

PURCHASE AND SALE AGREEMENT
(335 Milwaukee Street)

THIS PURCHASE AND SALE AGREEMENT (“Agreement”) is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation and home rule city of the State of Colorado (the “City”) and **WILLIAM W. SMITH III**, whose address is 2420 W. 26th Avenue, Suite 500, Building D, Denver, Colorado 80211 (“Purchaser”), collectively “the Parties”.

WITNESSETH:

WHEREAS, the City owns certain real property in the City and County of Denver known as 335 Milwaukee Street, Denver, Colorado 80206 and has determined that it no longer requires ownership of the property for any City purpose; and

WHEREAS, the recommending and approving City officials have determined that it is in the best interest of the City to sell the property to Purchaser subject to the terms and conditions set forth below;

NOW THEREFORE, in consideration of the premises and the mutual covenants and obligations set forth herein, and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. PROPERTY TO BE PURCHASED: Subject to the terms, provisions, reservations, covenants and conditions herein contained, the City hereby agrees to sell and convey and Purchaser hereby agrees to purchase and pay for the real property at 335 Milwaukee Street, Denver, Colorado, which is more particularly described in Exhibit A, attached hereto and incorporated herein by reference, together with all improvements, appurtenances and permanent fixtures, if any, of a permanent nature currently on the property (the “Property”).

2. PURCHASE PRICE AND TERMS: The Purchase Price to be paid by Purchaser for the Property shall be Four Hundred Seventy Thousand Dollars (\$470,000.00) (“Purchase Price”), payable to the City and County of Denver in good funds as follows:

(a) Purchaser shall make an earnest money deposit payable to the Manager of Finance in the amount of \$20,000.00, to be held by the City until the time of closing, or by a title

company in the event a title company is used for the transaction, or other disbursement in accordance with the terms of this Agreement (Earnest Money”); and

(b) \$450,000.00 at the time of closing.

3. ENVIRONMENTAL CONDITION: Purchaser, at its sole expense, may employ an environmental consultant to conduct an environmental audit of the Property. The City hereby grants Purchaser and its consultants the right to enter upon the Property to perform environmental testing and inspections. The Purchaser shall give the City forty-eight (48) hours notice prior to performing such work. Upon completion of the inspection, the Purchaser’s consultant shall return the Property to the condition it was in prior to such testing. The purpose of the environmental audit shall be to identify any existing or potential environmental problems located in, on, or under the Property, including but not limited to, the presence of hazardous substances. Purchaser shall be responsible as between Purchaser and the City and at Purchaser’s sole expense, for the removal and remediation of any underground storage tanks or hazardous substances, including asbestos and PCB’s, located on the Property and shall accept liability for underground storage tanks and hazardous substances located on the Property. Purchaser has the right to seek damages for environmental conditions on the Property against any adjacent land owners and previous owners of the Property except the City. City shall provide Purchaser with copies of any environmental studies or data it has regarding the Property, if any. Purchaser shall provide City, without charge, a copy of any environmental studies performed or data collected by or on behalf of Purchaser regarding the Property. All environmental audits and testing shall be completed no later than thirty (30) days from the date of this Agreement. Purchaser acknowledges that it is purchasing the Property in an “As Is Where Is” condition.

4. PHYSICAL INSPECTION: The Purchaser shall have the right to inspect the physical condition of the Property at the Purchaser’s expense. The City hereby grants Purchaser and its consultants the right to enter onto the Property to perform such inspections in accordance with the terms of a site access permit to be issued by the Director of Real Estate (“Director”). The Purchaser shall give the City forty-eight (48) hours notice prior to performing such work. Upon completion of the inspection, Purchaser shall return the Property to the condition it was in prior to such inspection.

5. OBJECTIONS/RESOLUTIONS: If written notice of any unsatisfactory environmental or physical condition, signed by the Purchaser, is not received by the City on or

before thirty (30) days from the date of this Agreement, then such items shall be deemed to be satisfactory to the Purchaser. If written notice of any unsatisfactory, environmental or physical condition, signed by the Purchaser, is given to the City as set forth above, and if the City fails to cure such defect on or before Closing, the Purchaser in its sole discretion may elect to (i) waive such defect itself and proceed to Closing; (ii) cure such defect itself and proceed to Closing; or (iii) terminate this Agreement.

6. EVIDENCE OF TITLE: Purchaser may obtain, at Purchaser's expense, a current commitment for owner's title insurance policy for the Property in an amount equal to the Purchase Price from a title company of its choosing ("Title Company") within thirty (30) days from the date of this Agreement. The title insurance commitment, together with any copies or abstracts of instruments furnished pursuant to this Section 6, constitute the title documents ("Title Documents"). Purchaser shall have the title insurance policy delivered as soon as practical after Closing and pay the premium at Closing if a title policy is obtained.

7. TITLE:

(a) Title Review: The Purchaser shall have the right to inspect the Title Documents. Written notice by the Purchaser of unmerchantability of title or any other unsatisfactory title condition shown by the Title Documents shall be signed by the Purchaser and given to the City on or before thirty (30) days from the date of this Agreement. If the City does not receive the Purchaser's notice by the date specified above, the Purchaser shall be deemed to have accepted the condition of title as disclosed by the Title Documents as satisfactory.

(b) Survey and Matters Not Shown by the Public Records. The City shall deliver to Purchaser within thirty (30) days from the date of this Agreement, true copies of all lease(s) and survey(s) in the City's possession pertaining to the Property, if any, and shall disclose to the Purchaser all easements, liens or other title matters not shown by the public records of which Joseph Margoshes of the Division of Real Estate has actual knowledge. The Purchaser shall have the right to inspect the Property to determine if any third party has any right in the Property not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy). The Purchaser, at Purchaser's expense, may obtain a current boundary and improvements survey of the Property, certified by a licensed Colorado surveyor reasonably acceptable to the City, showing thereon the correct legal description, property dimensions, easements, rights-of-way and encroachments, if any, recorded or in place,

and all improvements, with the dimensions thereof, certified to the City, Purchaser and to the Title Company. Written notice of any unsatisfactory condition(s) discovered by the survey or disclosed by the City or revealed by the inspection shall be signed by the Purchaser and given to the City on or before thirty (30) days from the date of this Agreement. If the City does not receive the Purchaser's notice by said date, the Purchaser shall be deemed to have accepted title subject to such rights, if any, of third parties of which the Purchaser has actual knowledge.

(c) Right to Cure. If the City receives notice of any unsatisfactory title matter, or other condition(s) revealed by a survey or inspection as provided in subsection (a) or (b) above or as otherwise given by the Purchaser, the City may cure such unsatisfactory condition(s) prior to Closing. If the City determines not to correct said unsatisfactory condition(s) on or before Closing, the Purchaser, in its sole discretion, may elect to (i) waive such defect and proceed to Closing; (ii) cure such defect itself; or (iii) terminate this Agreement.

8. DATE OF CLOSING: The date of Closing shall be on or before March 31, 2013, or a date otherwise agreed to by the parties in writing ("Closing"). The hour and place of Closing shall be as designated by the City. The Director of Real Estate ("Director") may agree to the Closing date on behalf of the City.

9. TRANSFER OF TITLE: Subject to completion of all prerequisites to Closing set forth herein and the tender of the Purchase Price, the City shall execute and deliver a Quit Claim Deed to the Purchaser at Closing, conveying the Property free and clear of all taxes except the general taxes for the year of Closing, free and clear of all liens and encumbrances, including liens for special improvements installed as of the date of Closing, except those matters reflected by the Title Documents accepted by Purchaser in accordance with Paragraph 7; those rights, if any, of third parties in the Property not shown by the public records accepted by Purchaser in accordance with Paragraph 7; and subject to building and zoning regulations.

10. POSSESSION: Possession of the Property shall be delivered to Purchaser at Closing.

11. PAYMENT OF ENCUMBRANCES: Any encumbrance required to be paid by the City shall be paid at or before Closing.

12. CLOSING COSTS, DOCUMENTS AND SERVICES: The City and Purchaser shall each pay one-half of all closing costs at Closing except as otherwise provided herein. Purchaser and City shall sign and complete all customary or required documents at or before

Closing. The City's Mayor shall be authorized to execute on behalf of the City any and all documents necessary or helpful to close the transaction contemplated herein. The Director, or his designee, shall also be authorized to execute on behalf of the City any and all documents necessary or helpful to close the transaction contemplated herein, provided no such document transfers title to real property or must be recorded in the real property records of the City and County of Denver.

13. PRORATIONS: General taxes and assessments for the year of Closing, based on the most recent levy and the most recent assessment, rents, water, sewer and other utility charges shall be prorated to date of Closing and paid at Closing.

14. CONDITION OF PROPERTY: The Property shall be conveyed as is, where is, without warranties of any kind.

15. TIME IS OF THE ESSENCE/REMEDIES: It is understood and agreed between the parties that time is of the essence hereof, and all the agreements herein contained shall be binding upon and for the benefit of each party's successors and assigns. If any payment due in accordance with this Agreement is not paid, honored or tendered when due, or if any other obligation hereunder is not performed or waived as herein provided, there shall be the following remedies:

(a) If Purchaser is in Default Prior to Closing: The City may elect to treat this Agreement as canceled, in which case, all payments and things of value received hereunder shall be forfeited by Purchaser and retained by City and both parties shall thereafter be released from all obligations hereunder, except for continuing obligations of Purchaser as set forth in Sections 3 and 4 above, or the City may elect to treat this Agreement as being in full force and effect and the City shall have the right to specific performance, damages, and all remedies in law or equity. In the event of default by Purchaser, City shall receive for its own use all engineering or development plans and any other plans, specifications and documents relating to Purchaser's use or development of the Property then in Purchaser's possession or under Purchaser's control.

(b) If City is in Default Prior to Closing: Purchaser may elect to treat this Agreement as canceled, in which case all payments and things of value received hereunder shall be returned to Purchaser. Purchaser expressly waives the remedies of specific performance and additional damages.

16. TERMINATION: In the event this Agreement is terminated for reason other than default, all payment and things of value received hereunder shall be returned and the parties shall be relieved of all obligations hereunder, except for continuing obligations of Purchaser as set forth in Sections 3 and 4 above,.

17. RETURN OF EARNEST MONEY – EARNEST MONEY DISPUTE:

(a) If the Earnest Money has not already been returned following receipt of a written notice of termination, the holder of the Earnest Money shall release the Earnest Money as directed by the written mutual instructions. Such release of Earnest Money shall be made within five days of holder's receipt of the written mutual instructions signed by both Purchaser and the City.

(b) In the event of any controversy regarding the Earnest Money (notwithstanding any termination of the Agreement), the holder of the Earnest Money shall not be required to take any action, Earnest Money holder, at its option and sole subjective discretion, may (1) await any proceeding, (2) interplead all parties and deposit Earnest Money into a court of competent jurisdiction and shall recover court costs and reasonable attorney and legal fees, or (3) provide notice to Purchaser and the City that unless Earnest Money holder receives a copy of the Summons and Complaint or Claim (between Purchaser and the City) containing the case number of the lawsuit (Lawsuit) within one hundred twenty days of Earnest Money holder's notice to the parties, Earnest Money holder shall be authorized to return the Earnest money to Purchaser. In the event the holder of the Earnest Money does receive a copy of the Lawsuit, and has not interpled the monies at the time of any Order, holder shall disburse the Earnest Money pursuant to the Order of the Court.

18. AUTHORITY TO EXECUTE: Purchaser represents that the persons who have affixed their signature hereto have all necessary and sufficient authority to bind Purchaser.

19. COOPERATION OF THE PARTIES: In the event that any third party brings an action against either party regarding the validity or operation of this Agreement, the parties shall cooperate with the other in any such litigation. Purchaser shall bear its own legal costs.

20. BROKER'S FEES: The City will not pay any real estate broker's commissions or fees. In the event a claim for such compensation is made, Purchaser shall be solely responsible for payment of the compensation and/or defense of the claim, and shall indemnify the City

against claims for broker's commissions or fees, including any attorney's fees or other costs incurred by the City.

21. ASSIGNMENT: Neither party may assign its rights and obligations under this Agreement to any entity without the prior written consent of the other party. For the City such consent shall be given by the Director. If this Agreement is assigned as permitted herein, all the covenants and agreements herein contained shall be binding upon and inure to the benefit of the successors, assigns, heirs, and personal representatives of the respective parties. If this Agreement is assigned without written consent, the assigning party shall be in default of this Agreement.

22. WHEN RIGHTS AND REMEDIES NOT WAIVED: In no event shall any performance hereunder constitute or be construed to be a waiver by any party or any breach of covenant or condition or of any default which may then exist. The rendering of any such performance when any such breach or default exists shall in no way impair or prejudice any right or remedy available with respect to such breach or default. Further, no assent, expressed or implied, to any breach of any one or more covenants, provisions, or conditions of the Agreement shall be deemed or taken to be a waiver of any other default or breach.

23. SUBJECT TO LOCAL LAWS; VENUE: Each and every term, provision, and condition herein is subject to the provisions of the laws of the United States, the State of Colorado, the Charter and Ordinances of the City and County of Denver, and regulations enacted pursuant thereto. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement as if fully set out herein by this reference. This Agreement is made, shall be deemed to be made, and shall be construed in accordance with the laws of the State of Colorado. Venue for any action arising under this Agreement or any amendment or renewal shall lie in the District Court in and for the City and County of Denver, Colorado.

24. NOTICES: All notices provided for herein shall be in writing and shall be personally delivered or mailed by registered or certified United States mail, postage prepared, return receipt requested, to the parties at the addresses given below or at such other address that may be specified by written notice in accordance with this paragraph. All notices which are mailed shall be deemed to have been received three (3) days after deposit in the United States mail.

If to Denver: Mayor
Mayor's Office
City and County Building
1437 Bannock Street, Room 350
Denver, CO 80202

With copies to: Denver City Attorney
Denver City Attorney's Office
1437 Bannock Street, Room 353
Denver, CO 80202

Director of Real Estate
201 W. Colfax Avenue, Dept.1010
Denver, CO 80202

If to Purchaser: William W. Smith III
2420 W. 26th Ave., Suite 500, Building D
Denver, Colorado 80211

25. PARTIES' LIABILITIES: Each party shall be responsible for any and all suits, demands, costs or actions proximately resulting from its own individual acts or omissions.

26. AGREEMENT AS COMPLETE INTEGRATION; AMENDMENTS: This Agreement is intended as to the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion or other amendment shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment shall have any force or effect unless embodied in a written amendatory or other agreement executed by the parties.

27. PARAGRAPH HEADINGS: The paragraph headings are inserted only as a matter of convenience and for reference and in no way are intended to be a part of this Agreement or to define, limit or describe the scope or intent of this Agreement or the particular paragraphs to which they refer.

28. THIRD-PARTY BENEFICIARY: The parties intend that this Agreement shall create no third party beneficiary interest except for an assignment pursuant to this Agreement. The parties are not presently aware of any actions by them or any of their authorized representatives which would form the basis for interpretation construing a different intent, and in any event expressly disclaim any such acts or actions, particularly in view of the integration of this Agreement.

29. COUNTERPARTS: This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but of all which shall together constitute one and the same document.

30. REASONABLENESS OF CONSENT OR APPROVAL: Whenever under this Agreement “reasonableness” is the standard for the granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards, as well as business and economic considerations.

31. SEVERABILITY: The promises and covenants contained herein are several in nature. Should any one or more of the provisions of this Agreement be judicially adjudged invalid or unenforceable, such judgment shall not affect, impair, or invalidate the remaining provision of this Agreement.

32. NO PERSONAL LIABILITY: No elected official, director, officer, agent or employee of the City nor any director, officer, employee or personal representative of Purchaser shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or because of any breach thereof or because of its or their execution, approval or attempted execution of this Agreement.

33. CONFLICT OF INTEREST BY CITY OFFICER: Purchaser represents that to the best of its information and belief no officer or employee of the City is either directly or indirectly a party or in any manner interested in this Agreement except as such interest may arise as a result of the lawful discharge of the responsibilities of such elected official or employee.

34. NO DISCRIMINATION IN EMPLOYMENT: In connection with the performance of work under this Agreement, Purchaser agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all contracts entered into in conjunction with this Agreement.

35. SUBJECT TO COUNCIL APPROVAL: This Agreement is subject to the approval of the City Council in accordance with the provisions of the City Charter, and this Agreement shall not take effect until its final approval by City Council, and until signed by all appropriate City officials, including the Mayor, the Clerk and Recorder, the Manager of Finance and the Auditor.

36. APPROPRIATION: Except for the purchase of certain property authorized to be paid for under various City General Obligation Bond ordinances, all obligations of the City under and pursuant to this Agreement are subject to prior appropriation of monies expressly made by the City Council for the purposes of this Agreement and paid into the Treasury of the City.

37. RIGHT TO EXTEND TIME FOR PERFORMANCE: The parties agree that any time for performance of any term or condition hereunder may be extended for up to three (3) additional thirty (30) day periods by a letter signed by the Director and an authorized representative of Purchaser. All other amendments to this Agreement must be fully executed by the City and the Purchaser.

38. NO MERGER: The parties intend that the terms of this Agreement shall survive Closing and shall not be merged into the deed conveying the Property.

39. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: Purchaser consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

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Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



EXHIBIT A

South 37 ½ feet of North 75 feet of Plot 8, Block 38 Harmans subdivision

Also known as 335 Milwaukee Street, Denver, Colorado 80206