

**AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY
AND ESCROW INSTRUCTIONS
APN: 449-335-25
817 N. Parkway Drive, Fresno, CA 93728**

This Agreement for Purchase and Sale of Real Property (Agreement) is entered into by and between Hemantkumar Patel (Seller) and the City of Fresno, a municipal corporation (City or Buyer).

RECITALS

- A. Seller is the owner of an approximately 0.84 acres of property located at 817 N. Parkway Drive (APN 449-335-25) in the City of Fresno.
- B. City desires to purchase Seller's property more particularly defined in Section 1 below (the Subject Property) for use as a temporary emergency shelter.
- C. City has been engaged in active negotiations with the Seller for the purchase and sale of the Subject Property.
- D. City now wishes to purchase from Seller and Seller now wishes to sell to City the Subject Property subject to the terms and conditions contained herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

- 1. **Subject Property.** The Subject Property known as APN 449-335-25 is situated at 817 N. Parkway Drive in the City of Fresno, County of Fresno, State of California, being approximately 0.84 acres, which includes fixtures and improvements located on the property and all rights, privileges, and appurtenances including any permits and easements. A legal description of the Subject property is described in Exhibit "A" and depicted on Exhibit "B", attached hereto, and incorporated herein by reference.
- 2. **Fee Title.** Seller shall grant the Subject Property to City in fee, free and clear of all liens, encumbrances, and restrictions of record.
- 3. **Purchase Price.** City shall pay Seller Two Million, Four Hundred Thirty Thousand Dollars (\$2,430,000) (the Purchase Price) for the Subject Property.
- 4. **Effective Date.** The Effective date of this Agreement shall be upon its duly authorized execution by the City.
- 5. **Right to Sell.** Seller represents and warrants that it holds fee title to the Subject Property, that such property is free of all liens and encumbrances, and that it has the authority to enter into this Agreement. Seller agrees to hold the City harmless and reimburse the City for any and all losses and expenses as to the Subject Property by reason of any change in ownership or lease of said Subject Property held by any tenant of the Seller.

6. **Seller's Intent to Exchange.** It is the intent of Seller to utilize this transaction as part of an exchange of like-kind property under Internal Revenue Code 1031 and the regulations promulgated thereunder. City and Seller agree to cooperate in effecting such an exchange, with the Seller's intent to use the Subject Property as part of an exchange for "Other Property", to be located and designated by Seller, who shall take all steps necessary to enter a contract to acquire such Other Property. Seller shall indemnify, defend, and hold harmless all other parties to this transaction from all liabilities and any additional attorney fees, accountant fees or any other costs arising from or connected in any way with the exchange. If Seller is unable to locate, designate, enter into a contract to acquire, or complete acquisition of such Other Property by the Close of Escrow in the Agreement, or as extended by mutual agreement, this transaction shall close escrow as a sale, without extension of time for closing. City shall not be required to take title to Other Property for any period of time, as an accommodation to Seller. The parties agree to take such actions and execute or consent to such additional documents and transactions as may be reasonably requested by Seller, provided that all other conditions of this Agreement are met.
7. **Escrow Instructions.** The sale shall be completed through an External Escrow to be opened at Fidelity National Title Company (Attn: Bernadette Watson, Escrow Officer). Said escrow shall be opened upon the following terms and conditions, and the Seller and City by their signature to this Agreement make this paragraph their escrow instructions:
- a. **Deposits.** The City shall deposit the sums specified in Paragraph 3 of this Agreement and the closing costs in escrow upon receipt of a demand and statement from said title company as follows:
- i. **Initial Deposit.** Within three days of the Effective Date of this Agreement, City shall deposit with Escrow Holder the sum of Twenty-Five Thousand Dollars (\$25,000) (the Initial Deposit). The Initial Deposit shall be applied to the Purchase Price at Close of Escrow.
- ii. **Balance of Purchase Price.** City shall pay the balance of the Purchase Price, less the Initial Deposit to Seller, in good funds through Escrow, not later than the close of business on the day before the Close of Escrow. Escrow Holder will forward to both City and Seller a separate accounting of all funds received and disbursed for each party, and copies of all signed and recorded documents deposited into Escrow, with the recording and filing date and information endorsed thereon.
- Payment of said sums, less Seller's cost to clear title, if any, may be made to Seller only when Escrow Holder possesses and is in a position to deliver to the City a fully executed and acknowledged and recorded deed to the Subject Property free and clear of all liens, encumbrances, and restrictions of record.
- b. **Feasibility Period.** City shall have the right to examine the feasibility of the Subject Property for a period of up to 60 days after the parties have

executed this Agreement (the Feasibility Period). City, in its sole and absolute discretion, shall have the authority to waive all, or any portion of the Feasibility Period at any time prior to expiration of the Feasibility Period by providing written notice to Escrow Holder and Seller.

- i. **Access.** City shall have the right to access the Subject Property, at all times following execution of this Agreement by the parties, for the purpose of conducting all studies, inspections, evaluations, tests, or surveys of the Subject Property that City elects to have performed, upon reasonable notice to Seller. City agrees to indemnify and hold Seller free and harmless from any and all liability, loss, cost, damage, or expense that Seller may sustain or incur by reason of or in connection with such entry, studies, inspections, evaluations, tests, or surveys conducted by City during the Feasibility Period. City agrees not to conduct any removal of underground tanks prior to close of escrow.
- ii. **Feasibility Package.** Seller shall deliver to City a feasibility package within fourteen days of execution of this Agreement. The following shall be included as due diligence in the package:
 1. Any documents relating to special assessment or bonds;
 2. All known current litigation affecting the Subject Property;
 3. All environmental reports;
 4. Copy of all fees paid;
 5. Updated title report and underlying title documents and surveys;
 6. Copy of the Subject Property appraisal report;
 7. All Plans and any history on repairs/maintenance;
 8. List of any and all existing and in-place vendor contracts/agreements (e.g. utilities, etc.);
 9. Any existing physical, environmental, soil, engineering, etc. studies and reports on the Property; and
 10. Any other documents or information related to the Subject Property that City shall require.
- iii. **Expiration of Feasibility Period.** If City has not given notice of termination and cancellation on or before the expiration of the Feasibility Period, the Initial Deposit shall be non-refundable and released and paid to Seller by Escrow Holder on the next business day immediately following the expiration of the Feasibility Period without need for further instructions, notice, or demand from either party.

- iv. **Termination and Cancellation of Agreement.** If City, in its sole and absolute discretion, decides to terminate and cancel this Agreement by timely delivery of a termination and cancellation notice on or before expiration of the Feasibility Period, then the entire Initial Deposit, and any accrued interest thereon, shall be immediately refunded to City by Escrow Holder without the need for further instruction, notice, or demand from either party.
- c. **Defects in Title.** The City reserves the right to accept title to the property interest to be acquired by City herein subject to certain defects in any or all matters of record title to the Subject Property. In consideration for Seller receiving the total sum as stated in Paragraph 3, the undersigned Seller covenants and agrees to indemnify and hold the City harmless from any and all claims and demands third parties may make or assert and causes of action third parties may bring which arise out of or are in connection with the foregoing defects in title to the Subject Property. The Seller's obligation herein to indemnify and hold harmless the City shall not exceed the amount paid to the Seller under specified in Paragraph 3.
- d. **Financial Liabilities.** It is understood that Seller shall be responsible for the payment of all taxes, penalties, redemptions, and costs allocable to the Subject Property.
- e. **Costs.** The parties shall each pay one half of the escrow fee; Seller shall provide City with a CLTA policy of title insurance; recording fees (if any) shall be as customary in Fresno County; all other closing costs shall be paid by the City; Sellers will pay any cost to convey the title to the Subject Property.
- f. **Disbursement.** Disbursements of the Purchase Price shall be in the amounts, at the times, and in all respects in accordance with the terms and conditions and subject to the limitations of this Agreement.
- g. **Close of Escrow.** Close of Escrow for the purchase and sale of the Subject Property shall occur on April 1, 2022. The following Conditions of Sale must be met prior to Close of Escrow:
 - i. City's approval of contents of preliminary title report and exceptions;
 - ii. City's approval of any engineering reports;
 - iii. No pending litigation against Subject Property and no notices of violation of law;
 - iv. City's approval of Preliminary title report;
 - v. City's approval of physical inspection of the Subject Property including but not limited to Phase 1 and Phase 2 environmental site assessment reports, as determined by the City;
 - vi. City's completion, approval, or waiver of the Feasibility Study;

- vii. Seller's delivery of the Subject Property at Close of Escrow to City without any tenants not previously approved in writing by the City Manager, or designee;
 - viii. Approval of this Agreement by the City Council of the City of Fresno prior to execution by City; and
 - ix. Escrow Holder is in possession of a good and sufficient grant deed, duly executed by Seller, in the form attached hereto as Exhibit C.
8. **Possession.** Sole and exclusive possession of the Subject Property shall be delivered to City on the Closing Date, free of all claims from Seller or any third persons under leases or otherwise.
9. **Commission.** At the Close of Escrow, and through escrow, Seller shall pay a brokerage commission to Seller's broker, Roger Story of Motel Hotel Specialists, pursuant to a separate agreement. City shall not incur or be responsible for any commission fees involving any commission fees earned upon Close of Escrow.
10. **Condition and Inspection of Subject Property.** Notwithstanding any other provision of this Agreement to the contrary, Seller has not expressly or impliedly made any representations, guaranties, promises, statements, assurances, or warranties of any kind concerning the Subject Property. Seller has not conducted any investigation regarding the condition of the Subject Property, and the Subject Property is sold as-is, where-is, with all faults, and there is no warranty, express or implied, regarding the condition of the Subject Property. City hereby represents and warrants that City is relying solely upon, and as of the expiration of the Feasibility Period will have conducted its own independent inspection, investigation, and analysis of the Subject Property as it deems necessary or appropriate in so acquiring the Subject Property from the Seller.
11. **Default and Remedies.**
- a. **City's Default.** IF CLOSE OF ESCROW SHALL FAIL TO OCCUR BECAUSE OF THE BUYER'S DEFAULT UNDER THIS AGREEMENT, SELLER'S SOLE AND EXCLUSIVE REMEDY SHALL BE TO RETAIN THE BUYER'S INITIAL DEPOSIT TOGETHER WITH ALL ACCRUED INTEREST THEREON. TO THE EXTENT THAT SELLER SUFFERS LOSS OF USE OF THE SUBJECT PROPERTY, THE CITY SHALL ADDITIONALLY COMPENSATE SELLER IN THE AMOUNT OF \$75,000 PER MONTH FOR THE PERIOD OF LOST USE, WHICH PERIOD MAY BE PRORATED ON A DAILY BASIS.
 - b. **Seller's Default.** IF THE CLOSE OF ESCROW SHALL FAIL TO OCCUR BECAUSE OF SELLER'S DEFAULT UNDER THIS AGREEMENT, CITY MAY (1) TERMINATE THIS AGREEMENT, IN WHICH EVENT THE ENTIRE INITIAL DEPOSIT PREVIOUSLY MADE BY CITY AND ALL OTHER FUNDS DEPOSITED BY CITY SHALL BE RETURNED TO CITY AND THE PARTIES SHALL THEREAFTER HAVE NO OBLIGATIONS UNDER THIS AGREEMENT OR ADDITIONAL LIABILITY TO ONE ANOTHER; (2) MAINTAIN THIS AGREEMENT IN EFFECT AND PURSUE

AN ACTION FOR SPECIFIC PERFORMANCE; OR (3) MAY PURSUE ANY OTHER REMEDIES THAT MAY EXIST IN LAW OR EQUITY, INCLUDING, BUT NOT LIMITED TO AN ACTION FOR DAMAGES.

12. **Notices.** All notices, demands, consents, requests or other communications required to or permitted to be given pursuant to this Agreement shall be in writing, shall be given only in accordance with the provisions of this Section, shall be addressed to the parties in the manner set forth below, and shall be conclusively deemed to have been properly delivered: (a) upon receipt when hand delivered during normal business hours (provided that, notices which are hand delivered shall not be effective unless the sending party obtains a signature of a person at such address that the notice has been received); (b) upon receipt when sent by facsimile if sent before 5:00 p.m. on a business day to the number set forth below with written confirmation of a successful transmission by the sender's facsimile machine; (c) upon the day of delivery if the notice has been deposited in an authorized receptacle of the United States Postal Service as first-class, registered or certified mail, postage prepaid, with a return receipt requested (provided that, the sender has in its possession the return receipt to prove actual delivery); or (d) one (1) business day after the notice has been deposited with either Golden State Overnight, FedEx or United Parcel Service to be delivered by overnight delivery (provided that, the sending party receives a confirmation of actual delivery from the courier). The addresses of the parties to receive notices are as follows:

TO SELLER:	Hemantkumar Patel c/o Roger Story Motel Hotel Specialists, Inc. 265 W. Fallbrook, Suite 102 Fresno, CA 93711
TO CITY:	CITY OF FRESNO Attention: City Manager 2600 Fresno Street Fresno, CA 93721 Telephone: (559) 621-8000
TO ESCROW HOLDER:	Fidelity National Title Company 7475 N. Palm Avenue, Suite 107 Fresno, California 93711 Attention: Bernadette Watson Telephone: (559) 261-8929 Facsimile: (559) 451-0701

Each party shall make an ordinary, good faith effort to ensure that it will accept or receive notices that are given in accordance with this Section, and that any person to be given notice receives such notice. If any notice is refused, the notice shall be deemed to have been delivered upon such refusal. Any notice delivered after

5:00 p.m. (recipient's time) or on a non-business day shall be deemed delivered on the next business day. A party may change or supplement the addresses given above, or designate additional addressees, for purposes of this Section by delivering to the other party written notice in the manner set forth above.

13. Miscellaneous Provisions:

- a. **Waiver.** The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provision of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.
- b. **Governing Law and Venue.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement any rights and duties hereunder shall be Fresno, California.
- c. **Headings.** The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify, or add to the interpretation or meaning of the provisions of this Agreement.
- d. **Severability.** The provisions of this Agreement are severable. The invalidity, or unenforceability or any one provision in this Agreement shall not affect the other provisions.
- e. **Interpretation.** The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against any party, but rather by construing the terms in accordance with their generally accepted meaning.
- f. **Attorney's Fees.** If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.
- g. **Precedence of Documents.** In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment.
- h. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

- i. **Exhibits and Attachments.** Each Exhibit and Attachment referenced herein is by such reference incorporated into and made a part of this Agreement for all purposes.
- j. **Non-Material Changes.** The City Manager of the City, or designee, may execute any supplemental escrow instructions and may make minor modifications to this Agreement, the exhibits, and the documents referenced herein, provided such modifications do not constitute a material change to this Agreement.
- k. **Extent of Agreement.** Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both the City and the Seller.

[SIGNATURES FOLLOW ON THE NEXT PAGE.]

