



BOARD OF ADJUSTMENT AGENDA

September 07, 2023 at 1:30 PM

Commissioners Meeting Room - 401 Main Street, Suite 309, Walsenburg, CO 81089

Office: 719-738-3000 ex 200 | Fax: 719-738-3996

Join via Zoom:

<https://us02web.zoom.us/j/83429735658?pwd=S2ZlSENWk0ZHR3Y0RkxBOEp3c2xGdz09>

Meeting ID: 834-2973-5658 | **Passcode:** 915234

1. ROLL CALL
2. PLEDGE OF ALLEGIANCE
3. READING OF MINUTES
 - a. Minutes from 8/17/23
4. ACTION ITEMS
 - a. [Variance 23-034](#) Bautista
5. DISCUSSIONS
6. UPCOMING MEETINGS
7. ADJOURNMENT



Huerfano County Board of Adjustment Staff Report – Permit #23-034 VAR Blue Sky Farms Meeting Type –Public Hearing

Meeting Date: September 7, 2023

Request Summary

With this Application Francisco Bautista of Blue Sky Farms (the Applicant) requests the following:

Variance from LUR §18.3.3 Setbacks for marijuana cultivation to be reduced to 390 feet from the north property boundary and 150 ft from the west property boundary. Setbacks to the East and South of the facility exceed 1,000 ft. The site contains improvements and infrastructure including previously used to cultivate hemp, and operations have been halted since 2019. The site is addressed at 303 CR 504 (Parcel Number 395593).

If this variance is granted, the applicant intends to apply for a Conditional Use Permit pursuant to Section 18 of the

The subject property is zoned Agricultural. Zoning standards for this district are set forth in LUR Section §1.03.

Code References

The following Code Sections are applicable to this application and may be referenced by the Board of Adjustment in their evaluation of the request:

§1.05.62 – Use Table reference: Commercial medical marijuana cultivation operation

§1.05.66 – Use Table reference: Commercial marijuana cultivation facility

In the Agricultural zone, marijuana cultivation is a conditional use. Section 18 of the Land Use Code governs conditional use permits for marijuana.

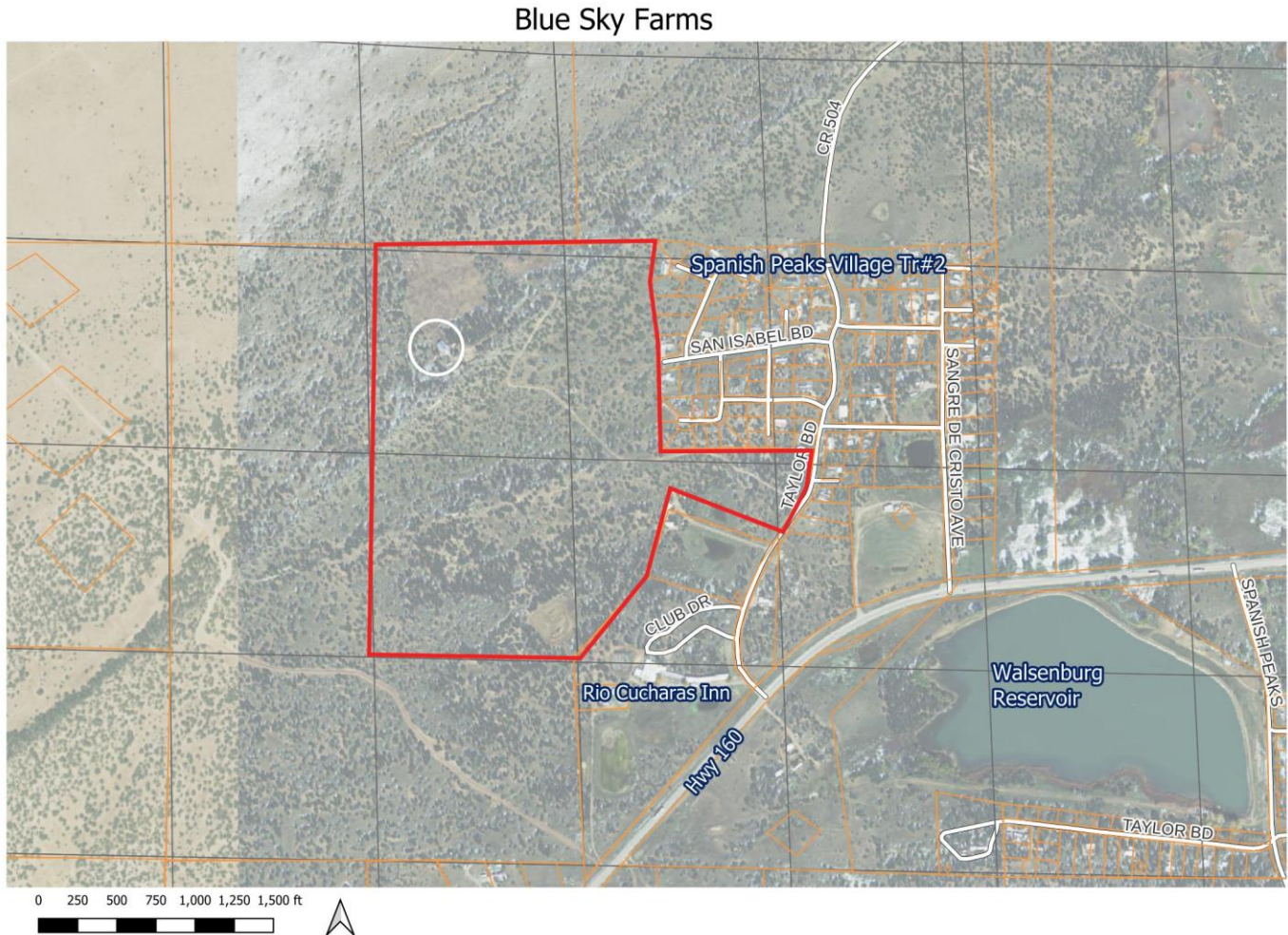
§18.3.3 Setback – Normal. All facilities in the Agricultural Zoning District shall be setback a minimum of one-thousand (1,000) feet from each of the facility’s property lines. For facilities located in the Commercial or Industrial Zoning Districts, existing zoning district setbacks shall apply. Facilities are not permitted in the Rural Residential or Urbanizing Residential Zoning Districts.

The suitability of a location for a facility shall be determined at the time of CUP application. Changes in the neighborhood that occur after the application that might render the site unsuitable for a facility under this Section shall not be grounds to revoke or deny renewal of a permit for such facility so long as the permit for the facility remains in effect. (See Sec. 18.5 for MIP manufacturing setbacks.)

§18.2.2 Variances. When a provision of this regulation would result in peculiar and exceptional hardship, the applicant may request a waiver from that provision. The Planning Commission shall have the authority to recommend relief from the provision to the BOCC, providing granting the request does not produce a substantial detriment to the public good.

18.4.2 Odor. Odor from a cultivation facility must not be detected by an Olfactometer after the odorous air has been diluted with seven (7) or more volumes of odor-free air at the property line of the facility.

Site Map/Vicinity Map



Background

This application was completed on August 18, 2023. The applicant has owned this 107-acre property since 2017 and grew hemp on the property until 2019, at which point operations were shut down due to changes in the market. Applicant claims to have never received a complaint from farming hemp at the same location. The site contains a greenhouse that would be used for cultivation and a shed that would be used for storage.

The 1000-foot setback rule was adopted in 2018. Since then, the following requests for variances have been made:

20-011 Monte Fiore was granted a variance to continue operations permitted in Permit 17-001 as setbacks were imposed after original CUP approval.

20-019 Green Leaf Growers was granted a variance to continue operations permitted in Permit 17-019 as setbacks were imposed after original CUP approval. Application included proposed expansion of operation.

22-20 Hurtado was denied a request for a variance from setbacks to convert a hemp operation into a marijuana operation. Public hearing revealed significant opposition from nearby property owners.

Submittal Requirements

1. Land Use Application.
2. Letter of Intent: include from what regulation a variance is requested, why a variance should be granted, and all relevant property history, deeds, surveys, permits, topography or other documentation.
3. A full and accurate legal description of the land involved in the appeal action.
4. A plot plan showing the existing and proposed location of all structures, uses, zoning district boundaries and setbacks on the land involved in the variance request.
5. Proof of ownership: Current deed to the property, and if applicant is not the owner, written evidence of authority to act on behalf of the lawfully demonstrated owner of the property.
6. List of adjacent property owners and mineral rights holders/lessees.

Criteria/Findings

Section 9.02.02 of the Land Use Code establishes powers of the Board of Adjustment, which serve to guide decisions. The Board of Adjustment may grant a variance based on the following considerations and criteria when considering an appeal for a variance:

1. Due to conditions of a piece of property, including: exceptional narrowness, shallowness, shape, topographic conditions or other extraordinary or exceptional physical characteristics or conditions of property not created by the applicant;
2. The strict application of any zoning regulation or provision therein would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property;
3. That the requested variance would pose no substantial detriment to the public good;
4. The requested variance does not alter or impair the intent and purpose of the zoning regulations and other provisions contained within State or County regulations;
5. The requested variance does not permit a use prohibited or allowed conditionally by special review for the zoning district involved.

Analysis

The conditions of the property allow for a 1000 setback from the adjacent residential subdivision of Spanish Peaks Village Tract #2, and the topography further contributes to a sense of separation as there is a dyke between the facility and residential properties. The property was previously used to grow hemp, which has a similar impact on nearby land owners to marijuana, therefore the proposed use is similar to a previous use, which, according to the applicant did not generate any complaints from neighbors.

The facility is less than 1000 ft from the northern and western property boundaries, which border on vacant agricultural land owned by the Bar Spear Bar Ranch LLC in the north and Michael Blaudendistel in the west. Because these parcels do not contain homes or businesses, the likely impact on these neighbors whose property is less than 1000 ft from the property line is likely to be minimal.

Noticing:

Hearing was posted in the World Journal on 8/24/23 and letters were sent to adjacent property owners on 8/22/23.

Staff Analysis/Recommendation

Staff finds that the impacts of granting this variance would be similar to impacts of previous uses of the facility. Since the facility is currently not being used, putting it into production to grow commercial or medical marijuana

would allow a dormant property to be put to productive use and would have a positive economic impact on the County. Section 18.4.2 gives the County the ability to enforce the spread of odor at the property line. Staff recommends approval of this request to grant a variance from the requirement for a 1000 foot setback to allow the applicant to pursue a Conditional Use Permit to use the existing facility for marijuana cultivation.

Potential Conditions

Limit variance from setback requirements to the north and west property boundary.

Commission Action Options:

1. **Approval** without any special conditions.
2. **Conditional** Approval with a description of the special conditions.
3. **Denial**, indicating for the record the reason(s) for such action.
4. **Continuation** until a future date to gather more information or obtain clarification or for any other relevant cause.

Enclosures

- Land Use Application.
- Letter of Intent.
- Plot plan.
- Deed to property.
- List of adjacent property owners and mineral rights holders/lessees.



Huerfano County Land Use and Building Department

401 Main St
Ste 304
Walsenburg, CO 81089
(719) 738-1220, x506

PERMIT

LU-23-034

VARIANCE

SITE ADDRESS: NO SITUS ADDRESS UNKNOWN
PRIMARY PARCEL: 395593
PROJECT NAME: BLUE SKY FARMS, LLP

ISSUED:
EXPIRES: 02/14/2024

APPLICANT: Ray, Rebecca
3570 E 12th Ave
Denver, CO 80206
303-588-4866

OWNER: BLUE SKY FARMS, LLP
12361 E CORNELL AVE
AURORA, CO 80014-0000

Detail Name

Detailed project description

Detail Value

The purpose of this project is to take a parcel of land previously used for hemp cultivation and to utilize the land for recreational marijuana cultivation. The existing greenhouse located on the property would become the cultivation site. And the existing shed would be used for storage. This land is ready to be utilized for marijuana cultivation because the previous use was for hemp cultivation. There is no planned construction for phase two of the operation. Phase two may include the addition of greenhouses and buildings. Phase two projects would be applied for in a future application.

From which regulation(s) are you seeking a variance?

18.3.3: Setback - Normal. All facilities in the Agricultural Zoning District shall be setback a minimum of one-thousand (1,000) feet from each of the facility's property lines. 18.05.3: Proof of Colorado residence of two years.

Characteristics or conditions of property that make variance necessary

Setback: Both the North and West sides of the property do not meet the 1,000 foot setback requirements. The North side of the property is 647.2 feet from the property line. The West side of the property is 298.5 feet from the property line.



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Explain how a strict application of the land use regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship to the applicant

Setback: This is a large parcel of land at 107.89 acres. The cultivation site is at the Northwest portion of the parcel and due to setback requirements, the parcel of land would not qualify for Retail Marijuana Cultivation Conditional Use Permit. The land was previously utilized for hemp cultivation. Hemp cultivation is a very similar use to the proposed new use of the land as it is just a variation of the same plant.

If granted, describe potential impacts of proposed use on neighborhood?

There would be no impact on the neighborhood as the proposed use is virtually the same as the previous use.

Applicant's Phone Number (if different from above or enter N/A)

816-529-7047

Parcel (Schedule) Number (Available from Assessor):

395593

Applicant's Email (if different from above or enter N/A)

fbautista@blueskyfarmscbd.com

Parcel Area (acres)

107

Zone District

Agricultural

Description of the current land use(s) on the property, the characteristics of the land within the property boundaries, and the current land use on all adjoining property.

The current land use is agricultural. The characteristics of the land are - property's plantable acreage is limited to the space in the rectangle shown on our site plan. Out of the total 107 acres, only about one-third of my land is actually usable for farming due to the topographic and physical characteristics of the land. The placement of our existing structure satisfies the 1000' setbacks for 90% of our property and neighbors. Out of the total 107 acres, only about one-third of my land is actually usable for farming due to the topographic and physical characteristics of the land. The land use on the adjoining properties are: Agricultural Rural residential Commercial

Is all or part of the proposed project in a 100-year flood zone?

No

Are there slopes in excess of 20% in the project area?

No

If yes, describe conditions

N/A

Will project require any state or federal permits?

Yes

If yes, list all required permits:

Marijuana Enforcement Division
Regulated Marijuana Business
License

Huerfano County CUP

2-



Huerfano County Land Use and Building Department

401 Main St
 Ste 304
 Walsenburg, CO 81089
 (719) 738-1220, x506

- 3- N/A
- 4- N/A
- 5- N/A
- Is an HB 1041 Permit required? No
- The Homeowner/Property Owner Associations (HOA/POA) in This List Require Their Approval Before Submitting This Application. If Your HOA/POA is in The List Please Upload The Approval Letter. 1-MY HOA/POA IS NOT LISTED
- Additional details that will help us understand and evaluate your project See LOI for additional details.

FEES:	<u>Paid</u>	<u>Due</u>
Variance Application Fee		\$75.00
Public Noticing		\$43.00
Totals :		\$118.00

Letter of Intent - Updated 9/1/2023

Dear members of the Huerfano County Board of Adjustment:

My name is Francisco Bautista, and I have owned Blue Sky Farms (CBD) since 2017. My property is 107.8 acres with a 1.21 acre fenced-in area, which holds a 5656 sq ft combined growing space. Due to the decreased demand in the hemp market, I had to shut down the hemp operations in 2019, and the farm has yet to be operational since then. From 2019 - 2022, I listed the property for sale. Through market research and restructuring, I identified Cannabis as an ideal crop to replace our hemp crops and get the farm operational and profitable since I did not have any interested buyers for the property while it was listed. I am requesting a setback variance on the 1000-foot setback rule at the northwest sectors of the property so I can proceed with submitting a Cannabis cultivation application. An approved setback variance request will enable me to utilize my existing hemp infrastructure for Cannabis, a more lucrative crop. We currently meet the 1000.0' Setback for all the Spanish Peaks subdivision properties adjacent to to the east, and I will not expand beyond that. The grant of the variance would not cause substantial detriment to the public good because hemp and Cannabis are cultivated nearly in the same manner with the same smell profile and I had no complaints when I operated as a hemp cultivation.

Setback variance request

- West sector - seeking a variance of 802.2 ft - our facility fenceline is within 197 ft of the western boundary of my property
- North Sector - seeking a variance of 605.4 ft - our facility fenceline is within 395 feet of the north boundary of my property

The fenceline of my growing facility is 1,337 ft from the eastern boundary and 1,922 ft from the southern boundary. My property has a dike that runs from our property's southwest to the northeast portion. Considering the existing infrastructure, the dike, the steep topography, rock composition (cliffs), and location of the well on the property, the current greenhouse is in the ideal location for resuming growing operations. The northwest corner of my property is really the only feasible place to continue cultivation operations due to the grading, lack of vegetation, and access to water/sun make.

The strict application of the 1,000 ft setback to the north and west would result in undue hardship for my business due to the peculiar and exceptional difficulties I would

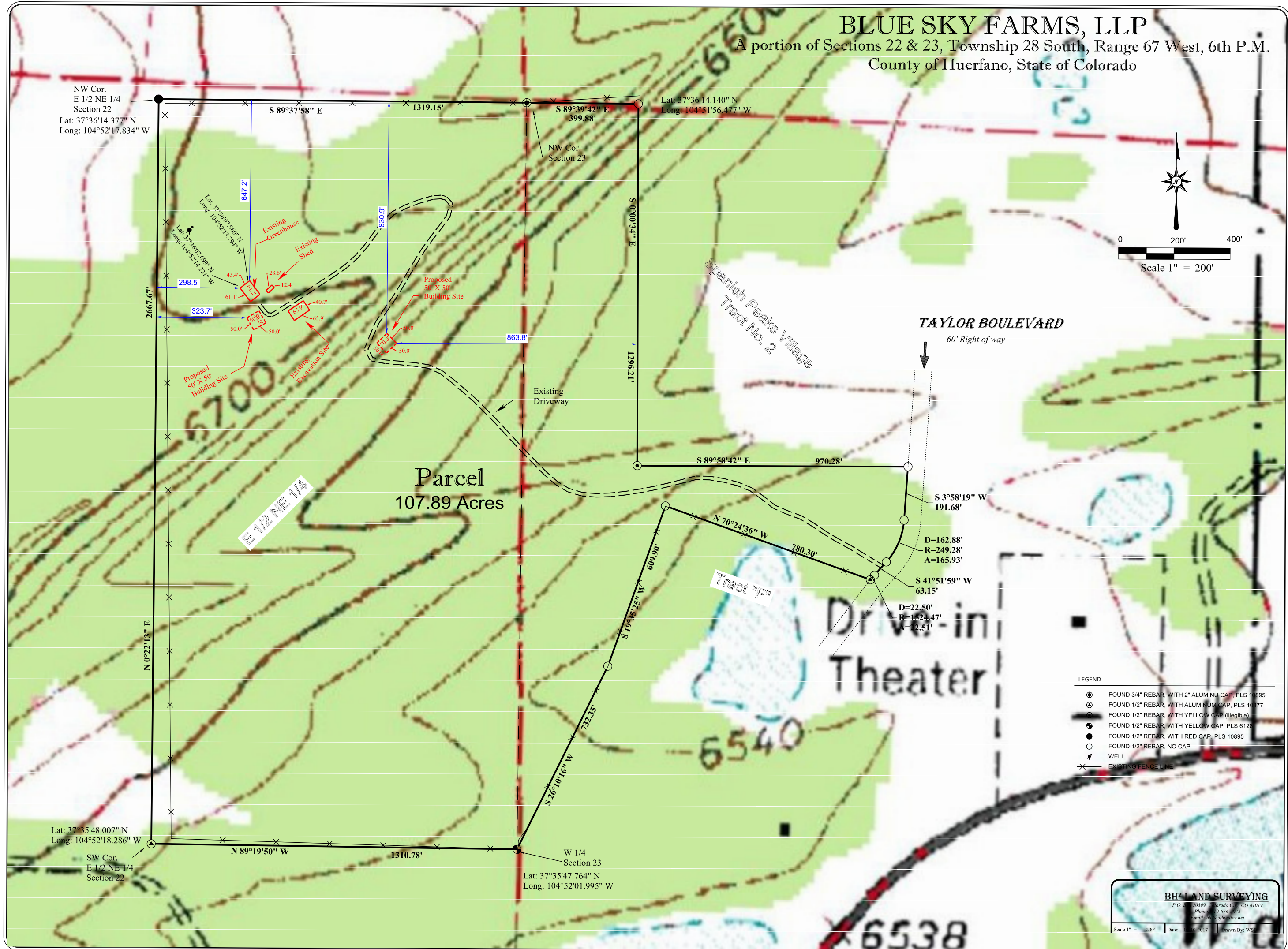
Huerfano County Department of Land Use
401 Main Street, Ste 304
Walsenburg, CO 81089

Name: Francisco Bautista
Schedule number: 395593-R
Zoning: Agricultural

Item 4a.

encounter of trying to relocate it within my property, and would be a total bar to making use of my farm. A grant of the variance would allow me to make my farm profitable while creating jobs in the community. Thank you for reviewing this letter and my application.

Thank you



Item 4a.

Original Note and Deed of Trust Returned to:
When recorded return to: DOTTER ABSTRACT CO., 506 MAIN, WALSENBURG, CO 81089
Prepared/Received by: CH/

REQUEST FOR FULL / PARTIAL
RELEASE OF DEED OF TRUST AND RELEASE BY HOLDER OF THE EVIDENCE OF DEBT WITH
PRODUCTION OF EVIDENCE OF DEBT PURSUANT TO § 38-39-102 (1) (a) and (3), COLORADO REVISED STATUTES

May 12, 2023 Date
BLUE SKY FARMS, LLP Original Grantor (Borrower)
TBD, WALSENBURG, CO 81089 Current Address of Original Grantor (assuming Party, or Current Owner)
 Check here if current address is unknown
ANDREW CHAPMAN Original Beneficiary (Lender)
July 13, 2017 Date of Deed of Trust
July 21, 2017 Date of Recording and/or Re-Recording of Deed of Trust
HUERFANO 409537 Recording Information

County, Rcpt. No. and/or File No. and/or Book/Page No. and/or Torrens Reg. No.
TO THE PUBLIC TRUSTEE OF Huerfano COUNTY

(The County of the Public Trustee who is the appropriate grantee to whom the above Deed of Trust should grant an interest in the property described in the Deed of Trust)

PLEASE EXECUTE AND RECORD A RELEASE OF THE DEED OF TRUST DESCRIBED ABOVE. The indebtedness secured by the Deed of Trust has been fully or partially paid and/or the purpose of the Deed of Trust has been fully or partially satisfied in regard to the property encumbered by the Deed of Trust as described in the Deed of Trust as to a full release or, in the event of a partial release, only that portion of the real property described as:

(IF NO LEGAL DESCRIPTION IS LISTED THIS WILL BE DEEMED A FULL RELEASE)

Pursuant to § 38-39-102 (3), Colorado Revised Statutes, in support of this Request for Release of Deed of Trust, the undersigned, as the holder of the evidence of debt secured by the Deed of Trust described above, or as a Title Insurance Company authorized to request the release of a Deed of Trust pursuant to § 38-39-102(3)(c), Colorado Revised Statutes, in lieu of the production or exhibition of the original evidence of debt with this Request for Release, certifies as follows:

- 1. The purpose of the Deed of Trust has been fully or partially satisfied.
- 2. The original evidence of debt is not being exhibited or produced with this request for release of Deed of Trust.
- 3. It is one of the following entities (check applicable box):
 - a. The holder of the original evidence of debt that is a qualified holder, as specified in § 38-39-102(3)(a), Colorado Revised Statutes, that agrees that it is obligated to indemnify the Public Trustee for any and all damages, costs, liabilities, and reasonable attorney fees incurred as a result of the action of the Public Trustee taken in accordance with this request for release;
 - b. The holder of the evidence of debt requesting the release of Deed of Trust without producing or exhibiting the original evidence of debt that delivers to the Public Trustee a corporate surety bond as specified in § 38-39-102(3)(b), Colorado Revised Statutes;
 - c. A title insurance company licensed in Colorado, as specified in § 38-39-102(3)(c), Colorado Revised Statutes, that agrees that it is obligated to indemnify the Public Trustee pursuant to statute as a result of the action of the Public Trustee taken in accordance with this request for release and that has caused the indebtedness secured by the deed of trust to be satisfied in full, or in the case of a partial release, to the extent required by the holder of the indebtedness; or
 - d. A holder, as specified in § 38-39-102(3)(d)(i), Colorado Revised Statutes, that agrees that it is obligated to indemnify the Public Trustee pursuant to statute as a result of the action of the Public Trustee in accordance with this Request for Release and that has caused the indebtedness secured by the Deed of Trust to be satisfied in full, or in the case of a partial release, to the extent required by the holder of the indebtedness. E-FILE ONLY

ANDREW CHAPMAN, 4815 WEST 69TH DR., WESTMINSTER, CO 80030

Name and address of the holder of the evidence of debt secured by Deed of Trust (lender) or name and address of the Title Insurance Company authorized to request the release of a Deed of Trust

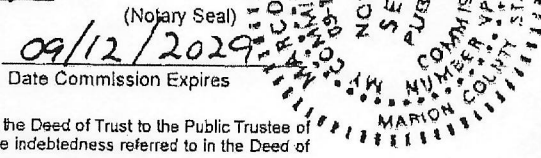
Name, title, and address of officer, agent, or attorney of the holder of the evidence of debt secured by Deed of Trust (lender)

X Andrew Chapman
ANDREW CHAPMAN Signature

State of Indiana County of Hamilton
The foregoing Request for Release was acknowledged before me on 05/22/2023 (Date)

by* Andrew Chapman
* if applicable, insert title of officer and name of current holder.

Witness my hand and official seal [Signature] Notary Public



RELEASE OF DEED OF TRUST

WHEREAS, the Grantor(s) named above, by Deed of Trust, granted certain real property described in the Deed of Trust to the Public Trustee of the County referenced above, in the State of Colorado, to be held in trust to secure the payment of the indebtedness referred to in the Deed of Trust; and

WHEREAS, the indebtedness secured by the Deed of Trust has been fully or partially paid and/or the purpose of the Deed of Trust has been fully or partially satisfied according to the written request of the holder of the evidence of debt or Title Insurance Company authorized to request the release of the Deed of Trust;

NOW THEREFORE, in consideration of the premises and the payment of the statutory sum, receipt of which is hereby acknowledged, I, as the Public Trustee in the County named above, do hereby fully and absolutely release, cancel and forever discharge the Deed of Trust or that portion of the real property described above in the Deed of Trust, together with all privileges and appurtenances belonging to the real property.

(Public Trustee use only; use appropriate label) (Public Trustee's Seal) Public Trustee
Debra J Reynolds May 26, 2023
Deputy Public Trustee

(If applicable, name and address of person creating new legal description as required by § 38-35-106.5, Colorado Revised Statutes.)

34362

RECORDED ELECTRONIC Item 4a.
 ID 430164 County Hu
 Date 5/30/2023 Time 10:09 A.M.
 simplifile www.simplifile.com 800.460.5657

Original Note and Deed of Trust Returned to:
 When recorded return to: DOTTER ABSTRACT CO., 506 MAIN, WALSENBURG, CO 81089
 Prepared/Received by: CH/

REQUEST FOR FULL / PARTIAL
 RELEASE OF DEED OF TRUST AND RELEASE BY HOLDER OF THE EVIDENCE OF DEBT WITHOUT
 PRODUCTION OF EVIDENCE OF DEBT PURSUANT TO § 38-39-102 (1) (a) and (3), COLORADO REVISED STATUTES

May 12, 2023 Date
 BLUE SKY FARMS, LLP Original Grantor (Borrower)
 TBD, WALSENBURG, CO 81089 Current Address of Original Grantor, Assuming
 Check here if current address is unknown Party, or Current Owner
 ANDREW CHAPMAN Original Beneficiary (Lender)
 July 13, 2017 Date of Deed of Trust
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 HUERFANO 409537 Recording Information

County Rcpt. No. and/or File No. and/or Book/Page No. and/or Torrens Reg. No.
 TO THE PUBLIC TRUSTEE OF Huerfano COUNTY

(The County of the Public Trustee who is the appropriate grantee to whom the above Deed of Trust should grant an interest in the property described in the Deed of Trust.)

PLEASE EXECUTE AND RECORD A RELEASE OF THE DEED OF TRUST DESCRIBED ABOVE. The indebtedness secured by the Deed of Trust has been fully or partially paid and/or the purpose of the Deed of Trust has been fully or partially satisfied in regard to the property encumbered by the Deed of Trust as described in the Deed of Trust as to a full release or, in the event of a partial release, only that portion of the real property described as:

(IF NO LEGAL DESCRIPTION IS LISTED THIS WILL BE DEEMED A FULL RELEASE)

Pursuant to § 38-39-102 (3), Colorado Revised Statutes, in support of this Request for Release of Deed of Trust, the undersigned, as the holder of the evidence of debt secured by the Deed of Trust described above, or as a Title Insurance Company authorized to request the release of a Deed of Trust pursuant to § 38-39-102(3)(c), Colorado Revised Statutes, in lieu of the production or exhibition of the original evidence of debt with this Request for Release, certifies as follows:

- The purpose of the Deed of Trust has been fully or partially satisfied.
- The original evidence of debt is not being exhibited or produced with this request for release of Deed of Trust.
- It is one of the following entities (check applicable box):
 - The holder of the original evidence of debt that is a qualified holder, as specified in § 38-39-102(3)(a), Colorado Revised Statutes, that agrees that it is obligated to indemnify the Public Trustee for any and all damages, costs, liabilities, and reasonable attorney fees incurred as a result of the action of the Public Trustee taken in accordance with this request for release;
 - The holder of the evidence of debt requesting the release of Deed of Trust without producing or exhibiting the original evidence of debt that delivers to the Public Trustee a corporate surety bond as specified in § 38-39-102(3)(b), Colorado Revised Statutes;
 - A title insurance company licensed in Colorado, as specified in § 38-39-102(3)(c), Colorado Revised Statutes, that agrees that it is obligated to indemnify the Public Trustee pursuant to statute as a result of the action of the Public Trustee taken in accordance with this request for release and that has caused the indebtedness secured by the deed of trust to be satisfied in full, or in the case of a partial release, to the extent required by the holder of the indebtedness; or
 - A holder, as specified in § 38-39-102(3)(d)(i), Colorado Revised Statutes, that agrees that it is obligated to indemnify the Public Trustee pursuant to statute as a result of the action of the Public Trustee in accordance with this Request for Release and that has caused the indebtedness secured by the Deed of Trust to be satisfied in full, or in the case of a partial release, to the extent required by the holder of the indebtedness. **E-FILE ONLY**

ANDREW CHAPMAN, 4815 WEST 69TH DR., WESTMINSTER, CO 80030

Name and address of the holder of the evidence of debt secured by Deed of Trust (lender) or name and address of the Title Insurance Company authorized to request the release of a Deed of Trust

Name, title, and address of officer, agent, or attorney of the holder of the evidence of debt secured by Deed of Trust (lender)

X Andrew Chapman
 ANDREW CHAPMAN

[Signature]
 Signature

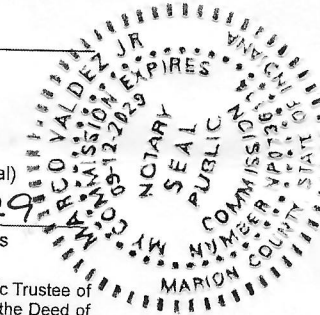
State of Indiana County of Hamilton
 The foregoing Request for Release was acknowledged before me on 05/22/2023 (Date)

by* Andrew Chapman

* if applicable, insert title of officer and name of current holder.

Witness my hand and official seal [Signature]
 Notary Public

(Notary Seal)
09/12/2029
 Date Commission Expires



RELEASE OF DEED OF TRUST

WHEREAS, the Grantor(s) named above, by Deed of Trust, granted certain real property described in the Deed of Trust to the Public Trustee of the County referenced above, in the State of Colorado, to be held in trust to secure the payment of the indebtedness referred to in the Deed of Trust; and

WHEREAS, the indebtedness secured by the Deed of Trust has been fully or partially paid and/or the purpose of the Deed of Trust has been fully or partially satisfied according to the written request of the holder of the evidence of debt or Title Insurance Company authorized to request the release of the Deed of Trust;

NOW THEREFORE, in consideration of the premises and the payment of the statutory sum, receipt of which is hereby acknowledged, I, as the Public Trustee in the County named above, do hereby fully and absolutely release, cancel and forever discharge the Deed of Trust or that portion of the real property described above in the Deed of Trust, together with all privileges and appurtenances belonging to the real property.

(Public Trustee use only; use appropriate label) (Public Trustee's seal) Public Trustee

(If applicable: Notary Seal) Deputy Public Trustee

(If applicable, name and address of person creating new legal description as required by § 38-35-106.5, Colorado Revised Statutes.)

34362

DEED OF TRUST

THIS INDENTURE, made this 13th day of July, 2017, between Blue Sky Farms, LLP, whose address is: 12361 E. Cornell Ave., Aurora, CO 80014, party of the first part, and the Public Trustee of the County of Huerfano in the State of Colorado, party of the second part, **WITNESSETH:**

THAT WHEREAS, the said Blue Sky Farms, LLP has executed a Promissory Note bearing even date herewith for the principal sum of Two hundred seventy thousand dollars, (\$270,000.00) payable to the order of Andrew Chapman, whose address is 4815 West 69th Dr., Westminster, CO 80030, after the date thereof with interest thereon from the date thereof at the rate of 6% per cent per annum, payable as follows: 60 consecutive monthly installments in the amount of \$5,219.86 commencing August 13, 2017 and continuing on the 13th day of each and every month until the balance of principal and interest is paid in full. If any payment is 10 days or more late, then a late charge of \$521.98 shall be due and payable. NO PRE-PAYMENT PENALTY.

AND WHEREAS, the said party of the first part is desirous of securing the payment of the principal and interest of said Promissory Note in whose hands soever the said Note may be.

NOW THEREFORE, the said party of the first part, in consideration of the premises, and for the purpose aforesaid, does hereby grant, bargain, sell and convey unto the said party of the second part, in trust forever, the following described property, situate in the County of Huerfano, and State of Colorado, to-wit:

See Exhibit A attached

TO HAVE AND TO HOLD the same, together with all the singular, the privileges and appurtenances, thereunto belonging: In Trust Nevertheless, that in case of default in the payment of said Note, or any part thereof, or in the payment of the interest thereon, according to the tenor and effect of said Note or in the payment of any prior encumbrance, principal or interest, if any, or in case default shall be made in or in case of violation or breach of any of the terms, conditions, covenants, or agreements herein contained, the beneficiary hereunder, or the legal holder of the indebtedness secured hereby may declare a violation of any of the covenants herein contained and elect to advertise said property for sale and demand such sale, then upon filing notice of such election and demand for sale with the said party of the second part, who shall upon receipt of such notice of election and demand for sale cause a copy of the same to be recorded in the recorder's office of the county in which said real estate is situated, it shall and may be lawful for said party of the second part to sell and dispose of the same (en masse or in separate parcels, as said Public Trustee may think best), and all the right, title and interest of said party of the first part, his heirs or assigns therein, at public auction at the east front door of the Courthouse in Walsenburg, County of Huerfano, and State of Colorado or on said premises of any part thereof, as may be specified in the notice of such sale, for the highest and best price the same will bring in cash, four weeks'

public notice having previously given of the time and place of such sale, by advertisement, weekly, in some newspaper of general circulation at the time published in said County of Huerfano, a copy of which notice shall be mailed as provided by statute to said party of the first part at the address given and to such person or persons appearing to have acquired a subsequent record interest in said real estate at the address given in the recorded instrument, where only the county and state is given as the address then such notice shall be mailed to the county seat, and to make and give to the purchaser or purchasers of such property at such sale a certificate or certificates in writing describing such property purchased, and the sum or sums paid therefore, and the time when the purchaser or purchasers (or other person entitled thereto) shall be entitled to a deed or deeds therefore, unless the same shall be redeemed as is provided by law and said Public Trustee shall, upon demand by the person or persons holding the said certificate or certificates of purchase, when said demand is made, or upon demand by the person or persons holding the said certificate or certificates of purchase, when said demand is made, or upon demand by the person entitled to a deed and for the property purchased, at the time such demand is made, the time for redemption having expired, make and execute to such person or persons a deed or deeds shall be in the ordinary form of a conveyance, and shall be signed, acknowledged and delivered by the said Public Trustee as grantor, and shall convey and quit claim to such person or persons entitled to such deed, as grantee, the said property purchased as aforesaid, and all the right, title, interests, benefit and equity of redemption of the party of the first part, his heirs and assigns therein and shall recite the sum or sums for which the said property was sold and shall refer to the power of sale herein contained, and to the sale or sales made by virtue thereof; and in case of an assignment of such certificate or certificates of purchase, or in case of the redemption of such property by a subsequent encumbrancer, such assignment or redemption shall also be referred to in such deed or deeds; but the notice of sale need not be set out in such deed or deeds; and the said Public Trustee shall, out of the proceeds or avails of such sale, after first paying and retaining all fees, charges and costs of making said sale, pay to the beneficiary hereunder or the legal holder of said note the principal and interest due on said note according to the tenor and effect thereof, and all monies advanced by such beneficiary or legal holder of said note for insurance, taxes, and assessments, with interest thereon at 12 percent per annum, rendering the overplus, if any, unto the said party of the first part, his legal representatives or assigns; which sale or sales and said deed or deeds so made shall be a perpetual bar, both in law and equity, against the said party of the first part, his heirs or assigns and all other persons claiming the said property, or any part thereof, by, from, through or under said party of the first part, or any of them. The holder or holders of said note or notes may purchase said property or any part thereof; and it shall not be obligatory upon the purchaser or purchasers at any such sale to see to the application of the purchase money. If a release deed be required, it is agreed that the party of the first part, his heirs or assigns, will pay the expense thereof.

And the said party of the first part, for himself and for his heirs, executors, and administrators, covenants and agrees to and with the said party of the second part, that at the time of the ensembling of and delivery of these presents he is well seized of the said lands and tenements in fee simple and has good right, full power

and lawful authority to grant, bargain, sell and convey the same in manner and form as aforesaid; hereby fully and absolutely waiving and releasing all rights and claims he may have in or to said lands, tenements, and property as a Homestead Exemption, or other exemption, under and by virtue of any act of the General Assembly of the State of Colorado or the act of Congress of the United States of America now existing or which may hereafter be passed in relation thereto; and that the same are free and clear of all liens and encumbrances whatever, and he will defend the quiet and peaceable possession of the said party of the second part, his successors and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part shall and will warrant and forever defend.

AND THAT DURING THE CONTINUANCE of said indebtedness or any part thereof, the said party of the first part will in due season pay all taxes and assessments levied on said property; all amounts due on account of principal and interest on prior encumbrances, if any; and will keep all buildings that may at any time be on said lands, insured against loss by fire with extended coverage endorsement in such company or companies as the holder of said note may, from time to time direct, for such sums as such company or companies will insure for, not to exceed the amount of said indebtedness, except at the option of said party of the first part, with loss, if any, payable to the beneficiary hereunder, as his interest may appear, and will deliver the policy or policies of insurance to the beneficiary hereunder, as further security for the indebtedness aforesaid. And in case of the failure of said party of the first part to thus insure and deliver the policies of insurance, or to pay such taxes or assessments or amounts due or to become due on any prior encumbrance, if any, then the holder of said note, or any of them, may procure such insurance, or pay such taxes or assessments or amounts due upon prior encumbrances, if any, and all monies thus paid, with interest thereon, at 12 per cent per annum, shall become so much additional indebtedness, secured by this deed of trust, and shall be paid out of the proceeds of the sale of the property aforesaid, if not otherwise paid by the said party of the first part, and such failure shall be a violation or breach of the covenant and agreement.

If all or any part of the property or an interest therein is sold or transferred by first party without beneficiary's prior written consent, excluding (a) the creation of a lien or encumbrance subordinate to this Deed of Trust, (b) the creation of a purchase money security interest for household appliances, (c) a transfer by devise, descent or by operation of law upon the death of a joint tenant, or (d) the grant of any leasehold interest of three years or less not containing an option to purchase, beneficiary may, at beneficiary's option declare all the sums secured by this Deed of Trust to be immediately due and payable. Beneficiary shall have waived such option to accelerate if, prior to the sale or transfer, beneficiary and the person to whom the property is to be sold or transferred reach agreement in writing that the credit of such person is satisfactory to beneficiary and that the interest payable on the sums secured by this Deed of Trust shall be at such rate as beneficiary shall request.

AND THAT IN CASE OF ANY DEFAULT, whereby the right of foreclosure occurs hereunder, the said party of the second part or the holder of said note or

certificate of purchase, shall at once become entitled to the possession, use and enjoyment of the property aforesaid, and to the rents, issues and profits thereof, from the accruing of such right and during the pendency of foreclosure proceedings and the period of redemption, if any there be; and such possession shall at once be delivered to the said party of the second part or the holder of said note or certificate of purchase on request, and on refusal, the delivery of such possession may be enforced by the said party of the second part or the holder of said note or certificate of purchase by any appropriate civil suit or proceeding, and the said party of the second part, or the holder of said note or certificate of purchase, or any thereof, shall be entitled to a Receiver for said property, and of the rents, issues and profits thereof, after any such default, including the time covered by foreclosure proceedings and the period of redemption, if any there be, and shall be entitled thereto as a matter of right without regard to the solvency or insolvency of the party of the first part or of the then owner of said property and without regard to the value thereof, and such Receiver may be appointed by any court of competent jurisdiction upon ex parte application, and without notice, notice being hereby expressly waived and all rents, issues and profits, income and revenue therefrom shall be applied by such Receiver to the payment of the indebtedness hereby secured, according to law and the orders and directions of the court.

AND, that in case of default in any of said payments of principal or interest, according to the tenor and effect of said promissory note aforesaid, or any of them, or any part thereof, or of a breach or violation of any of the covenants or agreements herein, by the party of the first part, his executors, administrators or assigns, then and in the case the whole of said principal sum hereby secured, and the interest thereon to the time of sale, may at once, at the option of the legal holder thereof, become due and payable, and the said property be sold in the manner and with the same effect as if the said indebtedness had matured, and that if foreclosure be made by the Public Trustee, a reasonable attorney's fee for services in the supervision of said foreclosure proceedings shall be allowed by the Public Trustee as a part of the costs of foreclosure, and if foreclosure be made through the courts a reasonable attorney's fee shall be taxed by the Court as a part of the costs of such foreclosure proceedings.

In this Deed of Trust and any instrument of indebtedness, the singular shall include the plural; the masculine shall include the feminine and neuter genders.

Should any provisions of this Deed of Trust be found to violate the statutes or Court decisions of the State of Colorado, or of the United States, such provision shall be deemed to be amended to comply with and conform to such statutes and decisions.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his

Item 4a.

hand the day and year first above written.

Blue Sky Farms, LLP

BY: [Signature]
Aaron Hough
General Partner

STATE OF COLORADO)
COUNTY OF Windsor) ss.

The foregoing Deed of Trust was acknowledged before me this 21 day of July, 2017, by Blue Sky Farms, LLP by Aaron Hough as General Partner.

SANDRA J DOTTER
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 19924018547
MY COMMISSION EXPIRES FEBRUARY 30, 2020
My Commission Expires

WITNESS MY HAND AND OFFICIAL SEAL.

[Signature]
Notary Public

EXHIBIT A

LEGAL DESCRIPTION

A PART OF THE WEST ONE-HALF OF SECTION 23 AND THE EAST ONE-HALF OF THE NORTHEAST ONE-QUARTER OF SECTION 22, BOTH IN TOWNSHIP 28 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF HUERFANO, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 23 SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE SOUTH $89^{\circ}39'42''$ EAST ALONG THE NORTH LINE OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 23 A DISTANCE OF 399.88 FEET TO THE NORTHWEST CORNER OF THE PLAT SPANISH PEAKS VILLAGE TRACT NUMBER 2; THENCE SOUTH $00^{\circ}00'34''$ EAST ALONG THE WEST LINE OF SAID PLAT A DISTANCE OF 1296.21 FEET TO THE SOUTHWEST CORNER OF LOT 92 BEING COMMON TO THE SOUTHWEST CORNER OF LOT 93 OF SAID PLAT SPANISH PEAKS VILLAGE TRACT NUMBER 2; THENCE SOUTH $89^{\circ}58'42''$ EAST ALONG THE SOUTH LINE OF SAID PLAT A DISTANCE OF 970.28 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF TAYLOR BOULEVARD AS PLATTED IN SPANISH PEAKS VILLAGE TRACT NUMBER 2; THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE THE FOLLOWING FOUR COURSES:

1. SOUTH $3^{\circ}58'19''$ WEST A DISTANCE OF 191.68 FEET TO A POINT OF NON-TANGENT CURVE SAID POINT BEARS NORTH $86^{\circ}16'39''$ WEST TO THE CENTER OF SAID CURVE.
2. ALONG THE CURVE TO THE RIGHT HAVING A DELTA OF $38^{\circ}08'18''$ A RADIUS OF 245.28 FEET A DISTANCE OF 165.93 FEET TO A POINT OF TANGENT.
3. SOUTH $41^{\circ}51'39''$ WEST A DISTANCE OF 63.15 FEET TO A POINT OF CURVE.
4. ALONG THE ARC OF CURVE LEFT HAVING A DELTA OF $00^{\circ}50'45''$ A RADIUS OF 1324.47 FEET A DISTANCE OF 22.51 FEET TO THE NORTHEAST CORNER OF TRACT F AS SHOWN PER THIS SURVEY;

THENCE NORTH $70^{\circ}24'36''$ WEST ALONG THE NORTH LINE OF SAID TRACT F A DISTANCE OF 790.30 FEET TO THE NORTHWEST CORNER; THENCE SOUTH $19^{\circ}35'24''$ WEST ALONG THE WEST LINE OF SAID TRACT F A DISTANCE OF 609.90 FEET TO THE SOUTHWEST CORNER; THENCE SOUTH $26^{\circ}10'16''$ WEST A DISTANCE OF 732.35 FEET TO THE WEST ONE-QUARTER CORNER OF SAID SECTION 23; THENCE ALONG THE SOUTH LINE OF THE EAST ONE-HALF OF THE NORTH-EAST ONE-QUARTER OF SAID SECTION 22 NORTH $65^{\circ}19'50''$ WEST A DISTANCE OF 1310.78 FEET TO THE SOUTHWEST CORNER OF THE EAST ONE-HALF OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 22; THENCE ALONG THE WEST LINE OF THE EAST ONE-HALF OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 22 NORTH $00^{\circ}22'13''$ EAST A DISTANCE OF 2687.67 FEET TO THE NORTHWEST CORNER OF THE EAST ONE-HALF OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 22; THENCE ALONG THE NORTH LINE OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 22 SOUTH $85^{\circ}37'58''$ EAST A DISTANCE OF 1319.15 FEET TO THE TRUE POINT OF BEGINNING, ACCORDING TO THE RECORDS OF THE CLERK AND RECORDER FOR HUERFANO COUNTY, COLORADO.