

## PURCHASE AND SALE AGREEMENT

**THIS PURCHASE AND SALE AGREEMENT** (“**Agreement**”), is dated \_\_\_\_\_, 2018 and is made by and between City of Brighton, Colorado, a Colorado home rule municipality (“**Purchaser**”) and SW Ringsby East LLC, a Colorado limited liability company and SW Peoria LLC, a Colorado limited liability company (jointly referred to as “**Seller**”).

Seller and Purchaser hereby agree as follows:

1. **Property.** Upon and subject to the terms and conditions set forth in this Agreement, Seller hereby agrees to sell to Purchaser, and Purchaser hereby agrees to buy from Seller, approximately 15.54 acres, more or less, of real property, located at the Northwest corner of Main Street and Denver Street, Brighton, Colorado, Adams County Assessor Schedule Number 0156906200025 (the “**Property**”), including all of Seller’s easements, rights-of-way, development rights, agreements, appurtenances, and hereditaments appertaining to or otherwise benefitting or used in connection with such Property. The exact legal description of the Property is described on **Exhibit A**.

2. **Purchase Price.** The purchase price for the Property (“**Purchase Price**”) shall be ONE MILLION SIX HUNDRED THOUSAND and 00/100ths Dollars (U.S. \$1,600,000.00) payable by Purchaser as provided herein, subject to appropriation and budgeting by the Brighton City Council.

2.1 **Deposit.** The “**Effective Date**” of this Agreement shall be the date upon which the final party hereto executes this Agreement. On or before three (3) business days following the Effective Date, Purchaser shall deposit with First American Title Insurance Company, attention Mej Ellsworth, 1125 17th Street, Suite 500, Denver CO 80202 (the “**Title Company**”), as escrow agent, the sum of FIFTY Thousand and 00/100ths Dollars (U.S. \$50,000.00) in the form of cash, a certified or bank cashier’s check or a confirmed federal bank wire transfer of funds (which earnest money deposit, together with all interest earned thereon, is herein called the “**Deposit**”). The Deposit will be applied to the Purchase Price upon the Closing (as defined in Section 6), and is subject to refund to Purchaser, or retention by Seller, on the terms and conditions set forth in this Agreement.

2.2 **Cash at Closing.** At the Closing, Purchaser shall pay to Seller, in the form of cash, a certified or bank cashier’s check or a confirmed federal bank wire transfer of funds, (a) the balance of the Purchase Price (*i.e.*, the amount of the Purchase Price, less the amount of the Deposit), adjusted for prorations under Section 11, and (b) an additional amount sufficient to cover other costs payable by Purchaser pursuant to this Agreement. Also at Closing, the Title Company shall disburse to Seller the full amount of the Deposit.

3. **Opening of Escrow.** Concurrently with Purchaser’s delivery of the Deposit to Title Company in accordance with Section 2.1 above, Purchaser and Seller shall open an escrow with Title Company, in its capacity as escrow and closing agent, and shall deposit with Title Company fully executed counterparts of this Agreement for use as escrow

instructions. Purchaser and Seller further agree that if requested by Title Company, each shall execute Title Company's standard form of supplemental escrow instructions for transactions of the type contemplated in this Agreement; provided, however, that such escrow instructions shall be for the purpose of implementing this Agreement; and provided further, that such instructions shall incorporate this Agreement by reference and shall specifically provide that no provision thereof shall have the effect of modifying this Agreement unless it is so expressly stated and initialed by or on behalf of Purchaser and Seller. In the event of any conflict between the provisions of this Agreement and any supplementary escrow instructions, the terms of this Agreement shall prevail.

4. **Due Diligence Items.**

4.1 Within five (5) days of the Effective Date, Seller shall deliver to Purchaser, at Seller's sole cost and expense, a preliminary title commitment and the following items to the extent already existing and in Seller's possession or control (collectively, the "**Due Diligence Items**"):

- 4.1.1 Site Plans
- 4.1.2 ALTA Survey(s)
- 4.1.3 Environmental reports (including, but not limited to, a Phase I)
- 4.1.4 Geotechnical reports, and
- 4.1.5 Any other reports, studies or analysis relating to the Property or Premises, including any appraisals.

Purchaser shall have thirty (30) days from the Effective Date to review the Due Diligence Items.

5. **Appraisal.** Purchaser shall have thirty (30) days from the Effective Date to obtain an MAI appraisal on the Property ("**Appraisal**"). If the Appraisal is below the Purchase Price or the Phase I discloses an unacceptable environmental condition, then Purchaser may terminate this Agreement, subject to Section 15.2, so long as Purchaser provides written notice of such termination to Seller, which written notice must be accompanied by the Appraisal and which must be received by Seller no later than 5:00 p.m. (MT) on the thirtieth (30<sup>th</sup>) day after the Effective Date. If Purchaser complies with the foregoing sentence, then the Deposit shall be promptly returned to Purchaser, and all parties shall be released from all further obligations under this Agreement except for Section 15.2 and any other provisions that are intended to expressly survive the termination hereof. If Purchaser has not delivered to Seller written notice of termination on or before the expiration of the Inspection Period, the right of Purchaser to terminate shall be waived, the Deposit shall become nonrefundable (other than as expressly provided elsewhere in this Agreement) and this Agreement shall continue in full force and effect.

6. **Closing.** The closing and transfer of the possession of the Property (the "**Closing**") shall be conducted by the Title Company at its offices or through an escrow closing. The Closing shall occur ("**Closing Date**") within forty five (45) after the Effective Date, on or before Friday, November 2, 2018. Time is specifically of the essence as to the Closing Date and, except as otherwise provided herein, the Closing Date shall not be extended except by the mutual written agreement of Purchaser and Seller. All action to be taken at Closing will

be considered as taken simultaneously and no paper, document, or instrument will be considered to be delivered until all items to be delivered have been delivered.

7. **Title Documents.** Within five (5) business days after the Effective Date, Seller shall deliver to Purchaser, at Purchaser's expense, a current commitment (the "**Commitment**") for issuance of an owner's policy of title insurance in the amount of the Purchase Price, together with complete and legible copies of all documents listed as exceptions therein (to the extent available to the Title Company) and a current certificate of taxes due, issued by the Title Company showing fee simple title to the Property to be in Seller. If required by the Title Company, Purchaser, at its expense, may update and recertify any ALTA survey of the Property delivered by Seller (the "**Survey**"). The Title Commitment and the Survey shall be collectively referred to as the "**Title Documents.**" Seller shall refrain from allowing any additional encumbrances on the Property and shall have any and all monetary encumbrances (except for those relating to Taxes for the year of closing, a lien not yet due and payable) on the Property removed at Closing. Purchaser shall have thirty (30) days from the Effective Date to object to any unacceptable condition disclosed by the Title Documents and may terminate this Agreement, subject to Section 15.2 and receive the Deposit, or Purchaser may waive such objection and proceed to Closing. Seller may, but shall not be obligated to, cure title objections raised by Purchaser during the 30-day period, prior to Closing.

8. **Representations and Warranties of Seller.** Seller represents and warrants to Purchaser, as of the Effective Date and as of the Closing Date (as if made separately on both of such dates), the following shall be true, accurate and complete:

8.1 **Seller's Authority.** Each Seller is a valid, duly formed limited liability company existing and in good standing under the laws of the State of Colorado. The person executing this Agreement on behalf of Seller has been duly authorized to execute and deliver this Agreement by all requisite action on the part of Seller in accordance with Seller's governing instruments and applicable law. Upon execution of this Agreement on behalf of Seller, this Agreement shall be a valid and binding obligation of Seller, enforceable against Seller in accordance with its terms.

8.2 **Noncontravention.** Neither the execution and delivery of this Agreement by Seller, the consummation by Seller of the transaction contemplated by this Agreement, nor the compliance by Seller with any of the provisions of this Agreement and/or of the other agreements to be entered into at Closing will (i) violate, conflict with or result in a breach of any provisions of, or constitute a default (or an event which, with notice or the passage of time, or both, would constitute a default) under, any of the terms, conditions or provisions of Seller's governing instruments or any note, bond, mortgage, indenture, deed of trust, lease, license, agreement or other instrument or obligation to which it is a party, or by which it or any of its properties or assets may be bound or affected, or (ii) violate any order, writ, injunction, decree, statute, rule or regulation applicable to it or any of its properties or assets.

9. **Representations and Warranties of Purchaser.** Purchaser represents and warrants to Seller, as of the Effective Date and as of the date of Closing (as if made separately on both of such dates), that the following shall be true and correct:

9.1 Purchaser's Authority. Purchaser is a valid, duly formed home rule municipality in good standing under the laws of the State of Colorado. The person executing this Agreement on behalf of Purchaser has been duly authorized to execute and deliver this Agreement by all requisite action on the part of Purchaser in accordance with Purchaser's governing instruments and applicable law. Upon execution of this Agreement on behalf of Purchaser, this Agreement shall be a valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms.

9.2 Noncontravention. Neither the execution and delivery of this Agreement by Purchaser, the consummation by Purchaser of the transaction contemplated by this Agreement, nor the compliance by Purchaser with any of the provisions of this Agreement and/or of the other agreements to be entered into at Closing will (i) violate, conflict with or result in a breach of any provisions of, or constitute a default (or an event which, with notice or the passage of time, or both, would constitute a default) under, any of the terms, conditions or provisions of Purchaser's governing instruments or any note, bond, mortgage, indenture, deed of trust, lease, license, agreement or other instrument or obligation to which it is a party, or by which it or any of its properties or assets may be bound or affected, or (ii) violate any order, writ, injunction, decree, statute, rule or regulation applicable to it or any of its properties or assets.

9.3 Acknowledgment.

(a) Purchaser expressly acknowledges and represents that, except as expressly provided for herein, no other representations concerning the Property have been made by or on behalf of Seller and, in entering into this Agreement, Purchaser has not relied and does not rely on any representations other than those set forth in specifically herein. Purchaser acknowledges and represents that Purchaser has entered into this Agreement with the intention of making and relying upon its own investigation of the physical, environmental, economic use, compliance and legal condition of the Property and that Purchaser is not now relying, and will not later rely, upon any representations and warranties made by Seller or anyone acting or claiming to act, by, through or under or on Seller's behalf concerning the Property, except as expressly provided for herein.

(b) Purchaser, for Purchaser and Purchaser's successors and assigns, releases Seller and Seller's agents, employees, officers, directors, shareholders, partners, members, managers, brokers, contractors and representatives from, and waives any and all causes of action or claims against any of such persons for (a) any and all liability attributable to any physical condition of or at the Property, including, without limitation, the presence on, under or about the Property of any hazardous or toxic materials; (b) any and all liability resulting from the failure of the Property to comply with any applicable laws, including, without limitation, any environmental law; and (c) any liabilities, damages or injury arising from, connected with or otherwise caused by statements, opinions or information obtained from any of such persons with respect to the Property.

(c) Purchaser recognizes, stipulates and agrees that the provisions of this Section 9.3. are a material inducement to Seller in connection with the execution of this Agreement and the consummation of the transaction contemplated hereby and that, but

for the provisions of this Section 9.3, Seller would not have executed this Agreement or agreed to sell the Property on the terms and conditions contained herein.

(d) Notwithstanding the foregoing, to the extent Purchaser, prior to the Closing, discovers or otherwise becomes aware of any facts or circumstances that would render any of Seller's representations made in this Agreement inaccurate or incomplete, such incomplete or inaccurate representation shall not be deemed a breach of this Contract by Seller, and Purchaser, as its sole and exclusive remedies, shall have the remedies provided in Section 10.2 below.

(e) Purchaser acknowledges that the Property is being sold "AS IS, WHERE IS, without any warranty of quality, condition or usefulness, including, without limitation, any WARRANTY OF MERCHANTABILITY or any WARRANTY OF FITNESS FOR THE PARTICULAR PURPOSE OF PURCHASER." The provisions of this Section 9.3 shall survive Closing and delivery of the Deed.

10. **Default.**

10.1 **Purchaser Default.** In the event that the Closing does not occur at the time and in the manner provided in this Agreement due to the failure of Purchaser to comply with any of its obligations under this Agreement ("**Purchaser Default**"), Seller shall have the right to terminate this Agreement by written notice to Purchaser and the Title Company, and upon such termination, this Agreement shall be of no further force and effect (except as expressly stated herein) and Seller shall be entitled to promptly receive from the Title Company the Deposit.

10.2 **Seller Default.** In the event the sale of the Property as contemplated hereunder is not consummated due to Seller's default hereunder, Purchaser shall be entitled to either (a) to receive the return of the Deposit, which return shall operate to terminate this Agreement and release Seller from any and all liability hereunder, or (b) to enforce specific performance of Seller's obligation to convey the Property to Purchaser in accordance with the terms of this Agreement, it being understood and agreed that the remedy of specific performance shall not be available to enforce any other obligation of Seller hereunder.

11. **Transactions at Closing.** The following transactions shall occur prior to or at, and as a condition of Closing, unless otherwise provided herein:

11.1 **Deed to Property; Assignment.** A Special Warranty Deed (the "**Deed**") shall be executed and delivered to Purchaser by Seller at Closing. The Deed shall convey fee simple title to the Property: (a) free and clear of all taxes, except the general taxes for the year of Closing, and (b) free and clear of all other liens and encumbrances, except those set forth in the Commitment. Seller shall also deliver a General Assignment assigning, transferring, and conveying to Purchaser all of Seller's right, title and interest in the Due Diligence Items and in any easement, agreement, permit, license, or other right, benefit, or entitlement pertaining to the Property.

11.2 Foreign Person. At Closing, Seller shall provide Purchaser with a fully executed certification of non-foreign status in a form which satisfies Section 1445 of the Internal Revenue Code.

11.3 Documentary Fees. Purchaser shall pay all documentary fees in connection with the transfer of the Premises.

11.4 Possession of Premises. Seller shall deliver possession of the Premises to Purchaser at Closing.

11.5 Closing Costs.

11.5.1. All general taxes (including without limitation, real and personal property taxes), special assessments and special assessment liens (collectively, "Taxes") shall be prorated and apportioned to the Closing Date and paid by the parties as is customary for real property transactions in Adams County, Colorado.

11.5.2. All other costs or expenses in connection with the transactions contemplated by this Agreement shall be paid by Purchaser.

11.5.3. Purchaser and Seller shall each pay their own legal fees and other incidental expenses incurred in connection with the transactions contemplated by this Agreement.

12. Notices. All notices required herein shall be in writing and shall be sufficient if delivered personally, by email, or by overnight courier providing document tracking services, or if sent by registered or certified United States mail, return receipt requested, postage prepaid, addressed as described below or to such other address as the party concerned may substitute by written notice to the other as provided herein. All notices given by mail shall be deemed to be received upon the date of actual receipt as evidenced by the return receipt, provided, however that non-receipt of any communication as a result of a change of address of which the sending party was not notified or as a result of a refusal to accept delivery by the intended recipient shall be deemed receipt of such communication. Personally, email and courier delivered notices shall be deemed to be received upon actual receipt.

To Seller: SW Ringsby East LLC  
SW Peoria LLC  
Attn: Mark D. Campbell  
5613 DTC Parkway, Suite 810  
Greenwood Village, Colorado 80111  
EM: [mark@swinvest.com](mailto:mark@swinvest.com)

And with a copy to:

Max Stich  
Tiemeier & Stich, PC  
1000 East 16<sup>th</sup> Avenue

Denver, CO 80218  
EM: [mstich@tslawpc.com](mailto:mstich@tslawpc.com)

To Purchaser: City of Brighton  
Attn: Philip Rodriguez, City Manager  
500 S. 4<sup>th</sup> Avenue  
Brighton CO 80601  
[prodriguez@brightonco.gov](mailto:prodriguez@brightonco.gov)

And with a copy to:

Christopher Ernst  
Mehaffy Brubaker & Ernst LLC  
21 N. 1<sup>st</sup> Avenue, Suite 290  
Brighton CO 80601  
EM: [cmernst@mmlc.com](mailto:cmernst@mmlc.com)

13. **Broker Commissions.** The parties acknowledge that no real estate broker is entitled to any commission as a result of the transactions contemplated in this Agreement. In the event that any claim for a broker's fee or real estate commission is asserted other than as described above, the party against whom the claim is asserted shall indemnify, defend and hold harmless the other party from any and all claims, losses, damages, or expenses of any nature whatsoever arising out of said claim, including, but not limited, reasonable attorneys' fees and costs. The provisions of this Section 13 shall survive Closing and delivery of the deed.

14. **Miscellaneous.**

14.1 **Attorneys' Fees.** In the event of any litigation between Purchaser and Seller for enforcement or interpretation of any of the terms or conditions of this Agreement, the prevailing party shall be awarded its reasonable costs and expenses, including without limitation, court costs and attorneys' fees actually incurred. For purposes of this Section, "prevailing party" shall include a party who withdraws or moves to dismiss a claim in consideration for payment due, performance owed, or other consideration in substantial satisfaction of the claim withdrawn or dismissed.

14.2 **Survival of Representations and Warranties and Indemnifications.** The representations and warranties of Purchaser and Seller as made herein shall survive the Closing for a period of sixty (60) days (the "**Survival Period**").

14.3 **Due Diligence Reimbursement.** At Closing, Purchaser shall pay to Seller the value of all Surveys, Phase I reports, and other Due Diligence Items produced under Section 4.1 above, not to exceed \$25,000.00.

14.5 **Entire Agreement.** This Agreement, together with the documents described and referred to herein, contains all of the agreements of Purchaser and Seller with regard to the transactions contemplated hereby, and supersedes all prior agreements,

understandings and negotiations, whether written or oral. This Agreement shall not be altered or modified, except by an instrument in writing signed by both parties.

14.6 Benefit of Agreement. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

14.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

14.8 Time of the Essence. Time shall be of the essence with respect to the performance by the parties of their respective obligations hereunder. In the event the day for performance of any obligation of the provision of notice falls on a Saturday, Sunday or bank holiday in the State of Colorado, said time shall be extended to the next business day.

14.9 Captions. The captions of the sections of this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope of this Agreement, or the intent of any provision hereof.

14.10 Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

14.11 Further Assurances. Each party agrees that at the request of the other party it will at any time hereafter make such further assurances and execute or cause to be executed such further instruments as may be reasonably requested by the other party in order that this Agreement may be fully performed in accordance with its intent and provisions.

14.12 Provisions Negotiated and Independent. Each and every provision of this Agreement has been independently, separately and freely negotiated by the parties as if this Agreement were drafted by all parties hereto. The parties, therefore, waive any statutory or common law presumption which would serve to have this document construed in favor of, or against, either party.

14.13 Merger. Except for those covenants, agreements, representations, warranties and indemnities which are expressly stated to survive the Closing, the provisions of this Agreement shall not survive the Closing, and shall merge into the Deed upon recordation.

## 15. Additional Provisions.

15.1 Special Taxing Districts. **SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND TAX TO SUPPORT THE SERVICING OF**

**SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. PURCHASERS SHOULD INVESTIGATE THE SPECIAL TAXING DISTRICTS IN WHICH THE PROPERTY IS LOCATED BY CONTACTING THE COUNTY TREASURER, BY REVIEWING THE CERTIFICATE OF TAXES DUE FOR THE PROPERTY, AND BY OBTAINING FURTHER INFORMATION FROM THE BOARD OF COUNTY COMMISSIONERS, THE COUNTY CLERK AND RECORDER, OR THE COUNTY ASSESSOR.**

15.2 In the event of (A) a Purchaser Default, in addition to the remedies provided for in Section 10.1, or (B) if the Purchaser elects to terminate this Agreement pursuant to Section 5 or 7, Purchaser agrees to immediately commence relocation of the sewer line per the Agreement dated February 20, 1964 and recorded in Book 1167 at Page 600 of the Adams County records.

**Signature page follows**

**Remainder of page blank**

**Signature page to Purchase and Sale Agreement**

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

**SELLER:**

SW Ringsby East LLC, a Colorado limited liability company

DocuSigned by:  
By:   
Name: ~~Mark D. Campbell~~ Mark D. Campbell  
Title: Manager

**SELLER:**

SW Peoria LLC, a Colorado limited liability company

DocuSigned by:  
By:   
Name: ~~Mark D. Campbell~~ Mark D. Campbell  
Title: Manager

**PURCHASER:**

City of Brighton. A Colorado home rule municipality

By: \_\_\_\_\_  
Name: Philip Rodriguez  
Title: City Manager

**EXHIBIT A**  
**LEGAL DESCRIPTION**