

CITY OF LEADVILLE, COLORADO
RESOLUTION 5
Series of 2016

**A RESOLUTION TO APPROVE THE PURCHASE AND SALE AGREEMENT BETWEEN
THE CITY OF LEADVILLE AND SHARON FURMAN BLAND FOR THE PURCHASE BY
THE CITY OF LEADVILLE OF THE TABOR OPERA HOUSE**

WHEREAS, the City of Leadville is authorized to buy and sell real property pursuant to Article 15 of Title 31 of the Colorado Revised Statutes; and

WHEREAS, the City Council of the City of Leadville (the "City") and the Sharon Furman Bland ("Property Owner") have entered into negotiations to pursue the acquisition of certain real property known as The Tabor Opera House, with a street address of 312 Harrison Avenue, Leadville, located within the boundaries of the City; and

WHEREAS, the City and Property Owner have agreed upon the terms of acquisition as set forth in the purchase and sale agreement attached to this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LEADVILLE, COLORADO, THAT:

Section 1. Execution of Purchase and Sale Agreement. The City Council authorizes the Mayor to execute on behalf of the City of Leadville a Purchase and Sale Agreement, a copy of which is attached hereto as **Exhibit A** ("Agreement") in order to enter into a purchase contract for certain real property known as the Tabor Opera House for the purchase price of Six Hundred Thousand Dollars (\$600,000.00).

Section 2. Due Diligence. The City Council further authorizes the Mayor, Administrative Services Manager, Deputy Treasurer and City Attorney to take all necessary steps to close in accordance with the terms of the Agreement, provided that the City Council will be required to accept the warranty deed for the Property at a future Council meeting upon satisfaction of the terms and conditions set forth in the Agreement.

Section 3. Severability. If any section, paragraph, clause, or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining issues of this Resolution.

Section 4. Effective Date. This Resolution shall take effect upon its adoption by the City Council.

ADOPTED the 19th day of January, 2016 by a vote of 5 in favor, 1 against, 0 abstaining, and 1 absent.

ATTEST:


Pamela Andrews, City Clerk

CITY OF LEADVILLE, COLORADO

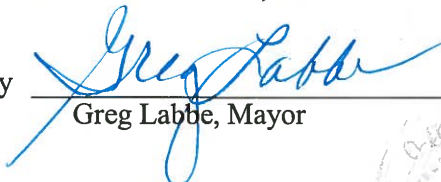
By 
Greg Labbe, Mayor



EXHIBIT A
PURCHASE AND SALE AGREEMENT

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "Agreement") is made and entered into this 13 day of February, 2016 (the "Effective Date"), by and between **SHARON FURMAN BLAND** and the **CITY OF LEADVILLE**, a municipal corporation of the State of Colorado having an address of 800 Harrison Avenue, Leadville, CO 80461 (the "City"). The Seller and the City may be collectively referred to herein as the "Parties."

WHEREAS, Seller is the owner of real property located in Lake County, Colorado, which is in close proximity to City Hall and is commonly known as the Tabor Opera House (the "Property"); and

WHEREAS, the Property is more fully described on Exhibit A, a copy of which is attached and incorporated into this Agreement by reference; and

WHEREAS, the Property was built in 1879 by Horace Tabor and was once billed as the finest theatre between St. Louis and San Francisco; and

WHEREAS, the Property is representative of early construction techniques employed in the City and was one of the first substantial structures built along Harrison Avenue; and

WHEREAS, the Property is one of the finest remaining Victorian opera houses in the Western United States; and

WHEREAS, Seller desires to sell and the City desires to purchase the Property.

NOW, THEREFORE, in consideration of the foregoing premises and the covenants, promises and agreements of each of the Parties hereto, the sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. Purchase and Sale. Seller agrees to sell and the City agrees to purchase the Property subject to the terms and conditions set forth in this Agreement.

2. Title Company. The title and escrow company for this transaction is **Stewart Title Guaranty Company** (the "Title Company"). The Title Company's address is 97 Main St., Ste. W-201, Edwards, CO 81632.

3. Purchase Price. The purchase price for the Property shall be Six Hundred Thousand Dollars (\$600,000.00) (the "Purchase Price"). The Purchase Price shall be paid by the City at Closing (as defined in section 7 below) in cash, certified funds, or by wire transfer of other immediately available funds.

a. Deposit. Within five (5) business days following the Effective Date, the City shall pay Seller an earnest money deposit of Twenty Thousand Dollars (\$20,000.00) ("Deposit"). Payment shall be made to the Title Company identified

in Section 2 above. Title Company will hold the Deposit in escrow by promptly placing the Deposit in a segregated non-interest bearing account. Title Company will provide the parties with all specific information concerning this account, including without limitation the account number. Title Company will promptly return the Deposit to the City if the parties mutually agree to terminate this Agreement.

- b. Balance of Purchase Price. The City shall pay Seller the unpaid balance of the Purchase Price on the date of Closing by immediately available funds. Likewise, Title Company shall release the Deposit to Seller at Closing.

4. Title.

- a. The City shall be entitled to examine title to the Property during the Inspection Period (as defined in section 6 below) to determine whether the same is good and marketable and can be insured by the Title Company or another recognized title insurance company acceptable to the City at standard rates for the amount of the Purchase Price, subject only to title exceptions that do not materially and adversely affect the City's intended use of the Property.
- b. In the event that the City cannot, because of a cloud on or deficiency in the title to the Property, obtain title insurance in accordance with the provisions of section 4(a) above (the "Title Commitment"), it will send written notice to Seller as provided in section 6(c) below.

5. Documents. Not later than five (5) days after the Effective Date, Seller shall provide City copies of the following:

- a. The name(s) of the Seller's representative(s), together with telephone and email contacts for said representative(s), that are most familiar with the Property, to aid the City in completing additional environmental inspections and/or investigations of the Property; and
- b. Any documents in Seller's possession pertaining to the Property, including but not limited to any lease(s); and
- c. Agreements, reports, studies, inspections and investigations regarding the Property; and
- d. Appraisals, environmental reports and geotechnical engineering reports; and
- e. Surveys, improvement location certificates, maps and plats; and



f. Most recent property tax bills affecting the Property.

6. Inspection and Treatment of Historic Collection.

- a. Seller and the City expressly covenant and agree that the City's commercially reasonable satisfaction upon the inspection provided for herein is a specific condition precedent to the obligation of the City to purchase the Property. The period of inspection (the "Inspection Period") shall begin on the Effective Date and shall terminate on the earlier of: (i) receipt by Seller of written notice from the City that the Property is suitable for purchase; or (ii) ninety (90) calendar days after the Effective Date.
- b. Seller and the City acknowledge and agree that certain furnishings, art, and other contents ("Historic Collection") of the Property, as agreed upon between the Seller and City, will be donated by the Seller to the Tabor Opera House Preservation Foundation by separate agreement. Within the first thirty (30) days of the Inspection Period, the Seller shall provide to the City in writing an itemized list of items from the Historic Collection that will be donated. Such itemized list will be attached to this Agreement as Exhibit B ("Donated Historic Collection").
- c. During the Inspection Period, and upon at least ten (10) days' advance written notice to and approval from Seller via electronic mail, with such approval not to be unreasonably withheld or delayed, the City may enter the Property to make such reasonable inspections, reviews, studies, evaluations, or surveys, at the City's sole cost and expense, as required to satisfy itself as to the acceptability and suitability of the Property for purchase.

Prior to entering the Property, the City shall provide Seller with a certificate of insurance naming Seller as an additional insured issued by the Colorado Intergovernmental Risk Sharing Agency (CIRSA) in the minimum amount of Six Hundred Thousand Dollars (\$600,000.00). All such entries upon the Property shall be at reasonable times during normal business hours and after at least ten (10) days' prior written notice to Seller via electronic email and Seller shall have the right to accompany the City during any activities performed by the City on the Property. The parties agree to try and schedule such inspections during the week of March 1-6, 2016. The City will restore the Property to substantially the same condition as existed before the inspection or test. Only if authorized by law and without waiving the provisions of the Colorado Constitution or the Colorado Governmental Immunity Act, the City shall indemnify, defend and hold harmless Seller from and against any and all losses, costs, damages, claims or liabilities, including, but not limited to, mechanic's liens and Seller's attorneys' fees and costs arising out of or in connection with the City's inspection of the Property allowed herein. Should, for any reason and in its sole and commercially reasonable discretion, the City determine during the Inspection Period that the Property is not acceptable or suitable for its intended use, the City shall notify

Seller in writing on or before the expiration of the Inspection Period of its dissatisfaction, at which time the City may either (i) terminate this Agreement by giving written notice of termination to Seller and the Title Company, in which event the Deposit made by the City shall be forthwith returned by Title Company to the City, and thereafter neither party hereto shall have any further rights against, or obligations to, the other party hereto, or (ii) waive its objections to the unsatisfactory condition and proceed with Closing with or without any adjustment or abatement in the Purchase Price as agreed by the parties.

The City may deliver to Seller written notice of any objections to the Title Commitment, the Donated Historic Collection, or any survey obtained by the City ("Objections") no later than fifteen (15) days prior to the expiration of the Inspection Period. If the City fails to timely notify Seller of any such Objections, the matters disclosed on the Title Commitment and any survey obtained by the City shall be deemed permitted exception(s) and accepted by the City. If the City timely notifies Seller of such Objections, Seller shall have seven (7) days following receipt of such Objections in which to advise the City that it will, in Seller's sole discretion, either (i) cause such defects to be removed or remedied prior to Closing; or (ii) not cause the defects to be removed or remedied. If Seller does not timely notify the City of its election, Seller shall be deemed to proceed under subsection (ii). If Seller elects or is deemed to have elected to proceed under subsection (ii) in regards to any Title Commitment or survey objections, the City shall have until the termination of the Inspection Period to either terminate this Agreement and receive a full refund of the Deposit or proceed with the purchase of the Property without a reduction in the Purchase Price. Failure of the City to notify Seller of its dissatisfaction prior to the expiration of the Inspection Period shall be deemed a waiver of the City's rights under this Section 6.c. and acceptance of the Property as suitable for purchase.

7. Closing.

- a. The closing of this Agreement ("Closing") shall be held at the office of the Title Company or closed in escrow within forty five (45) days following the satisfaction of the Financing Contingency set forth in Section 12 below, or on such other date as the Parties may agree to in writing, but not later than October 18, 2016, subject to one (1) automatic six (6) month extension of time in which to allow the City to satisfy the Financing Contingency ("Closing Extension"). Notice of the exercise of such Closing Extension shall be provided at least thirty (30) days prior to the expiration of the current period for Closing and documented in writing following election by the City via Resolution, with notice to the Seller given as provided under section 15 below. Should Seller receive a bona fide cash offer to purchase the Property during the Closing Extension, Seller shall provide the City with notice of such offer and the City shall have ten (10) calendar days to provide notice to Seller that it will waive the Closing Extension and immediately proceed to Closing. Should such notice not be provided during the required time

period, Seller may terminate this Agreement, after which the parties shall be released from their obligations under this Agreement and the Deposit will be returned to the City.

- b. At the Closing, Seller shall deliver to the City a special warranty deed, free and clear of all liens, encumbrances, and other exceptions, except such easements, restrictions, and other exceptions as are of record and are accepted by the City during the Inspection Period.
- c. Closing Conditioned on Future Legislative Action. Closing shall be scheduled on or before a date following the effective date of the City Council ordinance or resolution authorizing the acquisition of the Property following removal of the Financing Contingency, but not later than October 18, 2016, subject to the Closing Extension in which to allow the City time to satisfy the Financing Contingency.
- d. Occupancy and Possession of the Property by the City. Following the execution of this Agreement, the parties shall enter into a lease agreement between the parties for occupancy and use of the Property by the City ("Lease Agreement") pending Closing. Upon Closing, the Lease Agreement shall terminate and be of no further force or effect. Possession of the Property shall be delivered to the City at Closing, unless otherwise agreed to by the parties in writing.

8. Warranties.

- a. As of the Effective Date and continuing through and including the date of Closing, Seller warrants as follows:
 - i. There no actions, suits, proceedings or investigations pending or, to Seller's actual knowledge, threatened, against, or affecting the Property;
 - ii. To the best of Seller's actual knowledge, the Property is in compliance with the laws, orders, and regulations governing the Property;
 - iii. To the best of Seller's actual knowledge, Seller is not party to or subject to or bound by any agreement, contract or lease of any kind relating to the Property, which has not been specifically disclosed to the City;
 - iv. To the best of Seller's actual knowledge, no representation, warranty, or statement made herein by Seller contains any untrue statement of any material fact or omits to state any material fact necessary in order to make such representation, warranty, or statement not misleading;

- v. Seller is duly authorized and has taken all necessary actions to execute and perform this Agreement and this Agreement is enforceable against Seller in accordance with its terms; and
 - vi. Except as otherwise provided for herein, City is purchasing the Property "AS IS", "WHERE IS" and "WITH ALL FAULTS".
- b. As of the Effective Date and continuing through and including the date of Closing, City warrants as follows:
- i. There are no actions, suits or proceedings pending, or, to the knowledge of City, threatened against or affecting City which might adversely affect the power or authority of City to carry out the transaction or obligations to be performed by it hereunder;
 - ii. This Agreement is validly executed and delivered by City and, to the best of City's actual knowledge, the performance by City hereunder does not violate any agreement or contract to which City is a party or any judgment, order, injunction, decree, regulation, ordinance or ruling of any court or other governmental authority to which the City is subject;
 - iii. To the best of City's actual knowledge, no representation, statement or warranty by City contained in this Agreement contains or will contain any untrue statements or omits or will omit a material fact necessary to make the statement of fact therein recited not misleading. If, after City's execution hereof, City receives notice that any event has occurred or condition exists which renders any of the representations contained herein untrue or misleading, City shall promptly notify Seller in writing;
 - iv. The execution of this Agreement by City has been properly authorized by the City; and
 - v. Subject to the limitations of Section 12 and Section 22 of this Agreement, this Agreement is the binding obligation of City.

9. Costs and Fees. Closing fees and escrow fees shall be shared equally by Seller and City. Per page recording costs and transfer taxes, if any, shall be paid by Seller. The premium for the title insurance policy, in favor of the City in the amount of the Purchase Price (the "Owner's Policy"), shall be paid by the City. The cost of deletions from the Owner's Policy of any standard exceptions in Schedule B-2 of the Title Commitment, as well as the cost of any other affirmative coverages or endorsements and the amount of any coverage exceeding the Purchase Price, shall be borne by the City. Seller and the City shall each pay the fees and expenses of their respective legal counsel, accountants, and other consultants or advisors incurred in connection with the transaction contemplated by this Agreement.

10. Taxes. Taxes for all years prior to closing shall be paid in full by Seller prior to Closing. Taxes for the year of Closing shall be prorated to the date of Closing. As the City is a governmental entity exempt from real property tax, any proration of property taxes for the year in which Closing occurs shall remain Seller's sole responsibility.

11. Remedies upon Default.

- a. Seller's remedies. If Seller has fully performed or tendered performance of its obligations under this Agreement and the City is unable or fails to perform its obligations, then Seller's sole remedy shall be to retain ownership of the Property, after which Seller shall be released from its obligations under this Agreement to sell the Property to the City.
- b. The City's remedies. If, after satisfaction of any conditions to the City's obligations under this Agreement, Seller fails to consummate the transaction contemplated by this Agreement for any reason except a material breach by the City, the City may elect, at the City's sole option: (i) not to purchase the Property and to be released from its obligations hereunder; or (ii) to proceed against Seller for specific performance of this Agreement.

12. Financing Contingency. The Parties acknowledge and agree that City will not proceed to Closing unless and until the City has, in the City's sole and commercially reasonable discretion, obtained grants, loans, or secured other sources of funds, including the appropriation of general fund dollars or other funds available to the City, or any combination thereof, in the amount of the Purchase Price and acceptable to the City, as shall be evidenced and memorialized by a resolution or ordinance of City Council (the "Financing Contingency"). The Parties further acknowledge and agree that City has or will be submitting a grant to the State Historical Fund and Seller consents to the City submitting a copy of this Agreement to the State Historical Fund as part of the application process. The City shall have until 5 p.m. on October 1, 2016, (the "Financing Period") to provide written notice to Seller that the Financing Contingency has been removed and that Seller desires to proceed to Closing in accordance with Section 7 above. Should, for any reason and in its sole and commercially reasonable discretion, the City not be satisfied with the availability or structure of financing to proceed to Closing, the City shall notify Seller in writing on or before the expiration of the Financing Period of its dissatisfaction, at which time this Agreement shall be considered terminated and of no further force and effect and the Deposit shall be refunded in full to the City.

13. 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 Lake County, Colorado.

14. Further Documents. Seller and the City hereby instruct the Title Company to use this Agreement as closing instructions. The Seller and the City shall perform such other actions or deliver such other documents, including additional closing instructions, as may be reasonable

and necessary to complete the sale under this Agreement. Terms of this Agreement shall prevail over any inconsistent additional instructions, unless the City and Seller specifically waive the inconsistency in writing.

15. Notices. Except as otherwise expressly provided herein, any notices required by this Agreement shall be effective if made in writing and either delivered directly; or by electronic means, provided that the electronic delivery provides verification of receipt; or sent by certified or registered mail, return receipt requested or by USPS Express Mail to the following:

City: City of Leadville
Attention: Mayor and Administrative Services Manager
800 Harrison Avenue
Leadville, Colorado 80461
Email: lvmayor@leadville-co.gov
adminservices@leadville-co.gov

With a copy to: Widner, Michow & Cox, LLP
Attention: Linda C. Michow
13133 East Arapahoe Road, Suite 100
Centennial, Colorado 80112
Tel: 303-754-3399
Email: lmichow@wmcattorneys.com

Seller: Sharon Furman Bland
PO Box 1175
Leadville, CO 80461
Email: sharon.furmanbland@gmail.com
bill.bland@gmail.com

With a copy to: M. Christina Floyd
Rocky Mountain General Counsel
P.O. Box 927
Leadville, CO 80461
Tel: 719-293-3769
Email: chris@rmgclaw.com

All notices shall be deemed received on the date of the return receipt or acknowledgment of delivery.

16. Modification. This Agreement may only be modified upon written agreement of the Parties.

17. Integration. The foregoing constitutes the entire agreement between the Parties and no additional or different oral representation, promise or agreement shall be binding on any of the Parties hereto.



18. 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.

19. Broker(s). Seller represents that there is no Listing Broker for this transaction. The City represents that there is no Selling (Cooperating) Broker for this transaction. The Parties agree that no commissions will be paid to any Broker(s) or any other persons related to the transaction contemplated by this Agreement.

20. No Third-Party Beneficiaries. There are no intended third-party beneficiaries to this Agreement.

21. Construction. The City and Seller acknowledge that each party has reviewed this Agreement and that the normal rule of construction that provides for ambiguities to be resolved against the drafting party shall not apply to the interpretation of this Agreement. This Agreement shall be construed neither for nor against Seller or the City, but shall be given a reasonable interpretation in accordance with the plain meaning of its terms.

22. Article X, Section 20/TABOR. Seller and the City understand and acknowledge that the City is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The City represents that it has or will have budgeted and appropriated sufficient funding to meet its obligations set forth in this Agreement. For any amounts not fully appropriated, the City does not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, all payment obligations of the City are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the City's current fiscal period. Financial obligations of the City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the applicable rules, regulations, and resolutions of the City and any other applicable law.

23. Governmental Immunity. Nothing in this Agreement shall be construed as a waiver of the rights and privileges of the City pursuant to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the City and its officers or employees.

24. Counterparts. This Agreement and any subsequent extensions and/or amendments may be executed in one or more counterparts and each such counterpart shall be deemed to be an original; all counterparts so executed shall constitute one instrument and shall be binding on all of the parties to this Agreement notwithstanding that all of the parties are not signatories to the same counterpart. Facsimile and scanned electronically delivered copies of this Agreement and any subsequent extensions and/or amendments signed by the parties shall be binding and enforceable as if the same were an executed original.

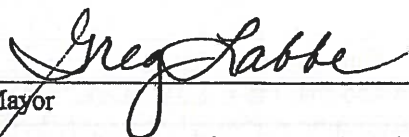


25. Time of the Essence. Time is of the essence with respect to every provision of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first set forth above.

CITY:

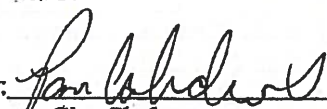
CITY OF LEADVILLE, a municipal corporation of the State of Colorado



Mayor

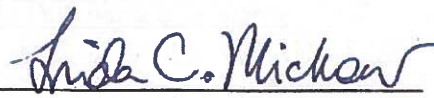
Date of execution: 2-16-2016, 2016

ATTEST:

By: 

City Clerk

REVIEWED BY:

By: 

Linda C. Michow, City Attorney

[Signatures Continue on the Next Page]



SELLER:

SHARON FURMAN BLAND

Sharon Bland
Sharon Furman Bland

STATE OF TEXAS)
) ss.
COUNTY OF BEXAR)

This Purchase and Sale Agreement was acknowledged before me this 13th day of FEBRUARY 2016, by Sharon Furman Bland.

Witness my hand and official seal.



Misty Lee Jarnagin
Notary Public



Q

EXHIBIT A

Property Description

Legal Description: South 10 feet, Lot 7 and all lots 8 and 9, Block 1, L I CO, Opera House
426/260 427/383 489/479 588/648, Assessor's Parcel Number: 000020001521, County of Lake,
State of Colorado.

The Property is commonly known as the Tabor Opera House and having a property address of
312 Harrison Avenue, Leadville, CO 80461



EXHIBIT B
Donated Historic Collection

The following contents of the Tabor Opera House are included for donation under section 6(b) of this Agreement:

[List to be Provided]

A handwritten signature or set of initials, possibly "JF", enclosed within a circular scribble.

