

PURCHASE AND SALE AGREEMENT

EVANS REDEVELOPMENT AGENCY,
a Colorado urban renewal authority and body corporate and politic;

SELLER

FLEXIBLE EVANS II, LLC,
a Colorado limited liability company,

PURCHASER

June ____, 2022

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PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is entered into as of the ___ day of June, 2022 ("Effective Date"), by and between EVANS REDEVELOPMENT AGENCY, a Colorado urban renewal authority and body corporate and politic ("Seller"), FLEXIBLE EVANS II, LLC, a Colorado limited liability company, and its assigns ("Purchaser") and the CITY OF EVANS (the "City"), but the City's obligations shall be limited to those obligations specifically set forth in Section 4.3 below.

ARTICLE 1 – DEFINITIONS

In this Agreement, unless a different meaning clearly appears from the context:

- (a) "Act" means the provisions of C.R.S. § 31-25-101 *et seq.*, referred to as the "Urban Renewal Law".
- (b) "Authority" means the Evans Redevelopment Agency or any successor or assign.
- (c) "Flex Building Property" shall mean that portion of the Property depicted on Exhibit ___, which is that portion of the Property to be platted prior to the Closing hereunder upon which Seller intends to construct what the Parties have referred to as the Flex Building.
- (d) "Government Approval" means approvals by all applicable state and local governmental and quasi-governmental authorities for the intended use of the Property, which shall be a McDonald's restaurant and drive through, and any other allowable use, including, without limitation, (i) building permits; (ii) approved site plans, development plans, working drawings, curb cuts, traffic signals, signage, lighting, access, deceleration lanes, median breaks, drainage plans, landscape plans, and similar development and construction matters; (iii) operating, conditional use, and food service permits, and (iv) grading, utility, sewer and storm drain permits, and all other necessary governmental entitlements, permits for the Property.
- (e) "McDonald's" shall mean McDonald's USA, LLC, a Delaware limited liability company.
- (f) "McDonald's Agreement" shall mean that certain Purchase and Sale Agreement, dated June ____, 2022.
- (g) "Plan" and "Urban Renewal Plan" means the Highway 85 Corridor Urban Renewal Plan, dated January 2013, which plan is scheduled to expire on _____.
- (h) "Project" shall have the meaning set forth in C.R.S. § 31-25-103(10) when capitalized. The redevelopment of the Property shall be an undertaking and activity within the meaning of the term "Project" and shall not be deemed a "Project" for purposes of applicability of HB 15-1348, or any amendments made thereto.
- (i) "Property" means that certain parcel of land, consisting of approximately 5.5 acres, commonly known as a portion of the SWC of 31st & Hwy 85, as shown on **Exhibit 1.1** attached hereto, all located in the City of Evans, the County of Weld, State of Colorado,

and all of the estates, rights, titles, privileges, easements, appurtenances thereto and hereditaments of any nature whatsoever in any way belonging, relating or pertaining to such land, including by way of illustration and not limitation, water rights, any interest in any roads, alleys and sidewalks, all transferable development rights or other entitlements, if any, but specifically excluding any and all mineral interests or mineral rights therein. Once the legal description is determined and accepted by the Title Company (as defined below), **Schedule 1.1** will be amended to reflect the Property's actual legal description.

ARTICLE 2 – PURPOSE

The purpose of this Agreement is to convey the Property to Purchaser in order to further the goals and objectives of the Act and the Plan. The Authority has determined that the undertakings and activities described or provided for herein, and the redevelopment of the Property in particular, as described in this Agreement is consistent with and conforms to the Plan and the public purposes and provisions of the Act. In addition, the Authority acknowledges that it believes the Request for Developer Qualifications selection process has met all applicable requirements for its agency and that Purchaser has been selected for development of the Property. Accordingly, the Purchaser and the Authority wish to enter into this Purchase and Sale Agreement as described below.

ARTICLE 3 – PURCHASE AND SALE

3.1 Purchase and Sale. Subject to the terms and provisions in this Agreement, Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller the Property legally described in **Exhibit 1.1**, and all of the estates, rights, titles, privileges, easements, appurtenances thereto and hereditaments of any nature whatsoever in any way belonging, relating or pertaining to such land, including by way of illustration and not limitation, water rights, any interest in any roads, alleys and sidewalks, all transferable development rights or other entitlements, if any, but specifically excluding any and all mineral interests or mineral rights therein.

3.2 Purchase Price: Payment of the Purchase Price. The purchase price of the Property is Ten and 00/100 Dollars (\$10.00) (the "Purchase Price"). The Purchase Price (subject to the prorations to be made pursuant to this Agreement) is payable by Purchaser as follows:

(a) Deposit. No later than five (5) business days after the Effective Date, Purchaser shall deposit with Chicago Title Insurance Company, Attention: Erin Kelly _____; _____, Email: _____, Telephone: (____) ____-____ (the "Title Company" or "Title Insurer"), the fully executed Agreement and the sum of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) (the "Deposit"). The Deposit shall be in good funds, either by certified bank or cashier's check or by federal wire transfer. The Title Company shall hold the Deposit in an interest-bearing account reasonably acceptable to Seller and Purchaser, in accordance with the terms and conditions of this Agreement. All interest on such sum shall be deemed income of Purchaser, and Purchaser shall be responsible for the payment of all costs and fees imposed on the Deposit account. The Deposit and all accrued interest shall be distributed in accordance with the terms of this Agreement. The failure of Purchaser to timely deliver the Deposit hereunder shall entitle Seller to terminate this Agreement immediately until such Deposit is delivered. If this Agreement is

terminated and such termination is not of a nature which would or may entitle Seller to retain the Deposit, the Deposit shall be returned to Purchaser following such termination.

(b) Payment of Purchase Price. The Purchase Price (less the Deposit), if any, held by the Title Company and paid to Seller on the Closing Date or shall be paid to Seller, as adjusted by the prorations, on the Closing Date in cash by wire transfer of immediately available federal funds.

(c) Title Company. The Title Company shall act as escrow agent and shall hold and dispose of the Deposit in accordance with the terms of this Agreement. Seller and Purchaser agree that the duties of Title Company with respect to the Deposit hereunder are purely ministerial in nature and shall be expressly limited to the safekeeping and disposition of the Deposit in accordance with this Agreement, but in all events, shall be governed by the laws of the State of Colorado. Title Company shall incur no liability in connection with the safekeeping or disposition of the Deposit for any reason other than Title Company's willful misconduct or gross negligence. In the event that Title Company shall be in doubt as to its duties or obligations with regard to the Deposit, or in the event that Title Company receives conflicting instructions from Purchaser and Seller with respect to the Deposit, Title Company shall not be required to disburse the Deposit and may, at its option, continue to hold the Deposit until both Purchaser and Seller agree as to its disposition, or until a final judgment is entered by a court of competent jurisdiction directing its disposition, or Title Company may interplead the Deposit in accordance with the laws of the State of Colorado. Title Company shall not be responsible for any interest on the Deposit except as is actually earned, or for the loss of any interest resulting from the withdrawal of the Deposit prior to the date interest is posted thereon. Title Company shall execute this Agreement solely for the purpose of being bound by the provisions of this Section 3.2(c) and acknowledging that in all events the terms of such escrow shall be governed and controlled by the laws of the State of Colorado.

ARTICLE 4 -- CLOSING

4.1 Closing. Upon mutual execution of this Agreement, Seller and Purchaser shall deposit executed counterparts of this Agreement with Title Company and this Agreement shall serve as instructions to Title Company as escrow holder for consummation of the purchase and sale contemplated hereby. Seller and Purchaser shall execute such additional escrow instructions as may be appropriate to enable Title Company to comply with the terms of this Agreement; provided that in the event of any conflict between the terms of this Agreement and any supplementary escrow instructions, the terms of this Agreement shall control. The Closing of the purchase and sale of the Property shall be held fifteen (15) days after Seller's receipt from Purchaser of the Governmental Approval Notice (as hereinafter defined), subject to extension only in accordance with Section 4.5(b)(ii) and expressly contingent upon McDonald's unconditional waiver of all contingencies under the McDonald's Agreement and McDonald's ability to concurrently close on the acquisition of the Property, including, without limitation receipt of Governmental Approvals (the "Closing Date"). Time is of the essence with respect to the obligations of Seller and Purchaser to deliver documents and items permitting the closing of

the purchase and sale pursuant to this Agreement on the Closing Date, except as expressly provided in this Agreement.

4.2 Seller's Closing Items. On or before the Closing, Seller shall execute, deliver and/or provide to Title Company or Purchaser, or cause to be executed, delivered and provided to Title Company or Purchaser, the following:

(a) Deed. A special warranty deed (the "Deed") conveying fee title to the Property to Purchaser, subject to the Permitted Exceptions, in the form attached hereto as **Exhibit 4.2(a)**.

(b) Assignment. An assignment of all Permits, Warranties and Plans in the form attached hereto as **Exhibit 4.2(b)**.

(c) Non-Foreign Affidavit. An affidavit from Seller stating that Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code, in the form attached hereto as **Exhibit 4.2(c)**.

(d) Reimbursement Agreements. A reimbursement agreement with respect Seller's reimbursement of certain costs associated with Purchaser's construction and relocation of the frontage road and utilities on the Property, in the form attached hereto as **Exhibit 4.2(d)(1)** (the "Seller Reimbursement Agreement"); and a reimbursement agreement with respect reimbursement by the City of Evans of certain costs associated with regional drainage improvements on land owned by the City between the Property's eastern boundary and Highway 85, in the form attached hereto as **Exhibit 4.2(d)(2)** the "City Reimbursement Agreement"; together with the Seller Reimbursement Agreement, the "Reimbursement Agreements"). Prior to the expiration of the Inspection Period (as defined below), the parties agree to negotiate, in good faith, the Reimbursement Agreements and enter into an amendment incorporating the agreed upon Reimbursement Agreements into the applicable exhibits referenced to in this Section 4.2(d).

(e) Authorization Documents. Such certificates of good standing or other evidence of organization and authority as the Title Insurer may reasonably require in order to issue the Title Policy.

(f) Owner's Title Policy. The Title Policy referred to in Section 4.5(b)(i), dated the date of Closing or a letter, in form approved by Purchaser, binding the Title Insurer to issue the policy in accordance with the Commitment, updated to the Closing Date, showing the Purchaser in title to the Property subject only to the Permitted Exceptions, and otherwise issued in accordance with the Commitment approved by Purchaser, together with any customary title affidavits required by the Title Insurer to delete so-called "standard exceptions" for mechanics' liens and parties in possession.

(g) Seller's Certificate of Representations and Warranties. Seller's certificate of representations to be provided in accordance with Section 2.5(d) and attached hereto as **Exhibit 4.2(g)**.

4.3 Intentionally Omitted.

4.4 Purchaser's Closing Items. At the Closing, Purchaser shall execute, deliver and/or provide to Title Company or Seller, or cause to be executed, delivered and provided to Title Company or Seller, the following:

(a) Authorization Documents. Such certificates of good standing or other evidence of organization and authority as the Title Insurer may reasonably require in order to issue the Title Policy.

(b) Purchase Price. The Purchase Price as provided in Section 3.2 (subject to the prorations to be made pursuant to this Agreement).

(c) Reimbursement Agreements. Countersigned Reimbursement Agreements.

(d) Proof of McDonald's waiver of contingencies.

4.5 Other Closing Documents. In addition to the documents referred to in Sections 4.2, 4.3 and 4.4, each party agrees to execute and deliver at the Closing such other documents as may be required in this Agreement or as may be reasonably necessary to carry out its obligations under this Agreement; provided that such documents shall not require Seller or Purchaser to make any additional warranties and representations or incur any other liabilities other than those contemplated by this Agreement. Without limiting the generality of the foregoing, Seller and Purchaser agree to cooperate with the other in the other's efforts to effect a tax-free, like-kind exchange for the Property under Section 1031 of the Internal Revenue Code, provided and on the conditions that the cooperating party shall incur no liability or expense and shall not be required to take title to any exchange property and any such exchange property shall be conveyed directly to the exchanging party. It is acknowledged and agreed that, in order to effect such exchange, Seller and Purchaser shall have the right to make an assignment or assignments of part or all of each respective party's rights under this Agreement to any one or more qualified intermediaries, provided that no such assignment shall relieve the assigning party of its liabilities and obligations under this Agreement.

4.6 Conditions to Purchaser's Obligations. The obligation of Purchaser to purchase the Property pursuant to this Agreement is subject to Seller's performance of its obligations pursuant to Sections 4.2 and 4.5 hereof in all material respects, and to the following conditions, except to the extent such obligations or conditions are waived in writing or deemed waived under the express terms of this Agreement:

(a) Seller's Warranties and Representations. All representations and warranties of Seller set forth in Section 4.6(d), as supplemented or amended pursuant to that Section shall be true in all material respects as of the Closing Date, subject to the provisions of Section 4.6(d).

(b) Title Evidence; Survey.

(i) Title Evidence. Seller shall cause to be delivered to Purchaser a preliminary title insurance commitment, not later than five (5) days following the Effective Date (the "Commitment") issued by the Title Company showing the status of

record title to the Property, together with copies of all recorded documents listed as exceptions to title on Schedule B-2 of the Commitment (collectively, the "Exception Documents"). On or before the Closing Date, Seller shall have the Title Company issue a revised Commitment evidencing the obligation of the Title Insurer to issue the current ALTA form Owner's Title Insurance Policy with Extended Coverage for the Property ("Title Policy") in the amount of the Purchase Price, subject to the following: the standard printed exceptions listed on Schedule B-2 of the Commitment shall be deleted; the exception for taxes shall be revised to taxes for the year of closing and thereafter only, not yet due and payable, and the exception for rights of parties in possession shall be limited to rights of parties under the Permitted Exceptions. If Purchaser desires to obtain additional endorsements and notifies the Title Company of such requested coverage and additional endorsements at least five (5) business days prior to expiration of the Inspection Period, the Title Company shall confirm, at least three (3) business days prior to the expiration of the Inspection Period, the status of meeting any requirements for obtaining the extended coverage and additional endorsements and Seller agrees to execute such documents as reasonably required for such purposes. Seller shall pay the basic premium cost for the ALTA Title Insurance Policy (Extended Coverage) and Purchaser shall pay the cost for any additional endorsements requested by Purchaser to such ALTA Title Insurance Policy. The Commitment and the Exception Documents are referred to as the "Title Materials."

(ii) Title Objections; Permitted Encumbrances. If, from its review of the Title Materials or the Survey (as hereinafter defined), Purchaser believes that any encroachment on the Property or any exception to title shown in the Title Materials or the Survey, with respect to the Property, would, in Purchaser's sole and absolute judgment, materially adversely affect the Property ("Title Objections"), Purchaser shall deliver to Seller notice (the "Objection Notice") of the Title Objections on or before the expiration of the Inspection Period. During the five (5) business day period following Seller's receipt of the Objection Notice, Seller may elect (but shall have no obligation), at Seller's sole cost, to remove or cure or, with Purchaser's consent, obtain title insurance over any Title Objections on or before the Closing Date (the "Cure Period"). If, within said five (5) business day period, Seller does not make an election to cure or is unable or unwilling to remove or cure or, with Purchaser's consent, to obtain title insurance over all such Title Objections prior to the end of the Cure Period, Purchaser may, in Purchaser's sole discretion by notice (the "Election Notice") given to Seller within five (5) business days after the end of the Cure Period, elect:

(1) If requested by Seller, to grant Seller an additional period of up to thirty (30) days to cure or remove or, if applicable, to obtain title insurance over, all uncured or unremoved Title Objections and, if Closing is scheduled to occur during such time period, the date of Closing shall be extended accordingly; or

(2) To waive all uncured or unremoved Title Objections; provided, however, Seller shall use commercially reasonable efforts to assist Purchaser in removing or insuring over any waived Title Objection prior to the Closing; or

(3) To terminate this Agreement by notice to Seller and the Title Company, in which event, upon written notice to Seller, the Title Company shall return the Deposit to Purchaser, and Purchaser shall have no further obligation or liability hereunder, except as otherwise expressly provided in this Agreement. If Seller does not object to Title Company returning the Deposit to Purchaser, solely due to a Purchaser default, within 2 business days after Seller's receipt of such termination notice, then Title Company shall immediately return the Deposit to Purchaser.

If Seller does not receive an Objection Notice within such ten (10) business day period, or after receiving an Objection Notice does not receive an Election Notice within such five (5) day period, Purchaser shall be deemed to have accepted the status of title to the Property as disclosed by the Title Materials and Survey, and to have waived any uncured and unremoved Title Objections.

(iii) Permitted Exceptions. Any matter that is disclosed in the Title Materials or the Survey (other than Liens, as defined in subsection (v)) and to which Purchaser does not object (or is deemed to approve) pursuant to subsection (ii), (iv) or (vii) (or to which Purchaser so objects but subsequently waives or consents to title insurance over), and any building, zoning, subdivision and similar laws shall be "Permitted Exceptions."

(iv) Additional Defect of Title. If, at any time prior to the Closing, Purchaser becomes aware, as a result of an updated Commitment or the Survey, of any encumbrance on or defect in title to the Property that is not a Permitted Exception and that was not disclosed in the Title Materials or the Survey, and which would otherwise qualify for an Objection Notice (an "Additional Title Objection"), Purchaser shall give Seller notice of the Additional Title Objection no later than five (5) days after receipt of the updated Commitment and Survey, which shall be subject to the same rights, requirements, elections and waivers as an Objection Notice and Election Notice given under subsection (ii); provided, however, that in addition to Seller's obligations under Section 4.6(b)(v) Seller shall be obligated to cure any encumbrance on or defect in title to the Property arising of record on or after the date of the Commitment if said matter is caused by the willful acts or omissions of Seller in breach of this Agreement. The Cure Period under subsection (ii) above for any such Additional Title Objection shall be for a period of twenty (20) days from and after the date of the Objection Notice, and the Closing Date for the Property shall be extended to the last day of the Cure Period if Seller has elected and is making a good faith effort to cure such defect.

(v) Seller's Obligation to Remove Certain Liens. Notwithstanding anything to the contrary in this Section 4.6(b), Seller shall be obligated to remove from title to the Property at Closing, and without any extension of the Closing Date, the following (collectively, the "Liens"): (i) any deeds of trust, mortgages or security interests created by Seller (other than those being assumed or taken subject to in accordance with Contracts being assumed by Purchaser); (ii) any mechanic's and materialmen's liens arising from the acts of Seller; and (iii) any other exception to title not appearing in the Commitments which qualifies as a Title Objection and was created

or caused by the willful acts or omissions of Seller, in connection with the ownership or operation of the Property, after the date of this Agreement and that encumber the Property as of Closing in violation of this Agreement. Purchaser agrees that Seller may use the proceeds of the Purchase Price for the Property for the purpose of removing Liens from the Property at Closing.

(vi) Survey. Purchaser shall elect to order survey ("Survey") of the Property. Purchaser shall pay all reasonable cost and expense associated with the Survey; provided, however, to the extent the Closing does not occur as a result of a Seller default, Seller shall reimburse Purchaser for the cost of the Survey.

(c) Inspection of the Property.

(i) Inspection Period. During the period beginning upon the later of the Effective Date or receipt by Purchaser of the Due Diligence Documents and ending at 5:00 p.m. (local time at the Property) on the date that is one hundred twenty (120) days following the Effective Date (hereinafter referred to as the "Inspection Period"), Purchaser and Purchaser's prospective tenant, shall have the right to make a physical inspection of the Property, including, but not limited to, an inspection of the environmental condition thereof pursuant to the terms and conditions of this Agreement. Purchaser shall deliver a site plan to Seller for its review and approval on or before the date that is forty-five (45) days following the Effective Date. In the event Seller does not object to Purchaser's site plan within five (5) business days following Purchaser's delivery of said site plan, Seller shall be deemed to have approved the same. In addition to copies of documents previously delivered by Seller, as soon as practicable following the Effective Date, but only to the extent in Seller's possession or control, Seller shall deliver to Purchaser or make available for its review documents and files at its office concerning: (i) the operation and ownership of the Property, (ii) all management, road work, and service contracts relative to the Property; (iii) any settlement agreements with respect to prior litigation involving the Property in any way, including condition, taxes, violations, or otherwise; (iv) government licenses, contracts, certificates, approvals, or permits and appurtenances related thereto; (v) environmental, endangered species act, wetland, geotechnical soils studies, physical, and engineering reports; (vi) all insurance policies relative to the Property, including fire, liability, workers compensation, and flood insurance; (vii) all agreements affecting title to the Property; (viii) Seller's most recent title policy (and all exception documents) and its most recent property survey; (ix) all real estate and personal property tax bills and assessments; (x) all plans and specifications, soils studies, water studies, engineering studies, ADA surveys, and similar documents relative to the Property; (xi) all pending entitlements, land use, road work, and environmental applications; (xii) all warranties or guarantees in favor of Seller with respect to the Property; and (xiii) all licenses, permits, and approvals relative to the ownership, operation, and development of the Property (collectively the documents delivered or made available are referred to as, the "Due Diligence Documents"). The documents and files that Seller shall make available to Purchaser shall include third party reports (excluding appraisals and excluding architectural plans for proposed development of the Property other than civil engineering site plans). Purchaser acknowledges that all such documents and files are delivered and/or made available without any representation

or warranty of any kind, except a warranty that such documents and files are complete, to the extent in Seller's possession or control. Notwithstanding the foregoing, Purchaser may extend the Inspection Period, at its election, for two (2) additional forty (40) day periods (each, an "Inspection Extension") by providing notice to Seller and the Title Company on or before the expiration of the then applicable Inspection Period.

(ii) Seller reserves the right to have a representative present during any inspections. If Purchaser or Purchaser's prospective tenant desires to do any invasive testing at the Property, other than soil borings by a soil testing engineer and environmental testing which are both hereby approved, Purchaser shall do so only after notifying Seller and obtaining Seller's prior written consent thereto (which consent shall not be unreasonably withheld, conditioned or delayed) as to the timing and scope of work to be performed. Purchaser agrees to provide the prompt restoration of the Property to its condition prior to any such inspections or tests, at Purchaser's sole cost and expense. Purchaser makes no representations or warranties with respect to anything contained in such reports received by Purchaser. Purchaser agrees that, in making any inspections of, or conducting any testing of, on, or under the Property, Purchaser shall or, to the extent only Purchaser's prospective tenant inspects the Property, cause Purchaser's prospective tenant to maintain and shall require their agents and consultants, as applicable, to maintain, in full force and effect, statutory worker's compensation insurance coverage and public liability and property damage insurance coverage in the minimum amount of One Million Dollars (\$1,000,000.00), which covers the indemnity described below. Purchaser shall advise Allison Moeding verbally (at (720)-243-5576) or in writing amoeding@evanscolorado.gov, at least 24 hours in advance of any such entry, study or inspection and of the names of the persons who will be making, and the nature of, the entry, study or inspection. Seller or its authorized employee or agent shall have the right to be present during each such entry, study and inspection. All entries on and inspections or studies of the Property shall be at the sole risk and expense of Purchaser and Purchaser's prospective tenant, and Purchaser shall indemnify and hold Seller harmless from and against any and all liens, claims, demands, injuries, damages, costs, expenses (including also reasonable attorneys' fees) or liability incurred by or asserted against Seller or the Property as a result of any of those entries, inspections or studies, which obligations shall survive the Closing or any termination of this Agreement; provided, however, that Purchaser shall have no obligation to indemnify Seller with respect to Seller's mere discovery (as opposed to exacerbation) of pre-existing conditions or issues.

If Purchaser or Purchaser's prospective tenant, in their sole and absolute discretion determines that the Property is suitable for purchase by Purchaser or lease by Purchaser's prospective tenant, Purchaser shall have the right to proceed by giving notice of the same to Seller and the Title Company ("Notice to Proceed") on or before 5:00 p.m. (local time at the Property) on the date the Inspection Period expires. If Purchaser fails to deliver its Notice to Proceed, this Agreement shall terminate, the Deposit shall be returned to Purchaser, and, except as otherwise expressly provided in this Agreement, neither party shall have any further obligations or liability under this Agreement. If Purchaser delivers its Notice to Proceed on or before the expiration of the Inspection Period, Purchaser shall be deemed to be satisfied with the condition of the Property (subject to Articles 8 and 9) and its suitability for purchase by Purchaser and this Agreement shall continue in full

force and effect and the Deposit become non-refundable to the Purchaser, except as otherwise expressly provided in this Agreement, including without limitation, Section 2.5(e).

(d) Representations of Seller. Notwithstanding anything herein to the contrary, Seller warrants and represents, as of the date of this Agreement (subject to being updated as provided in this Section 4.6(d)) to Purchaser that:

(i) Liens. Except for liens and security interests securing financing that Seller will cause to be released or such liens and security interests assumed by Purchaser at Closing, Seller owns the Property free and clear of all restrictions, security interests, liens and encumbrances (except for the Permitted Exceptions), and Seller has all requisite right, power and authority to transfer the Property to Purchaser. Except for the Permitted Exceptions, no person other than Seller has any legal or equitable interest in or to the Property or any portion thereof. There are no outstanding rights of first refusal or options to purchase the Property as of the date hereof.

(ii) FIRPTA. Seller is not, and as of the Closing shall not be, a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended, and any related regulations, and Seller agrees to execute any and all documents necessary or reasonably required by the Internal Revenue Service or the Title Company in connection with such declaration.

(iii) Environmental. To Seller's knowledge, except as may be set forth in the Due Diligence Documents, the Property is not in violation of any federal, state, or local law, ordinance, or regulation relating to the use, storage, disposal or generation of any Hazardous Materials on, under, or about the Property, including but not limited to soil and groundwater. To Seller's knowledge, there are no environmental, health, or safety hazards on, under, or about the Property, including but not limited to mold, asbestos, soil and groundwater conditions. To Seller's knowledge, neither Seller nor any third party (including but not limited to Seller's predecessors in title to the Property) has used or installed any underground tank, or used, generated, manufactured, treated, stored, placed, deposited, or disposed of on, under, or about the Property or transported to or from the Property any Hazardous Materials. For purposes of this Agreement, "Hazardous Materials" includes substances defined as "hazardous substances, hazardous materials, or toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 United States Code §§9601, et seq.), the Hazardous Materials Transportation Act (49 United States Code §§1801, et seq.), the Resource Conservation and Recovery Act (42 United States Code §§6901, et seq.), the substances defined as Hazardous Materials under the law of the state where the Property is located; and in the regulations adopted and publications promulgated under each of the aforesaid laws. Seller has no actual knowledge, except as otherwise disclosed to Purchaser in writing, of the existence on the Property of any Hazardous Material, other than de minimis amounts of household cleaners or office supplies.

(iv) Litigation. There is no litigation, arbitration or legal or administrative proceedings, unsatisfied order or judgment, government investigation or

proceeding pending or threatened against Seller which, if adversely determined, could individually or in the aggregate materially interfere with the consummation of the transaction contemplated by this Agreement that is not fully covered by insurance except for the deductible portion, nor has Seller received any written notice threatening any such proceedings arising out of Seller's ownership of the Property, or threatening any such proceeding against or with respect to the Property.

(v) Condemnation. There is no condemnation or similar proceeding currently pending or, to the knowledge of Seller, threatened against the Property.

(vi) Violations. Seller has not received written notice from any governmental authority of any alleged violations of any zoning, building, health, safety or other laws, statutes, ordinances, orders, codes or regulations with respect to the Property or any part thereof which have not been heretofore correct and Seller has not received written notice of nor to Seller's knowledge is there any uncured violation of any federal, state or local law relating to the use or operation of the Property which would materially adversely affect the Property or use thereof.

(vii) Assessments. Seller has not received written notice that, nor to Seller's knowledge is the Property subject to any special assessments or is it a part of any special improvement district except as may be shown on the Commitment.

(viii) OFAC. (i) Seller is not named as a "Specially Designated National and Blocked Person" as designated by the United States Department of the Treasury's Office of Foreign Assets Control or as a person, group, entity or nation designated in Presidential Executive Order 13224 as a person who commits, threatens to commit, or supports terrorism; (ii) Seller is not owned or controlled, directly or indirectly, by the government of any country that is subject to a United States Embargo; (iii) Seller is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by the United States Treasury Department as a "Specially Designated National and Blocked Person", or for or on behalf of any person, group, entity or nation designated in Presidential Executive Order 13224 as a person who commits, threatens to commit, or supports terrorism; (iv) Seller is not engaged in this transaction directly or indirectly on behalf of, or facilitating this transaction directly or indirectly on behalf of, any such person, group, entity or nation; and (v) Seller is currently in compliance with, and shall at all times during the term of this Agreement remain in compliance with, the regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated Nationals and Blocked Persons List) and any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action relating thereto.

(ix) Bankruptcy. None of Seller or its members, shareholders, or partners has filed any petition seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation dissolution or similar relief under any law relating to bankruptcy or insolvency, nor to Seller's knowledge has any such petition been filed

against Seller, nor any of their members, shareholders or partners. Seller has not admitted in writing its inability to pay its debts as they generally come due or made an offer of settlement, extension or composition to its creditors generally. Seller is not insolvent and the consummation of the transactions contemplated by this Agreement shall not render Seller insolvent. No general assignment of Seller's property has been made for the benefit of creditors, and to Seller's knowledge no receiver, master, liquidator or trustee has been appointed for Seller or any of its property.

(x) Operation. To Seller's knowledge, there is no contemplated change in applicable laws that would hinder or delay the operation or development of the Property.

(xi) Authority. Seller is and shall be duly formed and validly existing a Colorado urban renewal authority and body corporate and politic under the laws of the State of Colorado, and has and shall have full and lawful right and authority to enter into, execute and deliver this Agreement and to transfer all of the Property and to consummate and perform the transactions contemplated in it. Furthermore, Seller represents and warrants that the person or persons executing this Agreement and any documents required under it on its behalf have the authority to do so. Seller also represents and warrants that the consummation and performance of the transactions contemplated by this Agreement will not constitute a default or result in the breach of any term or provision of any contract or agreement to which Seller is a party so as to adversely affect the consummation of these transactions.

(xii) ERISA. Seller did not acquire the Property with the assets of an employee benefit plan as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and to Seller's knowledge, Seller is not aware of any facts or circumstances that would cause the transaction contemplated by this Agreement to be a "prohibited transaction" within the meaning of ERISA.

To the extent the above or other provisions in this Agreement are qualified to Seller's knowledge or in the knowledge of Seller, knowledge shall mean to the actual personal present knowledge of Allison Moeding (the "Representative"), without inquiry or investigation, and without imputation of any knowledge of any other person, or any employee, representative, agent or advisor of Seller. Seller represents that the Representative is the individual who has the most knowledge about the Property. Seller shall promptly advise Purchaser in writing if, subsequent to the date of this Agreement and prior to the Closing, it acquires actual knowledge that any of the representations and warranties set forth in this Section 4.6(d) are no longer true or correct in any material respect as a result of changes after the date of this Agreement, and if the modifications are unacceptable Purchaser shall have the right to terminate this Agreement (in which event the Deposit shall be returned to Purchaser). Purchaser shall advise Seller in writing if, subsequent to the date of this Agreement and prior to the Closing, it acquires actual knowledge that any of the representations and warranties set forth in this Section 4.6(d) is no longer true or correct in any material respect, which notice shall be given to Seller within five (5) days after learning of such facts (but not later than the Closing Date). If Purchaser gives notice to Seller, Seller shall have until the later of the Closing Date or fifteen (15) days after receipt of Purchaser's notice to correct such failure (and the Closing Date shall be extended accordingly).

If Seller cannot or does not elect to correct the change in the representation or warranty so as to make it acceptable to Purchaser within such period in all material respects, then Purchaser shall have the right to terminate this Agreement in accordance with the following provision. These warranties and representations, as supplemented or amended by any such subsequent disclosure, shall be restated at Closing in Seller's Closing Certificate and shall survive Closing for a period of twelve (12) months; provided that Purchaser shall be deemed to have waived any breach of a representation or warranty of Seller of which Purchaser had actual knowledge prior to Closing. If prior to the Closing Date Seller notifies Purchaser or Purchaser otherwise becomes aware that one or more of the representations or warranties are no longer true or correct in any material respect and are not waived by Purchaser on or before the Closing Date, then unless otherwise agreed to by Seller and Purchaser, Purchaser's exclusive remedy shall be to give notice to Seller of Purchaser's desire to terminate this Agreement, whereupon the Deposit shall be returned to Purchaser and this Agreement shall terminate and, except as otherwise expressly provided in this Agreement, neither party shall have any further rights or obligations under this Agreement.

(e) Governmental Approval; McDonald's Waiver of Contingencies. Purchaser's obligation to close on the purchase of the Property shall be conditioned on Purchaser having obtained receipt of the Governmental Approval, McDonald's unconditional waiver of all contingencies under the McDonald's Agreement, and McDonald's ability to concurrently close on the acquisition of the Property. During the period beginning upon the expiration of the Inspection Period and ending at 5:00 p.m. (local time at the Property) on the date that is one hundred twenty (120) days following the expiration of the Inspection Period (hereinafter referred to as the "Governmental Approval Deadline"), Purchaser shall use commercially reasonable efforts to obtain the Governmental Approval. Purchaser shall deliver or cause McDonald's to deliver the required submittals for Governmental Approval to the Governmental Authorities within thirty (30) days following the expiration of the Inspection Period, as may be extended. If Purchaser cannot obtain, or reasonably determines that it cannot obtain, Governmental Approval prior to the Governmental Approval Deadline or if McDonald's has not unconditionally waived all of its contingencies under the McDonald's Agreement and McDonald's is not in a position to concurrently close on the acquisition of the Property, Purchaser may terminate this Agreement by delivering notice thereof to Seller and the Title Company, whereupon the Title Company shall deliver the Deposit to Purchaser and the parties' other rights and obligations hereunder shall terminate, except for those rights and obligations that expressly survive termination. Notwithstanding the foregoing, Purchaser may extend the Governmental Approval Deadline, at its election, for two (2) additional forty-five (45) day periods (each, a "Permit Extension") by providing notice to Seller and the Title Company on or before the then applicable Governmental Approval Deadline. If prior to the Governmental Approval Deadline, Purchaser obtains Governmental Approval, Purchaser shall deliver written notice of such satisfaction to Seller (the "Governmental Approval Notice").

(i) Seller shall cooperate with Purchaser and McDonald's in connection with Purchaser's and McDonald's efforts to obtain Governmental Approval, including providing and executing any documents that are required in the application and submittal for such Governmental Approval, except that Seller shall not be required to bear any costs required therefor (other than the costs of Seller's attorneys and consultants, which Seller shall bear). Seller shall not be required to make any dedications or conveyances of the Property prior to Closing.

(ii) Purchaser shall pay all third-party costs (excluding any costs of Seller) relating to its Governmental Approval, including, but not limited to, governmental fees and the fees and costs of other professionals and consultants, in accordance with Purchaser's contracts with the same.

(iii) For purposes of this Section 4.6(e), Governmental Approval shall not be considered to have been "obtained" unless and until Purchaser has received written evidence that such approval for the development for Purchaser's intended use on the Property has been issued or such agreement has been fully executed and delivered to Purchaser, and such issuance or execution and delivery is not subject to appeal, or, if appealed, such appeal has been successfully and finally resolved in favor of Purchaser, and is not subject to any further appeal or other challenge.

ARTICLE 5 – CLOSING AND POST-CLOSING ADJUSTMENTS

5.1 Closing Adjustments. The following are to be apportioned at the Closing on a per diem basis through and including 11:59 p.m. of the day preceding the Closing Date (provided, however, that if the Purchase Price is received by the Title Company after 5:00 p.m. (local time at the Property) on the Closing Date, the apportionment shall be readjusted following Closing to 11:59 p.m. of the Closing Date):

(a) Taxes and Assessments. Seller and Purchaser shall each be responsible for real estate taxes assessed for their respective periods of ownership of the Property during the calendar year irrespective of when such taxes are due and payable, and such taxes shall be apportioned accordingly; provided, however, to the extent Seller, as a quasi-governmental authority, is not required to pay real estate taxes, then only Purchaser shall be responsible for its apportionment of real estate taxes for the calendar year of the Closing. The apportionment made with respect to the year of Closing for which the tax rate or assessed valuation, or both, have not yet been fixed shall be based upon the tax rate and/or assessed valuation last fixed. Such proration shall be a final settlement between Seller and Purchaser and shall not be subject to further adjustment following Closing based on the actual taxes. Ad valorem personal property taxes shall likewise be apportioned based upon the tax rate and/or valuation last fixed. All transfer taxes shall be paid in equal share by Purchaser and Seller.

(b) Closing Costs; Attorneys' Fees. All real estate recording and documentary fees payable in connection with the conveyance of the Property shall be paid by Purchaser. Seller shall pay the basic premium cost for the ALTA Title Insurance Policy (Extended Coverage) and Purchaser shall pay the cost for any additional endorsements requested by Purchaser to such ALTA Title Insurance Policy pursuant to the provisions of Section 4.6(b). All costs and expenses incurred for closing services, such as closing fees and document preparation fees charged by the Title Company shall be paid in equal share by Purchaser and Seller. Except as otherwise expressly provided in this Agreement, each party shall pay its own attorneys' fees and other expenses incurred in the preparation of this Agreement and the sale of the Property.

(c) Other Apportionments. Such other items as are customarily apportioned by the Title Company at a closing of the sale of vacant land in Weld County, Colorado.

ARTICLE 6 – INTENTIONALLY OMITTED

ARTICLE 7 – DEFAULT

7.1 Default and Termination.

(a) Purchaser's Default. If Purchaser defaults in its obligation to close Seller shall have the right, as its sole and exclusive remedy, to terminate this Agreement and retain the Deposit as liquidated damages. **The parties have agreed that Seller's actual damages, in the event of a default by Purchaser prior to or at Closing other than under Section 4.6(c), would be extremely difficult or impracticable to determine. Therefore the parties acknowledge that the Deposit has been agreed upon, after negotiation, as the parties' reasonable estimate of Seller's damages and together with terminating this Agreement, the retention of which is Seller's exclusive remedy against Purchaser, at law or in equity, for a Purchaser default.**

(b) Seller's Default. Subject to the specific remedy set forth in subsection (c) of this Section 7.1, if Seller defaults in its obligation to close or otherwise commits a material default under this Agreement and fails to cure such default within five (5) business days following receipt of written notice from Purchaser that such a default has occurred, Purchaser shall have, as its exclusive remedies, the following rights: (a) if the default occurs prior to or at Closing then Purchaser may (i) terminate this Agreement and obtain the return of the Deposit, plus reimbursement from Seller for all of Purchaser's reasonable and documented, actual out-of-pocket costs and expenses which were incurred and paid by Purchaser with respect to Purchaser's necessary inspections and proposed development diligence of the Property including, without limitation, any amounts expended by Purchaser as part of Purchaser's necessary pre-development activities for the Property, including design, environmental, engineering, legal and other due diligence costs expenses, which are necessary and required for Purchaser to determine if the Property is suitable for its proposed development, provided, that in no event shall Seller's liability under this sentence exceed Fifty Thousand and 00/100 Dollars (\$50,000.00), or (ii) subject to the following limitations, treat this Agreement as being in full force and effect and obtain specific performance (which action shall be commenced within sixty (60) days after the scheduled Closing Date) to compel Seller to remove any Liens in accordance with Section 2.5(b)(v) and convey to Purchaser such title to the Property in question, and with respect to the cost of removal of any such Liens, to recover Purchaser's actual out-of-pocket money damages for the removal of any such Liens (excluding lost profits, speculative or consequential damages) from Seller only resulting from such default; or (b) if the default occurs after Closing, if specific performance is not available, including by reason of a sale of the Property by Seller to a third-party while this Agreement remains in effect, or if Seller's default is a result of Seller's fraud, without regard to any limitations set forth herein, then Purchaser may obtain its actual out-of-pocket money damages (excluding lost profits, speculative or consequential damages) from Seller.

(c) Specific Seller Remedy Regarding Flex Building Property. Purchaser and Seller acknowledge and agree that partial consideration to the Seller for the Property includes Purchaser constructing or causing to be constructed that portion of the Property upon which the Flex Building shall be constructed. Therefore, subject to Permitted Delays as

described in Section 11.7 hereunder, Purchaser and Seller agree that in the event construction upon the Flex Building Property has not commenced within two (2) years of the date of closing on the Property, Seller shall, as a specific bargained for additional remedy, collect a penalty from Purchaser in the amount of Two Hundred and Fifty Thousand Dollars (\$250,000.00), and such Flex Building Property shall automatically revert to Seller at the expiration of such two (2) year period. Purchaser therefore agrees not to encumber the Flex Building Property until construction financing has been approved by Purchaser's lender and permits have been issued for the construction of the Flex Building, except for easements and other non-financial obligations as approved by Seller in its reasonable discretion.

(d) Termination of Agreement. Upon termination of this Agreement in the manner set forth in this Section, except as otherwise expressly provided in this Agreement, neither party shall have any further obligations or liabilities hereunder. Upon termination of this Agreement, the Deposit shall be returned to Purchaser unless such termination is of a nature which would or may entitle Seller to retain the Deposit as set forth in this Agreement. Upon termination of this Agreement, Purchaser will provide Seller copies of all non-proprietary reports and inspections of the Property, including ALTA surveys and environmental reports.

ARTICLE 8 – CONDEMNATION

8.1 Condemnation. If, between the date of this Agreement and Closing, any portion of the Property that is of such size and configuration or character to be, in Purchaser's reasonable judgment, material to the operation of the Property, is taken in condemnation (a "Material Taking") or proceedings are commenced with respect to a Material Taking, Purchaser shall have the right to terminate this Agreement, after which the Deposit shall be returned to Purchaser, and Purchaser and Seller shall have no further liability or obligation under this Agreement, except as otherwise provided in this Agreement and Purchaser shall have no right to any condemnation proceeds paid to Seller. If Purchaser does not terminate this Agreement, Seller shall be entitled to retain all condemnation proceeds and the Purchase Price for the Property shall be reduced by the amount of said proceeds or, if such condemnation is not completed as of the Closing, Seller shall assign such right to proceeds to Purchaser without adjustment of the Purchase Price. If, between the date of this Agreement and Closing, any portion of the Property is taken in condemnation that is not a Material Taking, Purchaser may not terminate this Agreement for that reason, and Seller and Purchaser shall perform their respective obligations under this Agreement, except with respect to the part of such Property so taken, Seller shall be entitled to all the condemnation proceeds and the Purchase Price for the respective Property shall be decreased by the net amount of those condemnation proceeds. If proceedings with respect to a taking which is not a Material Taking are commenced and not completed prior to the Closing, the Seller shall assign such right to proceeds to Purchaser without adjustment of the Purchase Price.

ARTICLE 9 – OPERATION OF THE PROPERTY

9.1 Operation of the Property. Seller agrees that between the date of this Agreement and the Closing Date:

(a) Seller shall, subject only to conditions beyond Seller's reasonable control, continue to operate and maintain the Property in its present condition and in accordance with Seller's existing procedures, standards and practices, ordinary wear and tear excepted.

(b) Seller shall not initiate or consent to any proposed changes in the zoning or other governmental land use requirements applicable to all or any part of the Property.

(c) Seller shall maintain in full force or effect its existing insurance coverage on the Property as disclosed to Purchaser.

(d) Seller shall use commercially reasonable efforts to preserve in force all existing permits and to cause all those expiring prior to the Closing Date to be renewed. If any such permit shall be suspended or revoked, Seller shall promptly so notify Purchaser and shall take all reasonable measures necessary to cause the reinstatement of such permit prior to Closing without any additional limitation or condition.

ARTICLE 10 – GENERAL DISCLAIMER

Except as otherwise expressly stated in this Agreement or in any agreement or instrument executed and delivered by Seller to Purchaser at the Closing, including but not limited to representations and warranties set forth in Section 4.6(d) of this Agreement and the limited warranty of title expressly set forth in the Deed (collectively, the "Surviving Representations"), Seller hereby expressly disclaims making any and all representations and warranties of any kind or character, express or implied, with respect to the Property, and Purchaser agrees to accept the Property "as is, where is, with all faults." Without limiting the generality of the preceding sentence or any other disclaimer set forth herein, Seller and Purchaser hereby agree that, except for the Surviving Representations, Seller has not made and is not making any representations or warranties, express or implied, written or oral, as to (a) the nature or condition, physical or otherwise, of the Property or any aspect thereof, including, without limitation, any warranties of habitability, suitability, merchantability or fitness for a particular use or purpose; (b) the nature or quality of construction, structural design or engineering of the improvements or the state of repair or lack of repair of any of the improvements; (c) the quality of the labor or materials included in the improvements; or (d) the compliance of the Property or the operation or use of the Property with any laws, ordinances or regulations of any governmental body, including, without limitation, the Americans with Disabilities Act, any Environmental Laws, and any zoning laws or ordinances.

Purchaser has been or will be given the opportunity to inspect the Property and the Due Diligence Documents (including, without limitation, Title Materials) relating to the Property that Purchaser deemed necessary to inspect and review in connection with this Agreement, and Purchaser has retained such environmental consultants, structural engineers, and other experts as it deemed necessary to inspect the Property and review such materials and to make its own determination as to the condition of the Property and its suitability for Purchaser's purposes, as to whether hazardous or toxic materials were used, released or stored on the Property or constitute a present hazard with respect to the Property, and otherwise. Purchaser is relying on its own investigation and the advice of its experts regarding the Property, and upon its review of the Due Diligence Materials, and not on any representations or warranties of Seller (other than the

Surviving Representations), and Purchaser acknowledges that the Purchase Price reflects the fact that this is an "as is, where is" transaction except as may be expressly set forth in the Surviving Representations. The covenants and agreements of Purchaser in this Section shall survive the Closing and consummation of the transactions contemplated by this Agreement.

ARTICLE 11 – MISCELLANEOUS

11.1 Confidentiality. Subject to the terms of this Section 11.1, and to the extent permitted by the Colorado Open Records Act, C.R.S. § 24-72-200.1, *et seq.*, Purchaser and its representatives shall hold in confidence all data and information obtained with respect to Seller or its business, whether obtained before or after the execution and delivery of this Agreement, and shall not disclose the same to others; provided, however, that it is understood and agreed that Purchaser may disclose such data and information to the employees, consultants, accountants, attorneys and prospective lenders and tenants of Purchaser provided that such persons agree to treat such data and information confidentially in accordance with this provision. In the event this Agreement is terminated or Purchaser fails to perform hereunder, Purchaser shall, upon the written request of Seller, promptly either return to Seller or destroy any statements, documents, schedules, exhibits or other written information obtained from Seller or any agent of Seller in connection with this Agreement or the transaction contemplated herein. The provisions of this Section 11.1 shall survive Closing. Notwithstanding anything contained hereinabove to the contrary, (i) this provision shall not apply to any information that is or becomes generally available to the public from a source other than Purchaser or its representatives or is disclosed to Purchaser or its representatives by a third party who is not known to Purchaser to be subject to a similar provision and (ii) Purchaser may disclose any such information pursuant to a court order, subpoena, or similar judicial requirement.

11.2 Authority of Purchaser. Purchaser represents and warrants that as of the date of this Agreement and as of the date of Closing, Purchaser is and shall be a duly organized and validly existing limited liability company under the laws of the State of Colorado, is and shall be in good standing under the laws of the State of Colorado, and has and shall have full and lawful right and authority to execute and deliver this Agreement and to consummate and perform the transactions contemplated in it. Furthermore, Purchaser represents and warrants that the person or persons executing this Agreement and any documents required under it on behalf of Purchaser have the full legal power and authority to do so. Purchaser also represents and warrants that the consummation and performance of the transactions contemplated by this Agreement will not constitute a default or result in the breach of any term or provision of any contract or agreement to which Purchaser is a party so as to adversely affect the consummation of these transactions.

11.3 Brokers. Each party represents and warrants to the other that no broker or finder has been engaged by such party or has a right to a commission in connection with the sale contemplated by this Agreement. Each party further represents and warrants to the other that no person or entity claims or will claim any commission, finder's fee or other amounts by, through under or as a result of any relationship with such party because of this transaction. Each party agrees to hold the other party harmless from and against any and all costs, expenses, claims, losses or damages, including reasonable attorneys' fees, resulting from any breach of the representations and warranties contained in this Section. Seller acknowledges that one or more of the principals of Purchaser are licensed real estate brokers in the State of Colorado.

11.4 Assignability.

(a) Purchaser's Assignability. Purchaser cannot assign all or any part of its rights or obligations hereunder without the prior written consent of Seller, which consent shall not be unreasonably withheld; provided, however, that Purchaser may assign its rights to an Affiliate (as hereinafter defined), provided (i) Purchaser shall not be relieved of its liability under this Agreement; and (ii) Purchaser shall notify Seller and Title Company of any such assignment not later than three (3) business days prior to the Closing Date. Any assignment made in violation of the terms of this Section shall be void and of no force and effect. For purposes of this Section 11.4(a), the term "Affiliate" shall mean: (1) an entity that controls, is controlled by, or is under common control with Purchaser (directly or indirectly, through voting or equity ownership); (2) any partnership in which Purchaser or Purchaser's controlling member is the general partner; or (3) any fund or entity sponsored by Purchaser.

(b) Seller's Assignability. Seller may not assign, prior to Closing, all or any part of its rights and obligations hereunder without the written consent of Purchaser.

11.5 Notices and Consents. Any notice provided for in or permitted under this Agreement shall be made in writing and may be given or served by (a) delivering the same in person to the party to be notified, (b) depositing the same in the United States mail, postage prepaid, registered or certified with return receipt requested, and addressed to the party to be notified at the address herein specified, (c) sent by reputable overnight delivery services (such as Federal Express or United States Express Mail) or (d) sent by electronic mail (with confirmation sent by any of the means described in subsections (a), (b) or (c) above). Notices given in accordance with any of the foregoing methods shall be effective when received (or service is refused). Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of notice. For the purpose of notice, the address of the parties shall be, until changed, as set forth below. The parties shall have the right at any time to change their respective addresses and each shall have the right to specify as its address any other address by written notice to the other party.

If intended for Purchaser, to: Flexible Evans II, LLC
2795 Speer Boulevard, Suite 10
Denver, CO 80211
Attn: Rich Hobbs
303/398-2111
hobbs@creginc.com

with a copy to: Senn Visciano Canges P.C.
1700 Lincoln Street, Suite 4300
Denver, CO 80203
Attn: Jonathan Nash
303/298-1122
jnash@sennlaw.com

If intended for Seller, to: Evans Redevelopment Agency
1100 37th Street

Evans, CO 80620
Attn: James L. Becklenberg
970/475-1119
jbecklenberg@evanscolorado.gov

with a copy to:

Hoffmann, Parker, Wilson & Carberry, P.C.
511 16th Street, Suite 610
Denver, CO 80202
Attn: Corey Y. Hoffmann
303/951-2094
cyh@hpwclaw.com

11.6 Binding Effect. Subject to Section 11.4, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and permitted assigns.

11.7. Force Majeure. Performance by Purchaser of Purchaser's obligations hereunder are subject to Permitted Delay and shall be excused during any period of Permitted Delay. For purposes hereof, "Permitted Delay(s)" shall mean delay beyond the reasonable control of the party claiming the delay, including, but not limited to, government mandated closures, incidence of disease or other illness that reaches outbreak, epidemic and/or pandemic proportions, acts of God, or by fire, casualty, flood, adverse weather conditions such as, by way of illustration and not limitation, wind, snow storms which prevent outdoor work from being accomplished, severe rain storms or below freezing temperatures of abnormal degree or for an abnormal duration, tornadoes, earthquakes, floods, civil disturbance, order of any government, court or regulatory body claiming jurisdiction or otherwise, act of public enemy, war, riot, sabotage, blockage, embargo, failure or inability to secure materials or labor (including labor and materials shortages caused by national weather or other national events), or other natural or civil disaster, delays caused by any dispute resolution process, any delays by injunctions or lawsuits concerning the overall project, or any cause whatsoever beyond the reasonable control of Purchaser. Lack of funds or inability to obtain internal approvals shall not constitute Permitted Delay. 11.8 Entire Agreement; Modification This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and may not be modified in any manner except by an instrument in writing signed by both parties. This Agreement supersedes and replaces all earlier agreements or understandings of the parties, whether written or oral, with respect to the subject matter hereof.

11.7 Headings. The headings herein are inserted only for convenient reference and do not define, limit or prescribe the scope of this Agreement or any Section or subsection.

11.8 No Merger; Survival. The representations, covenants and agreements contained herein shall not merge into the various documents executed and delivered at the Closing and shall survive Closing, except as limited in this Agreement. The provisions of Sections 11.1 and 11.3 and all post-closing obligations, including but not limited to the obligations under Section 5.1 shall survive the Closing.

11.9 Counterparts. This Agreement may be executed in any number of counterparts which together shall constitute a final Agreement. Facsimile signatures are as binding as original signatures.

11.10 Severability. If any provision of this Agreement or its application to any person or situation, to any extent, shall be held invalid or unenforceable, the remainder of this Agreement, and the application of that provision to persons or situations other than those to which it has been held invalid or unenforceable, shall not be affected, but shall continue valid and enforceable to the fullest extent permitted by law.

11.11 No Waiver. No waiver by either party of any provision hereof shall be deemed a waiver of any other provision or of any subsequent breach by either party of the same or any other provision.

11.12 Construction of Agreement. Seller and Purchaser acknowledge each to the other that both they and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits to it. Any words following the words "include," "including," "such as," "for example," or similar words or phrases shall be illustrative only and are not intended to be exclusive, whether or not language of non-limitation is used.

11.13 Governing Law; Attorneys' Fees. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. In the event of any litigation between the parties with respect to the subject matters of this Agreement, the prevailing party shall be entitled to recover all of its reasonable attorneys' fees from the other party.

11.14 Exclusivity. So long as this Agreement has not been terminated and so long as Purchaser is not in default hereunder, Seller agrees that during the period from and after the date of this Agreement Seller shall not solicit or respond to offers from others relative to the sale of the Property or enter into or negotiate any contract, letter of intent or term sheet for the sale of the Property to any prospective purchaser other than Purchaser.

11.15 Recordation. Purchaser shall not place this Agreement or any of its terms and provisions, or any notice, memorandum or other written evidence of it, of record without the prior written consent of Seller, which Seller may withhold in its sole discretion. Any violation of the terms and conditions of this Section by Purchaser shall, at the option of Seller, render this entire Agreement null and void and of no further force or effect.

11.16 Relationship of Parties. Nothing in this Agreement shall be construed or deemed to make or constitute Seller and Purchaser partners, joint venturers or any other form of joint participants in the acquisition and ownership of the Property, and Seller and Purchaser agree and acknowledge that the sole and exclusive nature of their relationship is as seller and purchaser.

11.17 Exhibits; Paragraph References. All exhibits to this Agreement are a part of this Agreement and are incorporated into it by reference. References to Section numbers and exhibits, unless otherwise stated, are to Sections in and exhibits to this Agreement.

11.18 Date of This Agreement. References to the "date of this Agreement" mean the date on page 1 of this Agreement.

11.19 Computation of Time. If any time period expires on a Saturday, Sunday, or legal holiday of the State of Colorado, the date of performance shall be the next day which is not a Saturday, Sunday, or legal holiday.

11.20 Time of the Essence. Time shall be deemed of the essence in construing this Agreement.

[SIGNATURES ON ATTACHED PAGE]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement effective as of the date first written above.

SELLER:

EVANS REDEVELOPMENT AGENCY,
a Colorado urban renewal authority and body
corporate and politic;

By: _____
Name: _____
Title: _____

PURCHASER:

FLEXIBLE EVANS II, LLC,
a Colorado limited liability company

By: _____
Name: _____
Title: _____

Title Company executes this Agreement solely for the purpose of being bound by the provisions of Sections 3.2(a), 4.1 and 4.6(b) hereof and the following provisions. The Deposit shall be held and disbursed by the Title Company in accordance with the provisions of this Agreement. The duties of the Title Company hereunder are purely ministerial in nature and shall be expressly limited to the safekeeping and disposition of the Deposit in accordance with this Agreement. Title Company shall incur no liability in connection with the safekeeping or disposition of the Deposit for any reason other than Title Company's willful misconduct or gross negligence. In the event that Title Company shall be in doubt as to its duties or obligations with regard to the Deposit, or in the event that Title Company receives conflicting instructions from Purchaser and Seller with respect to the Deposit, Title Company shall not be required to disburse the Deposit and may, at its option, continue to hold the Deposit until both Purchaser and Seller agree as to its disposition, or until a final judgment is entered by a court of competent jurisdiction directing its disposition, or Title Company may interplead the Deposit in accordance with the laws of the State of Colorado. Title Company shall not be responsible for any interest on the Deposit except as is actually earned, or for the loss of any interest resulting from the withdrawal of the Deposit prior to the date interest is posted thereon.

Chicago Title Insurance Company

By: _____
Name: _____
Title: _____

EXHIBIT 1.1

SITE PLAN

EXHIBIT 4.2(a)

After Recording Return To:

Senn Visciano Canges P.C.
1700 Lincoln Street, Suite 4300
Denver, CO 80203
Attn: Jonathan G. Nash

SPECIAL WARRANTY DEED

For valuable consideration, receipt of which is acknowledged, EVANS REDEVELOPMENT AGENCY, a Colorado urban renewal authority and body corporate and politic, whose address is 1100 37th Street, Evans, Colorado 80620 ("Grantor"), hereby grants, bargains, sells and conveys to FLEXIBLE EVANS II, LLC, a Colorado limited liability company, whose address is 2795 Speer Boulevard, Suite 10, Denver, Colorado 80211 ("Grantee"), that certain real property located in the County of Adams, State of Colorado, as legally described on EXHIBIT A attached hereto and made a part hereof (the "Property") together with all of Grantor's right, title and interest in and to all of the estates, rights, titles, privileges, easements, appurtenances thereto and hereditaments of any nature whatsoever in any way belonging, relating or pertaining to the Property, including by way of illustration and not limitation, water rights, any interest in any roads, alleys and sidewalks, all transferable development rights or other entitlements, if any, but specifically excluding any and all mineral interests or mineral rights therein.

The Property is conveyed subject to:

(a) The liens for real property taxes for the calendar year 2021 not yet due and payable; and

(b) All easements, rights of way, covenants, conditions and restrictions which are set forth on EXHIBIT B attached hereto.

TO HAVE AND TO HOLD the said Property unto the Grantee, its successors and assigns. The Grantor, for itself and its successors, hereby agrees that it shall WARRANT AND DEFEND the Property in the quiet and peaceable possession of the Grantee, its successors and assigns, against all and every person claiming the whole or any part thereof, by, through or under the Grantor.

IN WITNESS WHEREOF, Grantor has caused its duly authorized representative to execute this instrument as of the date hereinafter written.

DATED: _____, 2022

EVANS REDEVELOPMENT AGENCY,
a Colorado urban renewal authority and body
corporate and politic

By: _____
Name: _____
Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF WELD)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by _____ as _____ of EVANS REDEVELOPMENT AGENCY, a Colorado urban renewal authority and body corporate and politic.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

**EXHIBIT A
TO SPECIAL WARRANTY DEED**

Legal Description

**EXHIBIT B
TO SPECIAL WARRANTY DEED**

Permitted Exceptions

EXHIBIT 4.2(b)

ASSIGNMENT

KNOW ALL MEN BY THESE PRESENTS, that in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, EVANS REDEVELOPMENT AGENCY, a Colorado urban renewal authority and body corporate and politic, whose address is 1100 37th Street, Evans, Colorado 80620 ("Assignor"), does hereby convey, sell, assign, transfer, set over, and deliver to FLEXIBLE EVANS II, LLC, a Colorado limited liability company, whose address is 2795 Speer Boulevard, Suite 10, Denver, Colorado 80211 ("Assignee"), all of Assignor's right, title, and interest, if any, in and to those certain items of personal property described as follows: (i) to the extent that they may be transferred by Assignor, all licenses, permits, plans, approvals, and authorizations required for the use and operation of all or any part of the real property described on **Exhibit A** to this Assignment, including those required for the operation of the land, appurtenances, improvements, fixtures, equipment, and other personal property owned or leased by Assignor in connection with the operation and management of that real property (collectively, the "Property"); (ii) to the extent that they may be transferred, warranties covering any portion of the Property; and (iii) all other intangible personal property owned by Assignor or in which Assignor otherwise has an interest, and used solely in connection with the business conducted on or from the Property or any part of it, and, if available, telephone exchange numbers.

TO HAVE AND TO HOLD the above items unto Assignee forever.

This Assignment is made without representation, warranty, including, without limitation, any warranties of habitability, suitability, merchantability or fitness for a particular use or purpose, or recourse, express or implicit. Provided, however, Assignor hereby agrees to indemnify, hold harmless and defend Assignee from and against any loss, cost, claim, cause of action, damage, or expense, including reasonable attorneys' fees, which Assignee may incur, or which may be asserted against Assignee under the Property and which arise from or is related to events or circumstances occurring prior to the date of this Assignment.

This Assignment may be executed by one or more of the parties to this Assignment on any number of separate counterparts, and all of which taken together shall be deemed to constitute one and the same instrument.

This Assignment shall be binding upon Assignor and upon Assignor's successors and assigns and shall inure to the benefit of Assignee and its successors and assigns.

EXECUTED effective as of _____, 2022.

ASSIGNOR:

EVANS REDEVELOPMENT AGENCY,
a Colorado urban renewal authority and
body corporate and politic;

By: _____

Name: _____

Title: _____

ASSIGNEE:

FLEXIBLE EVANS II, LLC,
a Colorado limited liability company

By: _____

Name: _____

Title: _____

**EXHIBIT A
TO ASSIGNMENT**

Legal Description

EXHIBIT 4.2(c)

NON-FOREIGN AFFIDAVIT

CERTIFICATION OF SELLER'S NON-FOREIGN STATUS

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that the withholding of tax is not required upon the disposition of a U.S. real property interest by EVANS REDEVELOPMENT AGENCY, a Colorado urban renewal authority and body corporate and politic ("Seller"), the undersigned hereby certifies the following on behalf of Seller:

1. Seller is a limited liability company and is a "United States person" as defined in Section 7701 of the Internal Revenue Code of 1986 (the "Code") and regulations promulgated thereunder and is not a "foreign person" as defined in, or for the purposes of, Section 897 or 1445 of the Code and regulations thereunder.

2. The U.S. employer identification number for Seller is _____.

3. The office address of Seller is _____.

Seller understands that this Certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment or both.

Under the penalties of perjury I declare that I have examined this Certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Seller.

SELLER:

EVANS REDEVELOPMENT AGENCY,
a Colorado urban renewal authority and
body corporate and politic

By: _____
Name: _____
Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF WELD)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by _____ as _____ of EVANS REDEVELOPMENT AGENCY, a Colorado urban renewal authority and body corporate and politic.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT 4(d)

**SELLER REIMBURSEMENT AGREEMENT AND CITY REIMBURSEMENT
AGREEMENT**

[TO BE INSERTED]

EXHIBIT 4.2(g)

SELLER'S CERTIFICATE OF REPRESENTATIONS AND WARRANTIES

THIS CERTIFICATE OF REPRESENTATIONS AND WARRANTIES (this "Certificate") is given by EVANS REDEVELOPMENT AGENCY, a Colorado urban renewal authority and body corporate and politic ("Seller"), in connection with that certain Purchase and Sale Agreement dated _____, 2022 (the "Agreement"), relating to the sale and purchase of that certain real property located in the City of Evans, County of Weld, State of Colorado (the "Property"), by and between Seller and FLEXIBLE EVANS II, LLC, a Colorado limited liability company ("Purchaser").

Seller hereby restates to Purchaser the representations and warranties of Seller set forth in Sections 2.5(d) and 8.3 of the Agreement as of the date hereof, subject to the terms, conditions and limitations with respect thereto provided in the Agreement.

Dated as of the _____ day of _____, 2022.

EVANS REDEVELOPMENT AGENCY,
a Colorado urban renewal authority and
body corporate and politic

By: _____
Name: _____
Title: _____