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.

CITY COUNCIL REGULAR MEETING
DURANGO CITY HALL, SMITH CHAMBERS
06/04/2024
5:30 PM

MAYOR
Jessika Buell

MAYOR PRO-TEM
Gilda Yazzie

CITY COUNCILORS
Olivier Bosmans – David Woodruff
Melissa Youssef

CITY MANAGER
José Madrigal

ASSISTANT CITY MANAGERS
Bob Brammer and Erin Hyder

CHIEF OF POLICE
Brice Current, 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

MISSION
We provide outstanding services and experiences for the entire community.

VISION
A multigenerational community which is authentic, diverse, engaged, thriving and environmentally responsible.

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

STRATEGIC GOALS
- Organizational Stewardship (OS)
- Innovative Housing & Economic Development (IHED)
- Safety & Quality of Life (SQL)
- Reliable Infrastructure & Community Connectivity (RICC)
- Engaged & Informed Community (EIC)
- Strategic Workforce Development (SWD)
1. CALL TO ORDER AND ROLL CALL - 5:30 p.m.

2. INTRODUCTION OF TRANSLATOR

3. OPENING REMARKS BY MAYOR AND COUNCIL - Information Only

4. PRESENTATIONS/PROCLAMATIONS - Information Only
   4.1. Parks and Recreation Month Proclamation

5. CITY MANAGER UPDATES - Information Only

6. COMMITTEE, BOARD AND LIAISON REPORTS - Information Only

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

8. CONSENT AGENDA - Action Items without discussion - 5:45 p.m.
   8.1. Approval of Meeting Minutes - NO ITEMS
   8.2. Final Reading of Ordinances
      8.2.1. Final Reading of Ordinance O 2024 0007 for an Easement for La Plata Electric Association to Service the Durango-La Plata County Airport - RICC - Submitted by Community Development
      8.2.2. Final Reading of Ordinance O 2024 0008 for Land Use and Development Code Text Amendments Regarding Minor Updates to Floodplain Program and Other Code Provisions - SQL & RICC - Submitted by Community Development
   8.3. Adoption of Resolution(s) by Consent NO ITEMS
   8.4. Approval of Other Administrative Items NO ITEMS
   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

10. LAND USE AND DEVELOPMENT - Action Items with Discussion - 6:00 p.m.
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://durangoco.gov/zoom. If this link fails, please copy and paste into your browser.
10.1. A Public Hearing and First Reading of an Ordinance for an Easement for Clearnetworx to Service the Durango-La Plata County Airport - RICC - Submitted by Community Development

10.2. Public Hearing & First Reading of an Ordinance for the Sale of City-Owned Property Located at 166 E. 33rd Street for Conveyance of Real Property - IHED - Submitted by Community Development

10.3. A Resolution to Approve the Southfork Starbucks Preliminary Development Plan - IHED - Submitted by Community Development

11. RESOLUTIONS - CONSIDERATION OF ADOPTION - Action Items with discussion - 6:30 p.m.

11.1. A Resolution to Approve the Settlement of a Case Concerning the Application of Water Rights Filed by Patrick and Rachel Cain, Specifically 23CW3050, in La Plata County District Court - FEHPG - Submitted by the City Attorney

11.2. A Resolution Authorizing the City Manager to Execute the Purchase Agreement and all Related Documents to Finalize the Purchase of Buckley Park from the Durango 9R School District - FEHPG - Submitted by the City Manager's Office

11.3. A Resolution to Give Direction Regarding Tax-Re-Authorization and Bond Financing - FEHPG - Submitted by Finance

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

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

15. OTHER NEW BUSINESS - Non-Dispositive with limited discussion

16. REQUESTS FOR EXCUSED ABSENCES

17. ADJOURNMENT - 7:00 p.m.

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@durangoco.gov.

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.
Designation of July as Parks and Recreation Month

WHEREAS parks and recreation activities are an integral part of communities throughout the country, including the City of Durango; and

WHEREAS parks and recreation services and programs promote health and wellness, improving the physical and mental health of people; and

WHEREAS parks and recreation promotes time spent in nature, which positively impacts cognitive performance and well-being, and alleviates illnesses such as depression, attention deficit disorders, and Alzheimers; and

WHEREAS parks and recreation services encourage physical activities by providing programs, facilities, and access to natural resources that promotes active lifestyles as well as the environmental well-being of our community; and

WHEREAS park and recreation programming and education activities, such as out-of-school programming, youth sports, and environmental education, are critical to childhood development; and

WHEREAS parks and recreation increases a community’s economic prosperity through increased property values, expansion of the local tax base, increased tourism, the attraction and retention of businesses, and reduced crime; and

WHEREAS the U.S. House of Representatives has designated July as Parks and Recreation Month; and

WHEREAS City of Durango recognizes and promotes the benefits derived from parks and recreation resources.

NOW THEREFORE, BE IT RESOLVED BY City of Durango City Council that July is recognized as Park and Recreation Month in the City of Durango.
TO: DURANGO CITY COUNCIL  FROM: DANIEL MURRAY, DEVELOPMENT SERVICES MANAGER, COMMUNITY DEVELOPMENT

SUBJECT: FINAL READING OF AN ORDINANCE FOR AN EASEMENT FOR LA PLATA ELECTRIC ASSOCIATION TO SERVICE THE DURANGO-LA PLATA COUNTY AIRPORT - EIN - SUBMITTED BY COMMUNITY DEVELOPMENT

RECOMMENDATION:
It is the recommendation of the Community Development staff that the City Council, by motion, conduct a public hearing and first reading of an ordinance for an easement for La Plata Electric Association to provide electrical utility service to the airport.

BACKGROUND SUMMARY:
This is a request from La Plata Electric Association to provide an extension to an electrical utility line at the entrance of the Durango-La Plata County Airport.

STRATEGIC PLAN ALIGNMENT:
The proposal is compatible with the Strategic Plan goal of Reliable Infrastructure and Community Connectivity.

ALTERNATIVE OPTIONS CONSIDERED:
Alternative options will be addressed in the staff report and documentation for the public hearing. Alternative actions include the option to continue or deny the proposal.

FISCAL IMPACT:
There is no fiscal or budgetary impact associated with this Ordinance to dedicate an easement.

POTENTIAL ADVERSE IMPACTS:
Potential adverse impacts will be addressed in the staff report and documentation for the public hearing.

NEXT STEPS AND TIMELINE:
City Council has approved the first reading of the new ordinance at their May 21, 2024 City Council meeting. Upon approval of the final reading of the ordinance on June 4, 2024 City Council meeting, the ordinance is complete, and staff will work with the applicant to execute the Easement Agreement and record the easement and exhibit with the La Plata County Clerk & Recorder to memorialize the dedication.
ORDINANCE NO. O-2024-0007

AN ORDINANCE GRANTING UTILITY EASEMENT TO LA PLATA ELECTRIC ASSOCIATION TO INSTALL AN UNDERGROUND ELECTRICAL UTILITY LINE ON CITY OWNED PROPERTY AT THE DURANGO-LA PLATA COUNTY AIRPORT TO SERVICE THE AIRPORT AND DECLARING AN EFFECTIVE DATE.

WHEREAS, La Plata Electric Association has requested the granting of a utility easement for purposes of providing underground electrical utilities across City owned property to service the new Durango-La Plata County Airport terminal expansion; and

WHEREAS, Article II, §11(d) of the Charter of the City of Durango, Colorado requires the adoption of an ordinance to convey or lease or authorize the conveyance or lease of any real property owned by the City; and

WHEREAS, a public hearing has heretofore been held before the City Council of the City of Durango, and the Council has determined, subsequent to said public hearing, that the granting of the requested utility easement in favor of La Plata Electric Association would be in the best interests of the citizens of the City of Durango;

NOW, THEREFORE, THE CITY OF DURANGO HEREBY ORDAINS:

Section 1. Subject to the approval by the City Manager of the terms and conditions of the Grant of Utility Easement and Agreement between the City of Durango and La Plata Electric Association, the City Council of the City of Durango does hereby authorize and grant the utility easement in favor of La Plata Electric Association for installing an underground electrical utility line, said easement being more particularly described and depicted on Exhibit ‘A’ hereto attached, the contents of which are incorporated by reference herein.

Section 2. This ordinance shall become effective ten (10) days after its passage and final publication as provided by law.

CITY COUNCIL OF THE CITY OF DURANGO

Attest:

City Clerk

Mayor
I, Faye Harmer, City Clerk of the City of Durango, La Plata County, Colorado, do hereby certify that Ordinance No. O-2024-0007 was regularly introduced and read at a regular meeting of the City Council of the City of Durango, Colorado on the ______ day of ____________, 2024, and was ordered published in accordance with the terms and conditions of the statutes in such cases made and provided, in the Durango Herald, a newspaper of general circulation, on the ______ day of ____________, 2024, prior to its final consideration by the City Council.

I further certify that Ordinance No. O-2024-0007, was duly adopted by the Durango City Council on the ______ day of _________________, 2024, and that in accordance with instructions received from the Durango City Council, said amended ordinance was published by title only in the Durango Herald on the ______ day of _________________, 2024.

Faye Harmer, City Clerk
EASEMENT AGREEMENT

THIS GRANT OF EASEMENT AND AGREEMENT ("Agreement") is made and entered into this _______ day of ___________, 20___, by and between THE CITY OF DURANGO, COLORADO, a Municipal Home-Rule Corporation and THE BOARD OF COUNTY COMMISSIONERS OF LA PLATA COUNTY, COLORADO (hereinafter collectively referred to as "Grantors") and LA PLATA ELECTRIC ASSOCIATION, INC. a Colorado corporation (hereinafter “Grantee”).

WHEREAS, the Grantee has requested a utility easement from the Grantors under and through the Grantors' property for the installation of an underground distribution power line to provide a tie line between existing lines, which will improve reliability and redundancy in case of outages in the area, and

WHEREAS, the Grantors’ property is currently used for, or immediately adjacent to, the Durango-La Plata County Airport (“Airport”); and

WHEREAS, Grantors are willing to grant the requested easement, subject to the terms and conditions herein set forth; and

WHEREAS, it is the mutual desire of the parties to set forth in writing, their understanding and agreement with respect to the matters herein set forth;

NOW, THEREFORE, in consideration of the following mutual covenants, conditions and obligations, the parties agree:

1. In exchange of good and valuable consideration, the receipt of which is hereby acknowledged, Grantors do hereby grant, bargain, sell and convey to Grantee, its successors and assigns a permanent non-exclusive, perpetual easement in gross (the “Utility Easement”), the location of which is described and depicted on Exhibit A attached hereto, the contents of which are incorporated by reference herein, for the construction, installation, operation and maintenance of underground electrical utilities, including electric cable and one (1) new above ground junction box, there is also an existing above ground switch cabinet that will remain (the “Permitted Utilities”).

2. The conveyance of the Utility Easement shall be subject to the following terms and conditions:

a. The granted easement shall include the right of the Grantee, its successors, assigns, licensees, lessees and contractors, and their agents and
employees, to enter upon said premises for the purpose of ingress and egress, inspection, surveying, construction, operation, reconstruction, improvement, enlargement, replacement, alteration, maintenance and removal of the Permitted Utilities, all at no cost to Grantors. Access to the easement herein granted shall be limited to public right of way.

b. Within sixty (60) days subsequent to the installation, inspection, construction, reconstruction, improvement, enlargement, replacement, alteration, maintenance, removal, or any other allowed access to or work on the Permitted Utilities, Grantee shall restore the disturbed property to a condition that is the same or better than the condition of the property prior to such work. Grantee acknowledges and agrees that the existing condition includes fencing, which shall be restored to the same or better condition as existed before any work by Grantee. For a period of three (3) years following the initial installation of the Permitted Utilities, and for a period of three (3) years following any subsequent ground disturbance by Grantee for maintenance or other activities, Grantee shall be responsible for the maintenance and eradication of noxious weeds within the easement area, in compliance with applicable law.

c. After completion and installation of the Permitted Utilities, Grantee shall maintain such Permitted Utilities in good condition and repair.

3. Grantors reserve all rights to use the surface and subsurface of the Utility Easement in any manner or for any purpose that does not interfere with the Grantee’s use of the Permitted Utilities, including, but not limited to, the use of the granted easement for roadway, driveway, parking, or other utility purposes. Except for roadways, driveways, and parking areas (and of which may be fenced), no permanent buildings, structures, or other improvements shall be erected, placed or permitted within the described Utility Easement that would interfere with the exercise of any of the rights herein granted to or for the benefit of Grantee.

4. This Agreement shall run with the lands described to Exhibit A hereto attached and shall be binding upon the respective parties hereto, their heirs, successors, grantees, personal representatives, and assigns. Time is of the essence with respect to all terms, conditions, and obligations herein contained. If any part of the land described on Exhibit A shall be conveyed, or if the whole thereof shall be
conveyed, the Agreement shall be binding upon all future owners of the properties described in Exhibit A, irrespective of whether the parcel so conveyed are actually benefited by the utility services installed within such easements.

5. Grantee agrees that it shall indemnify and hold Grantors harmless from any and all claims, damages, losses, expenses, or demands, of whatsoever nature, including reasonable attorney’s fees, for personal injury, property damage, or death sustained by any person(s) or property caused by the acts or omissions of the Grantee, its employees, contractors, licensees, lessees, agents, employees or representatives arising from the use of the Utility Easement granted or Permitted Utilities allowed herein or the subsequent use thereof.

6. If Grantee shall neglect or fail to perform or strictly comply with the conditions of this Agreement, such act or omission shall be deemed an event of default. Grantors, or the successors or assigns of Grantors, may give written notice to Grantee specifying the particular or particulars of such default and directing Grantee to remedy such default. From the effective date of such notice, Grantee shall have a period of thirty (30) days within which to initiate and diligently pursue the remedying of such default. If, within such thirty (30) day period after notice, Grantee has neither cured such default nor initiated procedures reasonably calculated to cure such a default, the Facilities Easement may be terminated by Grantors.

Waiver by Grantors of any default of any term or condition of this Agreement shall not be construed as a waiver with respect to any other term or condition hereof.

7. All notices or deliveries allowed or required by this Agreement shall be either: (a) personally served; (b) given by certified mail directed to the address of the Grantors or Grantee as set forth below; or (c) given by email directed to the email address hereinafter set forth. Any such notice given hereunder shall be effective upon the date of actual receipt or three (3) days after notice is deposited in the U.S. Certified Mail, postage prepaid, whichever occurs first. All notices from Grantee shall also copy the Airport. Addresses for notice shall be as follows:

Grantors’ Address
City of Durango  La Plata County
949 East 2nd Avenue  1060 E. 2nd Avenue
Durango, Colorado 81301  Durango, CO  81301
8. Any amendments to this Agreement shall only be valid if set forth in writing and executed by all parties hereto. Verbal amendments shall be ineffective for any purpose.

9. The terms and conditions of the Agreement shall be construed, interpreted and enforced in accordance with the applicable laws of the State of Colorado. If any legal action is necessary to enforce or interpret the terms and conditions of this Agreement, the parties agree that jurisdiction and venue for such actions shall be in the appropriate court in La Plata County, Colorado. The parties further agree that should any proceeding be required to enforce or interpret the terms, conditions and provisions of this Agreement, the prevailing party in such proceeding shall be entitled, as part of any judgment entered, to recover its costs incurred, inclusive of reasonable attorney’s fees.

IN WITNESS WHEREOF, the parties have executed this Grant of Easement the day and year first above written.

Grantors:

CITY OF DURANGO, COLORADO, a Municipal Home-Rule Corporation

Attest:
The foregoing Grant of Easement and Agreement was acknowledged before me this ______ day of _____________, 20___ by ______________________, as Mayor, and by ____________________, as City Clerk of the City of Durango, a municipal home-rule corporation.

Witness my hand and official seal. My commission expires: ____________.

________________________________________
Notary Public

BOARD OF COUNTY COMMISSIONERS OF
LA PLATA COUNTY, COLORADO

Attest:

________________________________________
Matt Salka, Chair
Clerk to the Board
COUNTY OF LA PLATA  

The foregoing Grant of Easement and Agreement was acknowledged before me this __________ day of ______________, 20___ by Matt Salka, as Chair, and by ________________, as Clerk to the Board of the Board of County Commissioners of La Plata County, Colorado

Witness my hand and official seal. My commission expires: ____________.

_________________________________
Notary Public

IN WITNESS WHEREOF, the Grantees have executed this Grant of Easement the day and year first above written.

____________________________
Travis P. Fischer, ROW Specialist

STATE OF COLORADO  )
) S.S.
COUNTY OF LA PLATA  )

The foregoing Grant of Easement and Agreement was acknowledged before me this __________ day of ______________, 20___ by Travis P. Fischer, ROW Specialist for La Plata Electric Association, Inc.

Witness my hand and official seal. My commission expires: ____________.

_________________________________
Notary Public
EXHIBIT "A" - EASEMENT DESCRIPTION
LOCATED IN THE NW1/4SW1/4 OF SEC. 29 & THE NE1/4SE1/4
SEC. 30, T 34 N, R 8 W, N.M.P.M.
LA PLATA COUNTY, COLORADO

EASEMENT DESCRIPTION

An easement located in the NW1/4SW1/4 of Section 29, and the NE1/4SE1/4 of Section 30,
Township 34 North, Range 8 West of the New
Mexico Principal Meridian, La Plata County,
Colorado, being a strip on land twenty (20.00) feet
in width, ten (10.00) feet on each side of the
following described centerline:

BEGINNING at a point on the North line of said
NE1/4SE1/4 of Section 30, whence the Northeast
Corner of Section 30 bears N 01°59'44" E, a
distance of 2636.24 feet;
THENCE S 46°01'20" E, a distance of 148.72 feet;
THENCE N 76°55'12" W, a distance of 36.20 feet to
a point on the easterly edge of asphalt of Airport
Road, the POINT OF TERMINATION whence said
Northwest Corner of Section 29 bears
N 00°11'39" W, a distance of 1410.67 feet.

LESS AND EXCEPT any portion of said strip lying
within County Road 309/309A Right of Way.

The sidelines of said strip are to be lengthened or
shortened to intersect said northerly line of the
NE1/4SE1/4 of Section 30, the westerly and
southerly Right of Way of County Road 309A and
easterly edge of asphalt of Airport Road.

Said strip contains 182.92 linear feet and 0.08
acres, more or less.

SURVEYOR'S STATEMENT

I, David O. Freimuth, a Registered Professional Land Surveyor
in the State of Colorado, do hereby state that this survey was
made under my direct supervision and checking, is in
accordance with accepted standards of practice and that it is
true and correct to the best of my knowledge and belief and
is not a guaranty of accuracy, spoken or implied.

David O. Freimuth
P.L.S. 32437
Date:

For and on behalf of land surveyor corporation

PLAT NOTICES

NOTICE: According to Colorado law you must commence any legal
action based upon any defect in this survey within three years after you
first discovered such defect. In no event may any action based upon
any defect in this survey be commenced more than ten years from the
date of the certification shown hereon.

NOTICE: All linear dimensions shown herein are U. S. Survey feet.

EXHIBIT "A" - EASEMENT DESC.

IN THE NW1/4SW1/4 OF SEC. 29, & THE
NE1/4SE1/4 OF SEC. 30 T 34 N, R 8 W, N.M.P.M
LA PLATA COUNTY, COLORADO

DRAWN BY: D.O. CHK'D BY: d/f DATE: 6 DEC 22
SCALE: 1"=50' JOB NUMBER: 1524-1 SHEET: 1 OF 1
PROP. OWNER(S) LA PLATA COUNTY & CITY OF DURANGO

LPEA
La Plata Electrical Association, Inc.
800 E. 2nd Avenue
P.O. Box 497
durango, CO 81301
(970)385-6891
ORDINANCE NO. O-2024-0008

AN ORDINANCE AMENDING CHAPTER 27 OF THE CODE OF ORDINANCES OF THE CITY OF DURANGO (LAND USE AND DEVELOPMENT CODE) BY THE AMENDMENT TO PORTIONS OF CHAPTERS 2, 4 and 7 INCORPORATING MINOR UPDATES TO FLOODPLAIN ADMINISTRATION REGULATIONS; MINOR UPDATES TO INCREASE CONSISTENCY AND CLARITY OF CODE LANGUAGE; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the Land Use and Development Code (LUDC) was adopted in 2014 and since its adoption, the LUDC has had multiple revisions to address new uses and clarify provisions; and

WHEREAS, City staff has identified various amendments to sections of the LUDC that improve its function by enhancing clarity, correcting minor inconsistencies, and updating requirements to reflect how staff has interpreted or applied standards; and

WHEREAS, as part of the City's participation in the National Flood Insurance Program, the City is required pursuant to state and federal regulation to incorporate certain floodplain provisions in its municipal ordinances; and

WHEREAS, the Federal Emergency Management Agency (FEMA) has identified minor provisions which must be added to the City's Municipal Code to remain in good standing with the National Flood Insurance Program to improve safety for persons and property in the City; and

WHEREAS, after a public hearing held on April 22, 2024, the Community Development Commission voted to recommend approval of these amendments to the LUDC; and

WHEREAS, a public hearing has heretofore been held before the City Council of the City of Durango, and the Council has determined, subsequent to said public hearing, that the proposed text amendments to Chapter 2, 4 and 7 to the Land Use and Development Code are in the best interest of the citizens of the City of Durango; and

NOW, THEREFORE, THE CITY OF DURANGO HEREBY ORDAINS:

Section 1. That Chapter 27 of the Code of Ordinances of the City of Durango should be and the same is hereby amended, with the sections described below being added or amended as is more specifically described on Exhibit ‘A’ attached hereto and incorporated herein:
1) Sections 4-4-6-5.C and 4-4-5-6.D *General Provisions and Standards for Flood Hazard Reduction* are amended to read in their entirety, as described on Item 1 of Exhibit ‘A.’

2) Definition for *New Construction (Floodplain Management Regulations)* is hereby added to Article 7-3 *Definitions* and adopted to read in its entirety, as described on Item 2 of Exhibit ‘A.’

3) Section 2-3-2-3.L *Accessory Dwelling Units* is amended to read in its entirety, as described on Item 3 of Exhibit ‘A.’

4) Sections 2-2-3-12.C and 2-2-3-12.D *Standards for Motor Vehicle and Heavy Equipment Related Uses* are amended to read in their entirety, as described on Item 4 of Exhibit ‘A.’

5) Section 4-1-2-3 *Common Open Space Priorities* is amended to read in its entirety, as described on Item 5 of Exhibit ‘A.’

**Section 2.** This ordinance shall become effective ten (10) days after its passage and final publication as provided by law.

CITY COUNCIL OF THE CITY OF DURANGO

Attest:

________________________________   __________________________________
City Clerk Mayor

STATE OF COLORADO )
) ss.
COUNTY OF LA PLATA )

I, Faye Harmer, City Clerk of the City of Durango, La Plata County, Colorado, do hereby certify that Ordinance No. O-2024- was regularly introduced and read at a regular meeting of the City Council of the City of Durango, Colorado on the ___ day of _________________, 2024, and was ordered published in accordance with the terms and conditions of the statutes in such cases made and provided, in the Durango Herald, a newspaper of general circulation, on the ___ day of _________________, 2024, prior to its final consideration by the City Council.

________________________________
City Clerk
I further certify that Ordinance No. O-2024-0008, was duly adopted by the Durango City Council on the ____ day of ________________, 2024, and that in accordance with instructions received from the Durango City Council, said amended ordinance was published by title only in the Durango Herald on the ____ day of ________________, 2024.

______ City Clerk
ORDINANCE O-2024- 

Exhibit A

Item 1.

Sec. 4-4-6-5 General Provisions and Standards for Flood Hazard Reduction

C. Construction Materials and Methods.

1. All new construction and substantial improvements shall be constructed with materials and utility equipment recognized as resistant to flood damage.

2. All new construction and substantial improvements shall be constructed using recognized methods and practices that minimize flood damage. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

3. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
   a. A minimum of two openings having a total net area of not less than one square inch per every square foot of enclosed area subject to flooding shall be provided.
   b. The bottom of all openings shall be no higher than one foot above the grade.
   c. Openings may be equipped with screens, louvers, or other covering or devices, provided that they permit the automatic entry and exit of flood waters.

4. This provision applies only to homes constructed with the lowest floor at or above the base flood elevation.

D. Utilities.

1. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood-waters into the system.

2. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.

3. Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and / or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

4. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

Item 2.

Article 7-3 Definitions
**New Construction** (Floodplain Management Regulations) means the construction of a new structure (including the placement of a mobile home) or facility or the replacement of a structure or facility which has been totally destroyed.

Item 3.  

**Sec. 2-3-2-3 Accessory Dwelling Units**  
L. **Relationship to Other Standards.**

2. ADUs that are located within the same building as a detached garage are **not** eligible for the 450 square foot floor area ratio bonus for detached garages that is allowed by Section 3-1-4-3, Detached Garage Bonus.

Item 4.  

**Sec. 2-2-3-12 Standards for Motor Vehicle and Heavy Equipment Related Uses**

C. **Nonconforming Uses Applicable to All Motor Vehicle and Heavy Equipment Related Uses.**  
CB, MU-N, and MU-A Zones. Existing motor vehicle and heavy equipment uses may continue as nonconforming uses within their existing boundaries and fueling stations may be converted to charging stations. No new motor vehicle or heavy equipment-related uses will be allowed in the CB, MU-N, and MU-A zones.

D. **Electric Vehicle Charging Station.** EV charging stations will be allowed as an accessory use in EN-#, RL, RM, RH, MU-#, CB, and PB zones, as an allowed accessory use in the PD zones if approved during the PD approval process, or within an existing residential PD zone in which the use is not prohibited by private restrictions, and as an allowed principal or accessory use within the CG, CR, BP and LI zone districts if in addition to the other applicable standards of this LUDC, it is demonstrated that:

1. **Demonstration of Available Electric Capacity.** Level 3 DCFC stations shall provide documentation regarding the availability of power to meet demand during peak charging periods without compromising the City’s electric power; and,
2. **Landscaping and Buffering.** Where the landscaping and buffering requirements of Article 4-6, Landscaping and Buffering, are less dense than those shown in Table 2-2-3-12B, Landscaping and Buffering Requirements, the landscaping requirements of Table 2-2-3-12B, Landscaping and Buffering Requirements, apply.

Item 5.  

**Sec. 4-1-2-3 Common Open Space Priorities**  
B. **Priorities for Common Open Spaces.** Generally, open spaces shall be protected in the following order of priority (listed in descending order):
1. Geologic hazard areas and unstable slopes for which hazard mitigation is impracticable;
2. River, creek, and riparian areas;
3. Floodways;
4. Wetlands;
5. Floodplains;
6. Steep slopes (except unstable slopes and geologic hazards);
7. Ridgelines;
8. Steep slopes (except unstable slopes and geologic hazards);
9. Mature woodlands, meadows, critical wildlife habitat, big game migration corridors, and big game winter range;
10. Distinctive land formations; and
TO: DURANGO CITY COUNCIL
FROM: TYLER MICHAEL, PLANNER I, COMMUNITY DEVELOPMENT

SUBJECT: A PUBLIC HEARING AND FIRST READING OF AN ORDINANCE FOR AN EASEMENT FOR CLEARNETWORX TO SERVICE THE DURANGO-LA PLATA COUNTY AIRPORT - RICC

RECOMMENDATION:
It is the recommendation of the Community Development staff that the City Council, by motion, “Move to approve the first reading of Ordinance 2024-___ to create a Clearnetworx utility easement at the Durango-La Plata County Airport.”

BACKGROUND SUMMARY:
This is a request from Clearnetworx to install an underground fiber optic utility line at the Durango-La Plata County Airport.

STRATEGIC PLAN ALIGNMENT:
The proposal is compatible with the Strategic Plan goal of Reliable Infrastructure & Community Connectivity.

ALTERNATIVE OPTIONS CONSIDERED:
Alternative actions include the option to continue or deny the proposal.

FISCAL IMPACT:
There is no fiscal or budgetary impact associated with this Ordinance to dedicate an easement.

POTENTIAL ADVERSE IMPACTS:
There are no adverse impacts.

NEXT STEPS AND TIMELINE:
- City Council public hearing and first reading of Ordinance – June 4, 2024
- City Council final reading of Ordinance – June 18, 2024
- Once the final reading of the ordinance is complete staff will work with the applicant to execute the Easement Agreement and record the easement and exhibit with the La Plata County Clerk & Recorder to memorialize the dedication.
ORDINANCE NO. O-2024-XXXX

AN ORDINANCE GRANTING UTILITY EASEMENT TO CLEARNETWORX TO INSTALL AN UNDERGROUND FIBER OPTIC UTILITY LINE ON CITY OWNED PROPERTY AT THE DURANGO-LA PLATA COUNTY AIRPORT TO SERVICE THE AIRPORT AND DECLARING AN EFFECTIVE DATE.

WHEREAS, Clearnetworx has requested the granting of a utility easement for purposes of providing underground fiber optic utilities across City owned property to service the new Durango-La Plata County Airport terminal expansion; and

WHEREAS, Article II, §11(d) of the Charter of the City of Durango, Colorado requires the adoption of an ordinance to convey or lease or authorize the conveyance or lease of any real property owned by the City; and

WHEREAS, a public hearing has heretofore been held before the City Council of the City of Durango, and the Council has determined, subsequent to said public hearing, that the granting of the requested utility easement in favor of Clearnetworx would be in the best interests of the citizens of the City of Durango;

NOW, THEREFORE, THE CITY OF DURANGO HEREBY ORDAINS:

Section 1. Subject to the approval by the City Manager of the terms and conditions of the Grant of Utility Easement and Agreement between the City of Durango and Clearnetworx, the City Council of the City of Durango does hereby authorize and grant the utility easement in favor of Clearnetworx for installing an underground fiber optic utility line, said easement being more particularly described and depicted on Exhibit ‘A’ hereto attached, the contents of which are incorporated by reference herein.

Section 2. This ordinance shall become effective ten (10) days after its passage and final publication as provided by law.

CITY COUNCIL OF THE CITY OF DURANGO

Attest:

___________________________ Mayor

___________________________ City Clerk
STATE OF COLORADO  )
COUNTY OF LA PLATA  ) ss.

I, Faye Harmer, City Clerk of the City of Durango, La Plata County, Colorado, do hereby certify that Ordinance No. O-2024-_____ was regularly introduced and read at a regular meeting of the City Council of the City of Durango, Colorado on the ____ day of _________________, 2024, and was ordered published in accordance with the terms and conditions of the statutes in such cases made and provided, in the Durango Herald, a newspaper of general circulation, on the ____ day of _________________, 2024, prior to its final consideration by the City Council.

I further certify that Ordinance No. O-2024-_______, was duly adopted by the Durango City Council on the ____ day of _________________, 2024, and that in accordance with instructions received from the Durango City Council, said amended ordinance was published by title only in the Durango Herald on the ____ day of _________________, 2024.

________________________________
City Clerk
EASEMENT AGREEMENT

THIS GRANT OF EASEMENT AND AGREEMENT ("Agreement") is made and entered into this ______ day of _________, 20____, by and between THE CITY OF DURANGO, COLORADO, a Municipal Home-Rule Corporation and THE BOARD OF COUNTY COMMISSIONERS OF LA PLATA COUNTY, COLORADO (hereinafter collectively referred to as "Grantors") and CLEARNETWORX, LLC, a Colorado limited liability company (hereinafter "Grantee").

WHEREAS, the Grantee has requested a utility easement from the Grantors under and through the Grantors' property for the placement of fiber optic communications-based utility lines and equipment, including but not limited to conduit, cabling, handholes, and fiber optic lines, for fiber optic internet service, and

WHEREAS, the Grantors' property is currently used for, or immediately adjacent to, the Durango-La Plata County Airport ("Airport"); and

WHEREAS, Grantors are willing to grant the requested easement, subject to the terms and conditions herein set forth; and

WHEREAS, it is the mutual desire of the parties to set forth in writing, their understanding and agreement with respect to the matters herein set forth;

NOW, THEREFORE, in consideration of the following mutual covenants, conditions and obligations, the parties agree:

1. In exchange of good and valuable consideration, the receipt of which is hereby acknowledged, Grantors do hereby grant, bargain, sell and convey to Grantee, its successors and assigns a permanent non-exclusive, perpetual easement in gross (the "Utility Easement"), the location of which is described and depicted on Exhibit A attached hereto, the contents of which are incorporated by reference herein, for the construction, installation, operation and maintenance of underground fiber optic utilities, including fiber optic cable and lines, conduit, handholes and equipment (the "Permitted Utilities").

2. The conveyance of the Utility Easement shall be subject to the following terms and conditions:
   a. The granted easement shall include the right of the Grantee, its successors, assigns, licensees, lessees and contractors, and their agents and employees, to enter upon said premises for the purpose of ingress and egress, inspection, surveying, construction, operation,
reconstruction, improvement, enlargement, replacement, alteration, maintenance and removal of the Permitted Utilities, all at no cost to Grantors. Access to the easement herein granted shall be limited to public right of way.

b. Grantee acknowledges that the area of the Utility Easement falls within, alongside, and/or across an internal airport road right of way, and Grantee’s work within the right of way (whether initial installation or subsequent construction, reconstruction, improvement, enlargement, replacement, alteration, maintenance, removal, or other allowed work) requires first obtaining written permission from the Airport, which permission shall not be unreasonable withheld. Grantee agrees to provide a written request to the Airport prior to any work within the road right of way and to coordinate with the Airport regarding the timing and conditions of any impacts to normal flow of traffic on the road within and adjacent to the Utility Easement. At a minimum, the written request shall include the location and scope of proposed work within the right of way, the anticipated physical impact on the roadway (if any) and the proposed repair work to correct the same, the anticipated impact (if any) on vehicle traffic and Grantee’s plans for traffic control related to the same, and the proposed schedule for all work. Grantee shall ensure, to the Airport’s satisfaction, that the road right of way is returned to a condition equal to or better than the condition of the right of way immediately prior to Grantee’s work, within the limits of careful, diligent workmanship, good planning, and quality materials. Based on the submitted materials, the Airport may in its sole discretion require as a condition of approval that Grantee provide a letter of credit or other acceptable financial assurance in an amount equal to the greater of either $5,000.00 or 115% of the estimated costs of repairing the right of way, in which case such letter of credit or other acceptable financial assurance shall remain in place until the Airport has provided written confirmation that is has inspected and accepted the final condition of the right of way.

c. Within sixty (60) days subsequent to the installation, inspection, construction, reconstruction, improvement, enlargement, replacement, alteration, maintenance, removal, or any other allowed access to or work on the Permitted Utilities, Grantee shall restore the disturbed property to a condition that is the same or better than the condition of the property prior to such work. Grantee acknowledges and agrees that the existing condition includes fencing, which shall be restored to the same or better condition as existed before any work by Grantee. For a period of three (3) years following the initial installation of the Permitted Utilities,
and for a period of three (3) years following any subsequent ground disturbance by Grantee for maintenance or other activities, Grantee shall be responsible for the maintenance and eradication of noxious weeds within the easement area, in compliance with applicable law.

d. After completion and installation of the Permitted Utilities, Grantee shall maintain such Permitted Utilities in good condition and repair.

3. Grantors reserve all rights to use the surface and subsurface of the Utility Easement in any manner or for any purpose that does not interfere with the Grantee’s use of the Permitted Utilities, including, but not limited to, the use of the granted easement for roadway, driveway, parking, or other utility purposes. Except for roadways, driveways, and parking areas (and of which may be fenced), no permanent buildings, structures, or other improvements shall be erected, placed or permitted within the described Utility Easement that would interfere with the exercise of any of the rights herein granted to or for the benefit of Grantee.

4. This Agreement shall run with the lands described in Exhibit A hereto attached and shall be binding upon the respective parties hereto, their heirs, successors, grantees, personal representatives, and assigns. Time is of the essence with respect to all terms, conditions, and obligations herein contained. If any part of the land described on Exhibit A shall be conveyed, or if the whole thereof shall be conveyed, the Agreement shall be binding upon all future owners of the properties described in Exhibit A, irrespective of whether the parcel so conveyed are benefited by the utility services installed within such easements.

5. Grantee agrees that it shall indemnify and hold Grantors harmless from any and all claims, damages, losses, expenses, or demands, of whatsoever nature, including reasonable attorney’s fees, for personal injury, property damage, or death sustained by any person(s) or property caused by the acts or omissions of the Grantee, its employees, contractors, licensees, lessees, agents, employees or representatives arising from the use of the Utility Easement granted or Permitted Utilities allowed herein or the subsequent use thereof.

6. If Grantee shall neglect or fail to perform or strictly comply with the conditions of this Agreement, such act or omission shall be deemed an event of default. Grantors, or the successors or assigns of Grantors, may give written notice to Grantee specifying the particular or particulars of such default and directing Grantee to remedy such default. From the effective date of such notice, Grantee shall have a period of thirty (30) days within which to initiate and diligently pursue the remedying of such default. If, within such thirty (30) day period after
notice, Grantee has neither cured such default nor initiated procedures reasonably calculated to cure such a default, the Facilities Easement may be terminated by Grantors.

Waiver by Grantors of any default of any term or condition of this Agreement shall not be construed as a waiver with respect to any other term or condition hereof.

7. All notices or deliveries allowed or required by this Agreement shall be either: (a) personally served; (b) given by certified mail directed to the address of the Grantors or Grantee as set forth below; or (c) given by email directed to the email address hereinafter set forth. Any such notice given hereunder shall be effective upon the date of actual receipt or three (3) days after notice is deposited in the U.S. Certified Mail, postage prepaid, whichever occurs first. All notices from Grantee shall also copy the Airport. Addresses for notice shall be as follows:

Grantors’ Address
City of Durango
949 East 2nd Avenue
Durango, Colorado 81301
Email: Planning@durangogov.org

La Plata County
1060 E. 2nd Avenue
Durango, CO 81301
Email: CountyAdmin@lpcgov.org

Airport’s Address
Durango-La Plata County Airport
1000 Airport Road
Durango, CO 81303
Email: airport@durangogov.org

Grantee’s Address
Clearnetworkx, LLC
301 N. Cascade Avenue
Montrose, CO 81401
doug@deeply-digital.com

8. Any amendments to this Agreement shall only be valid if set forth in writing and executed by all parties hereto. Verbal amendments shall be ineffective for any purpose.

9. The terms and conditions of the Agreement shall be construed, interpreted and enforced in accordance with the applicable laws of the State of Colorado. If any legal action is necessary to enforce or interpret the terms and conditions of this Agreement, the parties agree that jurisdiction and venue for such actions shall be in the appropriate court in La Plata County, Colorado. The parties further agree that should any proceeding be required to enforce or interpret the terms, conditions and provisions of this Agreement, the prevailing party in such proceeding
shall be entitled, as part of any judgment entered, to recover its costs incurred, inclusive of reasonable attorney's fees.

IN WITNESS WHEREOF, the parties have executed this Grant of Easement the day and year first above written.

Grantors:

CITY OF DURANGO, COLORADO, a Municipal Home-Rule Corporation

Attest:

__________________________
Mayor

__________________________
City Clerk

STATE OF COLORADO )
 ) S.S.
COUNTY OF LA PLATA )

The foregoing Grant of Easement and Agreement was acknowledged before me this ______ day of ______________, 20___ by ________________________, as Mayor, and by ________________________, as City Clerk of the City of Durango, a municipal home-rule corporation.

Witness my hand and official seal. My commission expires: ______________.

__________________________
Notary Public
BOARD OF COUNTY COMMISSIONERS OF
LA PLATA COUNTY, COLORADO

Attest:

Matt Salka, Chair

______________________________
Clerk to the Board

STATE OF COLORADO    
)  
) S.S.
COUNTY OF LA PLATA 
)

The foregoing Grant of Easement and Agreement was acknowledged before me this ________
day of ____________, 20___ by Matt Salka, as Chair, and by __________________, as
Clerk to the Board of the Board of County Commissioners of La Plata County, Colorado

Witness my hand and official seal.        My commission expires: ____________.

______________________________
Notary Public

Page 6 of 9
IN WITNESS WHEREOF, the Grantees have executed this Grant of Easement the day and year first above written.

CLEARNETWORKX, LLC,
a Colorado limited liability company

Douglas Seacat, President

STATE OF COLORADO  )
   ) S.S.
COUNTY OF MONTROSE )

The foregoing Grant of Easement and Agreement was acknowledged before me this day of May, 2024 by Douglas Seacat, President, Clearnetwork, LLC.

Witness my hand and official seal.

My commission expires: 10/13/2027

WENDY CHAVEZ
NOTARY PUBLIC
State of Colorado
Notary ID # 20114055656
My Commission Expires 10/13/2027

Notary Public
EXHIBIT A

Exhibit A - Easement Description

A strip of land located within the Southeast ¼ of Section 30, Township 4 North, Range 8 West of the New Mexico Principal Meridian, County of La Plata, State of Colorado, said strip being twenty (20) feet wide lying ten (10) feet on each side of the centerline, being more particularly described as follows:

COMMENCING at the southwest corner of Tract A-3 (P.O.C.) from which the northwest corner of Tract A-3 as shown on the Merle McCaw Minor Exemption Subdivision, Project No. 91-142 plat recorded June 2, 1992 at Reception Number 628092 in the office of the La Plata County Clerk and Recorder, bears North 00°29'34" West, a distance of 839.03 feet;

Thence, South 26°08'08" West, a distance of 1865.83 feet to the POINT OF BEGINNING (P.O.B.);

THENCE, South 37°13'13" West, a distance of 270.01 feet;

THENCE, South 41°57'34" West, a distance of 124.11 feet;

THENCE, South 43°43'54" West, a distance of 89.14 feet;

THENCE, South 04°12'54" West, a distance of 68.75 feet;

THENCE, South 00°58'06" West, a distance of 191.02 feet;

THENCE, South 50°51'14" East, a distance of 65.52 feet;

THENCE, South 64°12'29" East, a distance of 96.59 feet; to the POINT OF TERMINATION (P.O.T.), from which the P.O.C. bears North 22°42'49" East, 2590.63 feet.

The sidelines of this strip of land are extended or shortened as necessary to form continuous sidelines

Containing 18,154.60 Square feet or 0.42 Acres more or less.

SURVEYOR'S STATEMENT

I hereby state that this exhibit and easement description was prepared by me or under my direct responsibility, supervision and checking, and that, in my professional opinion, they are true and correct to the best of my knowledge, belief and information based on the applicable standards of practice of Professional Land Surveyor in the state of Colorado. I also state that this survey and plat is not a guaranty or warranty, either expressed or implied.

Joshua J. Casselberry, P.L.S.
Colorado Registration No. 37803

[Signature]

[Seal]

[Stamp]
Exhibit A
Page 2 of 2

Legend
1. Found 8" rebar with a 2" aluminum cap stamped PLS 31989
2. Electric Breaker Box
3. Electric Meter
4. Electric Guy Anchor
5. Electric Power Pole
6. Electric Transformer
7. Gas Meter
8. Sewer Manhole
9. Sewer Cleanout
10. Water Valve
- OE - Overhead Electric Line
- UG - Underground Gas Line
- US - Underground Sewer Line
- UT - Underground Telecom Line
- EAS - Edge of Asphalt
- Concrete

SURVEYOR'S STATEMENT
I hereby state that this exhibit and easement description was prepared by me or under my direct responsibility, supervision and checking, and that, in my professional opinion, they are true and correct to the best of my knowledge, belief and information based on the applicable standards of practice of Professional Land Surveyors in the State of Colorado. I also state that this survey and plat is not a guaranty or warranty, either expressed or implied.

Joshua J. Casselberry, P.L.S.
Colorado Registration No. 37903

AMADO SURVEYING & GEOGRAPHY (970) 355-8335 DATE: 4/10/2024 SCALE: 1" = 200' ERASED: AMADO, AL CHEATER 3 AUG 3/2/2024 FEATURED EXHIBIT A PAGE 7 OF 7

©AMADO SURVEYING & GEOGRAPHY 2024
STRATEGIC PLAN GOAL:
- RELIABLE INFRASTRUCTURE & COMMUNITY CONNECTIVITY (RICC)
Mission (Why we exist)
“We provide outstanding services and experiences for the entire community.”

Vision (What we want to be)
“A multigenerational community which is authentic, diverse, engaged, thriving, and environmentally responsible.”

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

PURPOSE
- Public Hearing and First Reading of an Ordinance for a Utility Easement for Clearnetworx to Serve The Durango-La Plata County Airport.
This initiative applies to the Reliable Infrastructure & Community Connectivity (RICC)
Context Map
Overview & Timeline

This project will expand and update existing utility infrastructure at the airport.

Timeline

• Request for public hearing and introduction of an Ordinance – May 21, 2024
• Public hearing and First reading of an Ordinance – June 4, 2024
• Final reading of an Ordinance – June 18, 2024
Public Comment
To date, no advance public comments have been received.

Recommended Motion
“I move to approve the first reading of Ordinance 2024-___ to create a Clearnetworx utility easement at the Durango-La Plata County Airport.”
RECOMMENDATION

"I move to approve the Ordinance O-2024-__________ to sell city owed property located at 166 E. 33rd Street per City Charter Article II. Section 11d. -- Conveyance of Real Property."

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 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. 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.

On April 2, 2024, City Council adopted Resolution 24-0021 authorizing the acquisition and purchase of Unit 501 in the Animas City Park Overlook Townhome development located at 166 E. 33rd Street for a purchase price of $547,000. The City closed and purchased the unit on April 5, 2024. The subject property will be used as an income deed restricted unit for local workforce earning at or below 125% Area Median Income (AMI) for the benefit of the community and resale of the property to a qualified buyer at $399,999 purchase price.

2023 La Plata County Income Limits

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<th>Max AMI</th>
<th>1 person</th>
<th>2 person</th>
<th>3 person</th>
<th>4 person</th>
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<tr>
<td>125%</td>
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<td>$104,000</td>
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In mid-April, HomesFund sent email correspondence to previous qualified households on the original lottery list (from December 2022) and HomesFund’s interested waitlist to solicit interest and provide application processes to possible buyers interested in purchasing Unit 501 at $399,999. The email went out to 50 households (17 from the lottery and 33 from the interested list). HomesFund also held a Homebuyer Education Class on Saturday, May 11th, with over 40 attendees and shared information about the unit.

In mid-May, HomesFund notified the City that a qualified household had submitted a complete application, met all the income deed restriction criteria, and was pre-approved by HomesFund and a local lender. Staff has also coordinated with the City’s on-call realtor services agency, Wells Group, to assist with the real estate transaction and buyer representation at a reduced 1% realtor success fee (e.g. $3,999.99) through Land Title Guarantee Company in Durango for the real estate closing in mid- to late July.

The acquisition and resale of Unit 501 at Animas City Park Overlook Townhomes aims to advance the city’s housing goals by development of a variety of housing opportunities and innovative solutions to support a multi-generational and mixed income community. This creates a replicable model for future opportunities and creates an example of an innovative approach to create solutions for local workforce with long-term community benefits.

ATTACHMENTS

1. ACPO Conveyance Ordinance O-2024-XX
2. Income Deed Restriction Reception No. 1231205
3. Powerpoint Presentation

STRATEGIC PLAN ALIGNMENT

The proposed use is in conformance with the Durango Strategic Plan’s Innovative Housing & Economic Development (IHED) that aims to advance the city’s housing and economic landscape through strategic
partnerships and innovative solutions that bridge the affordability gap and support a multigenerational community. This goal area strives to propel economic progress by encouraging regional collaboration, entrepreneurship, and business growth, underpinned by city-supported initiatives. It also aims to enhance Durango’s unique charm and economic competitiveness by promoting community involvement, strategic infrastructure development, and robust public-private collaborations.

2.1 Cultivate innovative housing solutions and partnerships to advance the development of a variety of housing options to support a multigenerational and mixed-income community by narrowing the gap between income levels and housing affordability.

2.3 Preserve and enhance Durango’s distinctive appeal and competitive edge as an attractive community by engaging in community-driven planning, strategic infrastructure investments, and partnerships between the public and private sectors.

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.

For simplicity, the difference of $547,000 purchase price to $399,999 deed restricted price is $147,001. The remaining $30,000 ($10,000 a unit) in North Main Gateway Urban Renewal Area funds (Account 29-4141-31499) that were not used for three Workforce Housing designations, so the reimbursement to ACPO, LLC, will be re-appropriated back to the Housing Fund (Account 19-1000-66559) to offset this as well. Therefore, reducing the final gap from $147,001 minus $30,000 equals $117,001 of housing funds to bridge the disparity from market price to below-market price for the community benefit of local workforce.

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<th>Account Description</th>
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<td>Other Revenue (anticipated minus closing costs associated with selling unit)</td>
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ADVERSE IMPACTS
N/A

NEXT STEPS AND TIMELINE
Review and consideration of adoption of the ordinance authorizing the conveyance and sale of Animas City Park Overlook Townhome Unit 501 will occur at the public hearing proposed for June 4, 2024, Council meeting. The following next steps are anticipated:
- City Council Public Hearing and First Reading of Ordinance: June 4, 2024
- Colorado Real Estate Purchase/Sale Contract execution by City Manager & Qualified Buyer: June 5, 2025
- City Council Second/Final Reading of Ordinance: June 18, 2024
- Anticipated Closing: Mid-to-Late July 2024

Page 2 of 34
ORDINANCE NO. O-2024-_______
AN ORDINANCE AUTHORIZING THE SALE OF CITY-Owned Property Located at 166 E. 33rd Street
PER CITY CHARTER ARTICLE II. SECTION 11D – CONVEYANCE OF REAL PROPERTY.

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 the 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, Resolution R-2024-0021 authorized the City Manager to close on the purchase of Unit 501, located at 166 East 33rd Street, as directed by City Council on March 12, 2024, and authorized by Ordinance O-2023-0020;

WHEREAS, Pursuant to the above direction from City Council, the City of Durango and ACPO, LLC 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, The subject property shall be resold as an income deed restricted unit, deed restriction was recorded at Reception number 1231205, and priced at $399,999 and sold to a household earning at or below 125% Area Median Income for the benefit of the community;

WHEREAS, HomesFund will conduct outreach through email correspondence to the original lottery list and HomesFund’s interested list, review applications as received, and income qualify potential buyers;

WHEREAS, If HomesFund is unable to secure a qualified buyer through the process identified above, then the City will pursue publicly listing the unit in the Multiple Listing Service (MLS) with the City’s on-call realtor services agency, with a reduced sales commission of 1% listing/1% buyer representation, and will be first serve to potential buyers who must be pre-approved and qualified by HomesFund;
WHEREAS, A Public Hearing and First Reading of Ordinance will occur on June 4, 2024, followed by Final Reading and ten-day Public Noticing before the qualified buyer can close on the Property;

WHEREAS, Once the closing is complete 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 City Council has determined that the purchase of the Property is in the best interest of the citizens;

NOW, THEREFORE, THE CITY OF DURANGO HEREBY ORDAINS:

Section 1. The sum of $399,999 is to be deposited back into the Housing Fund upon closing transaction of Property located at 166 East 33rd Street, Unit 501, Durango, Colorado 81301.

Section 2. The City Manager of the City of Durango is hereby authorized to execute any and all documents necessary for the conveyance and sale of said property and to take any other action reasonably necessary to complete the closing transaction as described herein.

Section 3. This ordinance shall become effective ten (10) days after its passage and final publication as provided by law.

CITY COUNCIL OF THE CITY OF DURANGO

Attest:

__________________________________________
City Clerk ____________________________ Mayor

STATE OF COLORADO )
 ) ss.
COUNTY OF LA PLATA )

I, Faye Harmer, City Clerk of the City of Durango, La Plata County, Colorado, do hereby certify that Ordinance No. O-2024- as regularly introduced and read at a regular meeting of the City Council of the City of Durango, Colorado on the ____ day of ________________, 2024, and was ordered published in accordance with the terms and conditions of the statutes in such cases made and provided, in the Durango Herald,
a newspaper of general circulation, on the ____ day of _________________, 2024, prior
to its final consideration by the City Council.

City Clerk

I further certify that Ordinance No. O-2024- ____, was duly adopted by the Durango City
Council on the ____ day of _________________, 2024 and that in accordance with
instructions received from the Durango City Council, said amended ordinance was
published by title only in the Durango Herald on the ____ day of _________________,
2024.

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 __________, 2024, 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."

RECITALS 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 1 (one) Unit 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 1 (one) Unit 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 Unit 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 on 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 TRANSFEE

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 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: To HomesFund: To City:
ACPO, LLC HomesFund City of Durango
564 E. 2nd Avenue, Unit 101 PO Box 2179 949 E. 2nd Avenue
Durango, CO 81301 Durango, CO 81302 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: [Signature]

[Name]

MANAGING PARTNER

HEATHER J DAWSON-SNEAD
NOTARY PUBLIC - STATE OF COLORADO
NOTARY ID 20154026202
MY COMMISSION EXPIRES APR 13, 2025

STATE OF COLORADO )

) ss.

COUNTY OF LA PLATA )

The above and foregoing document was acknowledged before me this 19th day of MARCH, 2024, by MARK WILLIAMSON, LLC MANAGING PARTNER.

Witness my hand and official seal.

Notary Public

My commission expires: APR 13, 2025.

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: [Signature]

[Name]

City Manager

STATE OF COLORADO )

) ss.

COUNTY OF LA PLATA )

The above and foregoing document was acknowledged before me this 15th day of March, 2024, by Jose R. Madrigal, City Manager of City of Durango.
Witness my hand and official seal.

My commission expires: __ 4-21-2025 ___.

HOMESFUND

By: [Signature]

Lisa Bloomquist [Name]
Executive Director [Title]

STATE OF COLORADO )
 ) ss.
COUNTY OF LA PLATA )

The above and foregoing document was acknowledged before me this 26th day of March, 2024, by Lisa Bloomquist, Executive Director of HomesFund.

Witness my hand and official seal.

My commission expires: February 8, 2028.
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.

________________________________________
Owner  Date

________________________________________
Owner  Date

STATE OF COLORADO  )
  ) ss.

COUNTY OF LA PLATA  )

17
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.
June 4, 2024

CONVEYANCE OF REAL PROPERTY LOCATED AT 166 E. 33rd STREET
PUBLIC HEARING

Eva Henson
Community Development

Strategic Plan Goals:
Innovative Housing & Economic Development (IHED)
**Mission** (Why we exist)
“We provide outstanding services and experiences for the entire community.

**Vision** (What we want to be)
“A multigenerational community which is authentic, diverse, engaged, thriving, and environmentally responsible.”

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

**PURPOSE**
FIRST READING OF AN ORDINANCE REGARDING CONVEYANCE OF CITY OWNED REAL PROPERTY LOCATED AT 166 E. 33RD STREET
This initiative applies to the **Innovative Housing & Economic Development (IHED)**
OVERVIEW

City Purchases Animas City Park Overlook Townhome Unit 501 for $547,000

Identify Qualified Household ≥125% Area Median Income

City Conveys Unit at $399,999 Sale Price

2023 La Plata County Income Limits

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<th>Max AMI</th>
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<td>$117,000</td>
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<td>Date</td>
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<tr>
<td>March 12, 2024</td>
<td>City Council Executive Session per C.R.S. 24-6-402 (a) and (e)</td>
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<td></td>
<td>Reconvened in open meeting to acquire real property at 166 E. 33rd Street</td>
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<tr>
<td>April 2, 2024</td>
<td>City Council approves Resolution 24-0021 authorizing acquisition</td>
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<td>Income deed restrict ≥ 125% area median income for local worker</td>
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<tr>
<td>May 21, 2024</td>
<td>Request for public hearing and introduction of ordinance to convey city owned real property</td>
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<tr>
<td>June 4, 2024</td>
<td>Public hearing and first reading of ordinance</td>
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<td>June 5, 2024</td>
<td>Execution of real estate contract</td>
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<td>June 18, 2024</td>
<td>Final reading of ordinance</td>
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<tr>
<td>July 2024</td>
<td>Qualified buyer purchases unit 501</td>
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**Per City Charter Article II. Section 11d.**

In addition to other acts required by law or by specific provision of this Charter to be done by ordinance, those acts of the city council shall be by ordinance which:

(a) Adopt or amend an administrative code or establish, alter or abolish any city department, office or agency;

(b) Provide for a fine or other penalty or establish a rule or regulation, the violation of which a fine or other penalty is imposed;

(c) Levy taxes;

(d) Convey or lease or authorize the conveyance or lease of any real property of the city.
Public Comment:
No advanced public comment has been received for City Council.

Recommended Motion:
“I move to approve Ordinance O-2024-_____ to Sell City Owned Property Located at 166 E. 33rd Street Per City Charter Article II. Section 11d. – Conveyance of Real Property.”
RECOMMENDATION:

It is the recommendation of Community Development staff and the Planning Commission that the City Council, by motion,

1. Move to adopt a resolution approving the proposed Southfork Starbucks Preliminary Development Plan with the findings and conditions as described in the staff report and discussed at this public hearing.

BACKGROUND SUMMARY:

The applicant, Durango Cache, LLC, represented by Mark Austin of Austin Civil Group, proposes to build a new Starbucks restaurant in Southfork at 29 Copper Court. This location is at the southeast corner of Wilson Gulch Drive and Copper Court, near the Maverik gas station. Starbucks is in the Southfork Character District Area, and all new development in the Area must first be reviewed as a Preliminary Development Plan with public hearings.

In accordance with the directives of the South Fork Character District Master Plan, the site layout and subdivision were reviewed against the Land Use and Development Code standards for new commercial development and the requirements of the Commercial Design Guide. The restaurant is to be approximately 2,200 sf, with a drive-through and an outdoor patio. Staff comments on the proposal were primarily related to building design and pedestrian access/wayfinding:

Design – Several building elements were redesigned to better comply with the City’s commercial design standards and to address comments made by the Community Development Commission at their April meeting. The new design includes elements to emphasize the main pedestrian entrance; the use of brick as a material and color change; and the relocation of the Starbucks logos to where they are more visible.

Pedestrian Access – The lot to the northeast is planned to have a Hilton brand hotel. Starbucks and Hilton have planned an internal pedestrian connection to get people safely from the hotel to the restaurant and back. The crossing on the Starbucks site will be striped where it crosses access drives and will have wayfinding signage that will direct walkers on the Copper Court sidewalk onto or through Starbucks.

The Community Development Commission (CDC) reviewed this request during their April 22nd regular meeting. Comments focused on safety and wayfinding through the site. The CDC also discussed design details relating to materials and height changes. The applicant indicated he was amenable to these changes, and changes requested by staff, and the project resubmittal reflects the requested changes. The CDC recommended approval of the proposal with the conditions described in the staff report and discussed in the hearing unanimously on a 7-0 vote.

Attachments:  Resolution R-2024-___
Planning Commission Staff Report with Recommended Conditions
Planning Commission minutes
Application package
Vicinity Map
Presentation Slides

STRATEGIC PLAN ALIGNMENT:

The proposed Southfork Starbucks Preliminary Plan is in conformance with the Strategic Plan’s Affordability and Economic Opportunity section.

ALTERNATIVE OPTIONS CONSIDERED:

1. Deny the request with specific findings stated.
2. Continue consideration of the request with specific direction to the applicant and/or staff.

FISCAL IMPACT:
The development of this property will require the payment of applicable City development fees, including a Major Street Impact fee, Water Plant Investment fee, Building Permit Fee, and Use Tax.

**POTENTIAL ADVERSE IMPACTS:**
Development in this area has been anticipated since the South Fork Character District Master Plan was adopted in 2016 and since Wilson Gulch Drive was completed. Any potential adverse impacts of this development have therefore already been considered and addressed.

**NEXT STEPS AND TIMELINE:**
Following the approval of the Preliminary Planned Development, the applicant will submit for a Final Planned Development review. Final reviews of the project plans and the proposed subdivision plats will be conducted administratively and will confirm that the modifications made align with staff’s comments. Upon completion of the Final Planned Development review, the applicant may record the subdivision plat and apply for a building permit.
RESOLUTION NO. R-2024-___
A RESOLUTION APPROVING THE PRELIMINARY PLANNED DEVELOPMENT FOR THE SOUTHFORK STARBUCKS, 29 COPPER COURT

WHEREAS, the applicants for the Southfork Starbucks have submitted for a Preliminary Planned Development review; and

WHEREAS, Community Development staff have reviewed the proposal and found it to be in general compliance with the adopted standards of the Land Use and Development Code and the South Fork Character District Master Plan; and

WHEREAS, the Community Development Commission conducted a public hearing considering the proposal on April 22, 2024, and unanimously recommended approval of the Preliminary Planned Development on a 7-0 vote, subject to the conditions described within the staff report; and

WHEREAS, the City Council has conducted a subsequent public hearing considering the proposal on June 4, 2024, and found the project to be in alignment with adopted codes and policies.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Durango, in regular meeting assembled, that:

Said Preliminary Planned Development is approved with the conditions as described by the agenda documentation and discussed during the public hearing.

Approved and adopted this ________ day of _____________, 2024
COLORADO

By_____________________________ Jessika Buell, Mayor

ATTEST:
By__________________________
Faye Harmer, City Clerk
The applicant, Durango Cache, LLC, represented by Mark Austin of Austin Civil Group, has submitted a Preliminary Development Plan to build a new Starbucks at 29 Copper Court in the Southfork area west of Three Springs. The restaurant will have a drive-through and an outdoor patio.

According to the plans submitted by the applicants and their representatives, the proposed building is 2,185 sf. Access will be taken from Copper Court and with a shared access easement with the future Home2Suites Hilton to the east.

** Recommended Motion: **

Move to recommend approval of the proposed Southfork Starbucks Preliminary Development Plan with the findings and conditions as outlined in the staff report.

** Staff Recommendation: **

APPROVE WITH CONDITIONS
PROJECT BACKGROUND

This is a request from Mark Austin, dba Austin Civil Group, for Preliminary Planned Development approval of the Southfork Starbucks, to be located at 29 Copper Court. The Starbucks lot is at the southeast corner of Wilson Gulch Drive and Copper Court. The proposal calls for a restaurant with almost 2,200 sf, an outdoor dining patio, and a drive-through. Access is to be off Copper Court and there will be a shared access with the neighboring Hilton Home2Suites, providing access between Copper Court and Miners Court to the northeast. Store hours are anticipated to be 5:30 am through 7:30 pm.

This project is being reviewed as a Preliminary Development Plan as part of the Southfork Planned Development. Preliminary PDs require review and approval by the Community Development Commission and City Council. Following City Council approval, a staff-level Final Plan is required by the Land Use Development Code (LUDC). The applicant plans to begin construction as soon as possible following all City approvals, with construction anticipated to take approximately six months. Sidewalks, street trees and utilities were installed during the construction of Wilson Gulch Drive and Copper Court, reducing the responsibility associated with the Starbucks development.

The City’s review of the proposed project will focus on building design, lighting, landscaping, and site planning and its compliance with City standards and policies and the Southfork Master Plan. Copies of the proposed site plan, building elevations, landscaping, lighting, and applicant narrative are attached to this report for the Commission’s review. A detailed discussion of specific development features is in the following section.

PROJECT ANALYSIS

The staff analysis focuses upon how well the proposal meets land use and zoning criteria according to the standards contained in LUDC Section 6-3-10-5-D, Preliminary Plan. The applicable criteria include access, parking, site planning, building dimensions, location and design, grading and drainage, utilities, lighting, and landscaping. The proposed plan appears to generally meet all applicable criteria in the LUDC, as described below, although some minor modifications are typical at the Final Plan stage. Infrastructure improvements will include onsite water detention and treatment facilities, utility extensions, and an internal road network. The City of Durango will provide water, while the South Durango Sanitation District (SDSD) will provide sewer service.

Preliminary Development Plan standards include review of the following criteria:

1. A site plan illustrating each proposed building footprint, common open area, and public uses and facilities to be dedicated to the City and / or reserved in common ownership.

These plans were submitted as part of the Preliminary Plan submittal and comply with City and South Durango Sanitation District standards. All improvements will be to City standards unless specifically authorized by the City. Completion of all required public improvements shall be insured through a Public Improvements Agreement with adequate financial security provided.

The building area, access and drive-through comply with development standards. The drive-through has an extra 8’ of width for use a pass through around the drive-through lane, as required by the LUDC. As mentioned above, Starbucks and the proposed Hilton Home2Suites will share access. The City promotes off-street access whenever possible to provide more travel options, disperse traffic and increase safety—the shared access along the east side of Escalante Drive connecting an office building, hotel, restaurants and a car dealership is a good example of this approach.

Starbucks has provided an area of its lot for use as a parking easement with the Home2Suites hotel lot. The area in question is not needed by Starbucks to meet its own parking requirements or any other lot development standards. The easement will be called on the approved site plan so that the shared use will be recorded with the plan approval, and the parking will be available to users of the hotel lot in perpetuity. A paved path from the Copper Court sidewalk provides direct pedestrian access to Starbucks, and a paved walkway from the parking lot next to the Hilton lot is set up to connect walkers between the hotel and restaurant.

Generally, the drainage design as proposed meets city standards. The site has surface detention areas along the southwestern corner of the property. Clean water laws require that water be treated and released at the historic rate and are subject to water quality standards.

2. Approximate locations of all buildings, structures, and improvements, and open space, around buildings and structures.
Starbucks will provide an outdoor patio for customers to use. The LUDC requires a Special Use Permit for outdoor patios, and the proposal complies with the requirements for patios contained in LUDC Sec. 2-3-2-2. The City will issue a separate permit for use of the patio (signage will also be separate permit).

Exterior lights, except for security lighting, must be reduced by at least 30% no later than one hour after close of business. The project is in the Lighting Zone 3 location. The proposed project falls below the Lighting Zone 3 maximum for lumens. A lumen is a measure of the total amount of visible light emitted by a source, and the LUDC contains maximum total lumens calculated on site features such as the amount of hardscape (paving, access, etc.). Lighting will be Dark Skies compliant, and the City has requested that the applicant limit the brightness of exterior lighting to 3000 Kelvins (bright enough to be functional but softer than bright white light). Parking lot light poles are to be 17’ and 18’ tall, complying with City standards.

The sound from the order board is not expected to impact any offsite property. The drive-through order boards are largely blocked from offsite view and impact because the lot is lower than Wilson Gulch Drive and the Hilton site.

LUDC parking standards require a minimum of 20 parking spaces and 27 spaces have been provided. A minimum of three bicycle parking spaces must be provided. The site also contains an enclosure for refuse which will meet the City’s design standards.

3. Conceptual elevations and / or perspective drawings of typical proposed structures and improvements.

Building Design
The current building design largely complies with City design standards. Design guidelines require features such as quality materials such as masonry or wood, and stucco is allowed. The standards also prohibit large expanses of blank walls, materials and color changes, adequate fenestration (windows), and modulation in building height so that continuous roof parapets are broken up into smaller modules.

The City is asking for two changes to the building design. First, the north façade, adjacent to the outdoor patio, has a large expanse of blank façade. Staff has asked for this to be improved, with the window and the right side of the north elevation to be enlarged, with a metal awning above it. Second, the main entrance into the store should be visually emphasized, and staff has asked for the parapet above the entrance to be increased in height by a couple of feet. This modulation also meets the intent of other design standards such as breaking up roof planes with vertical changes and emphasizing pedestrian entrances through design.

4. Landscaping and buffering.
Site and parking lot landscaping meets LUDC requirements for amount, diversity, and appropriate species. The final plans will need to be stamped by a landscape architect registered in Colorado.

Southfork Master Plan
The Southfork Master Plan, adopted in 2016 and amended in 2019, largely references applicable LUDC standards. The dimensional standards in the Southfork area are based on the Commercial Regional (CR) standards, but modified to allow smaller developments, with smaller minimum areas and street frontages, such as the Starbucks lot. All Southfork Plan standards have been met by the submitted plans.

Public Comment
At the time this report was finalized, the City had received any public comments related to the project.

SUMMARY
City staff finds that the proposed Starbucks at Southfork is consistent with the Comprehensive Plan and the Southfork Master Plan, and that it generally meets the applicable LUDC and Commercial Design Guidelines review criteria.

ALTERNATIVE ACTIONS – PRELIMINARY DEVELOPMENT PLAN
A. **Recommend approval** of Southfork Starbucks Preliminary Planned Development with findings that the project is in general conformance with the Comprehensive Plan and applicable LUDC criteria, subject to the following conditions:
1. Prior to submitting for a building permit, the applicant shall receive approval for all site, building, and civil plans through the Final Plan process.
2. Staff will issue a Special Use Permit for the outdoor patio, as required by the LUDC.
3. Revised lighting plans will indicate the use of 3000 Kelvin exterior lighting.
4. A minimum of three bicycle parking spaces will be shown on the Final site plan.
5. Building elevations should be revised to include changes to the north façade and main entrance, as described in the staff report.
6. The site plan shall show a parking easement on the Starbucks property with an approximate 4.2’ by 145’ area will be used for parking by users of the 32 Miners Court lot to the north.
7. The applicant shall obtain a City of Durango sign permit prior to the installation of any permanent signage for this business. Temporary signage shall comply with the provisions of LUDC Article 3-6.
8. All future submittals by the applicant shall be in conformance with adopted city standards, regulations, plan goals, ordinances and building and fire codes.
9. All verbal and graphic representations of the applicants or their agents shall be deemed conditions of approval.

B. **Recommend denial** of the Southfork Starbucks Preliminary Planned Development with specific reasons and findings stated.

C. **Continue** consideration of the Southfork Starbucks Preliminary Planned Development to a date certain with specific directions to staff and/or the applicants.

**RECOMMENDED ACTION**
Following a detailed analysis of the project, staff recommends Alternative ‘A’.
DURANGO COMMUNITY DEVELOPMENT COMMISSION
VIRTUAL MEETING
MONDAY, APRIL 22ND, 2024
5:00 PM
DURANGO, COLORADO

DRAFT MINUTES

MEMBERS PRESENT: Chair Christopher Scott, Vice Chair Sarah Pritchard, Commissioner Carolyn Hunter, Commissioner Sarah Schwartz, Commissioner Dave Eppich, Commissioner Alma Evans, Commissioner Jennifer Johnston

MEMBERS ABSENT: Commissioner Weylin Ryan

STAFF PRESENT: Daniel Murray, Development Services Manager, Mark Williams, Planner II, Tommy Crosby, Economic Opportunity Manager, Vicki Vandegrift, Planner III, Lily Oswald, Code Reform Administrator, and Annie Chacon, Admin Analyst.

1. Call To Order
   Daniel Murray, Development Services Manager called the meeting to order at 5:01 PM.

2. Announcements
   2.1 Disclosure of any conflicts of interest. None.

3. Public Participation
   Chair Christopher Scott opened a public hearing with instructions on how and when to participate.

4. Consent Agenda

   4.1 Approval of the Commission February 26th, 2024, Meeting Minutes, approved with conditions provided by Commissioner Carolyn Hunter, during the study session.

   4.2 Continued the March 2024 meeting minutes.

   4.3 Approval of the RE: NEW Grant for 802 Camino Del Rio -Anthus Park Coffee.
Motion by Commissioner Hunter to approve the February meeting minutes with the two edits identified during the study session and to approve the RE: New Grant application. Motion was seconded by Vice Chair Pritchard.

Roll call.

Chair Scott – yes.
Vice Chair Pritchard – yes
Commissioner Evans – yes
Commissioner Eppich- yes
Commissioner Hunter- yes
Commissioner Johnson- yes
Commissioner Schwartz- yes

Approved unanimously.

5. Public Hearings

5.1 A Public Hearing to Consider the Southfork Starbucks Preliminary Planned Development 29 Copper Court

Mark Williams, Planner II presented the background of the project. The context map was shown. The preliminary plan will be presented, explained Planner Williams.

The proposed layout was presented with notable features.

- 2,200 sq ft building with an outdoor patio
- Proposed development of a 0.9-acre vacant lot in the South Fork Character District.
- 27 proposed parking spaces and four bike parking spaces
- Exterior lighting will be 3000 Kelvins, Dark Skies compliant
- Direct pedestrian connections to the hotel and to Copper Court

The site plan was displayed to show the location of parking, pedestrian access and relation to the streets.

Elevations were shown to show the designs and criteria/guidelines that are met for the trash enclosure that was brought up previously during the study session.

Planner Williams further explained the project design. Williams expanded on the study session discussion concerns on the design such as the logo and
discussed the house shields, which will shield the adjacent hotel rooms for parking lot lighting.

Building complies with design criteria, but staff and the CDC would like to see the following changes:

- Consider moving the Starbuck’s logo onto the brick sections of the facade
- Parapet line of the brick wall increased above main entrance to emphasize the entry

Other changes

- Add ‘house shields’ on the north sides (which is east side in actuality) of the light poles to screen from hotel rooms
- Changes to pedestrian access, with access from adjacent to the vehicle access off Copper Court north to the Hilton property line

Planner Williams shared the applicable standards that are met.

- LUDC 6-3-10-5
  - The PDP is consistent with the layout of the PDP and carries out its purposes and design objectives.
  - The PDP meets all of the criteria for approval of a PDP.
- Per the South Fork Character District Master Plan, the project must comply with the requirements of the Commercial Design Guide.

The review process was shared by Planner Williams.

- May 21 - City Council Review
- If approved, applicant may submit for Final PD Review (administrative)
- Building Permit review and construction

Findings and Recommendation were presented.

Findings:

- The Preliminary PD design aligns with the requirements of the South Fork Character District, Commercial Design Guide, and LUDC, with the recommended motion.

Recommendation:

“Move to recommend approval of the proposed Southfork Starbucks Preliminary Planned Development with the findings and conditions as described in the staff report and discussed at this public hearing.”

Chair Scott opened it up for Commissioner questions.

None.

Project Applicants Sid Squirrel commented the project was well received in the area.
Commissioner Evans, asked for clarity on pedestrian access on Wilson Gulch, the dedicated safety area, including hotel guests' access. The parking area of the hotel was discussed.

Squirrel explained the locations of the access points, and reasoning of the easiest path, and convenience for pedestrians and hotel guests.

Commissioner Hunter brought up the “grade drop” and the steepness of the grade between the road and Starbucks, and recommended consideration of double frontage, from the design guidelines. There was a discussion on the grading drop reports, and the slope for wheelchair access to be addressed. The Starbucks site will be graded to raise it, reducing the current slope from the street.

Agreement for a condition of approval for accessibility concerns, with a max slope of 5 percent threshold.

Discussion on the east elevation roof line. Commissioner Hunter referenced Ch. 5, Commercial Design Guidelines -Section 6 for the consideration of the change of height of wall plane and raising the brick veneer, or to lower the stucco while avoiding mechanical equipment views.

Commissioner Hunter referenced the signage from Ch.6 of the design guidelines to address the position of the signage.

Discussion on the west elevation, based on the design guidelines the primary entrance was reviewed.

Vice Chair Pritchard agreed on accessible and easy to find entrance for pedestrian access.

Commissioner Hunter added a condition regarding the hotel parking consideration for space on an accessible route as there is not a site layout yet on pedestrian access points.

Commissioner Eppich had a question on the accessible pathway from the hotel, if a parking adjacent to Starbucks for designation for accessibility was possible for immediate access.

Commissioner Hunter clarified the ADA law, with the closest parking spot to be designated to the business entrance, ideally to avoid crossing driving aisles.

Planner Williams explained the accessible codes for safety and convenience purposes.
Planer Williams clarified the pedestrian access slopes and access points for safety crossings.

Commissioner Pritchard recommended safety signage for this project.

**Public Comment**
No members of the public commented on this project.

**Motion & Action**

Commissioner Hunter moved to approve the proposal with the recommended conditions described in the staff report and discussed in the hearing. Seconded by Commissioner Eppich.

Commissioner Hunter recommended a modified condition of recommend approval of Southfork Starbucks Preliminary Planned Development with findings that the project is in general conformance with the Comprehensive Plan and applicable LUDC criteria, subject to the following conditions:

1. Prior to submitting for a building permit, the applicant shall receive approval for all site, building, and civil plans through the Final Plan process.
2. Staff will issue a Special Use Permit for the outdoor patio, as required by the LUDC.
3. Revised lighting plans will indicate the use of 3000 Kelvin exterior lighting.
4. A minimum of three bicycle parking spaces will be shown on the Final site plan.
5. Building elevations should be revised to include changes to the north façade and main entrance, as described in the staff report.
6. The site plan shall show a parking easement on the Starbucks property with an approximate 4.2' by 145' area will be used for parking by users of the 32 Miners Court lot to the north.
7. The applicant shall obtain a City of Durango sign permit prior to the installation of any permanent signage for this business. Temporary signage shall comply with the provisions of LUDC Article 3-6.
8. All future submittals by the applicant shall be in conformance with adopted city standards, regulations, plan goals, ordinances and building and fire codes.
9. All verbal and graphic representations of the applicants or their agents shall be deemed conditions of approval.
Commissioner Hunter included the additional conditions for the motion.

10. Condition that the entry of the walkway off Copper Court should be wheelchair accessible and there will be pedestrian markings on the crosswalks and for condition 11., Moving the brick veneer and adjusting signage for enhancement on finding the entrances.

Commissioner Eppich seconded.

**Roll Call**
Chair Scott – yes  
Vice Chair Pritchard – yes  
Commissioner Evans – yes  
Commissioner Eppich- yes  
Commissioner Hunter- yes  
Commissioner Johnson- yes  
Commissioner Schwartz- yes

Motion passed 7-0. Approved unanimously.
Project Description (Location and Acreage)

The purpose of this submittal is to obtain approval from the City of Durango of a major site plan for the construction of an approx. 2,400 square foot Starbucks with drive through and sit-down coffee shop. The subject property is an developed parcel of vacant land, which consists of approximately 0.916 acres. The property is in Section 03 Township 34 North, Range 9 West of the New Mexico Principal Meridian. This site is parcel #566903401009 in the City of Durango located on the eastside of Durango, south of Wilson Gulch Drive and east of Copper Court. The project location is depicted in the photo below:

![Project Site Map]

Procedure and Improvements

The proposed project is a commercial development that will consist of constructing an approx. 2,400 square foot building with a double paved drive through lane and parking lot with 27 parking spaces. The developed vacant lot of approximately 0.916 acres is currently sloping from the northeast corner to the southwest corner and will be graded prior to construction. All utilities necessary to complete this project are currently located adjacent to the site. The proposed project will include landscaped areas surrounding the site, a trash enclosure to the east side of the parking lot, curb and gutters, and surface water quality controls in place. The proposed use is commercial retail space for a coffee shop, which conforms to the current zoning and regulations.
General Project Report
for
Durango Starbucks Site plan

Project Zoning
The property is currently zoned Planned development (PD) in the City of Durango in an area composed of undeveloped land. Adjacent properties and properties within the vicinity of the project site are also zoned Planned Development (PD). The applicant proposes no change to the current zoning.

Surrounding Land Uses and Zoning
The following adjacent properties are zoning accordingly:

<table>
<thead>
<tr>
<th>DIRECTION</th>
<th>ZONING</th>
<th>CURRENT LAND USE</th>
</tr>
</thead>
<tbody>
<tr>
<td>North, NE, NW</td>
<td>PD</td>
<td>Planned Development</td>
</tr>
<tr>
<td>South, SE, SW</td>
<td>PD</td>
<td>Planned Development</td>
</tr>
<tr>
<td>East</td>
<td>PD</td>
<td>Planned Development</td>
</tr>
<tr>
<td>West</td>
<td>PD</td>
<td>Planned Development</td>
</tr>
</tbody>
</table>

The City of Durango’s current zoning surrounding this project site is shown below.
Site Access

The proposed project will create an access point located on the southwest corner of the site connecting to Copper Court. A second access point will be created on the southeast corner of the site for future use.

Development Schedule and Phasing

The project anticipates obtaining site plan approval by May 2024, beginning construction by July 2024 and completing this project by December 2024.
Southfork Starbucks
Preliminary Planned Development

Durango City Council

June 4, 2024

Mark Williams
Community Development

Strategic Plan Goals:
Innovative Housing and Economic Development

Mission (Why we exist)
“We provide outstanding services and experiences for the entire community.”

Vision (What we want to be)
“A multigenerational community which is authentic, diverse, engaged, thriving, and environmentally responsible.”

Values (What we believe in)
Teamwork | Dependability | Professionalism | Service | Respect | Innovation | Well-Being
Mission (Why we exist)
“We provide outstanding services and experiences for the entire community.”

Vision (What we want to be)
“A multigenerational community which is authentic, diverse, engaged, thriving, and environmentally responsible.”

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

• 2,200 sq ft building with an outdoor patio
• Proposed development of a 0.9-acre vacant lot in the South Fork Character District.
• 27 proposed parking spaces and four bike parking spaces
• Exterior lighting will be 3000 Kelvins, Dark Skies compliant
• Direct pedestrian connections to the hotel and to Copper Court
Elevations
Applicable Standards

• Land Use Development Code (LUDC) 6-3-10-5
  • The Preliminary Development Plan (PDP) is consistent with the purposes and design objectives.
  • The PDP meets all of the criteria for approval.
  • The proposed public improvements meets the City's Development Standards, the South Fork Character District Master Plan, and the requirements of the Commercial Design Guide.
Process

• April 22 – CDC Review
• June 4 – City Council Review
• If approved, review moves to Final Planned Development Review (administrative)

Public Comment

• No public comments have been received regarding this request.
Findings:
The Preliminary PD design aligns with the requirements of the Durango Strategic Plan, South Fork Character District, Commercial Design Guide, and LUDC, with recommended conditions.

Recommendation:
“Move to approve the proposed Southfork Starbucks Preliminary Planned Development and Resolution 24-___ with the findings and conditions as described in the staff report and discussed at this public hearing and direct the applicant to submit the Final Plan for staff review.”
TO: DURANGO CITY COUNCIL  
FROM: MARK MORGAN  
CITY ATTORNEY

SUBJECT: A MOTION TO ADOPT A RESOLUTION TO APPROVE THE SETTLEMENT OF A CASE CONCERNING THE APPLICATION OF WATER RIGHTS FILED BY PATRICK AND RACHEL CAIN, SPECIFICALLY 2023CW3050, IN LA PLATA COUNTY DISTRICT COURT

RECOMMENDATION:

It is recommended that, by motion, City Council:

Adopt a resolution to approve the settlement of a case concerning the application of water rights filed by Patrick and Rachel Cain, specifically 2023CW3050, in La Plata County District Court

BACKGROUND SUMMARY:

The City entered into an agreement with the Cains in lieu of a statement of opposition in the 20CW3037 case to protect the City’s interests. That original plan involved augmenting the depletions from a well to support a compost project, house, and some irrigation. The application in the present 23CW3050 case seeks to amend the prior plan for augmentation by increasing the amount of water replaced by that plan to cover additional depletions from a second dwelling on the Cain property. The City and the applicants' have since developed a proposed decree which outlines parameters that ensure that the City will not incur any injuries in relation to the use of the water rights and the plan for augmentation by the applicants’.

STRATEGIC PLAN ALIGNMENT:

Fiscal Excellence and High Performing Governance

ALTERNATIVE OPTIONS CONSIDERED:

None

FISCAL IMPACT:

Unknown at this time

POTENTIAL ADVERSE IMPACTS:

Unknown at this time

NEXT STEPS AND TIMELINE:

Unknown at this time
RESOLUTION R-2024-XX

A RESOLUTION TO APPROVE THE SETTLEMENT OF A CASE CONCERNING THE APPLICATION OF WATER RIGHTS FILED BY PATRICK AND RACHEL CAIN, SPECIFICALLY, 2023CW3050, IN LA PLATA COUNTY DISTRICT COURT

WHEREAS, The Durango City Council has the authority to settle any legal matters involving the City of Durango; and

WHEREAS, the City of Durango, through its outside legal counsel, has developed a proposed decree that outlines parameters that ensure that the City will not incur any injuries in relation to the use of the water rights and the plan for augmentation by the applicants’; and

WHEREAS, the City Council desires to settle this matter upon the recommendation of the City’s outside legal counsel; and

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Durango, in the regular meeting assembled June 4, 2024, to adopt a resolution to approve the settlement of a case concerning the application of water rights filed by Patrick and Rachel Cain, specifically, 2023CW3050, in La Plata County District Court

Approved and adopted this ____ day of __________________, 2024.

CITY OF DURANGO, COLORADO

By: ______________________________

Mayor

ATTEST:

By: ______________________________

Faye Harmer, City Clerk
This matter came before the Referee on the Application of Patrick H. Cain and Rachel B. Cain (collectively, “Applicants”) for water rights and for approval of a plan for augmentation. The Referee, being fully advised in the premises, hereby enters the following findings of fact and ruling:

I. FINDINGS OF FACT

1. Applicants:

   Patrick H. and Rachel B. Cain
   735 C.R. 236
   Durango, CO 81301

   c/o Nancy Agro, (970) 422-2024, nancy@nancyagro.com

2. Application filed: November 6, 2023

3. Pursuant to CRS 37-92-302, the time for filing statements of opposition has expired. No party filed a statement of opposition.

4. Conditional Groundwater Right:
a. Name of structure: Cain Well, Well Permit Number 85168-F. The Well permit will be amended to add the uses contained in this water right application prior to using the well for the new uses.

b. Legal Description: GPS Zone 13, NAD 84: Easting: 253240 Northing: 4127201, See Exhibit A for a map of the Cain Parcel and the location of the Cain Well.

c. Legal Description of Applicants’ Property: A tract of land located in the SW/4 NE/4, Part of NW/4 NE/4, SE/4 NE/4, NE/4 SE/4, Section 31, Township 35 North, Range 8 West, La Plata County Assessor Parcel Number 567131100054, also known as 735 C.R. 236, Durango, CO 81301 (“the Property”).

d. Source: Groundwater tributary to Florida River.

e. Date of appropriation: Date of filing of this application: November 6, 2020


g. Proposed uses: domestic in-house use for second dwelling and landscape irrigation

h. Additional information: The Cain Well was decreed in Case Number 2020CW3037 for domestic in-house use, indoor office use, and composting. The application in this matter was filed to add a new water right at the well for in-house use at a second residential dwelling and landscape irrigation with a 2023 priority.

5. Amended Plan of Augmentation

a. Name of Structure to be augmented: Cain Well

b. Statement of Plan for Augmentation: The augmentation plan decreed in Case Number 2020 CW 3037 is being amended to include augmentation releases for the out of priority depletions caused by the diversions made for a second residential dwelling and landscape irrigation. The attached Table 1 supersedes Table 1 from Case No. 20 CW 3037.

c. Depletions: In the plan of augmentation decreed in Case Number 2020 CW 3037, total lagged depletions amounted to 0.29 AF annually and total Augmentation Releases amounted to 0.32 AF. Following the decree in that case, Applicant entered into a long-term water service contract with the Florida Water Conservancy District (FWCD) for the release of 0.5 AF of water from Lemon Reservoir to replace the depletions set
forth in the augmentation plan. See Attached Exhibit B. Per the attached Table 1, in-house use for the second dwelling would use up to 195 gallons per day (gpd), for a total annual demand of 0.219 AF. Total water demand for two houses amounts to 0.437 AF annually. Return flows from septic are assumed at 85%. Landscape irrigation would use up to 0.169 AF annually and lagged return flows amount to 0.040 AF annually. Total lagged depletions for all uses including the addition of the second home and landscape irrigation amount to 0.436 AF annually. Total lagged depletions to be augmented for all uses are 0.480 AF per year including transit losses and are within the 0.50 AF per year contracted for with FWCD. Water demand may vary as between uses so long as the total depletions for those uses using the assumption set forth herein do not exceed 0.50 AF per year.

d. Source of Water for Augmentation: Florida River water stored in Lemon Reservoir. To protect senior water users, Applicant has entered a long-term water service contract with the Florida Water Conservancy District for the release of 0.50 AF of water per year for augmentation purposes. Applicant's out of priority depletions for the uses proposed herein will not exceed 0.50 AF per year. The contract is attached hereto as Exhibit B. Upon completion of this decree, Applicant will add this decree as an exhibit to that contract and shall re-record the contract in the real property records of La Plata County.

e. Total diversions from the Cain Well shall be metered with a totalizing flow meter. Augmentation releases will be made from Lemon Reservoir and coordinated with the Dam Superintendent for the Florida Water Conservancy District and tracked via mathematical calculations. These releases shall be made from the start of an administrative call and continue through the duration of the call period as determined by the Division Engineer. The monthly volume set forth in column 11 of Table 1 shall be released on an average daily basis during the period of administration, or as directed by the Division Engineer.

f. Applicants, or their successors in ownership of the plan for augmentation herein, shall be responsible for ensuring that the water uses stay within the diversions and depletions authorized by this Ruling. Applicants shall supply meter records and summaries of annual diversions and depletions under this Decree to the Division Engineer by November 15 of each year for the immediately preceding November 1 to October 31 period, or more often as may be required by the Division Engineer. Applicants will be the contact for purposes of correspondence and administration by the Division Engineer. If a different contact will be used, Applicants will provide the Division Engineer notice in writing.

II. CONCLUSIONS OF LAW
6. The Division Engineer is lawfully required to administer diversions under the subject water rights pursuant to Colorado law. The Division Engineer, or a designated representative, will administer all such water transported in the Florida River or its tributaries under this Decree, including water for replacement of depletions, past intervening headgates to ensure that such water is not intercepted or otherwise diminished in quantity by diversion, use or other interference by intervening water rights and to assure that such water remains available and suitable for Applicants’ uses under this Ruling. If the Division Engineer is unable to verify, manually or otherwise, that water was delivered past a structure that is sweeping the river, none of the water released will be available for diversion or replacement credit below the sweeping structure, provided that the sweeping structure had a right to sweep the river. The Applicants shall comply with the orders of the Division Engineer to install necessary measuring devices and administrative structures, and shall keep records and make reports as reasonably requested by the Division Engineer.

7. This Court has jurisdiction over these proceedings and over all persons and water rights affected thereby, whether they have appeared or not.

8. Full and adequate notice of these proceedings and the matters adjudicated herein has been given in the manner required by law.

9. Applicant has met all burdens of proof and complied with all standards applicable to each of the water rights requested herein.

10. Applicants’ conditional water right and plan of augmentation are contemplated and authorized by law, and if implemented and administered in accordance with the terms and conditions of this Ruling, will not injuriously affect the owners of or persons entitled to use water under a vested water right or a decreed conditional water right.

III. RULING OF REFEREE

11. The provisions of paragraphs 1-10 above are incorporated herein.

12. The conditional water rights described in Paragraph 4 is decreed with the indicated date of appropriation, and the plan of augmentation described in Paragraph 5 is approved subject to the terms and conditions of this Ruling.

13. The application for the water rights described herein was filed in 2023 and such water right shall be administered as having been filed in that year and shall be junior to all priorities for which applications were filed in previous years. As between all rights for which applications were filed in 2023, priority shall be determined by decreed dates of appropriation.
14. Measuring Devices. Applicants shall comply with reasonable orders of the State or Division Engineers to install the measuring devices required by this Decree and such additional measuring devices as are necessary for the administration of the plan of augmentation approved herein and shall make such additional reports as reasonably requested by the State or Division Engineers.

15. The plan for augmentation described in Paragraph 5 is hereby approved subject to the terms and conditions set forth in this decree. Out of priority depletions resulting from Applicant's use of the Cain Well shall be replaced through releases from Lemon Reservoir in the amounts required by Paragraph 5.d.

16. If Applicants wish to change the water use demands outlined in this decree, a revised Table 1 shall be provided to the Division Engineer for approval at least sixty days prior to the proposed change.

17. Pursuant to C.R.S. §37-92-304(6), the Court shall retain jurisdiction over the plan for augmentation for a period of five (5) years after the augmentation plan becomes operational.

18. During the month of _____________, 2030, and every six years thereafter until the conditional water right retained hereunder is decreed absolute, the owner or user thereof, if they desire to maintain the same, shall file an application for a finding of reasonable diligence with the Water Clerk of this Court.

Dated this _____ day of _______________, 2024.

____________________________________
Jeffery Wilson, Water Judge
Acting as Water Referee
APPROVED AS TO FORM:

[Signature]

Nancy Agro, Reg. No. 24910

CHECKED FOR FORM AND ADMINISTRABILITY:

______________________________

Rob Genualdi, Division Engineer
Colorado Water Resources
Division No. 7
160 Rockpoint Drive, Suite E
Durango, CO 81301
(970)247-1845

Date: __________________________
DECREE OF THE WATER COURT

With no protest being filed to the Ruling of the Referee, IT IS THEREFORE, ADJUDGED AND DECREED that the Ruling of the Referee is hereby approved and adopted as the decree of the Water Court.

Dated this _____ day of ________________, 2024.

____________________________________
Jeffery R. Wilson, Water Judge
Contract No. 21-WC-40-886
Acre-feet purchased: 0.5 Acre Foot

FLORIDA WATER CONSERVANCY DISTRICT

THIRD-PARTY AGREEMENT
FOR PURCHASE OF FLORIDA PROJECT STORAGE WATER
FOR LONG-TERM WATER SERVICE

This Agreement is entered into this ___ day of ____________, between the Florida Water Conservancy District and the buyer identified below (Buyer), as approved by the United States.

RECIDTALS

A. The District has entered into a Long-Term Water Service Contract with the United States of America (the United States), acting through the Secretary of the Interior, pursuant to The Reclamation Act of 1902 (Act of June 17, 1902, 32 Stat. 388) and all acts amendatory and supplementary thereto, and particularly pursuant to the contracting authority of Section 9(c)(2) of the Reclamation Project Act of August 4, 1939 (53 Stat. 1187) and the general authorization for municipal, industrial, and other miscellaneous beneficial uses provided by the Colorado River Storage Project Act approved April 11, 1956 (70 Stat. 105), for 114 acre-feet of water stored in Lemon Reservoir, a participating Project of the Colorado River Storage Project (District Contract). The terms of the District Contract are incorporated into this Agreement by this reference, and a copy is available upon request.

B. The District Contract authorizes the District to resell up to 114 acre-feet of water for municipal and industrial use and other miscellaneous beneficial uses, other than commercial agricultural irrigation, including but not limited to augmentation uses subject to the terms and conditions of the District Contract.

C. The District is providing the water described in this Agreement for use as replacement water to the Florida River to augment depletions by the applicant specifically identified in Article 2 below. The water is provided by the District pursuant to the terms and conditions of the Plan for Augmentation decreed in Case No. 2020CW3037, Water Division 7, or substitute water supply plan.

AGREEMENT

In consideration of the mutual and dependent covenants contained herein, the parties to this Agreement agree as follows:

1. This Agreement shall become effective upon execution of the Agreement by the District, subject to the approvals required by Article 15, and shall expire April 2, 2049. This Agreement is subject to and limited by the terms of the District Contract.

1.1 Pursuant to the Act of June 21, 1963 (77 Stat. 68), renewal of this contract may be performed upon written request from the Buyer not less than one year prior to expiration of this contract. Renewal of this contract shall be upon such terms and conditions as may be mutually agreeable to the United States, the District, and the Buyer. Any such renewal shall be subject to applicable Federal law, State law, and Reclamation policy in existence at the time of renewal.

2. The depletions to be augmented by release of water pursuant to this Agreement are described in detail on the document attached to this Agreement as EXHIBIT A. (Attach augmentation plan or substitute water supply plan.)

3. The amount of water purchased by Buyer under this Agreement is 0.5 Acre Foot.

4. For the water purchased under this Agreement, the Buyer agrees to pay the District as
follows:

4.1 Upon signing this Agreement, the Buyer shall pay to the District:

4.1.1 $200.00 minimum charge for one acre-foot or less to reimburse the District for costs of administration of this Agreement and the District Contract; plus

4.1.2 $68.37 per acre-foot for each acre-foot of water purchased by the Buyer, the Colorado River Storage Project M&I water rate, as calculated annually by the Bureau of Reclamation according to the terms of the District Contract; plus

4.1.3 $162.80 per acre-foot for annual system improvement costs and water conservation activity costs, and replacement costs, all associated with the Project Works; plus

4.1.4 $16.42 per acre-foot for annual operation and maintenance of Project Works.

Total amount paid by the Buyer upon signing this Agreement: $323.80 (4.1.1 if one acre-foot or less or 4.1.1 x acre-feet purchased if greater than one acre-foot + 4.1.2 x acre-feet purchased + 4.1.3 x acre-feet purchased + 4.1.4 x acre-feet purchased).

Example 1: Buyer is purchasing two acre-feet in 2021.
Total amount paid is $895.18 or ($200 x 2, plus $68.37 x 2, plus $162.80 x 2, plus $16.42 x 2);

Example 2: Buyer is purchasing one half acre-foot in 2021.
Total amount paid is $323.80 or ($200 plus $68.37 x 0.5, plus $162.80 x 0.5, plus $16.42 x 0.5).

4.2 Commencing in the calendar year following the year in which this Agreement is signed, the Buyer shall pay to the District annually the Colorado River Storage Project M&I water rate, as calculated for such year by the Bureau of Reclamation, plus the annual administration costs for each acre-foot of water purchased, plus the annual system improvement, replacement and water conservation activity costs for each acre-foot of water purchased, plus the operation and maintenance costs for each acre-foot of water purchased as calculated for such year by the Florida Water Conservancy District. The rates may be adjusted by the District as necessary to ensure that costs identified in Articles 4.1.1, 4.1.3 and 4.1.4 are recovered. The derivation of rates, as adjusted by the District shall be available upon request of the Buyer pursuant to Article 14.

4.3 On or before the last day of February of each year during the term of this Agreement, the District shall mail an invoice pursuant to Article 4.2 and a form to be completed by Buyer, itemizing monthly well diversions and depletions for the prior year described in Article 2 as reflected by Buyer’s flow meter to Buyer’s last known address, as reflected in the District’s records.

4.4 In the event that the District incurs additional attorney’s fees, engineering fees or other costs in connection with Buyer’s plan of augmentation or substitute water supply plan including, but not limited to providing evidence in such case, Buyer will reimburse the District those costs within 30 days of invoicing. All balances remaining after 30 days will incur interest at a rate of ten percent (10%) per annum.

4.5 On or before March 31st, Buyer shall return the completed diversion record provided by the District pursuant to Article 4.3, together with payment of the total amount due as described in the invoice.

4.6 The District shall pay all sums collected from Buyer, as described in Article 4.1.2 above, to the United States; provided, however, that all other cost reimbursements described in Article 4.1 will be retained by the District.

5. By signing this Agreement, Buyer acknowledges, represents and warrants to the District:
5.1 That the information provided by Buyer to the District on EXHIBIT A is correct to the best of Buyer's knowledge;

5.2 That Buyer has read and understands the District Contract incorporated by reference to this Agreement and agrees to be bound by its terms, as applicable;

5.3 That the Plan for Augmentation or substitute water supply plan described in Recital C above requires that all subject wells must have totalizing flow meters installed and maintained in good working order.

5.4 When available, water purchased under this Agreement will be released from Lemon Reservoir and delivered to the Florida River at the outlet works of Lemon Dam upon request of the Division Engineer, Water Division 7, at times and in amounts determined by the Division Engineer, and only for the purpose of providing replacement water to the Florida River to augment depletions specifically identified in Article 2. The Third Party Contractor recognizes that it cannot request scheduled releases from Lemon Dam which would damage Project facilities. The District will not open dam gates to satisfy the water purchased hereunder once gates are closed, which normally occurs at the end of the irrigation season, but may occur at other times for maintenance purposes, or due to natural disaster such as fire. Third Party Contractor agrees that it may not request release of water purchased hereunder after such gates are closed unless the District confirms that it can satisfy the requested release through the Lemon Reservoir bypass facilities;

5.5 That water purchased under this Agreement will not protect Buyer from curtailment as a result of a call placed by any water right upstream of the Florida Project and senior to Buyer's water right;

5.6 That nothing in this contract is intended to create a water right to Contracted Water obtained pursuant to this contract, and the Third Party Contractor may not claim a water right based on any legal theory arising under State or Federal law, before any State or Federal judicial or administrative body based on the use of Contracted Water under this or any Third Party Contract;

5.7 That the amount of water purchased by Buyer under this Agreement has been determined solely by Buyer, and that the District makes no representation that the amount purchased by Buyer is sufficient to protect Buyer from curtailment as a result of a call placed by senior water rights diverting water downstream from the Lemon Dam;

5.8 That the amount to be paid annually by Buyer under this Agreement is due and payable in full, whether or not the water purchased is actually released from Lemon Reservoir;

5.9 That Buyer shall have no holdover of water storage in Lemon Reservoir from water year to water year.

5.10 That in the event water available for release under this Contract is curtailed for any reason, including drought, error, the reaching of maximum use of water allotted to the State of Colorado, closing of the gates, or other reasons pursuant to the provisions of the District Contract, no liability shall attach to the District for such curtailment, even if said curtailment results in a reduction of the amount of water released under this Agreement;

5.11 That, except as expressly contained in this Agreement, no representation by or on behalf of the District has been made to Buyer as to the amount of water purchased by Buyer under this Agreement, the effectiveness of such purchase in protecting any water right from curtailment or the availability of water to the District under the District Contract.

6. Buyer agrees to maintain permanent records of all diversions and depletions described in Article 2, as reflected by Buyer's flow meter, recorded by Buyer at least monthly, and to submit a copy of such records to the District annually with the payment described in Article 4.2.
7. The payment by Buyer of the amounts described in Article 4 is a condition precedent to receiving benefits under this Agreement. In the event that Buyer's tendered payment is dishonored, the District shall not make water available for Buyer until Buyer provides payment of the amount due, plus interest at the rate of ten percent (10%) per annum from the date of tender and a late charge equal to five percent (5%) of the payment, in Good Funds (cash, electronic transfer funds, certified check or cashier's check). Buyer shall also pay all attorney's fees and costs incurred by the District for collection efforts of delinquent payments. Payments received shall be applied first to the payment of costs and attorney fees incurred, if any, second to the payment of late charges and accrued interest, and the balance applied to the overdue payment.

8. This Agreement may not be assigned, or the water purchased hereunder transferred, by Buyer without the written consent of the District, at its discretion and approval by the United States. Upon any transfer of the plan of augmentation or substitute water supply plan identified in Article 2, Buyer shall notify the District of such transfer in writing. The notice shall include the name, address and telephone number of the person to whom the transfer will be made and an application for transfer. The District may, in its discretion, assess an administration fee to record the transfer as a condition of approving the transfer. Any transfer of the water purchased under this Agreement without the consent and approval required by this paragraph shall be void.

9. The District may terminate this Agreement in the event of failure by the Buyer to perform Buyer's obligation to pay the sums due under this Agreement, in the event of a misrepresentation or breach of warranty by Buyer, or due to the inability of the District to provide water for augmentation or substitute water supply plans. In the event of termination by the District, any sums paid by Buyer shall be non-refundable. The District shall give written notice of termination to Buyer, the United States and the Division Engineer. No liability shall attach to the District for such termination.

10. This Agreement constitutes the entire and only agreement between the District and Buyer relating to the subject matter hereof. No subsequent modification of any of the terms of this Agreement shall be valid, binding upon the parties, or enforceable unless made in writing and signed by the parties and the United States and approved by the Division Engineer.

11. The use of water purchased under this Agreement shall comply fully with the National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321 et seq.) prior to the approval of this Agreement by the United States.

12. The water purchased under this Agreement shall be limited to the use described in the plan of augmentation or substitute water supply plan identified in Article 2, and the terms of this Agreement shall be binding upon Buyer's successors in interest.

13. No guarantee is made by Reclamation or the District as to the quality of Contracted Water released under this Third Party Contract.

14. Any notice to Buyer provided for in this Agreement shall be in writing and shall be given and be effective upon (1) hand delivery to Buyer or (2) mailing such notice by first-class U.S. mail, addressed to Buyer at the Buyer's address stated on the first page of this Agreement, or to such other address as Buyer may designate by notice to the District. Any notice to the District shall be in writing and shall be given and be effective upon (1) hand delivery to the District's president or (2) by mailing such notice by first-class U.S. mail to the President, Florida Water Conservancy District, 1523 County Road 243, Durango, Colorado 81301, with a copy to P.O. Box 1157, Durango, Colorado 81302.

15. This Agreement is subject to approval by the United States. Upon execution by all parties, and subject to timely payment by Buyer, the District will record this Agreement in the records of the La Plata County Clerk and Recorders office.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first written above.
Attest:

Terry Peluso

Secretary

Buyer:

Patrick H. Cain

Approved:

UNITED STATES OF AMERICA

Regional Director:
Upper Colorado Region
Bureau of Reclamation

FLORIDA WATER CONSERVANCY DISTRICT

Philip S Craig, President

Buyer

Rachel B. Cain

Approved:

Regional Solicitor's Office
Attest:

Terry Palmer

Secretary

Buyer:

Patrick H. Cain

Approved:

UNITED STATES OF AMERICA
WAYNE
PULLAN
Regional Director
Upper Colorado Region
Bureau of Reclamation

DigiSign by WAYNE PULLAN
Date: 2021.03.19 07:32:47

FLORIDA WATER CONSERVANCY DISTRICT

Philip H. Cryan
President

Buyer

Rachel B. Cain

Approved:

SUSANNAH THOMAS
Regional Solicitor's Office

DigiSign by SUSANNAH THOMAS
Date: 2021.03.17 18:39:59
Exhibit A: Filed in District Court Water Division
Jan 15 2021 Durango Colorado

DISTRICT COURT, WATER DIVISION NO. 7
LA PLATA COUNTY, COLORADO
1060 East Second Avenue
Durango, Colorado 81301
970-247-2304

CONCERNING THE APPLICATION FOR WATER RIGHTS OF
Applicant:  Patrick H. Cain and Rachel B. Cain

IN THE FLORIDA RIVER WATER SHED
IN LA PLATA COUNTY

FINDINGS OF FACT, CONCLUSIONS OF LAW,
RULING OF THE REFEREE AND DECREE

This matter came before the Referee on the Application of Patrick H. Cain and Rachel B. Cain (collectively, "Applicants") for water rights and for approval of a plan for augmentation. The Referee, being fully advised in the premises, hereby enters the following findings of fact and ruling:

I. FINDINGS OF FACT

1. Applicants:

   Patrick H. and Rachel B. Cain
   735 C.R. 236
   Durango, CO 81301

   c/o Nancy Agro, 700 Main Ave, Suite K, Durango, CO 81301, (970) 422-2024,
   nancy@nancyagro.com

2. Application filed:  August 31, 2020

3. Pursuant to CRS 37-92-302, the time for filing statements of opposition has expired. No party filed a statement of opposition.

4. Conditional Groundwater Right:
a. Name of structure: Cain Well. A well permit will be obtained pursuant to C.R.S. 37-90-137(2) prior to construction or use of the well.

b. Legal Description. Well will be drilled on the Applicants' property. The attached Exhibit A depicts the property and the proposed location of the well. However, the well may be drilled elsewhere on the property.

c. Legal Description of Applicants’ Property: A tract of land located in the SW/4 NE/4, Part of NW/4 NE/4, SE/4 NE/4, NE/4 SE/4, Section 31, Township 35 North, Range 8 West, La Plata County Assessor Parcel Number 567131100054, also known as 735 C.R. 236, Durango, CO 81301 ("the Property").

d. Source: Groundwater tributary to Florida River.

e. Date of appropriation: Date of filing of this application: August 31, 2020.


g. Proposed uses: domestic in-house use in one single-family dwelling, and commercial and industrial uses for indoor office use and composting. All uses will occur on Applicants’ Property described in paragraph 4.c. above.

h. Other: The existing home is currently supplied from a hand dug well. Upon completion of drilling and permitting of the new well, the hand dug well will be plugged and abandoned in accordance with Rule 16 of the Water Well Construction Rules (2 CCR 402-2) and an abandonment report submitted to the Division of Water Resources. Proof that the hand dug well has been plugged and abandoned will be provided to the Water Court upon making the subject Cain Well water right absolute.

5. Plan of Augmentation

a. Name of Structure to be augmented: Cain Well

b. Statement of Plan for Augmentation: This augmentation plan is intended to provide for the replacement of out of priority depletions caused by the diversions made at the Cain Well for the uses described above.

c. Diversions: In-house use would use up to 350 gallons per day (gpd) for the residence, and 60 gpd for the office, both on a year-round basis. Moisture for the compost piles would use up to 100 gpd, and 200 gpd would be used for dust suppression. These uses for the
compost piles would be seasonal (April through November). The total diversion amount would not exceed 0.66 Acre Feet (AF) per year.

d. Depletions: The compost piles uses would be 100% depletive. For the in-house and office uses, return flows from non-evaporative septic systems are assumed at 85%. Total lagged depletions to be augmented for these uses are 0.29 AF per year at the proposed well location. Final lagging will be determined upon drilling of the well. Additional stream loss of 0.625% per mile from Lemon Dam for 14.6 miles is 0.03 AF per year. The total depletion will not exceed 0.50 AF per year. Water demand may vary as between uses so long as the total depletions for those uses using the assumption set forth herein do not exceed 0.50 AF per year. See Table 1. Applicants’ uses, diversions and resulting depletions authorized under this augmentation plan are further described in the attached Table 1.

e. Source of Water for Augmentation: Florida River water stored in Lemon Reservoir. To protect senior water users, Applicant has entered into a Reservation Agreement with the Florida Water Conservancy District to reserve up to 0.50 AF of water per year for augmentation purposes. Upon completion of this Decree, and prior to diverting any water from the Cain Well described above, Applicant will enter into a Third Party Agreement for Purchase of Florida Project Storage Water for Long Term Water Service (“Third Party Contract”) for releases from Lemon Dam for up to 0.50 AF of water per year to replace Applicant’s out of priority depletions as required under the terms of this Decree. Applicants’ out of priority depletions for the uses proposed herein shall not exceed 0.50 AF per year.

The water rights decreed to the Florida Water Conservancy District for use in plans of augmentation is Case Numbers W 1689 77 through W 1695 77 as amended in 1994 for use of 114 acre feet of storage water to be used for augmentation. Legal description: The axis of the dam is located in Section 17 and 20, Township 36 North, Range 7 West, N.M.P.M. beginning at a point on the right abutment, from whence the Southwest corner of Section 17, Township 36 North, Range 7 West, N.M.P.M., bears South 84° 34' West, a distance of 1,699.6 feet, thence South 63° 22' East a distance of 1,320 feet to a point on the end of the axis of the dam and rock fill structure.

f. Total diversions from the Cain Well shall be metered with a totalizing flow meter. Augmentation releases will be made from Lemon Reservoir and coordinated with the Dam Superintendent for the Florida Water Conservancy District and tracked via mathematical calculations. These releases shall be made from the start of an administrative call and continue through the duration of the call period as determined by the Division Engineer. The monthly volume set forth in column 11 of Table 1 shall be released on an average daily basis during the period of administration, or as directed by the Division Engineer.

6. Applicants, or their successors in ownership of the plan for augmentation herein, shall be responsible for ensuring that the water uses stay within the diversions and depletions authorized
by this Ruling. Applicants shall supply meter records and summaries of annual diversions and depletions under this Decree to the Division Engineer by November 15 of each year for the immediately preceding November 1 to October 31 period, or more often as may be required by the Division Engineer. Applicants will be the contact for purposes of correspondence and administration by the Division Engineer. If a different contact will be used, Applicants will provide the Division Engineer notice in writing.

7. The augmentation plan described in this Ruling, if operated and administered in accordance with the terms and conditions of this Ruling, will adequately replace depletions resulting from the use of the wells in time, amount and location.

II. CONCLUSIONS OF LAW

8. The Division Engineer is lawfully required to administer diversions under the subject water rights pursuant to Colorado law. The Division Engineer, or a designated representative, will administer all such water transported in the Florida River or its tributaries under this Decree, including water for replacement of depletions, past intervening headgates to ensure that such water is not intercepted or otherwise diminished in quantity by diversion, use or other interference by intervening water rights and to assure that such water remains available and suitable for Applicants' uses under this Ruling. If the Division Engineer is unable to verify, manually or otherwise, that water was delivered past a structure that is sweeping the river, none of the water released will be available for diversion or replacement credit below the sweeping structure, provided that the sweeping structure had a right to sweep the river. The Applicants shall comply with the orders of the Division Engineer to install necessary measuring devices and administrative structures, and shall keep records and make reports as reasonably requested by the Division Engineer.

9. This Court has jurisdiction over these proceedings and over all persons and water rights affected thereby, whether they have appeared or not.

10. Full and adequate notice of these proceedings and the matters adjudicated herein has been given in the manner required by law.

11. Applicant has met all burdens of proof and complied with all standards applicable to each of the water rights requested herein.

12. Applicants' conditional water right and plan of augmentation are contemplated and authorized by law, and if implemented and administered in accordance with the terms and conditions of this Ruling, will not injuriously affect the owners of or persons entitled to use water under a vested water right or a decreed conditional water right.

III. RULING OF REFEREE
13. The provisions of paragraphs 1-12 above are incorporated herein.

14. The conditional water rights described in Paragraph 4 is decreed with the indicated date of appropriation, and the plan of augmentation described in Paragraph 5 is approved subject to the terms and conditions of this Ruling.

15. The application for the water rights described herein was filed in 2020 and such water right shall be administered as having been filed in that year and shall be junior to all priorities for which applications were filed in previous years. As between all rights for which applications were filed in 2020, priority shall be determined by decreed dates of appropriation.

16. Measuring Devices. Applicants shall comply with reasonable orders of the State or Division Engineers to install the measuring devices required by this Decree and such additional measuring devices as are necessary for the administration of the plan of augmentation approved herein and shall make such additional reports as reasonably requested by the State or Division Engineers.

17. The plan for augmentation described in Paragraph 5 is hereby approved subject to the terms and conditions set forth in this decree. Out of priority depletions resulting from Applicant’s use of the Cain Well shall be replaced through releases from Lemon Reservoir in the amounts required by Paragraph 5.e.

18. Within sixty days of completion of construction of the well pursuant to a well permit, the Applicant must notify both the Water Court and the Division of Water Resources of the precise location of the well.

19. Prior to any diversions from the Cain Well, the Applicants shall provide the Division Engineer with revisions to Table 1 based on the actual location of the well.

20. If Applicants wish to change the water use demands outlined in this decree, a revised Table 1 and a new well permit application, if necessary, shall be provided to the Division Engineer for approval at least sixty days prior to the proposed change.

21. In its application to make the conditional ground water right absolute, the Applicant shall identify the specific points of diversion and the terms and conditions necessary to avoid injury to other water rights from well pumping at that location. This may result in changes to the terms and conditions of the decree that are specific to the ultimate location of the well, but no other terms and conditions shall be changed. As described in Paragraph 5, Applicant has leased augmentation water which is available to be released on a 365 day basis. As long as the annual depletions do not exceed the amount of water leased and the other terms and conditions in this decree are not changed, the Court finds there will be no injury.
22. Pursuant to C.R.S. §37-92-304(6), the Court shall retain jurisdiction over the plan for augmentation for a period of five (5) years after the augmentation plan becomes operational.

23. Within thirty days of execution of this Decree by the Court, Applicant shall deliver to the FWCD a completed and signed Third Party Agreement for Purchase of Florida Project Storage Water for Long Term Water Service ("Third Party Contract") together with the first year payment. This Decree is expressly contingent on the BOR, FWCD, and Applicant entering into a Third Party Contract. Applicant shall provide a fully executed Third Party Contract to the Division Engineer within six months of the entry of Decree. If Applicant shall fail to provide the Third Party Contract, the Division Engineer shall notify the Court, and this matter shall set on the docket for a compliance review.

24. During the month of February, 2027, and every six years thereafter until the conditional water right retained hereunder is decreed absolute, the owner or user thereof, if they desire to maintain the same, shall file an application for a finding of reasonable diligence with the Water Clerk of this Court.
Dated this 15th day of January, 2021.

Jeffery Wilson, Water Judge
Acting as Water Referee

APPROVED AS TO FORM:

Nancy Agro, Reg. No. 24910
CHECKED FOR FORM AND ADMINISTRABILITY:

[Signature]

Date: 1/15/21

Rob Genuardi, Division Engineer
Colorado Water Resources
Division No. 7
160 Rockpoint Drive, Suite E
Durango, CO 81301
(970)247-1845

DECREE OF THE WATER COURT

With no protest being filed to the Ruling of the Referee, IT IS THEREFORE, ADJUDGED AND DECREED that the Ruling of the Referee is hereby approved and adopted as the decree of the Water Court.

Dated this 10th day of February 2021.

Jeffery R. Wilson, Water Judge
Table 1
Demands, Return Flows and Augmentation Requirement for Calculated Out-of-Priority Depletions
Table to Farm Compost/Cafl Augmentation Plan

<table>
<thead>
<tr>
<th>Month</th>
<th>Domestic (acre-feet)</th>
<th>Indoor Employee Use (acre-feet)</th>
<th>Compost Facility Demand (acre-feet)</th>
<th>Total Demands (acre-feet)</th>
<th>Total Legged Demands (acre-feet)</th>
<th>Domestic Return Flows (acre-feet)</th>
<th>Indoor Employee Use Return Flows (acre-feet)</th>
<th>Total Return Flows (acre-feet)</th>
<th>Total Legged Depletions (acre-feet)</th>
<th>Days of Administration</th>
<th>Augmentation Releasetes (acre-feet)</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td>0.03</td>
<td>0.004</td>
<td>0.02</td>
<td>0.04</td>
<td>0.04</td>
<td>0.03</td>
<td>0.009</td>
<td>0.03</td>
<td>0.03</td>
<td>100%</td>
<td>0.01</td>
</tr>
<tr>
<td>February</td>
<td>0.03</td>
<td>0.004</td>
<td>0.02</td>
<td>0.04</td>
<td>0.04</td>
<td>0.03</td>
<td>0.009</td>
<td>0.03</td>
<td>0.03</td>
<td>100%</td>
<td>0.01</td>
</tr>
<tr>
<td>March</td>
<td>0.03</td>
<td>0.004</td>
<td>0.02</td>
<td>0.04</td>
<td>0.04</td>
<td>0.03</td>
<td>0.009</td>
<td>0.03</td>
<td>0.03</td>
<td>100%</td>
<td>0.01</td>
</tr>
<tr>
<td>April</td>
<td>0.03</td>
<td>0.004</td>
<td>0.02</td>
<td>0.04</td>
<td>0.04</td>
<td>0.03</td>
<td>0.009</td>
<td>0.03</td>
<td>0.03</td>
<td>100%</td>
<td>0.01</td>
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<tr>
<td>May</td>
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<td>0.02</td>
<td>0.04</td>
<td>0.04</td>
<td>0.03</td>
<td>0.009</td>
<td>0.03</td>
<td>0.03</td>
<td>100%</td>
<td>0.01</td>
</tr>
<tr>
<td>June</td>
<td>0.03</td>
<td>0.004</td>
<td>0.02</td>
<td>0.04</td>
<td>0.04</td>
<td>0.03</td>
<td>0.009</td>
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<td>100%</td>
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<tr>
<td>July</td>
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<td>0.02</td>
<td>0.04</td>
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<td>100%</td>
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<td>0.02</td>
<td>0.04</td>
<td>0.04</td>
<td>0.03</td>
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<td>0.03</td>
<td>100%</td>
<td>0.01</td>
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<td>0.03</td>
<td>100%</td>
<td>0.01</td>
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<td>December</td>
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<td>0.004</td>
<td>0.02</td>
<td>0.04</td>
<td>0.04</td>
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<td>0.009</td>
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<td>0.009</td>
<td>0.03</td>
<td>0.03</td>
<td>100%</td>
<td>0.01</td>
</tr>
</tbody>
</table>

Notes:
(1) Based on 1 house utilizing 350 gpd (per La Plata County Standards) year-round.
(2) Based on indoor water use for 4 full time employees utilizing 15 gpd each (per La Plata County Standards), for a total of 60 gpd. During 250 annual work days.
(3) Based on 100 gpd for added compost pile moisture and 200 gpd for dust suppression. April through November.
(4) Equals Column (1) + Column (2) + Column (3).
(5) Equals Column 3 legged per g-ios analysis using Option 1, I = 100gpd, specific yield of 0.00505 and an X distance to the river of 540 feet.
(6) Equals Column (1) x 85%, based on 85% return flows from a septic system. Because domestic demands are constant year-round, the return flows do not need to be legged.
(7) Equals Column (2) x 85%, based on 85% return flows from a septic system. Because domestic demands are constant year-round, the return flows do not need to be legged.
(8) Equals Column (6) + Column (7).
(9) Equals Column 5 - Column 8.
(10) Equals # of days of month river is on call / total # of days of month, expressed as a percentage. This scenario assumes a year-round call based on the CWCB's water rights. Actual augmentation requirement will be based on yearly administration.
(11) Equals (Column 8 x Column 10) / (100% - (14.5 x 6.25%)) for transit losses of 0.625% over 14.6 miles. Equals the total amount of water to be released from Lemon Reservoir to replace out-of-priority depletions.
TTF Well is located in the SW1/4 of the NE1/4 of Section 31, T35N, R8W.
1,822 feet from the east section line and 2,063 feet from the north section line.
UTM X:253185 Y:4127344 Zone 13 NAD 83.
DISTRICT COURT, WATER DIVISION NO. 7
STATE OF COLORADO

La Plata County Courthouse
1060 E. Second Avenue
Durango, CO 81301
(970) 247-2304

CONCERNING THE APPLICATION FOR
WATER RIGHTS OF

Applicant: Patrick H. Cain and Rachel B. Cain

IN THE FLORIDA RIVER WATER SHED,

In La Plata County

COURT USE ONLY

Attorney for Applicant
Nancy Agro, #24910
128 Riverview Drive
Durango, Colorado 81301
Telephone: (970) 422-2024
nancy@nancyagro.com

Attorneys for Opposer, City of Durango
Paul F. Holleman, #21888
BUSHONG & HOLLEMAN PC
1525 Spruce Street, Suite 200
Boulder, Colorado 80302
303-431-9141
fholleman@BH-LAWYERS.COM

Case No. 2023CW 3050

STIPULATION BETWEEN APPLICANT AND CITY OF DURANGO
Applicants, ("Applicant"), Patrick H. and Rachel B. Cain, and Opposer, City of Durango ("Opposer"), (collectively the "Parties"), by and through their undersigned attorneys, hereby stipulate as follows:

1. Opposer consents to the entry of a decree in the above captioned case that is no less restrictive than the form of the proposed decree attached hereto as Exhibit 1.

2. Applicant shall provide notice of any changes to the proposed decree prior to submitting the final decree in this matter to the Court for entry. In addition, Opposer shall continue to receive copies of all pleadings in this case.

3. This Stipulation shall be binding upon the Parties and their successors and assigns.

4. Each Party to this Stipulation shall bear its own costs and expenses in this matter, including attorney fees.

5. This Stipulation shall be enforceable by the Parties either as an agreement or, upon approval of this Stipulation by the Water Division No. 7 Court, as an Order of the Water Court.

Dated this _____, _____, day of 2024.

Attorney for Applicant:     Attorney for Opposer:

NANCY AGRO, P.C.          CITY OF DURANGO

BY: Nancy Agro             By: Paul F. Holleman
Table 1
Demands, Return Flows and Augmentation Requirement for Calculated Out-of-Priority Depletions
Table to Farm Compost/Cain Augmentation Plan 2023

<table>
<thead>
<tr>
<th>Month</th>
<th>Groundwater Demands</th>
<th>Return Flows</th>
<th>Augmentation Requirement</th>
</tr>
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<tr>
<td></td>
<td>(acre-feet)</td>
<td>(acre-feet)</td>
<td>(acre-feet)</td>
</tr>
<tr>
<td>January</td>
<td>0.037</td>
<td>0.000</td>
<td>0.004</td>
</tr>
<tr>
<td>February</td>
<td>0.034</td>
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<tr>
<td>March</td>
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<tr>
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<td>November</td>
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<td>0.004</td>
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<tr>
<td>December</td>
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<td>Total</td>
<td>0.437</td>
<td>0.169</td>
<td>0.048</td>
</tr>
</tbody>
</table>

Notes:
(1) Based on 2 houses utilizing 195 gpd (per current La Plata County Standards for indoor use) year-round.
(2) Based on a total of 3,000 square feet of landscaping. Using a calculated irrigation water requirement of 1.93 ft per year for bluegrass with an irrigation efficiency of 80%, equaling an application rate of 2.41 ft per year. (1.93 ft per year / 80% = 2.41 ft per year)
(3) Based on indoor water use for 4 full time employees utilizing 15 gpd each (per La Plata County Standards), for a total of 60 gpd. During 259 annual work days.
(4) Based on 100 gpd for added compost pile moisture and 200 gpd for dust suppression. April through November. 100 percent consumptive.
(5) Equals Column (1) + Column (2) + Column (3) + Column (4)
(6) Equals Column (4) lagged per glover analysis using Option 1, T = 100gpd/ft, specific yield of 0.00050 and an X distance to the river of 516 feet.
(7) Equals Column (1) x 0.85, based on 85% return flows from a septic system.
(8) Equals Column (2) x 0.85, based on 85% return flows from a septic system.
(9) Equals Column (2) x 0.85, based on 85% return flows from a septic system.
(10) Equals Column (9) lagged per glover analysis using Option 1, T = 100gpd/ft, specific yield of 0.00050 and an X distance to the river of 516 feet.
(11) Equals Column (7) + Column (8) + Column (10)
(12) Equals Column (6) - Column (11)
(13) Equals # of days of month river is on call / total # of days of month, expressed as a percentage. This scenario assumes a year-round call based on the CWCB's water rights. Actual augmentation requirement will be based on yearly administration.
(14) Equals (Column 9 x Column 10) / (100% - (14.6 x 0.625%)) for transit losses of 0.625% over 14.6 miles. Equals the total amount of water to be released from Lemon Reservoir to replace out-of-priority depletions.
RESOLUTION R-2024-00

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE THE PURCHASE AGREEMENT AND ALL RELATED DOCUMENTS TO FINALIZE THE PURCHASE OF BUCKLEY PARK FROM THE DURANGO 9R SCHOOL DISTRICT

WHEREAS, The City of Durango has been leasing Buckley Park from the Durango 9R School District for several years to utilize as a downtown park;

WHEREAS, in 2020, Durango 9R School District notified the City of Durango of its intent to sell the property and expressed its interest in selling it to the City of Durango so Buckley Park could be maintained and preserved;

WHEREAS, The City of Durango and the Durango 9R School District have agreed to a purchase price of $3,000,000 for Buckley Park;

WHEREAS, The City of Durango desires to purchase Buckley Park at $3,000,000 to preserve Buckley Park as parkland for the benefit of our community, therefore be it

RESOLVED, That the City Council of the City of Durango, in regular meeting assembled,

Section 1. Authorize the city manager to execute the purchase agreement and all related documents to finalize the purchase of Buckley Park from the Durango 9R School District.

Approved and adopted this 4th day of June, 2024.

CITY OF DURANGO, COLORADO

By: __________________________________
Mayor

ATTEST:

By: _________________________________
Faye Harmer, City Clerk
RECOMMENDATION:

I recommend that the City Council approve by the resolution authorizing the City Manager to execute the purchase agreement and all related documents to finalize the purchase of Buckley Park from the Durango 9R School District.

BACKGROUND SUMMARY:

The City and 9R School District have been negotiating the purchase of Buckley Park since 2020. They have determined a purchase price of $3,000,000 for the City to purchase Buckley Park and permanently preserve it as parkland.

The purchase agreement approved by the Colorado Real Estate Commission for the purchase/sale of vacant land is attached to this agenda background form. We aim to close on the property before the end of June 2024.

The School District’s attorney and City Attorney’s Office have reviewed the purchase agreement.

STRATEGIC PLAN ALIGNMENT:

Safety & Quality of Life

ALTERNATIVE OPTIONS CONSIDERED:

The alternative option discussed was a possible swap of Buckley Park for the Carnegie Building. However, that proposal was no longer feasible, with the 9R School District deciding to move its administration office to Bodo.

FISCAL IMPACT:

$3,000,000 from the 2005 sales tax fund. This amount has already been recommended by the Financial Advisory Board, and the funding was allocated by the City Council via budget resolution at the previous City Council meeting.

POTENTIAL ADVERSE IMPACTS:

N/A

NEXT STEPS AND TIMELINE:

If the resolution is approved, the City Manager will execute the agreement, send it to the 9R School District, and begin the scheduling to close on the property in June 2024.
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, a Colorado Home Rule Municipality (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. Durango School District 9R (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 known as:

   DURANGO 9-R BUCKLEY PARK SD LOT: 1 PER PLAT 1203879 1250 MAIN AVENUE, DURANGO, CO 81301

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

   2.5. Inclusions. The Purchase Price includes the following items (Inclusions):
   2.5.1. Inclusions. The following items, whether fixtures or personal property, are included in the Purchase Price unless excluded under Exclusions: two monuments, 3 park benches, landscape boulders, red picknick table and bench.

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

   2.5.3. Personal Property Conveyance. Conveyance of all personal property will be by bill of sale or other applicable legal instrument.
   2.5.4. Leased Items. The following personal property is currently leased to Seller which will be transferred to Buyer at Closing (Leased Items): N/A
2.6. **Exclusions.** The following items are excluded (Exclusions): N/A

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

2.7.1. **Deeded Water Rights.** The following legally described water rights: The parties are not aware of any water rights at this time. Should the parties determine water rights exist, said rights will be transferred to Buyer.

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

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

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

2.7.4. **Water Stock Certificates.** The water stock certificates to be transferred at Closing are as follows: Same as 2.7.1. above.

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

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

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

2.7.7. **Water Rights Review.** Buyer [ ] Does [ X ] Does Not have a Right to Terminate if examination of the Water Rights is unsatisfactory to Buyer on or before the Water Rights Examination Deadline.

2.8. **Growing Crops.** With respect to growing crops, Seller and Buyer agree as follows: N/A
### 3. DATES, DEADLINES AND APPLICABILITY.

#### 3.1. Dates and Deadlines. MEC = Mutual Execution of Contract

<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 PM MST</td>
</tr>
<tr>
<td>2</td>
<td>§ 4</td>
<td>Alternative Earnest Money Deadline</td>
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</tr>
<tr>
<td><strong>Title</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>§ 8</td>
<td>Record Title Deadline (and Tax Certificate)</td>
<td>7 days from MEC</td>
</tr>
<tr>
<td>4</td>
<td>§ 8</td>
<td>Record Title Objection Deadline</td>
<td>14 days from MEC</td>
</tr>
<tr>
<td>5</td>
<td>§ 8</td>
<td>Off-Record Title Deadline</td>
<td>7 days from MEC</td>
</tr>
<tr>
<td>6</td>
<td>§ 8</td>
<td>Off-Record Title Objection Deadline</td>
<td>14 days from MEC</td>
</tr>
<tr>
<td>7</td>
<td>§ 8</td>
<td>Title Resolution Deadline</td>
<td>Date of Closing</td>
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<tr>
<td>8</td>
<td>§ 8</td>
<td>Third Party Right to Purchase/Approve Deadline</td>
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<tr>
<td><strong>Owners’ Association</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>§ 7</td>
<td>Association Documents Deadline</td>
<td>N/A</td>
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<tr>
<td>10</td>
<td>§ 7</td>
<td>Association Documents Termination Deadline</td>
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<tr>
<td><strong>Seller’s Disclosures</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>§ 10</td>
<td>Seller’s Property Disclosure Deadline</td>
<td>N/A</td>
</tr>
<tr>
<td>12</td>
<td>§ 10</td>
<td>Lead-Based Paint Disclosure Deadline (if Residential Addendum attached)</td>
<td>N/A</td>
</tr>
<tr>
<td><strong>Loan and Credit</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>§ 5</td>
<td>New Loan Application Deadline</td>
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<tr>
<td>14</td>
<td>§ 5</td>
<td>New Loan Terms Deadline</td>
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<tr>
<td>15</td>
<td>§ 5</td>
<td>New Loan Availability Deadline</td>
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<tr>
<td>16</td>
<td>§ 5</td>
<td>Buyer’s Credit Information Deadline</td>
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<td>17</td>
<td>§ 5</td>
<td>Disapproval of Buyer’s Credit Information Deadline</td>
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<td>18</td>
<td>§ 5</td>
<td>Existing Loan Deadline</td>
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<tr>
<td>19</td>
<td>§ 5</td>
<td>Existing Loan Termination Deadline</td>
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<td>20</td>
<td>§ 5</td>
<td>Loan Transfer Approval Deadline</td>
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<tr>
<td>21</td>
<td>§ 4</td>
<td>Seller or Private Financing Deadline</td>
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</tr>
<tr>
<td><strong>Appraisal</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>22</td>
<td>§ 6</td>
<td>Appraisal Deadline</td>
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</tr>
<tr>
<td>23</td>
<td>§ 6</td>
<td>Appraisal Objection Deadline</td>
<td>N/A</td>
</tr>
<tr>
<td>24</td>
<td>§ 6</td>
<td>Appraisal Resolution Deadline</td>
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<tr>
<td><strong>Survey</strong></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>25</td>
<td>§ 9</td>
<td>New ILC or New Survey Deadline</td>
<td>14 days from MEC</td>
</tr>
<tr>
<td>26</td>
<td>§ 9</td>
<td>New ILC or New Survey Objection Deadline</td>
<td>Date of Closing</td>
</tr>
<tr>
<td>27</td>
<td>§ 9</td>
<td>New ILC or New Survey Resolution Deadline</td>
<td>Date of Closing</td>
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<tr>
<td><strong>Inspection and Due Diligence</strong></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>28</td>
<td>§ 2</td>
<td>Water Rights Examination Deadline</td>
<td>14 days from MEC</td>
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<tr>
<td>29</td>
<td>§ 8</td>
<td>Mineral Rights Examination Deadline</td>
<td>14 days from MEC</td>
</tr>
<tr>
<td>30</td>
<td>§ 10</td>
<td>Inspection Termination Deadline</td>
<td>14 days from MEC</td>
</tr>
<tr>
<td>31</td>
<td>§ 10</td>
<td>Inspection Objection Deadline</td>
<td>Date of Closing</td>
</tr>
<tr>
<td>32</td>
<td>§ 10</td>
<td>Inspection Resolution Deadline</td>
<td>Date of Closing</td>
</tr>
<tr>
<td>33</td>
<td>§ 10</td>
<td>Property Insurance Termination Deadline</td>
<td>Date of Closing</td>
</tr>
<tr>
<td>34</td>
<td>§ 10</td>
<td>Due Diligence Documents Delivery Deadline</td>
<td>14 days from MEC</td>
</tr>
<tr>
<td>35</td>
<td>§ 10</td>
<td>Due Diligence Documents Objection Deadline</td>
<td>Date of Closing</td>
</tr>
<tr>
<td>36</td>
<td>§ 10</td>
<td>Due Diligence Documents Resolution Deadline</td>
<td>Date of Closing</td>
</tr>
<tr>
<td>37</td>
<td>§ 10</td>
<td>Environmental Inspection Termination Deadline</td>
<td>Date of Closing</td>
</tr>
<tr>
<td>38</td>
<td>§ 10</td>
<td>ADA Evaluation Termination Deadline</td>
<td>Date of Closing</td>
</tr>
<tr>
<td>39</td>
<td>§ 10</td>
<td>Conditional Sale Deadline</td>
<td>N/A</td>
</tr>
<tr>
<td>40</td>
<td>§ 10</td>
<td>Lead-Based Paint Termination Deadline (if Residential Addendum attached)</td>
<td>N/A</td>
</tr>
<tr>
<td>41</td>
<td>§ 11</td>
<td>Estoppel Statements Deadline</td>
<td>N/A</td>
</tr>
<tr>
<td>42</td>
<td>§ 11</td>
<td>Estoppel Statements Termination Deadline</td>
<td>N/A</td>
</tr>
</tbody>
</table>

**Closing and Possession**
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 [X] 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>$3,000,000</td>
<td></td>
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<tr>
<td>2</td>
<td>§ 4.3.</td>
<td>Earnest Money</td>
<td>$N/A</td>
<td>$N/A</td>
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<tr>
<td>3</td>
<td>§ 4.5.</td>
<td>New Loan</td>
<td>$N/A</td>
<td>$N/A</td>
</tr>
<tr>
<td>4</td>
<td>§ 4.6.</td>
<td>Assumption Balance</td>
<td>$N/A</td>
<td>$N/A</td>
</tr>
<tr>
<td>5</td>
<td>§ 4.7.</td>
<td>Private Financing</td>
<td>$N/A</td>
<td>$N/A</td>
</tr>
<tr>
<td>6</td>
<td>§ 4.7.</td>
<td>Seller Financing</td>
<td>$N/A</td>
<td>$N/A</td>
</tr>
<tr>
<td>7</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>§ 4.4.</td>
<td>Cash at Closing</td>
<td>$3,000,000</td>
<td>$3,000,000</td>
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<tr>
<td>10</td>
<td></td>
<td>Total</td>
<td>$3,000,000</td>
<td>$3,000,000</td>
</tr>
</tbody>
</table>

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

4.3. Earnest Money. The Earnest Money set forth in this Section, in the form of a N/A__________________, will be payable to and held by N/A___________________ (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. If Buyer has a Right to Terminate and timely terminates, Buyer is entitled...
to the return of Earnest Money as provided in this Contract. If this Contract is terminated as set forth in § 24 and, except as provided in § 23 (Earnest Money Dispute), if the Earnest Money has not already been returned following receipt of a Notice to Terminate, Seller agrees to execute and return to Buyer or Broker working with Buyer, written mutual instructions (e.g., Earnest Money Release form), within three days of Seller’s receipt of such form. If Seller is entitled to the Earnest Money, and, except as provided in § 23 (Earnest Money Dispute), if the Earnest Money has not already been paid to Seller, following receipt of an Earnest Money Release form, Buyer agrees to execute and return to Seller or Broker working with Seller, written mutual instructions (e.g., Earnest Money Release form), within three days of Buyer’s receipt.

4.3.2.1. Seller Failure to Timely Return Earnest Money. If Seller fails to timely execute and return the Earnest Money Release Form, or other written mutual instructions, Seller is in default and liable to Buyer as set forth in “If Seller is in Default”, § 20.2. and § 21, unless Seller is entitled to the Earnest Money due to a Buyer default.
4.3.2.2. Buyer Failure to Timely Release Earnest Money. If Buyer fails to timely execute and return the Earnest Money Release Form, or other written mutual instructions, Buyer is in default and liable to Seller as set forth in “If Buyer is in Default, § 20.1. and § 21,” unless Buyer is entitled to the Earnest Money due to a Seller Default.

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

4.4.1. Good Funds. All funds 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, _[X_] 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. N/A

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). N/A

4.5.3. Loan Limitations. Buyer may purchase the Property using any of the following types of loans:

☐ Conventional □ Other N/A

4.6. Assumption. Buyer agrees to assume and pay an existing loan in the approximate amount of the Assumption Balance set forth in § 4.1. (Price and Terms), presently payable at $ N/A ______ per ______ including principal and interest presently at the rate of ______% per annum and also including escrow for the following as indicated: □ Real Estate Taxes □ Property Insurance Premium and □__________.

Buyer agrees to pay a loan transfer fee not to exceed $ N/A_______. At the time of assumption, the new interest rate will not exceed ______% per annum and the new payment will not exceed $ _______ per _________ including principal and interest, plus escrow, if any. If the actual principal balance of the existing loan at Closing is less than the Assumption Balance, which causes the amount of cash required from Buyer at Closing to be increased by more than $ _________, or if any other terms or provisions of the loan change, Buyer has the Right to Terminate under § 24.1. on or before Closing Date.

Seller □ Will □ Will Not be released from liability on said loan. If applicable, compliance with the requirements for release from liability will be evidenced by delivery □ on or before Loan Transfer Approval Deadline □ at Closing of an appropriate letter of commitment from lender. Any cost payable for release of liability will be paid by _______ in an amount not to exceed $ _________.

4.7. Seller or Private Financing.

WARNING: Unless the transaction is exempt, federal and state laws impose licensing, other requirements and restrictions on sellers and private financiers. Contract provisions on financing and financing documents, unless exempt, should be prepared by a licensed Colorado attorney or licensed mortgage loan originator. Brokers should not prepare or advise the parties on the specifics of financing, including whether or not a party is exempt from the law.

4.7.1. Seller Financing. If Buyer is to pay all or any portion of the Purchase Price with Seller financing, □ Buyer □ Seller will deliver the proposed Seller financing documents to the other party on or before _______ days before Seller or Private Financing Deadline. N/A

4.7.1.1. Seller May Terminate. If Seller is to provide Seller financing, this Contract is conditional upon Seller determining whether such financing is satisfactory to the Seller, including its payments, interest rate, terms, conditions, cost, and compliance with the law. Seller has the Right to Terminate under § 24.1., on or before Seller or Private Financing Deadline, if such Seller financing is not satisfactory to Seller, in Seller’s sole subjective discretion.

4.7.2. Buyer May Terminate. If Buyer is to pay all or any portion of the Purchase Price with Seller or private financing, this Contract is conditional upon Buyer determining whether such financing is satisfactory to Buyer, including its availability, payments, interest rate, terms, conditions, and cost. Buyer has the Right to Terminate under § 24.1., on or before Seller or Private Financing Deadline, if such Seller or private financing is not satisfactory to Buyer, in Buyer’s sole subjective discretion. N/A

5. FINANCING CONDITIONS AND OBLIGATIONS. N/A

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.

TRANSACTION PROVISIONS
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 the 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. If an existing loan is not to be released at Closing, this Contract is conditional (for the sole benefit of Seller) upon Seller’s approval of Buyer’s financial ability and creditworthiness, which approval will be in Seller’s sole subjective discretion. Accordingly: (1) Buyer must supply to Seller by Buyer’s Credit Information Deadline, at Buyer’s expense, information and documents (including a current credit report) concerning Buyer’s financial, employment and credit condition; (2) Buyer consents that Seller may verify Buyer’s financial ability and creditworthiness; and (3) any such information and documents received by Seller must be held by Seller in confidence and not released to others except to protect Seller’s interest in this transaction. If the Cash at Closing is less than as set forth in § 4.1. of this Contract, Seller has the Right to Terminate under § 24.1., on or before Closing. If Seller disapproves of Buyer’s financial ability or creditworthiness, in Seller’s sole subjective discretion, Seller has the Right to Terminate under § 24.1., on or before Disapproval of Buyer’s Credit Information Deadline.

5.4. Existing Loan Review. If an existing loan is not to be released at Closing, Seller must deliver copies of the loan documents (including note, deed of trust and any modifications) to Buyer by Existing Loan Deadline. For the sole benefit of Buyer, this Contract is conditional upon Buyer’s review and approval of the provisions of such loan documents. Buyer has the Right to Terminate under § 24.1., on or before Existing Loan Termination Deadline, based on any unsatisfactory provision of such loan documents, in Buyer’s sole subjective discretion. If the lender’s approval of a transfer of the Property is required, this Contract is conditional upon Buyer obtaining such approval without change in the terms of such loan, except as set forth in § 4.6. If lender’s approval is not obtained by Loan Transfer Approval Deadline, this Contract will terminate on such deadline. Seller has the Right to Terminate under § 24.1., on or before Closing, in Seller’s sole subjective discretion, if Seller is to be released from liability under such existing loan and Buyer does not obtain such compliance as set forth in § 4.6.

6. APPRAISAL PROVISIONS. N/A

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).

6.3. 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 ☐ Buyer ☑ 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). N/A


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

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

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

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

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

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

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

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

7.4. Conditional on Buyer’s Review. Buyer has the right to review the Association Documents. Buyer has the Right to Terminate under § 24.1., on or before Association Documents Termination Deadline, based on any unsatisfactory provision in any of the Association Documents, in Buyer’s sole subjective discretion. Should Buyer receive the Association Documents after Association Documents Deadline, Buyer, at Buyer’s option, has the Right to Terminate under § 24.1. by Buyer’s Notice to Terminate received by Seller on or before ten days after Buyer’s receipt of the Association Documents. If Buyer does not receive the Association Documents, or if Buyer’s Notice to Terminate would otherwise be required to be received by Seller after Closing...
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.

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

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

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

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

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

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

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

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

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

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FURTHER INFORMATION FROM THE BOARD OF COUNTY COMMISSIONERS, THE COUNTY CLERK AND
TREASURER, BY REVIEWING THE CERTIFICATE OF TAXES DUE FOR THE PROPERTY AND BY OBTAINING
8.5. Tax Certificate. A tax certificate paid for by \[ \square \text{Seller} \biggm/ \text{Buyer}, for the Property listing any special taxing or
metropolitan districts that affect the Property (Tax Certificate) must be delivered to Buyer on or before Record Title Deadline. If
the content of the Tax Certificate is unsatisfactory to Buyer, in Buyer’s sole subjective discretion, Buyer may terminate, on or before
Record Title Objection Deadline. Should Buyer receive the Tax Certificate after Record Title Deadline, Buyer, at Buyer’s option,
has the Right to Terminate under § 24.1. by Buyer’s Notice to Terminate received by Seller on or before ten days after Buyer’s
receipt of the Tax Certificate. If Buyer does not receive the Tax Certificate, or if Buyer’s Notice to Terminate would otherwise be
required to be received by Seller after Closing Date, Buyer’s Notice to Terminate must be received by Seller on or before Closing.
If Seller does not receive Buyer’s Notice to Terminate within such time, Buyer accepts the content of the Tax Certificate as
satisfactory and Buyer waives any Right to Terminate under this provision. If Buyer’s loan specified in §4.5.3. (Loan Limitations)
prohibits Buyer from paying for the Tax Certificate, the Tax Certificate will be paid for by Seller. N/A

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

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

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

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

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

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

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

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

9.1. Ordering of New ILC or New Survey. ☐ Seller [X] 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 [X] 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. Buyer may select a New ILC or New Survey different than initially specified in this Contract if there is no additional cost to Seller or change to the New ILC or New Survey Objection Deadline. Buyer may, in Buyer’s sole subjective discretion, waive a New ILC or New Survey if done prior to Seller incurring any cost for the same.

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

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

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

DISCLOSURE, INSPECTION AND DUE DILIGENCE

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

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

<table>
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<tr>
<th>Inspect</th>
<th>Terminate</th>
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<tr>
<td>Yes</td>
<td>No</td>
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10.3.1. Inspection Termination. On or before the Inspection Termination Deadline, notify Seller in writing, pursuant to § 24.1., that this Contract is terminated due to any unsatisfactory condition, provided the Buyer did not previously deliver an Inspection Objection. Buyer’s Right to Terminate under this provision expires upon delivery of an Inspection Objection to Seller pursuant to § 10.3.2.; or

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

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

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: As Specified under Dates and Deadlines.

<table>
<thead>
<tr>
<th>Description</th>
<th>Due Diligence Documents Delivery Deadline</th>
</tr>
</thead>
</table>

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):

10.6.1.2. Leased Items Documents. If any lease of personal property (§ 2.5.4., 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 [X] Will Not assume the Seller’s obligations under such leases for the Leased Items (§ 2.5.4., Leased Items).

10.6.1.3. Encumbered Inclusions Documents. If any Inclusions owned by Seller are encumbered pursuant to § 2.5.2. (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 [X] Will Not assume the debt on the Encumbered Inclusions (§ 2.5.2., Encumbered Inclusions).

10.6.1.4. Other Documents. If the respective box is checked, Seller agrees to additionally deliver copies of the following:

<table>
<thead>
<tr>
<th>Description</th>
<th>Other Documents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Property;</td>
<td>10.6.1.4.1. All contracts relating to the operation, maintenance and management of the Property;</td>
</tr>
<tr>
<td>[X]</td>
<td>10.6.1.4.2. Property tax bills for the last ________ years;</td>
</tr>
</tbody>
</table>
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 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), this Contract will terminate on Due Diligence Documents Resolution Deadline, based on any unsatisfactory zoning and any use restrictions imposed by any governmental agency with jurisdiction over the Property, in Buyer’s sole subjective discretion.

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

If Buyer’s Phase I Environmental Site Assessment recommends a Phase II Environmental Site Assessment, the Environmental Inspection Termination Deadline will be extended by 21 days (Extended Environmental Inspection Objection Deadline) and if such Extended Environmental Inspection Objection Deadline extends beyond the Closing Date, the Closing Date will be extended a like period of time. In such event, [X] Seller [X] Buyer must pay the cost for such Phase II Environmental Site Assessment.

Notwithstanding Buyer’s right to obtain additional environmental inspections of the Property in this § 10.6.4., Buyer has the Right to Terminate under § 24.1., on or before Environmental Inspection Termination Deadline, or if applicable, the Extended...
12.2. Closing Instructions. Seller will sign and complete all customary or reasonably required documents at or before Closing. Buyer and Seller 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.

12.1. 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.

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

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

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

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

10.12. Methamphetamine Disclosure. [Intentionally Deleted - See Residential Addendum if applicable]
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 Title 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 § 2.5.4. (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: [X] special warranty deed [ ] general warranty deed [ ] bargain and sale deed [ ] quit claim deed [ ] personal representative’s deed

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 provided otherwise herein.

15.2. Closing Services Fee. The fee for real estate closing services must be paid at Closing by [ ] Buyer [ ] Seller

[X] 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
[X] 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 [ ] N/A.

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

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

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

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 [ ] N/A.

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

15.9. FIRPTA and Colorado Withholding.

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

16. PRORATIONS AND ASSOCIATION ASSESSMENTS.

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

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

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

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

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

16.2. Association Assessments. Current regular Association assessments and dues (Association Assessments) paid in advance will be credited to Seller at Closing. 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 □ Seller. Except however, any special assessment by the Association for improvements that have been installed as of the date of Buyer’s signature hereon, whether assessed prior to or after Closing, will be the obligation of Seller unless otherwise specified in Additional Provisions. Seller represents there are no unpaid regular or special assessments against the Property except the current regular assessments and □ N/A. Association Assessments are subject to change as provided in the Governing Documents. □ N/A

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 § 10.6.1.1.

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 $250.00 per day (or any part of a day notwithstanding § 3.3., Day) from Possession Date and Possession Time until possession is delivered.

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.

20.2.1. Specific Performance, Damages or Both. 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

20.2. If Seller is in Default:

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

20.2.1. Liquidated Damages, Applicable. This § 20.2. 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.

20.2.2. 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. N/A

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.)

30. OTHER DOCUMENTS.

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

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

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

Buyer's Name: City of Durango, A Colorado Home Rule Municipality

Buyer's Name:

Buyer's Signature Date

Address: 949 E 2nd Avenue, Durango, CO 81301

Phone No.: 970-375-5000

Fax No.: 

Email Address: Jose.Madrigal@DurangoCo.Gov

Buyer's Signature Date

Address:

Phone No.: 

Fax No.: 

Email Address: 

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

Seller's Name: Durango School District 9R

Kristin Smith, President Date Andrea Parmenter, Secretary Date

SIGNATURES
BROKER’S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.

A. Broker Working With Buyer N/A

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 N/A

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

[ ] **Customer.** Broker has no brokerage relationship with Seller. See § A for Broker’s brokerage relationship with Buyer.

Brokerage Firm’s compensation or commission is to be paid by [ ] **Seller** [ ] **Buyer** [ ] **Other** _________________________________.

This Broker’s 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.

<table>
<thead>
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Fax No.:

Email Address:

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TO: DURANGO CITY COUNCIL  
FROM: ELLIOTT FITZ, BUDGET MANAGER  

SUBJECT: A Resolution To Give Direction Regarding Tax Re-Authorization and Bond Financing

RECOMMENDATION:  
It is the recommendation that the City Council, by motion, approve the attached resolution giving direction to continue research into Tax Re-authorization and Bond Financing.

BACKGROUND SUMMARY:  
City Staff is seeking direction from the council regarding the Re-Authorization of the 2005 Sales Tax and potential Bond Financing. In the 2023 Council retreat, the council gave staff direction to get cost estimates for the renovations of the Police Department, City Hall, and Municipal Services building. The council also gave direction to take action towards re-authorizing the tax and maintaining the same use of funds in the current ballot language for Capital Projects and Parks, Open Space, and Trails.

City staff presented a recap of the retreat outcomes and direction from the Council at the study session on May 20th, as well as the cost estimates for construction. In addition, staff provided the funding scenarios available for consideration and the ballot language proposed by bond counsel.

This item seeks direction from the council regarding the reauthorization of the 2005 sales tax and potential bond financing.

STRATEGIC PLAN ALIGNMENT:  
Organizational Stewardship

ALTERNATIVE OPTIONS CONSIDERED:  
N/A

FISCAL IMPACT  
Fiscal Impact can only be estimated at this point; staff is seeking direction from the Council to determine a more accurate fiscal impact, which will be presented at a later date.
RESOLUTION R-2024-00

A RESOLUTION TO GIVE DIRECTION REGARDING TAX RE-AUTHORIZATION AND BOND FINANCING

WHEREAS, The City finds it necessary to get City Council direction in Re-authorizing the 2005 Sales Tax.

WHEREAS, The City Manager and staff have submitted to Council two funding strategies for the renovation and construction of a new Police Department and City Hall.

WHEREAS, the Council finds that it is in the best interest of the City and the citizens of Durango to continue evaluating funding strategies for the Police Department and City Hall project.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Durango in the Regular meeting assembled June 4th, 2024:

Section 1. The Council gives direction to staff at the next regular June 18th Council meeting to bring to the Council a possible action item for the council to direct staff to begin the process to start the 2005 sales tax re-authorization process to include the two presented bond options for Council discussion and decision.

at the next the regular June 18th meeting, tax re-authorization and the two presented bond options, at Regular meeting assembled June 4th, 2024.

Approved and adopted this 4th day of June, 2024.

CITY OF DURANGO, COLORADO

By: ________________________________
   Mayor

ATTEST:

By: ________________________________
   Faye Harmer, City Clerk