

RECORDING REQUESTED BY:

City of Brighton
500 S. 4th Avenue
Brighton, Colorado 80601

(Above space for Recorder's use only)

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "Agreement") is made and entered into as of this ____ day of _____, 2021 (the "Effective Date"), by and between the City of Brighton, a Colorado home rule municipality with an address of 500 S. 4th Avenue, Brighton, Colorado 80601 (the "City") and the Housing Authority of the City of Brighton, body corporate and politic created and existing under the Housing Authorities Law of the State of Colorado with an address of 22 South 4th Avenue, Brighton, Colorado 80601 ("Purchaser") (each a "Party" and collectively the "Parties").

WHEREAS, the City owns the real property known as 49 South 5th Avenue, Brighton, Colorado 80601, more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, the City wishes to sell the Property to Purchaser and Purchaser wishes to purchase the Property from the City, on the terms set forth in this Agreement.

NOW, THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Conveyance. The City agrees to convey, sell, transfer and assign to Purchaser, and Purchaser agrees to purchase from the City, on the terms and conditions of this Agreement, the Property, all improvements thereon and any appurtenant rights now owned by the City.
2. Earnest Money. Within 10 days after the Effective Date, Purchaser shall deposit the sum of \$ 10 with Land Title Guarantee Company (the "Title Company") to be held in an interest-bearing escrow account satisfactory to Purchaser, which shall be applied to the Purchase Price upon closing (together with all interest earned thereon, the "Earnest Money"). The Title Company shall hold the Earnest Money until delivery is permitted or required under the terms of this Agreement. The Earnest Money shall be refundable until expiration of the Entitlement Period. Upon expiration of the Entitlement Period, the Earnest Money shall be non-refundable to Purchaser, except in the event of default by the City, but fully applicable to the Purchase Price.
3. Purchase Price. The Purchase Price to be paid by Purchaser to the City for the sale and conveyance of the Property is \$ 10, to be paid by the Purchaser at closing in funds which comply with applicable Colorado law, including electronic transfer funds, certified check and cashier's check, as directed by the City.

4. Evaluation Period. Purchaser shall have the period commencing on the Effective Date and continuing up to 60 days thereafter (the "Evaluation Period") in which to determine whether the Property is satisfactory for Purchaser's proposed use, in Purchaser's sole and absolute discretion.

a. Within 10 days after the Effective Date, the City shall at Purchaser's expense, deliver to Purchaser a commitment (the "Title Commitment") for an ALTA owner's coverage title insurance policy on the Property (the "Title Policy"), issued by the Title Company, in the amount of the Purchase Price, together with copies of all items referred to therein, covering title to the Property on or after the Effective Date 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 Title Commitment and the date and time of recording the special warranty 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, (ii) an endorsement for deletion of the standard exceptions, if any, for mechanic's liens and/or leases or tenancies (iii) an access endorsement (iv) a tax parcel endorsement, and (v) mineral endorsements 100.29 and/or 100.31.

b. Within 10 days after the Effective Date, the City shall deliver to Purchaser a copy of an ALTA/ACSM survey of the Property (the "Survey") and any maps and/or plats of the Property in City's possession and control. The Survey shall include the following items from Table A of the ALTA/ACSM Survey Requirements: 1-11 and 13-16 and otherwise in a form sufficient to enable the Title Company to delete the standard exceptions from the Title Policy. The surveyor shall certify on the Survey as to the total acreage of the Property to the nearest one-hundredth of an acre.

c. Within 10 days after the Effective Date, the City shall make available to Purchaser for inspection and copying all reports and other documents in the City's possession or under its control which affect the value of the Property or otherwise relate to the Property, except any such document which is confidential or proprietary to a third party including without limitation environmental reports, soil reports, inspection reports, engineering drawings, mineral leases, pipeline agreements, utility plans, leases, road plans easements, surface rights or non-disturbance agreements, contracts, rights of way, signage licenses and easements. The City shall also disclose to Purchaser all easements, liens or other title matters not shown by the public records of which Seller has actual knowledge.

d. Within 10 days after the Effective Date, the City shall deliver to Purchaser copies of any and all environmental surveys, reports and/or studies of the Property in City's possession and control. Purchaser shall have the right during the Evaluation 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.

e. If, after review of the matters submitted pursuant to this Section 4 and inspection of the Property through both the Evaluation and Entitlement Periods, Purchaser determines in its

sole discretion that the Property is unsatisfactory for Purchaser's desired purposes in any respect, Purchaser may terminate this Agreement by written notice delivered to the City and the Title Company within the Entitlement Period. Upon delivery of such notice, this Agreement shall terminate, the Earnest Money shall be returned to Purchaser, and the Parties shall be released from all further obligations hereunder.

5. Entitlement Period. Purchaser shall have up to 120 days from expiration of the Evaluation Period to obtain all necessary approval for entitlements that Purchaser deems necessary for its intended use of the Property. If Purchaser is unable to obtain all necessary approval for entitlements that Purchaser deems necessary for its intended use of the Property, Purchaser shall have the right to terminate this Agreement, in which event the Earnest Money shall be returned to Purchaser.

6. Title Matters.

a. Purchaser shall be entitled to object to any matters shown in the Title Commitment or the Survey by a written notice of objections delivered to the City within 30 days of Purchaser's receipt of the Title Commitment, the Survey and related documents. The City may, but is not required to, respond to Purchaser's objections in writing within 15 days, proposing to take actions to satisfy any or all of such objections or declining to take action to satisfy any of such objections.

b. Purchaser may waive or approve a title objection by providing written notice of the waiver or approval prior to the end of the Evaluation Period. If Purchaser fails to deliver a notice of objections to the City prior to the end of the Evaluation Period, then Purchaser shall be deemed to have waived objection to all matters shown or noted on the Survey or appearing as exceptions to title on the Title Commitment, and all such matters shall be deemed to be "Permitted Exceptions."

c. If the City declines to satisfy any of Purchaser's stated objections and Purchaser does not terminate this Agreement at the end of the Evaluation Period, any matters previously listed in a notice of objections to title hereunder and not removed or otherwise eliminated shall also be deemed to be Permitted Exceptions.

7. Inspection. Purchaser and its employees, designated agents, representatives, consultants, prospective lenders and tenants, and independent contractors will have the right to enter the Property and other common areas of the Property for the purposes of preparing, conducting and performing surveys, site plans, inspections, environmental reports, studies, testing and other similar matters. Purchaser shall be responsible for all costs of such investigations and inspection, and shall not allow any mechanics liens to be placed against the Property as a result of Purchaser's access, entry or inspections.

8. Closing. The closing will occur at the office of the Title Company, or at such other mutually agreeable location. Subject to Section 13 below, the date of closing shall be 30 days after Purchaser waives its rights under the Entitlement Period, or by mutual agreement, at a later or earlier date. The City and Purchaser shall pay their respective closing costs and all other items required to be paid at closing, except as otherwise provided herein. The City and Purchaser shall sign and complete all customary or required documents, instruments, agreements or statements at

or before closing 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.

9. Possession. Possession of the Property shall be delivered to Purchaser at closing.

10. City's Deliverables; Reversionary Interest.

a. On or prior to closing, the City shall deliver to Purchaser a special warranty deed, in a form reasonably acceptable to Purchaser, duly executed and acknowledged by the City, conveying title to the Property to Purchaser, the Title Policy, resolution or document evidencing 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, and such other instruments of transfer, certificates and additional documents as may be required hereunder or reasonably required by Purchaser or the Title Company, subject only to the Permitted Exceptions.

b. The Parties agree the intent of this transaction is for the Property to be kept, maintained and used by Purchaser or Purchaser's successors or assigns for affordable housing purposes. To that end, the special warranty deed shall include an automatic reversion granting title in the Property to Purchaser only for so long as the Property is used for affordable housing purposes (the "Condition") after notice and opportunity to cure as described below. For purposes of the Condition, "affordable housing purposes" means the Property is rented by Purchaser only to qualified tenants based on Purchaser's consideration of the tenants' status as individuals with income below the average household income in the City of Brighton for purposes consistent with the service and mission of the Purchaser including rehabilitation of the unit to meet housing standards, and leveraging the Property as part of a larger development portfolio to create, acquire, or otherwise provide affordable housing units in the City of Brighton.

c. If at any time after closing Purchaser stops using the Property for affordable housing purposes for a period of 120 days or more, full title and the right of possession in the Property shall immediately vest in the City 30 days following written notice of the Condition from the City to Purchaser unless Purchaser cures the Condition to the City's satisfaction within such 30-day cure period. If the Condition is not timely cured, by operation of law, the City as the holder of the reversionary interest shall become owner of the Property, and Purchaser shall cooperate as necessary to establish the termination of Purchaser's fee simple interest and the change in ownership of the Property back to the City in public records.

d. If the occurrence of the Condition is disputed, the Parties shall submit to non-binding mediation to be conducted by a mutually agreed upon mediator. If the Parties fail to resolve their dispute through mediation, final dispute resolution shall be by litigation in a court of competent jurisdiction.

11. Purchaser's Deliverables. On or prior to the closing, Purchaser shall deliver to the City the Purchase Price and other funds required to be paid or provided by Purchaser under this Agreement, and such other documents as may be required hereunder or reasonably required by the City or the Title Company.

12. City's Representations and Warranties. The City hereby represents and warrants that the following statements are now, and will be as of the closing date, true and correct, to the best of the City's knowledge.

a. There is no action, suit or proceeding pending, or to the best of the City's knowledge threatened, against or otherwise affecting the City or the Property in any court of law or equity, or before any governmental authority, in which an adverse decision might materially impair the City's ability to perform its obligations under this Agreement.

b. There is no pending or threatened condemnation or similar proceeding affecting the Property.

c. The Property is being sold free and clear of all service contracts, agreements, leases and other occupancy rights.

d. The City has not received any notice of any violations of any applicable law related to the Property.

e. The City is not aware of any special assessments to be levied against the Property after its acquisition by Purchaser.

f. The City shall give Purchaser prompt written notice if any of the representations or warranties made by City in this Agreement are no longer true or correct in any material manner.

13. Condition of Property.

a. Except as provided herein, Purchaser understands that it is purchasing the Property in its existing condition, "as is." Except for those warranties expressly set forth herein, the City makes no warranties, representations or guarantees, either express or implied, of any kind, nature or type whatsoever. Without limiting the generality of the preceding sentence, Purchaser acknowledges and agrees that neither the City nor anyone acting for or on behalf of the City makes or has made any statements, promises, warranties or representations, either express or implied, with respect to the absence or presence of any hazardous substance, material or condition affecting the Property, the soil condition, geologic condition or other physical aspect of the Property or the accuracy or completeness of any reports or information pertaining to such matters.

b. Notwithstanding anything contained herein to the contrary, the City shall, prior to closing and at its sole cost and expense, manage and relocate the existing storm water system and detention pond such that all storm water systems or detention/retention areas that serve any real property other than the Property will be located offsite of the Property; provided that the City's relocation obligation shall not include adding any fill to the Property once the storm water system and detention pond have been removed. Purchaser and the City shall reasonably agree upon any plans and specifications in connection with the relocation of the storm water system and the closing hereunder shall be, if required, delayed until such date of completion of the relocation.

14. Remedies.

a. City's Remedies. If the closing does not occur by reason of a breach of the Purchaser, the City shall have the right to retain the Earnest Money as liquidated damages and neither Party shall have any further obligation hereunder.

b. Purchaser's Remedies. If the closing does not occur by reason of a breach of the City, and Purchaser has complied with the terms of this Agreement, Purchaser may terminate this Agreement by written notice to the City and the Title Company, in which event the Earnest Money shall be returned to Purchaser. Purchaser shall have all remedies available at law or equity for such breach, excluding, unless specifically provided by applicable laws, the remedy of specific performance and damages.

15. Miscellaneous.

a. Entire Agreement. This Agreement contains the entire agreement of the Parties. There are no other agreements, oral or written, and this Agreement can be amended only by written agreement signed by the Parties.

b. Agreement Binding; Assignment. This Agreement, and the terms, covenants, and conditions herein contained, shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of the Parties. Purchaser shall have the right to assign this Agreement without the City's consent and, if so, the Condition shall continue to apply.

c. Notice. Any notice under this Agreement shall be in writing and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the party at the address set forth on the first page of this Agreement.

d. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Adams County, Colorado.

e. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

f. Third Parties. There are no intended third-party beneficiaries to this Agreement.

g. Subject to Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the City not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

h. Governmental Immunity. The City and the Purchaser and their officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities or protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the City and its officers, attorneys or employees.

i. Risk of Loss. Any and all risk of loss to the Property shall remain upon the City prior to the Closing.

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

k. Time of the Essence. Time is of the essence of this Agreement and every provision hereof.

l. 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.

Signature page follows.

EXHIBIT A
Legal Description of the Property

49 SOUTH 5TH AVENUE, BRIGHTON, CO 80601
LOTS 27 AND 28, BLOCK 25, WALNUT GROVE SECOND ADDITION TO BRIGHTON,
COUNTY OF ADAMS, STATE OF COLORADO.