

TOWN OF SUPERIOR  
ORDINANCE NO. 0-7  
SERIES 2017

AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR APPROVING A PURCHASE AND SALE AGREEMENT WITH DRAKE SUPERIOR PARTNERS, LLC, FOR THE SALE OF REAL PROPERTY OWNED BY THE TOWN

WHEREAS, in 1987, the Town acquired the real property described as a Portion of Tract A, Superior Town Center, Filing 1B Replat (the "Property");

WHEREAS, since acquisition of the Property, the Town has determined that the Property is not needed for municipal purposes;

WHEREAS, the Property contains a stormwater detention facility that is no longer needed, so the Town will be removing the stormwater detention facility;

WHEREAS, following removal of the stormwater detention facility, remediation of the Property will be required to make the Property useful for other purposes;

WHEREAS, the remediation would cost the Town approximately \$400,000;

WHEREAS, the estimated fair market value of the Property, as remediated, is \$800,000;

WHEREAS, Drake Superior Partners, LLC has expressed an interest in purchasing the Property without such remediation for \$294,000;

WHEREAS, Drake Superior Partners, LLC plans to construct improvements on the Property to accommodate a sales and service center for electric vehicles; and

WHEREAS, the sale of the Property for less than fair market value is justified, because the sale will spare the Town the cost of remediation, and will allow the Property to be used for private development that will generate sales tax revenues and property tax revenues for the Town and provide economic development opportunities for the Town and region as a whole.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR, COLORADO, THAT:

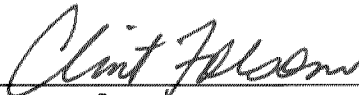
Section 1. Findings. The Board hereby finds and determines: that the Property is not used for municipal purposes; that the Property should not be held for governmental purposes; and that the sale of the Property to Drake Superior Partners, LLC is in the best interest of the public health, safety and welfare.

Section 2. Sale and Agreement. The Board hereby approves the sale of the Property to Drake Superior Partners, LLC, pursuant to the terms of the Purchase and Sale Agreement between the Town of Superior and Drake Superior Partners, LLC. The Purchase and Sale Agreement is hereby approved in substantially the same form as attached hereto, subject to final approval by the Town Attorney.

Section 3. Severability. If any article, section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Board of Trustees hereby declares that it would have passed this Ordinance and each part or parts hereof irrespective of the fact that any one, or part, or parts be declared unconstitutional or invalid.

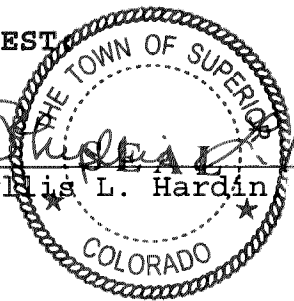
Section 4. Safety. This Ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

INTRODUCED, READ, PASSED AND ORDERED PUBLISHED this 27<sup>th</sup> day of November, 2017.

  
\_\_\_\_\_  
Clint Folsom, Mayor

ATTEST

  
\_\_\_\_\_  
Phyllis L. Hardin, Town Clerk-Treasurer



## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "Agreement") is made and entered into as of this 27 day of November, 2017 (the "Effective Date"), by and between the TOWN OF SUPERIOR COLORADO, a Colorado municipal corporation with an address of 124 East Coal Creek Drive, Superior, Colorado 80027 (the "Town"), and GCH SUPERIOR LLC, a Colorado limited liability company, with an address of 496 South Broadway, Denver, Colorado 80209 ("Purchaser") (each individually a "Party" and collectively the "Parties").

WHEREAS, the Town owns the real property more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, the Town wishes to sell the Property to Purchaser and Purchaser wishes to purchase the Property from the Town, 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 Town agrees to convey, sell, transfer and assign to Purchaser, and Purchaser agrees to purchase from the Town, on the terms and conditions of this Agreement, the Property, all improvements thereon and any appurtenant rights now owned by the Town.
2. Earnest Money. Within 10 days after the Effective Date, Purchaser shall deposit the sum of \$10,000 with NCS Colorado (Attention: Mindy Humphrey) (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 Town, but fully applicable to the Purchase Price.
3. Purchase Price. The Purchase Price to be paid by Purchaser to the Town for the sale and conveyance of the Property is \$294,000, 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 Town.
4. Evaluation Period. Purchaser shall have the period commencing on the Effective Date and continuing for 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 Town shall deliver to Purchaser a commitment (the "Title Commitment") for an ALTA owner's coverage title insurance policy on the Property, 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.

b. Within 20 days after the Effective Date, the Town shall deliver to Purchaser a copy of an ALTA/ACSM survey of the Property (the "Survey"). 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 Town shall make available to Purchaser for inspection and copying all reports and other documents in the Town'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, engineering drawings, utility plans, road plans easements, rights of way, signage licenses and easements.

d. If, after review of the matters submitted pursuant to this Section 3 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 Town 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 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 Town within 30 days of Purchaser's receipt of the Title Commitment, the Survey and related documents. The Town may, but is not required to, respond to Purchaser's objections in writing within 30 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 Town 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 Town 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 Town and Purchaser shall pay their respective closing costs and all other items required to be paid at closing, except as otherwise provided herein. The Town and Purchaser shall sign and complete all customary or required documents at or before closing.

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

10. Town's Deliverables. On or prior to closing, the Town shall deliver to Purchaser a special warranty deed duly executed and acknowledged by the Town, conveying title to the Property to Purchaser, 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.

11. Purchaser's Deliverables. On or prior to closing, Purchaser shall deliver to the Town 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 Town or the Title Company.

12. Town's Representations and Warranties. The Town 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 Town's knowledge.

a. There is no action, suit or proceeding pending, or to the best of the Town's knowledge threatened, against or otherwise affecting the Town or the Property in any court of law or equity, or before any governmental authority, in which an adverse decision might materially impair the Town'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 Town has not received any notice of any violations of any applicable law related to the Property.

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

f. The Town shall give Purchaser prompt written notice if any of the representations or warranties made by Town 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 Town 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 Town nor anyone acting for or on behalf of the Town 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 Town 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 Town'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 Town 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. Town's Remedies. If the closing does not occur by reason of a breach of the Purchaser, the Town 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 Town, and Purchaser has complied with the terms of this Agreement, Purchaser may terminate this Agreement by written notice to the Town 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.

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 Town's consent to an entity affiliated with or formed by one or more principals of Purchaser.

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 Boulder 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 Town 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 Town and its 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 Town and its officers, attorneys or employees.

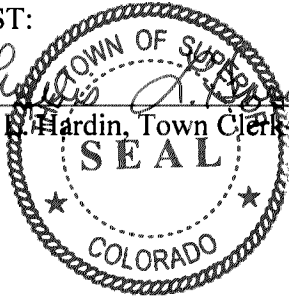
**IN WITNESS WHEREOF**, the Town and Purchaser have executed this Agreement as of the Effective Date.

**TOWN OF SUPERIOR, COLORADO**

  
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Clint Folsom, Mayor

ATTEST:

Phyllis A. Hardin  
Phyllis A. Hardin, Town Clerk-Treasurer



GCH SUPERIOR LLC, a Colorado limited liability company

By: Jonathan H. Hardy

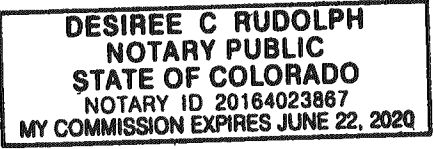
Name: JONATHAN H. HARDY

Its: MANAGER

STATE OF Colorado )  
Chaut ) ss.  
COUNTY OF Drew )

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of November, 2017, by Jonathan Hardy, as manager for GCH Superior LLC, a Colorado limited liability company.

Desiree C. Rudolph  
Notary Public (Desiree C. Rudolph)



My Commission expires: June 22, 2020



**EXHIBIT A**  
**Legal Description**

Portion of Tract A, Superior Town Center, Filing 1B Replat