

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement"), made and entered into as of this _____ day of _____, 2010, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado whose address is 1437 Bannock Street, Denver, Colorado 80202 (the "City"), and the **HOUSING AUTHORITY OF THE CITY AND COUNTY OF DENVER**, whose address is 777 Grant Street, Denver, CO 80203 ("Purchaser").

10-844

WITNESSETH:

WHEREAS, City owns property located at the northwest corner of 10th and Osage Street in the City and County of Denver, which property is no longer in use and has been determined to be surplus property; and

WHEREAS, City has agreed to sell and the Purchaser has agreed to purchase such property subject to the terms and conditions hereinafter set forth; and

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

1. PROPERTY TO BE PURCHASED: The Purchaser agrees to purchase and the City agrees to sell, the real property located at the northwest corner of Osage and 10th Streets in Denver, Colorado, which is more particularly described in **Exhibit A**, attached hereto and incorporated herein ("Property").

2. PURCHASE PRICE: The Purchase Price to be paid by the Purchaser for the Property shall be Eight Hundred Ninety-Seven Thousand Two Hundred Twenty-Five Dollars (\$897,225.00) ("Purchase Price") payable to the City in good funds due at the time of closing.

3. ENVIRONMENTAL CONDITION:

(a) Environmental Information: City has disclosed to the Purchaser all information, reports and certifications the Director of Real Estate (the "Director") and the City's Office of Economic Development have regarding environmental contamination or the presence of any Hazardous Waste or Toxic Substances on, under or about the Property. For purposes hereof, "Hazardous Wastes" mean all waste materials subject to regulations under the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund or CERCLA), 42 U. S. C.,

Sec. 9601 et seq., or applicable state law, and any other applicable federal or state laws now in force or hereafter enacted relating to hazardous waste disposal. "Toxic Substance" means and includes any materials present on the Property which are subject to regulation under the Toxic Substance Control Act (TSCA), 15 U. S. C., Sec. 2601 at seq., applicable state law, or any other applicable federal or state law now in force or hereafter enacted relating to toxic substances. "Toxic Substances" includes, but is not limited to asbestos, polychlorinated biphenyls (PCB's), and lead-based paints.

(b) As Is Where Is Condition: Purchaser acknowledges that it is purchasing the Property in an "As Is Where Is" condition.

4. EVIDENCE OF TITLE: Purchaser may obtain, at Purchaser's expense, a current commitment for owners' title insurance policy for the Property in an amount equal to the Purchase Price from a title company of its choice ("Title Company") within ten (10) days after execution of this Agreement. The title insurance commitment, together with any copies or abstracts of instruments furnished pursuant to Section 5, 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.

5. TITLE:

(a) Title Review and Deed. 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 before the end of the Due Diligence Period. 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. If a subsequent title commitment update shows any new matter not set forth in earlier title commitments, Purchaser shall have up to fifteen (15) days before Closing to give the City notice of any unsatisfactory title condition relating to the newly disclosed title matter in the manner set forth above. The City shall convey the Property by a Quitclaim Deed, with no covenants of title or warranties, in substantially the same form as is attached as **Exhibit B**, "Quitclaim Deed."

(b) Survey and Matters Not Shown by the Public Records. The City has delivered to Purchaser true copies of all lease(s) and survey(s) in the City's possession, if any, pertaining to the

Property and has disclosed to the Purchaser all easements, liens or other title matters not shown by the public records of which Director 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, 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 the end of the Due Diligence Period. 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.

6. DUE DILIGENCE PERIOD: The due diligence period shall be the period of time during which Purchaser may perform any and all title examinations and inspections authorized by Paragraph 5 above, and such period shall run until August 13, 2010. The due diligence period may be waived or shortened by the Purchaser.

7. DATE OF CLOSING: The date of Closing shall be on or before September 8, 2010 or a date otherwise agreed to by the parties in writing ("Closing"). The time and place of the Closing shall be agreed upon by the parties.

8. POST-CLOSING OBLIGATIONS: Purchaser shall commence construction for affordable housing purposes at the Property within one year of the execution of this Agreement. "Commencing construction" shall mean issuing a notice to proceed to a contractor. If such construction is not undertaken by such time, Purchaser agrees that it shall, at the City's option,

transfer the Property back to the City and the City shall pay to Purchaser the Purchase Price. If such transfer takes place, DHA shall pay all reasonable legal and administrative expenses 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 Quitclaim Deed to the Purchaser at Closing. The City and Purchaser shall execute all customary or required documents at or before Closing. The City's Director, or her/his designee, shall 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.

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

11. CLOSING COSTS, DOCUMENTS AND SERVICES: Purchaser shall pay all closing costs at Closing. The City and Purchaser shall sign and complete all customary or required documents at or before Closing.

12. 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 inure to 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 the City is in default: 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, or Purchaser may elect to treat this Agreement as being in full force and effect and Purchaser shall have the right to specific performance, damages, and all remedies in law or equity.

(b) If Purchaser is in default: The City may elect to treat this Agreement as canceled, in which case all payments and things of value received hereunder shall be returned to Purchaser and both parties shall thereafter be released from all obligations hereunder, 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.

13. TERMINATION: In the event this Agreement is terminated for reason other than default, all payment and things of value received hereunder shall be returned to the parties providing the same and the parties shall be relieved of all obligations hereunder.

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

15. COOPERATION OF THE PARTIES: In the event that any third party brings an action against the City or Purchaser regarding the validity or operation of this Agreement, the other party shall reasonably cooperate in any such litigation.

16. NO BROKER'S FEES: The City and Purchaser represent to each other that they have had no negotiations through or brokerage services performed by any broker or intermediary to facilitate purchase and sale of the property, and that no claims for commissions, fees or other compensation shall arise out of this transaction.

17. 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 provisions of this Agreement.

18. WHEN RIGHTS AND REMEDIES NOT WAIVED: In no event shall any performance hereunder constitute or be construed to be a waiver by any party of any breach of covenant or condition or of any default which may then exist. The rendering of any such performance when any such breach of default exists shall in no way impair or prejudice any right of remedy available with respect to such breach of 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 or any other default or breach.

19. 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 legal action arising under or relating to this Agreement shall lie in the District Court in and for the City and County of Denver, Colorado.

20. 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 prepaid, 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:

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

With copies to: Director of Real Estate
201 W. Colfax, Dept. 1010
Denver, Colorado 80202

Denver City Attorney
Denver City Attorney's Office
1437 Bannock Street, Room 353
Denver, Colorado 80202

If to Purchaser: Christopher Parr, Director of Development, or successor
Housing Authority of the City and County of Denver
777 Grant Street, 6th Floor
Denver, Colorado 80203

With copies to: Joshua Crawley, Agency Counsel, or successor
Housing Authority of the City and County of Denver
777 Grant Street, 6th Floor
Denver, Colorado 80203

21. 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.

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

23. PARAGRAPH HEADINGS: The paragraph headings are inserted herein 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 hereof to which they refer.

24. THIRD-PARTY BENEFICIARY: It is the intent of the parties that no third party beneficiary interest is created in 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.

25. COUNTERPARTS: This Agreement shall be executed in at least two (2) counterparts, each of which shall be deemed to be an original, but all of which shall together constitute one and the same document.

26. 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.

27. 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.

28. 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 to 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.

29. 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 two (2) additional thirty (30) day periods by a letter signed by the Director and an authorized representative of Purchaser, except as otherwise provided for herein. All other amendments to this Agreement except

for certain approvals granted to the Director herein, must be fully executed by the City and the Purchaser, and may require further City Council approval, if so required by the City's Charter.

30. 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.

31. 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, at the Director's sole discretion. For Purchaser, consent shall be given by the Director of Development, at his/her sole discretion.

32. 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 and the Auditor.

33. EXAMINATION OF RECORDS: Purchaser, the U.S. Department of Housing and Urban Development ("HUD"), the Office of Counsel or Comptroller General of the United States, or any of their duly authorized representatives shall, until three (3) years after final payment under this Agreement, have access to and the right to examine any of the City's directly pertinent books, documents, papers, or other records involving transactions related to this Agreement for the purpose of making audit, examination, excerpts, and transcriptions.

The periods of access and examination above for records relating to (1) litigation or settlement of claims arising from the performance of this Agreement, or (2) costs, expenses, or payments under this Agreement to which the City, Purchaser, HUD, the Office of Counsel, Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

34. COLORADO GOVERNMENTAL IMMUNITY ACT: In relation to the Agreement, both parties are relying upon and have not waived the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

35. FEDERAL FUNDS CONTINGENCY: All payments under this Agreement, whether in whole or in part, are subject to and contingent upon the continuing availability of federal funds for the purposes of the purchase of the Property. In the event that federal funds, or any part thereof, are

not awarded to Purchaser, are reduced or eliminated by the federal government, or are otherwise unavailable to Purchaser, Purchaser may terminate this Agreement and all payment and things of value received hereunder shall be returned to the parties providing the same and the parties shall be relieved of all obligations hereunder. Any termination by Purchaser subject to the terms of this paragraph 35 shall not constitute a default by Purchaser.

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IN WITNESS WHEREOF, the parties hereto have here unto set their hand and affix their seals at Denver, Colorado as of the day first above written.

ATTEST:

STEPHANIE Y. O'MALLEY
Clerk and Recorder, Ex-Officio Clerk
of the City and County of Denver

CITY AND COUNTY OF DENVER

By _____
Mayor

RECOMMENDED AND APPROVED:

By _____
Director, Real Estate

APPROVED AS TO FORM:

City Attorney for the City
and County of Denver

By _____
Office of Economic Development

REGISTERED AND COUNTERSIGNED:

By _____
Assistant City Attorney

By _____
Manager of Finance
Contract Control No. RC00043

By _____
Auditor

"CITY"

DENVER HOUSING AUTHORITY

By: Arturo Guerrero *Arturo Guerrero*

Title: EXECUTIVE DIRECTOR

STATE OF COLORADO)
) ss.
CITY AND COUNTY OF DENVER)

This foregoing instrument was acknowledged before me this 11 day of AUGUST, 2010, by Bob Prettyman, the COO OF HOUSING of the Denver Housing Authority. WITNESS my hand and official seal. MANAGEMENT

My commission expires:

[Handwritten Signature]

Notary Public

“PURCHASER”

EXHIBIT A
LEGAL DESCRIPTION

HUNTS ADD B26 BEG NE COR B26 TH S 500FT W 87.12FT NW 506.08 FT E
44.42FT N 40FT E 125.25FT S 40FT TO POB

EXHIBIT B

After recording, return to:
Jennifer Welborn
City Attorney's Office, 201 W. Colfax Ave., 12th Floor
Denver, CO 80202

QUITCLAIM DEED

THIS DEED, made this _____ day of _____, 2010, between the CITY AND COUNTY OF DENVER, a Colorado municipal corporation of the State of Colorado, whose address is 1437 Bannock Street, Denver, Colorado 80202 ("Grantor") and the HOUSING AUTHORITY OF THE CITY AND COUNTY OF DENVER, A Colorado quasi-municipal corporation, whose address is 777 Grant Street, Denver Colorado 80203 ("Grantee");

WITNESSETH, That Grantor, for and in consideration of the sum of Eight Hundred Ninety-Seven Thousand Two Hundred Twenty-Five Dollars (\$897,225.00), the receipt and sufficiency of which are hereby acknowledged, has remised, released, sold and QUITCLAIMED, and by these presents does remise, release, sell and QUITCLAIM unto Grantee and Grantee's heirs, successors, and assigns, forever, all the right, title, interest, claim and demand which Grantor has in and to the real property, together with improvements, if any, situate, lying and being in the County Denver and State of Colorado, described as follows:

See Exhibit A attached hereto;

Also known by street and number as:

TO HAVE AND TO HOLD the same, together with all and singular the appurtenances and privileges thereunto belonging for in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever, of Grantor, either in law or equity, to the only proper use, benefit and behoof of Grantee and Grantee's heirs, successors, and assigns forever.

IN WITNESS WHEREOF, Grantor has caused this deed to be executed on the date set for the above.

ATTEST: CITY AND COUNTY OF DENVER

By _____
STEPHANIE Y. O'MALLEY,
Clerk and Recorder, Ex-Officio Clerk
of the City and County of Denver

By _____
Mayor

APPROVED AS TO FORM:
DAVID R. FINE, Attorney for
the City and County of Denver

By _____
Assistant City Attorney

STATE OF COLORADO)
) ss.
CITY AND COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this ___ day of _____, 20__ by
John W. Hickenlooper, Mayor of the City and County of Denver.

Witness my hand and official seal.

My commission expires: _____

Notary Public