

**To:** City Council  
**From:** Joe Gillman, Community Development Manager  
**CC:** Elyse Ackerman-Casselberry, City Manager  
**Date:** March 19, 2024  
**Re:** Proposed Right-Of-Way Vacation and Easement Use Agreement – Look Industrial Park, LLC

**Summary:** The subject request is for approval to move forward with a City right-of-way vacation and associated easement use agreement for an approximately 0.2 acre portion of a 1.3 acre parcel. The subject property is generally addressed as 633 Silver Street and is located generally between West 6<sup>th</sup> and West 7<sup>th</sup> Streets and west of Silver Street and east of Confluence Drive (Figure 1). The request to consider this approval is submitted by Look Industrial Park, LLC, represented by Nichole J. Leonard, and Community Development staff.

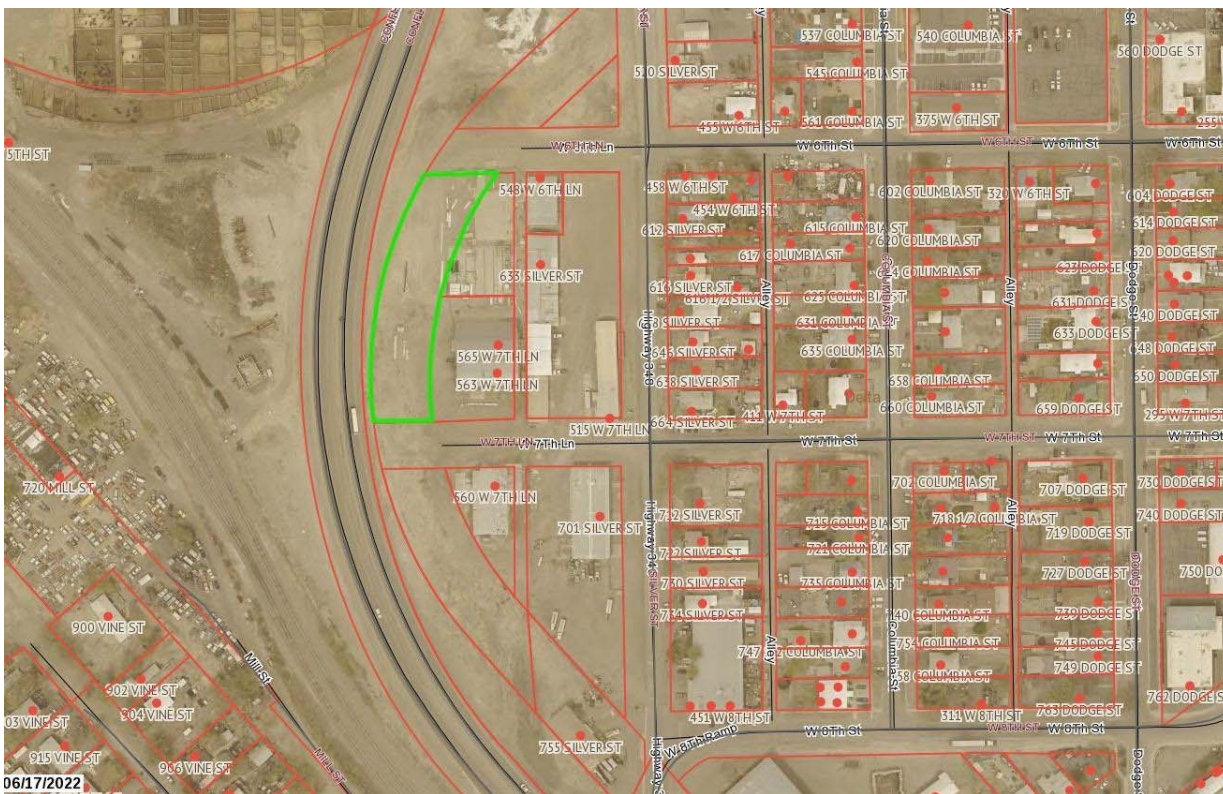


Figure 1

### Background

According to LOOK Industrial Park, LLC, the primary purpose of this request is to address a City right-of-way encroachment and would better align with the use of the LOOK property. Staff discussed a proposal with LOOK Industrial, taking into consideration the encroachment issue, the desire of LOOK to continue to utilize part of



the City property, and the needs of the City for future use of the remainder of the property for stormwater retention and conveyance. Figures 2, 3, and 4 detail the proposed configuration.

The proposal was initially reviewed as a proposed Boundary Line Adjustment. However, upon further review by Community Development staff and City Attorney's office, it has been determined that this should be processed as a right-of-way vacation pursuant to the roadway vacation procedures set forth in C.R.S. 43-2-303:

“(1) All right, title, or interest of a county, of an incorporated town or city, or of the state or of any of its political subdivisions in and to any roadway shall be divested upon vacation of such roadway by any of the following methods:

(a) The city council or other similar authority of a city or town by ordinance may vacate any roadway or part thereof located within the corporate limits of said city or town, subject to the provisions of the charter of such municipal corporation and the constitution and statutes of the state of Colorado.”

Pending direction from Council, the Surveyor will be directed to prepare a right-of-way vacation plat rather than a boundary adjustment plat. A Right-Of-Way Vacation Ordinance, Right-Of-Way Vacation Plat and Easement Use Agreement will be presented to City Council for official consideration and adoption.

LOOK Buildings has agreed to pay for appraisal, survey, preparation of right-of-way vacation plat, plat review, plat filing, and attorney fees associated with this proposal. In summary, this proposal will:

- City to agree to transfer parcel at no cost to LOOK Buildings (Figure 3),
- Resolve current encroachment issues for both the City and LOOK Buildings (Figure 3),
- Allow the City/LOOK Buildings to enter into an Easement Use Agreement for remainder of parcel, to allow temporary use, but not allow any permanent construction. This agreement will be severable by City, with notice (Figure 4),
- and allow the City to maintain its ability to utilize the remainder of the Right of Way for infrastructure purposes as needed.

This action would have no impact on Zoning, as both parcels are currently zoned Industrial.

### **City Council Option for Executive Session**

Council has the option to further discuss this during an Executive Session pursuant to C.R.S. § 24-6-402(4)(e) for the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators regarding LOOK right-of-way encroachment.

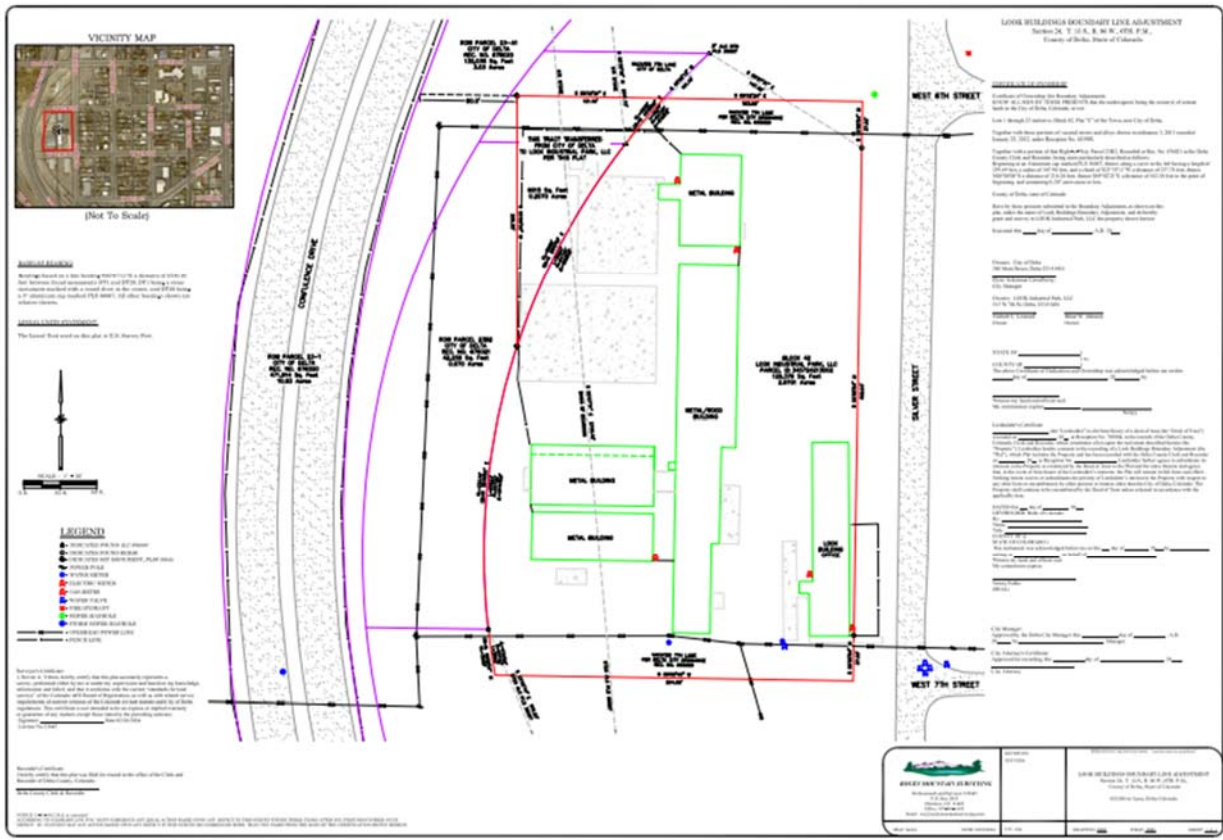


Figure 2

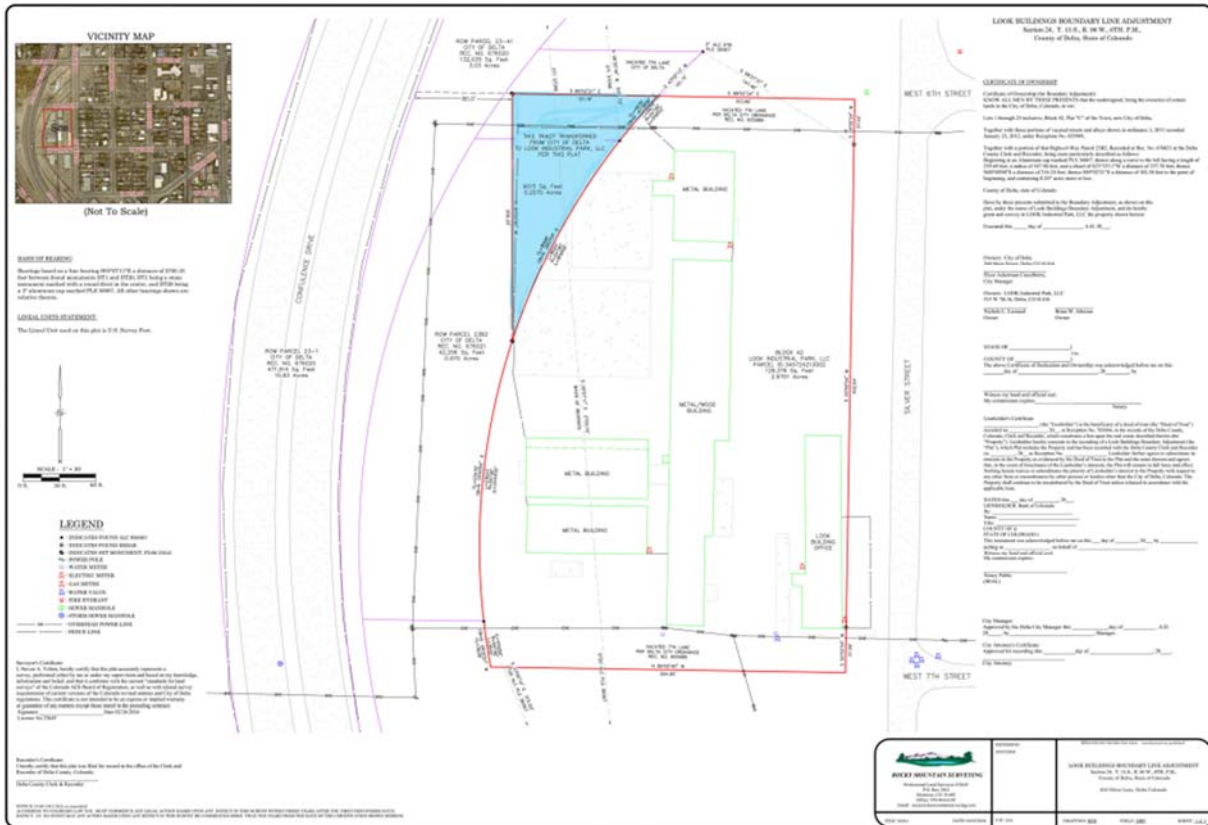


Figure 3



**PURCHASE AND SALE AGREEMENT**  
*(Delta Municipal Light & Power)*

THIS PURCHASE AND SALE AGREEMENT (this “**Agreement**”) is made as of the \_\_\_\_ day of \_\_\_\_\_, 2024, by and between the City of Delta, Colorado (“**Seller**”) and Mainspring Foundation, a Colorado non-profit corporation (“**Purchaser**”).

**RECITALS**

A. Seller is the owner of certain real property in Delta County, Colorado known as 1133 Main Street, Delta, and more particularly described on **Exhibit A**, attached hereto (the “**Property**”).

B. Pursuant to applicable law, prior to conveying the Property, Seller must obtain voter approval for a sale of the Property.

C. In November 2018, the voters approved a sale of the Property for \$100,000.00 or fair market value, whichever is greater, provided that such sale closes on or before December 31, 2024.

D. Subsequent to the voter approval, the Delta City Council released a request for proposals (“**RFP**”) from parties who were interested in purchasing the Property from Seller. Purchaser was selected through the RFP process.

E. In November 2021, the voters approved ballot question 2A, providing that the Delta City Council may, by ordinance, approve the sale of real estate and real property of Seller that is not used or needed for any public purposes.

F. The Property was previously used by Seller as a public utility service facility providing light and power to Delta residents.

G. The Property is no longer used to provide light and power to Delta residents; however, certain employees of Seller have continued to work at the Property, and a portion of the Property is currently used, and will continue to be used, as a carrier-neutral facility providing Internet backbone.

H. The Property has been appraised at \$425,000.00 based on that certain Appraisal Report of the Municipal Light and Power Building dated May 13, 2022 (the “**Appraisal**”).

I. The analysis and conclusions in the Appraisal assume (i) prior to Seller’s conveyance of the Property, the Property will be vacant and comparable to other nearby commercial properties in Delta, Colorado, that are either occupied or ready for immediate occupancy, and (ii) Purchaser will have full use of the entire Property, including the portion of the Property referenced in Recital G.

J. Seller intends to complete the Work (as defined below) required to bring the Property into the condition assumed in the Appraisal.

K. Because of the Property's prior use as a utilities provider, certain environmental conditions must be addressed, as more fully described below.

L. Notwithstanding the assumption described in clause (ii) of Recital I, Seller will require continued access to the carrier neutral location ("CNL") and utility room located within the Property, and pursuant to Section 11, Seller and Purchaser will enter into a lease agreement at Closing (as defined below) providing for Seller's continued access to and use of the CNL and utility room.

M. Seller and Purchaser have agreed the total rent due under the Lease Agreement (as defined below) will be \$186,000.00.

N. Seller desires to sell the Property to Purchaser, and Purchaser desires to purchase the Property from Seller, on the terms and subject to the conditions set forth in this Agreement.

## AGREEMENT

NOW THEREFORE, in consideration of the foregoing premises, the promises, covenants and agreements of the parties set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto, Seller and Purchaser do hereby promise and agree as follows:

1. Incorporation of Recitals. The foregoing Recitals are hereby incorporated into and made a part of this Agreement.

2. Property. Subject to the terms and conditions of this Agreement, Seller agrees to sell and Purchaser agrees to purchase the Property (final survey and legal description to govern), containing approximately 37,500 square feet, together with any and all buildings, attachments, improvements, easements, hereditaments and appurtenances thereto (except to the extent such items are to be removed in conjunction with the Work) (the "**Real Estate**"), any and all personal property (including, without limitation, all equipment) currently owned by Seller located at the Real Estate except as otherwise provided in Section 15 (the "**Personal Property**"), and, subject to the last paragraph of Section 6, any and all intangible property pertaining or related to the Real Estate or the Personal Property or the use thereof, including, without limitation, management contracts, service contracts, equipment leases, maintenance contracts, transferable utility contracts, transferable telephone exchange numbers, plans and specifications, engineering plans and studies, floor plans and landscape plans relating to the same or any part of the same, and all other agreements and documents pertaining to the Real Estate or the Personal Property (the "**Intangible Property**"); the Real Estate, the Personal Property and the Intangible Property are sometimes collectively referred to herein as "**Property**"). Set forth on Exhibit B attached hereto and made a part hereof are true and complete lists of all management contracts, service contracts, equipment leases, maintenance contracts, transferable utility contracts, leases, and other occupancy agreements and documents affecting all or any portion of the Real Estate as of the date hereof together with all amendments or modifications thereto (collectively, the "**Contracts**").

3. Effective Date; Closing; Closing Date. The "**Effective Date**" shall be the later of (i) the date first set forth above or (ii) the date on which the last party executes this Agreement. The "**Closing Date**" shall be the later of (I) the date which is 60 days after the expiration of the

Due Diligence Period (as defined below) or any extension thereof or (II) the date which is 60 days after Seller has Completed (as defined below) the Work; but in no event shall the Closing Date be after December 31, 2024 notwithstanding any conflicting term, condition, date, or timeframe set forth in this Agreement. The closing of the transaction contemplated herein (“**Closing**”) shall take place on the Closing Date at the offices of Land Title Guarantee Company or such other title company selected by Purchaser (the “**Title Company**”).

4. Purchase Price. The total purchase price for the Property shall be \$425,000.00 (the “**Purchase Price**”). The Purchase Price shall be payable as follows:

a. An initial earnest deposit of \$20,000.00 by check or wire transfer to be deposited into escrow with the Title Company within five business days of the Effective Date (together with any and all interest paid on such deposits, the “**Earnest Deposit**”); and

b. The balance of the Purchase Price in immediately available funds, subject to the adjustments provided in this Agreement, at Closing.

5. Deed/Bill of Sale/Assignment. Seller shall sell the Property for the Purchase Price on the terms set forth herein and, at Closing, Seller shall convey or cause to be conveyed to Purchaser:

a. Title to the Real Estate by recordable form of a special warranty deed customarily used in Colorado (the “**Deed**”), duly executed and acknowledged by Seller, subject only to (a) general real estate taxes for the year of Closing and subsequent years, and (b) the Permitted Exceptions (as defined herein); and

b. Title to the Personal Property, if applicable, and any Intangible Property Purchaser has elected to acquire, by bill of sale and assignment and assumption in the form attached hereto as Exhibit C (the “**Bill of Sale**”), duly executed and acknowledged by Seller, sufficient to convey all Personal Property and Intangible Property, free from all liens and encumbrances, and including warranties of title.

6. Due Diligence Period. Purchaser, or its designated agents, contractors or employees, shall have a period of 180 days after the Effective Date (the “**Due Diligence Period**”) within which to: (i) inspect, investigate, conduct, obtain and/or review, as applicable, at its sole cost and expense, (a) the Property (including, without limitation, soil and water samples, boring tests, and testing for the presence of hazardous materials and wastes), (b) a land survey (as more specifically described in Section 7), (c) an environmental assessment of the Property, (d) a title commitment from the Title Company and underlying title exception documents (as more specifically discussed in Section 7), (e) the Contracts, (f) the progress of Seller’s Work, and (g) any other matters with respect to the Property deemed necessary by Purchaser in its sole discretion; and (ii) obtain firm funding commitments or otherwise satisfy itself that it will obtain funding for an amount no less than Two Million Dollars (\$2,000,000.00), toward the rehabilitation and renovation of the Property.

In the event that Purchaser, in its sole discretion, is not satisfied for any reason or no reason at all with the results of its inspections, investigations, reviews, funding or funding commitments, and other matters described above, Purchaser shall have the right, on or before the



last day of the Due Diligence Period (as the same may be extended as provided herein), to terminate this Agreement by written notice to Seller of its election to terminate this Agreement. If Purchaser terminates this Agreement, the Earnest Deposit, except as otherwise specifically provided herein, shall be immediately returned to Purchaser, and neither party shall have any further rights or obligations hereunder, except as specifically set forth in this Agreement. If Purchaser does not terminate this Agreement on or before the last day of the Due Diligence Period or any extension thereof, the Earnest Deposit shall become non-refundable and non-returnable to Purchaser (except as provided in Section 211 or Section 233 of this Agreement).

During the Due Diligence Period, Purchaser may provide written notice to Seller of Purchaser's intent to have any Contract listed on **Exhibit B** assigned to Purchaser from Seller at Closing. In the event Purchaser does not provide written notice to Seller during the Due Diligence Period, Seller shall terminate all Contracts on or before Closing.

7. **Title Objections.** Within five business days of the Effective Date, Purchaser shall request the following (collectively, the "**Title Documents**"): (i) a commitment for title insurance legally describing the Property, listing Purchaser as the named insured and showing, as the policy amount, the Purchase Price (the "**Title Commitment**"), which shall be dated after the date of this Agreement and issued by the Title Company as a commitment to insure Purchaser, and (ii) legible copies of all of the documents reported as exceptions in the Title Commitment. Purchaser may, in its sole discretion, order an ALTA Survey certified to Purchaser and the Title Company, in the event any existing survey is not acceptable to Purchaser or the Title Company (the "**Survey**").

a. If the Title Documents or Survey of the Real Property ordered by Purchaser disclose conditions which render title to the Property unmarketable or that are unacceptable to Purchaser, in Purchaser's sole discretion ("**Defects**"), Purchaser shall notify Seller of such Defects in writing at least 15 days prior to the expiration of the Due Diligence Period (a "**Title Objection Notice**").

b. If Purchaser delivers to Seller a Title Objection Notice pursuant to Section 7.a, then within 10 days of receipt of such Title Objection Notice, but not later than five days prior to the last day of the Due Diligence Period, Seller shall notify Purchaser as to which objections Seller elects to cure prior to Closing (the "**Election Notice**"). If Seller does not elect to cure all of Purchaser's objections prior to Closing, then, at the option of Purchaser, Purchaser may (i) terminate this Agreement by providing written notice of such termination to Seller prior to the end of the Due Diligence Period, whereupon the Earnest Deposit shall be returned to Purchaser, and the parties shall have no further rights, duties, liabilities or obligations hereunder, except as otherwise expressly set forth in this Agreement, or (ii) proceed to Closing and take title subject to such objectionable matter, which shall be deemed a Permitted Exception. If Seller does cure or satisfy the Defects, then this Agreement shall continue in effect.

c. Any exception to or Defect in the interest to be conveyed by Seller which Purchaser shall elect to waive, or which is otherwise acceptable to, or not objected to by, Purchaser, shall be deemed a "**Permitted Exception**" to the interest purchased by Purchaser at Closing. Under no circumstance will any mechanic's, materialman's, or similar lien arising from the Work or other work performed on the Property prior to Closing

be a Permitted Exception unless such lien arises from work or inspections performed by or at the request of Purchaser. Seller covenants and agrees not to alter or encumber in any manner Seller's interest in the Property after the Effective Date except as otherwise provided in this Agreement, including without limitation as provided in Sections 12 and 19 hereof.

d. Purchaser's failure to notify Seller of any objections to the Title Documents (other than items that must be cured by the payment of money by Seller at Closing, subject to Section 7.b above) or Survey within the period set forth in Section 7.a shall be considered to be Purchaser's approval of such items. If Seller fails to respond to Purchaser's Title Objection Notice within the period set forth in Section 7.b, Purchaser may elect to terminate this Agreement or proceed to Closing in accordance with subsection (b) above.

e. If, as of the Closing Date, the Title Commitment discloses additional or new Defects which have arisen or been placed of record subsequent to Purchaser's review of the Title Documents, and Purchaser objects to such additional or new Defects, then Seller shall cure such Defect as a condition precedent to Purchaser's obligation to close this transaction. Closing may be extended for a reasonable period to effectuate the terms of this section, but in no event shall Closing extend beyond December 31, 2024. Purchaser expressly acknowledges and agrees that nothing described in Section 19 of this Agreement shall be deemed a Defect as defined in this Section 7, and Purchaser expressly waives any objection with respect thereto.

8. Furnishing Documents. Seller shall, within 30 days following the Effective Date, furnish to Purchaser, for Purchaser's review, copies of any and all of the following items with respect to the Property in Seller's possession or control: (i) title insurance policies and underlying title documents, (ii) surveys, plats and other drawings, (iii) plans and specifications, (iv) engineering plans, reports, and studies, (v) floor plans and landscaping plans, (vi) soil reports, (vii) maintenance, repair and service contracts and any other material agreements relating to the Property or the conduct of business thereon, (viii) asbestos surveys, inspections, testing, mitigation or other reports regarding the presence of asbestos or asbestos containing material on the Property; (ix) correspondence, documents, instruments, reports, studies, or other information related to environmental conditions at or pertaining to the Property, including, without limitation, all correspondence and/or documents with or from the U.S. Environmental Protection Agency and/or its equivalent in Colorado, (x) records or information relating to any claims, actions, suits or other proceedings relating to all or any portion of the Property, (xi) the most recent tax bill(s) with respect to the Property, if applicable, (xii) any information on adjoining real estate to the Real Estate, (xiii) a listing of the names and contact information of all contractors and subcontractors who have performed work or services on the existing improvements within the past five years (which will be used by Purchaser for future reference; Purchaser does not intend to contact such contractors or subcontractors during the Due Diligence Period), (xiv) certificate of occupancy for the existing improvements and zoning certificate of compliance relating to the Property from the appropriate governmental authority, (xv) any and all current and effective warranties related to the Property that could be assigned by Seller to Purchaser at Closing (for example only, HVAC, roof, and general contractor warranties) (the "**Warranties**"), (xvi) any accounts receivable, and (xvii) any and all environmental assessments with respect to the Property (collectively, the "**Property Documents**"). If Seller has not timely delivered the Property Documents to Purchaser pursuant to

this Section 8, then Purchaser may extend the Due Diligence Period on a day-for-day basis until any outstanding Property Documents are delivered to Purchaser by providing written notice to Seller.

Seller shall also deliver to Purchaser (a) copies of any and all documents of the kind described in the foregoing paragraph received by Seller or its agents, employees, representatives or contractors on and after the Effective Date (“**After Acquired Documents**”), and (b) any other types of documents or correspondence or any other information reasonably requested by Purchaser on or before Closing with respect to the Property (“**Additional Documents and Information**”). After Acquired Documents shall be delivered to Purchaser within five days after receipt and any and all Additional Documents and Information requested by Purchaser shall be delivered to Purchaser within five days after Purchaser’s written request for such documents.

9. Access and Inspections; Cooperation. Seller hereby grants to Purchaser, its agents, employees, representatives and contractors, effective as of the Effective Date, a continuing right of reasonable access to the Property for the purpose of performing its inspections, reviews and other investigations during the pendency of this Agreement. Purchaser, its agents, employees, representatives and contractors shall have the right, but not the obligation, to review zoning laws and applicable building codes.

Purchaser shall indemnify, defend and hold Seller harmless against and with respect to any and all loss, claims, demands, liens, injury, deficiency or any other damage resulting from Purchaser’s entry upon, and inspections of, the Property. The indemnification obligations of Purchaser set forth in this Section shall survive Closing or termination of this Agreement.

10. Work. The plans and specifications for the Work (as defined below), attached hereto as Exhibit G, (the “**Plans**”) have been approved by the parties. No later than October 31, 2024 (the “**Work Completion Deadline**”), Seller shall complete the work described on Exhibit D (the “**Work**”). Seller shall be deemed to have completed the Work when (a) the Work has been substantially completed in accordance with the approved Plans for the Work and all federal, state and local approvals, licenses and permits received for the Work, all permits for the Work are closed out, all required inspections of the Work are completed and signed, all required certificates of occupancy have been issued for the Property (including, but not limited to, the CNL (as defined below) and utility room), and all construction equipment and materials have been removed from the Property, (b) Seller has provided written notice to Purchaser stating the Work is substantially complete in accordance with the preceding clause (a), and (c) Purchaser has inspected and provided written approval of the Work. Purchaser may, in its reasonable discretion, periodically inspect the progress of the Work at any time prior to its Completion. If, prior to Closing, any mechanic’s, materialman’s, or similar lien arising from the Work or any other work completed on or at the Property is filed against the Property, then Seller must at its sole cost and expense take any and all action required to remove such lien(s) from title prior to Closing, unless such lien arises from work or inspections performed by or at the request of Purchaser. If, after Closing, the Property is made subject to any mechanic’s, materialman’s, or similar lien arising from the Work or any other work completed on or at the Property prior to Closing, Seller shall at its sole cost and expense cause any such lien(s) to be immediately removed and released, unless such lien arises from work or inspections performed by or at the request of Purchaser. Seller’s obligations pursuant to the preceding sentence shall survive Closing. Nothing herein applies to or obligates Seller to remove

or release any mechanic's lien, materialman's lien, or similar lien arising from inspections or work performed by Purchaser or at Purchaser's request, which liens shall be subject to Purchaser's indemnification obligations of Section 9, above, and Purchaser agrees to and shall take title subject to any such lien.

11. Lease Agreement. Purchaser acknowledges that after Closing, Seller will require continued access to and use of the CNL and utility room located within the Property. Seller and Purchaser hereby agree on the form of lease agreement providing for Seller's continued access to and use of the CNL and utility room as included in Exhibit E attached hereto and made a part hereof (the "**Lease Agreement**"), which Lease Agreement will be executed at Closing. All rent due from Seller pursuant to the Lease Agreement shall be paid to Purchaser in one lump sum at Closing.

12. Affirmative Covenants. Seller shall cause the Property to be maintained free from waste and neglect and shall not allow the dumping on the Property of any wastes or substances of any kind whatsoever. Without the prior written consent of Purchaser, Seller shall not (i) enter into any transaction in respect to or affecting the Property, including, without limitation, leases or service, maintenance or repair contracts in respect to or affecting the Property, that will survive Closing, (ii) further encumber the Property in any form or manner whatsoever, (iii) create or allow to be created any additional exceptions to title to the Real Estate, (iv) enter into any agreement which would prohibit negotiations between Seller and Purchaser of additional extensions of the Due Diligence Period or any extension of the Closing Date, or (v) list the Property with any broker or otherwise negotiate or solicit or make or accept any offers to sell the Property, engage in any discussions or negotiations with any third party with respect to the sale or other disposition of the Property, or enter into any contracts or agreements (whether binding or not) regarding any disposition of the Property. A breach of any of the provisions in this Section 12 shall constitute a default as addressed in Section 211. Purchaser expressly acknowledges and agrees that nothing described in Section 19 of this Agreement shall be deemed a breach of, or require the prior written consent of Purchaser under, this Section 12.

13. Seller's Representations and Warranties. Seller represents and warrants that, as of the Effective Date and except and subject to those matters set forth in Section 19 of this Agreement:

- a. Seller has full and lawful right and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereunder;
- b. Seller owns good fee simple marketable title to the Property;
- c. There is currently no litigation, bankruptcy or other proceeding pending in any manner affecting the Property;
- d. There is no pending or threatened condemnation of the Property or any part thereof;
- e. There are no violations of any federal, state or local law, code, ordinance, rule, regulation or requirement affecting the Property;

f. To the best of Seller's knowledge and subject to the disclosure herein below, except for the Work, there are no known defects to the existing improvements that are inconsistent with the historical nature and use of the Property, including without limitation its use as a powerplant, other than ordinary maintenance and repairs or as disclosed to Purchaser in the items furnished to Purchaser pursuant to Section 8. Seller discloses and Purchaser expressly acknowledges and agrees that the Property includes historical improvements that have been added onto several times and that may have components that are not to current City of Delta code and may require replacement.

g. The Property has been used solely as a power and light plant and carrier neutral location with an auxiliary utility shed during the entire time Seller has owned it;

h. To the best of Seller's knowledge, the Property was not at any time used for the dumping, disposal, storage or handling of Hazardous Wastes as defined in 42 U.S.C. § 6901-§ 6987, Hazardous Substances as defined in 42 U.S.C. 9601 or petroleum and/or petroleum by-products, except (1) for small amounts of common office and industrial supplies such as gasoline or diesel fuel, motor oil, and cleaning products that were used in compliance with all applicable environmental laws, and (2) as disclosed in this Agreement and that will be remediated in accordance with Section 10;

i. To the best of Seller's knowledge, any underground storage tanks on the Property have been properly removed;

j. Seller has caused no unrecorded liens, encumbrances or adverse claims to exist with respect to the Property or any portion thereof except as disclosed to Purchaser in accordance with Section 8;

k. Seller has entered into no management contracts, repair contracts, service contracts, leases, options or any other material agreements relating to the Property or the conduct of business thereon, except as provided to Purchaser as required under Section 8;

l. Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code and is therefore exempt from the withholding requirements of said section;

m. To the best of Seller's knowledge, there are no unrecorded restrictions, contracts or other documents affecting the Property, except as provided to Purchaser as required under Section 8 above;

n. Except as listed on Exhibit B and except the Lease Agreement set forth in Exhibit E, there are no leases or occupancy agreements affecting all or any portion of the Property which will continue after Closing or which will have any force or effect after Closing; and

o. Seller has received any and all licenses, certificates, and permits which are required to be possessed to own, operate, use and/or maintain the Property. Seller has not received any notice, nor is Seller aware, of the violation of any applicable zoning or other ordinances, resolutions, statutes or regulations of any government or governmental agency

with respect to the operation, use, maintenance, condition, or operation of the Property or any part thereof.

As provided in Section 18, Purchaser's obligations under this Agreement are expressly conditioned on the foregoing representations and warranties of Seller being true on the Effective Date and as of the Closing Date, up to the time of Closing. Any legal action by Purchaser based on the foregoing representations and warranties shall be filed with the court no later than three years after Closing Date.

14. Pre-Existing Conditions. Seller shall assume all risks associated with any Hazardous Materials (defined below) existing on or impacting the Property as of the Effective Date ("**Pre-Existing Conditions**"). Seller's responsibility with respect to Pre-Existing Conditions shall include, but not be limited to, the cost of remediation, engineering fees, legal fees, and costs associated with responding to any order or request from a governmental agency regarding Pre-Existing Conditions; provided, however, that Seller shall not be responsible for any remediation of Pre-Existing Conditions required solely as a result of a change in use of the Property. The responsibility obligations of Seller contained in this Section shall survive the Closing or sooner termination of this Agreement for a period of five years following the Effective Date, termination of this Agreement or Closing, whichever is later, subject to Section 25(i) below. "**Hazardous Materials**" as used herein shall mean and include any pollutants, contaminants or hazardous or toxic wastes or substances as defined, listed or regulated by any Environmental Laws (defined in the following sentence), including without limitation, any petroleum or petroleum-derived products, asbestos in any form, lead or lead-based paint, urea formaldehyde foam insulation and polychlorinated biphenyls. "**Environmental Laws**" shall mean and include federal, state, and local laws, regulations, and ordinances, relating to pollution or the protection of human health or the environment, including air, surface water, groundwater, land surface, or subsurface strata. Environmental Laws also include those laws, regulations and ordinances relating to the emission, discharge, release or threatened release, manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Materials.

15. Removal of Personal Property. Seller shall remove the equipment and other personal property identified on Exhibit D from the Real Estate prior to Closing.

16. Closing Adjustments and Costs.

a. To the extent any real estate taxes pertaining to the Real Estate are due as of the Closing Date, Purchaser shall be charged for the real estate taxes beginning on the Closing Date for the year in which Closing occurs based on the latest available tax bill and any accrued but unpaid general or special assessments payable therewith. In the event the latest available tax bill does not include the tax bill for taxes due and payable during the year of Closing, the parties shall prorate the taxes at Closing based on the latest available tax bill and such proration shall be deemed final, as applicable.

b. Seller agrees to pay the costs of the Title Policy (defined in Section 18), including any search fees, commitment fees, and the costs of any endorsements to the Title Policy obtained by Seller to cure any Defects pursuant to Section 7. Seller shall pay the cost of releasing any existing liens or encumbrances, real estate transfer taxes, deed stamps,

deed preparation, and recording costs. Purchaser agrees to pay the costs of any endorsements to the Title Policy requested by Purchaser and the Survey, and all costs associated with Purchaser's due diligence performed under this Agreement. Seller and Purchaser shall each pay one-half of any escrow fees or Title Company fees associated with Closing. Each party shall pay its own attorneys' fees.

17. Events of Closing.

a. On or before the Closing Date, Seller shall deliver the following executed documents and provide the below items, where applicable, to the Title Company, in escrow for the benefit of Purchaser, at Seller's sole cost and expense ("**Seller's Closing Deliveries**"):

(i) Deed;

(ii) Bill of Sale;

(iii) Seller's certification that the warranties and representations in Section 13 of this Agreement are true and correct as of the Closing Date (up to the time of Closing) in the form attached as **Exhibit F** hereto;

(iv) Assignments of all Warranties to Purchaser, counter-signed by the applicable third party provider, along with all documentation needed for Purchaser to invoke the Warranties after Closing (including receipts showing Seller's payment, if any was due, for transfer of the Warranties);

(v) A non-foreign affidavit containing such information as shall be required by IRC Section 1445(b)(2) and the regulations issued thereunder. The non-foreign affidavit shall be a sworn statement of Seller stating that Seller is not a foreign person, stating that Seller is (as the case may be) a U.S. tax resident individual, or a U.S. corporation, or a U.S. partnership, or a U.S. trust, or a U.S. estate, setting forth Seller's taxpayer identification number, stating that Seller intends to file a U.S. income tax return with respect to the sale of the Property, and granting Purchaser permission to furnish a copy of such affidavit to the Internal Revenue Service;

(vi) A Title Affidavit in customary form, stating that, without limitation, Seller has caused no unrecorded liens, judgments, claims or bankruptcies to affect the Property, along with any other documentation required by the Title Company to delete any and all exceptions to the Title Policy related to any such unrecorded liens, judgments, claims or bankruptcies;

(vii) A settlement statement prepared by the Title Company and approved by Purchaser and Seller (the "**Settlement Statement**");

(viii) Such entity documentation, resolutions, authorizations, consents, certificates of incumbency, certificates of good standing, and other documentation as the Title Company may reasonably require from Seller in order to cause Closing to occur or as the Title Company may require in order to issue the Title Policy;

- (ix) Lease Agreement, signed by Seller;
- (x) The full amount of rent due under the Lease Agreement, which equals \$186,000.00, by cash, cashier's check or wire transfer;
- (xi) Such other documents that may be reasonably required by Purchaser or the Title Company; and
- (xii) Any keys in Seller's possession to all entrance doors, equipment, utility rooms, and vault boxes located in or on the Property.

b. On or before the Closing Date, Purchaser shall deliver the following executed documents and provide the below items, where applicable, to the Title Company, in escrow for the benefit of Seller, at Purchaser's sole cost and expense ("**Purchaser's Closing Deliveries**"):

- (i) The balance of the Purchase Price, subject to the adjustments and offsets herein provided, by cash, cashier's check or wire transfer;
- (ii) Such corporate or other entity formation documents, resolutions, authorizations, certificates of incumbency, certificates of good standing, and other documentation with respect to Purchaser as the Title Company may reasonably require in order to cause Closing to occur or as the Title Company may require in order to issue the Title Policy;
- (iii) A Title Affidavit in customary form, stating that, without limitation, Purchaser has caused no unrecorded liens, judgments, claims or bankruptcies to affect the Property, along with any other documentation required by the Title Company to delete any and all exceptions to the Title Policy related to any such unrecorded liens, judgments, claims or bankruptcies;
- (iv) Lease Agreement, signed by Purchaser;
- (v) Such other documents that may be reasonably required by Seller or the Title Company; and
- (vi) Settlement Statement.

18. Conditions Precedent to Closing.

a. In addition to Purchaser's approval of its due diligence reviews as provided in Section 6, Seller and Purchaser agree that Purchaser's obligation to proceed with Closing is subject to the satisfaction or waiver by Purchaser of the following conditions at Closing:

- (i) Seller shall have completed the Work by the Work Completion Deadline in a good and workmanlike manner in accordance with Section 10;



(ii) Seller shall have delivered to Purchaser a Phase I Environmental Site Assessment, including an environmental lien and activity and use limitation search, dated within 180 days of the Closing Date;

(iii) Seller shall have obtained and delivered to Purchaser a reliance letter from each environmental professional that prepared a Phase I and/or Phase II Environmental Site assessment for the Property, authorizing Purchaser to rely on all such reports;

(iv) Seller shall have delivered the Seller's Closing Deliveries to the Title Company;

(v) The Title Company shall be irrevocably committed to issue, upon payment of its normal premium, an Owner's Policy of Title Insurance with extended coverage deleting all standard exceptions, insuring Purchaser in the amount of the Purchase Price that fee simple title to the Real Property is vested in Purchaser, subject only to the Permitted Exceptions (collectively, the "**Title Policy**");

(vi) Each representation and warranty made by Seller in Section 13 of this Agreement shall be true and correct in all material respects as of the Closing Date (up to, but excluding, the time of Closing), except and subject to those matters set forth in Section 19 of this Agreement; and

(vii) The Property shall not be encumbered by any mechanic's, materialman's, or similar lien, excepting herefrom any such lien arising from inspections or work performed by Purchaser or at Purchaser's request, which liens shall be subject to Purchaser's indemnification obligations of Section 9, above, and Purchaser agrees to and shall take title subject to any such lien.

b. In addition to all other conditions to Seller's obligations in this Agreement, Seller and Purchaser agree that Seller's obligation to proceed with Closing is subject Closing occurring on or before December 31, 2024 and subject to the satisfaction of, or waiver by, Seller that Purchaser shall have delivered Purchaser's Closing Deliveries to the Title Company at or prior to Closing.

c. The conditions precedent to Closing set forth in Section 18.a are for the exclusive benefit of Purchaser and the conditions set forth in Section 18.b are for the exclusive benefit of Seller. If any of the conditions set forth in this Section 18 have not been satisfied or waived within the period provided, this Agreement may be terminated by the party benefiting from such condition in accordance with Section 211 hereof.

19. Urban Renewal Plan Disclosure. Seller hereby discloses, and Purchaser hereby acknowledges and agrees, that Seller may pursue an urban renewal plan for the Property, as provided in C.R.S. § 31-25-101, *et seq.*, during the pendency of this Agreement and the transaction contemplated herein. Notwithstanding any other term, condition, or provision of this Agreement, no activity or action by Seller in furtherance of such urban renewal plan shall be deemed contrary to or a violation of this Agreement; provided, however, that no such action shall result in a new exception to record title to the Property without Purchaser's prior written consent. Nothing herein

obligates, nor shall be construed to obligate, Seller to pursue such urban renewal plan for the Property, or any action therefor or in furtherance thereof, which actions may to be taken, or not taken, in Seller's sole and absolute discretion.

20. Real Estate Brokers and Commission. Purchaser and Seller hereby state that neither party has dealt with a real estate broker or agent in connection with the purchase of the Property. Purchaser shall indemnify and hold Seller harmless against any claims for real estate commissions made by anyone claiming representation of Purchaser in this transaction. Such obligations to indemnify and hold harmless shall include, without limitation, all costs and attorneys' fees relating to litigation and other proceedings.

21. Default. If Purchaser defaults under this Agreement and does not cure any such default within 10 days after notice from Seller to Purchaser that such default exists, Seller's sole remedy shall be to cancel this Agreement and obtain the Earnest Deposit from the Title Company as liquidated damages and, in doing so, Seller hereby waives all other remedies for breach of this Agreement, including, without limitation, specific performance. If Seller defaults under this Agreement and does not cure any such default within 10 days after notice from Purchaser to Seller that such default exists, then Purchaser may (i) cancel this Agreement, obtain an immediate return from the Title Company of the Earnest Deposit upon Purchaser's written notice of cancellation to the Title Company, and recover actual damages for Seller's breach, including, but not limited to, attorneys' fees incurred during the acquisition of the Property and prosecution of this Section 211, and due diligence expenses, and Permits and Approval preparation and application fees; or (ii) enforce the specific performance of this Agreement and recover actual damages for Seller's breach, including but not limited to attorneys' fees incurred during the prosecution of the specific performance remedy.

22. Notices. All notices must be in writing and may be given by (i) certified U.S. Mail, return receipt requested, postage pre-paid to the following addresses; (ii) courier delivery to the following addresses; (iii) overnight delivery using a reputable carrier to the following addresses; or (iv) electronic transmission directed to the following e-mail addresses. Notices shall be deemed to have been made upon deposit into the U.S. Mail or to reputable overnight carrier, if mailed, or upon receipt if delivered by courier delivery, or electronic transmission.

All notices to Seller shall be directed to:

City of Delta  
360 N. Main Street  
Delta, Colorado 81416  
E-mail: [elyse@cityofdeltanet](mailto:elyse@cityofdeltanet)  
Attn: Elyse Ackerman-Casselberry, City Manager

*With a copy to:*

Garfield & Hecht, P.C.  
910 Grand Avenue, Suite 201  
Glenwood Springs, Colorado 81601  
E-mail: dmconnaughy@garfieldhecht.com and cgazda@garfieldhecht.com  
Attn: David McConaughy, Esq. and Christine Gazda, Esq.

All notices to Purchaser shall be directed to:

MAINSRING Foundation  
3070 Blake Street, Suite 200  
Denver, Colorado 80205  
E-mail: andy@mainspringco.com and emilyt@mainspringco.com  
Attn: Andy Schlauch, CEO, and Emily Tucker

*With a copy to:*

Polsinelli PC  
1401 Lawrence Street, Suite 2300  
Denver, Colorado 80202  
E-mail: ahansen@polsinelli.com and emkhirsch@polsinelli.com  
Attn: Amy K. Hansen, Esq. and Eloise Hirsch, Esq.

or to such other persons or addresses as either party shall hereafter designate by notice given from time to time in accordance with this Section.

23. Condemnation; Risk of Loss. If, after this Agreement is executed and prior to the Closing Date:

a. Any or all of the Property is taken by exercise of the power of eminent domain or any proceedings are instituted, or threatened to be instituted, to effect such a taking or any offer of settlement is made in lieu of a taking, Seller shall promptly notify Purchaser thereof (with a copy of all relevant correspondence and other materials relating thereto) and Purchaser shall have the option (exercisable by notice to Seller within 10 days after the receipt of such notice) to either (i) cancel this Agreement or (ii) reduce the Purchase Price by the fair market value of the portion(s) of the Property adversely affected thereby and continue with the transaction set forth in this Agreement in accordance with the terms, conditions and provisions of this Agreement. If this Agreement is canceled, the Earnest Deposit shall be returned to Purchaser.

b. Any or all of the improvements located at the Real Estate are destroyed or damaged by fire, windstorm or otherwise, Purchaser shall have the option of canceling or enforcing this Agreement. If enforced, Purchaser shall be entitled to insurance proceeds, if any, and Seller shall assign insurance policies and right to such proceeds at Closing. If this Agreement is enforced and Seller has not insured improvements, the Purchase Price shall be reduced by the amount necessary to restore the improvements to the condition

immediately prior to such damage or destruction. If this Agreement is canceled, the Earnest Deposit shall be returned to Purchaser.

**24. Tax-Deferred Exchange.** Purchaser and Seller agree that, at Purchaser's sole election, this transaction shall be structured as an exchange of like-kind properties under Section 1031 of the Internal Revenue Code of 1986, as amended, and the regulations and proposed regulations thereunder ("**Section 1031 Exchange**"). The parties agree that if Purchaser wishes to make such election, it must notify Seller no less than 10 days prior to the Closing Date. If Purchaser so elects, (a) Seller shall reasonably cooperate, provided any such exchange is consummated pursuant to an agreement that is mutually acceptable to Purchaser and Seller and which shall be executed and delivered on or before the Closing Date, (b) Purchaser shall in all events be responsible for all costs and expenses related to the Section 1031 Exchange, and (c) Purchaser shall full indemnify, defend and hold Seller harmless from and against any and all liability, claims, damages, expenses (including reasonable attorneys' and paralegal fees and reasonable attorneys' and paralegal fees on appeal), proceedings and causes of action of any kind or nature whatsoever arising out of, connected with or in any manner related to such Section 1031 Exchange that would not have been incurred by Seller if the transaction were a purchase for cash. The provisions of clause (c) in the immediately preceding sentence shall survive Closing and the transfer of title to subject Property to Purchaser. Notwithstanding anything to the contrary contained in this Section, any such Section 1031 Exchange shall be consummated through the use of a facilitator or intermediary so that Purchaser shall in no event be requested or required to acquire title to any property other than the Property.

**25. Miscellaneous.**

a. **Assignment.** Purchaser may at any time, with Seller's prior written consent, which shall not be unreasonably withheld, conditioned or delayed, assign its rights under this Agreement to an entity (i) controlling, controlled by, or under common control with Purchaser or its Manager or Members, or (ii) acquiring all or substantially all of Purchaser's assets. As used in the foregoing sentence, "control" exists when a person or entity possesses the power, directly or indirectly, to direct, or cause the direction of, the management of an entity or trust, whether through ownership of voting securities, as a manager, member, officer, director, trustee, by contract, or otherwise.

b. **Construction; Severability; Entire Agreement; Binding Effect; Governing Law; Venue.** The section headings herein are solely for convenience and shall in no way be deemed to affect the meaning or construction of any part hereof. If any provision or provisions of this Agreement shall be unlawful, then such provision or provisions shall be null and void, but the remainder of the Agreement shall remain in full force and effect and binding on Seller and Purchaser. This Agreement constitutes the entire understanding and agreement between the parties and may not be amended, supplemented, or modified except by a writing executed by both of the parties. This Agreement shall supersede, replace and terminate all prior agreements between the parties executed prior to the Effective Date, including but not limited to those related to access and/or confidentiality. This Agreement shall be binding upon, and shall benefit, the parties and their heirs, personal representatives, successors and assigns. No provision of this Agreement shall be construed in favor of, or against, any particular party by reason of any presumption with respect to the drafting of

this Agreement; both parties, having the opportunity to select and be represented by counsel of its choice, having fully participated in the negotiation of this instrument. This Agreement and all related documents shall be governed by the laws of the State of Colorado. Venue for any disputes relating to or arising from this Agreement shall lie exclusively in the Delta County District Court, Colorado.

c. Time of Essence. Time shall be of the essence in the performance of this Agreement.

d. Attorneys' Fees and Costs. In the event either party to this Agreement commences a legal proceeding to enforce any of the terms of this Agreement or any rights under this Agreement, the substantially prevailing party in such action shall be entitled to recover reasonable attorneys' fees and costs from the other party.

e. Confidentiality. Subject to Seller's disclosure requirements pursuant to the Colorado Open Records Act and Open Meetings Laws, Seller and Purchaser shall treat this Agreement as confidential and shall not, without the prior written consent of the other party, disclose non-public or proprietary information regarding Seller or Purchaser (collectively, "**Confidential Information**"). The only exceptions to this obligation are that each party shall be permitted to disclose (i) Confidential Information that is in the public domain, (ii) Confidential Information that must be disclosed in order to comply with any laws or legal process (a "**Required Disclosure**"), and (iii) Confidential Information to its attorneys and other advisors and consultants, investors, lenders, and potential financing sources that have a need to know the information for purposes of the transaction contemplated by this Agreement and who have been advised of the duty to protect the Confidential Information, or as required by law. In the event of a Required Disclosure, Seller and Purchaser shall provide each other with prompt notice of the Required Disclosure so that the applicable party may seek a protective order or other appropriate remedy in such party's reasonable discretion and/or waiver in compliance with this Section 25.e. In the absence of any protective order, Seller or Purchaser, as applicable, shall disclose only the portion of the information that is required to be disclosed to comply with the law or court order, as applicable, and such party shall simultaneously deliver to the other party a copy of the information disclosed. Upon the written request of a party, the other party shall promptly return to the requesting party any of its Confidential Information. Seller and Purchaser further agree not to disclose the contents of any documents, reports or tests results received or furnished to either party pursuant to Section 6, 8 or 9 of this Agreement to any other person or entity, other than their respective agents, representatives or accountants, or, as to Purchaser, such persons as Purchaser deems necessary, in Purchaser's sole judgment, for Purchaser's business purposes or to obtain financing, including but not limited to investors and potential investors. Purchaser agrees that any disclosure of information by Seller consistent with the Colorado Open Records Act shall result in no liability to Seller, so long as Seller gives Purchaser prompt written notice of any such request. Seller acknowledges and agrees that upon receipt of any such notice, Purchaser may, in Purchaser's sole discretion and at Purchaser's sole cost and expense, seek to obtain a protective order, and/or Purchaser may request that certain proprietary information be redacted prior to said disclosure. Absent a protective order allowing for or requiring redaction, Seller's compliance with Purchaser's request to redact certain information prior to disclosure shall

be at Seller's reasonable discretion. If Purchaser seeks to obtain a protective order, Seller shall reasonably cooperate with Purchaser if and to the extent Purchaser requests such cooperation.

f. Agreement Not to be Recorded. Each party agrees that it will not cause or permit this Agreement or any memorandum or summary of this Agreement or any portion thereof to be recorded. Failure to comply with the provisions of this Section by Seller shall be a material default under this Agreement. The obligations of Seller set forth in this Section shall survive Closing or termination of this Agreement.

g. Business Days. If the last day for making the Earnest Deposit, for conducting due diligence or for providing notice to either party is a Saturday, Sunday or legal holiday, then such last day shall be extended to the next succeeding business day thereafter.

h. Execution in Counterparts. This Agreement may be executed in two or more identical counterparts which taken together shall constitute one and the same instrument.

i. Appropriation. No provision of this Agreement shall be construed or interpreted: i) to directly or indirectly obligate Seller to make any payment in any year in excess of amounts appropriated for such year; ii) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever within the meaning of Article X, Section 20 of the Colorado Constitution or any other constitutional or statutory limitation or provision; or iii) as a donation or grant by Seller to or in aid of any person, company or corporation within the meaning of the Colorado Constitution. Notwithstanding the foregoing, Seller agrees to request the funds and use all commercially reasonable efforts to secure the funds as needed to complete the Work and otherwise satisfy its obligations under this Agreement.

j. Immunity. Nothing herein shall be construed as a waiver, or partial waiver, by Seller of any portion of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

*[Remainder of page left intentionally blank. Signature page follows.]*

**IN WITNESS WHEREOF**, the parties have executed this Purchase and Sale Agreement, as of the day and year first above written.

**SELLER:** THE CITY OF DELTA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date of Execution: \_\_\_\_\_, 2024

**PURCHASER:** MAINSPRING FOUNDATION,  
a Colorado non-profit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date of Execution: \_\_\_\_\_, 2024

The Title Company has executed this Agreement in order to confirm that the Title Company has received and shall hold the Earnest Deposit, in escrow, and shall disburse the Earnest Deposit pursuant to the provisions of this Agreement.

**TITLE COMPANY:** LAND TITLE GUARANTEE COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date of Execution: \_\_\_\_\_, 2024

**EXHIBIT A  
TO  
PURCHASE AND SALE AGREEMENT**

**Legal Description**

BLOCK 4, LOTS 5 THROUGH 25, SOUTH DELTA ADDITION, CITY OF DELTA, COUNTY OF DELTA, STATE OF COLORADO.



**EXHIBIT B  
TO  
PURCHASE AND SALE AGREEMENT**

**Contracts**

*[To be added by Seller]*

**EXHIBIT C  
TO  
PURCHASE AND SALE AGREEMENT**

**Bill of Sale and Assignment**

*[See attached.]*

**BILL OF SALE AND ASSIGNMENT**

\_\_\_\_\_, a \_\_\_\_\_ (“**Assignor**”), for and in consideration of the sum of \$10.00 and other good and valuable consideration paid to Assignor by \_\_\_\_\_, a \_\_\_\_\_ (“**Assignee**”), including, without limitation, Assignee’s acceptance and agreement to all matters set forth herein, and assumption and agreement to perform all obligations arising under or out of any management or service agreements, equipment leases, maintenance contracts or other contracts comprising all or any portion of the Property (as hereinafter defined), on the part of Assignor to be done or performed from and after the date hereof, all as more particularly provided in the Purchase and Sale Agreement pursuant to which this Bill of Sale and Assignment is made and delivered, the receipt and sufficiency of which are hereby acknowledged, has ASSIGNED, SOLD, CONVEYED and DELIVERED, and does hereby ASSIGN, SELL, CONVEY and DELIVER unto Assignee, its successors, heirs, executors, administrators personal representatives and assigns, all of Assignor’s right, title and interest, if any, in and to the following:

1. All of the fixtures, equipment, machinery, furniture, plans and specifications, floor plans, landscaping plans, engineering plans and studies and other personal property (the “**Personal Property**”) placed or installed on or about the real property described on **Exhibit A** attached hereto and incorporated herein (the “**Real Property**”), including, but not limited to, the personal property listed on **Exhibit B**, attached hereto and incorporated herein by reference; and

2. All intangible property (the “**Intangible Property**”), and together with the Personal Property, the “**Property**”) pertaining to the Real Property or the Personal Property or the use thereof, including, without limitation, management contracts, service contracts, equipment leases, maintenance contracts, transferable utility contracts, transferable telephone exchange numbers, transferable builder’s warranties, transferable manufacturer’s warranties, plans and specifications, engineering plans and studies, floor plans and landscape plans relating to the same or any party of the same, and all other agreements and documents pertaining to the Real Property or the Personal Property or the use thereof and specifically listed on **Exhibit C**, attached hereto and incorporated herein by reference.

*[Remainder of page left intentionally blank. Signature page to follow.]*

**IN WITNESS WHEREOF**, Assignor and Assignee have executed this Bill of Sale and Assignment as of this \_\_\_\_ day of \_\_\_\_\_, 202\_.

ASSIGNOR

**FORM – DO NOT SIGN**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ASSIGNEE

**FORM – DO NOT SIGN**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Exhibit A  
To Bill of Sale and Assignment  
Real Property Legal Description

Exhibit B  
To Bill of Sale and Assignment

Personal Property

Exhibit C  
To Bill of Sale and Assignment  
Intangible Property

**EXHIBIT D  
TO  
PURCHASE AND SALE AGREEMENT**

**Work**

1. Clean up any and all environmental contamination on the Property, as required by local, state or federal law;
2. Remediate all lead, asbestos, and other contaminants as recommended by the U.S. Environmental Protection Agency or other governmental authority;
3. Subject to the below, remove all generators and all related equipment from the Property and fill and compact the dirt, install a vapor mitigation system, stub in utilities, and pour new concrete floors to fill in where generators are currently located. In general, the condition of the Property following the Work is to be in a clean core and shell condition. Notwithstanding the foregoing before removing any generators or related equipment, Seller shall provide Purchaser notice and an opportunity to request in writing that Seller not remove or otherwise preserve a piece of such machinery in which event Seller's Work will specifically exclude removal of such item.
4. Install vapor sampling equipment in the Garage and Generator buildings per Section 4.0 SUMMARY AND REMEDIAL ACTION PLAN RECOMMENDATIONS of the PHASE II ENVIRONMENTAL SITE ASSESSMENT AND REMEDIAL ACTION PLAN, dated September 29, 2021;
5. Remove all equipment (including, but not limited to, desks, chairs, computers, and file cabinets) currently used by the City of Delta's electrical and other departments on the Property; and
6. Make all necessary changes to the CNL and utility room as required in accordance with the Lease Agreement, including, but not limited to, electrical distribution, HVAC, fire protection, security, lighting, demising walls, and ingress/egress doors.
  - a. Relocate electric service for main building out of utility room and separate electric service for CNL and utility room from main electrical service.
  - b. Install a minimum of a 2 hour fire wall on all openings between Utility room and main building space.
  - c. Install a dry type fire suppression system utility room and CNL.
  - d. Remove irrigation tap plumbing from utility room and install valve box on the ground.
  - e. Install access door to utility room from CNL.



**EXHIBIT E  
TO  
PURCHASE AND SALE AGREEMENT**

**Form of Lease Agreement**

*[See attached.]*

## COMMERCIAL LEASE

THIS COMMERCIAL LEASE (“**Lease**”) is made effective as of \_\_\_\_\_, 2024 (the “**Effective Date**”), by and between MAINSPRING FOUNDATION, a Colorado non-profit corporation (“**Lessor**”), and CITY OF DELTA, a Colorado home rule municipality (“**Lessee**”). Lessor and Lessee are collectively referred to herein as the “**Parties**”.

WHEREAS, Lessor, as buyer, and Lessee, as seller, have entered into that certain Purchase and Sale Agreement dated \_\_\_\_\_, 2024 (the “**Purchase and Sale Agreement**”) for the purchase and sale of certain real property located in the City of Delta with a street address of 1133 Main Street, Delta, Colorado (the “**Property**”); and

WHEREAS, the Parties desire to enter into this Lease pursuant to Section 11 of the Purchase and Sale Agreement, to be effective upon closing of Lessor’s purchase of the Property.

NOW, THEREFORE, for and in consideration of the covenants and agreements given herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

1. Premises. Effective upon the Effective Date, Lessor hereby leases to Lessee approximately 513 square feet of commercial space located in the building (the “**Building**”) situated on the Property, including exterior door access to and utilities serving exclusively such commercial space, as depicted on Exhibit 1 attached hereto and incorporated herein by this reference (collectively, the “**Premises**”).

2. Term. The initial term of this Lease shall be 50 years commencing on the Effective Date (the “**Initial Term**”), unless terminated earlier as provided herein, with one additional 50- year renewal (the “**Renewal Term**”). This Lease shall automatically renew for the Renewal Term unless Lessee provides Lessor with written notice at least 90 days prior to the expiration of the Initial Term that Lessee does not intend to occupy the Premises for the Renewal Term. Lessee’s occupancy of the Premises during the Renewal Term will be subject to the terms, conditions, and provisions hereof. The Initial Term, together with the Renewal Term, shall be referred to herein as the “**Term**.”

3. Rent. Lessee shall pay to Lessor gross rent in the total amount of \$186,000.00 (“**Rent**”) for the Term. Such Rent shall be due and payable in advance in one lump sum on the Effective Date. There shall be no additional rent due for the Renewal Term. Because the Rent is paid in gross, there shall be no additional charges imposed on Lessee for taxes, insurance, utilities, or Common Areas (as defined in Section 4).

4. Common Areas and Reserved Areas.

- a. The “**Common Areas**” are all areas outside of the Premises on the Property, including without limitation parking areas and any utilities serving the Premises and other areas of the Building, designated by Lessor for common use by Lessee, Lessor, and other tenants of the Property and their respective agents, employees, licensees, invitees, and contractors; provided, however, that the Common Areas expressly exclude any and all utilities serving exclusively the Premises. Lessor grants to Lessee, for use by its employees, licensees,

invitees, and contractors, a non-exclusive license over such Common Areas of the Property necessary to the use and occupancy of the Premises (the “**Common Area License**”). Subject to the terms and conditions of this Lease, the Common Area License shall be effective for the Term of the Lease and shall terminate concurrently with expiration of the Lease Term. All Common Areas of the Property shall at all times be subject to the management of Lessor and are not part of the Premises.

- b. As part of the Common Area License provided above, Lessee shall be entitled to the non-exclusive use of the parking area on the Property on a first come-first serve basis, provided that Lessee and its agents, employees, licensees, invitees, and contractors shall not be entitled to use more than two (2) parking spaces on the Property simultaneously. Lessor shall be entitled to establish reasonable rules and regulations governing the use of the parking area including, without limitation, the right to issue parking permits and decals to be affixed to motor vehicles. Lessor may designate a specific area for Lessee’s parking spaces within the parking area and may modify, relocate, reduce or restrict any of the parking spaces in the parking area. Lessor shall be entitled to permit the use of the parking area and other Common Areas for other purposes, including uses not related to the operation of the Building. Lessor shall not be liable for and Lessee hereby releases and covenants not to bring any action against Lessor for any loss, damage or theft to or from any motor vehicle or other property of Lessee or its agents, employees, licensees, invitees and contractors which occurs in or about the parking area unless due to the gross negligence or willful act or omission of Lessor or its members, employees, agents, or contractors.
  
- c. Lessor reserves the right to use the roof, the demising floors, the exterior walls of the Premises, and such telecommunications and utilities chases, ducts or other utilities located within the Premises and serving portions of the Building other than exclusively the Premises (“**Reserved Areas**”). Lessee is entitled to operate and maintain all utilities and equipment located in the Reserved Areas and serving exclusively the Premises without additional charge or permission of Lessor, but the installation or placement of any new telecommunications, data, utility or other wires, cables or other equipment or facilities in the Reserved Areas or elsewhere on the Property outside of the Premises by Lessee or its employees, licensees, invitees, or contractors shall be subject to the prior written approval of Lessor, which approval shall not be unreasonably withheld. Lessor shall be entitled to allocate the available space in the Reserved Area as Lessor determines from time to time. Lessor shall have the sole right to place equipment on and/or lease or license the rooftop of the Building (including, without limitation, for solar panels and other energy generating equipment and facilities). If Lessor determines that Lessee’s use of the Reserved Area shall require additional improvements or other costs to Lessor, Lessor shall be entitled to charge such costs to Lessee as a condition precedent to its consent. If Lessor receives or is entitled to any compensation or any amount of tax rebate, refund or any other form of monetary incentive or benefit (“**Lessor Incentive**”) from a federal, state or local governmental entity, or from a private party, as a result of Lessor’s use or lease of all or any portion of the Reserved Area (including, without limitation, the rooftop of the Building) or other portions of the Property, the entire amount or value of such Lessor Incentive shall be the sole and exclusive property of Lessor, and Lessor shall have the right to use, retain or apply such Lessor Incentive as Lessor deems necessary or appropriate in Lessor’s sole and absolute discretion. Lessor reserves to itself the right, from time to time, to grant such easements,

rights and dedications with respect to the Property that Lessor deems necessary or desirable, and to cause the recordation of parcel maps and restrictions with respect to the Property, so long as such easements, rights, dedications, maps and restrictions do not adversely affect Lessee's rights under this Lease. The obstruction of Lessee's view or natural light by any structure erected in the vicinity of the Premises, whether by Lessor or third parties, shall in no way affect this Lease or impose any liability upon Lessor.

5. Changes to the Property.

- a. Notwithstanding anything to the contrary contained in this Lease, Lessee acknowledges and agrees that Lessor shall have the right to redevelop and perform other construction on the Property now and in the future (“**Existing or Future Construction**”) provided that such Existing or Future Construction does not deprive or materially interfere with Lessee's use and occupancy of the Premises. Lessee shall not interfere with and shall prohibit anyone acting by or through Lessee from interfering with such Existing or Future Construction, and Lessee will not object thereto, will not seek to impose any restriction or limitation thereon, and will not assert any challenge thereto so long as such Existing or Future Construction does not deprive or materially interfere with Lessee's use and occupancy of the Premises. Lessee further acknowledges that there will, necessarily, be some disruption in the Property, including, without limitation, noise, dust, interruption and re-routing of traffic, dislocation of parking, construction traffic, sidewalk superintending, and the like in connection with Existing or Future Construction. Lessee hereby accepts such non-material disruptions as a necessary and normal part of such Existing or Future Construction and hereby waives any and all claims for constructive eviction or any other default by Lessor or damages resulting from the same. Lessor reserves the right, at any time, to make alterations, expansions, or additions to the Property and/or to build an additional story or stories on the Building or other buildings on the Property and to build buildings adjoining the same, provided, however, that such changes shall not materially alter the size of the Premises, deny reasonable ingress to and egress to and from the Premises, or deprive or materially interfere with Lessee's use and occupancy of the Premises.
- b. Subject to the terms and conditions of this subsection, Lessor reserves the right to relocate the Premises to another location on the Property (the “**Substitute Premises**”), provided that: (i) the Substitute Premises is reasonably comparable to the Premises in size and serviceability; (ii) Lessor shall pay all costs of construction of such Substitute Premises, including without limitation utility services and interior finishing, to a quality and form substantially the same as or better than the Premises; and (iii) Lessor shall pay all actual relocation costs incurred by Lessee, including but not limited to reasonable costs to relocate all furnishings and equipment, to the Substitute Premises. Lessor shall provide written notice to Lessee of any such relocation, whereupon Lessee may inspect the Substitute Premises to determine compliance with this subsection. Upon Lessee's approval of such Substitute Premises, Lessee shall have 90 days to complete relocation to the Substitute Premises. Lessee shall invoice Lessor for all moving/relocation expenses reasonably incurred as provided in this subsection, and Lessor shall pay Lessee's invoice within 30 days thereof. Upon Lessor's payment to Lessee, Lessee shall surrender the Premises to Lessor in the condition required under this Lease. Following surrender of the Premises by

Lessee and at the request of Lessor, Lessee shall enter into an amendment to this Lease memorializing the substitution of the Substitute Premises; provided, however, that all other the terms of the Lease shall remain unaffected by such amendment.

6. Condition of Premises. Lessee warrants and represents that it has inspected the Premises and shall accept the Premises in its “as-is” condition. Lessor makes no representations or warranties as to the physical condition of the Premises, the Building, or the Property, or their suitability for Lessee’s intended use as of the Effective Date. Lessor is not obligated to make upgrades or improvements to the Premises. In the event Lessee desires to make any alterations to the Premises, such alterations shall be subject to prior written approval of Lessor as set forth in Section 8 below. Lessee acknowledges that neither Lessor nor any agent, representative, or employee of Lessor has made any representation or warranty (either express or implied, including without limitation any implied warranty of habitability, merchantability, or fitness for a particular purpose, and any and all such warranties are hereby disclaimed) with respect to the Premises, the Building, or the Property as of the Effective Date or their suitability for the conduct of Lessee’s business. Lessee’s occupancy of the Premises shall be conclusive evidence that the Premises were in good order and repair as of the Effective Date.

7. Use of Premises. Lessee shall use the Premises solely as a carrier neutral location, utility room, and related activities (collectively, “CNL”), and for no other purposes without the prior express written consent of Lessor in its sole and absolute discretion. Should the Premises permanently cease to be used as a CNL, this Lease will automatically terminate.

- a. No Violations. Lessee shall not utilize the Premises for any purpose that is in violation of any applicable law, zoning, building regulation, rules, or any other applicable restriction in effect on the Effective Date of this Lease (collectively, “Laws”) on the use of the Premises. Lessee understands and agrees that in the event actions, alterations, or improvements are required in order to bring the Premises into compliance with any Laws because of Lessee’s intended use, Lessee shall be solely responsible for any and all associated costs and expenses relative thereto, including but not limited to all fees and charges related to the construction or use of the Premises and all permitting fees. Lessor shall not have any obligation whatsoever to make or pay for any improvement within the Premises or to any property, equipment, or services serving exclusively the Premises.
- b. Lessee’s Conduct. Lessee shall not do or permit anything to be done in or about the Premises or the Property, nor bring nor keep anything therein or elsewhere, that will in any way (i) increase the existing rate of or affect any fire or other insurance upon said Premises or Property or any of its contents, or (ii) cause cancellation of any insurance policy covering said Premises or Property or any part thereof or any of its contents. Lessee shall not (a) do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other lessees or occupants of the Property or injure any of them, (b) use or allow the Premises to be used for any improper or unlawful purpose, or (c) cause, maintain or permit any nuisance in, on or about the Premises. Lessee shall not perform any action or practice that may damage or injure the Premises or any portion of the rest of the Property. The floors and the electrical system of the Premises will not be overloaded in excess of load requirements applicable to Lessee’s use, and no machinery, apparatus, or other appliance shall be used or operated in or on the Premises in any manner which will

- injure, vibrate, or shake the Premises or the rest of the Property or which otherwise interferes with the use of the Property. Lessee shall keep all portions of the Premises in a clean, safe, sanitary, and habitable condition. Lessee shall promptly notify Lessor of any accidents or defects in the Premises or the Building of which Lessee becomes aware, including defects in pipes, electric wiring and HVAC equipment, and of any condition which may cause injury or damage to the Building or the Property or any person or property therein. In no event shall Lessor be liable to Lessee for injury or damage to person or property caused by fire, theft, heating, air conditioning or lighting apparatus, falling plaster, steam, gas, electricity, water, rain, or dampness, which may leak or flow from or through any part of the Building, or from the pipes, appliances, or plumbing work of the Building, unless caused by or resulting from gross negligence or willful act or omission of Lessor or its agents, employees or contractors.
- c. Waste Removal. Lessee shall not commit waste on or to the Premises. Lessee shall store all materials, equipment, supplies and other personal property entirely within the Premises. Lessee shall keep the Premises free and clean of all debris, garbage, and rubbish. Lessee shall store all trash and refuse in adequate containers within the Premises, which Lessee shall maintain in a neat and clean condition, or within designated Common Areas so as to not be visible to members of the public in or about the Property, and so as not to create any health or fire hazard. Lessee shall be entitled to reasonable shared use of common dumpster or other waste disposal service for the Property as part of the Common Area License.
- d. Pets and Animals. Pets or animals shall not be permitted on the Premises except with prior written approval of Lessor. Service animals are permitted as required by law.
- e. Hazardous Substances. Lessee shall, at its sole cost and expense, promptly respond to and clean up any release or threatened release of any Hazardous Substance (defined below) on the Property caused by Lessee or its agents, employees, contractors, licensees or invitees in a safe manner, in strict accordance with applicable law, and as authorized or approved by all federal, state, and/or local agencies having authority to regulate the permitting, handling, and cleanup of Hazardous Substances. Lessee and Lessee's agents, employees, contractors, licensees, and invitees shall not use, store, generate, treat, transport, or dispose of any Hazardous Substance at the Property without first obtaining Lessor's written approval, which consent shall be in Lessor's sole and absolute discretion. Lessor consents to Lessee's use of ordinary office products in customary quantities within the Premises, in accordance with applicable laws and the terms and conditions of this Lease. "**Hazardous Substance(s)**" shall mean substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or the Resource Conservation and Recovery Act (RCRA).
- f. Security. Lessor shall have the right, but not the obligation, to provide security-related services for the Property. Notwithstanding the foregoing, Lessor is not responsible for the security of persons or property on the Property or within the Premises or the Building and Lessor is not and shall not be liable in any way whatsoever for any breach of security. Lessee assumes full responsibility for protecting the Premises from theft, robbery, vandalism, or other destruction of property, which includes keeping doors locked and other means of entry to the Premises closed and secured.

- g. Utilities. Lessee shall contract in Lessee's own name and pay all charges for utility services used, rendered, supplied, and/or metered exclusively to or for the Premises. Lessee's portion of any utility charges to the Building or Property for utility services not exclusively serving and/or separately metered to the Premises are included within the Rent paid by Lessee.
- h. Signage. Lessee shall not erect or maintain any signs or advertising devices of any nature on the exterior of the Premises, the Building, or the Property unless approved in advance by Lessor in writing.
8. Maintenance and Repairs.
- a. Lessor's Responsibilities. Lessor at no cost to Lessee shall maintain, repair, and replace the Common Areas and the foundation, exterior walls, exterior doors, and roof of the Premises, the Building, and the Property so they are at all times during the Term in good operation and repair; provided, however, that all costs of any maintenance, repairs, or replacements necessitated by the negligence, misuse, or abuse of Lessee or Lessee's employees, contractors, invitees, licensees, or agents shall be paid by Lessee to Lessor promptly upon billing. Lessor shall use reasonable efforts to cause any necessary repairs to be made promptly. Lessor shall keep all driveways, sidewalks, and parking areas on the Property at all times during the Term in good repair and free and clear of ice and snow.
- b. Lessee's Responsibilities. Lessee agrees, at Lessee's expense, to keep all portions of the Premises (including, without limitation, the HVAC and other utility pipes, lines and facilities exclusively serving the Premises) maintained, repaired, and replaced so they are at all times during the Term in good order, condition, and repair and otherwise as provided in the Lease. All Lessee repairs shall be equal or better in quality and class to the original work. If Lessee fails to complete Lessee repairs as required by this Lease, Lessor may complete them and bill Lessee for the reasonable cost of such work. Lessee shall not perform or contract with third parties to perform any such maintenance or repair without prior written approval of Lessor. If any repair that is the responsibility of Lessor becomes necessary, Lessee shall notify Lessor as soon as possible, and Lessor shall complete such work with diligence within a reasonable time. Any unauthorized work performed or contracted for by Lessee will be at the sole expense of Lessee.
- c. Lessee Improvements. Lessee shall be solely responsible for any and all improvements and alterations within the Premises necessary for Lessee's intended use of the Premises in accordance with Section 9 of the Purchase and Sale Agreement. Any and all such improvements and alterations shall be subject to Lessor's prior written approval (not to be unreasonably withheld) and subject to the other terms and conditions of this Lease (including without limitation subsection 8(d) below). Lessee accepts the existing HVAC, electrical and other mechanical facilities and systems serving the Premises, and Lessor shall not be responsible for any improvements or other modifications thereto. Lessee shall not make any alterations or improvements to the Premises or install any equipment or

machinery which would adversely affect other HVAC, electric, or other utility systems in the Building.

- d. Lessee Work or Repairs. Lessee shall procure all necessary permits before undertaking any work or repairs upon the Premises. Lessee shall perform all work and repairs in a good and workmanlike manner using materials of good quality. Lessee's work and repairs shall comply with all Laws. Lessee shall promptly pay when due the entire cost of any Lessee work or repairs on the Premises undertaken by Lessee, so that the Premises shall at all times be free of liens for labor and materials. Should any such liens be filed or recorded against the Premises or the Property or any portion thereof with respect to work done for, or materials supplied to or on behalf of, Lessee, or should any action affecting the title thereto be commenced, Lessee shall cause such liens to be released of record within five days after notice thereof. If Lessee desires to contest any such claim of lien, Lessee shall nonetheless cause such lien to be released of record by the posting of adequate security with a court of competent jurisdiction as may be provided by Colorado's mechanics' lien statutes. If Lessee shall be in default in paying any charge for which such mechanics' lien or suit to foreclose such lien has been recorded or filed and shall not have caused the lien to be released as provided herein, Lessor may (but without being required to do so) pay such lien or claim and any associated costs, and the amount so paid, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due from Lessee to Lessor.

9. Insurance.

- a. Lessee Insurance. Lessee shall, at its expense, maintain in full force during the Term of the Lease commercial general liability insurance with coverage at least equal to the limitations on judgments provided by the Colorado Governmental Immunity Act ("CGIA"), C.R.S. §§ 24-10-101, *et seq.*, at any given time, which shall not be interpreted as a waiver of the CGIA. Lessee shall also maintain commercial property insurance covering Lessee's business personal property, equipment, and alterations and modifications at full replacement cost value. The policies shall name Lessor as an additional insured thereunder and shall provide that the insurance will not be subject to cancellation, termination, or change except after at least 30 days' prior written notice to Lessor. Certificates for such insurance shall be provided to Lessor prior to the commencement of the Term and upon request of the Lessor thereafter. In addition, Lessee shall cause any contractor, licensee or other party entering the Property by or through Lessee to conduct operations from, or perform work in, the Premises to obtain and maintain a policy of commercial general liability insurance with personal injury and property damage liability limits in an amount not less than One Million and 00/100 Dollars (\$1,000,000.00). Such policy(s) shall name Lessor as an additional insured thereunder and shall provide that the insurance will not be subject to cancellation, termination, or change except after at least 30 days' prior written notice to Lessor. Certificates for such insurance shall be provided to Lessor upon request.
- b. Lessor Insurance. Lessor shall, at its expense, maintain commercial general liability and property insurance in the amount of liability coverage and replacement cost of any



improvements as Lessor may determine. Such insurance shall not be required to cover any of Lessee's personal property.

- c. Waiver of Subrogation. As long as their respective insurers so permit, Lessor and Lessee waive all rights to recover against each other or against the officers, directors, shareholders, partners, joint venturers, employees, agents, customers, invitees, or business visitors of each other for any loss or damage arising from any cause covered by any insurance required to be carried by either of them pursuant to this Lease or any other insurance actually carried by each of them which occur in, on or about the Premises or the Property to the extent that such loss or damage is covered by collectible insurance. Lessor and/or Lessee will cause their respective insurers to issue appropriate waiver of subrogation rights endorsements to all policies of insurance carried in connection with the Premises.

10. Destruction of Premises; Condemnation.

- a. Lessor's Duty to Repair. If the Premises shall be totally or partially destroyed or damaged by fire, earthquake, act of God, or by other casualty during the Term of this Lease not a result of Lessee's negligent act or omission, said destruction or damage shall not release Lessee from any obligation hereunder except as provided in this Section 10; and in the case of such casualty to or destruction of any such part of the Premises, Lessor shall, at its own expense, promptly repair and restore the same to a condition as good as or better than that which existed prior to such damage or destruction. Without limiting such obligation of Lessor, the Parties agree that the proceeds of any insurance covering such damage or destruction shall be made available to Lessor for repair or replacement. As soon as practical, Lessor shall provide Lessee a written estimate of the time required to repair such damage or destruction. Lessee may elect to terminate this Lease upon written notice to Lessor given no later than 30 days after receipt of Lessor's repair time estimate. If actual repair time will exceed Lessor's original estimate, Lessor shall provide an additional notice to Lessee, whereupon Lessee will have an additional 30 days within which it may elect to terminate this Lease. If Lessee elects not to terminate this Lease, then Lessor shall promptly restore the Premises, excluding the improvements installed by Lessee, subject to delays arising from the collection of insurance proceeds or from force majeure events. Lessee, at Lessee's sole expense, shall promptly perform, subject to delays arising from the collection of insurance proceeds or from force majeure events, all repairs or restoration not required to be done by Lessor and shall promptly re-enter the Premises and commence doing business in accordance with this Lease.
- b. Rent Reduction. For any period during which the Premises cannot be occupied ("**Abatement Period**") as a result of damage to the Premises by a cause covered by this Section or the repair thereof, Lessor shall pay back to Lessee an amount equal to the number of days in the Abatement Period, pro-rated in accordance with the rent paid pursuant to Section 3. For example, if the Abatement Period lasts 60 days, Lessor shall pay to Lessee \$305.75. Any rent abated shall be paid to Lessee within 30 days of the end of the Abatement Period.

- c. Termination of Term. Lessor agrees that if Lessee decides to terminate the Lease due to damage or destruction of the Premises as described in this Section, the Term of the Lease shall cease upon the date that Lessee gives written notice to Lessor of such determination. A refund will be given to Lessee for the balance of any rent paid in advance for which Lessee did not have use of the Premises due to the cessation of the Term under the conditions of this Section. For example, if termination of the Lease occurs under this subsection with 10 years remaining in the Term, Lessor shall pay back to Lessee \$18,600.00. Lessee shall not hold Lessor liable for any additional damages as a result of any of the acts or events described in this Section.
- d. Condemnation. For purposes of the provisions of this section, a “**Taking**” shall mean the taking of all or any portion of the Premises or the Building as a result of the exercise of the power of eminent domain or condemnation for public or quasi-public use by a public entity other than Lessee or the sale of all or part of the Premises or the Building under the threat of condemnation by a public entity other than Lessee. A “**Substantial Taking**” shall mean a Taking of twenty-five percent (25%) or more of the rentable area of either the Premises or the Building. An “**Insubstantial Taking**” shall mean a Taking which does not constitute a Substantial Taking. If there is a Substantial Taking, the Term shall expire on the date of vesting of title pursuant to such Taking. In the event of an Insubstantial Taking with respect to the Premises or the Building, this Lease shall continue in full force and effect, Lessor shall cause the Premises (but excluding any alterations, improvements, fixtures and personal property constructed or owned by Lessee), less such Taking, to be restored as near as may be to the original condition thereof. If no part of the Premises or this Lease is affected by the Taking, and Lessee retains full use and enjoyment of the Premises as provided in this Lease, then the total award, compensation, damages or consideration received or receivable as a result of a Taking (“**Award**”) shall be paid to and be the property of Lessor. However, in the event of a Substantial Taking, or if any portion of the Premises or this Lease is affected by the Taking, the Lessee shall be entitled to a proportionate share of the Award, which shall be paid to and be the property of Lessee. Whether or not Lessee is entitled to a portion of the Award as provided herein, Lessee shall be entitled to a separate award, if any, for the loss of Lessee’s personal property, the loss of Lessee’s business and profits, and Lessee’s moving expenses.

11. Lessor’s Right of Entry. Lessee shall permit Lessor and the agents and employees and contractors of Lessor to enter into and upon the Premises upon 24-hour advance notice to Lessee (except in the event of an emergency when no such advance notice shall be required) during all reasonable business hours for the purpose of inspecting the same, performing maintenance, repairs, or other work to the Building, or for the purpose of posting notices of non-responsibility for alterations, additions, or repairs without any rebate of rent and without any liability to Lessee for any loss of occupation or quiet enjoyment of the Premises.

12. Holdover. Lessee shall vacate the Premises and remove all of Lessee’s personal property from the Premises prior to 11:59 p.m. on the date the Term expires. Lessor may immediately commence eviction proceedings at its sole discretion if Lessee fails to vacate the Premises by such time. If, after the expiration of the Term, Lessee remains in possession of the Premises with the consent of Lessor and continues to pay rent without a written agreement as to such possession, then such tenancy shall be regarded as a month-to-month tenancy, at a monthly rental, payable in advance, equivalent to 100% of the

then-current fair market rental for the Premises (as determined by Lessor) and shall be subject to all the terms and conditions of this Lease.

13. Default; Remedies. If Lessee is in violation of any covenants or agreements set forth in the Lease (a “**Default**”) and the Default remains uncorrected for a period of 10 days after Lessor has given written notice thereof (or such longer time as reasonably required under the circumstances so long as Lessee commences to cure within such 10-day period and diligently proceeds therewith to completion), then Lessor may undertake the following sole and exclusive remedies: (a) suspend Lessee’s right to possession of the Premises until Lessee cures the violation; or (b) pursue breach of contract remedies. If Lessor is in Default and the Default remains uncorrected for a period of 10 days after Lessee has given written notice thereof (or such longer time as reasonably required under the circumstances so long as Lessor commences to cure within such 10-day period and diligently proceeds therewith to completion), then Lessee may undertake any available remedies at law or equity, including but not limited to repayment to Lessee of rent advanced, prorated according to the period remaining in the Term. Notwithstanding anything to the contrary herein, Lessor’s managers, shareholders, officers, employees, or agents shall not be personally liable with respect to any of the terms, covenants, and conditions of this Lease.

14. Abandonment. In the event of abandonment of the Premises by Lessee, Lessor may, without being obligated to do so and without terminating the Lease, retake possession of the Premises and exercise any of the remedies contained in Section 15 below. Abandonment shall not be deemed to occur unless Lessee fails to occupy, access, or use the Premises or to maintain personal property or equipment within the Premises for a period of at least one year.

15. Re-Entry. In the event of re-entry by Lessor as a result of: (i) Lessee’s abandonment of the Premises; or (ii) termination of the Lease because the Premises permanently cease to be used as a CNL (as provided in Section 7), then:

- a. Lessee’s personal property and the personal property of any guest, invitee, licensee, or occupant may be removed from the Premises and stored or disposed of, at Lessor’s sole discretion, at Lessee’s cost. Lessor shall not be deemed a bailee of the property removed, and Lessor shall not be held liable for the property.
- b. Lessor may enter the Premises, clean and make repairs, and charge Lessee accordingly.
- c. Lessee shall surrender all keys and peacefully surrender and deliver up possession of the Premises.

16. Surrender of Premises. Lessee will return the Premises to Lessor at the expiration of the Term in as good order and repair as when Lessee took possession (loss by casualty, condemnation, and normal wear and tear excepted). Any deterioration or damage caused by abuse, carelessness, or negligence shall not be considered normal wear and tear. If Lessee fails to redeliver the Premises in appropriate condition, Lessor may restore the Premises to appropriate condition, including, but not limited to, repair, replacement, and cleaning. Lessee shall be obligated to pay the cost of any such work necessitated. At the termination of the Lease or Lessee’s right to possession of the Premises, Lessee shall remove Lessee’s movable trade fixtures, equipment, pipes, lines, wires, cabling, and other items of personal property that are not permanently affixed to the Premises. Lessee shall remove the alterations and additions and signs made by Lessee, as Lessor may request, and repair any damage caused by such removal. Lessee shall peacefully yield the Premises and all alterations and additions thereto (except such as Lessor has requested

Lessee to remove), and all fixtures and floor coverings that are permanently affixed to the Premises, which shall thereupon become the property of Lessor. Any personal property of Lessee not removed within five business days following termination shall, at Lessor's option, become the property of Lessor.

17. No Waiver of Requirements. No assent, express or implied, to any Default of any one or more of the obligations herein shall be deemed or taken to be a waiver of any succeeding or other Default. The covenants set forth herein are independent.

18. Subletting. Lessee is expressly authorized to sublet the Premises or any part thereof to other CNL providers, and any rent or other income derived from such sublease shall belong to Lessee. Any such use or sublease of the Premises shall be subject to the terms of this Lease.

19. Transfer by Lessor. Lessor shall have the right to transfer, sell or otherwise convey the Property or any interest therein. In the event of a transfer by Lessor of the Property or of Lessor's interest as Lessor under this Lease, Lessor's successor or assign shall take subject to and be bound by this Lease and in such event, Lessee covenants and agrees that Lessor shall be released from all obligations of Lessor under this Lease, except obligations which arose and matured prior to such transfer by Lessor; that Lessee shall thereafter look solely to Lessor's successor or assign for satisfaction of the obligations of Lessor under this Lease; and that, upon demand by Lessor or Lessor's successor or assign, Lessee shall attorn to such successor or assign.

20. Estoppel Certificates. Lessee covenants and agrees to execute, acknowledge and deliver to Lessor, within 30 days of Lessor's written request, a written statement certifying that this Lease is unmodified (or, if modified, stating the modifications) and in full force and effect; stating the Rent paid; stating that there have been no defaults by Lessor or Lessee and no event which with the giving of notice or the passage of time, or both, would constitute such a default (or, if there have been defaults, setting forth the nature thereof); and stating such other matters concerning this Lease as Lessor may reasonably request. Lessee agrees that such statement may be delivered to and relied upon by any existing or prospective mortgagee or purchaser of the Property.

21. Notices. All notices required to be sent under the Lease shall be in writing and delivered by: (i) U.S. Certified Mail, return receipt requested, postage prepaid; (ii) courier delivery; (iii) overnight delivery using a reputable overnight carrier; or (iv) electronic mail (e-mail). Notices shall be deemed to have been made on the fifth day after deposit into the U.S. Mail, on the first day after deposit with a reputable overnight carrier, or upon receipt if delivered by courier delivery or email. All notices required to be sent to Lessor or Lessee shall be sent or delivered to the addresses below unless otherwise specified in writing by the Parties. Any notices or communications provided for in this Lease shall be sent to the Parties at the following addresses:

To Lessor: MAINSPRING Foundation  
Attn: Andy Schlauch, CEO, and Emily Tucker  
3070 Blake Street, Suite 200  
Denver, Colorado 80205  
[andy@mainspringco.com](mailto:andy@mainspringco.com) and [emilyt@mainspringco.com](mailto:emilyt@mainspringco.com)

*With a copy to:* Polsinelli PC

Attn: Amy K. Hansen, Esq. and Eloise Hirsch, Esq.  
1401 Lawrence Street, Suite 2300  
Denver, Colorado 80202  
[ahansen@polsinelli.com](mailto:ahansen@polsinelli.com) and [emkhirsch@polsinelli.com](mailto:emkhirsch@polsinelli.com)

To Lessee: City of Delta  
Attn: Elyse Ackerman-Casselberry, City Manager  
360 N. Main Street  
Delta, Colorado 81416  
[elyse@cityofdelta.net](mailto:elyse@cityofdelta.net)

*With a copy to:* Garfield & Hecht, P.C.  
Attn: David McConaughy, Esq. and Christine Gazda, Esq.  
910 Grand Ave., Suite 201  
Glenwood Springs, Colorado 81601  
[dmcconaughey@garfieldhecht.com](mailto:dmcconaughey@garfieldhecht.com) and  
[cgazda@garfieldhecht.com](mailto:cgazda@garfieldhecht.com)

22. Governing Law; Jurisdiction. This Lease shall be governed and construed by the laws of the State of Colorado. Venue and jurisdiction for any litigation arising out of this Lease shall rest exclusively with the courts in Delta County, Colorado. LESSOR AND LESSEE HEREBY EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION, CAUSE OF ACTION, OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS LEASE, OR IN ANY WAY CONNECTED WITH, OR RELATED TO, OR INCIDENTAL TO, THE DEALINGS OF THE PARTIES HERETO WITH RESPECT TO THIS LEASE, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND IRRESPECTIVE OF WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE.

23. Attorneys' Fees. In the event of any action or proceeding under this Lease, the prevailing party shall be entitled to recover all reasonable costs and expenses, including the fees and expenses of its attorneys. All rights concerning remedies and/or attorneys shall survive any termination of this Lease.

24. Entire Agreement. This Lease memorializes and constitutes the final, complete, and exclusive agreement and understanding between the Parties on the subject matter hereof. It supersedes and replaces all prior negotiations, proposed agreements, and agreements, whether written or oral on the subject matter hereof. This Lease may not be amended or modified, except in writing and signed by the Parties. Lessor and Lessee each acknowledges that it has participated in the drafting of and has had the opportunity to thoroughly review and negotiate this Lease.

25. Lease Not to be Recorded. Each party agrees that it will not cause or permit this Lease or any memorandum or summary of this Lease or any portion thereof to be recorded. Failure to comply with the provisions of this Section by Lessee or Lessor shall be a material default under this Lease.

26. Successors and Assigns. This Lease is binding upon and inures to the benefit of the Parties and their respective assigns and successors-in-interest.

27. Time of the Essence. Time is of the essence of the Lease and each and all of its provisions.

28. Severability. In the event any part of this Lease is found to be void, illegal, invalid, or unenforceable under present or future laws, then, in such event, the remaining provisions of this Lease shall nevertheless be binding with the same effect as though such part was deleted and shall be construed to effectuate, as nearly as possible, the original intentions of the Parties based upon the entire agreement, including the invalidated provision.

29. Captions. The captions contained in this Lease are for convenience only and shall not affect the construction or interpretation of any provision herein.

30. Non-Appropriation. No provision of this Lease shall be construed or interpreted: (a) to directly or indirectly obligate Lessee to make any payment in any year in excess of amounts appropriated for such year; (b) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever within the meaning of Article X, Section 16 or Article X, Section 20 of the Colorado Constitution or any other constitutional or statutory limitation or provision; or (c) as a donation or grant to or in aid of any person, company, or corporation within the meaning of Article XI, Section 2 of the Colorado Constitution.

31. Immunity. The Parties hereto understand and agree that Lessee neither waives nor intends to waive by this Lease, or any provision hereof, the monetary limitations and any other rights, immunities, and protections provided by the Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.* (CGIA).

32. Authorization. Lessor and Lessee each represents and warrants to the other that the signatories to this Lease for such party are fully authorized to enter into and execute this Lease, and that all necessary actions, notices, and/or meetings required by law to authorize their execution of this Lease have been made.

33. Counterparts. This Lease may be executed in counterparts, each of which shall for all purposes be deemed an original and all of which together shall constitute one and the same agreement. Any such counterpart may be transmitted by e-mail (in PDF format), and any such counterpart so transmitted shall have full force and effect as if it were an original.

*[Remainder of page intentionally left blank.]*

This Lease is executed by the Parties hereto as of the date first set forth above.

**LESSOR:**

**FORM – DO NOT SIGN**

By: \_\_\_\_\_

Name:

Title:

**LESSEE:**

**FORM – DO NOT SIGN**

By: \_\_\_\_\_

Name:

Title:

Exhibit 1  
To Commercial Lease  
Depiction of Premises



**EXHIBIT F  
TO  
PURCHASE AND SALE AGREEMENT**

**Seller's Closing Certificate**

*[See attached.]*

**SELLER’S CLOSING CERTIFICATE**

The undersigned, on behalf of City of Delta, Colorado, hereby certifies that pursuant to that certain Purchase and Sale Agreement dated \_\_\_\_\_, 2024, between the City of Delta, Colorado (“**Seller**”) and Mainspring Foundation, a Colorado nonprofit corporation (“**Purchaser**”), each of Seller’s representations and warranties contained in Section 13 of the Purchase and Sale Agreement are true and correct in all material respects as of the date below, up to the time of, but excluding Closing under the Purchase and Sale Agreement. Any legal action by Purchaser based on said representations and warranties or this Certificate shall be filed with the court no later than three years after the date hereof.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2024.

SELLER: \_\_\_\_\_,  
a \_\_\_\_\_

**FORM – DO NOT SIGN**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT G  
TO  
PURCHASE AND SALE AGREEMENT**

**Plans**

*[See attached.]*