

TOWN OF SUPERIOR  
RESOLUTION NO. R-12  
SERIES 2023

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR APPROVING THE PURCHASE OF CERTAIN REAL PROPERTY FROM MARCEL ARSENAULT AND SUPERIOR PRESERVATION, LLC, FOR \$750,000, PURSUANT TO A PURCHASE AND SALE AGREEMENT

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR, COLORADO, as follows:

**Section 1.** The purchase of property more particularly described in the attached Purchase and Sale Agreement (the "Property"), for \$750,000, is hereby approved.

**Section 2.** The Purchase and Sale Agreement with Marcel Arsenault and Superior Preservation, LLC, for the purchase of the Property, is hereby approved in the form as attached hereto.

ADOPTED this 23<sup>rd</sup> day of January, 2023.



Mark Lacis, Mayor

ATTEST:



Lydia Yecke, Town Clerk



## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "Agreement") is made and entered into as of this 31 day of January, 2023 (the "Effective Date"), by and among the Town of Superior, a Colorado municipal corporation with a legal address of 124 East Coal Creek Drive, Superior, CO 80027 (the "Town") and Marcel J. C. Arsenault, an individual with a legal address of 2135 4<sup>th</sup> Street, Boulder, CO 80302 and Superior Preservation, LLC, a Colorado limited liability corporation, with an address of 371 Centennial Parkway, Suite 200, Louisville, CO 80027 (each a "Seller" and collectively, "Sellers") (the Town and Sellers each a "Party" and collectively, the "Parties").

WHEREAS, Marcel J. C. Arsenault owns the real property referred to as "Parcel A" and Superior Preservation, LLC owns the real property referred to as "Parcel B," both located in Boulder County, Colorado and further set forth in **Exhibit A**, attached hereto and made a part hereof (Parcel A and Parcel B collectively referred to as the "Property"); and

WHEREAS, the Town wishes to purchase the Property from Sellers and Sellers wish to sell the Property to the Town, pursuant to 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.** Sellers agrees to convey, sell, transfer, and assign to the Town, and the Town agrees to purchase from Sellers, on the terms and conditions of this Agreement, the Property, all improvements thereon and any appurtenant rights now owned by Sellers.
2. **Earnest Money.** The Town shall tender \$5,000 as Earnest Money. The Earnest Money shall be payable to and held by First American Title, 4940 Pearl East Circle, Suite 104, Boulder, CO 80301 (the "Closing Company") in an interest-bearing account, on behalf of Sellers and the Town. The Earnest Money is part of and included in the total Purchase Price. The Town shall deliver the Earnest Money to the Closing Company within 10 days after the Effective Date.
3. **Purchase Price.** Subject to the terms of this Agreement, the total Purchase Price for the Property is \$750,000, to be paid by the Town at Closing in funds which comply with applicable Colorado law, including electronic transfer funds, certified check, or cashier's check, as directed by Sellers.
4. **Subject to Compliance by both Sellers.** The Parties hereby acknowledge and agree that the sale of the Property and this Agreement is expressly contingent on compliance with this Agreement by both Sellers. Each Seller agrees to be jointly and severally liable for the obligations of each Seller hereunder and all representations, warranties, covenants and agreements made by or on behalf of each Seller in this Agreement or in any exhibit or instrument delivered pursuant to this Agreement. Should either Seller fail to comply with any provision of this Agreement, such actions shall be deemed to be a breach of this Agreement pursuant to Section 10(b) hereof, the Town may seek immediate termination of the entire Agreement and shall not incur any liability whatsoever as a result of such action.

5. Closing. The closing will occur at a mutually agreeable location. The date of closing shall be on or before March 1, 2023, or such other date to which the Parties agree. The Parties shall pay their respective closing costs and all other items required to be paid at closing, except as otherwise provided herein. The Parties shall sign and complete all customary or required documents at or before closing.

6. Possession. Possession of the Property shall be delivered to the Town at closing.

7. Sellers' Deliverables. On or prior to closing, Sellers shall deliver to the Town two special warranty deeds duly in the form as set forth in **Exhibit B**, attached hereto and made a part hereof, executed and acknowledged by each Seller, conveying title to the Property to the Town, and such other instruments of transfer, certificates and additional documents as may be required hereunder or reasonably required by the Town.

8. Town's Deliverables. On or prior to closing, the Town shall deliver to the Closing Company the Purchase Price, less the amount of Earnest Money, and such other documents as may be required hereunder or reasonably required by Sellers, so that the Closing Company may deliver the Purchase Price to Sellers. The Town shall have no obligation to determine how much of the Purchase Price is delivered to each Seller.

9. Sellers' Representations and Warranties. Sellers hereby represent and warrant that the following statements are now, and will be as of the Closing date, true and correct, to the best of Sellers' knowledge.

a. Sellers have the full right, power, and authority to transfer and convey their respective portion of the Property, as provided in this Agreement, and to carry out Sellers' obligations under the Agreement and Sellers, if not a natural person, is a corporation, partnership, limited partnership, limited liability company, or other entity validly existing and in good standing under the laws of the State of Colorado. Sellers have not (i) commenced a voluntary case, or had entered against it a petition, for relief under Title 11 of the United States Code, as amended (the "Bankruptcy Code") or any similar petition, order, or decree under any federal or state law or statute relative to bankruptcy, insolvency, or other relief for debtors; (ii) caused, suffered, or consented to the appointment of a receiver, trustee, administrator, conservator, liquidator, or similar official in any federal, state, or foreign judicial or non-judicial proceeding, to hold, administer, and liquidate all or substantially all of its property; or (iii) made an assignment for the benefit of creditors; and that each Seller's signature below is fully authorized and binding upon that Seller.

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

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

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

e. Sellers have not received any notice of any violations of any applicable law related to the Property.

f. Sellers are not aware of any special assessments to be levied against the Property after its acquisition by the Town.

g. The Property is not contaminated with any hazardous substance, including asbestos material.

h. There are no underground storage tanks located in, on, or beneath the Property.

i. There are no natural or artificial conditions upon the Property, or any part thereof, any of which would result in any material change in the Property, or any part thereof, for any purpose.

j. Sellers shall give the Town prompt written notice if any of these representations or warranties are no longer true or correct in any material manner.

10. Condition of Property. Except as provided in this Agreement, Town understands that it is purchasing the Property in its existing condition, "as is". Except for those warranties expressly set forth in this Agreement, Sellers make no warranties, representations or guarantees, either express or implied, of any kind, nature or type whatsoever. Without limiting the generality of the preceding sentence, Seller acknowledges and agrees that neither Sellers nor anyone acting for or on behalf of Sellers 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.

11. Remedies.

a. *Sellers' Remedies.* If the closing does not occur by reason of a breach of the Town, Sellers shall have the right to terminate this Agreement, the Earnest Money shall be refunded to the Town and neither Party shall have any further obligation hereunder. Termination of this Agreement shall be Sellers' exclusive remedy.

b. *Town's Remedies.* If the closing does not occur by reason of a breach of Sellers or an individual Seller, and the Town has complied with the terms of this Agreement, the Town may terminate this Agreement by written notice to Sellers and the Earnest Money shall be refunded to the Town. In addition, the Town shall have all remedies available at law or equity for such breach, including specific performance.

12. 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.* 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.

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 Parties have executed this Agreement as of the Effective Date.

TOWN OF SUPERIOR, COLORADO



  
Mark Lacis, Mayor

ATTEST:

  
Lydia Yecke, Town Clerk

  
\_\_\_\_\_  
Marcel J. C. Arsenault


STATE OF COLORADO )  
 ) ss.  
COUNTY OF Boulder )

The foregoing instrument was subscribed, sworn to and acknowledged before me this 24<sup>th</sup> day of January, 2023, by Marcel J. C. Arsenault.

My commission expires: 2-26-25

(S E A L)

DAVID STOREY  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20214008025  
MY COMMISSION EXPIRES FEBRUARY 26, 2025

  
\_\_\_\_\_  
Notary Public

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Boulder )

By:   
\_\_\_\_\_  
Superior Preservation, LLC  
SHARON ESHIMA - MANAGER

The foregoing instrument was subscribed, sworn to and acknowledged before me this 24<sup>th</sup> day of January, 2023, by SHARON K ESHIMA, as MANAGER of Superior Preservation, LLC.

My commission expires: 2-26-25

(S E A L)

DAVID STOREY  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20214008025  
MY COMMISSION EXPIRES FEBRUARY 26, 2025

  
\_\_\_\_\_  
Notary Public

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

**Parcel A:** Lot 5, Erin's Community, Filing No. 1  
County of Boulder, State of Colorado

**Parcel B:** Lot 6, Erin's Community, Filing No. 1  
County of Boulder, State of Colorado

**EXHIBIT B  
Special Warranty Deeds**

**SPECIAL WARRANTY DEED**

Marcel J. C. Arsenault, an individual, with a legal address of 2135 4<sup>th</sup> Street, Boulder, CO 80302 ("Grantor"), for the consideration of **TEN DOLLARS AND 00/100 (\$10.00)** and other good and valuable consideration, in hand paid, the receipt and sufficiency of which is confessed, hereby sells and conveys to the Town of Superior, with an address of 124 East Coal Creek Drive, Superior, CO 80027, its successors and assigns ("Grantee"), the real property in the County of Boulder, State of Colorado, described below, with all its improvements, fixtures and appurtenances, and warrants title to the same to Grantee, its successors and assigns forever against all person claiming under Grantor, subject to the "statutory exceptions" as defined in C.R.S. § 38-30-113(5)(a), and validly existing easements, rights-of-way, and restrictions of record and taxes for 2022; the said Grantor hereby covenanting that Grantor will forever warrant and defend the title to said premises unto Grantee and Grantee's successors and assigns forever, against claims of all persons claiming by, through or under Grantor, but not otherwise.

Property description: Lot 5, Erin's Community, Filing No. 1, County of Boulder, State of Colorado

GRANTOR:

\_\_\_\_\_ )  
Marcel J. C. Arsenault

Date: \_\_\_\_\_, 2023

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was subscribed, sworn to and acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2023, by Marcel J. C. Arsenault.

My commission expires: \_\_\_\_\_

(SEAL)

\_\_\_\_\_ )  
Notary Public



**SPECIAL WARRANTY DEED**

Superior Preservation, LLC, a Colorado limited liability corporation, with an address of 371 Centennial Parkway, Suite 200, Louisville, CO 80027 ("Grantor"), for the consideration of **TEN DOLLARS AND 00/100 (\$10.00)** and other good and valuable consideration, in hand paid, the receipt and sufficiency of which is confessed, hereby sells and conveys to the Town of Superior, with an address of 124 East Coal Creek Drive, Superior, CO 80027, its successors and assigns ("Grantee"), the real property in the County of Boulder, State of Colorado, described below, with all its improvements, fixtures and appurtenances, and warrants title to the same to Grantee, its successors and assigns forever against all person claiming under Grantor, subject to the "statutory exceptions" as defined in C.R.S. § 38-30-113(5)(a), and validly existing easements, rights-of-way, and restrictions of record and taxes for 2022,; the said Grantor hereby covenanting that Grantor will forever warrant and defend the title to said premises unto Grantee and Grantee's successors and assigns forever, against claims of all persons claiming by, through or under Grantor, but not otherwise.

Property description: Lot 6, Erin's Community, Filing No. 1, County of Boulder, State of Colorado

GRANTOR:

\_\_\_\_\_ Date: \_\_\_\_\_, 2023  
 Superior Preservation, LLC

STATE OF COLORADO            )  
   ) ss.  
 COUNTY OF \_\_\_\_\_ )

The foregoing instrument was subscribed, sworn to and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_, as \_\_\_\_\_ of Superior Preservation, LLC.

My commission expires: \_\_\_\_\_

( S E A L )

\_\_\_\_\_  
 Notary Public