

## REAL ESTATE PURCHASE AND SALE CONTRACT

### Industrial Drive Project No. ST3056A

The City of Flagstaff, a municipal corporation organized and existing under the laws of the State of Arizona (“Buyer” or “City”) and Block-lite Company, Inc. an Arizona corporation (“Seller”) hereby enter into this Real Estate Purchase and Sale Contract (“Contract”).

1. Property. The City agrees to purchase, and Seller offers to sell, approximately 1.931 acres of real Property, located at 3900 E. Industrial Drive, Flagstaff, AZ. 86001, Assessor parcel number 113-26-003H, legally described and depicted in Exhibit A attached hereto. (“the Property”).
2. Contingencies of Sale. This sale is contingent on the Council of the City of Flagstaff passing and adopting an ordinance authorizing the purchase. The Contract shall be executed by the Mayor thirty days (30) after the ordinance has been passed and adopted.
3. Temporary Construction Easement. The Seller also agrees to grant a Temporary Construction Easement (“TCE”) to the City, under, over and across the Property, Assessor parcel number 113-26-003H, attached hereto as Exhibit B during the duration of the construction of the project, at no additional cost to the City.
4. Drainage Easement. A perpetual easement and right-of-way for Drainage and Underground Utilities was granted to the City of Flagstaff, an Arizona municipal corporation on April 21st, 1969, and recorded in Docket 329 Page 58, April 22<sup>nd</sup>, 1969. The actual physical alignment of the easement is different than the recorded legal description, the City shall record an Affidavit of Correction with a corrected legal description attached hereto as Exhibit C, at no additional cost to the City.
5. Purchase Price for Property. The City agrees to pay Seller five hundred thirty three thousand and seventy five dollars (**\$533,075**).
6. Conveyance of Property. Seller shall convey the Property to the City by Special Warranty Deed.
7. Opening of Escrow; Closing. The City shall deposit the sum of one thousand dollars (\$1,000.00) deposit with Pioneer Title Agency, Inc. of Flagstaff, Arizona (the “Escrow Agent”) to be applied against the Purchase Price at the Close of Escrow.

The Opening of Escrow shall be deemed to be the date on which the Deposit and a fully executed copy of this Contract are delivered to the Escrow Agent. The consummation of the transaction contemplated by this Contract (“Close of Escrow”) shall occur on or before ninety (90) days after the Opening of Escrow. If Escrow Company or Recorder’s office is closed on the scheduled closing date, Close of Escrow shall occur on the next day that both are open for business. Buyer, and Seller may accelerate the Closing Date upon mutual acceptance by both parties. The Closing shall occur at the offices of the Escrow Agent, or at such other place as Seller and Buyer may agree in writing. Closing shall be deemed to have occurred when (i) all closing documents contemplated by this Contract have been delivered to, received by, and executed by the appropriate parties, (ii) all conditions to such Closing contemplated by this Contract have been satisfied or waived, (iii) the funds required to be paid under this Contract have been properly delivered to Escrow Agent and are available for distribution to Seller by Escrow Agent, (iv) the deed required pursuant to Conveyance has been recorded.

8. Title. Within (5) days of Opening of Escrow, Escrow Agent shall deliver to the City and Seller a preliminary title report pertaining to the Property (the "Title Commitment"). On or before fifteen (15) days after receipt of the Title Commitment, the City 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 the City (the "Objections"). Any matters or title exceptions to which the City does not object within such time period shall be deemed to be acceptable matters. Mortgages, deeds of trust and other liens encumbering the Property shall be cleared at or before Closing by Seller. The Seller is responsible for property taxes outstanding or due, if any, at time of closing or prior to transfer of the Property. The Property the City is acquiring will be tax exempt as of close of escrow. If escrow closes on or before the taxes for the current year have been calculated by the governing body, the escrow officer is not responsible for proration. If escrow closes after the taxes have been calculated by the governing body for the current year then the taxes shall be paid in full by the Seller prior to closing.

*(Note: On or before the third Monday in August of the tax year (2017), the governing body of each county, community college district, school district, and city or town shall fix, levy and assess the amount to be raised from primary and secondary property taxation. A.R.S. 42-17151(A)(1).)*

9. Environmental Investigation. Seller hereby grants permission to the City 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 the City) at the City's expense. The City may choose and retain its inspectors without seeking approval of Seller. However, the City shall not undertake any invasive testing, such as drilling or trenching, without Seller's prior written consent, which consent shall not be unreasonably withheld. The City agrees to indemnify, defend and hold Seller harmless for, from, and against any personal injury and property damage claims arising out of City's exercise of the rights granted by this paragraph, this indemnity shall survive the Closing or the cancellation of this Agreement. Seller acknowledges that City's participation in the performance of any Environmental Investigation or additional inspection will not create any liability for the City as to any Environmental Condition that may exist on the Property unless such condition is exacerbated by City'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. The City shall have 30 days to conduct all investigations commencing upon Opening of Escrow.

10. 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.

11. 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.

12. Closing Costs.

a. The City 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 by the City.

13. Distribution of Proceeds upon Closing. The proceeds of the sale shall be distributed to Seller by the Escrow Agent. Seller is responsible for verifying accuracy of distribution of proceeds with the Escrow Agent and the City has no liability for any errors.

14. 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.

15. 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.

16. Seller Remedies. In the event of default by the City, Seller's sole remedy shall be to cancel this Contract and to retain the Deposit, together with all accrued interest, as liquidated damages. Seller and the City agree that it would be impractical or extremely difficult to fix actual damages in case of the City's default; that the amount of the Deposit paid by City is a reasonable estimate of the Seller's damages in case of City's default; that Seller shall retain said Deposit as its damages; and that, thereafter, neither party shall have any further obligations to the other under this Contract, except with respect to obligations which expressly survive the cancellation of this Contract.

17. Buyer Remedies. In the event of default by Seller, the City shall have all remedies available at law including but not limited to specific performance.

18. Time of the Essence. The parties hereto expressly agree that time is of the essence with respect to this Contract.

19. 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:

Block-Lite Company Inc.  
P.O. Box 2728  
Flagstaff, AZ. 86003

BUYER:

City of Flagstaff  
Attn: City Manager

211 W. Aspen Avenue  
Flagstaff, AZ 86001  
FAX (928) 779-7656

- 20. Governing Law. The laws of the State of Arizona shall govern the validity, construction, enforcement and interpretation of this Contract.
- 21. 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.
- 22. 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.
- 23. 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.
- 24. 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:

By: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

**BUYER:**

City of Flagstaff,  
an Arizona municipal corporation

By: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney