

RESOLUTION 2020-22

A RESOLUTION APPROVING A CONTRACT TO BUY REAL ESTATE FOR ROAD RIGHT OF WAY AND APPROVING A DEED AND AGREEMENT FOR MULTI-PURPOSE EASEMENTS FOR THE K.4 ROAD INFRASTRUCTURE IMPROVEMENTS PROJECT

WHEREAS, Mesa County Valley School District 51 prioritized the completion of a new elementary school located at 1501 K.4 with an anticipated opening in the fall of 2021; and

WHEREAS, the City has prioritized the construction of improvements to K.4 Road to provide safer vehicular and pedestrian travel; and

WHEREAS, the City of Fruita has expended considerable resources toward the planning and design processes necessary for the road improvements construction; and

WHEREAS, the owners of the property subject to the right of way and multi-purpose easement acquisition required to construct the improvements on K.4 Road are:

703 Carlotta Ct. (2697-093-46-003) - Jerry O'Brien and Dorothy L. O'Brien
702 Carlotta Ct. (2697-093-46-012) - Russell H. Bingham and Marnie Bingham
No Address (2697-093-45-000) - Monument Glen HOA
No Address (2697-093-56-000) – Monument Glen HOA; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL, THAT THE CITY OF FRUITA HEREBY APPROVES A CONTRACT TO BUY REAL ESTATE FOR ROAD RIGHT OF WAY AND APPROVE A DEED AND AGREEMENT FOR MULTI-PURPOSE EASEMENTS FOR THE K.4 ROAD INFRASTRUCTURE IMPROVEMENTS PROJECT AND AUTHORIZES THE CITY MANAGER TO SIGN THE CONTRACTS AND AGREEMENTS

PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL OF THE CITY OF FRUITA, COLORADO THIS 21st DAY OF APRIL, 2020.

CITY OF FRUITA, COLORADO

Joel Kincaid, Mayor

ATTEST:

Margaret Sell, City Clerk

**CONTRACT TO BUY AND SELL REAL ESTATE IN LIEU OF
CONDEMNATION FOR COUNTY ROAD RIGHT-OF-WAY AT
702 CARLOTTA CT. – CITY OF FRUITA, MESA COUNTY, COLORADO**

THIS CONTRACT is made and entered into this 11 day of APRIL, 2020 by and between **THE CITY OF FRUITA, COLORADO**, a political subdivision of the State of Colorado (“Buyer”), and **Russell H. and Marnie Bingham**, whose legal address is 702 Carlotta Ct., Fruita, CO 81521 (“Seller”).

RECITALS

1. Buyer is currently acquiring real property necessary for county road right-of-way at K.4 Rd. Improvements Project in Mesa County, Colorado (the “Project”); and
2. Seller presently owns and has title to certain property, all or a portion of which is required by Buyer necessary for county road right-of-way at K.4 Rd.; and
3. Buyer has authority pursuant to the laws of the State of Colorado to acquire by eminent domain proceedings any property or property interest necessary for county road right-of-way; and
4. The parties desire that Buyer acquire the necessary property or property interest through negotiation rather than by the exercise of the powers of eminent domain; and
5. The amount of money and/or other considerations set forth herein have been mutually established as just compensation;

NOW, THEREFORE, in consideration of the promises and other consideration set forth herein, the receipt and adequacy of which is acknowledged, Buyer and Seller agree as follows:

1. Transfer of Title: At closing, subject to the tender of payment as required herein, Seller shall execute and deliver a good and sufficient General Warranty Deed to Buyer, conveying fee title interest in the real property described on **Exhibit A** and depicted on **Exhibit B**, both of which are attached hereto and incorporated herein by this reference (the “Property”), free and clear of all liens, including any governmental liens for special improvements installed as of the date of Buyer’s signature hereon, whether assessed or not. Buyer shall prepare the General Warranty Deed. Title shall be conveyed subject to specific Exceptions described by reference to recorded documents as reflected in the Title Documents, utility easements, and the inclusion of the Property within any special taxing district.
2. Fence Construction: Upon the written request of Seller, the Buyer agrees to reconstruct a fence on the new right-of-way boundary in accordance with the plans and specifications agreed upon by the parties in writing prior to construction. The Seller shall have the obligation for maintenance of the fence. The Buyer does not make any warranties that the fence will be suitable for any particular purpose, or that the fence complies with the lawful fence requirements of the Colorado Fence Law, C.R.S. § 35-46-101, *et seq.*, and

3. Purchase Price: At closing, Buyer shall **\$2,232.00** to the Seller, pursuant to this Contract, as full satisfaction and full consideration of this Contract (the "Purchase Price"). No earnest money or prepayment is required.

4. Additional Provisions:

- Buyer agrees to replace the Split-rail fence affected by the Project;
- Buyer agrees to replace landscaping and curbing to like condition and design;

5. Settlement of Damages: The payment by Buyer of the Purchase Price constitutes full settlement of all and any damages, including any damages to the remainder, occurring to Seller or Seller's property, and includes full compensation for Seller's interest, either present or future, the interest of lienors, and any and all interests, legal or equitable, which are or may be outstanding. Seller shall pay any encumbrance required to be paid at or before closing from the proceeds of this transaction or from any other source.

6. Taxes: Personal property taxes, if any, special taxing district assessments, if any, and general real estate taxes for the year of closing, based on taxes for the calendar year immediately preceding closing, shall be paid by the property owner.

7. Closing Costs: Buyer shall pay all closing service fees, transfer fees and other closing costs, if any.

8. Evidence of Title: Buyer, at Buyer's sole discretion and expense, may obtain a title commitment and purchase title insurance. Buyer reserves the right to object to the status of title to the Property at any time prior to closing, and if Buyer objects to title, Buyer may, at Buyer's sole option, treat this Contract as canceled.

9. Releases and Subordination: Seller shall take all required actions and execute all documents necessary to secure releases of any outstanding liens or encumbrances against, or affecting, the Property. This Contract is expressly subject to the execution of releases or subordinations pertaining to any interests relating to the Property by all outstanding lienors, lessees, or any others with legal or equitable interests in the Property. Failure of Seller to secure the release or subordination of all outstanding interests to the satisfaction of Buyer prior to closing may, Buyer may, at Buyer's sole option, treat this Contract as canceled.

10. Closing: Upon Buyer receiving and recording partial release documents of that certain Deed of Trust United Community Mortgage Corporation signed on December 14, 2011, recorded at the Mesa County Clerk & Recorder's Office on December 20, 2011 at Reception #2594962, and also from that Deed of Trust U.S. Bank National Association signed on August 8, 2017, recorded at the Mesa County Clerk & Recorder's Office on September 1, 2017 at Reception #2812864.

11. Default: If Buyer is in default, Seller may elect to treat this Contract as cancelled and Seller may recover such damages as may be proper. If Seller is in default, Buyer may elect to treat this Contract as cancelled, and Buyer may recover such damages as may be proper, or Buyer may elect to treat this Contract as being in full force and effect and Buyer has the right to specific performance.

12. Time is of the essence in the performance of this Contract.

13. Entire Agreement: This Contract, together with the grant and conveyance documents and covenants referenced herein, constitute the entire agreement between the parties and supersedes and cancels any and all prior Contracts, agreements or proposals, whether written or oral, between the parties relating to the subject matter hereof.

14. Choice of Law, Venue and Attorney's Fees: This Contract shall be construed according to the laws of the State of Colorado and venue for any dispute hereunder shall be in the District Court of the County of Mesa, Colorado. In the event any legal action is instituted to interpret or enforce this Contract, the substantially prevailing party shall be entitled to payment from the other party of its reasonable attorney's fees and costs incurred therein.

15. Binding Effect: When this Contract is executed by Seller and thereafter approved by resolution of the City Council of the City of Fruita, which date of approval shall constitute, the Effective Date, this Contract shall be binding upon Seller and Seller's heirs, devisees, executors, administrators, legal representatives, successors and assigns.

16. Possession: Possession of the Property shall be delivered at closing, or such earlier time as Buyer may determine, in Buyer's sole discretion, provided that prior to taking position prior to closing, Buyer shall deposit the Purchase Price into an escrow account for the benefit of Seller.

WHEREFORE, the parties have executed this Contract as of the date and year first above written.

SELLER


By: **Russell H. Bingham**

SELLER


By: **Marnie Bingham**

BUYER

By: _____

Buyer's Address: 325 E. Aspen Ave., Fruita, Colorado 81521

Buyer's Telephone No: (970) 858-8377 Buyer's Fax No: (970) 858-0210

Exhibit "A"

**Parcel 2697-093-46-012
Russel & Marnie Bingham
702 Carlotta Ct.
Fruita, CO 81521**

Legal Description:

A parcel of land for roadway, utility, and all other public purposes, located in Section 9, T1N R2W, Ute Meridian, in the City of Fruita, Mesa County, Colorado, being more particularly described as follows:

Beginning at the southwest corner of said lot 12;

Thence along the western boundary line of said lot 3 N 0° 07' 52.0" W a distance of 20.00';

Thence S 45° 06' 33.5" E a distance of 28.30';

Thence S 89° 54' 45.0" W a distance of 20.00' to the point of beginning.

Described strip contains:

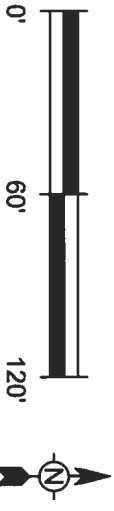
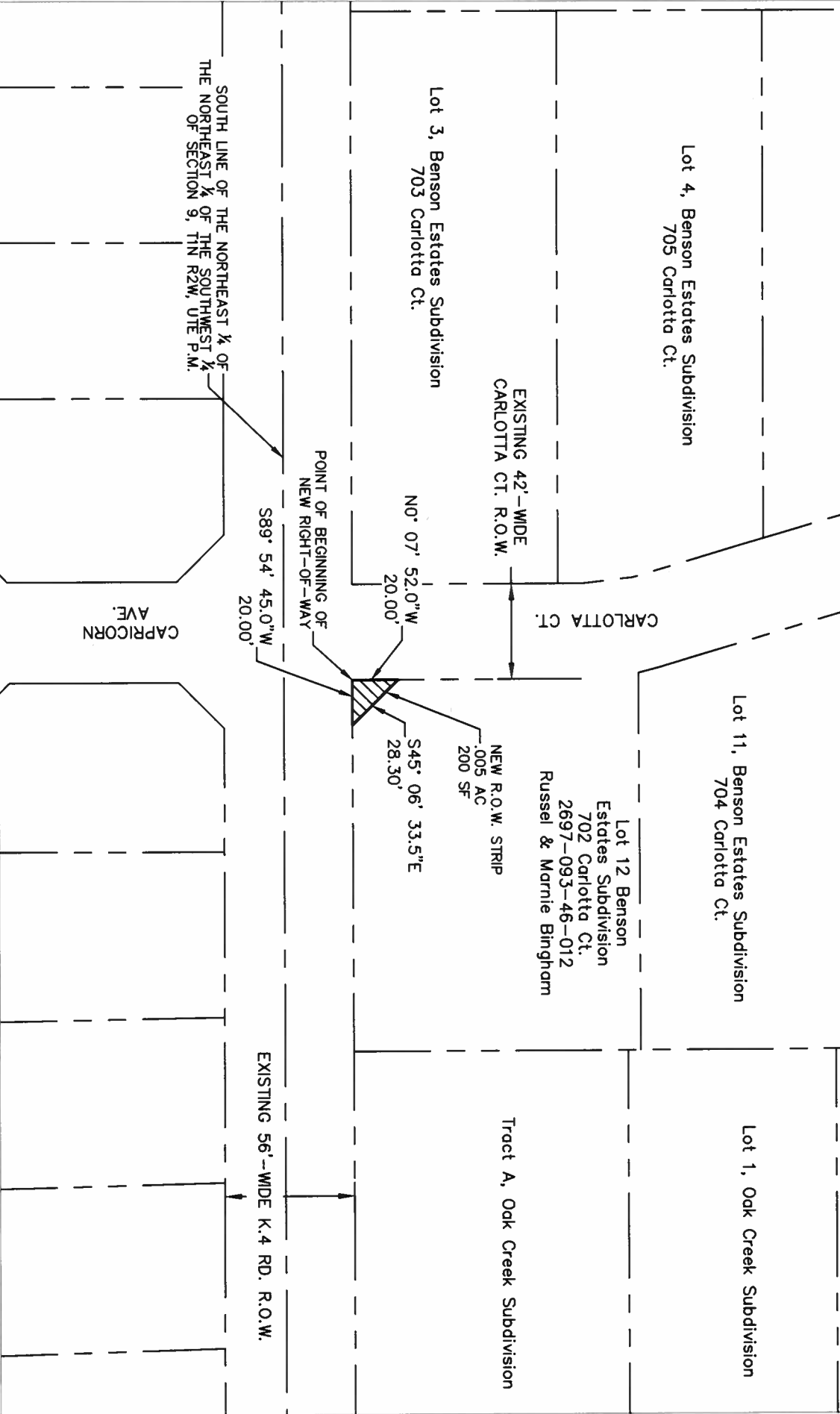
Area: 200.0 SF (.005 AC)

Perimeter: 68.3'

Description authored by Chris Dehmel for the City of Fruita, 325 E. Aspen Ave. Fruita, CO 81521

2697-093-46-012 (BINGHAM)
 Exhibit "B"
 NE1/4 SW1/4 OF SECTION 9
 TOWNSHIP 1 NORTH, RANGE 2 WEST
 UTE MERIDIAN, MESA COUNTY, COLORADO

The sketch and description shown hereon has been derived from subdivision plats and deed descriptions as they appear in the office of the Mesa County Clerk and Recorder. This sketch does not constitute a legal survey, and is not intended to be used as a means for establishing or verifying property boundary lines.



**LOT 12, BENSON ESTATES
 RIGHT-OF-WAY DEDICATION
 EXHIBIT B**

City of Fruita Engineering Department
 325 E. Aspen Ave.
 Fruita, Colorado 81501
 (970) 858-8377

Request for Taxpayer Identification Number and Certification

Give Form to the requester. Do not send to the IRS.

Go to www.irs.gov/FormW9 for instructions and the latest information.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.
Russell Bingham

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.

Individual/sole proprietor or single-member LLC

C Corporation

S Corporation

Partnership

Trust/estate

Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ _____

Other (see instructions) ▶ _____

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) _____

Exemption from FATCA reporting code (if any) _____

(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.) (see instructions).
702 Carlotta Court

6 City, state, and ZIP code
Frunita, CO 81521

7 List account number(s) here (optional)

Requester's name and address (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number

5	2	8	-	1	9	-	5	3	1	1
---	---	---	---	---	---	---	---	---	---	---

or

Employer identification number

--	--	--	--	--	--	--	--	--	--	--

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here Signature of U.S. person ▶ **Russell B.**

Date ▶ **4-11-2020**

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adopt-on taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.

CITY OF FRUITA, COLORADO
MULTI-PURPOSE EASEMENT DEED AND AGREEMENT

This Multi-Purpose Easement Deed and Agreement is made this 11 day of April, 2019, by and between **RUSSELL H. AND MARNIE BINGHAM**, whose legal address 702 Carlotta Ct., Fruita, CO 81521 (“Grantor”) and **THE CITY OF FRUITA, COLORADO**, a political subdivision of the State of Colorado, whose legal address is 325 E. Aspen Ave. Fruita, CO 81521 (“Grantee”).

In exchange for and in consideration of **\$1,000.00**, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby grants and conveys to Grantee and its successors and assigns, a perpetual easement for the installation, operation, maintenance, repair and replacement of public utilities and appurtenances related thereto, together with the right of ingress and egress for persons and equipment, at any time and from time to time, on, along, over, under, through and across that certain real property located in the NE ¼ SW ¼ Section 9, Township 1 north, Range 2 west of the Ute P.M., Mesa County, State of Colorado, as more specifically described as follows, to wit (“Easement Property”):

See Exhibits A and B, attached hereto and incorporated herein.

Grantee has the right to enter upon Easement Property, to survey, maintain, operate, repair, replace, control and use the Easement Property, and to remove objects interfering therewith, including the trimming of trees and bushes as may be required to permit the operation of standard utility construction and repair, or the free and unobstructed access to the Easement Property, subject to the terms and conditions contained herein.

Grantor reserves the right to use and occupy the Easement Property for any lawful purpose which is not inconsistent with and which will not interfere with the full use and quiet enjoyment of the rights herein granted; provided however, that Grantors hereby agree that the Easement Property shall not be burdened or overburdened by the installation, construction or placement of any structure or any other item or fixture which may be detrimental to the utilities or facilities of Grantee (or Grantee’s assigns) or which may act to impede or prevent reasonable ingress and egress for workers and equipment on, along, over, under, through and across the Easement Property.

Grantee agrees the work and act of installing, maintaining and repairing utilities and related appurtenances shall be performed with due care using commonly accepted standards and techniques, taking precautions for the protection of persons and property. To the extent allowed by law, all damages to persons or property located on the Easement Property that result from Grantee’s failure to exercise due care, shall be paid for and repaired at the expense of Grantee.

{Signature & Notary on the Following Page}

This Multi-Purpose Easement Deed and Agreement, and its terms and conditions shall inure to the benefit of Grantee and shall be binding upon the heirs, successors and assigns of the parties.

GRANTOR

Russell H. Bingham
By: Russell H. Bingham

GRANTOR

Marnie Bingham
By: Marnie Bingham

STATE OF COLORADO)
COUNTY OF *Mesa*)



The foregoing instrument was acknowledged before me this *11* day of *April*, 2019, by Russel H. and Marnie Bingham, Grantor.

Witness my hand and official seal: *Shawn Burd*
Notary Public

My commission expires: *10/20/21*.

Exhibit "A"

**Parcel 2697-093-46-012
Russel & Marnie Bingham
702 Carlotta Ct.
Fruita, CO 81521**

Legal Description:

A strip of land for the installation, operation, maintenance, repair and replacement of public utilities and appurtenances related thereto, together with the right of ingress and egress for persons and equipment, located in Section 9, T1N R2W, Ute Meridian, in the City of Fruita, Mesa County, Colorado, being more particularly described as follows:

Beginning at the southwest corner of said parcel, thence

N 44° 53' 33.5" W a distance of 19.79' to the point of beginning;

Thence N 89° 54' 45.0" W a distance of 11.81';

Thence N 45° 06' 33.5" E a distance of 16.70';

Thence S 0° 07' 52.0" E a distance of 11.81' to the point of beginning.

Described strip contains:

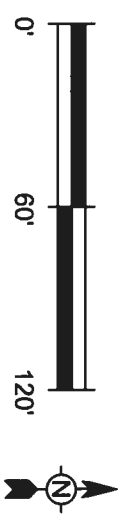
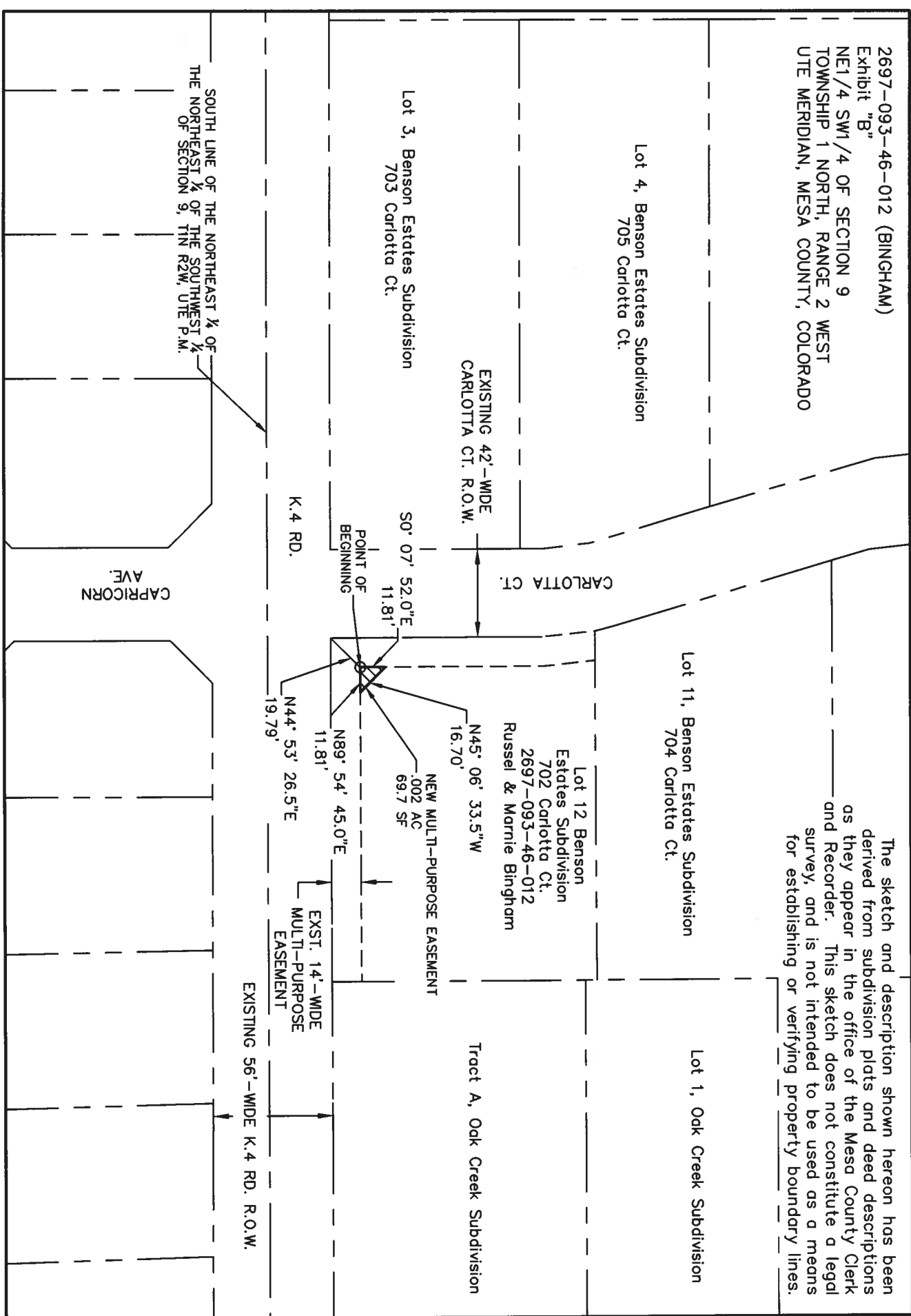
Area: 69.7 SF (.002 AC)

Perimeter: 40.3'

Description authored by Chris Dehmel for the City of Fruita, 325 E. Aspen Ave. Fruita, CO 81521

2697-093-46-012 (BINGHAM)
 Exhibit "B"
 NE1/4 SW1/4 OF SECTION 9
 TOWNSHIP 1 NORTH, RANGE 2 WEST
 UTE MERIDIAN, MESA COUNTY, COLORADO

The sketch and description shown hereon has been derived from subdivision plats and deed descriptions as they appear in the office of the Mesa County Clerk and Recorder. This sketch does not constitute a legal survey, and is not intended to be used as a means for establishing or verifying property boundary lines.



LOT 12, BENSON ESTATES MULTI-PURPOSE EASEMENT DEDICATION
EXHIBIT B

City of Fruita Engineering Department
 325 E. Aspen Ave.
 Fruita, Colorado 81501
 (970) 858-8377

**CONTRACT TO BUY AND SELL REAL ESTATE IN LIEU OF
CONDEMNATION FOR COUNTY ROAD RIGHT-OF-WAY AT
703 CARLOTTA CT. – CITY OF FRUITA, MESA COUNTY, COLORADO**

THIS CONTRACT is made and entered into this 26 day of March, 2020 by and between **THE CITY OF FRUITA, COLORADO**, a political subdivision of the State of Colorado (“Buyer”), and **JERRY D. AND DOROTHY L. O’BRIEN**, whose legal address is 703 Carlotta Ct., Fruita, CO 81521 (“Seller”).

RECITALS

1. Buyer is currently acquiring real property necessary for county road right-of-way at K.4 Rd. Improvements Project in Mesa County, Colorado (the “Project”); and
2. Seller presently owns and has title to certain property, all or a portion of which is required by Buyer necessary for county road right-of-way at K.4 Rd.; and
3. Buyer has authority pursuant to the laws of the State of Colorado to acquire by eminent domain proceedings any property or property interest necessary for county road right-of-way; and
4. The parties desire that Buyer acquire the necessary property or property interest through negotiation rather than by the exercise of the powers of eminent domain; and
5. The amount of money and/or other considerations set forth herein have been mutually established as just compensation;

NOW, THEREFORE, in consideration of the promises and other consideration set forth herein, the receipt and adequacy of which is acknowledged, Buyer and Seller agree as follows:

1. Transfer of Title: At closing, subject to the tender of payment as required herein, Seller shall execute and deliver a good and sufficient General Warranty Deed to Buyer, conveying fee title interest in the real property described on **Exhibit A** and depicted on **Exhibit B**, both of which are attached hereto and incorporated herein by this reference (the “Property”), free and clear of all liens, including any governmental liens for special improvements installed as of the date of Buyer’s signature hereon, whether assessed or not. Buyer shall prepare the General Warranty Deed. Title shall be conveyed subject to specific Exceptions described by reference to recorded documents as reflected in the Title Documents, utility easements, and the inclusion of the Property within any special taxing district.
2. Fence Construction: Upon the written request of Seller, the Buyer agrees to reconstruct a fence on the new right-of-way boundary in accordance with the plans and specifications agreed upon by the parties in writing prior to construction. The Seller shall have the obligation for maintenance of the fence. The Buyer does not make any warranties that the fence will be suitable for any particular purpose, or that the fence complies with the lawful fence requirements of the Colorado Fence Law, C.R.S. § 35-46-101, *et seq.*, and

3. Purchase Price: At closing, Buyer shall **\$2,232.00** to the Seller, pursuant to this Contract, as full satisfaction and full consideration of this Contract (the "Purchase Price"). No earnest money or prepayment is required.

4. Additional Provisions:

- None

5. Settlement of Damages: The payment by Buyer of the Purchase Price constitutes full settlement of all and any damages, including any damages to the remainder, occurring to Seller or Seller's property, and includes full compensation for Seller's interest, either present or future, the interest of lienors, and any and all interests, legal or equitable, which are or may be outstanding. Seller shall pay any encumbrance required to be paid at or before closing from the proceeds of this transaction or from any other source.

6. Taxes: Personal property taxes, if any, special taxing district assessments, if any, and general real estate taxes for the year of closing, based on taxes for the calendar year immediately preceding closing, shall be paid by the property owner.

7. Closing Costs: Buyer shall pay all closing service fees, transfer fees and other closing costs, if any.

8. Evidence of Title: Buyer, at Buyer's sole discretion and expense, may obtain a title commitment and purchase title insurance. Buyer reserves the right to object to the status of title to the Property at any time prior to closing, and if Buyer objects to title, Buyer may, at Buyer's sole option, treat this Contract as canceled.

9. Releases and Subordination: Seller shall take all required actions and execute all documents necessary to secure releases of any outstanding liens or encumbrances against, or affecting, the Property. This Contract is expressly subject to the execution of releases or subordinations pertaining to any interests relating to the Property by all outstanding lienors, lessees, or any others with legal or equitable interests in the Property. Failure of Seller to secure the release or subordination of all outstanding interests to the satisfaction of Buyer prior to closing may, Buyer may, at Buyer's sole option, treat this Contract as canceled.

10. Closing: Upon Buyer receiving and recording partial release documents of that certain Deed of Trust Wells Fargo Bank, N.A. – Mortgage signed on June 15, 2017, recorded at the Mesa County Clerk & Recorder's Office on June 21, 2017 at Reception #2804289.

11. Default: If Buyer is in default, Seller may elect to treat this Contract as cancelled and Seller may recover such damages as may be proper. If Seller is in default, Buyer may elect to treat this Contract as cancelled, and Buyer may recover such damages as may be proper, or Buyer may elect to treat this Contract as being in full force and effect and Buyer has the right to specific performance.

12. Time is of the essence in the performance of this Contract.

13. Entire Agreement: This Contract, together with the grant and conveyance documents and covenants referenced herein, constitute the entire agreement between the parties and supersedes and cancels any and all prior Contracts, agreements or proposals, whether written or oral, between the parties relating to the subject matter hereof.

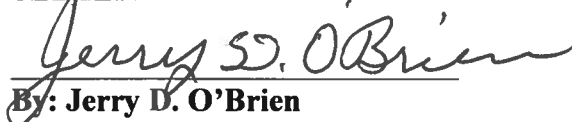
14. Choice of Law, Venue and Attorney's Fees: This Contract shall be construed according to the laws of the State of Colorado and venue for any dispute hereunder shall be in the District Court of the County of Mesa, Colorado. In the event any legal action is instituted to interpret or enforce this Contract, the substantially prevailing party shall be entitled to payment from the other party of its reasonable attorney's fees and costs incurred therein.

15. Binding Effect: When this Contract is executed by Seller and thereafter approved by resolution of the City Council of the City of Fruita, which date of approval shall constitute, the Effective Date, this Contract shall be binding upon Seller and Seller's heirs, devisees, executors, administrators, legal representatives, successors and assigns.

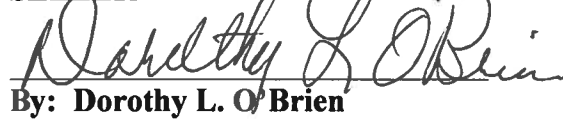
16. Possession: Possession of the Property shall be delivered at closing, or such earlier time as Buyer may determine, in Buyer's sole discretion, provided that prior to taking position prior to closing, Buyer shall deposit the Purchase Price into an escrow account for the benefit of Seller.

WHEREFORE, the parties have executed this Contract as of the date and year first above written.

SELLER


By: Jerry D. O'Brien

SELLER


By: Dorothy L. O'Brien

BUYER


By:

Buyer's Address: 325 E. Aspen Ave., Fruita, Colorado 81521

Buyer's Telephone No: (970) 858-8377
0210

Buyer's Fax No: (970) 858-

Exhibit "A"

**Parcel 2697-093-46-003
Jerry & Dorothy O'Brien
703 Carlotta Ct.
Fruita, CO 81521**

Legal Description:

A parcel of land for roadway, utility, and all other public purposes, located in Section 9, T1N R2W, Ute Meridian, in the City of Fruita, Mesa County, Colorado, being more particularly described as follows:

Beginning at the southeast corner of said lot 3;

Thence along the southern boundary line of said lot 3 S 89° 54' 45.0" W a distance of 20.00';

Thence N 44° 53' 26.5" E a distance of 28.27';

Thence S 0° 07' 52.0" E a distance of 20.00' to the point of beginning.

Containing approximately:

Area: 200 SF (.005 AC)

Perimeter: 68.3'

Description authored by Chris Dehmel for the City of Fruita, 325 E. Aspen Ave. Fruita, CO 81521

2697-093-46-003 (O'BRIEN)
 Exhibit "B"
 NE1/4 SW1/4 OF SECTION 9
 TOWNSHIP 1 NORTH, RANGE 2 WEST
 UTE MERIDIAN, MESA COUNTY, COLORADO

Lot 5, Benson Estates Subdivision
 705 Carlotta Ct.

Lot 4, Benson Estates Subdivision
 705 Carlotta Ct.

Lot 3, Benson Estates Subdivision
 703 Carlotta Ct.
 2697-093-46-003
 Jerry & Dorothy O'Brien

The sketch and description shown hereon has been derived from subdivision plats and deed descriptions as they appear in the office of the Mesa County Clerk and Recorder. This sketch does not constitute a legal survey, and is not intended to be used as a means for establishing or verifying property boundary lines.

Lot 11, Benson Estates Subdivision
 704 Carlotta Ct.

Lot 1, Oak Creek Subdivision

Lot 12 Benson Estates Subdivision
 702 Carlotta Ct.

Tract A, Oak Creek Subdivision

NEW R.O.W. STRIP
 .005 AC
 200 SF

N44° 53' 26.5"E
 28.27'

S0° 07' 52.0"E
 20.00'

POINT OF BEGINNING OF
 NEW RIGHT-OF-WAY

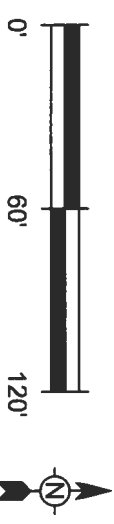
S89° 54' 45.0"W
 20.00'

EXISTING 56'-WIDE K.4 RD. R.O.W.

K.4 RD.

SOUTH LINE OF THE NORTHEAST 1/4 OF
 THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4
 OF SECTION 9, T1N R2W, U1E P.M.

CAPRICORN
 AVE.



**LOT 3, BENSON ESTATES
 RIGHT-OF-WAY DEDICATION
 EXHIBIT B**

City of Fruita Engineering Department
 325 E. Aspen Ave.
 Fruita, Colorado 81501
 (970) 858-8377

Request for Taxpayer Identification Number and Certification

**Give Form to the
requester. Do not
send to the IRS.**

▶ Go to www.irs.gov/FormW9 for instructions and the latest information.

Print or type. See Specific Instructions on page 3.	<p>1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank. <u>Jerry D. O'Brien</u></p> <p>2 Business name/disregarded entity name, if different from above</p>	
	<p>3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.</p> <p><input checked="" type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate</p> <p><input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ _____</p> <p><small>Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.</small></p> <p><input type="checkbox"/> Other (see instructions) ▶ _____</p>	<p>4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):</p> <p>Exempt payee code (if any) _____</p> <p>Exemption from FATCA reporting code (if any) _____</p> <p><small>(Applies to accounts maintained outside the U.S.)</small></p>
	<p>5 Address (number, street, and apt. or suite no.) See instructions. <u>703 CARLOTTA Ct.</u></p>	<p>Requester's name and address (optional)</p>
	<p>6 City, state, and ZIP code <u>Fruita, Colorado 81521</u></p>	
	<p>7 List account number(s) here (optional)</p>	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number
5 2 3 - 5 6 - 0 9 9 8
or
Employer identification number

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here	Signature of U.S. person ▶ <u>Jerry D. O'Brien</u>	Date ▶ <u>03-26-2020</u>
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.

CITY OF FRUITA, COLORADO
MULTI-PURPOSE EASEMENT DEED AND AGREEMENT

This Multi-Purpose Easement Deed and Agreement is made this 21 day of March, 2020, by and between **JERRY D. AND DOROTHY L. O'BRIEN**, whose legal address 703 Carlotta Ct., Fruita, CO 81521 ("Grantor") and **THE CITY OF FRUITA, COLORADO**, a political subdivision of the State of Colorado, whose legal address is 325 E. Aspen Ave. Fruita, CO 81521 ("Grantee").

In exchange for and in consideration of **\$505.00**, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby grants and conveys to Grantee and its successors and assigns, a perpetual easement for the installation, operation, maintenance, repair and replacement of public utilities and appurtenances related thereto, together with the right of ingress and egress for persons and equipment, at any time and from time to time, on, along, over, under, through and across that certain real property located in the NE ¼ SW ¼ Section 9, Township 1 north, Range 2 west of the Ute P.M., Mesa County, State of Colorado, as more specifically described as follows, to wit ("Easement Property"):

See Exhibits A and B, attached hereto and incorporated herein.

Grantee has the right to enter upon Easement Property, to survey, maintain, operate, repair, replace, control and use the Easement Property, and to remove objects interfering therewith, including the trimming of trees and bushes as may be required to permit the operation of standard utility construction and repair, or the free and unobstructed access to the Easement Property, subject to the terms and conditions contained herein.

Grantor reserves the right to use and occupy the Easement Property for any lawful purpose which is not inconsistent with and which will not interfere with the full use and quiet enjoyment of the rights herein granted; provided however, that Grantors hereby agree that the Easement Property shall not be burdened or overburdened by the installation, construction or placement of any structure or any other item or fixture which maybe detrimental to the utilities or facilities of Grantee (or Grantee's assigns) or which may act to impede or prevent reasonable ingress and egress for workers and equipment on, along, over, under, through and across the Easement Property.

Grantee agrees the work and act of installing, maintaining and repairing utilities and related appurtenances shall be performed with due care using commonly accepted standards and techniques, taking precautions for the protection of persons and property. To the extent allowed by law, all damages to persons or property located on the Easement Property that result from Grantee's failure to exercise due care, shall be paid for and repaired at the expense of Grantee.

{Signature & Notary on the Following Page}

Exhibit "A"

Parcel 2697-093-46-003
Jerry & Dorothy O'Brien
703 Carlotta Ct.
Fruita, CO 81521

Legal Description:

A strip of land for the installation, operation, maintenance, repair and replacement of public utilities and appurtenances related thereto, together with the right of ingress and egress for persons and equipment, located in Section 9, T1N R2W, Ute Meridian, in the City of Fruita, Mesa County, Colorado, being more particularly described as follows:

Beginning at the southeast corner of said parcel, thence

N 45° 06' 33.5" W a distance of 19.81' to the point of beginning;

Thence S 89° 54' 45.0" W a distance of 11.79';

Thence N 44° 53' 26.5" E a distance of 16.67';

Thence S 0° 07' 52.0" E a distance of 11.79' to the point of beginning.

Described strip contains:

Area: 69.5 SF (.002 AC)

Perimeter: 40.3'

Description authored by Chris Dehmel for the City of Fruita, 325 E. Aspen Ave. Fruita, CO 81521

2697-093-46-003 (O'BRIEN)
 Exhibit "B"
 NE1/4 SW1/4 OF SECTION 9
 TOWNSHIP 1 NORTH, RANGE 2
 UTE MERIDIAN, MESA COUNTY,
 WEST COLORADO

Lot 5, Benson Estates Subdivision
 705 Carlotta Ct.

Lot 4, Benson Estates Subdivision
 705 Carlotta Ct.

NEW MULTI-PURPOSE EASEMENT
 .002 AC
 69.5 SF

Lot 3, Benson Estates Subdivision
 703 Carlotta Ct.
 2697-093-46-003
 Jerry & Dorothy O'Brien

EXST. 14'-WIDE
 MULTI-PURPOSE
 EASEMENT

Lot 2
 Benson Estates Subdivision
 1832 K.4 Rd.

The sketch and description shown hereon has been derived from subdivision plats and deed descriptions as they appear in the office of the Mesa County Clerk and Recorder. This sketch does not constitute a legal survey, and is not intended to be used as a means for establishing or verifying property boundary lines.

Lot 11, Benson Estates Subdivision
 704 Carlotta Ct.

CARLOTTA CT.

Lot 12 Benson Estates Subdivision
 702 Carlotta Ct.

EXISTING 42'-WIDE
 CARLOTTA CT. R.O.W.

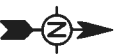
POINT OF BEGINNING

K.4 RD.

EXISTING 56'-WIDE K.4 RD. R.O.W.

SOUTH LINE OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 9, T1N R2W, UTE P.M.

CAPRICORN AVE.



LOT 3, BENSON ESTATES MULTI-PURPOSE EASEMENT DEDICATION EXHIBIT B

City of Fruita Engineering Department
 325 E. Aspen Ave.
 Fruita, Colorado 81501
 (970) 858-8377

**CONTRACT TO BUY AND SELL REAL ESTATE IN LIEU OF
CONDEMNATION FOR CITY ROAD RIGHT-OF-WAY AT
TRACT A, MONUMENT GLEN FILING III, CITY OF FRUITA, MESA
COUNTY, COLORADO**

THIS CONTRACT is made and entered into this 16 day of April, 2020 by and between **THE CITY OF FRUITA, COLORADO**, a political subdivision of the State of Colorado ("Buyer"), and **Monument Glen, Filing 3 Homeowner's Association, Inc.**, whose mailing address is P.O. Box 592, Fruita, CO 81521 ("Seller").

RECITALS

1. Buyer is currently acquiring real property necessary for county road right-of-way at K.4 Rd. Improvements Project in Mesa County, Colorado (the "Project"); and
2. Seller presently owns and has title to certain property, all or a portion of which is required by Buyer necessary for county road right-of-way at K.4 Rd.; and
3. Buyer has authority pursuant to the laws of the State of Colorado to acquire by eminent domain proceedings any property or property interest necessary for county road right-of-way; and
4. The parties desire that Buyer acquire the necessary property or property interest through negotiation rather than by the exercise of the powers of eminent domain; and
5. The amount of money and/or other considerations set forth herein have been mutually established as just compensation;

NOW, THEREFORE, in consideration of the promises and other consideration set forth herein, the receipt and adequacy of which is acknowledged, Buyer and Seller agree as follows:

1. **Transfer of Title:** At closing, subject to the tender of payment as required herein, Seller shall execute and deliver a good and sufficient General Warranty Deed to Buyer, conveying fee title interest in the real property described on **Exhibit A** and depicted on **Exhibit B**, both of which are attached hereto and incorporated herein by this reference (the "Property"), free and clear of all liens, including any governmental liens for special improvements installed as of the date of Buyer's signature hereon, whether assessed or not. Buyer shall prepare the General Warranty Deed. Title shall be conveyed subject to specific Exceptions described by reference to recorded documents as reflected in the Title Documents, utility easements, and the inclusion of the Property within any special taxing district.
2. **Fence Construction:** Upon the written request of Seller, the Buyer agrees to reconstruct a fence on the new right-of-way boundary in accordance with the plans and specifications agreed upon by the parties in writing prior to construction. The Seller shall have the obligation for maintenance of the fence. The Buyer does not make any warranties that the fence will be suitable

for any particular purpose, or that the fence complies with the lawful fence requirements of the Colorado Fence Law, C.R.S. § 35-46-101, *et seq.*, and

3. **Purchase Price:** At closing, Buyer shall pay **\$700.00** to the Seller, pursuant to this Contract, as full satisfaction and full consideration of this Contract (the "Purchase Price"). No earnest money or prepayment is required. The purchase price payment shall be directed to the account of the Monument Glen Filing III Homeowners Association, Inc.

4. **Additional Provisions:**

- None

5. **Settlement of Damages:** The payment by Buyer of the Purchase Price constitutes full settlement of all and any damages, including any damages to the remainder, occurring to Seller or Seller's property, and includes full compensation for Seller's interest, either present or future, the interest of lienors, and any and all interests, legal or equitable, which are or may be outstanding. Seller shall pay any encumbrance required to be paid at or before closing from the proceeds of this transaction or from any other source.

6. **Taxes:** Personal property taxes, if any, special taxing district assessments, if any, and general real estate taxes for the year of closing, based on taxes for the calendar year immediately preceding closing, shall be paid by the property owner.

7. **Closing Costs:** Buyer shall pay all closing service fees, transfer fees and other closing costs, if any.

8. **Evidence of Title:** Buyer, at Buyer's sole discretion and expense, may obtain a title commitment and purchase title insurance. Buyer reserves the right to object to the status of title to the Property at any time prior to closing, and if Buyer objects to title, Buyer may, at Buyer's sole option, treat this Contract as canceled.

9. **Releases and Subordination:** Seller shall take all required actions and execute all documents necessary to secure releases of any outstanding liens or encumbrances against, or affecting, the Property. This Contract is expressly subject to the execution of releases or subordinations pertaining to any interests relating to the Property by all outstanding lienors, lessees, or any others with legal or equitable interests in the Property. Failure of Seller to secure the release or subordination of all outstanding interests to the satisfaction of Buyer prior to closing may, Buyer may, at Buyer's sole option, treat this Contract as canceled.

10. **Closing:** Shall occur on or before May 29, 2020, at such date, time and location as may be mutually agreed upon in writing by the parties.

11. **Default:** If Buyer is in default, Seller may elect to treat this Contract as cancelled and Seller may recover such damages as may be proper. If Seller is in default, Buyer may elect to treat this Contract as cancelled, and Buyer may recover such damages as may be proper, or Buyer may

12. Time is of the essence in the performance of this Contract.

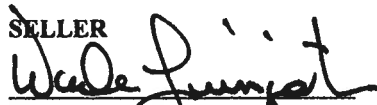
13. Entire Agreement: This Contract, together with the grant and conveyance documents and covenants referenced herein, constitute the entire agreement between the parties and supersedes and cancels any and all prior Contracts, agreements or proposals, whether written or oral, between the parties relating to the subject matter hereof.

14. Choice of Law, Venue and Attorney's Fees: This Contract shall be construed according to the laws of the State of Colorado and venue for any dispute hereunder shall be in the District Court of the County of Mesa, Colorado. In the event any legal action is instituted to interpret or enforce this Contract, the substantially prevailing party shall be entitled to payment from the other party of its reasonable attorney's fees and costs incurred therein.

15. Binding Effect: When this Contract is executed by Seller and thereafter approved by resolution of the City Council of the City of Fruita, which date of approval shall constitute, the Effective Date, this Contract shall be binding upon Seller and Seller's heirs, devisees, executors, administrators, legal representatives, successors and assigns.

16. Possession: Possession of the Property shall be delivered at closing, or such earlier time as Buyer may determine, in Buyer's sole discretion, provided that prior to taking position prior to closing, Buyer shall deposit the Purchase Price into an escrow account for the benefit of Seller.

WHEREFORE, the parties have executed this Contract as of the date and year first above written.

SELLER


By: Wade Livingston – President of the Monument Glen, Filing III Homeowners Association, Inc.

SELLER

By: Yvonne Hall – Secretary of the Monument Glen, Filing III Homeowners Association, Inc.


BUYER

By:

Buyer's Address: 325 E. Aspen Ave., Fruita, Colorado 81521

Buyer's Telephone No: (970) 858-8377 Buyer's Fax No: (970) 858-0210

Exhibit "A"

**Parcel 2697-093-45-000
Monument Glen Filing III HOA, Inc.
Fruita, CO 81521**

Legal Description:

A parcel of land for roadway, utility, and all other public purposes, located in Section 9, T1N R2W, Ute Meridian, in the City of Fruita, Mesa County, Colorado, being more particularly described as follows:

Beginning at the northeast corner of said tract A;

Thence along the northern boundary line of said tract A S 89° 55' 18.5" W a distance of 14.98';

Thence S 61° 46' 59.6" E a distance of 17.03';

Thence along the east boundary line of said tract A N 0° 10' 43.0" W a distance of 8.07' to the point of beginning.

Described strip contains:

Area: 60.5 SF (.001 AC)

Perimeter: 40.1'

Description authored by Chris Dehmel for the City of Fruita, 325 E. Aspen Ave. Fruita, CO 81521

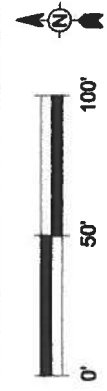
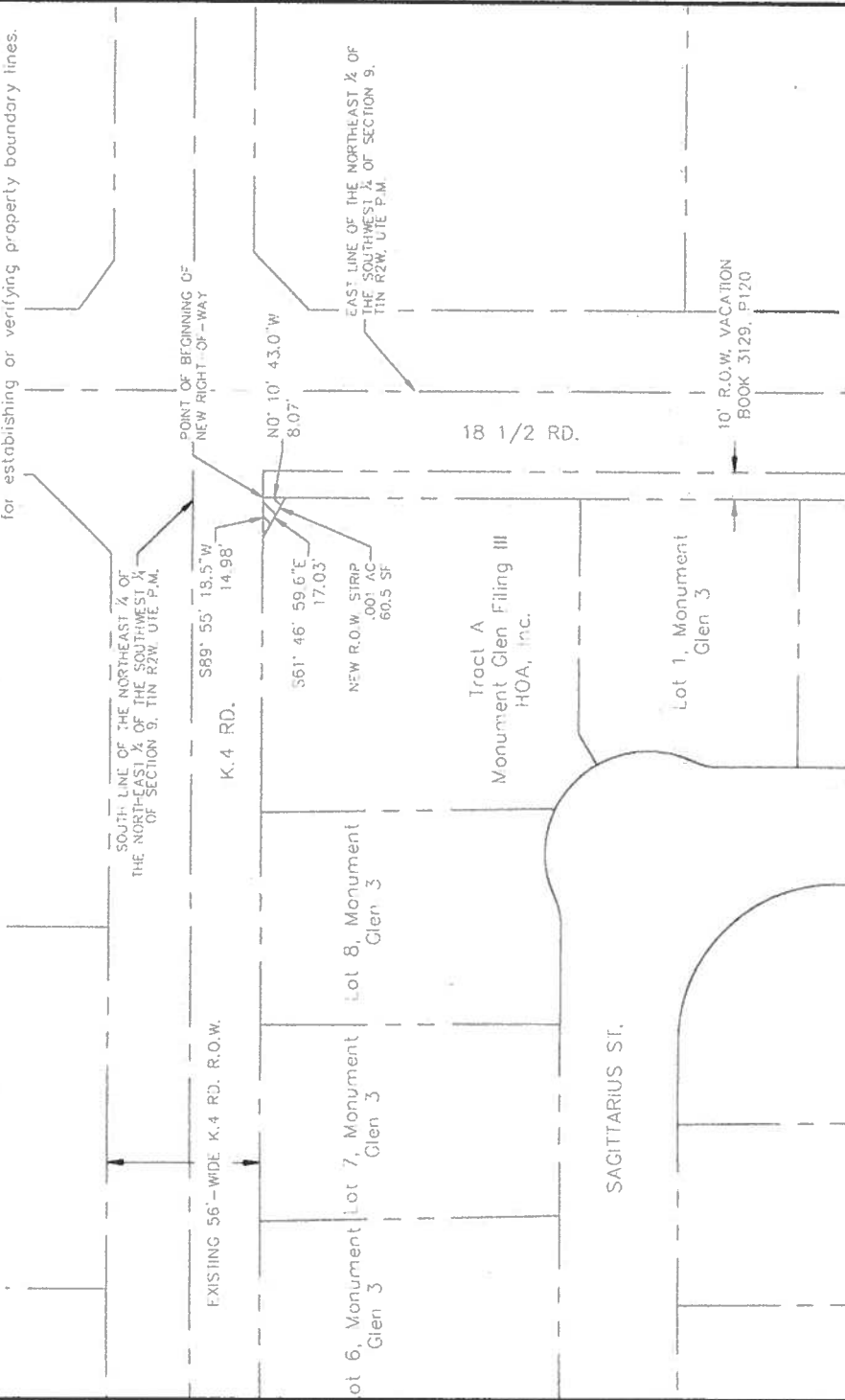
2697-093-45-000 (MONUMENT GLEN FILING III H.O.A., INC.)

Exhibit "B"

NET 1/4 SW 1/4 OF SECTION 9
TOWNSHIP 1 NORTH, RANGE 2 WEST
UTE MERIDIAN, MESA COUNTY, COLORADO

Lot 28
Creek Estates

The sketch and description shown hereon has been derived from subdivision plats and deed descriptions as they appear in the office of the Mesa County Clerk and Recorder. This sketch does not constitute a legal survey, and is not intended to be used as a means for establishing or verifying property boundary lines.



**MONUMENT GLEN FILING III H.O.A., INC.
RIGHT-OF-WAY DEDICATION
EXHIBIT B**

City of Fruita Engineering Department
325 E. Aspen Ave.
Fruita, Colorado 81501
(970) 858-8377

Exhibit "A"

**Parcel 2697-093-56-000
Monument Glen Filing III HOA, Inc.
Fruita, CO 81521**

Legal Description:

A parcel of land for roadway, utility, and all other public purposes, located in Section 9, T1N R2W, Ute Meridian, in the City of Fruita, Mesa County, Colorado, being more particularly described as follows:

Beginning at the northeast corner of said tract B;

Thence along the northern boundary line of said tract B S 89° 49' 17.0" W a distance of 10' to the northwest corner of said tract B;

Thence along the western boundary line of said tract B S 0° 10' 43.0" E a distance of 8.07';

Thence S 46° 04' 33.7" E a distance of 13.93';

Thence along the eastern boundary line of said tract B N 0° 10' 43.0" W a distance of 17.76' to the point of beginning.

Described strip contains:

Area: 129.2 SF (.003 AC)

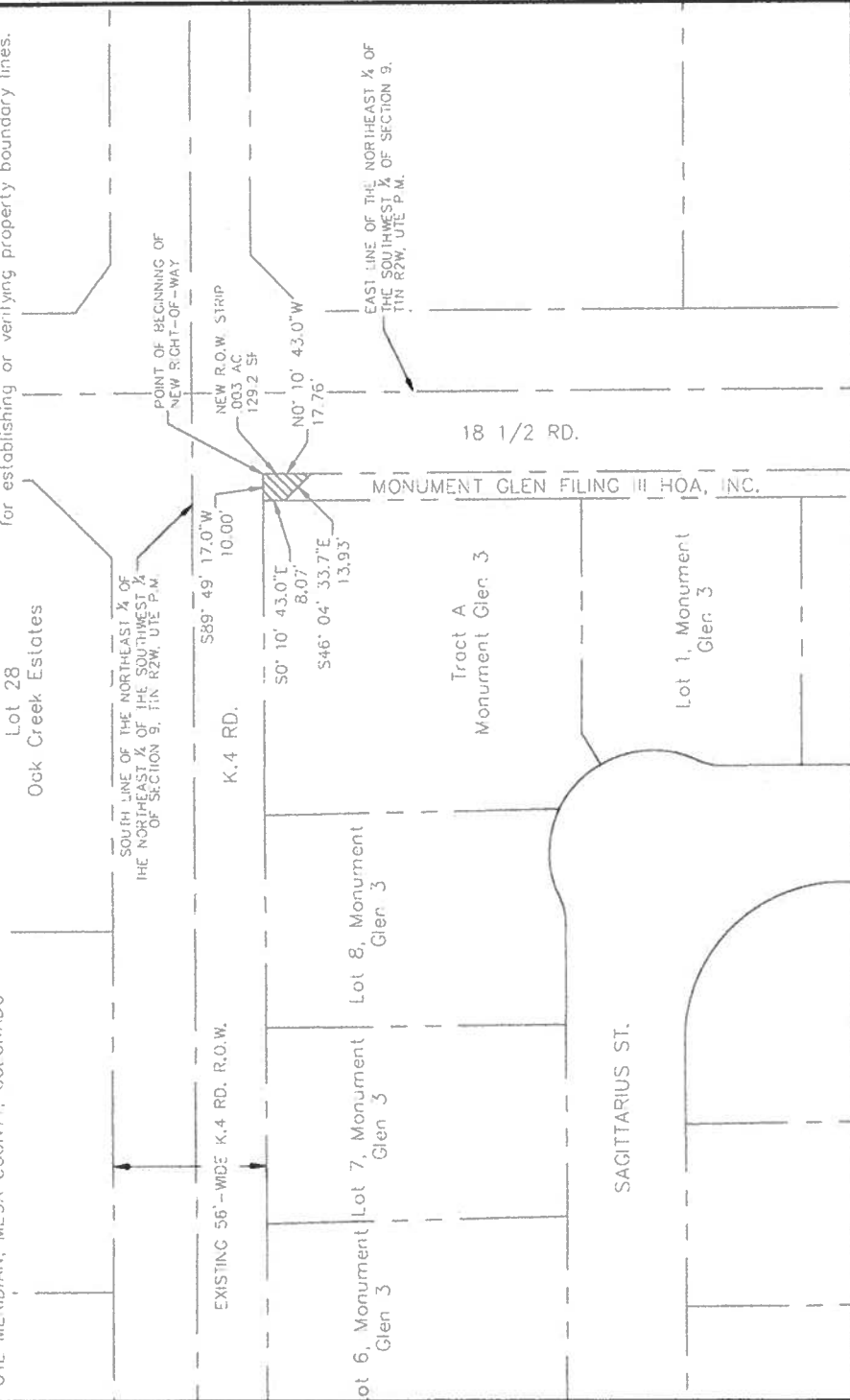
Perimeter: 49.76'

Description authored by Chris Dehmel for the City of Fruita, 325 E. Aspen Ave. Fruita, CO 81521

2697-093-56-000 (MONUMENT GLEN FILING III H.O.A., INC.)

Exhibit "B"
 NET 1/4 SW 1/4 OF SECTION 9
 TOWNSHIP 1 NORTH, RANGE 2 WEST
 UTE MERIDIAN, MESA COUNTY, COLORADO

The sketch and description shown hereon has been derived from subdivision plats and deed descriptions as they appear in the office of the Mesa County Clerk and Recorder. This sketch does not constitute a legal survey, and is not intended to be used as a means for establishing or verifying property boundary lines.



City of Fruita Engineering Department
 325 E. Aspen Ave.
 Fruita, Colorado 81501
 (970) 858-8377

**MONUMENT GLEN FILING III H.O.A., INC.
 RIGHT-OF-WAY DEDICATION
 EXHIBIT B**



**CONTRACT TO BUY AND SELL REAL ESTATE IN LIEU OF
CONDEMNATION FOR CITY ROAD RIGHT-OF-WAY AT
TRACT B, MONUMENT GLEN FILING III, CITY OF FRUITA, MESA
COUNTY, COLORADO**

THIS CONTRACT is made and entered into this 16 day of April, 2020 by and between **THE CITY OF FRUITA, COLORADO**, a political subdivision of the State of Colorado ("Buyer"), and **Monument Glen, Filing III Homeowner's Association, Inc.**, whose mailing address is P.O. Box 592, Fruita, CO 81521 ("Seller").

RECITALS

1. Buyer is currently acquiring real property necessary for county road right-of-way at K.4 Rd. Improvements Project in Mesa County, Colorado (the "Project"); and
2. Seller presently owns and has title to certain property, all or a portion of which is required by Buyer necessary for county road right-of-way at K.4 Rd.; and
3. Buyer has authority pursuant to the laws of the State of Colorado to acquire by eminent domain proceedings any property or property interest necessary for county road right-of-way; and
4. The parties desire that Buyer acquire the necessary property or property interest through negotiation rather than by the exercise of the powers of eminent domain; and
5. The amount of money and/or other considerations set forth herein have been mutually established as just compensation;

NOW, THEREFORE, in consideration of the promises and other consideration set forth herein, the receipt and adequacy of which is acknowledged, Buyer and Seller agree as follows:

1. **Transfer of Title:** At closing, subject to the tender of payment as required herein, Seller shall execute and deliver a good and sufficient General Warranty Deed to Buyer, conveying fee title interest in the real property described on **Exhibit A** and depicted on **Exhibit B**, both of which are attached hereto and incorporated herein by this reference (the "Property"), free and clear of all liens, including any governmental liens for special improvements installed as of the date of Buyer's signature hereon, whether assessed or not. Buyer shall prepare the General Warranty Deed. Title shall be conveyed subject to specific Exceptions described by reference to recorded documents as reflected in the Title Documents, utility easements, and the inclusion of the Property within any special taxing district.
2. **Fence Construction:** Upon the written request of Seller, the Buyer agrees to reconstruct a fence on the new right-of-way boundary in accordance with the plans and specifications agreed upon by the parties in writing prior to construction. The Seller shall have the obligation for maintenance of the fence. The Buyer does not make any warranties that the fence will be suitable

for any particular purpose, or that the fence complies with the lawful fence requirements of the Colorado Fence Law, C.R.S. § 35-46-101, *et seq.*, and

3. **Purchase Price:** At closing, Buyer shall pay **\$1,450.00** to the Seller, pursuant to this Contract, as full satisfaction and full consideration of this Contract (the "Purchase Price"). No earnest money or prepayment is required. The purchase price payment shall be directed to the account of the Monument Glen Filing III Homeowners Association, Inc.

4. **Additional Provisions:**

- None

5. **Settlement of Damages:** The payment by Buyer of the Purchase Price constitutes full settlement of all and any damages, including any damages to the remainder, occurring to Seller or Seller's property, and includes full compensation for Seller's interest, either present or future, the interest of lienors, and any and all interests, legal or equitable, which are or may be outstanding. Seller shall pay any encumbrance required to be paid at or before closing from the proceeds of this transaction or from any other source.

6. **Taxes:** Personal property taxes, if any, special taxing district assessments, if any, and general real estate taxes for the year of closing, based on taxes for the calendar year immediately preceding closing, shall be paid by the property owner.

7. **Closing Costs:** Buyer shall pay all closing service fees, transfer fees and other closing costs, if any.

8. **Evidence of Title:** Buyer, at Buyer's sole discretion and expense, may obtain a title commitment and purchase title insurance. Buyer reserves the right to object to the status of title to the Property at any time prior to closing, and if Buyer objects to title, Buyer may, at Buyer's sole option, treat this Contract as canceled.

9. **Releases and Subordination:** Seller shall take all required actions and execute all documents necessary to secure releases of any outstanding liens or encumbrances against, or affecting, the Property. This Contract is expressly subject to the execution of releases or subordinations pertaining to any interests relating to the Property by all outstanding lienors, lessees, or any others with legal or equitable interests in the Property. Failure of Seller to secure the release or subordination of all outstanding interests to the satisfaction of Buyer prior to closing may, Buyer may, at Buyer's sole option, treat this Contract as canceled.

10. **Closing:** Shall occur on or before May 29, 2020, at such date, time and location as may be mutually agreed upon in writing by the parties.

11. **Default:** If Buyer is in default, Seller may elect to treat this Contract as cancelled and Seller may recover such damages as may be proper. If Seller is in default, Buyer may elect to treat this Contract as cancelled, and Buyer may recover such damages as may be proper, or Buyer may

12. Time is of the essence in the performance of this Contract.

13. Entire Agreement: This Contract, together with the grant and conveyance documents and covenants referenced herein, constitute the entire agreement between the parties and supersedes and cancels any and all prior Contracts, agreements or proposals, whether written or oral, between the parties relating to the subject matter hereof.

14. Choice of Law, Venue and Attorney's Fees: This Contract shall be construed according to the laws of the State of Colorado and venue for any dispute hereunder shall be in the District Court of the County of Mesa, Colorado. In the event any legal action is instituted to interpret or enforce this Contract, the substantially prevailing party shall be entitled to payment from the other party of its reasonable attorney's fees and costs incurred therein.

15. Binding Effect: When this Contract is executed by Seller and thereafter approved by resolution of the City Council of the City of Fruita, which date of approval shall constitute, the Effective Date, this Contract shall be binding upon Seller and Seller's heirs, devisees, executors, administrators, legal representatives, successors and assigns.

16. Possession: Possession of the Property shall be delivered at closing, or such earlier time as Buyer may determine, in Buyer's sole discretion, provided that prior to taking position prior to closing, Buyer shall deposit the Purchase Price into an escrow account for the benefit of Seller.

WHEREFORE, the parties have executed this Contract as of the date and year first above written.

SELLER



By: Wade Livingston - President of the Monument Glen, Filing III Homeowners Association, Inc.

SELLER



By: Yvonne Hall - Secretary of the Monument Glen, Filing III Homeowners Association, Inc.

BUYER

By: _____

Buyer's Address: 325 E. Aspen Ave., Fruita, Colorado 81521

Buyer's Telephone No: (970) 858-8377 Buyer's Fax No: (970) 858-0210

ARTICLES OF INCORPORATION

OF

MONUMENT GLEN FILING 3 HOMEOWNERS ASSOCIATION, INC.

In compliance with the requirements of Article 7, Title 121, Section 201, C.R.S., as amended, *et seq.*, the undersigned, acting as incorporator of a corporation under the Colorado Nonprofit Corporation Act, hereby adopts the following Articles of Incorporation for such corporation:

**ARTICLE I
NAME**

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SECRETARY OF STATE
12-13-1999 10:58:17

The name of the corporation is Monument Glen Filing 3 Homeowners Association, Inc., hereinafter called the "Association."

**ARTICLE II
PRINCIPAL PLACE OF BUSINESS**

The principal place of business of the Association is located at 2808 North Avenue, #400, Grand Junction, CO 81501.

**ARTICLE III
REGISTERED AGENT AND REGISTERED OFFICE**

J. Richard Livingston, is hereby appointed the initial registered agent of this Association with the registered office to be located at 2808 North Avenue, #400, Grand Junction, CO 81501.

**ARTICLE IV
PURPOSE AND POWERS OF THE ASSOCIATION**

1. This Association does not contemplate pecuniary gain or profit to the members thereof, and the specific purposes for which it is formed are to provide for maintenance, preservation and architectural control of the real property described as:

Monument Glen Subdivision Filing No. 3,
Mesa County, Colorado

and to promote the health, safety and welfare of the residents within the above-described property and any additions thereto as may hereafter be brought within the jurisdiction of this Association for this purpose to:

a. exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in that certain Declaration of Covenants, Conditions and Restrictions, hereinafter called the "Declaration," applicable to the property and recorded or to be recorded in the Office of the Clerk and Recorder, Mesa County, Colorado, and as the same may be amended from time to time as therein provided, said Declaration being incorporated herein as if set forth at length;

b. fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association;

c. acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;

d. borrow money, and with the assent of five-sevenths (5/7) of each class of members, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

e. dedicate, sell or transfer all or any part of any Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members;

f. participate in mergers and consolidations with other nonprofit corporations organized for the same purposes or annex additional residential property and Common Area;

g. have and to exercise any and all powers, rights and privileges which a corporation organized under the Nonprofit Corporation Law of the State of Colorado by law may now or hereafter have or exercise.

2. No part of the income or net earnings of the corporation shall be distributable to or inure to the benefit of its members, directors, officers or any individual; provided, however, that reasonable compensation may be paid for any services rendered to the corporation, and payments and distributions may be made in furtherance of the purposes set forth in Article III hereof. No substantial part of the activities of the corporation shall be carrying on of propaganda or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of the Articles, the corporation shall not carry on any other activities not permitted to be carried on by a corporation exempt from Federal income taxation under the provisions, applicable to this corporation, of Section 501(c) of the Internal Revenue Code of 1954, as amended, (or the corresponding provision of any future United States or Colorado law).

3. In the event of dissolution of the corporation, the property and assets thereof remaining, after providing for all obligations and liabilities of the corporation, shall then be disposed of exclusively for the purposes of the corporation in such manner, or to such organization or organizations exempt from taxation under Section 501(c) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States or Colorado law), as shall be determined by the Board of Directors.

ARTICLE V MEMBERSHIP

Every person or entity who is a record owner of a fee or undivided fee interest in any property which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association.

ARTICLE VI VOTING RIGHTS

Members shall be all Owners, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

ARTICLE VII BOARD OF DIRECTORS

The affairs of this Association shall be managed by a Board of not less than three Directors. The number of directors may be changed by amendment of the Bylaws of the Association.

ARTICLE VIII DISSOLUTION

The Association may be dissolved with the assent given in writing and signed by not less than five-sevenths (5/7) of the members. Upon dissolution of the Association, other than incident to merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to such similar purposes.

**ARTICLE IX
DURATION**

The corporation shall exist perpetually.

**ARTICLE X
AMENDMENTS**

Amendments of these Articles shall require the assent of 75 percent (75%) of the entire membership.


**ARTICLE XI
INCORPORATOR**

The name and address of the incorporator is:

J. Richard Livingston
2808 North Avenue, Suite 400
Grand Junction, CO 81501


**ARTICLE XII
CONSENT OF AGENT**

The undersigned hereby consents to be appointed as the initial registered agent of the above Association.



J. Richard Livingston, Registered Agent

IN WITNESS WHEREOF, for the purpose of forming this corporation under the laws of the State of Colorado, I, the undersigned incorporator of this Association, have executed these Articles of Incorporation this 8th day of December, 1999.



J. Richard Livingston, Incorporator

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

I, the undersigned, a notary public, hereby certify that on December 8, 1999 the above named registered agent and incorporator personally appeared before me and being by me first duly sworn declared that he is the person who signed the foregoing document as registered agent and incorporator, and that the statements therein contained are true.

WITNESS my hand and official seal.

Joan L Carrico
Notary Public



My Commission Expires
October 24, 2002

Request for Taxpayer Identification Number and Certification

Give Form to the
requester. Do not
send to the IRS.

Print or type
See Specific Instructions on page 2.

Name (as shown on your income tax return) Monument Glen Filing 3 Homeowners Association, Inc.	
Business name/disregarded entity name, if different from above	
Check appropriate box for federal tax classification: <input type="checkbox"/> Individual/sole proprietor <input checked="" type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ <input type="checkbox"/> Other (see instructions) ▶ _____	
Exemptions (see instructions): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____	
Address (number, street, and apt. or suite no.) PO Box 592	Requester's name and address (optional)
City, state, and ZIP code Fruita, CO 81521	
List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number	
[] - [] - [] [] [] []	
Employer identification number	
91 - 2019822	

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below), and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Sign Here	Signature of U.S. person ▶	Date ▶ 4/16/2020
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. The IRS has created a page on www.irs.gov/w9 for information about Form W-9, at www.irs.gov/w9. Information about any future developments affecting Form W-9 (such as legislation enacted after we release it) will be posted on that page.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, payments made to you in settlement of payment card and third party network transactions, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and

4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct.

Note. If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.