to be listed for sale or advertised for sale by the Non-Qualified Transferee(s) until an offer in accordance with this subsection is made, which offer must be accepted. The cost of any appraisal required for the sale of the Unit shall be paid by the Non-Qualified Transferee(s). In the event the Non-Qualified Transferee(s) elect to sell the Unit without the assistance of a real estate broker or agent, such Non-Qualified Transferee(s) shall advertise the subject Unit for sale in a manner approved by HomesFund and shall use due diligence and make all reasonable efforts to accomplish the sale of the Unit. In the event HomesFund finds and determines that such Non-Qualified Transferee(s) have failed to exercise such due diligence, HomesFund may require the Non-Qualified Transferee(s) to execute a standard listing contract on forms approved by the Colorado Real Estate Commission, or its successor, with a licensed real estate broker or agent.

a. Unless written permission is granted by HomesFund, Non-Qualified Transferee(s) shall not: (1) occupy the Unit; (2) rent all or any part of the Unit; (3) engage in any other business activity on or in the Unit; (4) sell, convey, or otherwise transfer the Unit except in accordance with this Agreement; or (5) sell or otherwise transfer the Unit for use in a trade or business.

c. Where the provisions of this subsection 4.1 apply, HomesFund may require the Non-Qualified Transferee(s) to rent the Unit in the same manner as provided for Owners in Section 5, below.

d. Non-Qualified Transferee(s) shall otherwise comply with all obligations of Owners set forth in this Agreement.

SECTION 5
RENTAL OF UNIT

5.1 An Owner may not under any circumstance lease or rent the unit, except with prior written consent and approval of HomesFund and subject to HomesFund’s conditions of approval. If HomesFund grants approval of a rental request, no lease shall have a rental term in excess of twelve (12) months. A signed copy of the lease must be provided to HomesFund prior to occupancy by any tenant.

5.2 Short-term or vacation rental of all or a portion of the Unit is strictly prohibited.

5.3 In the event an Owner rents the Unit without explicit written permission from HomesFund or the City, the Unit shall be offered for sale pursuant to the provisions of subsection 3.1 of this Agreement.

SECTION 6
BREACH OF AGREEMENT; OPPORTUNITY TO CURE

6.1 In the event that HomesFund has reasonable cause to believe the Owner is violating the provisions of this Agreement, HomesFund, by its authorized representative, may inspect a Unit
after providing the Owner with written notice provided no less than 24 hours prior to the inspection.

6.2 In the event a violation of this Agreement is discovered, HomesFund may send a notice of violation to the Owner detailing the nature of the violation and allowing the Owner fifteen (15) days to cure. If the violation is not cured within the fifteen (15) day period, the Owner shall be considered in violation of this Agreement, and HomesFund may exercise its remedies as provided in Section 8, below.

6.3 The failure of HomesFund to insist upon the strict and prompt performance of any of the terms, conditions, and restrictions of this Agreement shall not constitute or be construed as a waiver or relinquishment of HomesFund’s right or rights thereafter to enforce any term, condition, or restriction and the same shall continue in full force and effect.

SECTION 7
DISPUTE RESOLUTION

7.1 In the event of a dispute by an Owner of any of the terms of this Agreement, the Owner shall submit a formal grievance to HomesFund at the address provided in the Notice section of this Agreement. The parties will attempt to resolve any dispute within thirty (30) days of the date the dispute is received by HomesFund. In the event the dispute cannot be resolved in this time period, the parties may pursue any remedies available to them as set forth in this Agreement.

SECTION 8
REMEDIES

8.1 This Agreement shall constitute covenants running with the Units, described hereinabove as a burden thereon, for the benefit of, and shall be specifically enforceable by the City, HomesFund, and their respective successors and assigns, as applicable, by any appropriate legal action against any non-complying Owners and/or occupants.

8.2 In the event the Parties resort to litigation with respect to any or all provisions of this Agreement, the prevailing party shall be entitled to recover damages and costs, including reasonable attorneys’ fees.

8.3 With the exception of a Public Trustee’s or Sheriff’s sale in a foreclosure proceeding for the benefit of a first lien mortgage holder; in the event of any sale, transfer, or conveyance of the Units thereof, each and every conveyance of a Unit, for all purposes, shall be deemed to include and incorporate by this reference the covenants, conditions, limitations, and restrictions herein contained, even without reference therein to this Agreement.

8.4 In the event that the Owner fails to cure any breach of this Agreement, the City or HomesFund may require an Owner to sell the Unit to a Qualified Buyer on the terms and conditions specified in Section 3. The City or HomesFund may also resort to any and all available legal remedies, including but not limited to seeking injunctive relief. It is hereby agreed and acknowledged that it will be impossible to measure in money the damage that would be suffered if an Owner fails to comply with any of the obligations herein imposed on them and that in the event of any such failure, and the City and/or HomesFund will be irreparably damaged and will not have an adequate
remedy at law. The City and HomesFund shall, therefore, be entitled (in addition to any other remedy to which it may be entitled in law or in equity) to injunctive relief, including specific performance, to enforce such obligations, and if any action should be brought in equity to enforce any of the provisions of this Agreement, none of the parties hereto shall raise the defense that there is an adequate remedy at law and no bond shall be required.

8.5 In the event of a breach of any of the terms or conditions contained herein by the Owner, his/her/their heirs, successors, or assigns, the Owner’s sale price of the Unit as referred to in Section 3 of this Agreement shall, upon the date of such breach as determined by HomesFund, automatically cease to increase as set out in Section 3 of this Agreement and shall remain fixed until the date of cure of said breach.

SECTION 9
REFINANCE; DEFAULT IN LOAN PAYMENTS; FORECLOSURE

9.1 The Purchaser may finance a portion of the initial purchase of the Unit with a loan from an Institutional Lender that is secured by a First Deed of Trust. The Owner may only refinance a loan secured by a First Deed of Trust with written permission of HomesFund, and the terms of the refinance must meet the requirements set forth in this Agreement.

9.2 HomesFund is authorized to negotiate, execute, and record such consents or agreements as it may deem necessary which have the effect of subordinating this Agreement to the terms of a First Deed of Trust to facilitate favorable financing for the benefit of a Qualified Buyer of the Unit.

9.3 It shall be a breach of this Agreement for an Owner to default in payment or other obligations due or to be performed under a promissory note secured by any deed of trust or mortgage encumbering a Unit, including the First Deed of Trust, or to breach any of Owner’s duties or obligations under said deed or deeds of trust. It shall also be a breach of this Agreement for the Owner to default in the payment of real property taxes or any assessments, dues, or other obligations to any applicable homeowners’ association, if applicable. The Owner must notify HomesFund, in writing, of any such default and provide a copy of any notification received from a lender, or its assigns or loan servicer, of past due payments or default in payment or other obligations due or to be performed under a promissory note secured by a deed of trust, as described herein, or of any breach of any of Owner’s duties or obligations under said deed of trust, within five (5) calendar days of Owner’s notification from lender, or its assigns, or within five (5) calendar days of Owner’s notification from any other creditor specified herein, of any default, past due payment, or breach. The Owner must also notify HomesFund of any notices received from any governmental entity or homeowners’ association claiming a violation or non-payment, within five (5) calendar days of receiving such notice.

9.4 Upon notification of a default as provided in subsection 9.3, above, HomesFund is entitled to require the Owner to sell the Unit in order to avoid the commencement of or the completion of foreclosure proceedings. If HomesFund requires sale of the Unit, Owner shall, immediately upon request, execute a standard Listing Contract on forms approved by the Colorado Real Estate Commission providing for a ninety (90) day listing period. In the event of a listing of the Unit pursuant to this subsection, HomesFund is entitled to require the Owner to accept a qualified offer.
for the Maximum Resale Price, determined at the time the Unit is listed for sale, or, if none are received, to accept a qualified offer for an amount less than the Maximum Resale Price which is sufficient to satisfy the Owner’s financial obligations pursuant to the promissory note or notes secured by the First Deed of Trust and any junior deeds of trust. The Listing contract shall obligate the Owner to pay the standard listing fee and normal closing costs and expenses that would be the obligation of the Owner in the event of a sale pursuant to Section 3 of this Agreement.

9.5 Upon receipt of notice as provided in subsection 9.3, above, HomesFund shall have the right, but not the obligation, to cure the default or any portion thereof. In such event, the Owner shall be personally liable to HomesFund for any payments made by HomesFund on the Owner’s behalf together with interest thereon at the rates specified in the obligation then in default, plus 1%, together with all actual expenses of HomesFund incurred in curing the default, including reasonable attorneys’ fees. The Owner shall be required by HomesFund to execute a promissory note to be secured by a junior deed of trust encumbering the Unit in favor of HomesFund for the amounts expended by HomesFund as specified herein, including future advances made for such purposes. HomesFund shall not be limited by the provisions in subsection 9.1. The Owner may pay the promissory note at any time prior to the sale of the Unit. Otherwise, Owner’s indebtedness to HomesFund shall be satisfied from the Owner’s proceeds at the closing upon sale of the Unit.

9.6 The City and HomesFund shall be a “person who appears to have an interest in the property” as described in C.R.S. § 38-38-103(1)(a)(II)(E) and, thus, shall be entitled to receive the combined notice required by and described in C.R.S. § 38-38-103(1)(a). In addition, HomesFund shall be a “contract vendee” pursuant to C.R.S. § 38-38-104(1)(d), and shall be entitled to cure any default which is the basis for a foreclosure action in accordance with C.R.S. § 38-38-104, et seq. Upon filing with the Public Trustee of La Plata County of a Notice of Election and Demand pursuant to C.R.S. § 38-38-101(4) by the holder of the First Deed of Trust, HomesFund shall have the right and option, but not the obligation, to purchase the Unit from the Owner for 95% of the Maximum Resale Price established as of the date of the NED, less the amount of any debt secured by the Unit (including interest, late fees, penalties, costs, and other fees and reimbursement due to lender) to be assumed by HomesFund. HomesFund may assign the foregoing option to the City. The party electing to exercise the option shall be referred to herein as the “Purchaser.” The Purchaser shall give written notice thereof to the Owner within thirty (30) days following the filing of the NED. In the event that the option is exercised, the closing on the purchase of the Unit shall occur no less than seventy-five (75) days nor more than ninety (90) days after the date of the NED. At closing, Owner shall execute and deliver a Special Warranty Deed conveying the Unit free and clear of all monetary liens and encumbrances, except those to be assumed by the Purchaser, and shall execute normal and customary closing documents. The proceeds of the sale shall be applied first to cure the default by paying off the indebtedness secured by the Unit which is the subject of the pending foreclosure action, then to the Owner’s closing costs, and the balance, if any, shall be disbursed to the Owner. If the Owner cures the default prior to closing resulting in withdrawal of the NED and cancellation of the foreclosure sale, the option of HomesFund shall terminate. Such termination shall not, however, operate to extinguish the option of HomesFund to purchase the Unit in the event that any subsequent NED is filed.
9.7 The provisions of this Agreement may be subordinate only to the lien of a First Deed of Trust to secure a loan to purchase the Unit made by an Institutional Lender. This Agreement shall not impair the rights of such Institutional Lender, or such lender’s assignee or successor in interest, to exercise its remedies under the First Deed of Trust in the event of default by Owner; these remedies include the right to foreclose or exercise a power of sale or to accept a deed or assignment in lieu of foreclosure. In the event of foreclosure by a holder of a First Deed of Trust, and upon the issuance of a Public Trustee’s or Sheriff’s Deed, these Covenants shall automatically terminate.

9.8 With the exception of the First Deed of Trust provided by an Institutional Lender, this Agreement shall be senior to any lien or encumbrance recorded in the Office of the Clerk of Recorder of La Plata County, Colorado, after the date on which this Agreement is recorded in said Office. Any purchaser acquiring any rights in a Unit by virtue of foreclosure of a lien other than a First Deed of Trust, as defined herein, shall be deemed a Non-Qualified Transferee subject to the provisions of subsection 4.1 of this Agreement. In the event of a foreclosure of a lien other than a First Deed of Trust, as defined herein, nothing herein shall be construed to create a release or waiver of the covenants, conditions, limitations, and restrictions contained in this Agreement.

SECTION 10
GENERAL PROVISIONS

10.1 Notices. Any notice, consent, or approval which is required to be given hereunder shall be given by mailing the same, certified mail, return receipt requested, properly addressed and with postage fully prepaid, to any address provided herein or to any subsequent mailing address of the party as long as prior written notice of the change of address has been given to the other parties to this Agreement. Said notices, consents, and approvals shall be sent to the parties hereto at the following addresses unless otherwise notified in writing:

To Declarant:  
ACPO, LLC  
564 E. 2nd Avenue, Unit 101  
Durango, CO 81301

To HomesFund:  
HomesFund  
PO Box 2179  
Durango, CO 81302

To City:  
City of Durango  
949 E. 2nd Avenue  
Durango, CO 81301

To Owner: As set forth in a subsequent recorded Memorandum of Acceptance for each Unit.

10.2 Severability. Whenever possible, each provision of this Agreement and any other related document shall be interpreted in such a manner as to be valid under applicable law, but if any provisions of any of the foregoing shall be invalid or prohibited under said applicable law, such provisions shall be ineffective to the extent of such invalidity or prohibition without invalidating the remaining provisions of this Agreement or other related document.

10.3 Choice of Law. This Agreement and each and every related document are to be governed and construed in accordance with the laws of the State of Colorado.

10.4 Successors. Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon the heirs, successors, and assigns of each of the parties.
10.5 Section Headings. Paragraph or section headings within this Agreement are inserted solely for convenience of reference, and are not intended to, and shall not govern, limit, or aid in the construction of any terms or provisions contained herein.

10.6 Perpetuities Savings Clause. If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations, or options set forth in this Agreement shall be unlawful or void for violation of: (a) the rule against perpetuities or some analogous statutory provision; (b) the rule restricting restraints on alienation; or (c) any other statutory or common law rules imposing like or similar time limits, then such provision shall continue only for the period of the lives of the current duly elected and seated governing board of the City, their now living descendants, if any, and the survivor of them, plus twenty-one (21) years.

10.7 Waiver. No claim of waiver, consent, or acquiescence with respect to any provision of this Agreement shall be valid against any party hereto except on the basis of a written instrument executed by the parties to this Agreement. However, the party for whose benefit a condition is inserted herein shall have the unilateral right to waive such condition.

10.8 Gender and Number. Whenever the context so requires herein, the neuter gender shall include any or all genders and vice versa and the use of the singular shall include the plural and vice versa.

10.9 Personal Liability. Each Owner agrees that he or she shall be personally liable for any of the transactions contemplated herein.

10.10 Further Action. The parties to this Agreement, including any Owner, agree to execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of this Agreement or any agreement or document relating hereto or entered into in connection herewith.

10.11 Modifications. The parties to this Agreement agree that any modifications of this Agreement shall be effective only when made by writings signed by the parties, approved by HomesFund and the City, and recorded with the Clerk and Recorder of La Plata County, Colorado. Notwithstanding the foregoing, the City or HomesFund reserves the right to amend this Agreement unilaterally when deemed necessary to effectuate the purpose and intent of this Agreement, when such unilateral action does not materially impair an Owner or lender’s rights under this Agreement, and when such amendment has been approved by the City.

10.12 Delegation. The City and HomesFund, with written consent of all parties, may delegate their authority hereunder to another organization qualified to manage and enforce the rights and obligations of either the City or HomesFund pursuant to this Agreement.

[Signatures on following page.]
IN WITNESS WHEREOF, the parties hereto have executed this instrument on the day and year first above written.

DECLARANT:

By:__________________________

_______________ [Name]
_______________ [Title]

STATE OF COLORADO  )
COUNTY OF LA PLATA  ) ss.

The above and foregoing document was acknowledged before me this ___ day of ________, 20__, by ____________________, ACPO, LLC__________________________________________.

Witness my hand and official seal.

____________________________
Notary Public

My commission expires: ____________.

ACCEPTANCE BY THE CITY OF DURANGO AND HOMESFUND.

The foregoing Declaration of Deed Restriction and Agreement Concerning the Sale, Occupancy, and Resale of Certain Units within ACPO Development, and its terms are hereby adopted and declared by the City of Durango and HomesFund.

CITY OF DURANGO

By:__________________________

_______________ [Name]
_______________ [Title]

STATE OF COLORADO  )
COUNTY OF LA PLATA  ) ss.

The above and foregoing document was acknowledged before me this ___ day of ________, 20__, by ____________________, ____________________________ of ____________________________.
Witness my hand and official seal. ________________________________

Notary Public

My commission expires: ________________.

HOMESFUND

By: ________________________________

________________________ [Name]

____________________ [Title]

STATE OF COLORADO    )

) ss.

COUNTY OF LA PLATA    )

The above and foregoing document was acknowledged before me this ____ day of ________, 20__, by ________________________________, _______________ of ______________________.

Witness my hand and official seal. ________________________________

Notary Public

My commission expires: ________________.
EXHIBIT A

Legal Description

UNIT 501, ANIMAS CITY PARK OVERLOOK TOWNHOMES PHASE 2 AS-BUILT SUBDIVISION AS RECORDED DECEMBER 7, 2023, UNDER RECEPTION NO. 1228146 AND SURVEYORS’ AFFIDAVIT OF CORRECTION RECORDED JANUARY 4, 2024, UNDER RECEPTION NO. 1228806 AND SURVEYOR’S AFFIDAVIT OF CORRECTION RECORDED JANUARY 8, 2024 UNDER RECEPTION NO. 1228854. COUNTY OF LA PLATA, STATE OF COLORADO.
EXHIBIT B
MEMORANDUM OF ACCEPTANCE OF DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE SALE, OCCUPANCY AND RESALE OF CERTAIN UNITS WITHIN THE ANIMAS CITY PARK OVERLOOK PLANNED DEVELOPMENT

RECITALS:
WHEREAS, ________________, the Buyer and hereinafter the Owner or Buyer/Owner, is purchasing from ________________, the Seller at the price of $_________________, a unit described as _______________________________________________ (legal description) (hereinafter, the “Unit”), as recorded on ______________ (date) at reception no. ________________________, also known as _________________________________ (street address).

WHEREAS, It is required, as a prerequisite to the sale transaction, that the Buyer/Owner acknowledges and agrees to the terms, conditions, limitations, restrictions, and uses found in that certain instrument entitled Declaration of Deed Restriction and Agreement Concerning the Sale, Occupancy and Resale of Certain Units within the Animas City Park Overlook Planned Development as Described as ________________, La Plata County, Colorado (hereinafter the “Deed Restriction and Agreement”). Said Deed Restriction and Agreement is recorded under reception number _____________________ in the records of the Clerk and Recorder for La Plata County, Colorado.

NOW, THEREFORE, as required by the Deed Restriction and Agreement and in consideration of the covenants and agreements contained therein and contained herein, the Buyer/Owner agrees and acknowledges the following:

1. Buyer/Owner has carefully read the entire Deed Restriction and Agreement and has had the opportunity to consult with legal and financial counsel of his/her/their own choosing concerning said Deed Restriction and Agreement. Buyer/Owner fully understands the Deed Restriction and Agreement and agrees to comply with all covenants, restrictions, and requirements thereof.

2. Buyer/Owner hereby acknowledges and accepts the Deed Restriction and Agreement, in its entirety, including all exhibits, as the same is defined herein, and acknowledges the condition of the Unit purchased as follows:

   a. That the closing of Buyer/Owner’s acquisition of the Unit occurred on ____________________.

   b. The purchase price that Buyer/Owner is paying for the Unit is $ ____________.

   c. The Unit contains _____ bedrooms.
d. The Unit contains _____ square feet of heated living space.

e. The price for the home when it was sold from the developer to the first homebuyer in _______ (year of first sale of the home) was $_____________.

It is understood that future sales of the Unit will be limited to the Maximum Resale Price.

4. Buyer/Owner hereby specifically acknowledges and agrees to the following provisions as set forth in the Deed Restriction and Agreement:

a. That the Unit can only be sold to a Qualified Buyer in accordance with the terms of the Deed Restriction and Agreement.

b. That nothing contained in this Memorandum, or the Deed Restriction and Agreement shall be construed to constitute a representation or guarantee by the Declarant, as the same is defined in the Deed Restriction and Agreement, HomesFund, or the City of Durango, that upon resale the Buyer/Owner shall obtain the Maximum Resale Price, as the same is defined in the Deed Restriction and Agreement.

d. That it shall be a breach of the Deed Restriction and Agreement for the Buyer/Owner of the Unit to default in payment or other obligations due or to be performed under a promissory note secured by any deed of trust or mortgage encumbering the Unit, including the First Deed of Trust, or to fail to pay any real property taxes or homeowners’ assessments as the same become due.

e. That the Owner of the Unit may only refinance a loan secured by a First Deed of Trust on the Unit with written permission of HomesFund, and that the terms of the refinance must meet the requirements set forth in the Deed Restriction and Agreement.

5. The address of Owner is as follows:

6. This Memorandum shall be recorded in the Office of the Clerk and Recorder of La Plata County, Colorado.

IN WITNESS WHEREOF, the undersigned Owner(s) has/have executed this Memorandum of Acceptance on the date set forth opposite his/her signature.

<table>
<thead>
<tr>
<th>Owner</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Owner</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

STATE OF COLORADO  )

) ss.

COUNTY OF LA PLATA  )

17

82
The above and foregoing document was acknowledged before me this ___ day of _________________, 20___ by ____________________ and ____________________.

Witness my hand and official seal.

____________________________
Notary Public

My commission expires: _________________.
EXHIBIT C

PERMITTED CAPITAL IMPROVEMENTS

1. The “Permitted Capital Improvements” as used in the Agreement shall only include the following:

   a. Increased heated living space added to the Unit.

      i. Receipts for Permitted Capital Improvements shall be reported to HomesFund no later than 180 calendar days after the improvement is made. Failure to provide such evidence within the timeframe stated above shall disqualify any such improvements from being considered a Permitted Capital Improvement.

   b. Other capital improvements that materially benefit the Unit and are approved, in writing, by HomesFund prior to their installation.

2. Permitted Capital Improvements as used in this Agreement shall NOT include any items that are not approved in accordance with paragraph 1 above, examples of such items, include but are not limited to the following:

   a. Upgrades/replacements of appliances, plumbing and mechanical fixtures, carpets, and other similar items included as part of the original construction of the unit;

   b. Improvements required to repair, replace and maintain existing fixtures, appliances, plumbing, and mechanical fixtures, painting, carpeting, and other similar items;

   c. Upgrades or addition of decorative items, including lights, window coverings, floor coverings, and other similar items; or

   d. Jacuzzis, spas, saunas, steam showers, and other similar items.

3. In order to qualify as Permitted Capital Improvements, the Owner must furnish to HomesFund, in a form acceptable to HomesFund in its or their sole and absolute discretion, the following information with respect to the improvements which the Owner seeks to include in the calculation of Maximum Resale Price:

   a. Original or duplicate receipts to verify the actual costs expended by the Owner for the Permitted Capital Improvements;

   b. Owner’s affidavit verifying that the receipts tendered are valid and correct; and

   c. True and correct copies of any building permit or certificate of occupancy required to be issued by the City of Durango, or such other City as jurisdiction requires, with respect to the Permitted Capital Improvements.

4. In calculating the costs under paragraph 3 above only the Owner’s actual out-of-pocket costs and expenses shall be eligible for inclusion. Such amount shall not include any amounts attributable to Owner’s “sweat equity” or to any appreciation in the value of the improvements.
5. All Permitted Capital Improvement items and costs must be approved by HomesFund prior to being added to the Maximum Resale Price as defined herein.

6. No Permitted Capital Improvements shall be made to a Unit unless said improvements comply with the CC&Rs and have been approved by the Declarant and/or Board of Directors as provided in the CC&Rs.
Date: March 1, 2024

AGREEMENT

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

2. PARTIES AND PROPERTY.

2.1. Buyer. __City of Durango__ (Buyer) will take title to the Property described below as [ ] Joint Tenants [ ] Tenants In Common [X] Other __Sole Owner___________.

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

2.3. Seller. ACPO, LLC (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 La Plata, Colorado (insert legal description):

Unit __501__, Building __A2__, Animas City Park Overlook Townhomes according to the plat thereof recorded __12/07/2023__ at Reception No. __1228146__ in the County of La Plata, State of Colorado.

The legal description of the Property will be automatically updated by the Title Company.

known as: __166 E 33rd Street, #501__, __Durango__, __Colorado__, __81301__,
Street Address City State Zip
together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto and all interest of Seller in vacated streets and alleys adjacent thereto, except as herein excluded (Property).

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

2.5.1. Inclusions – Attached. If attached to the Property on the date of this Contract, the following items are included unless excluded under 2.6 Exclusions: lighting, heating, plumbing, ventilation and air conditioning units, vanity mirrors, kitchen appliances (refrigerator, dishwasher, range, microwave, washer & dryer), window screens, smoke/fire detectors and all keys.

2.6. Exclusions. The following items are excluded (Exclusions): None.

2.7. Water Rights/Well Rights. OMITTED AS INAPPLICABLE. CITY WATER SERVES PROPERTY.

3. DATES, DEADLINES AND APPLICABILITY.

3.1. Dates and Deadlines.

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Reference</th>
<th>Event</th>
<th>Date or Deadline</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>§ 3</td>
<td>Time of Day Deadline</td>
<td>5:00 PM Mountain Standard Time</td>
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<tr>
<td>2</td>
<td>§ 4</td>
<td>Alternative Earnest Money Deadline</td>
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<td></td>
<td></td>
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<tr>
<td>3</td>
<td>§ 8</td>
<td>Record Title Deadline (and Tax Certificate)</td>
<td>March 25, 2024</td>
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<td>4</td>
<td>§ 8</td>
<td>Record Title Objection Deadline</td>
<td>March 27, 2024</td>
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<td>5</td>
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<td>Off-Record Title Deadline</td>
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<td>6</td>
<td>§ 8</td>
<td>Off-Record Title Objection Deadline</td>
<td>March 27, 2024</td>
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<tr>
<td>Section</td>
<td>Title</td>
<td>Deadline/Information</td>
<td></td>
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<tr>
<td>---------</td>
<td>----------------------------------------------------------------------</td>
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<tr>
<td>8</td>
<td>Title Resolution Deadline</td>
<td>March 29, 2024</td>
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<tr>
<td>8</td>
<td>Third Party Right to Purchase/Approve Deadline</td>
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<td>7</td>
<td>Association Documents Deadline</td>
<td>March 20, 2024</td>
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<td>7</td>
<td>Association Documents Termination Deadline</td>
<td>March 22, 2024</td>
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<td>10</td>
<td>Seller’s Property Disclosure Deadline</td>
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<td>Lead-Based Paint Disclosure Deadline</td>
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<td>5</td>
<td>New Loan Terms Deadline</td>
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<td>New Loan Availability Deadline</td>
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<td>Loan Transfer Approval Deadline</td>
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<td>Seller or Private Financing Deadline</td>
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<td>Appraisal Resolution Deadline</td>
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<td>New ILC or New Survey Deadline</td>
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<td>Mineral Rights Examination Deadline</td>
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<td>10</td>
<td>Inspection Termination Deadline</td>
<td>March 22, 2024</td>
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<td>Inspection Objection Deadline</td>
<td>March 20, 2024</td>
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<td>Inspection Resolution Deadline</td>
<td>March 21, 2024</td>
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<td>Property Insurance Termination Deadline</td>
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<td>Due Diligence Documents Delivery Deadline</td>
<td>March 18, 2024</td>
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<td>Due Diligence Documents Objection Deadline</td>
<td>March 20, 2024</td>
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<td>10</td>
<td>Due Diligence Documents Resolution Deadline</td>
<td>March 19, 2024</td>
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<td>Conditional Sale Deadline</td>
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<td>Lead-Based Paint Termination Deadline</td>
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<td>12</td>
<td>Closing Date</td>
<td>March 29, 2024</td>
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<tr>
<td>17</td>
<td>Possession Date</td>
<td>At Closing</td>
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<tr>
<td>17</td>
<td>Possession Time</td>
<td>At Closing</td>
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<tr>
<td>27</td>
<td>Acceptance Deadline Date</td>
<td>March 18, 2024</td>
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<tr>
<td>27</td>
<td>Acceptance Deadline Time</td>
<td>5:00 pm</td>
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</tbody>
</table>

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

The abbreviation “MEC” (mutual execution of this Contract) means the date upon which both parties have signed this Contract. The abbreviation “N/A” as used in this Contract means not applicable.
3.3. Day; Computation of Period of Days; Deadlines.

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

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

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

4. PURCHASE PRICE AND TERMS.

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

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Reference</th>
<th>Item</th>
<th>Amount</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>§ 4.1.</td>
<td>Purchase Price</td>
<td>$ 547,000.00</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>§ 4.3.</td>
<td>Earnest Money</td>
<td>$ DETERMINED</td>
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<tr>
<td>3</td>
<td>§ 4.5.</td>
<td>New Loan</td>
<td>$ DETERMINED</td>
<td>BY BUYER AND LENDER</td>
</tr>
<tr>
<td>4</td>
<td>§ 4.6.</td>
<td>Assumption Balance</td>
<td>$ n/a</td>
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<tr>
<td>5</td>
<td>§ 4.7.</td>
<td>Private Financing</td>
<td>$ n/a</td>
<td></td>
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<tr>
<td>6</td>
<td>§ 4.7.</td>
<td>Seller Financing</td>
<td>$ n/a</td>
<td></td>
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<tr>
<td>7</td>
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<td></td>
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<td>8</td>
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<tr>
<td>9</td>
<td>§ 4.4.</td>
<td>Cash at Closing</td>
<td>$ TBD (Purchase</td>
<td>$ 547,000.00</td>
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<td>Price Less Loan</td>
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<td></td>
<td>and Earnest</td>
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<td></td>
<td></td>
<td>Money)</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td></td>
<td><strong>TOTAL</strong></td>
<td><strong>$ 547,000.00</strong></td>
<td><strong>$ 547,000.00</strong></td>
</tr>
</tbody>
</table>

4.2. Seller Concession. OMITTED AS INAPPLICABLE.

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

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

4.3.2. Disposition of Earnest Money. n/a

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

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

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

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

4.5. New Loan.

4.5.1. Buyer to Pay Loan Costs. Buyer, except as otherwise permitted in § 4.2. (Seller Concession), if applicable, must timely pay Buyer’s loan costs, loan discount points, prepaid items and loan origination fees as required by lender.
4.5.2. **Buyer May Select Financing.** Buyer may pay in cash or select financing appropriate and acceptable to Buyer, including a different loan than initially sought, except as restricted in § 4.5.3. (Loan Limitations) or § 29 (Additional Provisions).

4.5.3. **Loan Limitations.** Buyer may purchase the Property using any of the following types of loans:
- [ ] Conventional
- [ ] FHA
- [ ] VA
- [ ] Bond
- [ ] Other

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

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

4.6. **Assumption.** OMITTED AS INAPPLICABLE.

4.7. **Seller or Private Financing.** OMITTED AS INAPPLICABLE.

## TRANSACTION PROVISIONS

### 5. FINANCING CONDITIONS AND OBLIGATIONS.

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

5.2. **New Loan Terms; New Loan Availability.**

5.2.1. **New Loan Terms.** If Buyer is to pay all or part of the Purchase Price with a New Loan, this Contract is conditional upon Buyer determining, in Buyer’s sole subjective discretion, whether the proposed New Loan’s payments, interest rate, conditions and costs or any other loan terms (New Loan Terms) are satisfactory to Buyer. This condition is for the sole benefit of Buyer. Buyer has the Right to Terminate under § 24.1., on or before **New Loan Terms Deadline**, if the New Loan Terms are not satisfactory to Buyer, in Buyer’s sole subjective discretion.

5.2.2. **New Loan Availability.** If Buyer is to pay all or part of the Purchase Price with a New Loan, this Contract is conditional upon Buyer’s satisfaction with the availability of the New Loan based on the lender’s review and underwriting of Buyer’s New Loan Application (New Loan Availability). Buyer has the Right to Terminate under § 24.1., on or before **New Loan Availability Deadline** if the New Loan Availability is not satisfactory to Buyer. Buyer does not have a Right to Terminate based on the New Loan Availability if the termination is based on the New Loan Terms, Appraised Value (defined below), the Lender Property Requirements (defined below), Insurability (§ 10.5. below) or the Conditional Upon Sale of Property (§ 10.7. below). IF SELLER IS NOT IN DEFAULT AND DOES NOT TIMELY RECEIVE BUYER’S WRITTEN NOTICE TO TERMINATE, BUYER’S EARNEST MONEY WILL BE NONREFUNDABLE, except as otherwise provided in this Contract (e.g., Appraisal, Title, Survey).

5.3. **Credit Information.** OMITTED AS INAPPLICABLE

5.4. **Existing Loan Review.** OMITTED AS INAPPLICABLE

6. **APPRaisal PROVISIONS.**

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

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

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

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

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

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

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

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

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

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

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


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

7.3. Association Documents. Association documents (Association Documents) consist of the following, to the extent available as the Association has not yet been formed:

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

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

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

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

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

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

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

8.1. Evidence of Record Title.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8.8.1. Oil, Gas, Water and Mineral Disclosure. The Surface Estate of the Property may be owned separately from the underlying Mineral Estate and Transfer of the Surface Estate may not necessarily include transfer of the Mineral Estate or Water Rights. Third Parties May Own or Lease Interests in Oil, Gas, Other Minerals, Geothermal Energy or Water On or Under the Surface of the Property, Which Interests May Give Them Rights to Enter and Use the Surface of the Property to Access the Mineral Estate, Oil, Gas or Water.

8.8.2. Surface Use Agreement. The Use of the Surface Estate of the Property to Access the Oil, Gas or Minerals may be governed by a Surface Use Agreement, a Memorandum or Other Notice of Which May Be Recorded with the County Clerk and Recorder.

8.8.3. Oil and Gas Activity. Oil and Gas Activity that may occur on or adjacent to the Property may include, but is not limited to, Surveying, Drilling, Well Completion Operations, Storage, Oil and Gas, or Production Facilities, Producing Wells, Reworking of Current Wells and Gas Gathering and Processing Facilities.

8.8.4. Additional Information. Buyer is encouraged to seek additional information regarding oil and gas activity on or adjacent to the Property, including Drilling Permit Applications. This information may be available from the Colorado Oil and Gas Conservation Commission.

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

8.9. Mineral Rights Review. Buyer □ Does □ Does Not have a Right to Terminate if examination of the Mineral Rights is unsatisfactory to Buyer on or before the Mineral Rights Examination Deadline.

9. NEW ILC, NEW SURVEY.

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

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

9.1.2. Payment for New ILC or New Survey. The cost of the New ILC or New Survey will be paid, on or before Closing, by: □ Seller □ Buyer or:

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

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

9.2. Buyer’s Right to Waive or Change New ILC or New Survey Selection. OMITTED AS INAPPLICABLE.

9.3. New ILC or New Survey Objection. OMITTED AS INAPPLICABLE.

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

9.3.2. New ILC or New Survey Objection. OMITTED AS INAPPLICABLE.

9.3.3. New ILC or New Survey Resolution. OMITTED AS INAPPLICABLE.
10. PROPERTY DISCLOSURE, INSPECTION, INDEMNITY, INSURABILITY, DUE DILIGENCE AND SOURCE OF WATER.

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

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

10.3. Inspection. SEE ADDENDUM.

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

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

10.6. Due Diligence.

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

10.6.1.1. Occupancy Agreements. All current leases, including any amendments or other occupancy agreements, pertaining to the Property. Those leases or other occupancy agreements pertaining to the Property that survive Closing are as follows (Leases): None.

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

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

10.6.1.4. Other Documents. Other documents and information: Plans and Specifications; Association Documents

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

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

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

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

10.7. Conditional Upon Sale of Property. OMITTED AS INAPPLICABLE.


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

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

10.10. Lead-Based Paint.

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

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

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

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

11. TENANT ESTOPPEL STATEMENTS. [Intentionally Deleted]

CLOSING PROVISIONS

12. CLOSING DOCUMENTS, INSTRUCTIONS AND CLOSING.

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

12.2. Closing Instructions. Colorado Real Estate Commission’s Closing Instructions ☒ Are ☐ Are Not executed with this Contract.

12.3. Closing. Delivery of deed from Seller to Buyer will be at closing (Closing). Closing will be on the date specified as the Closing Date or by mutual agreement at an earlier date. At Closing, Seller agrees to deliver a set of keys for the Property to Buyer. The hour and place of Closing will be as designated by Land Title Guarantee Company.

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

12.5. Assignment of Leases. Seller must assign to Buyer all Leases at Closing that will continue after Closing and Buyer must assume Seller’s obligations under such Leases. Further, Seller must transfer to Buyer all Leased Items and assign to Buyer such leases for the Leased Items accepted by Buyer pursuant to § 2.5.7. (Leased Items).
13. TRANSFER OF TITLE. Subject to Buyer’s compliance with the terms and provisions of this Contract, including the tender of any payment due at Closing, Seller must execute and deliver the following good and sufficient deed to Buyer, at Closing: ☒ special warranty deed ☐ general warranty deed ☐ bargain and sale deed ☐ quit claim deed ☐ personal representative’s deed ☐ ______________ deed. Seller, provided another deed is not selected, must execute and deliver a good and sufficient special warranty deed to Buyer, at Closing.

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

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

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

15.1. Closing Costs. Buyer and Seller must pay, in Good Funds, their respective closing costs and all other items required to be paid at Closing, except as otherwise provided herein. However, if Buyer’s loan specified in §4.5.3. (Loan Limitations) prohibits Buyer from paying for any of the fees contained in this Section, the fees will be paid for by Seller.

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

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

15.3.1. Status Letter Fee. Any fee incident to the issuance of Association’s Status Letter must be paid by ☐ Buyer ☐ Seller ☒ One-Half by Buyer and One-Half by Seller ☐ N/A.

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

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

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

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

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

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

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

☐ Water Stock/Certificates ☐ Water District
☐ Augmentation Membership ☐ Small Domestic Water Company

and must be paid at Closing by ☐ Buyer ☐ Seller ☒ One-Half by Buyer and One-Half by Seller

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

15.9. FIRPTA and Colorado Withholding.

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

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

16. PRORATIONS AND ASSOCIATION ASSESSMENTS.

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

16.1.1. Taxes. Personal property taxes, if any, special taxing district assessments, if any, and general real estate taxes for the year of Closing, based on Taxes for the Calendar Year Immediately Preceding Closing and Most Recent Assessed Valuation, adjusted by any applicable qualifying seniors property tax exemption, qualifying disabled veteran exemption or Other.

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

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

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

16.2. Association Assessments. Current regular Association assessments and dues (Association Assessments) paid in advance will be credited to Seller at Closing. Cash reserves held out of the regular Association Assessments for deferred maintenance by the Association will not be credited to Seller except as may be otherwise provided by the Governing Documents. Buyer acknowledges that Buyer may be obligated to pay the Association, at Closing, an amount for reserves or working capital. Any special assessment assessed prior to Closing by the Association will be the obligation of Buyer. Except however, any special assessment by the Association for improvements that have been installed as of the date of Buyer’s signature hereon, whether assessed prior to or after Closing, will be the obligation of Seller unless otherwise specified in Additional Provisions. Seller represents there are no unpaid regular or special assessments against the Property except the current regular assessments and . Association Assessments are subject to change as provided in the Governing Documents.

17. POSSESSION. Possession of the Property and Inclusions will be delivered to Buyer on Possession Date at Possession Time, subject to the Leases as set forth in § 10.6.1. and, if applicable, any Post-Closing Occupancy Agreement.

If Seller, after Closing occurs, fails to deliver possession as specified, Seller will be subject to eviction and will be additionally liable to Buyer, notwithstanding § 20.2. (If Seller is in Default), for payment of $100.00 per day (or any part of a day) from Possession Date and Possession Time until possession is delivered.

Buyer represents that Buyer will occupy the Property as Buyer’s principal residence unless the following box is checked, then Buyer Does Not represent that Buyer will occupy the Property as Buyer’s principal residence.

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

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

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

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

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

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

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

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

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

20.1. If Buyer is in Default:

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

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

20.2. If Seller is in Default:

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

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

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

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

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

24. TERMINATION.

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

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

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

26. NOTICE, DELIVERY AND CHOICE OF LAW.

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

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

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

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

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

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

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

SEE CONTRACT ADDENDUM ATTACHED HERETO AND INCORPORATED HEREIN

30. OTHER DOCUMENTS.

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

a. Animas City Park Overlook Townhomes Contract Addendum.


30.2. Documents Not Part of Contract. The following documents have been provided but are not a part of this Contract:

- All Marketing Materials, photographs and preliminary site plans which are Not the Plans and Specifications.

SIGNATURES

Buyer’s Name: City of Durango

Buyer’s Name:____________________

[Signature]

3/13/2024

Buyer’s Signature: José R. Madrigal

Buyer’s Signature: ____________________

3/13/2024

Address: 949 E. 2nd Avenue

Durango, CO 81301

Address: _________________________

Phone No.: 970-375-5009

Fax No.: _________________________

Email Address: Jose.madrigal@durangoco.gov

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

Seller’s Name: Mark Williamson

Seller’s Name: Tracy L. Reynolds

Seller’s Signature: Mark Williamson

Seller’s Signature: Tracy L. Reynolds

3/13/2024

3/14/2024

Address: 564 E 2nd Ave, Unit 101

Durango, CO 81301

Address: 564 E 2nd Ave, Unit 201

Durango, CO 81301

Phone No.: 970-946-3155

Fax No.: Na

Email Address: mark@agavedurango.com

Phone No.: 970-259-7494

Fax No.: Na

Email Address: treynolds@ra-ae.com

END OF CONTRACT TO BUY AND SELL REAL ESTATE

BROKER’S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.
SELLER IS NOT REPRESENTED BY A BROKER AND IS NOT RESPONSIBLE FOR PAYMENT OF BROKER COMMISSIONS.

A. Broker Working With Buyer

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

Broker is working with Buyer as a ☒ Buyer’s Agent □ Transaction-Broker in this transaction.

□ Customer. Broker has no brokerage relationship with Buyer. See § B for Broker’s brokerage relationship with Seller.

Brokerage Firm’s compensation or commission is to be paid by □ Listing Brokerage Firm ☒ Buyer □ Other _____________________.

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

Brokerage Firm’s Name:
Brokerage Firm’s License #:
Broker’s Name:
Broker’s License #:

Broker’s Signature Date

Address:

Phone No.:
Fax No.:
Email Address:

B. Broker Working with Seller OMITTED AS INAPPLICABLE.
AGREEMENT TO AMEND/EXTEND CONTRACT

Date: 03/27/2024

1. This agreement amends the contract dated 03/01/2024 (Contract) between ACPO LLC (Seller) and City of Durango (Buyer) relating to the sale and purchase of the following legally described real estate in the County of LA PLATA, Colorado (insert legal description): TBD

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<th>Reference</th>
<th>Event</th>
<th>Date or Deadline</th>
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<td>Time of Day Deadline</td>
<td>03/27/2024</td>
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<td>§ 8</td>
<td>Record Title Deadline (and Tax Certificate)</td>
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<td>§ 7</td>
<td>Association Documents Deadline</td>
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<td>Association Documents Termination Deadline</td>
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<td>Seller’s Property Disclosure Deadline</td>
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<td>Lead-Based Paint Disclosure Deadline</td>
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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.]
3. Other dates or deadlines set forth in the Contract are changed as follows:

4. Additional amendments:

All other terms and conditions of the Contract remain the same.

This proposal expires unless accepted in writing by Seller and Buyer as evidenced by their signatures below and the offering party to this document receives notice of such acceptance on or before March 28, 2024.
Buyer’s Name: José R. Madrigal

Buyer’s Signature

Date: 3/27/2024

Buyer’s Name: ________________________________

Buyer’s Signature

Date

Seller’s Name: ________________________________

Seller’s Signature

Date

DocuSign Envelope ID: 6EF5F781-C7D0-454F-BEFC-BE8B465DA082

José R. Madrigal

Jose Madrigal
1. PLANS AND SPECIFICATIONS; STANDARD INTERIOR FINISHES. The Contract Purchase Price includes the improvements comprising the Plans and Specifications and Standard Interior Finishes. Seller shall construct improvements upon the Property in substantial conformance with the Plans and Specifications as amended from time to time. The Plans and Specifications will be initialized by both Buyer and Seller and incorporated into and made a part of the Contract. Any material modification to the Plans and Specifications which would result in a material change in the scope of work shall result in a change order (“Change Order”) being issued. Seller may make minor modifications to Plans and Specification as necessary to facilitate construction of improvements. Seller has sole discretion with respect to choosing vendors, suppliers and manufacturers of finishes and appliances. Seller, in its discretion, has the right to make substitutions and modifications to the items comprising the Standard Interior Finishes. Buyer does NOT have the right to make modifications or substitutions to the Standard Interior Finishes.

2. NON-REFUNDABILITY OF EARNEST MONEY. n/a

3. ASSOCIATION WORKING CAPITAL FEE. Buyer shall pay to the Association at Closing a $500.00 working capital fee as required by the Declaration.

4. CLOSING; SUBSTANTIAL COMPLETION. Substantial Completion is defined as completion in accordance with the Plans and Specifications and issuance of a Certificate of Occupancy. Seller intends to achieve Substantial Completion of the Property by March 8, 2024 or sooner. Given current uncertainty in the marketplace, including the potential for delays in obtaining materials, labor shortages, pandemic issues and an event of force majeure, which prevents or restricts Seller from performing its obligations under this Contract, Seller has the sole discretion to extend the date of Closing for up to an additional 90 days with prior written notice to Buyer.

5. WALK-THROUGH INSPECTION AND PUNCH LIST. Buyer shall schedule and conduct a walk-through inspection of the Property for the purpose of preparing a punch list (the “Punch List”) identifying incomplete or defective items. To the extent reasonably practical, all Punch List items will be completed by Seller prior to Closing. Punch list items not completed by Closing, and which do not materially affect occupancy, will be completed within sixty (60) days of Closing. Buyer acknowledges that no further requests for modifications, additions or deletions to the Property may be made by Buyer after the date of Closing.

6. CONTROL OF CONSTRUCTION. Control, direction, and supervision of all construction personnel at the construction site will lie exclusively with Seller, and Buyer shall not issue any instructions to or otherwise interfere with construction personnel. Buyer may not visit the site unless accompanied by Seller or by one of Seller’s designated agents. Buyer will not perform any work or contract with Seller’s contractors or other builders, contractors, interior decorators, or others to perform work in or about the Property before Closing without Seller’s prior written consent. Buyer will indemnify, defend, and hold Seller and its contractors, subcontractors, and agents harmless against any claims, demands, losses, damages, liabilities, or other expenses that they may incur by reason or Buyer’s breach of any provision of this Section 7.

7. MARKETING MATERIALS. Buyer acknowledges that any advertisements, brochures, and other written statements (the “Marketing Materials”) which he/she may have read in connection with this purchase are not warranties or guarantees as to the condition of the Unit and shall not be relied upon by Buyer as such. The only representations or warranties made by Seller in connection with the Property are the limited representations and warranties contained in this Contract. The Unit finishes, including but not limited to, all colors, materials, components,
and appliances will consist only of the items described in Standard Interior Finishes and the Unit will be constructed in conformance with the Plans and Specifications and not in accordance with Marketing Materials.

8. **DEED-RESTRICTED UNITS.** Within the Animas City Park Townhomes common interest community, four (4) of the Units will be income-restricted and up to six (6) of the Units will be restricted to workforce housing (collectively, the “Restricted Units”) with said restrictions to be administered and enforced by the City of Durango and HomesFund, a Colorado non-profit organization. A Buyer of a Restricted Unit must meet the eligibility requirements for purchase of a Restricted Unit in accordance with the criteria established by the City and HomesFund. Seller is not responsible for ensuring Buyer meets the requisite qualifications of ownership and Seller and the community Association will not be responsible for enforcing the terms, conditions and restrictions of the Restricted Units. Buyers should work directly with the City and HomesFund to determine feasibility of purchase and impact of the restrictions on Buyer’s ownership of a Restricted Unit. Buyer will be required to execute, at Closing, agreements expressly relating to the Restricted Units.

9. **LIMITED WARRANTY.** Seller warrants that all material incorporated in and made a part of the Property shall be new as of the date of installation and shall remain free from defect in workmanship or quality for a period of one year from the date of Closing. Seller represents that Seller will cause to be remedied, by repair or replacement, any structural defects in the Property that Buyer discovers within one year after the date of Closing and that result from faulty material or workmanship, provided that Buyer gives Seller written notice of any such defect within ten days after Buyer’s discovery of the defect. Any such notice shall be addressed to Seller at Seller’s address set forth in this contract, or such other address for notice furnished to Buyer. Seller’s warranty excludes remedy for damage or defect caused by abuse or alterations to the improvement not performed by the Seller, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage. Buyer’s sole remedy (in lieu of all remedies implied by law or otherwise) against Seller in connection with such defects shall be to require Seller to correct the defect in material or workmanship. This limited warranty does not extend to any items of tangible personal property in the Property. Seller will assign to Buyer at Closing any unexpired warranties that Seller has received from the manufacturer of any tangible personal property (whether or not such property is attached to or installed in the Property), including, without limitation, any range, oven, range hood and fan, microwave, garbage disposal, and dishwasher, and which are then in effect, to the extent they are assignable. **SELLER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO THE FITNESS, DESIGN OR CONDITION OF SUCH ITEMS OF TANGIBLE PERSONAL PROPERTY, THEIR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
ANIMAS CITY PARK OVERLOOK
STANDARD INTERIOR FINISHES
December 1, 2022

FLOORING
Lower level and bathrooms: Vinyl plank flooring; neutral color
Upper level: Carpet; neutral color

CABINETRY
All cabinets: Decorative Laminate Veneer by Karman; neutral color

COUNTERTOPS
All countertops: 2cm Quartz; neutral color

APPLIANCES
Refrigerator: 27.0 cu.ft. French door. Stainless Steel.
Range: 30” free standing electric convection range & oven. Stainless Steel.
Microwave: Over-the-range with exhaust fan. 1.6 cu. ft. Stainless Steel.
Dishwasher: Front controls. Stainless Steel.

PLUMBING & ELECTRICAL FIXTURES
Standard plumbing fixtures.
Standard electrical fixtures.
WHATSOEVER NOR ARE THEY TO BE ASSIGNED TO ANY THIRD PARTY WITHOUT FIRST OBTAINING WRITTEN PERMISSION AND CONSENT OF THE ARCHITECT OF RECORD. THE USE OF THESE PLANS AND SPECIFICATIONS SHALL BE RESTRICTED TO THE ORIGINAL SITE FOR WHICH THEY WERE PREPARED AND PUBLICATION THEREOF IS EXPRESSLY LIMITED TO SUCH USE. FEDERAL LAW PROHIBITS THE REPRODUCTION, DISPLAY, SALE, OR OTHER DISPOSITION OF THIS DOCUMENT WITHOUT THE EXPRESS WRITTEN CONSENT OF RA+A ARCHITECTS, P.C. COPYRIGHT AND OTHER PROPERTY RIGHTS IN THESE PLANS. THESE PLANS ARE NOT TO BE CHANGED OR COPIED IN ANY FORM OR MANNER EXPRESSLY RESERVES THE COMMON LAW

#501 - #502 NORTH ELEVATION

#501 - #502 SOUTH ELEVATION

#501 - #502 EAST ELEVATION

#501 - #502 WEST ELEVATION
TO: DURANGO CITY COUNCIL  
FROM: SCOTT L. SHINE, AICP  
COMMUNITY DEVELOPMENT DIRECTOR

SUBJECT: AUTHORIZATION FOR THE MAYOR TO SIGN A SUPPORT LETTER FOR A RURAL ECONOMIC DEVELOPMENT INITIATIVE (REDI) GRANT APPLICATION TO CREATE A REGIONAL CHILDCARE INVESTMENT STRATEGY IN PARTNERSHIP WITH LA PLATA ECONOMIC DEVELOPMENT ALLIANCE

RECOMMENDATION

It is the recommendation of the Community Development and Finance Departments that City Council, by motion, Approve the submission of an application to the Colorado Department of Local Affairs REDI grant program to support the Alliance’s Childcare Investment Strategy project and authorize the Mayor to sign the grant submission support letter.

BACKGROUND SUMMARY

The purpose of this agenda item is to request support for the submission of an application to the Colorado Department of Local Affairs (DOLA) Rural Economic Development Initiative (REDI) grant program to support the La Plata County Economic Development Alliance (Alliance) in their efforts to coordinate a regional Childcare Investment Strategy. The Alliance, through the City-sponsored application, is requesting a $55,000 grant from DOLA. DOLA requires that a local government be the grant applicant and oversee administration of the funding, if awarded.

The City and the Alliance have a history of successful partnership in supporting local initiatives. This proposal is designed to be a productive collaborative endeavor for both organizations and the entire region. The project is to create a multi-phase Childcare Investment Strategy to help identify critical actions to take regarding essential childcare services. This Strategy would be developed in collaboration with a variety of local non-profits and community organizations. The emphasis is on developing actionable, viable strategies to help retention and recruitment of essential workforce as it relates to their childcare needs.

Attached to this agenda documentation is a draft of the cover letter to be signed by the Mayor once it is finalized.

STRATEGIC PLAN ALIGNMENT

This action will support the Strategic Plan goal of ‘Affordability & Economic Opportunity’.

ALTERNATIVE OPTIONS CONSIDERED

The City could not serve as the fiscal agent for the grant and that would require the Alliance to find other funding for this project.

FISCAL IMPACT

The REDI grant requires a match of at least 20% of grant proceeds. The Alliance will secure the required match from other community organizations. There is no direct financial contribution towards the match requirement being requested from the City at this time. There is a small commitment of staff time to assist the Alliance in reporting on grant activities to DOLA.

POSSIBLE ADVERSE IMPACTS

None.

NEXT STEPS AND TIMELINE

Staff will provide the support letter to DOLA and expects to hear back on whether or not the grant is approved by the end of June. If the grant is awarded, staff will come back to Council with budget appropriation documents to ensure proper accounting and transparency.
April 2, 2024

Kate Guibert, Rural Prosperity Manager
Kate.guibert@state.co.us
(720) 822-7803

RE: REDI Grant Application for Durango Childcare Investment Strategy Development Project

Dear Ms. Guibert:

The City of Durango is grateful for the support that the Department of Local Affairs (DOLA) offers to communities across Colorado. Financial and technical assistance from DOLA has played an integral role in helping the City of Durango and the surrounding region thrive. We look forward to continuing to work together to strengthen our community, our region, and our state. The City of Durango is very pleased to be supporting this collaborative grant application for a program that is ready to deploy immediately which will contribute substantially to the resiliency and health of the entire southwest region.

The City of Durango is excited to be requesting a Rural Economic Development Initiative (REDI) Grant of $55,000 to develop a Childcare Investment Strategy for the La Plata County region. This project is a collaboration between the City of Durango, the Early Childhood Council of La Plata County (ECC), La Plata Economic Development Alliance (Alliance), and the Regional Housing Alliance (RHA) of La Plata County. The project will build off of the success of the 2021 REDI Grant - Durango Project Workforce Housing Investment Strategy Development.

This REDI grant will help fund a multi-phase childcare survey and investment plan to inform our public entities on how and when to make financial investments to address childcare issues. The emphasis would be on viable strategies and public-private partnerships to help retention and development of essential childcare services as they relate to the needs of the population.

The information in the application should provide all the details you need to evaluate the request. Please let us know if you need anything else at this time. Thank you in advance for your consideration of this request.

Sincerely,

Melissa Youssef
Mayor of Durango