

REAL ESTATE PURCHASE AND SALE CONTRACT

The City of Flagstaff, a municipal corporation organized and existing under the laws of the State of Arizona (“Buyer” or “City”) and Allen T. Ginsberg (“Seller”) hereby enter this Real Estate Purchase and Sale Contract (“Contract”).

1. Property: The City agrees to purchase, and Seller offers to sell, parcel number 104-01-023, property located at 424 E. Butler Avenue, Flagstaff, Arizona, 86001, legally described and depicted in the Exhibit “A”, attached hereto (“the Property”). The City of Flagstaff is acquiring the Property for the construction of the Lone Tree Overpass Project at S. Colorado Street and E. Butler Avenue.
2. Authorization: On August 18th, 2020 the Council of the City of Flagstaff passed and adopted Ordinance 2020-20 authorizing the purchase of the Property
3. Purchase Price for Property: The City agrees to pay Seller Three hundred seventy-five thousand dollars (\$375,000.00).
4. Conveyance of Property: Seller shall convey the Property to the City by Special Warranty Deed.
5. “AS IS CONDITION”: Seller and Buyer agree that the Premises is being sold in its existing condition (“AS IS”) and Seller makes no warranty to Buyer, either express or implied, as to the condition of the Premises.
6. 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 after City Council approves the Purchase Contract. The consummation of the transaction contemplated by this Contract (“Close of Escrow”) shall occur on or before forty-five (45) 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.

Title: Within (5) days of Opening of Escrow with, 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. Taxes shall be prorated.

7. 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.

8. Brokerage: The City warrants to the Seller that they have not dealt with any Broker in connection with the sale of the Property. The City is aware that the Seller is a Licensed Real Estate Broker in the State of Arizona. 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.
9. Assessment Liens: The amount of any assessment that is a lien as of the COE, shall be paid in full by Seller prior to COE. Any assessment that becomes a lien or property tax that becomes due after COE is the Buyer's responsibility.
10. Seller Warranties: Seller warrants and shall maintain and repair the Premises so that at COE: (i) heating, mechanical, plumbing, and electrical systems, free-standing range/oven, and built in appliances will be in working condition; (ii) Seller shall remove all personal property not included in the sale and all debris from the Premises, including but not limited to vehicles, prior to Close of Escrow or such longer period allowed by City in writing; (iii) Seller will provide City with a copy of the existing tenant lease, if any, and not take any actions that would cause a breach of the lease.
11. Closing Costs: All closing 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.
12. 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 is responsible for verifying accuracy of distribution of proceeds with the Escrow Agent and the City has no liability for any errors.
13. 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.
14. 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.
15. 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.
16. 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.

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

Allen T. Ginsberg

Address: _____

Flagstaff, AZ _____

Email: Ag@theginsberggroup.com

BUYER:

City of Flagstaff

Attn: City Manager

211 W. Aspen Avenue

Flagstaff, AZ 86001

FAX (928) 779-7656

19. Governing Law: The laws of the State of Arizona shall govern the validity, construction, enforcement and interpretation of this Contract.
20. 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.
21. 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.
22. 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.
23. 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.
24. Terms of Acceptance: This offer will become a binding Contract when acceptance is signed by Seller and a signed copy delivered in person, by mail, facsimile or electronically, and received by the City of Flagstaff by January 1, 2021 at 8:00 a.m., Mountain Standard Time.

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

SELLER: Allen T. Ginsberg

By: _____

Date: _____

STATE OF ARIZONA)
) ss
County of Coconino)

ACKNOWLEDGMENT. On this ____ day of _____ 2020, before me, a Notary Public, personally appeared Allen T. Ginsberg, known to be or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that (s)he executed the same for the purposes therein contained.

Notary Public

(SEAL)

City of Flagstaff, an Arizona municipal corporation

By: _____

Coral Evans, Mayor

Date: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

Senior Assistant City Attorney

Exhibit "A"

Legal Description:

The Easterly 35.00 feet of LOTS 5 and 6, BLOCK 25, BRANNEN ADDITION TO THE TOWN OF FLAGSTAFF, as shown on the plat thereof, recorded in Book 1 of Maps, Page 42, records of Coconino County, Arizona.