

PURCHASE AGREEMENT

This Purchase Agreement (“**Agreement**”) is made as of the ____ day of _____, 2018, by and between the City of Flagstaff, a municipal corporation organized and existing under the laws of the State of Arizona (“**City**” or “**Seller**”) and Brinshore Development LLC, an Illinois limited liability company (“**Buyer**”).

1. Authorization. On January 2, 2018, the City Council of Flagstaff, Arizona, passed and adopted Ordinance Number 2018-06 authorizing the sale or lease of City Property for Affordable Housing.
2. Affordable Housing. Defined below as:
 - a. Housing for households earning no more than eighty percent (80%) of the Area Median Income (AMI), as defined annually by the U.S. Department of Housing and Urban Development (HUD) or its successor. (If a successor is not identified, the City of Flagstaff will issue comparable income guidelines.)
 - b. Provided that for dwelling units that qualify under the Low-Income Housing Tax Credit program, rents charged shall not exceed sixty percent (60%) AMI.
3. Development Obligations. Buyer agrees to develop the Property such that, at the time the development is placed in service (as defined in the Arizona Department of Housing 2018 Final Qualified Allocation Plan), it provides a minimum of seventy-four (74) units of permanent Affordable Housing, including of a minimum of forty-one (41) studio and one-bedroom units, with an average AMI at or below 48% across all units developed, as measured at the time of new tenant lease (the “**Development Obligations**”). The Development Obligations shall be subject to modifications necessary to satisfy the requirements of ADOH under its Low-Income Housing Tax Credit Qualified Allocation Plan. Any failure to fulfill the Development Obligations constitutes a default by Buyer under this Agreement, provided that Buyer shall have a period of sixty (60) days following Buyer's receipt of the City's notice of default to cure the default. If Buyer fails to cure the default within such period of time, Buyer shall be in default hereunder and the City may pursue specific performance, monetary damages and/or any remedy available by law, provided that the City shall not have a right of reverter.
4. Property Transfer. The Seller desires to sell, and the Buyer desires to purchase, the following real property (“Property”) for the purpose of permanently Affordable Housing, legally described and depicted in **Exhibit A** attached hereto.
 - a. 3100 N. West Street Flagstaff, Arizona 86004, Assessor parcel number 109-02-001P.
 - b. 303 S. Lone Tree Road, Flagstaff, Arizona 86001, Assessor parcel number 104-19-117.
 - c. Approximately 37,897 square feet of Property at 1700 E. Sixth Avenue, Flagstaff, Arizona 86004, Assessor parcel number 109-11-151C. Buyer has the option to dedicate back to the Seller the portion of the Property that is in the floodplain.

5. Purchase Price for the Property. The Buyer agrees to pay the Seller two million twenty thousand dollars (\$2,020,000) for the Property.
6. Provisions Regarding the Escrow. This Agreement constitutes escrow instructions to Escrow Agent. If Escrow Agent requires the execution of its standard form printed escrow instructions, Buyer and Seller agree to execute those instructions; however, those instructions will be construed as applying only to Escrow Agent's engagement. If there are conflicts between the terms of this Agreement and the terms of the printed escrow instructions, the terms of this Agreement will control. If the Escrow fails to close because of Seller's default, Seller will pay all customary escrow cancellation charges. If the Escrow fails to close because of Buyer's default, Buyer will pay all customary escrow cancellation charges. If the Escrow fails to close for any other reason, the party requesting the withdrawal of the agreement for any reason (including a reason permitted by this Agreement, such as failure to obtain funding or as the result of due diligence investigations), Buyer will pay all of the customary escrow cancellation charges.
7. Opening of Escrow. For purposes of this Agreement, the Opening of Escrow ("**Opening of Escrow**") shall be deemed to be the date on which the Earnest Money and a fully executed copy of this Agreement are delivered to the Escrow Agent. Escrow Agent shall immediately notify Buyer and Seller in writing of the date of the Opening of Escrow.
8. Earnest Money. Buyer shall deposit ten thousand dollars (\$10,000.00) (the "Earnest Money") with Mario Ruiz of Pioneer Title Company, located at 112 N. Elden Street, Flagstaff, Arizona 86001 (the Escrow Agent), within two (2) business days of the mutual execution and delivery of this Agreement to Open Escrow. Five thousand dollars (\$5,000) of the Earnest Money shall be deemed non-refundable, but shall be credited against the purchase price at Closing, and shall be immediately released to the Seller for consideration of the execution of this Agreement.
9. Payment Structure. The Buyer will pay to Seller five hundred thousand dollars (\$500,000) at Closing (the "Down Payment"). Seller will carry back one million five hundred twenty thousand dollars (\$1,520,000) the remaining balance due at three percent (3%) simple interest. Subject to available cash flow from the operation of the development, annual interest only payments shall be payable annually, in arrears, by June 30 of each calendar year, for a term of forty (40) years, with any outstanding principle due at the end of the forty-year term. Interest accrues from the date of Closing, but Buyer may elect to delay the first interest payment until the June 30th first occurring after the first calendar year the project is placed in service. If Buyer is unable to make an interest payment because of insufficient cash flow, Buyer must notify Seller annually no later than April 30, and provide a copy of Buyer's third-party audited financial statement demonstrating available cash flow. Any payment not timely made is due and payable by June 30 of the following year, subject to available cash flow. The terms of the Payment Structure will be documented by a Deed of Trust (the "**Deed of Trust**") and a Promissory Note (the "**Promissory Note**") to be executed by the Buyer and Seller at Closing (the "**Payment Structure**").

- Documents**”) in a form substantially similar to the examples attached hereto as Exhibits B and C.
10. Subordination. The Payment Structure Documents will be subordinate to all of Buyer’s other project financing put in place for the initial project closing. Provided that with respect to any subsequent financing after the initial project financing is in place, the Payment Structure Documents will only be subordinate to such subsequent financing if agreed to by Seller in writing. If Seller agrees to such future subordination, such subordination shall only be allowed if the Buyer is not in default under the terms of the Promissory Note and Deed of Trust and if the Seller approves the terms and conditions of the subsequent financing, such approval will not be unreasonably withheld. If Seller agrees to subordination, Seller may make payments on the senior loan in order to protect Seller’s interest in the event that the senior loan is in default.
 11. Conveyance of Property. Seller shall convey the Property to the Buyer by Special Warranty Deed. Attached hereto as Exhibit D.
 12. Use of Property. The Property shall be for the purposes of providing housing to low- and moderate-income households, as set forth in the Special Warranty Deed, which closely tracks the language of the Declaration of Affirmative Land Use and Restrictive Covenants Agreement (commonly referred to as the “LURA”).
 13. Approvals and Financing. In addition to obtaining all financing required to construct, develop, and operate a permanently Affordable Housing development as proposed in Buyer’s response to Request for Proposals 2018-02, Buyer will need to obtain all required permits and approvals as well as comply with all local, state, and federal regulations.
 14. Approval and Financing Contingency Period. In the event Buyer has not received an award of tax credits within **36 months** after Opening Escrow (the “**Approval and Financing Contingency Period**”), Buyer may submit to Seller a written request on or before the expiration of the Approval and Financing Contingency Period requesting an extension, detailing the reason for the extension. Upon receipt of the request, the Seller may in its sole discretion agree to extend the Approval and Financing Contingency Period for an additional one (**1**) year upon the written approval of the Flagstaff City Manager.
 15. Day. For purposes of this Agreement, any day on which national banking associations are required to be open for business in Flagstaff, Arizona, shall be a business day. Whenever, under the terms of this Agreement, the time for performance of a covenant or condition falls upon a day other than a business day, such time for performance shall be extended to the next business day. All references in this Agreement to a “day” or “days” shall mean calendar day or days, unless either of the terms “business day” or “business days” is used.
 16. Cancellation. If at the expiration of the Approval and Financing Contingency Period (as it may be extended), Buyer has not obtained an allocation of Low Income Housing Tax Credits from ADOH:

- a. this Agreement shall be null and void and the refundable portion of the Earnest Money will be returned to Buyer.
- b. the parties shall have no further rights or obligations under this Agreement, except for those rights, liabilities, or obligations that expressly survive a termination of this Agreement.

17. Inspection Period. Buyer shall have a period of time beginning on the first day following the Opening of Escrow and expiring **180 days** after Opening of Escrow (the “**Due Diligence Period**”) to conduct inspections and investigations on the Property to satisfy Buyer with respect to the physical condition of the Property, surveying, the condition of title to the Property, and as to the feasibility and suitability of the Property for Buyer’s intended purpose. During the Due Diligence Period, Buyer, at Buyer’s expense, shall: (1) conduct all desired physical, environmental, and other types of inspections and investigations to determine the condition of the Property; (2) make inquiries and consult government agencies, lenders, insurance agents, architects, and other appropriate persons and entities concerning the feasibility and suitability of the Property and the surrounding area for the Buyer’s intended purpose; and (3) investigate applicable building, zoning, fire, health, and safety codes. If a sewer connection, or the availability of a sewer connection, and or the availability of other utilities to the property are a material matter to Buyer, it must be investigated during the Due Diligence Period. If roadways, cost, and responsibility for the road maintenance, improvements, or access is a material matter to Buyer, it must be investigated during the Due Diligence Period. Buyer shall keep the Property free and clear of liens, shall indemnify and hold Seller harmless from all liability, claims, demands, damages, and costs, and shall repair all damages arising from the inspections. Unless Buyer gives written notice to Seller and Escrow Agent of Buyer’s election to terminate this Agreement prior to the expiration of the Due Diligence Period, Buyer will be deemed to be satisfied with Buyer’s investigations and to have elected to proceed to the Closing. If Buyer delivers written notice of termination to Seller and Escrow Agent prior to the expiration of the Due Diligence Period, Escrow Agent shall cancel the contract and return to the Buyer the remaining Earnest Money and thereafter neither party shall have any further obligation hereunder. Notwithstanding the foregoing, Buyer shall have the right to conduct inspections and investigations after the Due Diligence Period, so long as this Agreement is in full force and effect.

18. Federal Environmental Review. Notwithstanding any other provision of this Contract, Buyer shall have no obligation to purchase the Property, and no transfer of title to the Buyer may occur, unless and until ADOH (and/or other Responsible Entity, as applicable) has provided Buyer and/or Seller with a written notification that: 1) it has completed a federally required environmental review and its request for release of federal funds has been approved and, subject to any other Contingencies of this Contract, (a) the purchase may proceed, or (b) the purchase may proceed only if certain conditions to address issues in the environmental review shall be satisfied before or after the purchase of the property; or 2) it has determined that the purchase is exempt from federal environmental review and a request for release of funds is not required.

ADOH (and/or other Responsible Entity, as applicable) shall use its best efforts to conclude the environmental review of the property expeditiously.

19. Permission to Enter. Seller as part of the prior Right of Entry Agreement and within the Due Diligence Period hereby grants permission to Buyer to enter onto the Property to undertake inspections and investigations regarding the Property, which may include, but not be limited to, a physical inspection of the Property as well as any and all improvements, and as deemed reasonably necessary, a Phase I environmental assessment (scope to be determined by Buyer) at Buyer's expense. Buyer may choose and retain its inspectors without seeking approval of Seller. However, Buyer shall not undertake any invasive testing, such as drilling or trenching, without Seller's prior written consent, which consent shall not be unreasonably withheld. Buyer agrees to indemnify, defend, and hold Seller harmless for, from, and against any personal injury and property damage claims arising out of Buyer's exercise of the rights granted by this paragraph. This indemnity shall survive the Closing or the cancellation of this Agreement.

20. Limitation of Liability. Seller acknowledges that Buyer's participation in the performance of any Environmental Investigation or additional inspection will not create any liability for Buyer as to any Environmental Condition that may exist on the Property unless such condition is exacerbated by Buyer's actions. "Environmental Condition" shall mean the presence, release, or threatened release into the environment (which includes air, soil, or water) of a Hazardous Material. "Hazardous Material" means and includes any petroleum product and any hazardous substance or any pollutant or contaminant defined as such in (or for purposes of) the Comprehensive Environmental Response, Compensation and Liability Act, any so-called "Superfund" or "Superlien" law, the Toxic Substances Control Act, or any other federal, state, or local statute, law, ordinance, code, rule, regulation, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous waste, substance, or material, as now or at any time hereafter in effect, and asbestos or any substance or compound containing asbestos, PCBs, or any other hazardous, toxic, or dangerous waste, substance, or material, or any hazardous or regulated material, waste, substance, toxin, chemical, or pollutant as those terms are defined by federal, state, or local law, rule, regulation, or statute.

21. Buyer's Release of Seller. Buyer does hereby release Seller and Seller's constituent members, officers, and directors, except any constituent members, officers, or directors who held any ownership interest in the Property at any time prior to the acquisition of the Property by Seller, from any and all losses, costs, damages, expenses (including reasonable attorneys' fees and costs), claims, injuries, demands, actions, causes of action, judgments, fines, penalties, liabilities, or obligations of any nature whatsoever, whether accrued or unaccrued, and whether known or unknown (individually and collectively "Claims") concerning, relating to, or arising from: (1) the condition of the Property, including, without limitation, any alleged presence, use, storage, generation, manufacture, transport, release, leak, spill, disposal, or other handling of any Hazardous Materials in, on, under, or about the Property; (2) any litigation affecting the Property; (3) any violation of law; (4) Buyer's inspections or examinations of the Property prior to the Closing Date; and (5) any breach or default

by Buyer of its obligations under this Agreement.

22. Seller's Rights. The rights of Seller shall be in addition to and not in lieu of any other rights or remedies to which Seller may be entitled under this Agreement or otherwise. In connection with any and all releases made by Buyer for the benefit of Seller under this Agreement, Buyer hereby specifically waives any right or benefit of Buyer under any statute or other rule of law which provides, in essence, that the general releases granted by Buyer to Seller hereunder would not extend to claims which Buyer does not know or suspect to exist in Buyer's favor at the time of executing this release, which if known by Buyer must have materially affected Buyer's release of Seller.

23. Title. On or before 30 days after the Opening of Escrow, Escrow Agent shall deliver to the Buyer and Seller a preliminary title report pertaining to the Property (the "Title Commitment")

On or before 60 days after receipt of the Title Commitment, Buyer shall notify Seller of any matters or exceptions shown on the Title Commitment, or on any documents identified in the Title Commitment as title exceptions, that are not acceptable to Buyer (the "Objections"). Any matters or title exceptions to which Buyer does not object within such time period shall be deemed to be acceptable matters.

Seller shall have 30 days from receipt of notice (the "Cure Period") of each of Buyer's Objections either to cure all such Objections or to decline to cure said Objections (at Seller's sole option and without any obligation to do so). Mortgages, deeds of trust and other liens encumbering the Property (other than current taxes and assessments) shall be cleared at or before Closing by Seller. Should Seller be unable to cure or elect not to cure said Seller's Objections within the Cure Period, then Buyer may cancel this Agreement by written notice to Seller given within ten (10) days following expiration of the Cure Period, and Buyer shall be reimbursed the Deposit paid by Buyer into escrow or waive its Objections and proceed to Closing. If Buyer does not elect to cancel within such ten (10) day period, it shall be deemed to have waived any Objections not cured.

24. Title Insurance Policy. At Closing, Buyer shall cause the Title Company to provide Seller, at Buyer's sole cost and expense, with a lender's title policy insuring the Payment Structure on the Property.

25. Close of Escrow. The consummation of the transactions contemplated by this Agreement ("Close of Escrow" or "Closing") shall be deemed to have occurred when: (1) all closing documents contemplated by this Agreement have been delivered to, received by, and executed by the appropriate parties; (2) all conditions to such Closing contemplated by this Agreement have been satisfied or waived; (3) the funds required to be paid under this Agreement have been properly delivered to Escrow Agent and are available for distribution to Seller by Escrow Agent; and (4) the Special Warranty Deed, as appropriate, has been recorded. Buyer and Seller may accelerate the Closing Date upon mutual acceptance by both parties.

26. Closing Date. The Closing shall occur on the date that is on or before ninety (90) days after the expiration of the Approval and Financing Contingency Period, or such other

date mutually agreed by Seller and Buyer, provided that the Closing shall not be required to occur earlier than one hundred and eighty (180) days after the application deadline for the Low Income Housing Tax Credits obtained by Buyer from ADOH. The Closing shall be held at 10:00 a.m. on the Closing Date at the offices of Title Company or at such other place, date, and time as Seller and Purchaser may agree.

27. Closing Costs.

- a. The Seller shall pay the premium for a standard ALTA owner's policy of title insurance with a limit of liability in the amount of the Purchase Price for the Property.
- b. Other costs incurred in the transfers of the Property shall be paid in accordance with the customs of real estate transactions presently in effect in Coconino County, Arizona, as determined by the Escrow Agent. However, any and all property taxes and/or assessments that are due and payable as a result of the transfer of title to Buyer, are the responsibility of Buyer. To the extent Seller receives a statement for taxes or assessments owed after Closing, Seller will forward that statement to Buyer for payment. Any failure by Buyer to pay taxes or assessments when due constitutes a breach of this Agreement.

28. Seller's Closing Documents. At Closing, Seller shall execute, acknowledge (where appropriate), and deliver to Buyer the following, each dated as of the Closing Date and in form and substance reasonably satisfactory to Buyer:

- a. A special warranty deed in the form of Exhibit D conveying to Buyer the Real Property.
- b. A general assignment assigning to Buyer all of Seller's right, title, and interest in the Permits if any exist on the Property.
- c. All documents and instruments which (a) the Title Company may reasonably determine are necessary to transfer the Property to Buyer subject only to the Permitted Exceptions, including, but not limited to, releases of all existing mortgages or other liens, (b) the Title Company may reasonably determine are necessary to evidence the authority of Seller to enter into and perform this Agreement and to execute and deliver the documents and instruments required to be executed and delivered by Seller pursuant to this Agreement, (c) the Title Company may require as a condition to issuing the title insurance policy consistent with the Commitment, or (d) may be required of Seller under applicable law, including any revenue or tax certificates or statements, or any affidavits, certifications, or statements.

29. Buyer's Closing Documents. At Closing, Buyer shall execute, acknowledge (where appropriate), and deliver to Seller the following, each dated as of the Closing Date and in form and substance reasonably satisfactory to Seller:

- a. Deed of Trust and Promissory Note.

30. Distribution of Proceeds upon Closing. The proceeds of the sale (Purchase Price less Closing Costs attributable to Seller) shall be distributed to Seller by the Escrow Agent. Seller and Buyer are responsible for verifying the accuracy of the closing statement with the Escrow Agent.
31. AS-IS SALE. Inspection by Buyer. Buyer will be acquiring the Property solely in reliance upon Buyer's own inspections, examinations, and evaluations of the Property, and, subject to Buyer's right to terminate this Agreement as set forth above. By accepting delivery of the Special Warranty Deed, Buyer shall be deemed to represent to Seller that (a) Buyer has had the opportunity to examine and inspect the Property to Buyer's complete satisfaction, and (b) Buyer has determined that Buyer is satisfied with the condition, quality, quantity, operation, state of repair, and prospects of the Property, and all other matters concerning the Property, in all respects, and (c) Buyer has decided that Buyer is willing to acquire the Property AS-IS, WHERE-IS, and WITH ALL FAULTS, including the physical condition of the Property and any defects thereof, the presence of any Hazardous Materials in, on or under the Property, the condition or existence of any above ground or underground structures or improvements in, on or under the Property, the condition of title to the Property, and any leases, easements, reservations, or other agreements affecting the Property.
32. No Warranties by Seller. The City agrees and acknowledges that no representations, statements, or warranties have at any time been made by Seller, or any agent of Seller, as to the condition, quality, quantity, operation, state of repair, or prospects of the Property, or any other matter concerning the Property, in any respect.
33. Brokerage. The City and Seller warrant to one another that they have not dealt with any broker in connection with the sale of the Property. If any person shall assert a claim to a finder's fee, brokerage commission, or other compensation on account of employment or alleged employment as a finder or broker or performance of services as a finder or broker in connection with this transaction, the party under whom the finder or broker is claiming shall indemnify, defend, and hold the other party harmless from and against any such claim and all costs, expenses, and liabilities incurred in connection with such claim or any action or proceeding brought on such claim, including, but not limited to, counsel and witness fees and court costs in defending against such claim. This indemnity shall survive the close of escrow or the cancellation of the Contract.
34. Cure Period. A party shall have an opportunity to cure a potential breach of this Contract. If a party fails to comply with any provision of this Contract, the other party shall deliver a notice to the non-complying party specifying the non-compliance. If the non-compliance is not cured within five (5) business days after delivery of such notice ("Cure Period"), the failure to comply shall become a breach of Contract.
35. Attorneys' Fees and Costs. If any action is brought by either party in respect to its rights under this Contract, the prevailing party shall be entitled to reasonable attorneys' fees and court costs as determined by the court.
36. Remedies.

- a. General. In the event of breach of this Agreement, the parties retain their respective rights under Arizona law subject to the limitations below. Notwithstanding the foregoing, prior to Closing, in the event of a breach by Buyer, Seller's sole and exclusive remedy will be to terminate this Agreement and retain the Earnest Money as liquidated damages.
 - b. Cancellation for Convenience. Seller may cancel this Agreement for any reason and without liability or penalty of any kind upon written notice to Buyer within fifteen (15) business days of the date of execution of this Agreement. Upon Cancellation for Convenience, Buyer is entitled to a return of all Earnest Money.
 - c. Notice of Breach and Right to Cure. Subject to the additional provisions set forth herein, neither party shall be considered to be in default hereunder unless the failure of such party is not cured within thirty (30) days after receipt of written notice and demand to cure, providing however, that if the failure is one that cannot be reasonably cured within thirty (30) days, the breaching party must diligently and faithfully pursue cure, and if the breach is not then remedied or cured within a reasonable time, the aggrieved party shall have the rights set forth above.
37. Time is of the Essence. The parties hereto expressly agree that time is of the essence with respect to this Contract.
38. Notices. Any notice, which a party is required or may desire to give the other, shall be in writing and shall be sent either (a) by United States registered or certified mail, return receipt requested, postage prepaid, or (b) by a generally recognized overnight carrier providing proof of delivery. Any such notice shall be addressed to a party at such party's address appearing next to such party's signature on last page of the main body of this Contract. Any notice so given shall be deemed to have been given as of the date of actual receipt. Notices shall be addressed to the parties as follows:

SELLER:

City of Flagstaff
Attn: City Manager
211 W. Aspen Avenue
Flagstaff, AZ 86001
FAX: (928) 779-7656

BUYER:

Richard Sciortino
Brinshore Development
666 Dundee Road
Suite 1102
Northbrook, Illinois 60062
Email: Rich@brinshore.com

COPY TO: Applegate & Thorne-Thomsen, P.C.
626 W. Jackson, Suite 400

Chicago, Illinois 60661
Attention: Steven D. Friedland
E-mail: sfriedland@att-law.com

39. Governing Law. The laws of the State of Arizona shall govern the validity, construction, enforcement, and interpretation of this Contract.
40. Severability. In the event that any phrase, clause, sentence, paragraph, section, or other portion of this Contract becomes illegal, null, or void or against public policy for any reason, or is held by any court of competent jurisdiction to be illegal, null, or void or against public policy, the remaining portions of this Contract will not be affected thereby and will remain in force and effect to the fullest extent permitted by law.
41. Entire Contract. This Contract embodies the entire Contract of the parties. Any amendments hereto shall be in writing and executed by the parties hereto. All exhibits attached hereto are a part of this Contract for all purposes.
42. Successors in Interest. This Contract shall bind and inure to the benefit of Seller, the City, and their heirs, executors, administrators, successors, and permitted assigns. Purchaser may assign its rights under this Agreement to an affiliate of Purchaser with Seller's consent.
43. Survival of Closing. Each of the covenants, conditions, agreements, and representations contained in this Contract shall survive the closing hereunder and the recordation of the Special Warranty Deed.

IN WITNESS WHEREOF, Seller and Buyer have executed this Contract on the date set forth below.

SELLER:

City of Flagstaff

Dated: _____

By: _____

Name: _____

Its: _____

BUYER:

Brinshore Development, LLC

Dated: _____

By: _____

Name: _____

Its: _____