

PURCHASE AND SALE AGREEMENT
(VACANT LAND)

This Purchase and Sale Agreement ("Agreement") is made and entered into as of the ____ day of June 2017 (the "Effective Date") by and between Christopher M. Scully, as trustee of the Scully and Sons Living Trust dated February 9, 2004, 504 N. Leroux, Flagstaff, Arizona 86001, ("Seller") and the City of Flagstaff, a municipal corporation, 211 W. Aspen Ave., Flagstaff, Arizona 86001, ("Buyer"). The Seller and Buyer may be referred to individually as a "Party" or collectively as "Parties."

RECITALS:

WHEREAS, Seller is the owner of the property commonly known as 24 S. Mikes Pike, Flagstaff, Arizona 86001 (APN # 100-40-007B) which includes approximately 112 square feet of the vacant land legally described on **Exhibit A** and outlined on **Exhibit A-1** (referred to hereinafter as the "Subject Property") to be transferred hereunder and shall retain the remainder of the 24 S. Mikes Pike, Flagstaff, Arizona 86001 not sold hereunder ("Seller's Remaining Property"); and

WHEREAS, The Buyer is in the process of obtaining authorization to purchase the Subject Property from Seller for right of way improvements as part of the Mikes Pike Improvement Project ("Project").

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Parties agree as follows:

1. PURCHASE AND SALE. Subject to the terms and conditions set forth in this Agreement, Seller agrees to sell, assign, transfer and deliver to Buyer and Buyer agrees to purchase, acquire and accept from Seller the fee simple interest in the Subject Property by Special Warranty Deed in the form attached hereto as **Exhibit B**.

2. PURCHASE PRICE. Buyer agrees to pay Seller the total purchase price of Two Thousand Five Hundred Dollars (\$2,500.00) ("Purchase Price"), for the Subject Property in cash or other readily available funds.

3. ESCROW, OPENING & CLOSING.

3.1 Opening of Escrow. Escrow shall be opened with Pioneer Title Agency, Inc., 112 N. Elden Street, Flagstaff, Arizona 86001 ("Escrow Company"), with John Kuban serving as the escrow officer ("Escrow Agent") when: (i) one fully executed or counterparts of this Agreement executed by Seller and Buyer, respectively, have been delivered to Escrow Agent ("Opening of Escrow").

3.2 Close of Escrow. Consummation of the purchase of the Subject Property shall take place on or before October 1st, 2017 ("Closing" or "Closing Date"). Closing shall be defined as Seller's delivery of the Special Warranty Deed to Buyer and Buyer's delivery of the Purchase Price to Seller. At or before Closing, each Party shall execute and deliver such documents and perform such acts necessary to carry out the purpose and intent of this Agreement. Exclusive possession of the Subject Property shall be delivered to Buyer as of the Closing.

3.3 Closing Costs/Prorations. All Escrow fees and other costs required to close escrow shall be paid by Buyer. 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. The Seller is responsible for the payment of property taxes for the Subject Property though the date of Closing which shall be paid when due by the Coconino County Treasurer. The Subject Property will be tax exempt as of Close of Escrow.

4. CONTINGENCIES. The Parties respective obligations to sell and purchase the Subject Property are subject to the satisfaction of the following conditions within the timeframes set forth below:

(i) Buyer, via the City Council, shall have adopted an Ordinance authorizing the purchase as provided for herein;

(ii) The Buyer shall have satisfied itself with the condition of title. Title Company shall deliver the Title Commitment to Buyer within five (5) calendar days of Opening of Escrow. Buyer shall have fifteen (15) calendar days after the receipt of a Title Commitment with copies of all Schedule B items ("Title Commitment") to review said Title Commitment and to disapprove any or all of the matters set forth in the Title Commitment, in writing to Seller and Escrow Agent. Seller shall satisfy all Seller requirements necessary for the issuance of a standard policy of title insurance. In the event the Buyer fails to disapprove the Title Commitment in writing within the time period set forth above, the Title Commitment shall be deemed approved and all matters therein shall be deemed Permitted Exceptions and Buyer shall proceed to Closing.

(iii) The Seller shall have obtained the release of the Subject Property from the lender, Bluestone Enterprises, Inc.'s deed of trust.

5.1 Satisfaction of Contingency. In the event any of the above contingencies are not satisfied on or before Closing, either Party may elect, by notifying the other Party in writing to cancel this Agreement and in such event this Agreement shall be terminated and of no further force and effect and neither Party shall have any further liability hereunder.

5. AS-IS, WHERE-IS. BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT SELLER IS SELLING AND BUYER IS PURCHASING THE SUBJECT PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT BUYER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM SELLER OR ITS AGENTS, AS TO ANY MATTERS CONCERNING THE SUBJECT PROPERTY. THOSE MATTERS ON WHICH NO RELIANCE IS INTENDED BY SELLER INCLUDE WITHOUT LIMITATION: (i) the quality, nature, adequacy and physical condition and aspect of the Subject Property, (ii) the quality, nature, adequacy, and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy, and physical condition of utilities serving the Subject Property, (iv) the Subject Property's use, merchantability, or fitness, suitability, value or adequacy for any particular purpose, (v) the zoning or other legal status of the Subject Property or any other public or private restrictions of any governmental or quasi-governmental entity or of any other person or entity, (vi) the presence of Hazardous Materials on, under or about the Subject Property or the adjoining or neighboring property, and (viii) the condition of title to the Subject Property. The terms and conditions of this section shall expressly survive the Closing.

6. INDEMNIFICATION. Seller agrees to indemnify, protect, defend and hold Buyer harmless from and against any damage to person or property, actions, claims, liabilities, costs, or expenses, including attorneys' fees, arising from or attributable to Seller's breach of this

Agreement or Seller's ownership of the Subject Property prior to the Closing. Buyer agrees to indemnify, protect, defend and hold Seller harmless from and against any damage to person or property, actions, claims, liabilities, costs, or expenses, including attorneys' fees, arising from or attributable to Buyer's breach of this Agreement or Buyer's ownership of the Subject Property subsequent to the Closing.

7. FURTHER INSTRUMENTS AND DOCUMENTS. Each Party shall, promptly upon the request of the other Party or Escrow Agent, acknowledge and deliver to the other Party or Escrow Agent any and all further instruments and assurances reasonably requested or appropriate to evidence or give effect to the provisions of this Agreement or to satisfy Escrow Agent's requirements.

8. EVENT OF DEFAULT/REMEDIES. In the event either Party fails to perform any term or condition of this Agreement when due (which is not the result of the other Party's action(s)), then before an event of default shall allow the non-defaulting Party to exercise its remedies, the following shall take place. The non-defaulting Party shall give the defaulting Party written notice of the default, and thereafter the defaulting Party shall have five (5) calendar days to cure the default. In the event the default is not cured within that timeframe, then the non-defaulting Party may pursue all rights and remedies available at law or equity.

9. NOTICES. Whenever any Party shall give notice pursuant to this Agreement, each such notice shall be in writing and shall be delivered personally, by overnight delivery service, by certified mail, return receipt requested, postage prepaid to the Parties at the addresses set forth on page one, or by email to the Buyer at: CLee@flagstaffaz.gov and to Seller at: cscully.orpheum@gmail.com with a copy to plb@smbattorneys.com. Any such notice of communication shall be deemed to have been received as of the date of delivery if hand-or courier-delivered or as of three (3) days after the date of mailing if mailed registered or certified mail, return receipt requested, postage prepaid. Any Party may change its notice address by providing notice thereof to the other Party as set forth above, to be effective three (3) calendar days after delivery.

10. ATTORNEYS FEES. In any action, proceeding (or any appeals from such actions), between Seller and Buyer arising out of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees, expert fees, and costs therein.

11. GOVERNING LAW. This Agreement shall be governed, enforced, and construed in accordance with the laws of Arizona.

12. SUCCESSORS AND ASSIGNS. All of the provisions hereof shall inure to the benefit of and be binding upon the heirs, successor and permitted assigns of Seller and Buyer. Buyer may nominate another Buyer or assign this Agreement without the prior written consent of the Seller.

13. MISCELLANEOUS. Neither Party has employed a broker or other realtor or person in connection with the sale and purchase of the Subject Property. Time is of the essence. Extension of time or waiver for performance of any act or obligation shall not be deemed an extension of time or waiver for any other act or obligation. All prior agreements between the Parties are incorporated in this Agreement, which constitutes the entire Agreement. The terms of this Agreement are intended by the Parties as a final, complete and exclusive expression of their agreement with respect to its subject matter and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. The captions in this Agreement are for convenience of reference only and are not intended as part of this Agreement. This

Agreement may not be extended, amended, modified, altered, or changed in any respect whatsoever except by a further agreement in writing executed by Buyer and Seller. If any provision of this Agreement is declared void or unenforceable, such provision shall be deemed severed from this Agreement, and this Agreement shall otherwise remain in full force and effect. Performance due on a weekend or holiday shall be due on the first business day thereafter.

14. CONSTRUCTION/INTERPRETATION. The captions and paragraph headings used in this Agreement are for convenience and reference only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement. When used herein, the terms "include" or "including" shall mean without limitation by reason of the enumeration. All grammatical usage herein shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the person or persons may require. The term "person" shall include an individual, corporation, partnership, trust, estate, or any other entity. "Days" means calendar days, unless specified otherwise in this Agreement. "Business Days" shall mean weekdays excluding holidays recognized by the Coconino County recorder's office. If the last day of any time period stated herein shall fall on a Saturday, Sunday, or legal holiday in the State of Arizona, then the duration of such time period shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday, or legal holiday in the State of Arizona.

15. RELATIONSHIP. This Agreement shall not be construed as creating a joint venture, partnership, or any other cooperative or joint arrangement between Buyer and Seller, and it shall be construed strictly in accordance with its terms.

16. AUTHORITY. Each person signing this Agreement represents that such person has full power and authority to bind that person's principal and that the designated Seller and Buyer have the full authority to enter into and perform this Agreement. Entering into this Agreement and the completion of the obligations pursuant to this Agreement does not violate any document governing the activity or authority of either Seller or Buyer.

17. COUNTERPARTS. This Agreement may be executed electronically, by facsimile, or in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

18. INCORPORATION. The Recitals and Exhibits are hereby incorporated as if fully set forth herein.

The Parties have executed this Agreement as of the date listed on page one.

SELLER:

Christopher M. Scully, as trustee of the Scully
and Sons Living Trust dated February 9, 2004

BUYER:

City of Flagstaff, a Municipal Corporation

By: _____
Coral Evans, Mayor

Approved as to form:
City Attorney for City of Flagstaff

Attest:

By: _____
Sterling Solomon

By: _____
City Clerk