

## PURCHASE AND SALE AGREEMENT

WHEREAS, the City of Loveland, Colorado (the "City") is the owner of certain real property located in the City between East 1st Street and East 4th Street, and between North Cleveland Avenue and North Lincoln Avenue, (the "Site") including property located at 130 North Cleveland Avenue, the legal description of which is set forth on Exhibit A attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, pursuant to a competitive bidding procedure established by the City, the Buyer's affiliate, Brinkman Development, LLC submitted a proposal dated November 13, 2015 concerning the redevelopment of the Site; and

WHEREAS, the City and the Buyer entered into that certain Exclusive Negotiation Agreement dated February 25, 2016, as amended (the "ENA") relating to the redevelopment of the Site which was later amended by Motion at the June 7, 2016 Loveland City Council meeting, and again by Resolution #R-81-2016 at the August 16, 2016 Loveland City Council meeting; and

WHEREAS, pursuant to the ENA, the City, the Loveland Downtown Development Authority (the "Authority") and the Buyer are currently negotiating a Disposition and Redevelopment Agreement (the "DRA") for the redevelopment of the Site in connection with a project to be located on the Site to be known as the Foundry (the "Project"); and

WHEREAS, in connection with the redevelopment of the Site and the construction and acquisition of the Project, the Buyer desires to purchase the Property from the City; and

WHEREAS, the City desires to sell the Property to the Buyer in connection with the redevelopment of the Site and the construction and acquisition of the Project pursuant to the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the promises and covenants set forth herein, the parties agree as follows:

### 1. Conditions of Conveyance

a) The City hereby agrees to convey to the Buyer by special warranty deed (the "Deed") all of its right, title and interest in the Property. The delivery of the Deed and the closing on this conveyance ("Closing") shall occur as set forth in Paragraph 3(a) herein.

b) The Buyer hereby agrees to purchase the Property from City for the sum of Five Thousand and no/100ths dollars (\$5,000.00) to be paid in accordance with Paragraph 3(a) herein, in U.S. dollars ("Purchase Price"). All payments required to be made shall be made in funds which comply with all applicable Colorado laws ("Good Funds").

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c) The Buyer will obtain and pay for a current commitment for an ALTA Owner's Policy of Title Insurance for the Property from Stewart Title ("Title Company") and copies of all documents referred to therein as exceptions ("Title Commitment"). The Title Commitment is in the amount of the Purchase Price and commits to insure fee simple title to the Property in the Buyer and to delete or insure over the standard exceptions which relate to (1) parties in possession, (2) unrecorded easements, (3) survey matters, (4) any unrecorded mechanics' liens, (5) gap period (effective date of commitment to date Deed is recorded), and (6) unpaid taxes, assessments and unredeemed tax sales prior to the year of Closing. The Buyer agrees to take title to the Property subject to all exceptions to title disclosed by the Title Commitment (the "Permitted Exceptions"), but no other exceptions.

d) Buyer agrees that the Property will be deemed to be part of the "Developer Parcel" as defined in the DRA and that the Property shall be subject to all the terms and conditions concerning the "Developer Parcel" as set forth in the final executed DRA.

e) Buyer agrees to pay the entire cost of the Title Policy (as hereinafter defined) and all closing costs incurred in connection with the conveyance of the Property.

## **2. City's Obligations at Closing**

At Closing, City shall deliver, or cause to be delivered, the following:

a) The Deed, in the form set forth in **Exhibit "B"**, attached hereto and incorporated herein by this reference, executed and acknowledged by City sufficient to convey to the Buyer fee simple title to the Property, free and clear of all liens and encumbrances except for 1) the lien of real property taxes for the current year pro-rated after the date of Closing and 2) Permitted Exceptions.

b) Possession of the Property.

c) Such documentation which the Title Insurer may reasonably require in order to confirm the proper authority of Buyer to consummate this transaction and to issue the Title Policy.

## **3. Buyer's Obligations at Closing**

At Closing, the Buyer shall deliver, or cause to be delivered, the following:

a) An ALTA Owner's Policy of Title Insurance (the "Title Policy") in the amount of the Purchase Price issued by the Title Insurer to the Buyer, insuring fee simple title to the Property subject to no exceptions other than the Permitted Exceptions, and all

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endorsements thereto.

b) The cost of the Title Policy and all other closing costs.

#### **4. Payment by the Buyer**

Buyer shall pay the Purchase Price for the Property of Five Thousand dollars (\$5,000), plus the cost of the Title Policy and all other closing costs, in Good Funds to the Title Company at Closing. Closing shall occur on or before October 3, 2016, or at such other date and at such location as the Parties may mutually agree upon.

#### **5. Reconveyance of Property to City**

The City shall have the right to require the Developer to reconvey the Property back to the City, in accordance with this Section 5, upon the occurrence of any of the following events:

a) The City, the Authority and the Developer have not executed and delivered the DRA on or prior to December 31, 2016, unless the City and the Developer agree to extend such date.

b) After the execution and delivery of the DRA, the remainder of the Developer Parcel, as defined in the DRA, is not conveyed to the Developer by the Required Closing Date (as defined in the DRA).

c) After the remainder of the Developer Parcel is conveyed to the Developer in accordance with the DRA, the City's right to have the Developer reconvey the Property shall be governed by the DRA.

Except as hereinafter provided, to exercise its right to require the Developer to reconvey the Property, the City shall provide written notice to the Developer that it is exercising its option to compel reconveyance of the Property to the City. Any reconveyance of the Property pursuant to this Section 5 shall be completed on the date that is no more than thirty (30) days after the giving of the notice exercising the election for such reconveyance. Developer shall reconvey the Property to the City by special warranty deed, which will be subject to (i) any real property taxes and assessments against the Property for the year of reconveyance, payable the following year, that are not yet due and payable as of the reconveyance; (ii) those title exceptions and matters to which the warranty of title in the Deed conveying the Property to the Developer is subject; (iii) any title exceptions or matters arising from measures or actions taken in furtherance of the redevelopment of the Project which were in accordance with the DRA or approved by the City; and (iv) any utilities easements or similar grants of interests or title matters arising in the ordinary course of actions and measures taken to proceed with the redevelopment of the Project. Any applicable real property taxes and assessments for the year of reconveyance will be prorated to the date of reconveyance or otherwise allocated so that Developer

bears the taxes and assessments accruing during its period of ownership. Any recording fees or documentary fees attributable to the reconveyance of the Property will be paid by the Developer.

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In the event that a lien, mortgage or deed of trust has been placed on the Property to secure a loan or other financing relating to the Property, the Developer shall repay any amounts owing pursuant to such loan or other financing and discharge the lien and mortgage on the Property in connection with the reconveyance of the Property. To the extent that the Developer does not repay any such amounts owing pursuant to any such loan or other financing, the City may, but is not required, to make such payment directly to the lender and receive a credit against any amounts owed by the City to the Developer pursuant to this Section 5.

The City agrees that in order to exercise its right to have the Property reconveyed to the City, that the City shall be required to pay to the Developer \$5,000.

Notwithstanding the foregoing or any provision to the contrary contained herein, after the remainder of the Developer Parcel is conveyed to the Developer pursuant to the terms and provisions of the DRA, the City's rights to require reconveyance of the Property shall be governed by the DRA and all references in the DRA to the Developer Parcel shall be deemed to include the Property.

## **6. Acknowledgments and Representations**

a) The City acknowledges, represents and warrants that the City has good and merchantable title to the Property and that there exists no restriction on the right of the City to sell and convey the Property to the Buyer as herein contemplated, except as may be set forth in this Agreement and that the City is lawfully seized and possessed of the Property and that it has a good and lawful right to enter into this Agreement.

b) Buyers' Investigation. Except for the express representations and warranties of City set forth herein, Buyer acknowledges and agrees that there are no representations or warranties of any kind whatsoever, express or implied, made by City in connection with this Agreement, the conveyance of the Property to the Buyer, the physical condition of the Property, whether the Property complies with applicable laws, or whether the Property is appropriate for Buyer's intended use. The Buyer represents and agrees that it has (or will have chosen not to have) fully investigated the Property and all matters pertaining thereto. Except for the express representations and warranties of the City set forth herein, Buyer also acknowledges and agrees that: (i) Buyer is not relying on any statements or representations of the City or its officers, employees, agents, consultants or its representatives; (ii) Buyer, in entering into this Agreement and in financing and completing its construction of the Project, is relying entirely on its own investigation of the Property; (iii) Buyer is aware (or has chosen not to be aware) of all zoning regulations, other governmental requirements, prior and current Property and physical conditions, and

other matters affecting the use and condition of the Property; and (iv) Buyer's decision of whether to accept conveyance of the Property on the terms and conditions hereof shall be made solely in reliance on the City's express representations and warranties in this Agreement and on Buyer's review, inspection and investigation of the Property and of materials, documents,

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information and studies relating to the Property. **EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES OF THE CITY SET FORTH HEREIN, THE CONVEYANCE OF THE BUYER PROPERTY AS PROVIDED FOR HEREIN IS MADE ON A STRICTLY "AS IS" "WHERE IS" CONDITION AND BASIS "WITH ALL FAULTS" AS OF THE CLOSING DATE, AND THE CITY MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF QUANTITY, QUALITY, CONDITION, HABITABILITY, MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, ANY IMPROVEMENTS LOCATED THEREON OR ANY SOIL CONDITIONS RELATED THERETO.**

c) Buyer's Release. Except for claims based on breach of the City's representations and warranties herein, Buyer, for itself and Buyer's successors, lessees and assigns (collectively, "Buyer's Assigns"), hereby releases the City from, and waives, any and all claims and liabilities against the City for, related to, or in connection with, any prior or current environmental or physical condition of the Property (or the presence of any matter or substance relating to the environmental condition of the Property), including, but not limited to, claims and/or liabilities relating to (in any manner whatsoever) any hazardous, toxic or dangerous materials or substances previously or now located in, at, about or under the Property, or for any and all claims or causes of action (actual or threatened) based upon, in connection with, or arising out of, the Federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, and as it may be further amended from time to time, the Federal Resource Conservation and Recovery Act, as amended and as it may be further amended from time to time, the Colorado Hazardous Waste Act, as amended, and as it may be further amended from time to time, or any other claim or cause of action (including any federal or state based statutory, regulatory or common law cause of action) related to environmental matters or liability with respect to, or affecting, the Property. Upon Closing, Buyer and Buyer's Assigns shall assume the risk that adverse matters, including but not limited to, construction defects and adverse physical and environmental conditions, may not have been revealed by Buyer's investigations, and upon Closing Buyer and Buyer's Assigns, shall be deemed to have waived, relinquished and released the City and the Authority and their successors from and against any and all claims, demands, causes of action (including causes of action in tort), losses, damages, liabilities, costs and expenses (including attorney fees and court costs) of any and every kind or character, known or unknown, which Buyer or Buyer's Assigns might have asserted or alleged against the City, at any time by reason of or arising out of any latent or patent construction defects or physical conditions, violations of any applicable laws (including, without limitation, any environmental

laws) and any and all other acts, omissions, events, circumstances or matters regarding the Property, with the exception of claims based on breach of the City's express representations and warranties herein. Buyer acknowledges and agrees that the waivers, releases and other provisions contained herein were a material factor in City's conveyance of the Property to the Buyer for

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the Project. The City is unwilling to convey the Property to Buyer unless City is released as expressly set forth above. Buyer further acknowledges and agrees that the waivers, releases and other provisions contained herein were a material factor in the City's agreement to convey the Property to the Buyer. Buyer, with Buyer's counsel, has fully reviewed the disclaimers and waivers set forth in this Agreement, and understands the significance and effect thereof. The terms and conditions of this Section 6 will expressly survive the Closing and will not merge with the provisions of any Closing documents, and shall survive any termination of this Agreement.

#### **7. Integration and Modification**

a) This Agreement contains the entire and only agreement between the parties, and supersedes all prior negotiations, representations, and preliminary or other agreements between them respecting the subject matter. Any prior representation, promise, warranty, or condition in connection with such subject matter which is not incorporated into this Agreement shall not be binding on either party.

b) No modifications, alterations, amendments, additions or deletions to this Agreement or to any of its provisions shall be binding upon the party against whom the enforcement of such modifications, alterations, amendments, additions, or deletions is sought unless such modifications, alterations, amendments, additions, or deletions have been made in writing and signed by each party or for and on behalf of each party by someone authorized to sign.

#### **8. Covenants Attached to Land**

It is the intent of the parties that all of the Buyer's obligations contained herein shall constitute covenants running with the land and equitable servitudes and shall be binding upon the successors, heirs, and assigns of the parties.

#### **9. Governing Law**

This Agreement shall be construed in accordance with the laws of the State of Colorado. The parties to this Agreement recognize that there are legal restraints imposed upon the City by the constitution, statutes, and laws of the State of Colorado and the City's Code and Charter, and subject to such restraints, the parties intend to carry out the terms and conditions of this Agreement. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and

valid under applicable law, but if any provision of this Agreement or any application thereof to a particular situation shall be held invalid under applicable law, such provision or application thereof shall be ineffective only to the extent of such invalidity without invalidating the remainder of such provision or any other provision of this Agreement. Venue for any judicial proceeding concerning this Agreement shall only be in the District Court for Larimer County, Colorado.

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#### **10. Further Acts**

In addition to the acts recited in this Agreement to be performed by either party, the parties agree to perform, or cause to be performed, on or after the Closing, any and all such further acts as may be reasonably necessary to consummate the transactions contemplated herein.

#### **11. Headings**

Headings used in this Agreement are used for reference purposes only and do not constitute substantive matter to be considered in construing this Agreement.

#### **12. Notices**

All notices, demands, requests and other communications required or permitted hereunder shall be in writing, and shall be deemed to be delivered when actually received or, regardless whether actually received or not, on the third day following deposit in a regularly maintained receptacle for the United States mail, postage paid, certified, return receipt requested, addressed to the addressee as follows:

*If to Buyer:*

Kevin Brinkman

Brinkman Capital, LLC

3003 E. Harmony Road, Suite 300

Fort Collins, CO 80525

*If to the City:*

City Manager

500 East Third Street

Loveland, CO 80537

*With a copy to:*

City Attorney

City of Loveland

500 East Third Street, Suite 330

Loveland, CO 80537

**12. Default**

a) Default by Either Party. Notwithstanding the provisions of paragraph above, if prior to Closing, either party refuses to consummate this Agreement for reasons other than as permitted by the terms of this Agreement, such refusal shall constitute a breach and default of this Agreement and the non-defaulting Party's remedies shall be limited to the right to enforce the defaulting Party's obligations hereunder by an action for injunction, specific performance, or other appropriate equitable remedy or

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for mandamus, or by an action to collect and enforce payment of sums owing hereunder, and no other remedy, and no Party shall be entitled to or claim damages for a default by the defaulting Party, including, without limitation, lost profits, economic damages, or actual, direct, incidental, consequential, punitive or exemplary damages.

b) Attorney's Fees. If it shall be necessary for either party to employ an attorney to enforce its rights pursuant to this Agreement because of the default of the other party, whether or not suit is commenced, the defaulting party shall reimburse the non-defaulting party for its reasonable attorney's fees, court costs and other expenses related thereto.

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

**CITY OF LOVELAND**

Stephen C. Adams, City Manager

ATTEST:

City Clerk