

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (this “**Agreement**”) is made as of December ____, 2021 (the “**Effective Date**”), by and between Town of Johnstown, a Colorado home rule municipal corporation (“**Seller**”), and Grows, LLC (“**Purchaser**”).

RECITALS

A. Seller is the owner of real property described as Lot 2 of Replat of Block 2, County of Weld, State of Colorado, more particularly described as 16 North Parish Avenue, Johnstown, Colorado 80534, consisting of approximately 7,361 square feet (the “**Land**”).

B. As used in this Agreement, the term “**Property**” includes the Land, together with all of Seller’s right, title and interest in and to all existing improvements, structures and fixtures, if any, placed, constructed, installed or located on the real property, including all fences, gates, plants, trees, landscaping and other appurtenances, if any, located upon, over or under the Land.

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 shall be Three Hundred Thousand Dollars (\$300,000.00) payable in accordance with the following terms and conditions:

(a) Deposit.

(i) No later than two (2) business days after execution and delivery of this Agreement by both Seller and Purchaser, Purchaser will deliver to Land Title, 345 E 27th St, Loveland, CO 80538 (the “**Title Company**”) an earnest money deposit in the amount of Ten Thousand Dollars (\$10,000.00) (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 9, 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 SURVEY AND TITLE

2.1 **Survey**. Within twenty (20) days of the Effective Date, Seller, at Purchaser’s expense and option, shall obtain a survey of the Property and deliver same to the Purchaser. The Survey shall show the boundaries of the Property and all improvements located thereon. Purchaser and Seller agree that the legal description set forth in the Survey shall be used for the deed and other documents prepared and executed at Closing. The parties agree that, if the survey indicates a difference in the area of the Property than the area set forth in this Agreement, there shall be no adjustment in the Purchase Price.

2.2 **Title Commitment**. Within ten (10) 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 will be subject to Purchaser’s review and approval during the Contingency Period (as approved by Purchaser, the “**Approved Title Commitment**”).

2.3 **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, but subject to all matters of record shown in the Approved Title Commitment and the existing encroachments (collectively, the “**Permitted Encumbrances**”).

ARTICLE 3 CONTINGENCY PERIOD

3.1 **Contingency Period**. Purchaser will have thirty (30) 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.

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 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, or will have prior to the Closing, the full right and authority to enter into this Agreement and consummate the transaction contemplated by this Agreement. All requisite action has been, or will be prior to Closing, 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 the full right and authority to enter into this Agreement and consummate the transaction contemplated by this Agreement. All requisite action has been taken 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.

ARTICLE 6
PURCHASER'S AGREEMENTS

6.1 **“As Is” Condition.** Purchaser expressly acknowledges that Seller does not make any representations or warranties regarding the present or future condition or operation of the Property, either express or implied.

6.2 **Purchaser’s Waivers.** Without limiting the foregoing, Purchaser acknowledges that:

(a) PURCHASER AND ITS REPRESENTATIVES ARE BEING PROVIDED IN THIS AGREEMENT WITH AN ADEQUATE OPPORTUNITY TO FULLY INSPECT THE PROPERTY, AND TO BECOME ARE FULLY FAMILIAR WITH THE PHYSICAL (INCLUDING, WITHOUT LIMITATION, ENVIRONMENTAL) CONDITION THEREOF. PURCHASER ACKNOWLEDGES THAT, EXCEPT AS PROVIDED IN THIS AGREEMENT, THE PROPERTY IS BEING PURCHASED BY PURCHASER IN AN “AS IS” AND “WHERE IS” CONDITION AND WITH ALL EXISTING DEFECTS (PATENT AND LATENT).

(b) PURCHASER IS NOT RELYING ON ANY AGREEMENT, UNDERSTANDING, CONDITION, WARRANTY (INCLUDING, WITHOUT LIMITATION, WARRANTIES OF HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE) OR REPRESENTATION MADE BY SELLER, ANY DIRECTOR, OFFICER, AGENT, EMPLOYEE OR PRINCIPAL OF SELLER, OR ANY OTHER PARTY REPRESENTING SELLER AS TO THE PHYSICAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ENVIRONMENTAL CONDITION), OR AS TO ANY OTHER MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, AS TO ANY PERMITTED USE THEREOF, THE ZONING CLASSIFICATION THEREOF OR COMPLIANCE THEREOF WITH FEDERAL, STATE OR LOCAL LAWS.

(c) PURCHASER WAIVES, RELEASES AND FOREVER DISCHARGES SELLER, ITS OFFICERS, EMPLOYEES AND AGENTS AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, COLLECTIVELY REFERRED TO AS THE “RELEASED PARTIES,” OF AND FROM ANY AND ALL SUITS, LEGAL OR ADMINISTRATIVE PROCEEDINGS, CLAIMS OR DEMANDS, ACTUAL DAMAGES, PUNITIVE DAMAGES, LOSSES, LIABILITIES, INTEREST, ATTORNEY’S FEES, EXPENSES OF WHATEVER KIND IN NATURE, IN LAW OR IN EQUITY, KNOWN OR UNKNOWN (COLLECTIVELY REFERRED TO AS “LIABILITIES”), THAT THE PURCHASER EVER HAD, NOW HAS, OR IN THE FUTURE MAY HAVE, AGAINST ANY OF THE RELEASED PARTIES BASED UPON, OR ARISING INDIRECTLY OR DIRECTLY OUT OF (I) THE CONDITION, STATUS, QUALITY OR NATURE OF THE PROPERTY AND (II) THE EXISTENCE, PRESENCE OR CONDITIONS OF ASBESTOS AND ANY TOXIC OR HAZARDOUS MATERIAL IN OR UNDER THE PROPERTY. THE PURCHASER ALSO AGREES TO INDEMNIFY, DEFEND AND SAVE HARMLESS THE RELEASED PARTIES FROM AND AGAINST ANY AND ALL LIABILITIES THAT ANY OF THE RELEASED

PARTIES MAY INCUR OR BECOME RESPONSIBLE FOR, AS A RESULT OF ANY CLAIMS BY ANY PERSONS OR ENTITIES WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, ANY GOVERNMENTAL AUTHORITIES, BASED UPON OR ARISING DIRECTLY OR INDIRECTLY OUT OF, THE MATTERS DESCRIBED IN THE PRECEDING SENTENCE, BUT PURCHASER'S INDEMNIFICATION WILL ONLY RELATE TO SUCH CLAIMS THAT FIRST ARISE DURING AND IN CONNECTION WITH PURCHASER'S OWNERSHIP OF THE PROPERTY.

6.3 **Survival of Terms.** This Article 6 shall survive closing and delivery of the deed by seller, and shall be deemed incorporated by reference and made a part of all documents delivered by seller to purchaser in connection with the sale of the property.

ARTICLE 7 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 8 CLOSING

8.1 **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 twenty (20) 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.

8.2 **Deliveries.** 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 9;

(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; and

(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 Approved 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 9 PRORATIONS AND CLOSING EXPENSES

9.1 **Closing Adjustments**. The cash due at Closing pursuant to Section 8.2(b) 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 attorneys' fees and costs, all transfer taxes, Seller's cost for the appraisal obtained prior to execution this Agreement, which costs shall be provided by Seller to the Title Company with a copy to Purchaser, and all other closing costs not paid by Seller as set forth in Section 9.1(c).

(c) Seller will pay its attorneys' fees and costs, the premium for the title insurance policy based on the Approved 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.

9.2 **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 10 REMEDIES

10.1 **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 five (5) business days after delivery of written notice thereof from Purchaser to Seller, Purchaser, as its sole and exclusive remedy, will be entitled to terminate this Agreement and obtain the prompt refund of the Deposit, whereupon both parties will be discharged from all duties and performance hereunder.

10.2 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 five (5) 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 OR 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.

10.3 Attorneys' Fees. Notwithstanding any contrary provision contained in this Agreement, in the event of any litigation or legal action arising out of this Agreement, but only to the extent permitted by law recognizing the limitations of a governmental entity to expend funds that have not been budgeted and appropriated, 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 attorneys' fees and costs.

ARTICLE 11 GENERAL PROVISIONS

11.1 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 attorneys' 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.

11.2 Reservation of Mineral Rights. Purchaser agrees that Seller, for itself and its successors and assigns, as their interests may appear, reserves from this conveyance unto Seller all oil, gas and other minerals owned by Seller located in and under and that may be produced from the Property to the extent not reserved by prior grantors; provided, however, Seller, for itself and its successors and assigns agrees to waive all surface rights and other rights of ingress and egress in and to the Property, and agrees that in conducting operations with respect to the exploration for and production, processing, transporting and marketing of oil, gas and other minerals from the

Property, that no portion of the surface of the Property will be used, occupied or damaged and that fixtures, equipment, buildings or structures used in connection with the exploitation of the reserved mineral, oil and gas rights, shall not be placed on the surface of the Property. Seller shall not be restricted or prohibited from the pooling or unitization of the portion of the mineral estate owned by Seller with land other than the Property; or the exploration or production of the oil, gas, and other minerals by means of wells that are drilled or mines that open on land other than the Property but enter or bottom under the Property, provided that these operations will in no manner interfere with the surface or subsurface support of any improvements constructed or to be constructed on the Property. The foregoing reservation of minerals and Seller's waiver of surface rights set forth above shall survive closing be included in substance in the special warranty deed.

11.3 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.

11.4 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.

11.5 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.

11.6 Zoning. Seller assumes no obligation to change the current zoning on the Property.

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

11.8 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) three (3) business days after having been deposited in a U.S. Postal Service depository and sent by registered or certified mail, return receipt requested, with all required postage prepaid; (iii) upon confirmed facsimile transmission and the deposit of the original in a U.S. Postal Service depository, with all required postage; (iv) by e-mail upon acknowledgment of receipt thereof by the intended recipient; or (v) 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:
Town of Johnstown

Attn: Town Manager
450 S. Parish Avenue
Johnstown, Colorado 80534
Telephone No.: 970-587-4664
Email: mlecerf@townofjohnstown.com

with a copy to:

Law Office of Avi S. Rocklin, LLC
Attn: Avi Rocklin, Esq.
1437 N. Denver Avenue #330
Loveland, CO 80538
Telephone No.: 970-419-8226
Email: avi@rocklinlaw.com

If to Purchaser:

Grows, LLC
C/O Grant and Robyn Schaneman
407 Ridgeview Ct
Johnstown, CO 80534
Telephone No.: 970-744-1492
Email: rschaneman@hotmail.com

Any address fixed pursuant to the foregoing may be changed by the addressee by notice given pursuant to this Section 11.8.

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

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

11.11 **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:

Town of Johnstown

By: _____
Matthew LeCerf, Town Manager

PURCHASER: Grows, LLC

By: _____
Title: _____

By: _____
Title: _____