

REAL ESTATE PURCHASE AND SALE CONTRACT

(Humphreys Road adjacent to Marriott Residence Inn)

The City of Flagstaff, a municipal corporation organized and existing under the laws of the State of Arizona (“Buyer” or “City”) and the entity listed below (“Seller”) hereby enter into this Real Estate Purchase and Sale Contract this ____, day of _____, 2017 (“Contract”).

1. Property. Buyer agrees to purchase, and Seller offers to sell, certain real property along the east side of Humphreys Road, as legally described and depicted in Exhibits A and B attached hereto (“the Property”). The City of Flagstaff is acquiring the Property for possible future widening of Humphreys Road.
2. Seller. Seller consists of the following entity, with the following ownership interests in the Property:

<u>Name and Corporate Status:</u>	<u>Ownership Interest (%):</u>
FMH Enterprises, LLC	100%
	Total: 100%

3. Purpose. The purpose of this Contract is to carry out the intent of Ordinance No. 2016-03, and section 4.1.1 of the Development Agreement dated February 2nd 2016, by and between the City and FMH Enterprises, LLC, an Arizona limited liability company (“Developer”), related to purchase and transfer of the Property. The parties acknowledge that this Contract is not intended to waive any terms and conditions of the Development Agreement. A secondary purpose of this Contract is to carry out the intent of Ordinance No. 2016-04, related to City of Flagstaff abandonment of a 64 square foot parcel as legally described and depicted in Exhibit A and B attached hereto (“the Abandoned Parcel”) to the Developer.
4. Purchase Price for Property. Buyer agrees to pay Seller the purchase price of one hundred and fifty-five thousand six-hundred dollars (\$155,600.00) less the value of the Abandoned Parcel of five thousand six hundred dollars (\$5,600.00), for a total of one hundred fifty thousand dollars (\$150,000.00).
5. Conveyance of Property. Seller shall convey the Property to Buyer by Special Warranty Deed, as provided for in Ordinance No. 2016-03. The Special Warranty Deed will be executed prior to Closing.
6. Conveyance of Abandoned Parcel. City of Flagstaff shall convey the Abandoned Parcel to FMH Enterprises, LLC by Special Warranty Deed, as provided for in Ordinance No. 2016-04. The Special Warranty Deed will be executed prior to Closing.
7. Opening of Escrow; Closing. Buyer shall deposit the sum of one thousand dollars (\$1,000.00) 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 sixty (60) days after the Opening of Escrow but in any event no earlier than March 1, 2017. 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. 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 Buyer 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, 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. Mortgages, deeds of trust and other liens encumbering the Property shall be cleared at or before Closing by Seller. Seller shall pay all ad valorem and similar taxes and assessments relating to the Property in full prior to Close of Escrow.
9. Environmental Investigation. Buyer has received a copy of the Phase 1 Assessment and accepts the Property with no further environmental inspections required. Seller shall not make any material adverse change to the condition of the Property prior to Closing.
10. No Warranties by Seller. Buyer 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. The Property and the Abandoned Parcel are being conveyed in "as-is" and "where is" condition and the parties agree to bear all risk regarding all attributes and conditions, latent or otherwise with respect to the property conveyed to that respective party.
11. Brokerage. Buyer 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. Buyer 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.
13. 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 per the ownership interests listed herein. Seller is responsible for verifying accuracy of distribution of proceeds with the Escrow Agent and Buyer has no liability for any errors.
14. Sidewalk Maintenance. Seller, its successors, assigns, and/or tenants shall remain responsible for maintenance of public sidewalks to the extent required by the Flagstaff City Code as may be amended from time to time. See Flagstaff City Code Section 8-03-001-0004, *Removal of Snow and/or Ice*, and Chapter 8-0, *Sidewalks*.
15. 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.
16. 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.
17. Seller Remedies. In the event of default by Buyer, Seller shall have all remedies available at law including but not limited to specific performance.
18. Buyer Remedies. In the event of default by Seller, Buyer shall have all remedies available at law including but not limited to specific performance.
19. Time of the Essence. The parties hereto expressly agree that time is of the essence with respect to this Contract.
20. 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:
FMH Enterprises, LLC
1501 E. Woodford Rd.
Show Low, AZ. 85901

BUYER:
City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona. 86001

- 21. Governing Law. The laws of the State of Arizona shall govern the validity, construction, enforcement and interpretation of this Contract.
- 22. Severability. In the event that any phrase, clause, sentence, paragraph, section or other portion of this Contract is found 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.
- 23. 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.
- 24. Successors in Interest. This Contract shall bind and inure to the benefit of Seller, Buyer, and their heirs, executors, administrators, successors and permitted assigns.
- 25. 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, the parties have executed this Contract on the date set forth below.

SELLER:

By: _____

Title: _____
Its Authorized Representative

STATE OF ARIZONA)
)ss
County of Coconino)

ACKNOWLEDGMENT. On this ____ day of _____ 2017, before me, a Notary Public, personally appeared _____, 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

My Commission Expires:

BUYER: City of Flagstaff

By: _____
Coral Evans, Mayor

STATE OF ARIZONA)
)ss
County of Coconino)

ACKNOWLEDGMENT. On this ____ day of _____ 2017, before me, a Notary Public, personally appeared _____, 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

My Commission Expires:

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney's Office