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

The City of Lemoore, a public body, corporate and politic ("Seller"), and Richard Gress and Carolyn Gress, husband and wife, (collectively, "Buyer") enter this Agreement, effective as July ____, 2004 (the "Effective Date").

RECITALS :

- A. Seller owns certain real property within the County of Kings, City of Lemoore, more particularly described on Exhibit "A" (the "Property") and as follows: APN No. 024-052-078 and APN No. 024-052-079.
- B. Buyer wants to purchase the Property for development and use as a vehicle storage facility, and Seller is willing to sell the Property to Buyer, on the terms and conditions set forth in this Agreement:

AGREEMENT:

- 1. **Purchase and Sale.** Seller will sell the Property to Buyer, and Buyer will purchase the Property from Seller.
- 2. **Conditions Precedent.** Escrow Closing and Buyer's obligation to purchase the Property are subject to the satisfaction of the following conditions precedent. The conditions are solely for Buyer's benefit unless otherwise indicated. Each condition must be satisfied or Buyer must waive it in writing within the time provided. If no time is stated, then the condition must be satisfied within a reasonable time. If any condition is not timely satisfied, Buyer may waive the condition and close escrow, or it may terminate this Agreement by giving Seller and the Title Company (defined below) 10 days written notice. After expiration of the 10 days, this Agreement and any escrow will terminate. In that event, the Title Company will return any documents and money deposited into escrow to the depositor, after deducting any escrow cancellation fee, and Buyer will have no further obligation to Seller.
 - 2.1 **Buyer's right to enter property.** Seller grants Buyer, or Buyer's agents, the right, upon 24 hours notice, to enter onto the Property and conduct tests or investigations, if all the following occur: (a) Buyer conducts tests or

investigations at its sole cost and expense, (b) the tests or investigations do not unreasonably interfere with Seller's possession, (c) Buyer indemnifies and holds Seller harmless from any costs or liability resulting from the tests or investigations and, if the escrow is canceled for a reason that is not the fault of Seller, for any damage to the Property resulting from conducting the tests or investigations.

- 2.2 **Other.** Seller shall not enter into or authorize any new lease or sublease any portion of the Property during the escrow period.
3. **Purchase Price.** The purchase price for the Property is \$75,000 (\$16,269/acre). Buyer will pay a good faith deposit of \$10,000 in escrow upon opening of escrow. Deposit is non-refundable unless City fails to perform the terms of this agreement. Buyer will pay the balance of the purchase price in full, one year from the close of escrow, pursuant to the terms of a promissory note, secured by a first position deed of trust, in the form attached herewith as Exhibit "B" which will be delivered in fully executed form into the escrow in time to meet the Title Company's requirements for immediate Closing.
4. **Use of the Property.** (a) By letter of June 12, 2004, Buyer has represented to Seller that the intended use of the Property is for the development of not less than eight 4,000 square foot metal buildings to be leased or rented for vehicle or other storage purposes, construction to begin within one year after the close of escrow for phase I (four buildings) and two years after the completion of Phase I for phase II (four additional buildings). Phase I shall be completed by July 1, 2006. Buyer has also represented that the Property will be used as the place for storage of roll-off containers and vehicles associated with Buyers company - Tule Trash Company, (the "Project"). Seller has agreed to sell the Property to Buyer on the basis of these representations and Buyer is hereby obligated to own, operate and develop the Property and the Project in accordance therewith.
- (b) Nothing herein shall relieve Buyer of its obligations to (i) apply for such approvals as may be necessary under the Lemoore Municipal Code for said proposed uses of the Property and for the development of the Project, (ii) pay such fees and charges, including but not limited to development impact fees, as are normally charged by the City for such uses and for the development of the Project and (iii) own, operate and maintain the Property and the Project continuously in a neat, clean, presentable and odor-free condition and in accordance with all applicable City, County, State and Federal rules, laws and policies.

(c) To avoid speculation in connection with the sale of the Property by Seller to Buyer and Buyers' subsequent use thereof, the parties agree that, unless approved in writing by the Seller upon a showing of good cause, the Buyer shall not sell or contract to sell the Property until the Project is fully built and complete and a certificate of occupancy therefore has been issued by the City of Lemoore building official.

(d) Any breach of Buyers' obligations and duties under this paragraph 4 shall constitute an event of default under this Agreement and, at Sellers option, shall result in a reversion of the Property to the Seller. Seller's rights under this paragraph 4 shall be deemed a "Power of Termination" under sections 885.010 through 885.060 of the California Civil Code and shall be exercised and enforced as provided therein.

(e) The duties and rights and obligations of the parties under this paragraph 4 shall survive the close of escrow and shall bind their heirs, successors and assigns.

5. **Seller's Warranties.** The Buyer shall take the Site on an "as is" basis and shall be solely responsible for investigating and determining whether the Site is suitable for development, use and operation of the Project and for any other purposes of the Buyer. In addition to and without limitation on implied warranties arising from conveyance by grant deed, Seller represents and warrants that: (a) Seller owns the Property, free and clear of all liens, licenses, claims, encumbrances, easements, encroachments on the Property from adjacent properties, encroachments from the Property onto adjacent properties, and any rights of way, other than those disclosed by the public record; (b) Seller has no knowledge of any pending litigation involving the Property, (c) Seller has no knowledge of any violations of, or notices concerning defects or noncompliance with, any code, statute, regulation, ordinance, judicial order, or judicial holding concerning the Property; and (d) Seller has no knowledge of any material defects in the Property or the presence of any hazardous substances or materials (as now or hereafter defined in any law, regulation, or rule) in, on, or about the Property. Without limiting the foregoing, THE SELLER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY OR FITNESS FOR PARTICULAR USE OR PURPOSE OF ANY PORTION OF THE SITE. These warranties shall survive the Closing and the recording of the grant deed.

6. **Opening Escrow.** Within ten days after the Effective Date of this Agreement (defined above), the parties will open an escrow with Chicago Title Company, 449 W. "D" Street, Suite B, Lemoore, California, Attention: Mary Ann Sarratt.

- 6.1 **Agreement as joint escrow instructions.** This Agreement, when signed by both parties and deposited with the Title Company will be the initial joint escrow instructions of both. Buyer and Seller will sign any other form instructions required by the Title Company to complete this transaction and close escrow.
- 6.2 **Deposits into escrow.** Buyer and Seller will deposit all instruments, documents, money, and other items with the Title Company that are (i) identified in this Agreement or (ii) required by the Title Company to effect the Closing on the date specified below. Seller will deposit a recordable grant deed after the Effective Date. And before the closing.
- 6.3 **Title.** Seller will convey title of the Property to Buyer free and clear of all title defects, liens, encumbrances, conditions, covenants, restrictions, and other adverse interests of record or known to Seller, subject only to title exceptions approved by the Buyer, in a preliminary report issued by the Title Company after the Effective Date.
- 6.4 **Title and closing costs.** Seller will pay any costs of clearing and conveying title in the condition described in Section 6.3, above. Seller will pay the costs of a CLTA owner's title policy insuring Buyer's title in the condition described in Section 6.3. Seller and Buyer will each pay one-half the escrow fees, and the costs to record the grant deed including all notary fees, transfer taxes, and deed preparation. Buyer and Seller will pay any other costs according to the custom in Kings County.
- 6.5 **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 any conditions to close are satisfied or waived, the Title Company is prepared to issue the title policy described herein, and the Title Company is otherwise able to record the grant deed. The escrow will continue in effect until Closing unless Buyer or Seller gives a 30-day written demand to terminate the escrow. If Seller demands that escrow terminate, then Buyer, within the 60 days, may either (a) deposit the purchase price into escrow, in which case the Title Company will Close escrow, or, (b) agree to the demand, in which case the Title Company will terminate the escrow and return all funds and all documents, less any escrow termination fee, and this Agreement will be of no further effect except as herein provided. Escrow shall close on or before September 30, 2004.

- 6.6 **Disbursements.** At Closing, the Title Company shall disburse the cash portion of the purchase price, less Seller's costs to clear title, prorations and other costs, if any, to Seller, but only when the Title Company is prepared to issue a standard CLTA owner's title insurance policy to Buyer insuring its fee title in the condition set forth in Section 6.3, above, for the purchase price or other lesser amount that Buyer designates.
- 6.7 **Prorations.** The Title Company will prorate the following between Seller and Buyer as of the Closing Date, based on a 30-day month: real property taxes, special assessments, and rents, if any.
- 6.8 **Risk of loss.** Any loss or damage to the Property or any improvements on it before Closing is at Seller's risk. Following the Closing, Buyer will insure all structures and personal property owned or used by Buyer against loss or damage.
- 6.9 **Broker.** Seller has not engaged a broker or real estate agent for this transaction. Buyer has not engaged a broker or real estate agent for this transaction.

7. **Delivery of Possession.** Seller shall deliver possession at Closing.

8. **Miscellaneous Provisions.**

- 8.1 **Further assurances.** Each party will sign and deliver further documents and take any further actions required to complete the purchase and sale described herein.
- 8.2 **Notices.** All notices and other communications required or permitted under this Agreement shall be in writing and duly given on the date of service, if (a) served personally on the person to receive the notice, (b) 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, or (c) by facsimile that provides a transmission confirmation showing the date and time transmitted.

To Seller:

City of Lemoore
210 Fox Street
Lemoore, CA 93245
Attn: City Manager

To Buyer:

Richard and Carolyn Gress
P.O. Box 288
Pixley, CA 93256

- 8.3 **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.
- 8.4 **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.
- 8.5 **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.
- 8.6 **Time of the essence.** Time is of the essence of each term in this Agreement.
- 8.7 **Attorneys' fees.** If either party 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.
- 8.8 **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 Kings County, California.
- 8.9 **Headings.** The section headings in this Agreement are for convenience only. They are not part of this Agreement and shall not be used to construe it.
- 8.10 **Waiver.** Any party's waiver of a breach of any provision herein will not be a continuing waiver or a waiver of any subsequent breach of that or any other provision of this Agreement.
- 8.11 **Severability.** The provisions of this Agreement are severable. The invalidity or unenforceability of any provision in this Agreement will not affect the other provisions.

- 8.12 **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.
- 8.13 **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.
- 8.14 **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.

BUYER:

SELLER: City of Lemoore

By _____
Richard Gress

By _____
City Manager

By _____
Carolyn Gress

All signatures must be notarized