

AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY

[Dry Creek – Connection Channel Project]

THIS AGREEMENT is made and entered into this _____ day of _____, 2008 (the “Effective Date”), by and between **AIRPARK VILLAGE, LLC**, a Colorado Limited Liability Company (“Seller”), and **THE CITY OF FORT COLLINS, COLORADO**, a **Municipal Corporation**, (“Purchaser”).

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Purchaser agree to be legally bound whereby Seller agrees to convey to Purchaser, and Purchaser agrees to acquire from Seller, the Property as defined below on the terms and conditions set forth in this Agreement.

1. Description of Property to be Conveyed. Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, that certain real property, described below, which is located in Larimer County, Colorado, and is collectively referred to as the “Property”:

- A. Drainage Easement. Seller agrees to convey to Purchaser by Deed of Drainage Easement in substantially the form attached hereto as **Attachment 1** and incorporated herein by this reference, a perpetual, exclusive drainage easement on, over and across that certain real property more fully described in **Exhibit A to Attachment 1** (the “Easement Area”) for construction by the Purchaser of drainage improvements. Seller’s rights in the Easement Area are described in the Deed of Drainage Easement, **Attachment 1**.
- B. Temporary Construction Easement. Seller agrees to convey to Purchaser by Deed of Temporary Construction Easement in substantially the form attached hereto as **Attachment 2** and incorporated herein by this reference, a temporary construction easement on, over and across that certain real property more fully described in **Exhibit B to Attachment 2** (the “Temporary Construction Easement”).

2. Purchase Price. The total purchase price of the Property will be as follows:

- A. No earnest money deposit is required in connection with this transaction, the mutuality of the promises of the parties hereto being deemed adequate consideration.
- B. As the purchase price for the above-referenced perpetual, exclusive drainage easement, Purchaser agrees to absorb stormwater fees on land represented by the following Parcel Numbers in the office of the Larimer County, Colorado Assessor’s Office: 87083-05-030; 87072-09-001; 87071-12-017; 87071-37-003; 87071-37-002; 87072-00-010; 87071-00-001; 87071-05-015; 87071-00-007; 87071-07-001; or 87083-00-006, to the extent any such fees were due and owing to the City as of March 1, 2008. Fees due subsequent to that date will be charged and paid in

accordance with applicable City of Fort Collins Code and any related City policies and procedures.

- C. Purchaser will pay the costs of design, engineering and FEMA approvals for its improvements in the Easement Area.

3. Title Insurance.

- A. Purchaser within thirty (30) days of the Effective Date will obtain a Title Insurance Commitment (the "Title Commitment") from Land Title Guarantee Company ("Title Company"). The Title Commitment must show title to the Property in Seller, subject only to those exceptions shown on Schedule B-2 to the Title Commitment that are acceptable to Purchaser. Purchaser is responsible for the cost of the Title Commitment and Title Insurance.
- B. If the Title Commitment discloses title defects unsatisfactory to Purchaser and subject to which Purchaser need not take title, Purchaser may give Seller written notice of such defects by the date ten (10) calendar days after the Effective Date or the date ten (10) calendar days after Purchaser's receipt of the Title Commitment, whichever is later, and no later than ten (10) calendar days after notice of any title change. Seller must attempt in good faith to cure such defects prior to the date of closing, at its expense, without any other manner affecting the terms of this Agreement.
- C. If any instrument or deposit is necessary in order to correct a defect in or objection to title, the following apply:
 - (1) Any instrument will be in a form and contain terms and conditions Title Company may reasonably require so as to be sufficiently satisfied and omit such defects or objection.
 - (2) Any deposit will be made with Title Company.
 - (3) Seller agrees to execute, acknowledge and deliver any required instrument and to make any required deposit.
- D. If Title Company refuses to omit any title defect or objection prior to closing, then Purchaser, at its election, has the right to:
 - (1) accept such title as Seller is able to convey, without any reduction of the purchase price; or
 - (2) rescind this Agreement and, upon such rescission pursuant to this paragraph, Purchaser will be entitled to the return of the amount of money theretofore paid to Seller or its agent. Upon such payment, this Agreement will be null and void and of no further effect, and all parties to this Agreement will be released from all obligations

hereunder.

- E. If Seller is unable to convey title as provided in this paragraph 3 to Purchaser due to an act or omission of Seller, Seller is in default and continues to be liable under this Agreement.
- F. Notwithstanding the foregoing,
 - (1) any title condition consisting of monetary liens, deeds of trust or other financial encumbrances against the Property must be removed by Seller at or prior to closing, or subordinated to the Easement to be conveyed to Purchaser, and Seller's failure to cause the removal of the same will constitute a default by Seller under this Agreement; and
 - (2) in the event Seller fails to cause the removal of a financial encumbrance against the Property prior to closing if required to subordinate said encumbrance to the Easement to be conveyed to Purchaser, Purchaser has the right to pay amounts required to do so at closing, and shall be entitled to recover said amounts from Seller, at or subsequent to closing, and Purchaser's right to recovery will survive closing.

4. Legal Description. The parties each acknowledge that a legal description of the Property, including separately described portions or areas of the Property, if applicable, is attached to and incorporated by reference into this Agreement, and each party acknowledges having received a copy of any such description. The parties agree that it is their intent that the referenced legal description describes the Property and separately described portions or areas of the Property, except as otherwise expressly provided, and agree to work in good faith and cooperatively to correct technical errors that any such legal description is determined to contain.

5. Special Taxing Districts. Special taxing districts may be subject to general obligation indebtedness that is paid by revenues produced from annual tax levies on the taxable property within such districts. Property owners in such districts may be placed at risk for increased mill levies and excessive tax burdens to support the servicing of such debt where circumstances arise resulting in the inability of such a district to discharge such indebtedness without such an increase in mill levies. Purchaser should investigate the debt financing requirements of the authorized general obligation indebtedness of such districts, existing mill levies of such district servicing such indebtedness, and the potential for an increase in such mill levies.

6. Maintenance of the Property/Title. Seller must keep, or cause to be kept, the Property in its condition as of the Effective Date until the closing of this transaction, subject to normal wear-and-tear and seasonal changes, and agrees not to commit or permit waste thereon. Seller must not cause or permit new liens, easements or other encumbrances on the title to the Property, except as expressly agreed by Purchaser in writing.

7. Representations of Seller. Seller represents and warrants as of the Effective Date and as of the closing, as follows:

- A. There is no litigation proceeding, including but not limited to any eminent domain proceeding, pending (or to Seller's knowledge threatened) against or relating to any part of the Property, nor does Seller know of or have reasonable grounds to know of any basis for any such action [~~*except for~~ *].
- B. Seller has not received notice of, and to the best of Seller's knowledge, there are no violations of any laws, orders, regulations or requirements of any governmental authority affecting the Property or any part thereof.
- C. Seller has the unconditional right and power to execute and deliver this Agreement and to consummate the transaction(s) contemplated by this Agreement.
- D. Seller has not received notice of default or breach by Seller of any of the covenants, conditions, restrictions, rights-of-way or easements affecting the Property or any portion thereof; no default or breach now exists or will exist on the date of closing; and no event or condition has occurred and is continuing that, with or without notice and/or the passage of time, will constitute such a default or breach.
- E. Seller represents that it has provided to Purchaser all environmental reports and any other documentation in Seller's possession related to the Property.

8. Seller's Environmental Representations. Seller represents and warrants as of the Effective Date and as of the closing, that, to the best of Seller's knowledge:

- A. the Property has never been used as a landfill, waste dump or mine;
- B. there has been no installation in, or production, release, disposal or storage on the Property of any hazardous material, hazardous waste or other toxic or regulated substances by Seller, Seller's agents, employees, or assigns, any tenant or previous owner or previous tenant;
- C. there has not been any other activity that is known to or reasonably could have resulted in an environmental condition requiring investigation or remediation on the Property;
- D. there is no anticipated, threatened or pending proceeding or inquiry by any governmental authority or agency with respect thereto;
- E. no property in the vicinity of the Property has ever been used as a landfill or waste dump;
- F. there has been no installation in, or production, release, disposal or storage in the vicinity of the Property of any hazardous material, hazardous waste or other toxic or regulated substances by any owner, tenant or previous

owner or previous tenant or any other activity which could have resulted in an environmental condition requiring investigation or remediation on the Property; and

- G. there is no anticipated, threatened, or pending proceeding or inquiry by any governmental authority or agency with respect to property in the vicinity of the Property that may relate to the condition of or need to take investigative or remedial action on the Property.

9. Inspection. Purchaser or any designee of Purchaser has the right to make inspections of the physical condition of the Property and the improvements located thereon at Purchaser's expense. These inspections may include, but are not limited to, environmental assessments and inspections regarding compliance with any building or fire code, environmental protection, pollution or land use or zoning laws, rules or regulations, including, but not limited to any laws relating to the disposal or existence of any hazardous substance or other regulated substance in or on the Property. If Purchaser does not provide to Seller written notice of any unsatisfactory condition, as determined at Purchaser's sole discretion, signed by an authorized representative of Purchaser, on or before [REDACTED], 200[REDACTED], Purchaser waives any objection to the physical condition of the Property and the improvements located thereon as of that date. If Purchaser provides written notice of any unsatisfactory condition, signed by an authorized representative of Purchaser, to Seller on or before [REDACTED], 200[REDACTED], and Seller does not cure such conditions prior to closing, this Agreement may be terminated at the option of Purchaser. Upon such termination, all payments and things of value received hereunder by Seller must be returned to Purchaser. Purchaser is responsible and will pay for any damage that occurs to the Property and the improvements located thereon as a result of these inspections.

10. Closing. The parties agree to close this transaction on [REDACTED], at 2:00 o'clock p.m. at Land Title Guarantee Company, 772 Whalers Way, Suite 100, in Fort Collins, Colorado, or at such other reasonable time, date or location as the parties may mutually agree. The parties acknowledge that it is their intent to close this transaction at the earliest mutually agreeable date upon completion of all inspections, investigations and reviews to which Purchaser is entitled hereunder, and fulfillment of any contingencies for closing.

11. Possession. Seller will deliver possession of the Property to Purchaser as of the Effective Date of this Agreement. Upon termination of this Agreement by Purchaser, Purchaser shall return the Property to its condition as of the Effective Date, and surrender possession of the Property to Seller. If Purchaser does not elect to terminate the Agreement in the event of default by Seller, Purchaser shall be entitled to continued possession of the Property until such time as Purchaser has obtained the Property or such portions thereof as Purchaser elects to obtain through an action for specific performance.

12. Proration. Real property taxes and assessments and similar expenses, in accordance with local practice, will be prorated as of the date of closing.

13. Remedies on Default. If any note or check received as earnest money hereunder or any other payment due hereunder is not paid, honored or tendered when due, or if any other obligation hereunder is not performed as herein provided, the remedies are:

- A. If Purchaser is in default, then Seller may terminate this Agreement and

both parties will be released from all obligations under this Agreement. Seller may recover direct damages as may be proper and Seller expressly waives the remedies of specific performance and additional damages.

- B. If Seller is in default, Purchaser may elect to treat this Agreement as terminated, in which case all payments and things of value received hereunder will be returned to Purchaser, and Purchaser may recover such damages as may be proper, or Purchaser may elect to treat this Agreement as being in full force and effect, and Purchaser will have the right to an action for specific performance or damages, or both.

14. Notices. Any notice or other communication given by either party to the other relating to this Agreement must be hand delivered; sent by a commercial carrier; or sent by mail, addressed to the party at its respective address as set forth below. The notice or other communication will be effective on the date it is delivered or on the third business day after being sent, whichever comes first.

If to Seller:

Airpark Village, LLC
1593 Jamaica St.
Aurora, CO 80012

If to Purchaser:

Real Estate Services Manager
City of Fort Collins
Mailing Address:
P.O. Box 580
Fort Collins, CO 80522-0580
Hand Delivery:
117 North Mason St.
Fort Collins, CO 80524

With a copy to:

City Attorney's Office
City of Fort Collins
Mailing Address:
P.O. Box 580
Fort Collins, CO 80522-0580
Hand Delivery:
300 LaPorte Avenue
Fort Collins, CO 80521

15. Assignment. This Agreement must not be assigned by either of the parties hereto without the prior written consent of the other party.

16. Risk of Loss. Seller shall bear all risk of loss with respect to the Property up to the date title is transferred in accordance with this Agreement. In the event of damage to any

portion of the Property by fire or other casualty prior to the closing which damage either affects 5% of the usable facilities on the Property or reduces the value of the Property by 5%, then this Agreement may be terminated at the option of Purchaser. This option shall be exercised, if at all, by Purchaser's written notice thereof to Seller within thirty (30) calendar days after receipt of written notice of such fire or other casualty. Upon the exercise of such option to terminate, this Agreement shall become null and void, and neither party shall have any further liability or obligations hereunder, except as otherwise provided in this Agreement. Closing may be delayed for up to thirty (30) calendar days for Purchaser to decide whether to exercise this option. If Purchaser does not elect to terminate, Seller shall assign and transfer to Purchaser at the closing all of Seller's right, title and interest in and to all insurance proceeds or other compensation paid or payable to Seller on account of such fire or casualty together with the amount of the deductible relating thereto.

17. Lead-Based Paint. This paragraph intentionally omitted.

18. Recommendation of Legal and Tax Counsel. By signing this document, Seller acknowledges that Seller has been advised that this Agreement has important legal consequences and has received the recommendation to consider the examination of title and consultation with legal and tax or other counsel before signing this Agreement.

19. Entire Agreement, Modification. This Agreement constitutes the entire contract between the parties relating to the conveyance of the Property, and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Agreement. No subsequent modification of any of the terms of this Agreement will be valid, binding upon the parties, or enforceable unless made in writing and signed by the parties.

20. Headings. Paragraph headings are used for convenience of reference and in no way define, limit or prescribe the scope or intent of any provision under this Agreement.

21. Construction. Words of the masculine gender include the feminine and neuter gender and when the sentence so indicates, words of the neuter gender refer to any gender. Words in the singular include the plural and vice versa. Definitions of defined terms are intended to apply throughout this Agreement. This Agreement is to be construed according to its fair meaning, and as if prepared by all parties, and is deemed to be and contain the entire understanding and agreement between the parties.

22. Time is of the Essence. It is agreed that time is of the essence of this Agreement and each and every provision.

23. Binding Effect / Joint and Several Liability. This Agreement is binding upon and inures to the benefit of the parties their respective heirs, administrators, successors and assigns. If Seller consists of more than one individual or entity, each such individual or entity is jointly and severally liable for any and all obligations of Seller hereunder.

24. Litigation Expenses. In the event any party defaults in any of its covenants or obligations and a party not in default commences and prevails in any legal or equitable action against the defaulting party, the defaulting party expressly agrees to pay all reasonable expenses of the litigation, including a reasonable sum for attorneys' fees or similar costs of legal representation.

25. Brokers. Seller and Purchaser each represent and warrant to the other that such party has not employed, retained or consulted any broker, agent or other real estate professional with respect to the Property. Seller and, to the extent permitted by law, Purchaser, each indemnify and hold the other harmless from and against all claims, demands, causes of action, debts, liabilities, judgments and damages, including, without limitation, any related litigation expenses, that may be asserted or recovered against the other on account of any breach of this representation and warranty.

26. 1031 Exchange. At the request of Seller, Purchaser agrees to make reasonable efforts to cooperate with Seller in the achievement of a tax-deferred real estate exchange pursuant to Section 1031 of the Internal Revenue Code and the Treasury Regulations implementing that Section. In particular, Purchaser may be asked, and Purchaser hereby agrees, to cooperate in and consent to the assignment of Seller's rights in this Agreement for the purpose of such an exchange. Purchaser shall not be required to incur any additional liability or expense in connection with Seller's tax-deferred exchange transaction.

27. Authority. Each person executing this Agreement represents and warrants that he or she is duly authorized to execute this Agreement in his or her individual or representative capacity as indicated.

28. Counterpart and Facsimile Signatures. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. Signatures may be delivered by facsimile copy. Facsimile signatures are binding on the parties as if they were originals.

29. Recording. Purchaser may record this Agreement in the real property records of the Larimer County Clerk and Recorder.

30. Governing Law/Venue. The parties intend and agree that this Agreement is to be construed and enforced according to the laws of Colorado, and that venue in any proceeding related to the subject matter of this Agreement will be in Larimer County, Colorado.

31. Condemnation Rights. Seller expressly acknowledges that it is aware that under Colorado law, Purchaser is empowered with the right of eminent domain and that, in the event Purchaser fails to acquire the Property from Seller under this Agreement, Purchaser may have the authority to acquire the Property by exercising its power of eminent domain. Seller further acknowledges that in the event Purchaser seeks to acquire the Property using its eminent domain authority, Seller would have the right, absent this Agreement, to require Purchaser to acquire the Property by complying with the laws of the State of Colorado regarding eminent domain. In particular, Seller acknowledges that Seller would have the right to receive from Purchaser a Notice of Intent pursuant to Section 38-1-121, C.R.S., advising Seller of Purchaser's intent to acquire the Property by an eminent domain action and of Seller's right to obtain an appraisal of the Property, the reasonable costs of which Purchaser must pay, if the Property has an estimated value of Five Thousand Dollars (\$5,000.00) or more. Seller understands and agrees that by entering into this Agreement, Seller waives these rights.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

SELLER:

**AIRPARK VILLAGE, LLC,
a Colorado Limited Liability Company**

Date: _____

By: _____

Name:

Title:

STATE OF COLORADO)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2008, by _____, as _____ for Airpark Village, LLC.

Witness my hand and official seal.

My Commission expires: _____

Notary Public

PURCHASER:

**THE CITY OF FORT COLLINS, COLORADO
a Municipal Corporation**

Date: _____

By: _____

Darin A. Atteberry, City Manager

ATTEST:

APPROVED AS TO FORM:

City Clerk

Deputy City Attorney

STATE OF COLORADO)
) ss
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2008, by Darin A. Atteberry as City Manager and Wanda Krajicek as City Clerk of the City of Fort Collins.

Witness my hand and official seal.

My Commission expires: _____

Notary Public