

**TOWN OF SUPERIOR
ORDINANCE NO. 0-15
SERIES 2023**

**AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF
SUPERIOR AUTHORIZING THE SALE OF REAL PROPERTY TO
CORNERSTONE CONTRACTING COMPANY, LLC**

WHEREAS, the Town is the fee owner of certain real property more particularly described in Exhibit A to the Purchase and Sale Agreement, attached hereto and incorporated herein by this reference (the "Property");

WHEREAS, the Property is not held or used by the Town for park purposes or any other governmental purpose; and

WHEREAS, the Town wishes to sell the Property to Cornerstone Contracting Company, LLC to revitalize and make certain improvements to the Property.

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

Section 1. The Board of Trustees hereby approves the sale of all of the Town's interest in the Property to Cornerstone Contracting Company, LLC.

Section 2. The Purchase and Sale Agreement is hereby approved in substantially the form attached hereto, subject to final approval by the Town Attorney. Upon such approval, the Mayor is authorized to execute the Purchase and Sale Agreement on behalf of the Town.

Section 3. The Town Manager is hereby authorized to execute all closing documents related to the sale of the Property.

Section 4. 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 5. 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 26th day of June, 2023.



Mark Lacis, Mayor

ATTEST:


Lydia Yecke, Town Clerk

**EXHIBIT A
LEGAL DESCRIPTION**

1. THE SOUTH 1/2 OF LOTS 1 AND 2, BLOCK 1, MINKS' ADDITION TO SUPERIOR, COUNTY OF BOULDER, STATE OF COLORADO.

2. **PARCEL C:** A PARCEL OF LAND LOCATED IN THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 1 SOUTH, RANGE 70 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF SUPERIOR, COUNTY OF BOULDER, STATE OF COLORADO, SAID PARCEL BEING THE WEST 65 FEET OF THE SOUTH 70 FEET OF THAT PROPERTY DESCRIBED UNDER RECEPTION NO. 666536 OF THE BOULDER COUNTY RECORDS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID NORTHEAST QUARTER OF THE NORTHEAST QUARTER; THENCE N00°11'40"W ALONG THE EAST LINE OF SAID NORTHEAST QUARTER OF THE NORTHEAST QUARTER, 30.00 FEET TO THE NORTH LINE OF COAL CREEK DRIVE AS SHOWN ON THE OFFICIAL MAP OF THE TOWN OF SUPERIOR; THENCE S89°48'20"W ALONG SAID NORTH LINE, 25.00 FEET TO A LINE 25 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 24, SAID POINT BEING THE POINT OF BEGINNING; THENCE N00°11'40"W ALONG SAID LINE, 70.00 FEET; THENCE S89°48'20"W, 65.00 FEET; THENCE S00°11'40"E, 70.00 FEET TO THE NORTH LINE OF SAID COAL CREEK DRIVE; THENCE N89°48'20"E ALONG THE NORTH LINE, 65.00 FEET TO THE POINT OF BEGINNING, COUNTY OF BOULDER, STATE OF COLORADO.

3. **PARCEL D:** A PARCEL OF LAND LOCATED IN THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 1 SOUTH, RANGE 70 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF SUPERIOR, COUNTY OF BOULDER, STATE OF COLORADO, SAID PARCEL BEING THE WEST 65 FEET OF THAT PROPERTY DESCRIBED UNDER RECEPTION NO. 657508 OF THE BOULDER COUNTY RECORDS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID NORTHEAST QUARTER OF THE NORTHEAST QUARTER; THENCE NORTH 00 DEGREES 11 MINUTES 40 SECONDS WEST ALONG THE EAST LINE OF SAID NORTHEAST QUARTER OF THE NORTHEAST QUARTER, 100.00 FEET; THENCE SOUTH 89 DEGREES 48 MINUTES 30 SECONDS WEST, 25.00 FEET TO A LINE 25 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 24, SAID POINT BEING THE POINT OF BEGINNING; THENCE NORTH 00 DEGREES 11 MINUTES 40 SECONDS WEST ALONG SAID LINE, 70.00 FEET; THENCE SOUTH 89 DEGREES 48 MINUTES 20 SECONDS EAST, 65.00 FEET; THENCE SOUTH 00 DEGREES 11 MINUTES 40 SECONDS EAST, 70.00 FEET; THENCE NORTH 89 DEGREES 48 MINUTES 20 SECONDS EAST, 65 FEET TO THE POINT OF BEGINNING, COUNTY OF BOULDER, STATE OF COLORADO.

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "Agreement") is made and entered into as of this 2/28 day of June, 2023 (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, CO 80027 (the "Town"), and Cornerstone Contracting Company, LLC, a Colorado limited liability company with an address of 1005 S. 120th St. #201, Lafayette, CO 80026 ("Purchaser") (each 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 \$20,000 with First American Title (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 \$701,800, 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. Proposed Use. Purchaser intends to use the Property as a new commercial development for retail and office space. It is understood that the Town desires to maintain a certain design aesthetic in this region as the "Gateway to Superior." Purchaser therefore agrees to seek the Town's input and approval on conceptual building elevations, façades, site plans and landscaping plans.
5. 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 title and the physical and environmental condition of the Property is satisfactory for Purchaser's proposed use, in Purchaser's sole and absolute discretion.

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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 Improvement Survey Plat of the Property (the "ISP").

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.

6. 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. The parties agree that the Entitlement Period can be extended in thirty-day increments upon payment by Purchaser of \$10,000 in additional Earnest Money per such increment; provided that in no event shall the Entitlement Period exceed 180 days beyond expiration of the Evaluation Period. To the greatest extent feasible and legally permissible, the Town agrees to cooperate with and facilitate Purchaser's entitlements efforts, including but not limited to prompt review and decision-making on any application for replat of the parcels in 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.

7. Title Matters.

a. Purchaser shall be entitled to object to any matters shown in the Title Commitment or the ISP by a written notice of objections delivered to the Town within 30 days of Purchaser's receipt of the Title Commitment, the ISP 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

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to have waived objection to all matters shown or noted on the ISP 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.

8. 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 inspections, and shall not allow any mechanics liens to be placed against the Property as a result of Purchaser's access, entry or inspections.

9. Portfolio Sale. The Town and Purchaser acknowledge that the transaction contemplated by this Agreement is part of a portfolio purchase and sale that includes the subject Property, as well as property located at 123 Coal Creek Drive, Superior, CO 80027 ("Asti Parcel"). It is therefore agreed that Purchaser's obligation to purchase the Property herein is expressly conditioned upon and contingent on Purchaser's ability to contract for and concurrently close the purchase of the Asti Parcel. If Purchaser is unable or unwilling for any reason in its sole and absolute discretion, to close the contract for purchase on the Asti Parcel, Purchaser shall have the right to terminate this Agreement. If this termination occurs prior to the expiration of the Entitlements Period, the Earnest Money shall be returned to Purchaser. The Town further agrees that if an extension of the closing date on the Asti Parcel is necessitated by circumstances outside Purchaser's control, it will provide a commensurate extension of the closing date under this Agreement.

10. 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 expiration of the Entitlement Period, or 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.

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

12. 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.

13. 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.

14. 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.

15. 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.

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16. 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.

17. **Brokerage Disclosures and Commissions.** The parties agree that no brokerage commissions shall be incurred in connection with the transaction for this Property other than a commission to be paid by the Town to Joseph Bennell, The Colorado Group, Inc. as agent for the Town, and a commission to be paid by the Town to Chris Hansen, The Colorado Group, Inc. as agent for Purchaser.

18. 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.

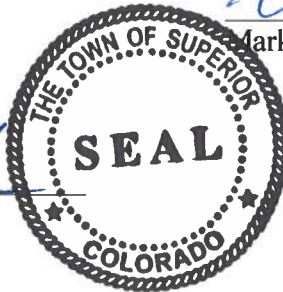
IN WITNESS WHEREOF, the Town and Purchaser have executed this Agreement as of the Effective Date.

TOWN OF SUPERIOR, COLORADO



Mark Lacis, Mayor

ATTEST:


Lydia Yezke, Town Clerk

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PURCHASER

Cometstar Galaxy Company LLC by Kala Isomura

STATE OF COLORADO)
) ss.
COUNTY OF Boulder)

Subscribed, sworn to and acknowledged before me this 12th day of June,
2023 by Bethanie Morado.

My Commission expires: 03-14-2027

(SEAL)

[Signature]

Notary Public

BETHANIE MORADO
Notary Public
State of Colorado
Notary ID # 20234009945
My Commission Expires 03-14-2027

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**EXHIBIT A
LEGAL DESCRIPTION**

1. THE SOUTH 1/2 OF LOTS 1 AND 2, BLOCK 1, MINKS' ADDITION TO SUPERIOR, COUNTY OF BOULDER, STATE OF COLORADO.

2. **PARCEL C:** A PARCEL OF LAND LOCATED IN THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 1 SOUTH, RANGE 70 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF SUPERIOR, COUNTY OF BOULDER, STATE OF COLORADO, SAID PARCEL BEING THE WEST 65 FEET OF THE SOUTH 70 FEET OF THAT PROPERTY DESCRIBED UNDER RECEPTION NO. 666536 OF THE BOULDER COUNTY RECORDS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID NORTHEAST QUARTER OF THE NORTHEAST QUARTER; THENCE N00°11'40"W ALONG THE EAST LINE OF SAID NORTHEAST QUARTER OF THE NORTHEAST QUARTER, 30.00 FEET TO THE NORTH LINE OF COAL CREEK DRIVE AS SHOWN ON THE OFFICIAL MAP OF THE TOWN OF SUPERIOR; THENCE S89°48'20"W ALONG SAID NORTH LINE, 25.00 FEET TO A LINE 25 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 24, SAID POINT BEING THE POINT OF BEGINNING; THENCE N00°11'40"W ALONG SAID LINE, 70.00 FEET; THENCE S89°48'20"W, 65.00 FEET; THENCE S00°11'40"E, 70.00 FEET TO THE NORTH LINE OF SAID COAL CREEK DRIVE; THENCE N89°48'20"E ALONG THE NORTH LINE, 65.00 FEET TO THE POINT OF BEGINNING, COUNTY OF BOULDER, STATE OF COLORADO.

3. **PARCEL D:** A PARCEL OF LAND LOCATED IN THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 1 SOUTH, RANGE 70 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF SUPERIOR, COUNTY OF BOULDER, STATE OF COLORADO, SAID PARCEL BEING THE WEST 65 FEET OF THAT PROPERTY DESCRIBED UNDER RECEPTION NO. 657508 OF THE BOULDER COUNTY RECORDS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID NORTHEAST QUARTER OF THE NORTHEAST QUARTER; THENCE NORTH 00 DEGREES 11 MINUTES 40 SECONDS WEST ALONG THE EAST LINE OF SAID NORTHEAST QUARTER OF THE NORTHEAST QUARTER, 100.00 FEET; THENCE SOUTH 89 DEGREES 48 MINUTES 30 SECONDS WEST, 25.00 FEET TO A LINE 25 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 24, SAID POINT BEING THE POINT OF BEGINNING; THENCE NORTH 00 DEGREES 11 MINUTES 40 SECONDS WEST ALONG SAID LINE, 70.00 FEET; THENCE SOUTH 89 DEGREES 48 MINUTES 20 SECONDS EAST, 65.00 FEET; THENCE SOUTH 00 DEGREES 11 MINUTES 40 SECONDS EAST, 70.00 FEET; THENCE NORTH 89 DEGREES 48 MINUTES 20 SECONDS EAST, 65 FEET TO THE POINT OF BEGINNING, COUNTY OF BOULDER, STATE OF COLORADO.

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