

# AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

This AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY (the “Agreement”) is made and entered into by and between **THE CITY OF FRUITA, a home rule municipal corporation**, of 325 E. Aspen, Fruita, CO 81521 (“Seller”) and **POWER FAMILY PINON MESA, LLLP, a Colorado limited liability limited partnership**, of 2575 1½ Rd., Grand Junction, CO 81505 (“Buyer”).

## ARTICLE I CONTRIBUTION AND ACCEPTANCE

1.1 The Property. Subject to the terms and provisions hereof, Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, title to the real property described as follows:

Beginning south 15°45’ east 3070.7 feet from the NW Corner of Section 5, Township 14 South, Range 101 West, thence north 435.6 feet; thence west 200 feet, thence south 435.6 feet, thence east 200 feet to the Point of Beginning.

Tax Parcel No. 3223-053-00-002

(the “Property”)

1.2 Effective Date. The “Effective Date” of this Agreement shall be the date which is the last date of execution by Seller and Buyer. In the event this Agreement is not executed by both parties on or before September 18, 2023, the Agreement shall be null and void.

## ARTICLE II PURCHASE PRICE

2.1 Purchase Price. The purchase price for the Property shall be Fifty Thousand and No/100ths (\$50,000.00) (“Purchase Price”), to be paid by Purchaser to Seller as follows:

(a) Earnest Money Deposit. Within five (5) business days of execution of this Agreement, Buyer will deliver to Title Company of the Rockies (“Title Company”), the sum of \$2,500.00 (“Earnest Money Deposit”). If Buyer terminates this Agreement, the Title Company shall refund the Earnest Money Deposit to Buyer. If Buyer does not terminate this Agreement, then the Earnest Money Deposit shall be held by the Title Company as a partial payment of the Purchase Price, which shall be non-refundable to Buyer except in the event of Seller’s default under this Agreement. At Closing, the Title Company shall deliver to Seller the entire Earnest Money Deposit.

(b) Cash at Closing. Buyer shall pay to Seller at Closing the balance of the purchase price of \$47,500.00, in the form of cash, wire transfer, or certified funds.

### **ARTICLE III TITLE MATTERS**

3.1 Title Commitment Review. Within ten (10) business days from the Effective Date, Seller shall, at Buyer's sole cost and expense, furnish to Buyer a current commitment (hereinafter called the "Title Commitment") for the issuance of an owner's policy of title insurance in the amount of \$50,000.00 to Buyer from the Title Company, together with good legible copies of all documents constituting exceptions to Seller's title. Buyer shall have a period of ten (10) days after receipt in which to review such items and to deliver to Seller in writing such objections as Buyer may have to anything contained or set forth in the Title Commitment. Any items to which Buyer does not object within the Inspection Period shall be deemed to be "Permitted Exceptions." As to items to which Buyer makes objection, Seller shall have the right, but not the obligation, to attempt to effectuate the cure of such objections. In the event Seller is not able to cure such matters prior to Closing, Buyer shall have the right to either (i) terminate this Agreement, in which event neither party hereto shall have any further obligations hereunder, or (ii) waive such title matters and proceed to Closing, whereupon such waived title matters shall also be deemed "Permitted Exceptions." In the event Buyer terminates this Agreement pursuant to the provisions of this Section, the Earnest Money Deposit shall be returned to Buyer.

If following the title review period, any new title matters are reflected in an update to the Title Commitment, then at Buyer's sole option, Buyer may approve such new title matter as an additional Permitted Exception, or Buyer may object to such new title matter. If Buyer objects to a new title matter, then the provisions for Seller cure and the provisions for Buyer's remedies in the event Seller is not able to cure, as set forth in the preceding paragraph, shall apply to such new title matter.

3.2 Title Policy. At Closing, Seller shall furnish Buyer, at Buyer's sole cost and expense, an owner's title insurance policy issued by the Title Company, in an amount equal to the Purchase Price, on standard ALTA Policy Form, insuring good and indefeasible title to the Property in Buyer, subject only to the Permitted Exceptions.

3.3 AS-IS" Nature of Sale. Buyer acknowledges and agrees that Seller has not made, does not make and specifically negates and disclaims any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, verbal or written, past, present or future, of, as to, concerning or with respect to: (a) the value, nature, quality or condition of the Property, including, without limitation, availability of utility services, the water, soil and geology; (b) the income to be derived from the Property; (c) the suitability of the Property for any and all activities and uses which Buyer may conduct thereon; (d) the compliance of or by the Property or its operation with any laws, rules, ordinances or regulations of any applicable governmental authority or body; (e) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Property; or (f) any other matter with respect to the Property, and Buyer specifically disclaims any representations regarding

compliance with any environmental protection, pollution or land use laws, rules, regulations, orders or requirements, including solid waste, or the disposal or existence, in or on the Property, of asbestos or any hazardous substance. Buyer further acknowledges and agrees that having been given the opportunity to inspect the Property, Buyer is relying solely on Buyer's own investigation of the Property and not on any information provided or to be provided by Seller other than as is stated in this Contract. Buyer further acknowledges and agrees that any information provided or to be provided by or on behalf of Seller with respect to the Property was obtained from a variety of sources and that Seller has not made any independent investigation or verification of such information and makes no representations as to the accuracy or completeness of such information. Seller is not liable or bound in any manner by any verbal or written statements, representations or information pertaining to the Property, or the operation thereof, furnished by any real estate broker, agent, employee, servant or other person. Buyer further acknowledges and agrees that to the maximum extent permitted by law, the sale of the Property as provided for herein is made on an "AS IS" condition and basis with all faults. Buyer and anyone claiming by, through or under Buyer hereby fully and irrevocably releases Seller, Seller's employees, representatives and agents, from any and all claims that Buyer may now have or hereafter acquire against Seller, Seller's employees, representatives and agents for any cost, loss, liability, damage, expense, demand, action or cause of action arising from or related to any defects, errors, omissions or other conditions, including environmental matters, affecting the Property, or any portion thereof. It is understood and agreed that the Purchase Price has been adjusted by prior negotiation to reflect that all the Property is sold by Seller and purchased by Buyer subject to the foregoing.

#### **ARTICLE IV CONDEMNATION OR DAMAGE PRIOR TO CLOSING**

In the event of damage or casualty to the Property or in the event of a taking by condemnation or similar proceedings or actions of all or any part of the Property, Buyer shall have the option to terminate this Agreement upon written notice to Seller prior to Closing, in which event neither Buyer nor Seller shall have any further rights or obligations hereunder and the Earnest Money Deposit shall be returned to Buyer. If Buyer does not exercise its option to so terminate this Agreement, then this Agreement shall remain in full force and effect.

#### **ARTICLE V BUYER CONSENT**

By closing the transaction contemplated hereby, Buyer acknowledges that it has made or will have made all such independent inspections, investigations and inquiries as it deems necessary concerning the Property including, but not limited to, zoning, classifications, suitability for intended use, location of property boundaries, easements and rights-of-way, the status of utility extensions and availability of utilities, compliance with governmental laws, rules and regulations affecting the Property (including, without limitation, laws relating to land use, environmental conditions and health or safety). Except as specifically set forth in the Agreement, Seller, its members, officers, and agents have made no representations, warranties, or covenants with respect to the condition of any portion of the Property. Buyer further acknowledges that in the event it acquires the Property, it will be doing so in its then present condition, "AS IS" without further

alteration, remediation, development of infrastructure or other improvement. The foregoing disclaimer shall not apply to or in any way diminish the warranties of title contained in the Special Warranty Deed to be delivered at closing.

## **ARTICLE VI CLOSING**

6.1 Time and Place. The date of the exchange of documents (the “Closing”) hereinafter described shall take place at the offices of the Title Company. The Closing shall occur on September 29, 2023, at 10:00 a.m., or on such earlier date as may be mutually agreed upon by Seller and Buyer in writing. The parties may close by mail. Closing is expressly contingent upon Seller, at its sole discretion, satisfying any legal requirements required for this sale of real estate.

6.2 Seller Delivery. At the Closing, Seller shall deliver or cause to be delivered to Buyer:

(a) a special warranty deed, duly executed and acknowledged by Seller, conveying good and indefeasible fee simple title in the Property to Buyer, subject only to the Permitted Exceptions.

(b) the owner’s title insurance policy.

(c) Possession of the Property to Buyer.

(d) Any other additional documents and instruments as in the mutual opinion of Buyer’s counsel and Seller’s counsel are reasonably necessary to the proper consummation of this transaction.

6.3 Buyer Delivery. At the Closing, Buyer shall deliver to Seller the balance of the Purchase Price, after credit for the Earnest Money Deposit. Buyer shall also deliver any other additional documents and instruments as in the mutual opinion of Buyer’s counsel and Seller’s counsel are reasonably necessary to the proper consummation of this transaction.

6.4 Adjustments and Prorations. At Closing, the Buyer shall be responsible for the following:

(a) Ad valorem taxes for the Property for the calendar year of Closing.

(b) The Title Company closing fee.

## **ARTICLE VII ADDITIONAL PROVISIONS**

7.1 Indemnity. Each party hereto represents to the other that such respective party has not authorized any broker or finder to act on such party's behalf in connection with the transaction described herein. Each party hereto agrees to indemnify and hold harmless the other party from and against any and all claims, losses, damages, costs or expenses of any kind or character arising out of or resulting from any agreement, arrangement or understanding alleged to have been made by such party with any broker or finder in connection with this Agreement or the transaction contemplated hereby. This obligation shall survive the closing or any earlier termination of this Agreement.

7.2 Special District Disclosure. 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 EXCESSIVE TAX BURDENS 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. BUYER SHOULD INVESTIGATE THE DEBT FINANCING REQUIREMENTS OF THE AUTHORIZED GENERAL OBLIGATION INDEBTEDNESS OF SUCH DISTRICTS, EXISTING MILL LEVIES OF SUCH DISTRICT SERVICING SUCH INDEBTEDNESS, AND THE POTENTIAL FOR AN INCREASE IN SUCH MILL LEVIES.

7.3 Mineral Disclaimer. The surface estate may be owned separately from the underlying mineral estate, and transfer of the surface estate does not necessarily include transfer of the mineral rights or water rights. Third parties may hold interests in oil, gas, other minerals, geothermal energy, or water on or under the Property, which interests may give them rights to enter and use the Property. Such matters, and others, may be excluded from or not covered by the owner's title insurance policy. Buyer is advised to timely consult legal counsel with respect to all such matters as there are time limits provided in this Purchase Agreement.

## **ARTICLE VIII REMEDIES OF DEFAULT**

8.1 Seller Default. Seller shall be in default hereunder upon the occurrence of any one or more of the following events:

(a) any of Seller's warranties or representations set forth herein are materially untrue or inaccurate in any respect; or

(b) Seller shall fail to meet, comply with, or perform any covenant, agreement, or obligation within the time limits and in the manner required in this Agreement.

In the event of a default by Seller of the type described above, Buyer may, at Buyer's sole option, do either of the following:

- (a) terminate this Agreement by written notice delivered to Seller at or prior to the Closing in which event the Earnest Money Deposit shall be returned to Buyer; or
- (b) enforce specific performance of this Agreement against Seller.

Buyer shall not be required to tender performance hereunder prior to exercising the remedies set forth in this Section. In the event of a default by Seller of the type described above, Buyer may, in addition to and not to the exclusion of any other remedy at law or equity available to Buyer, bring an action against Seller for monetary damages.

8.2 Buyer Default. Unless this Agreement is terminated by Buyer in accordance with the specific provisions hereof, Buyer shall be in default hereunder if Buyer fails to meet, comply with or perform any covenant, agreement, or obligation within the time limits and in the manner required in this Agreement. In the event of a default by Buyer hereunder, Seller, as Seller's sole and exclusive remedy for such default, shall receive the Earnest Money Deposit as liquidated damages, and both parties shall be released from all obligations under this Agreement.

## **ARTICLE IX MISCELLANEOUS**

9.1 Notices. All notices, demands, or other communications of any type (herein collectively referred to as "Notices") given by Seller to Buyer or by Buyer to Seller, whether required by this Agreement or in any way related to the transactions contracted for herein, shall be void and of no effect unless given in accordance with the provisions of this Section. All notices shall be in writing and delivered to the person to whom the notice is directed, either in person (provided that such delivery is confirmed by the courier delivery service), or by overnight delivery service with proof of delivery, or by United States Mail, postage prepaid, as a Registered or Certified item, Return Receipt Requested. Notices delivered by personal delivery shall be deemed to have been given at the time of such delivery and notices delivered by mail shall be effective five (5) days following the deposit of such mail in a Post Office or other depository under the care or custody of the United States Postal Service, enclosed in a wrapper with proper postage affixed and addressed, as set forth above. Any party hereto may change the address for notice specified above by giving the other party ten (10) days advance written notice of such change of address.

9.2 Governing Law and Forum. This Agreement shall be construed and interpreted in accordance with the laws of the State of Colorado.

9.3 No Oral Modification. This Agreement may not be modified or amended, except by an agreement in writing signed by both Seller and Buyer.

9.4 No Oral Waiver. The parties may waive any of the conditions contained herein or any of the obligations of the other party hereunder, but any such waiver shall be effective only if in writing and signed by the party waiving such conditions or obligations.

9.5 Time of Essence. Time is of the essence of this Agreement.

9.6 Attorneys' Fees. In the event it becomes necessary for either party hereto to commence legal action or any alternative dispute resolution proceeding to enforce this Agreement or any provisions contained herein, the party prevailing in such action shall be entitled to recover, in addition to all other remedies or damages, reasonable attorneys' fees and court costs incurred by such prevailing party in such suit.

9.7 Headings. The descriptive headings of the various Articles and Sections contained in this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

9.8 Total Agreement. This Agreement, including any Exhibits hereto, the Title Commitment, and the items to be furnished in accordance with the terms hereof, constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties in connection therewith. No representation, warranty, covenant, agreement, or condition not expressed in this Agreement shall be binding upon the parties hereto or shall affect or be effective to interpret, change or restrict the provisions of this Agreement.

9.9 Counterpart Execution. To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages. In addition, signatures may be executed by facsimile, with original signatures to follow in a reasonable time.

9.10 Holidays. In the event that the date upon which any duties or obligations, hereunder to be performed shall occur upon a Saturday, Sunday, or legal holiday, then, in such event, the due date for performance of any duty or obligation shall thereupon be automatically extended to the next succeeding business day.

EXECUTED as of the 29<sup>th</sup> day of August, , 2023.

“SELLER”

THE CITY OF FRUITA, a home rule municipal corporation

By: \_\_\_\_\_  
Fruita City Manager

ATTEST:

\_\_\_\_\_  
Fruita City Clerk

“BUYER”

POWER FAMILY PINON MESA, LLLP, a Colorado limited liability limited partnership

By: \_\_\_\_\_  
Rodney C. Power, Partner

Date: August 29, 2023