

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (“**Agreement**”) is made and entered into as of the 20th day of **October**, 2015 (“**Effective Date**”), by and between the **CITY OF BRIGHTON**, a Colorado home rule municipality, as the purchaser hereunder (“**Purchaser**”), and the **CITY OF BRIGHTON HOUSING AUTHORITY**, a body corporate and politic created and existing under the Housing Authorities Law of the State of Colorado, as the seller hereunder (collectively, “**Seller**”).

WHEREAS, Seller owns that certain vacant Adams County real property more particularly described in **Exhibit A**, comprising approximately 0.219 acres, more or less (the “**Property**”); and

WHEREAS, Purchaser desires to purchase and acquire the Property, and Seller desires to sell and convey the Property to Purchaser, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

1. Purchase and Sale of Property. In consideration of the Purchase Price and subject to the terms and conditions hereinafter set forth, Seller shall sell, transfer, assign and convey to Purchaser, and Purchaser shall purchase, acquire and accept from Seller, the real property described in **Exhibit A**.

2. Purchase Price. The purchase price to be paid by Purchaser to Seller for the Property (the “**Purchase Price**”) is Fifty Thousand Dollars (\$50,000.00) net after payment to and collection by or waiver by the City of any outstanding water tap fee, payable in good and immediately available funds at Closing.

(a) Earnest Money. Within five (5) business days after the Effective Date, Purchaser shall deliver the sum of Five Thousand Dollars (\$5,000.00), in the form of a check or wire-transfer, to First American Title Insurance Company, 1125 17th Street, Suite 500, Denver, CO 80202 (the “**Escrow Agent**” or “**Title Company**”), as the earnest money deposit hereunder (“**Earnest Money**”). At any time prior to the expiration of the Review Period, Purchaser shall have the right to terminate this Agreement by delivering written notice to Seller and the Title Company, whereupon the Title Company shall immediately return the Earnest Money to Purchaser, this Agreement shall be deemed terminated and of no further force or effect, and the parties shall have no further obligations hereunder except those that may by their express terms survive such termination.

(b) Cash at Closing. Purchaser shall deliver the Adjusted Balance of the Purchase Price (as defined below), in cash, by wire-transfer, cashier’s check or other good funds acceptable to the Title Company for immediate disbursement at Closing.

3. Title, Survey, Environmental and Other Due Diligence.

(a) Title Commitment. Seller shall at Seller’s expense, within ten (10) business days after the Effective Date, cause the Title Company to issue and deliver to Purchaser a current commitment for 2006 ALTA Owner’s Extended Coverage Title Insurance Policy,

committing to insure title in the Purchaser in the amount of the Purchase Price and consistent with the terms and provisions of this Agreement (the “**Commitment**”), along with legible and complete copies of the vesting deed(s) and all other documents of public record referenced in the Commitment (collectively, the “**Title Documents**”).

(b) Survey. Seller shall, within ten (10) days after the Effective Date, deliver to Purchaser and the Title Company copies of any and all surveys, maps and/or plats of the Property in Seller’s possession and control. Purchaser shall have the right during the Review Period, to obtain (or to have updated) any ALTA/ACSM survey of the Property (the “**Survey**”) certified to Purchaser and the Title Company. Purchaser shall pay all of surveyor’s costs, charges, fees and expenses for any new or updated Survey.

(c) Environmental. Seller shall, within ten (10) days after the Effective Date, deliver to Purchaser copies of any and all environmental surveys, reports and/or studies of the Property in Seller’s possession and control. Purchaser shall have the right during the Review Period to obtain (or to have updated) any Phase I Environmental Assessment for the Property (the “**Phase I**”), and to conduct any and all additional environmental assessments suggested by the Phase I or otherwise required by Purchaser (including a Phase II Environmental Assessment of the Property). Purchaser shall pay all costs, charges, fees and expenses for such Environmental Assessments.

(d) Other Deliveries. Seller shall, within ten (10) days after the Effective Date, deliver to Purchaser true, accurate and complete copies of any and all materials and documents in any way related to the Property or to the development, use, operation, condition, or marketability of the Property which are in the possession or control of Seller, including, but not limited to maps, easements, permits, licenses, plans, drawings, inspection reports, soils investigations, agreements affecting the property or its use or development, leases, mineral leases, surface rights or non-disturbance agreements, contracts, pipeline agreements, ditch agreements, etc. Seller shall also disclose to Purchaser all easements, liens or other title matters not shown by the public records of which Seller has actual knowledge. All of the foregoing information and materials are the “**Due Diligence Items**.”

4. Review Period.

Purchaser and Purchaser’s Representatives will have a period of forty five (45) calendar days commencing on the Effective Date (the “**Review Period**”), in which to conduct or complete any and all physical, environmental, survey, title and other reviews, studies, investigations, assessments, appraisals and inspections of the Property and all Due Diligence Items, and to perform such other due diligence with respect to the Property as Purchaser deems necessary, proper or advisable, in an effort to determine whether or not to proceed with the Closing of the purchase and sale transaction contemplated hereby. Seller hereby agrees that Purchaser and Purchaser’s Representatives shall be allowed reasonable access to the Property to conduct such due diligence, and hereby grants to Purchaser and Purchaser’s Representatives a license therefor (which shall be irrevocable until the end of the Review Period). To the extent permitted by Colorado law, Purchaser shall save, defend, indemnify, and hold Seller harmless from any and all losses, costs, expenses, damages, liabilities, mechanics’ or materialmen’s liens

or claims of liens, actions or causes of action, to the extent same arise out of the acts or omissions of Purchaser, its contractors, consultants, inspectors or others who enter onto the Property at the request or on behalf of Purchaser for the purpose of conducting inspections of the Property.

At any time prior to the expiration of the Review Period, Purchaser may, at its option and in its sole and absolute discretion, terminate this Agreement and receive a full refund of its Earnest Money and all accrued interest by delivering written notice of its election to terminate this Agreement (“**Termination Notice**”) to Seller on or before 5 p.m. (Mountain Time) on the last day of the Review Period, with a copy of such Termination Notice to be sent to the Title Company. Immediately upon the delivery of such Termination Notice, the Earnest Money shall be returned to Purchaser, this Agreement shall be deemed terminated and of no further force or effect and the parties shall be released from all obligations hereunder except those that may expressly survive any such termination. In the event Purchaser or Seller terminates this Agreement in accordance herewith, Purchaser, at its sole cost and expense, shall reasonably restore the Property to a condition that is substantially similar to the condition existing immediately prior to the commencement of any physical inspection of the Property.

5. Closing. Subject to the other terms hereof, the closing of the purchase and sale of the Property (“**Closing**”) shall take place at the offices of the Purchaser, at a time to be mutually determined by the Parties, within fifteen (15) calendar days after any extension of the Review Period. The parties may, by mutual agreement, elect to conduct Closing at an earlier or later date and time.

(a) Deliveries by Seller at Closing. On or before the Closing Date, Seller shall deliver fully executed originals of the following documents to the Title Company:

(i) Deed. A Special Warranty Deed conveying the Property to Purchaser, in a form reasonably acceptable to Purchaser (the “Deed”);

(ii) Title Policy. The Owner’s Title Policy insuring fee title to the Property in Purchaser;

(iii) Authority. Such evidence or documents as may be reasonably required by Purchaser or the Title Company evidencing the status and capacity of Seller and the authority of the person or persons who are executing the various documents on behalf of the Seller in connection with the sale of the Property;

(iv) Miscellaneous. Seller shall execute and deliver to the Title Company such other documents, instruments, agreements or statements as may be reasonably required by the Title Company or as may be necessary in order to effect the consummation of the transactions contemplated hereby.

(b) Deliveries by Purchaser at Closing. On or before the Closing Date, Purchaser shall deliver the following items to the Title Company:

(i) Purchase Price. In accordance with the Title Company's wire instructions, a wire transfer of the balance of the Purchase Price (as reduced by the Earnest Money and as reduced or increased by other adjustments, credits and prorations provided for in this Agreement) (the "**Adjusted Balance of the Purchase Price**");

(ii) Authority. Such evidence or documents as may reasonably be required by Seller or the Title Company evidencing the status and capacity of Purchaser and the authority of the person or persons who are executing the various documents on behalf of the Purchaser in connection with the sale of the Property; and

(iii) Miscellaneous. Purchaser shall execute and deliver to the Title Company such other documents, instruments, agreements or statements or as may be reasonably required by the Title Company or as may be necessary in order to effect the consummation of the transactions contemplated hereby.

6. Title Policy and Closing Costs. At the Closing, Seller shall at its expense cause the Title Company to issue or irrevocably commit to issue to Purchaser, pursuant to the Commitment, an ALTA (2006 Form) Owner's Extended Policy of Title Insurance (the "**Owner's Title Policy**") in the full amount of the Purchase Price, insuring marketable and insurable title in Purchaser as the owner of the Property in fee simple absolute, and: (a) containing no exceptions to title other than those accepted by Purchaser, (b) modifying the exception for taxes to refer to taxes for the year in which the Closing occurs, and subsequent years, (c) containing no exception for any matters which may come of record between the effective date of the Commitment and the date and time of recording the Deed, and (d) endorsed with: (i) an endorsement for deletion of the standard pre-printed exceptions for unrecorded easements, survey matters and rights of parties in possession, and (ii) an endorsement for deletion of the standard exceptions, if any, for mechanic's liens and/or leases or tenancies.

The recording fees for the Deed shall be paid by Purchaser, and all other closing costs and escrow fees charged by the Title Company shall be split equally between Seller and Purchaser. Each party shall be responsible for its own attorneys' fees. Seller shall pay the premium for the Owner's Title Policy and any additional endorsement Seller has agreed to obtain and Purchaser shall pay the premiums for any other endorsements or title policies requested by Purchaser.

7. Prorations, Credits and Adjustments. All ad valorem real estate and personal property taxes, charges and/or assessments affecting the Property shall be prorated and apportioned to the Closing Date. If any such taxes, charges or assessments have not been finally assessed as of the Closing Date, then the same shall be prorated based on the most recent mill levy and assessment at time of Closing Date and reconciled within 30 days after a final tax bill is available.

8. Conservation Easement; 1031 Exchange. [N/A]

9. Representations and Warranties of Seller. For the purpose of inducing Purchaser to enter into this Agreement and to consummate the sale and purchase of the Property in

accordance herewith, Seller hereby represents and warrants to Purchaser that the following are true and correct and will also be true and correct as of the Closing Date:

(a) No Conflict. The execution and delivery of this Agreement and the documents required to consummate the transaction hereunder will not: (a) conflict with or be in contravention of any provision of any law, order, rule or regulation applicable to Seller or the Property; (b) result in the breach of any of the terms or provisions of, or constitute default under, any agreement or other instrument to which Seller is a party or by which it or any portion of the Property may be bound or affected; or (c) result in any lien, charge or encumbrance of any nature on the Property other than as permitted by this Agreement.

(b) Contracts. Seller has not made, and is not aware of, any commitment or representation to any governmental authority, or any adjoining or surrounding property owner, which would in any way be binding on Purchaser or would interfere with Purchaser's ability to use or improve the Property, and Seller will not make any such commitment or representation without Purchaser's written consent.

(c) Condemnation. To the best of Seller's knowledge, no condemnation, eminent domain or similar proceedings have been instituted or threatened against the Property.

(d) Litigation. To the best of Seller's knowledge, there are no legal actions pending or threatened against the Property or against Seller which would affect the Property or inhibit Seller's ability to consummate the transaction contemplated by this Agreement. To the best of Seller's knowledge there are no actions, suits, or proceedings, pending or threatened, before any judicial body or any governmental authority, against or affecting the Property.

(e) Compliance with Laws. Seller has received no notice of and has no knowledge of the assertion of any violation of any law, rule, regulation, code, ordinance, order, decree, judgment, injunction or covenant that would affect the Property or Seller's ability to consummate this transaction in any manner.

(f) Liens. The Property shall be transferred to Purchaser on the Closing Date free and clear of any and all liens and encumbrances, except for Permitted Exceptions. Any liens affecting the Property as of the date of Seller's execution of this Agreement will be fully and completely satisfied and released on or before the Closing Date.

(g) Environmental. Except as may be disclosed in Environmental Assessments, the Property has at all times during Seller's ownership, been used and operated in compliance with all applicable Environmental Laws and no Hazardous Substances (as hereinafter defined) are present in, on, under, or above the Property.

(h) Outstanding Water Tap Fee. Notwithstanding the above, the Property shall be transferred to Purchaser with an outstanding water tap fee that is to be paid or waived by Purchaser on or before the Closing Date.

10. Purchaser's Representations and Warranties. Purchaser represents and warrants to Seller as follows:

(a) Purchaser has full right, power and authority to execute this Agreement and consummate the transactions herein described, without the consent or joinder of any other person or party; and

(b) Purchaser is not a party to any suit, arbitration or other proceedings or any governmental investigation, and none, to Purchaser's knowledge, are threatened against Purchaser, which would adversely and materially affect Purchaser's right or ability to enter into this Agreement or to consummate the transactions contemplated hereby.

(c) Purchaser agrees that the Property shall be transferred to Purchaser with an outstanding water tap fee that is to be paid or waived by Purchaser on or before the Closing Date.

11. Seller's Remedies. In the event Purchaser fails to close the transaction contemplated hereby or otherwise breaches its obligations hereunder in any material respect, other than due to Seller's default hereunder or the termination hereof by Purchaser in accordance with the applicable provisions hereof, Seller shall, as its sole and exclusive remedy, be entitled to receive the immediate release of all of the Earnest Money as liquidated damages. Seller and Purchaser agree that actual damages due to Purchaser's default would be difficult and inconvenient to ascertain and that such amount is not a penalty and is fair and reasonable in light of all relevant circumstances.

12. Purchaser's Remedies. If Seller fails to close the transaction contemplated hereby or otherwise breaches its obligations hereunder, other than due to Purchaser's default hereunder or the termination hereof by Seller in accordance with the applicable provisions hereof, Purchaser may terminate this Agreement and receive a full and immediate refund of the Earnest Money.

13. Condemnation. [N/A]

14. Risk of Loss and "As Is, Where Is" Nature of Sale. Any and all risk of loss to the Property shall remain upon Seller prior to the Closing. Except for the special warranty of title in the Special Warranty Deed to be delivered at the Closing, the sale and transfer of the Property is made on an "AS IS, WHERE IS" condition and basis with all faults. Except as provided herein, the Seller provides no warranties, guarantees of title or otherwise, express or implied, including fitness for purpose of use.

15. Exclusivity. From the Effective Date until the end of the Review Period or earlier termination of this Agreement, Purchaser and Seller shall negotiate and communicate in good faith and shall deal fairly and exclusively with each other for the purchase and sale of the Property.

16. Notices. Any notice required or permitted to be delivered under the terms and conditions of the Agreement shall be in writing and shall be delivered to the parties and their respective representatives personally or by United States Mail, first class postage prepaid. Such notices shall be addressed to the parties and their representative as follows:

City: Director of Parks
City of Brighton
Mr. Gary Wardle
500 South 4th Ave.
Brighton, CO 80601
Telephone: 303-655-2135

With a copy to:

Margaret R. Brubaker, City Attorney
Mehaffy Brubaker & Ernst LLC
21 N. 1st Ave., Suite 290
Brighton, CO 80601
Telephone: 303-659-0731

Seller: Executive Director
Brighton Housing Authority
Mr. Joseph A. Espinosa
22 South 4th Avenue
Brighton, Colorado 80601
Telephone: 303-655-2160

With a copy to:

Mark Berry, Esquire
Law Office of Mark Berry
1 Wren
Littleton, CO 80127
Telephone: 303-932-2909

17. Miscellaneous.

(a) Integration. This Agreement contains the complete agreement between the parties with respect to the subject matter hereof and cannot be varied except by the written agreement of the parties. The parties agree that there are no other or oral agreements, understandings, representations or warranties which are not expressly set forth herein.

(b) Counterparts. This Agreement may be executed in one or more counterparts, and all so executed shall constitute one (1) and the same agreement, binding upon the parties hereto, and notwithstanding that all of the parties are not signatories to the same counterparts, and counterparts executed via facsimile shall have the same force and effect as originals.

(c) Time of the Essence. Time is of the essence of this Agreement and every provision hereof.

(d) Seller's and Purchaser's Respective Representatives. The individuals respectively executing this Agreement on behalf of Seller and Purchaser are doing so in their respective representative capacities only, solely as a representative of Seller or Purchaser, as applicable, and any liability resulting hereunder based upon the actions of such individual shall merely be that of Seller or Purchaser, as applicable, and not such individual.

(e) Binding Effect. This Agreement and the terms and provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors and assigns, wherever the context so requires or permits.

(f) Effective Date. All references herein to the "Effective Date" or the "date hereof" shall be deemed to be the date when the latest to execute of Seller and Purchaser has fully executed the Agreement.

(g) Special Taxing Districts (required). **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 EXCESSIVE TAX BURDENS 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. PURCHASER SHOULD INVESTIGATE THE DEBT FINANCING REQUIREMENTS OF THE AUTHORIZED GENERAL OBLIGATION INDEBTEDNESS OF SUCH DISTRICTS, EXISTING MILL LEVIES OF SUCH DISTRICT SERVICING SUCH INDEBTEDNESS, AND THE POTENTIAL FOR AN INCREASE IN SUCH MILL LEVIES.**

(h) No Broker's Commission. Each Party represents and warrants to the other that no broker or finder has represented or acted on behalf of the representing Party in connection with the transaction contemplated by this Agreement, and, subject to any and all legal restrictions, each such representing party agrees to indemnify and hold harmless the other Party against any loss, claim, damage or expense, including reasonable attorney fees, incurred by the other Party as a result of a claim for any fee or commission asserted by any person claiming as a broker or finder to have represented or acted on behalf of the representing Party.

EXECUTED by Purchaser this 20th day of October, 2015.

PURCHASER:

CITY OF BRIGHTON,
a Colorado Home Rule Municipality

Manuel Esquibel, City Manager

Attest:

Natalie Hoel, City Clerk

Approved as to Form:

Margaret R. Brubaker, Esq.
City Attorney

EXECUTED by Seller this _____ day of September, 2015

SELLER:

CITY OF BRIGHTON HOUSING AUTHORITY,
a body corporate and politic created and existing under the
Housing Authorities Law of the State of Colorado

By: _____
Joseph A. Espinosa, Executive Director

ACCEPTANCE BY ESCROW AGENT

First American Title Insurance Company, referred to in this Agreement as the "Title Company" and the "Escrow Agent," hereby acknowledges receipt of the Earnest Money in the amount of Five Thousand Dollars (\$5,000.00), together with fully executed counterparts of this Agreement. The Escrow Agent certifies that it has received and understands the Agreement and hereby accepts the obligations of the Escrow Agent and the Title Company as set forth herein, including, without

limitation, its agreement to hold the Earnest Money and dispose of same in accordance with the terms and provisions of this Agreement.

ESCROW AGENT/TITLE COMPANY:

FIRST AMERICAN TITLE INSURANCE COMPANY

By: _____

Jessica Broderick, Commercial Title Officer

Date:

EXHIBIT A
LEGAL DESCRIPTION

THAT PART OF THE SOUTHEAST ONE-QUARTER OF SECTION 7, TOWNSHIP 1 SOUTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN, ADAMS COUNTY, COLORADO, DESCRIBED AS:

COMMENCING AT A POINT 240.00 FEET EAST OF AND 794.0 FEET (48 RODS 2 FEET) NORTH OF THE SOUTHWEST CORNER SAID SOUTHEAST ONE-QUARTER;
THENCE NORTH 63.50 FEET;
THENCE EAST 150 FEET;
THENCE SOUTH 63.50 FEET;
THENCE WEST 150.00 FEET TO THE TRUE POINT OF BEGINNING,
COUNTY OF ADAMS, STATE OF COLORADO.

Known by street and address as: 781 S. 5th Avenue, Brighton, Colorado 80601
Parcel Number: 0156907400060

RESOLUTION NUMBER 15-09-02

**A RESOLUTION OF THE COMMISSIONERS OF THE HOUSING
AUTHORITY OF THE CITY OF BRIGHTON, COLORADO, TO
APPROVE THE SALE OF THE PROPERTY LOCATED AT 781 SOUTH
5TH AVENUE, BRIGHTON COLORADO 80601.**

WHEREAS, the undersigned, representing all of the Commissioners of The Brighton Housing Authority, a body corporate and politic created and existing under the Housing Authorities Law of the State of Colorado (the "Authority"), do hereby take the actions below set forth as follows:

WHEREAS, the sale price of 781 South 5th Avenue, Brighton Colorado, (the "Property") is for \$50,000; and

WHEREAS, the Property will be sold to the City of Brighton, COB, and the Property has an existing tap fee that will be paid by COB at or before the Property Closing Date; and

WHEREAS, the COB will pay the Authority a \$5,000 Escrow payment within (5) days of Effective Date, pending COB City Council approval of transaction.


NOW, THEREFORE, BE IT RESOLVED The Housing Authority of the City of Brighton is authorized to sell the Property to the City of Brighton.

BE IT FURTHER RESOLVED, that the Executive Director, Joseph A .Espinosa, ("Authorized Officer") is hereby authorized and directed, to execute, attest, seal and deliver on behalf of the Authority to sell the Property; and any and all other documents, certificates, instruments and writings necessary to sell the Property and effectuate the foregoing resolutions without further notice to or approval of the Commissioners;

BE IT FURTHER RESOLVED, that all previous actions taken by the Authorized Officer and anyone acting under the direction or approval of such Authorized Officer on behalf of the Authority in connection with the foregoing resolutions are hereby approved and ratified.

RESOLVED AND ADOPTED this ____ day of September 2015 **BY THE COMMISSIONERS OF THE BRIGHTON HOUSING AUTHORITY.**

**HOUSING AUTHORITY FOR THE
CITY OF BRIGHTON, COLORADO**



Jessica Ford, Chairperson

ATTEST:



Joseph A. Espinosa, Secretary