
**REAL PROPERTY PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS**

THE CITY OF FRESNO, a public body, corporate and politic ("Seller" or "City"), and MARC O' POLO ENTERPRISES, INC., a California corporation ("Buyer"), enter into this Real Property Purchase and Sale Agreement and Joint Escrow Instructions (the "Agreement"), effective as of the date that both the Buyer and Seller have executed it, including attestation by the Clerk ("Effective Date").

RECITALS

- A. City owns fee title to that certain real property on the southwest corner of N. Brawley and W. Herndon Avenues more particularly described as Assessors' Parcel Number 507-030-12ST located in Fresno, California and set forth in Exhibit-A attached hereto (the "Property").
- B. The Buyer has agreed to purchase the Property as-is.
- C. The Buyer desires to purchase the Property on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. **Purchase and Sale.** Seller will sell the Property to Buyer, and Buyer will purchase the Property from Seller on the terms and conditions set forth in this Agreement.
2. **Conditions Precedent.** Seller to provide the following items to Buyer within five calendar days of the Effective Date. Closing is contingent upon Buyer's review and approval of the following items within thirty calendar days from the formal opening date of Escrow, provided that Buyer may, in Buyer's sole discretion, elect to waive any such condition of Closing:
 - 2.1 Review of existing maintenance or property management contracts regarding the property, if any.
 - 2.2 Accurate parcel map depicting the area for the proposed corner parcel that will be developed as a Chevron gas/car wash/mini mart operation.
3. **Purchase Price.** The purchase price for the Property is One Million Seven Hundred Thousand Dollars (\$1,700,000) ("Purchase Price"). The Purchase Price, subject to adjustments provided in this Agreement (if any), will be paid by Buyer in cash or by wire transfer of immediately available funds at the Closing.

4. **As Is Sale.** Except as expressly provided in this Agreement, Buyer acknowledges that Seller makes no representations or warranties whatsoever, either express or implied, with respect to the physical condition of the Property, its present condition, or its fitness or suitability for any particular purpose, or with respect to any other matter whatsoever and, subject to the terms of this Agreement, BUYER CONFIRMS THAT IT IS PURCHASING THE PROPERTY IN ITS "AS IS" CONDITION AND IN RELIANCE UPON ITS OWN INVESTIGATION OF THE PRESENT CONDITION OF THE PROPERTY AND ALL GOVERNMENTAL LAWS AND ORDINANCES WHICH MIGHT AFFECT ITS USE AND DEVELOPMENT. Buyer shall perform and rely solely upon its own independent investigation concerning the Property and the Property's compliance with any applicable law. Buyer acknowledges that any and all documents, feasibility or marketing reports, environmental assessments, water tests, well reports, septic system reports, engineering studies and other information of any type that Buyer has received or may receive from Seller or its agents are furnished on the express condition that Buyer shall make an independent verification of the accuracy and/or completeness of any and all such information, AND ALL SUCH INFORMATION IS FURNISHED WITHOUT ANY WARRANTY WHATSOEVER. Buyer agrees that it will not attempt to assert any liability against Seller and/or its agents for furnishing such information, unless and to the extent Seller is aware that such information is incorrect. Buyer acknowledges that it is acquiring the Property subject to all existing law, ordinances, rules, regulation and covenants, and that (except as set forth herein) neither Seller nor any of Seller's agents or employees have made any warranties, representations or statements regarding any laws, ordinances, rules or regulations of any governmental or quasi-governmental body, entity, district or agency having authority with respect to the use, condition, or occupancy of the Property.

5. **Opening Escrow/Escrow Deposit.** Within three business days after the execution of this Agreement by both parties (including attestation by the City Clerk), the parties will open an escrow ("Escrow") with First American Title Company, Attn: Reba Starnes, 7010 North Palm Avenue, Fresno, California ("Title Company" or "Escrow Holder"), Attention: Reba Starnes, and Buyer shall deposit into Escrow the sum of Twenty-Five Thousand Dollars (\$25,000.00) ("Deposit") to be placed in an interest bearing account. Until 5:00p.m. Pacific Time on the last day of the Site investigation Period, the Deposit shall remain refundable to Buyer. Thereafter, the Deposit and all interest earned on said funds shall be credited against the Purchase Price at Close of Escrow or otherwise disbursed in accordance with the terms of this Agreement.

5.1 **Agreement as Joint Escrow Instructions.** This Agreement, when signed by Buyer and Seller and deposited into escrow with the Title Company, will be the parties' joint escrow instructions. Buyer and Seller will sign and deliver any other form instructions the Title Company may require that are consistent with this Agreement.

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- 5.2 **Deposits into Escrow.** Buyer and Seller will deposit all instruments, documents, money, and other items into escrow with the Title Company that (i) this Agreement identifies or (ii) the Title Company may require that are consistent with the terms and purposes of this Agreement, and necessary to Closing. Seller will deposit into the escrow with Title Company a recordable grant deed duly executed and acknowledged before a notary public, and accompanied by documentation reasonably necessary to establish the authority of any signatory executing such deed on behalf of Seller. All documents and other items to be delivered at the Closing shall be deemed to have been delivered simultaneously, and no delivery shall be effective until all such items have been delivered.
- 5.3 **Title.** Seller will convey title of the Property to Buyer free and clear of all title defects, liens, encumbrances, conditions, covenants, restrictions, leases or agreements, except those agreed to in writing by Buyer. If Buyer disapproves any exception to title and Seller elects not to remove such item, this Agreement shall terminate and the Deposit shall be refunded to Buyer unless Buyer elects to waive any disapproved exceptions prior to the Closing in which event any such disapproved exception which is waived shall be deemed approved by Buyer.
- 5.4 **Title and Closing Costs.** Seller will pay any costs of clearing and conveying title in the condition described in Section 5.3. Seller will pay the cost of a CLTA owner's title policy insuring Buyer's title in the condition described in Section 5.3. Escrow fees shall be split equally between Buyer and Seller. Seller shall pay any transfer taxes and recording fees for the grant deed. Any other expenses shall be allocated in accordance with Fresno County custom.
- 5.5 **Closing.** The escrow will be considered closed ("Closing" or "Close" or the "Closing Date") on the date that the Title Company records the grant deed. The escrow will be in condition to Close when all conditions to Close are satisfied or waived, Buyer has deposited the balance of the Purchase Price, the Title Company is prepared to issue the title policy described herein, and the Title Company is otherwise able to record the grant deed. Closing shall occur within 180 days from the date of Buyer's IRS Code 1031 Tax Deferred Exchange Escrow #1411008013-DB with Old Republic Title Company (Donna Brown) which closed & recorded on December 28, 2016 ("Outside Closing Date"). The exact Closing Date for the Property, to be supplied to all parties by the escrow holder. Escrow shall terminate if it does not Close by the Outside Closing Date. Upon termination of the Escrow, the Title Company will return all funds, including the Deposit, and documents to the respective depositor, less any termination fee if applicable, and this Agreement will be of no further effect except as herein provided.
- 5.6 **Recordation.** At Closing, Title Company shall date the grant deed, and

all other undated documents in escrow, with the date of Closing, and the Title Company shall record the grant deed and all other documents necessary to the Closing.

- 5.7 **Disbursements.** At Closing, Title Company shall disburse the Purchase Price, less Seller's costs to clear title (placing it in the condition set forth in Section 5.3), prorations, Broker's Fee set forth in Section 5.8, and other costs, if any, to Seller, when Title Company is committed to issue a standard CLTA owner's title insurance policy to Buyer insuring its fee title in the condition set forth in Section 5.3, above, for the Purchase Price or such lesser amount as Buyer may designate.
- 5.8 **Broker.** The parties represent and warrant that the Buyer is represented by Colliers Tingey International dba Colliers International ("Broker"), Bobby Fena SIOR, Senior Vice President/Principal (BRE#00590204), Cushman & Wakefield/Pacific Commercial Realty Advisors Tony Cortopassi, Senior Associate (BRE#01413706) and Gary Mathias, Senior Associate (BRE#00457234) exclusively represent the Seller in this sale transaction, and the parties hereby agree and consent to such agency representations. Seller agrees to pay a commission of 6% of the Purchase Price ("Broker's Fee") to Colliers International/Cushman & Wakefield by escrow, through escrow, and expressly conditioned upon Close of Escrow and Brokers agree to share said fee on an equal 50/50 basis. Other than the referenced Brokers, neither party has incurred any obligations for real estate commissions, finder's fees or any similar fees in connection with the transaction contemplated herein. If any other person asserts a claim for commission or finder's fees in connection with this transaction based upon contact or dealings with Buyer or Seller, the party through whom that person makes its claim will indemnify, hold harmless, and defend the other party from such claim and all expenses, including reasonable attorneys' fees, incurred by the other party in defending the claim. The execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate either of the parties hereto to, any person or entity not a party to this Agreement.
6. **Delivery of Possession.** Seller shall deliver exclusive possession of the Property at Closing.
7. **Approval Periods.**
- 7.1 **Title Matters.** Within five days after the Effective Date, Seller shall furnish to Buyer, at Seller's expense, a preliminary title report and binder on the Property, copies of all matters of record disclosed in the title report including exceptions, conditions, covenants and restrictions affecting the Property ("Title Commitment").
- 7.2 **Site Investigation Period.** Buyer shall have ninety days after the Effective Date to enter upon the Property and investigate whether, in Buyer's sole discretion, the Property is suitable for Buyer's intended purpose. The investigation may include, without limitations, soil

conditions, environmental, engineering, surveys, land use, utility and other studies. Any such entry shall be at Buyer's expense and risk, shall not constitute a taking of possession and Buyer shall return each test location to substantially its original condition. Buyer shall use commercially reasonable care and consideration in connection with any of its inspections and shall defend, indemnify and hold Seller and the Property harmless from any and all damage to the extent arising out of or resulting from the activities of Buyer and/or its agents in connection with such entry and/or activities on or about the Property. This indemnity shall survive termination of this Agreement and Close of Escrow. Should Buyer determine that the Property is not suitable, Buyer shall provide written notice of same to Escrow Holder on or before the end of the Site Investigation Period and the Deposit shall then be promptly returned to Buyer and this Agreement shall be terminated with no further obligations to either party. After expiration of the initial Site Investigation Period, the earnest money deposit shall become non-refundable (except in the event of Seller default) and applicable to the Purchase Price.

7.3 **Access to Property.** Between the date hereof and execution of the Agreement, Buyer and its agent, engineers, consultants and representatives (collectively the Buyer's Agents) shall have the right to enter upon the Property, following 24 hours' notice to Seller, for the purpose of performing reasonable non-destructive inspections and tests of the Property and make investigations with regard to zoning, building code and other legal requirements.

8. **1031 Exchange.** Buyer and/or Seller may elect to consummate the transaction as a simultaneous or non-simultaneous like-kind exchange pursuant to Section 1031 of the Code and requiring Buyer and/or Seller to cooperate with Buyer and/or Seller (by executing such documents and taking such actions as may be reasonably necessary) to effectuate the transaction as a like-kind exchange. Buyer and/or Seller is to be at no cost or expense in the exchange and shall not be required to take title to any other property, nor is the Close of Escrow to be delayed, due to Buyer and/or Seller's exercise of this provision. It is further clarified and agreed that this Purchase & Sale Agreement shall be subject to and contingent upon the Close of Escrow of Buyer's Exchange Property as previously described in Section 5.5.

9. **Miscellaneous Provisions.**

9.1 **Further Assurances.** Each party will sign and deliver further documents, or take any further actions required to complete the purchase and sale described herein.

9.2 **Notices.** All notices and other communications required or permitted under this Agreement shall be in writing and shall be deemed delivered: (a) on the date of service if served personally on the person to receive the notice, (b) on the date deposited in the U.S. mail, if delivered by depositing the notice or communication in the U. S. mail, postage prepaid, and

addressed to the relevant party at the address set forth below, (c) on the date of transmission if delivered by facsimile, to the number provided below, that provides a transmission confirmation showing the date and time transmitted, or (d) on the date of transmission if delivered electronically via email and showing the date and time transmitted.

To Seller:

THE CITY OF FRESNO
Attention: City Manager
2600 Fresno Street
Fresno, CA 93721
Phone No.: (559) 621-7784
Fax No.: (559) 621-7776

To Buyer:

MARC O' POLO ENTERPRISES, INC.
Attn: Armen Basmajian
7471 North Remington Avenue, Suite 100
Fresno, California 93711
Phone No.: (559) 449-0300
Fax No.: (559) 449-0965

With a Copy to:

A. Emory Wishon III
Motschieder, Michaelides, Wishon, Brewer & Ryan, LLP
1690 West Shaw Avenue, Suite 200
Fresno, California 93711
Phone No.: (559) 439-4000
Fax No.: (559)439-5654

- 9.3 **Entire Agreement.** Each Exhibit referred to in this Agreement is by that reference incorporated into and made a part of this Agreement. This Agreement is the entire agreement between the parties regarding the purchase and sale of the Property, and supersedes all prior discussions, negotiations, commitments or understanding, written or oral.
- 9.4 **Amendment or Cancellation.** Buyer and Seller may amend or cancel this Agreement only by mutual written consent of the parties, unless otherwise expressly provided herein.
- 9.5 **Successors and Assigns.** This Agreement is binding upon and shall inure to the benefit of each party, and each party's heirs, successors, assigns, transferees, agents, employees or representatives. The Buyer may assign this agreement and its rights hereunder without the consent of Seller.
- 9.6 **Time of the Essence.** Time is of the essence of each term in this Agreement.

- 9.7 **Attorneys' Fees.** If any party to this Agreement or the Title Company begins any action, proceeding, or arbitration arising out of this Agreement, then as between Buyer and Seller, the prevailing party shall be entitled to receive from the other party, besides any other relief that may be granted, its reasonable attorneys' fees, costs, and expenses incurred in the action, proceeding, or arbitration.
- 9.8 **Governing Law.** This Agreement and the legal relations between the parties shall be governed by and construed according to California law. Venue for the filing of any action to enforce or interpret this Agreement or any rights and duties hereunder shall be in Fresno, California.
- 9.9 **Headings.** The section headings in this Agreement are for convenience only. The headings are not part of this Agreement and shall not be used to construe it.
- 9.10 **Waiver.** If Buyer or Seller waives a breach of any provision herein, the waiver will not be a continuing waiver. The waiver will not constitute a waiver of any subsequent breach, or a waiver of a breach of any other provision hereof.
- 9.11 **Severability.** The provisions of this Agreement are severable. The invalidity or unenforceability of any provision in this Agreement will not affect the other provisions.
- 9.12 **Interpretation.** This Agreement is the result of the combined efforts of the parties. If any provision of this Agreement is found ambiguous, the ambiguity will not be resolved by construing this Agreement in favor or against any party, but by construing the terms according to their generally accepted meaning.
- 9.13 **Precedence of documents.** If any conflict exists between the body of this Agreement and any Exhibit or Attachment to it, the provisions of the body of this Agreement will control and take precedence over the Exhibit or Attachment.
- 9.14 **Counterparts.** This Agreement may be executed in counterparts, each of which when executed and delivered will be deemed an original, and all of which together will constitute one instrument. Facsimile or electronic copy signatures shall be deemed as valid and binding as original signatures.
- 9.15 **Survival.** All representations and warranties, indemnifications, and other provisions which, by their nature are intended to continue, shall survive Closing and delivery of the grant deed.

IN WITNESS WHEREOF the Seller and Buyer have signed this Agreement on the dates set forth below.

BUYER:

MARC O' POLO ENTERPRISES, INC.
a California corporation

By: 
Armen Basmajian, President

Dated: 1/5/17, 2017

SELLER:

CITY OF FRESNO,
a municipal corporation

By: _____
Bruce Rudd, City Manager

Dated: _____, 2017

The City of Fresno has signed this Agreement pursuant to authority granted on _____, 2017.

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By _____
Deputy

Dated: _____, 2017

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By 
Laurie Avedisian-Favini, Assistant

Dated: 1/5, 2017

Attachments:

Exhibit A: Legal Description