

**TOWN OF BUENA VISTA, COLORADO  
ORDINANCE NO. 13  
(SERIES OF 2022)**

**AN ORDINANCE OF THE TOWN OF BUENA VISTA, COLORADO, APPROVING THE SALE AND CONVEYANCE OF PROPERTY TO RICHARD W. EBERHARDT AND WILMA C. EBERHARDT, AND AUTHORIZING EXECUTION OF ALL CLOSING DOCUMENTS**

**WHEREAS**, the Town of Buena Vista owns and no longer has use for certain property in Town generally known as 403 Beldan Street, Lot 42, Block 39, LLA Amendment No. 1, Town of Buena Vista, Chaffee County, Colorado (the "Property");

**WHEREAS**, the Board of Trustees desires to authorize conveyance of the Property according to the terms and conditions set out in the Contract to Buy and Sell Real Estate, dated May 5, 2022, which is attached hereto and incorporated herein;

**WHEREAS**, the Property is no longer used or held for any governmental purpose and, as such, the Trustees find and determine that the Town, in disposing of the Property, is acting in its proprietary capacity and not in its governmental capacity, pursuant to the holding in *New Stanley Associates, L.L.P. v. Town of Estes Park*, 200 P.3d 1118 (Colo. App. 2008); and

**WHEREAS**, Board of Trustees desires to authorize the sale and disposal of the Property, as it is authorized to do pursuant to C.R.S. § 31-15-713(1)(b).

**NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF BUENA VISTA, COLORADO:**

**Section 1.** The Mayor and the Town Administrator are hereby authorized to execute the Purchase and Sale Agreement attached hereto as **Exhibit A** and all other documents required to sell and convey the Property with no further approval or action of the Board of Trustees being required.

**INTRODUCED, READ, ADOPTED AND ORDERED PUBLISHED** this 10th day of May, 2022.

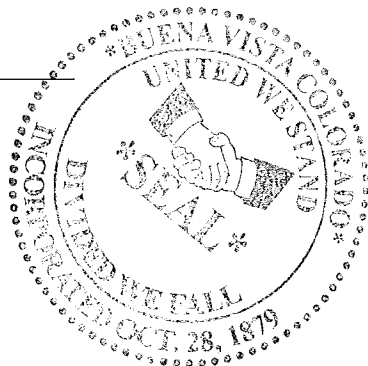
**THIS ORDINANCE SHALL BECOME EFFECTIVE THIRTY DAYS FROM PUBLICATION.**

TOWN OF BUENA VISTA, COLORADO

By: Libby Fay  
Libby Fay, Mayor

ATTEST:

Paula Barnett  
Paula Barnett, Town Clerk



## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into this \_\_\_ day of May 2022, by and between the Town of Buena Vista, a Colorado municipality with an address of P.O. Box 2002, Buena Vista, Colorado 81211 ("Seller") and Richard W. Eberhardt and Wilma C. Eberhardt, individuals with an address of 1240 Toedtli Drive, Boulder, Colorado 80305 ("Buyers").

WHEREAS, Seller owns certain real property in Chaffee County, Colorado, together with tangible and intangible rights appurtenant to or benefiting that property; and

WHEREAS, Seller wishes to transfer and convey a portion of that property to Buyers and Buyers wish to acquire that property from Seller.

NOW, THEREFORE, in consideration of the above premises, the mutual promises and covenants below, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Purchase and Sale. Subject to the terms contained herein, Seller hereby agrees to sell and convey and Buyers hereby agree to purchase and pay for a parcel of real property located in Chaffee County, Colorado, and more specifically described in **Exhibit A**, attached hereto and incorporated herein by this reference, together with all easements and rights-of-way appurtenant thereto, and all improvements and fixtures of a permanent nature currently on the premises (the "Property").

2. Purchase Price and Payment. The parties agree that the purchase price for the Property shall be Three Hundred Thousand Dollars (\$300,000.00) (the "Purchase Price"), delivered to Seller at closing and upon delivery of the deed at closing, less any amounts to be withheld in accordance with this Agreement, and further subject to all terms and conditions set forth in this Agreement. Upon execution of this Agreement, Buyers shall deposit Five Thousand Dollars (\$5,000.00) in earnest money ("Earnest Money") into escrow with a mutually agreed upon title company, which shall be credited against the Purchase Price upon closing or dealt with as further set forth in this Agreement.

3. Merchantability of Title; Objections to Title.

(a) Seller represents to Buyers that at closing Seller will have and will convey to Buyers good, merchantable and insurable title to the Property, including fee simple title to the Property, subject only to prorated general real estate taxes on the Property for the current year and to any burdens, easements, rights-of-way, agreements, reservations, restrictions and encumbrances described in the title commitment approved by Buyers as hereinafter provided.

(b) Seller represents and covenants to Buyers that it comprises all parties who have a fee interest in said Property and that, to the best of Seller's knowledge, there are no other interested parties in said property.

(c) If Buyers deems, in their sole discretion, that title for any reason is not merchantable in Seller, Buyers shall give immediate notice thereof to Seller, and Seller shall make a reasonable effort to correct any defects objectionable to Buyers prior to the closing date.

(d) If Seller is unable or unwilling to correct such defects on or before the closing date, this Agreement, at Buyers's option, may be declared void and of no force or effect. In the event of such termination, the parties shall have no further rights or obligations hereunder.

(e) Seller acknowledges that the Purchase Price is full and just compensation for all of its interests, the interests of all lienholders, deed of trust holders and beneficiaries, mortgagees, lessees (whether or not the lease is recorded), and any and all other legal or equitable interests in the Property that exist at the time of the closing.

4. Title Commitment; Title Policy. Buyers may, at their option and expense, obtain a current commitment for a title insurance policy and obtain a title insurance policy current as of the date of closing.

5. Closing Documents. At closing, Seller shall execute and deliver to Buyers a special warranty deed selling and conveying the Property in fee simple to Buyers.

6. Closing. The date, time and location of closing shall be mutually agreed upon by Buyers and Seller as soon as possible following the execution of this Agreement; provided, however, that if for any reason a closing does not occur on or before **June 30<sup>th</sup>, 2022**, Buyers and Seller shall be entitled to exercise their rights contained in the "Remedies" section contained herein.

7. Closing Costs. Buyers shall pay any closing fees charged by the title insurance company and all recording fees for the documents delivered by Seller to Buyers hereunder. Each party shall be responsible for the payment of its own attorney's fees incurred in connection with the transaction that is the subject of this Agreement.

8. Taxes. Seller shall pay all personal property taxes and general property taxes due on the Property for the year of closing and all preceding years. General taxes for the year of closing shall be apportioned between the parties to the date of delivery of the deed.

9. Entry. Seller shall allow Buyers and their authorized representatives to enter upon the Property from time to time prior to closing for the purposes of placing markers and conducting visual inspections, surveys, subsurface drilling, soil tests, groundwater tests and environmental audits to determine adverse environmental conditions and contamination. Buyers's representatives shall give reasonable notice to Seller upon entering the Property for these purposes. The costs of such inspection(s) shall be borne by Buyers.

10. Risk of Loss; Damage. If improvements are located on the Property, loss or damage to the improvements from any cause, including, but not limited to, fire, vandalism, or acts of God, from the date of this Agreement until the conveyance of said deed from Seller to Buyers shall be the risk of Seller. If, prior to closing, improvements are destroyed or damaged in

whole or in part, this Agreement may be canceled at the option of Buyers. Buyers, at their option, shall have the right to proceed with specific performance of this Agreement despite such damage, provided that Seller shall be entitled to all insurance proceeds resulting from such damage.

11. Seller's Representations. Seller represents that to the best of its knowledge, as of the date hereof, and as of the date of the closing, that the following are true and correct:

(a) Soils. Seller has no knowledge of any patent or latent defects, soil deficiencies, or subsurface anomalies existing on the Property.

(b) No litigation or investigations. There is no pending or threatened litigation, proceeding, or investigation by any governmental authority or any other person known to Seller against or otherwise affecting the Property, nor does Seller know of any ground for any such litigation, proceedings or investigations.

(c) Documents. Each and every document, schedule, item, and other information delivered or to be delivered by Seller to Buyers hereunder, or made available to Buyers for inspection hereunder, shall be accurate and correct.

(d) Assessments. There are no special assessments which now burden or encumber the Property, there are no special assessments currently proposed as to the Property, and the Property shall be free and clear of all liens for special improvements installed as of the date of closing, whether assessed or not.

(e) Leases. Seller has notified Buyers of all leases, tenancies or rental agreements relating to the Property, or to any part thereof.

(f) Third party improvements. Seller has notified Buyers of all improvements, real or personal, on the Property not owned by Seller, and Seller hereby warrants to Buyers that it is the lawful owner of all other improvements located in or on the Property and is entitled to compensation for same.

(g) Easements. Seller has notified Buyers of all easements, rights-of-way or claims of possession not shown by record, whether by grant, prescription, adverse possession or otherwise, as to any part of the Property.

(h) To provide Buyers with information to protect Buyers and its contractors and agents, Seller agrees to provide any information whatsoever that it may have with regard to environmental contamination and will answer environmental inventory questions, to the best of Seller's knowledge, if requested by Buyers.

12. Contingencies.

(a) Performance by Buyers under this Agreement is expressly contingent upon Buyers's inspection of the Property, review of all agreements and information affecting the Property, review and approval of the title commitment and title documents,

any appraisal of the Property which Buyers has obtained, approval by Buyers of any survey of the Property.

(b) In the event of termination of this Agreement due to the failure of any contingency, the parties shall have no further rights or obligations hereunder.

14. Remedies.

(a) In the event Seller fails to consummate this Agreement for any reason, except Buyers's default or termination of this Agreement by Buyers pursuant to the provisions hereof, Buyers may, at their option, enforce this Agreement by bringing an action against Seller for specific performance. Seller acknowledges and agrees that the subject of this Agreement is unique and irreplaceable and damages would be a wholly inadequate remedy for Buyers in the event of termination of this Agreement by Seller.

(b) In the event that Buyers fail to close on this Agreement for any reason, Seller shall be entitled to retain the Earnest Money and terminate this Agreement.

15. Time. Time is of the essence hereof and all terms, conditions and covenants shall be tendered or performed as specified herein.

16. Agreement Binding. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, personal representatives, successors and assigns. The parties hereto agree that, except for such of the terms, conditions, covenants and agreements hereof which are, by their very nature, fully and completely performed upon closing, all of the terms, conditions, representations, warranties, covenants and agreements herein set forth and contained shall survive the closing and shall continue to be binding upon the parties and their above-named successors.

17. Warranty. Seller warrants that it has the full right and legal authority to make the grant of this Agreement.

18. Governing Law and Venue. This Agreement and the rights and obligations of the parties hereunder shall be governed by the laws of the State of Colorado, and any legal action brought under or as a result of this Agreement shall be brought in Chaffee County, Colorado.

19. Modification. This Agreement may only be modified upon written agreement of the parties.

20. Integration. The foregoing constitutes the entire agreement between the parties regarding the use of the Property and no additional or different oral representation, promise or agreement shall be binding on any of the parties hereto with respect to the Property.

IN WITNESS WHEREOF, this Agreement is executed by Seller and the Town as of the date first above written.

*[Remainder of Agreement Intentionally Blank. Signatures on following page.]*

TOWN OF BUENA VISTA

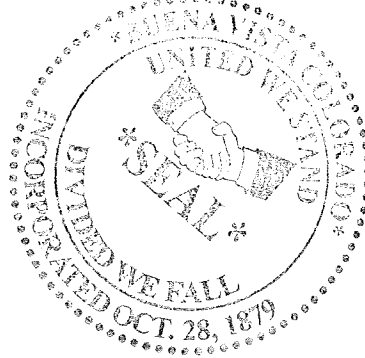
Libby Fay  
Libby Fay, Mayor

ATTEST:

Paula Barnett  
Paula Barnett, Town Clerk

RICHARD W. EBERHARDT

Richard W. Eberhardt



STATE OF COLORADO )  
 )ss.  
COUNTY OF Boulder )

The above and foregoing document was acknowledged before me this 5<sup>th</sup> day of May, 2022, by Richard W. Eberhardt.

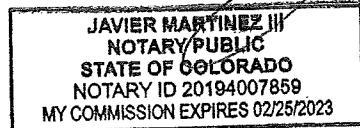
WITNESS my hand and official seal.

My Commission expires: 02/25/23

WILMA C. EBERHARDT

Wilma C. Eberhardt

Javier Martinez III  
Notary Public



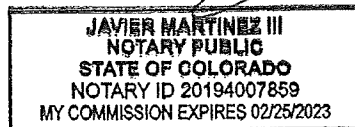
STATE OF COLORADO )  
 )ss.  
COUNTY OF Boulder )

The above and foregoing document was acknowledged before me this 5<sup>th</sup> day of May, 2022, by Wilma C. Eberhardt.

WITNESS my hand and official seal.

My Commission expires: 02/25/23

Javier Martinez III  
Notary Public



**EXHIBIT A**

Lot 42, Block 39, LLA Amendment No. 1, Town of Buena Vista, Chaffee County, Colorado.