

PURCHASE AND SALE AGREEMENT

This **PURCHASE AND SALE AGREEMENT** (this “**Agreement**”) is made as of January ___, 2024 (the “**Effective Date**”), by and between TF Johnstown Farms, L.P., a Delaware limited partnership (“**Seller**”), and the Town of Johnstown, a Colorado home rule municipality (“**Purchaser**”).

RECITALS

A. Seller is the owner of real property known as Lot 1, Johnstown Farms Filing No. 1 Third Amendment, Town of Johnstown, County of Weld, State of Colorado, and by legal description as “LOT 1 JOHNSTOWN FARMS FG #1 3RD AMD,” consisting of approximately 1.744 acres, being more fully described on **Exhibit A** attached hereto and incorporated herein by reference (“**Property**”).

B. As used in this Agreement, the Property includes the real property, together with all of Seller’s right, title and interest in and to: (i) all reversions, remainders, easements, rights-of-way and appurtenances appertaining to or otherwise benefiting or used in connection with the Property; (ii) all of Seller’s right, title and interest in and to any streets abutting or adjoining the Property; and (iii) all existing improvements, structures and fixtures, if any, placed, constructed, installed or located on the Property, including all plants, trees, landscaping and other appurtenances, if any, located upon, over or under the Property.

C. Seller desires to sell the Property to Purchaser, and Purchaser desires to purchase the Property from Seller, upon and subject to the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, for the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1

PURCHASE AND SALE OF THE PROPERTY

1.1 **Recitals.** The Recitals are incorporated into the Agreement as if fully set forth herein.

1.2 **Purchase.** Seller agrees to sell and convey to Purchaser, and Purchaser agrees to purchase from Seller, all of the Property, subject to and upon the terms and conditions set forth in this Agreement.

1.3 **Purchase Price.** The total purchase price (the “**Purchase Price**”) for the Property will be Two Hundred Twenty Five Thousand Dollars (\$225,000.00) payable in accordance with the following terms and conditions:

- (a) Deposit.

(i) No later than five (5) business days after the Effective Date, Purchaser will deliver to Land Title Guaranty Company (the “**Title Company**”) an earnest money deposit of \$5,000.00 (together with all interest earned thereon, the “**Deposit**”).

(ii) The Title Company will deposit the Deposit in one or more federally insured interest-bearing accounts and hold the Deposit pursuant to the terms and provisions hereof. The Deposit will be applied to the Purchase Price at the closing of the purchase contemplated hereby (“**Closing**”). In the event that this Agreement is terminated or the acquisition contemplated hereunder is not closed for any reason other than Purchaser’s default hereunder, the Deposit will be promptly returned to Purchaser.

(b) Balance. The balance of the Purchase Price, subject to prorations and adjustments in accordance with Article 88, will be paid to Seller by Purchaser at Closing by wire transfer of immediately available funds to the Title Company, for further payment to Seller.

ARTICLE 2 TITLE

2.1 **Title Commitment.** Within seven (7) days of the Effective Date, Seller shall procure and deliver a current commitment for an owner’s title insurance policy for the Property (the “**Title Commitment**”), in an amount equal to the Purchase Price, to Purchaser. The Title Commitment shall contain owner’s extended coverage, committing to delete or insure over the standard exceptions which relate to: (1) parties in possession, (2) unrecorded easements, (3) survey matters, (4) unrecorded mechanics’ liens, (5) gap period (period between the effective date and time of the commitment to the date and time the deed is recorded) and (6) unpaid taxes, assessments and unredeemed tax sales prior to the year of Closing.

2.2 **Status of Title at Closing.** At Closing, Seller will convey to Purchaser title to the Property by special warranty deed free and clear of monetary liens and encumbrances of record, but subject to all other matters of record shown in the Title Commitment (the “**Permitted Encumbrances**”).

ARTICLE 3 CONTINGENCY PERIOD

3.1 **Contingency Period.** Purchaser will have ten (10) days following the Effective date (the “**Contingency Period**”) within which to complete Purchaser’s investigation of the Property and to obtain all required approvals for Purchaser’s purchase of the Property. All inspection fees and other expenses of any kind incurred by Purchaser relating to the inspection of the Property will be Purchaser’s sole responsibility. Purchaser will promptly repair, at its expense, any damage to the Property caused by Purchaser or its agents in conducting its inspection of the Property. Purchaser will coordinate its physical inspections of the Property with Seller prior to entry on the Property, and Seller shall permit Purchaser, its contractors and agents, to enter the Property at reasonable times to conduct physical inspections.

3.2 **Termination.** If, on or before the expiration of the Contingency Period, Purchaser delivers to Seller written notice setting forth Purchaser's election to terminate this Agreement, in Purchaser's sole and absolute discretion, then this Agreement will terminate, the Deposit will be returned promptly to Purchaser and both parties will be relieved from any further liability hereunder. If Purchaser does not terminate this Agreement as described in the preceding sentence, then this Agreement will remain in full force and effect in accordance with its terms.

ARTICLE 4

SELLER'S REPRESENTATIONS, WARRANTIES AND COVENANTS

Seller represents, warrants and covenants to Purchaser as set forth below in this Article 4 as of the Effective Date and as of Closing under this Agreement.

4.1 **Authority.** Seller has the full right and authority to enter into this Agreement and consummate the transaction contemplated by this Agreement. All requisite entity action has been taken by Seller in connection with the entering into of this Agreement, the instruments referenced herein, and the consummation of the transaction contemplated hereby. The person signing this Agreement on behalf of Seller is authorized to do so.

4.2 **No Consents; Binding Obligations.** No third party approval or consent is required for Seller to enter into this Agreement or to consummate the transaction contemplated hereby. This Agreement and all documents required hereby to be executed by Seller are and will be valid, legally binding obligations of and enforceable against Seller in accordance with their terms.

4.3 **No Third-Party Interests.** Seller has not granted to any party any option, contract or other right to a purchase the Property, or any portion thereof or any interest therein.

4.4 **Non foreign Person.** Seller is not a foreign person, corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code or Income Tax Regulations).

ARTICLE 5

PURCHASER'S REPRESENTATIONS AND WARRANTIES

Purchaser represents and warrants to Seller as set forth below in this Article 5 as of the Effective Date and as of Closing under this Agreement.

5.1 **Authority.** Purchaser has, or will have prior to the expiration of the Contingency Period, the full right and authority to enter into this Agreement and consummate the transaction contemplated by this Agreement. All requisite action has been taken, or will be taken prior to the expiration of the Contingency Period, by Purchaser in connection with the entering into of this Agreement, the instruments referenced herein, and the consummation of the transaction contemplated hereby. Each of the persons signing this Agreement on behalf of Purchaser is authorized to do so.

5.2 **No Consents; Binding Obligations.** No third party approval or consent is required for Purchaser to enter into this Agreement or to consummate the transaction contemplated hereby. This Agreement and all documents required hereby to be executed by Purchaser are and will be

valid, legally binding obligations of and enforceable against Purchaser in accordance with their terms, subject to Purchaser obtaining the required consents prior to the expiration of the Contingency Period.

ARTICLE 6 CASUALTY

6.1 **Risk of Casualty.** The risk of casualty loss to the Property will remain with Seller prior to Closing. In the event that the Property is damaged by fire, flood or other casualty prior to Closing, then Purchaser may elect, at its sole option, either (i) to terminate this Agreement and recover its Deposit, in which case both Seller and Purchaser will be released from further responsibility hereunder, or (ii) to waive its right to terminate this Agreement and to consummate the transaction contemplated hereby, in which case Seller will assign to Purchaser all of Seller's right to receive the insurance proceeds, if any, payable as a result of such casualty damage, but not exceeding the Purchase Price, and Purchaser will be entitled to an abatement of the Purchase Price in an amount equal to the applicable insurance deductibles.

ARTICLE 7 CLOSING

7.1 **Time and Procedures.** Closing under this Agreement ("**Closing**") will take place on a date designated by Purchaser by written notice to Seller, which will be no earlier than three (3) days following the expiration of the Contingency Period and no later than thirty (30) days following the expiration of the Contingency Period, or as otherwise agreed by the parties in writing. Closing will be conducted by delivery of all documents and funds to the Title Company for delivery, disbursement or recording by the Title Company, as applicable, in accordance with the terms of this Agreement. The parties may issue supplemental instructions to the Title Company to accomplish Closing, provided that such instructions are consistent with the terms of this Agreement or are otherwise approved by both parties.

7.2 **Delivery at Closing.** At Closing the following will occur:

(a) **Deed.** Seller will deliver to Purchaser a duly executed and acknowledged special warranty deed for the Property conveying title to the Property, subject only to the Permitted Encumbrances;

(b) **Payment.** Purchaser will pay to Seller the Purchase Price by wire transfer of funds as provided in Section 1.3, subject to the adjustments described in Article 8.

(c) **Possession.** Possession of the Property will be delivered to Purchaser.

(d) **Non-Foreign Certificate.** Seller will execute and deliver to Purchaser and the Title Company an affidavit that Seller is exempt from the withholding requirements of Section 1445 of the Internal Revenue Code.

(e) **Miscellaneous Documents.** Each of Seller and Purchaser will execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any and all conveyances, assignments and all other instruments and documents as may be required

by the Title Commitment, or reasonably requested by the other party or the Title Company in order to complete the transaction herein provided and to carry out the intent and purposes of this Agreement in a manner consistent with the terms of this Agreement.

ARTICLE 8 PRORATIONS AND CLOSING EXPENSES

8.1 **Closing Adjustments.** The cash due at Closing pursuant to Section **Error! Reference source not found.** will be subject to adjustment as of Closing in accordance with the following provisions:

(a) Property taxes will be prorated at Closing based on the most recent information available, with the proration to be final and not subject to any post-closing adjustment.

(b) Purchaser will pay the fee for recording Seller's deed, one-half of the Title Company's closing fee, any endorsements to the title insurance policy requested by Purchaser, its attorney's fees and costs, all transfer taxes, and all other closing costs not paid by Seller as set forth in Section 8.1(c).

(c) Seller will pay its attorney's fees and costs, the premium for the title insurance policy based on the Title Commitment, one-half of the Title Company's closing fee, and any costs required to deliver title to the Property subject only to the Permitted Encumbrances.

8.2 **Settlement Statement.** At Closing, Seller and Purchaser will execute a Closing settlement statement to reflect the credits, prorations, and adjustments contemplated by or specifically provided for in this Agreement.

ARTICLE 9 REMEDIES

9.1 **Breach by Seller.** Time is of the essence of Seller's obligations hereunder. If Seller fails to comply with any of its obligations hereunder which are required to be performed at or prior to Closing, and such failure continues for three (3) business days after delivery of written notice thereof from Purchaser to Seller, Purchaser, at Purchaser's option, will be entitled to: (i) terminate this Agreement and obtain the prompt refund of the Deposit, whereupon both parties will be discharged from all duties and performance hereunder; or (ii) treat this Agreement as being in full force and effect and to seek specific performance. The foregoing provisions of this Section 9.1 will not affect Purchaser's right to recover its attorney's fees from Seller under the provisions of Section 9.3.

9.2 **Breach by Purchaser.** Time is of the essence of Purchaser's obligations hereunder. If Purchaser fails to comply with any of its obligations hereunder which are required to be performed at or prior to Closing, and such failure continues for three (3) business days after delivery of written notice thereof from Seller to Purchaser, Seller, as its sole and exclusive remedy, will be entitled to terminate this Agreement and have the Deposit paid to Seller as liquidated damages. PURCHASER AND SELLER AGREE THAT IT WOULD BE IMPRACTICAL OR

EXTREMELY DIFFICULT TO FIX SELLER'S ACTUAL DAMAGES IN THE EVENT PURCHASER FAILS TO PURCHASE THE PROPERTY IN ACCORDANCE HEREWITH. THEREFORE PURCHASER AND SELLER AGREE A SUM EQUAL TO THE DEPOSIT REPRESENTS ALL SELLER'S COST WITH RESPECT TO THIS TRANSACTION, THE LOSS OF OTHER OPPORTUNITIES TO SELLER AND THE PROPERTY TAX AND INTEREST BURDEN OF CARRYING THE PROPERTY DURING THE PERIOD THE PROPERTY IS KEPT OFF THE MARKET AS A RESULT OF THIS AGREEMENT. SELLER AGREES TO ACCEPT THE SUM OF THE DEPOSIT MADE TO THAT DATE HEREUNDER AS ITS SOLE REMEDY IN FULL SATISFACTION OF SELLER'S DAMAGES. IT IS THE INTENT OF THE PARTIES THAT THE AMOUNT OF THE DEPOSIT MADE TO THAT DATE WILL BE THE FULL AGREED LIQUIDATED DAMAGES FOR THE BREACH OF THIS AGREEMENT BY PURCHASER AND ALL OTHER CLAIMS TO DAMAGES OR OTHER REMEDIES ARE EXPRESSLY WAIVED BY SELLER. SELLER HEREBY WAIVES THE PROVISIONS OF ANY STATUTES WHICH ARE INCONSISTENT WITH THE INTENT OF PURCHASER AND SELLER AS SET FORTH HEREIN. The foregoing provisions of this Section 9.2 will not affect Seller's right to recover its attorney's fees from Purchaser under the provisions of Section 9.3

9.3 **Attorney's Fees.** Notwithstanding any contrary provision contained in this Agreement (including the provisions of Sections 9.1 and 9.2), in the event of any litigation or legal action arising out of this Agreement, to the extent permitted by law, the court will award the prevailing party its reasonable costs and expenses incurred in connection with such litigation or legal action, including, without limitation, its reasonable attorney's fees and costs.

ARTICLE 10 GENERAL PROVISIONS

10.1 **Brokers.** Seller and Purchaser each hereby represent and warrant to the other that their only contact with the other or with the Property has been made without the assistance of any broker or other third party. Each of Seller and Purchaser will save and hold the other party free, clear and harmless from any claim, cost or expense, including reasonable attorney's fees, for or in connection with any claims for commissions or compensation claimed or asserted by or through each respective party in connection with the transaction contemplated herein.

10.2 **Entire Agreement.** No change or modification of this Agreement will be valid unless the same is in writing and signed by the parties hereto. No waiver of any of the provisions of this Agreement will be valid unless in writing and signed by the party against whom it is sought to be enforced. This Agreement contains the entire agreement between the parties relating to the purchase and sale of the Property. All prior negotiations between the parties are merged in this Agreement; and there are no promises, agreements, conditions, undertakings, warranties or representations, oral or written, express or implied, between the parties other than as herein set forth.

10.3 **Survival.** All of the parties' representations, warranties, covenants and agreements hereunder, to the extent not fully performed or discharged by or through Closing, will not be deemed merged into any instrument delivered at Closing and will remain fully enforceable thereafter.

10.4 **Dates.** If any date set forth in this Agreement for the delivery of any document or the happening of any event (such as, for example, the expiration of the Contingency Period or the Closing Date) should, under the terms hereof, fall on a weekend or holiday, then such date will be automatically extended to the next succeeding weekday that is not a holiday.

10.5 **Governing Law and Venue.** This Agreement will be construed and enforced in accordance with the laws of the State of Colorado and venue for any action shall be in the County of Weld, State of Colorado.

10.6 **Notices.** Any notice required or permitted to be sent pursuant to this Agreement must be in writing and will be deemed given, sent, delivered and received upon the earlier of: (i) when personally or actually delivered; or (ii) by e-mail upon confirmation of receipt by the intended recipient; or (iii) one (1) business day after being deposited with a commercial overnight courier and sent by overnight delivery for next business day delivery, with all required charges prepaid, and addressed:

If to Seller:

TF JOHNSTOWN FARMS, L.P.
Attention: _____
591 West Putnam Avenue
Greenwich, CT 06830
Email: _____

If to Purchaser:

TOWN OF JOHNSTOWN
Attention: Town Manager
450 South Parish
P. O. Box 609
Johnstown, CO 80534
Email: mlecerf@johnstownco.gov

Any address fixed pursuant to the foregoing may be changed by the addressee by notice given pursuant to this Section 10.6.

10.7 **Successors and Assigns.** This Agreement will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

10.8 **Counterparts.** This Agreement may be executed in multiple counterparts, all of which, together, will be deemed one and the same original document.

10.9 **Headings.** The paragraph headings herein are for the convenience and reference of the parties and are not intended to define or limit the scope or intent of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed effective as of the Effective Date.

SELLER:

TF JOHNSTOWN FARMS, L.P.

By: _____

Name: _____

Title: _____

STATE OF _____)
)ss
COUNTY OF _____)

SUBSCRIBED AND SWORN to before me this _____ day of _____, 202__, by _____ as the _____ of TF JOHNSTOWN FARMS, L.P.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

PURCHASER:

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

By: _____
Hannah Hill, Town Clerk

By: _____
Troy D. Mellon, Mayor

EXHIBIT A
to
PURCHASE AND SALE AGREEMENT
DESCRIPTION OF THE PROPERTY