

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement ("Agreement") is made and entered into this _____ day of _____, 2022 by and between the City of Douglas, an Arizona municipal corporation ("Seller") and Byrd's Sheet Metal and Construction, Inc., an Arizona corporation (the "Buyer"), on the following terms and conditions:

1. Sale and Purchase. Seller agrees to sell and Buyer agrees to purchase that certain real property consisting of approximately .54 acres located on the southwest corner of 15th Street and Van Buren Avenue, Douglas, Cochise County, Arizona, Assessor's Parcel No. 410-32-121, legally described on Exhibit A attached hereto, together with all rights and easements appurtenant thereto (the "Property").

2. Restriction on Property. Buyer acknowledges and agrees that the Property is being sold to Buyer on the condition that the Property shall not be split and Buyer will construct a single family home on the Property. This provision shall survive the Close of Escrow.

3. Escrow; Title Insurance.

3.01 Escrow. Buyer shall set up escrow with a title company ("Escrow Agent") of Buyer's choice to receive the Down Payment (defined in Section 4.01(a)) and to handle the closing of this transaction.

3.02 Title Insurance. Buyer and Seller acknowledge and agree that there shall be no title insurance provided for this transaction. Buyer may elect, at Buyer sole cost and expense, to obtain title insurance.

Buyer's Initials: _____ **Seller's Initials:** _____

4. Purchase Price. The purchase price ("Purchase Price") that Buyer agrees to pay Seller for the Property shall be the sum of Fifty-Six Thousand Five Hundred and No/100 Dollars (\$56,500.00). The Purchase Price shall be paid as follows:

(a) Within five (5) days after the execution of this Agreement by Buyer and Seller ("Opening Date"), Buyer shall deposit with the Escrow Agent the sum of Five Thousand and No/100 Dollars (\$5,000.00) as down payment ("Down Payment") on the Purchase Price. If the transaction contemplated hereby is consummated in accordance with the terms and provisions hereof, the Down Payment shall be applied towards the Purchase Price at Closing.

(b) The balance of the Purchase Price shall be paid in cash or immediately available funds ("Cash Payment"), on or before the Close of Escrow.

5. Closing. The closing of this transaction (the "Closing" or "Close of Escrow") shall occur within sixty (60) days after the Opening Date unless an extension is otherwise agreed to in writing by Seller. If the Closing is delayed as a result, directly or indirectly, of Buyer's actions or inactions, and not by any action on the part of the City, the City may grant an extension and require Buyer to pay either (a) a liquidated damages assessment of \$200 per day for each day the

Closing is extended; or (b) interest on the balance of the Purchase Price, whichever is greater. Interest shall be computed based on the yield of a 10-year United States Treasury maturities as reported by the Federal Reserve Board in Federal Reserve Statistical Release H.15 plus 1 ½ % rounded to the nearest 1/8% as of the date of this Agreement. Seller may impose additional terms and conditions to grant an extension of Closing.

6. Preliminary Due Diligence; Examination of Property

6.01 Within five (5) business days after execution of this Agreement, or as soon thereafter as reasonably possible, Seller shall provide to Buyer the following information (the "Property Information"), to the extent the Property Information is in the Seller's actual possession or control: a survey including existing public reports, cross-access easements, drainage easements, ditch easements and/or utility easements/agreements, title report, flood zone status/Elevation Certificate, proof of legal access, septic system reports and permits, well documentation and water rights, Phase 1 report or any other environmental studies or approvals related to current or past operations on the Property of which the Seller has knowledge, soil and archeological studies, tax information, Seller's Property Disclosure Statement, and other information Seller may have in its possession concerning the Property ("Preliminary Items of Due Diligence").

The Seller makes no representation or warranty whatsoever regarding the Property Information, except that the Seller has no actual knowledge of any incorrect information contained therein (and such representation is made without investigation or review by the Seller of the Property Information). The Seller nor any of its council members, employees, attorneys, engineers, agents or representatives shall be deemed to make or have made any representation or warranty as to the adequacy, validity, accuracy, fitness for a particular purpose or completeness of the Property Information, and neither Seller nor any of its council members, employees, attorneys, engineers, agents or representatives shall have any liability resulting from the use of or reliance on the Property Information. If this transaction does not close for any reason, Buyer shall not use any Property Information provided to Buyer and shall return the same and any copies thereof to the Seller.

6.02 Examination of Property.

(a) Upon making prior arrangements with the Seller, Buyer, its agents or employees may enter upon the Property for the purposes of inspecting the Property, conducting environmental, soil, engineering, structural and other tests as Buyer may deem necessary. Buyer shall restore the affected portion of the Property to its condition prior to the performance of such studies or inspections. Buyer agrees to indemnify, defend and hold the Seller harmless for, from and against any liability and/or damages caused by Buyer in exercising the foregoing license (unless arising from Seller's gross negligence or willful misconduct), including, but not limited to any and all costs, expenses and attorneys' fees, through all mediation, arbitration, trial and appellate proceedings, and agrees that this obligation to indemnify shall survive any termination of this Agreement and the Closing. All expenses incurred in connection with the exercise of such license by Buyer shall be the responsibility of Buyer.

(b) Notwithstanding any provisions to the contrary, Buyer may terminate this Agreement for any reason, by either delivering written notice of such termination to Seller on or before last day of the Feasibility Period. The period between the Opening Date and the date that is thirty (30) days thereafter shall be the "Feasibility Period." If Buyer elects to terminate this Agreement on or before the expiration of the Feasibility Period, the Down Payment shall be returned to Buyer and neither party shall have any further rights or obligations hereunder except for those rights and obligations that survive termination of this Agreement or the Close of Escrow as provided in this Agreement.

7. "AS IS". Buyer acknowledges and agrees that upon Closing, Seller shall sell and convey the Property to Buyer and Buyer shall accept the Property **"AS IS, WHERE IS, WITH ALL FAULTS,"** except to the extent expressly provided otherwise in this Agreement. Except as expressly set forth in this Agreement or any document executed by Seller and delivered to Buyer at Closing, Buyer has not relied and will not rely on, and Seller has not made and is not liable for or bound by, any express or implied warranties, guarantees, statements, representations or information pertaining to the Property or relating thereto (including specifically, without limitation, the Property information packages distributed with respect to the Property) made or furnished by Seller, or any property manager, real estate broker, agent or third party representing or purporting to represent Seller, to whomever made or given, directly or indirectly, orally or in writing. Buyer represents that it is a knowledgeable, experienced and sophisticated Buyer of real estate and that, except as expressly set forth in this Agreement, it is relying solely on its own expertise and that of Buyer's consultants in purchasing the Property and shall make an independent verification of the accuracy of any documents and information provided by Seller. Buyer will conduct such inspections and investigations of the Property as Buyer deems necessary, including, but not limited to, the physical and environmental conditions thereof, and shall rely upon same. By failing to terminate this Agreement prior to the expiration of the Feasibility Period, Buyer acknowledges that Seller has afforded Buyer a full opportunity to conduct such investigations of the Property as Buyer deemed necessary to satisfy itself as to the condition of the Property and the existence or non-existence or curative action to be taken with respect to any Hazardous Materials on or discharged from the Property, and will rely solely upon same and not upon any information provided by or on behalf of Seller or its agents or employees with respect thereto, other than such representations, warranties and covenants of Seller as are expressly set forth in this Agreement. Upon Closing, Buyer shall assume the risk that adverse matters, including, but not limited to, adverse physical or construction defects or adverse environmental, health or safety conditions, may not have been revealed by Buyer's inspections and investigations. Buyer hereby represents and warrants to Seller that Buyer is represented by legal counsel in connection with the transaction contemplated by this Agreement, or Buyer has waived its right to have legal counsel represent Buyer in this transaction. Buyer waives any and all rights or remedies it may have or be entitled to, deriving from disparity in size or from any significant disparate bargaining position in relation to Seller.

8. Remedies.

8.01 Seller's Remedies. In the event Buyer fails to perform its obligations pursuant to this Agreement for any reason except due to the Seller's default or failure to perform

its obligations hereunder, the Seller shall be entitled as its sole remedy to terminate this Agreement and retain the Down Payment. Nothing in this Section shall limit the Seller's right to recover attorneys' fees under Section 8.03 below.

8.02 Buyer's Remedies. If the Seller fails to perform any of its obligations under this Agreement prior to the Closing for any reason other than the default of Buyer or the termination of this Agreement (and such failure continues for a period of ten (10) days following written notice to the Seller), as Buyer's sole and exclusive remedy, Buyer may elect to: (i) waive the default and proceed to close this transaction; or (ii) pursue specific performance of this Agreement. As a condition precedent to Buyer's right to pursue specific performance under section (ii) above, Buyer shall (a) not be in default under this Agreement; and (b) file suit therefore in the Superior Court of Arizona in Cochise County, Arizona on or before 5:00 pm MST on or before the date that is sixty (60) business days immediately following the scheduled Closing Date. Nothing in this Section shall limit Buyer's right to recover attorneys' fees under Section 8.03 below.

8.03 Attorneys' Fees. In the event either party hereto is required to employ an attorney because of the other party's default, then the defaulting party shall pay the non-defaulting party's reasonable attorneys' fees incurred in the enforcement of this Agreement.

8.04 Waiver. Seller and Buyer waive the right to pursue consequential or punitive damages against the other.

9. Conditions Precedent to Seller's Obligations. The obligations of Seller under this Agreement are subject to the satisfaction, on or prior to the Closing, of the following conditions, all or any of which may be waived in writing by the Seller:

(a) All representations and warranties made by Buyer in this Agreement and in any written statements delivered to the Seller by Buyer under this Agreement shall be true and correct as of the Closing.

(b) Buyer shall have performed and complied with all obligations of Buyer required by this Agreement to be performed or complied with by Buyer on or prior to the Closing.

(c) All documents required to be delivered by Buyer on or prior to the Closing shall have been properly executed by Buyer and delivered to the Seller in form and substance reasonably satisfactory to Seller.

10. Conditions Precedent to Buyer's Obligations. The obligations of Buyer under this Agreement are subject to the satisfaction, on or prior to the Closing, of the following conditions, all or any of which may be waived in writing by Buyer:

(a) Seller shall convey all right, title and interest in the Property, free and clear of all encumbrances.

(b) Seller shall have performed and complied with all obligations of Seller required by this Agreement to be performed or complied with by Seller on or prior to the Closing.

(c) All documents required to be delivered by Seller on or prior to the Closing shall have been properly executed by Seller and delivered to the Buyer in form and substance reasonably satisfactory to Buyer.

11. Closing.

11.01 Closing Matters.

(a) At Closing, the Seller shall execute, deliver and acknowledge the following documents:

(i) A quit claim deed ("Deed") conveying the Property to Buyer;

(ii) An affidavit, signed and acknowledged by the Seller under penalties of perjury, certifying that the Seller is not a nonresident alien, foreign corporation, foreign partnership, foreign trust, foreign estate, or other foreign person within the meaning of Section 1445 and Section 7701 of the Internal Revenue Code of 1986 and the associated Treasury Regulations;

(iii) An affidavit of property value as required by law; and

(iv) Such other documents as are reasonably necessary to close and consummate the purchase and sale transaction contemplated by this Agreement.

(b) At Closing, Buyer shall:

(i) Deliver the Cash Payment to Seller;

(ii) Execute and deliver an affidavit of property value as required by law;

(iii) Execute and deliver such other documents as are reasonably necessary to close and consummate the purchase and sale transaction contemplated by this Agreement.

(c) Possession of the Property shall be delivered to Buyer at Closing.

11.02 Taxes. Buyer shall be responsible for all taxes (real and personal), fees and assessments as of and after the date of the Closing.

11.03 Closing Costs. All closing costs, including recording, escrow and financing fees, will be paid by Buyer. Except as otherwise provided in Section 8.03, each party shall be responsible for the payment of its own attorneys' fees incurred in connection with the transaction, which is the subject of this Agreement.

11.04 Commissions. Neither Seller nor Buyer have retained or engaged a real estate broker, commission agent or any other person who is or may be entitled to payment of a

commission or finder's fee or other compensation in connection with the transaction contemplated by this Agreement. Seller and Buyer shall indemnify, hold harmless and defend the other, its successors and assigns for, from and against any and all claims, demands, actions, costs and expenses, including reasonable attorney and accounting fees and court costs arising out of any claim by any real estate broker or other person claiming through the indemnifying party that such person is entitled to any commission or fee in connection with this transaction. The provisions of this Section 11.04 shall survive the Closing.

12. Condemnation and Risk of Loss.

12.01 Condemnation. If, prior to Closing, any governmental authority, other than Seller, or other entity having condemnation authority shall institute an eminent domain proceeding or take any steps preliminary thereto (including the giving of any direct or indirect notice of intent to institute such proceedings) with regard to the Property, and the same is not dismissed on or before ten (10) days prior to Closing, Buyer shall be entitled either to terminate this Agreement upon written notice to Seller or to waive such right of termination and receive all such condemnation proceeds. In the event Buyer elects to terminate this Agreement under this Section 12.01, the Down Payment shall be returned to Buyer neither party to this Agreement shall thereafter have any further rights or obligations hereunder except for those rights and obligations that survive termination of this Agreement or the Closing as provided in this Agreement.

12.02 Risk of Loss. The risk of loss or damage to the Property and all liability to third persons until the Closing shall be borne by the Seller. Buyer shall assume all risks of loss or damage to the Property and all liability to third persons upon the Closing.

13. Miscellaneous.

13.01 Notices. Any and all notices, demands or requests required or permitted hereunder shall be in writing and shall be effective upon personal delivery or facsimile transmission (facsimile transmission must include verification of transmission) or one (1) business day after being deposited with any commercial air courier or express service providing next day delivery, addressed as follows:

To the Seller: City of Douglas
Attn: Ana Urquijo, City Manager
425 E. 10th Street
Douglas, AZ 85607
Email: ana.urquijo@douglasaz.gov

With copy to: Denis M. Fitzgibbons, City Attorney
Fitzgibbons Law Offices, P.L.C.
1115 E. Cottonwood Lane, Suite 150
P.O. Box 11208
Casa Grande, Arizona 85130-0148
Email: denis@fitzgibbonslaw.com

To Buyer: Byrd's Sheet Metal and Construction, Inc.
420 E. 12th Street
Douglas, AZ 85607
Attn: Ricky Byrd
Email: byrdscontraction@outlook.com

Buyer or Seller may change its address for notice by giving notice in the manner provided above. The inability to deliver because of a changed address of which no notice was given, or rejection or other refusal to accept any notice, shall be deemed to be the receipt of the notice as of the date of such inability to deliver or rejection or refusal to accept. Any telephone numbers or e-mail addresses provided in this Agreement are for aiding informal communications only, and notices shall not be effective if provided orally or if sent only by e-mail.

13.02 Time of the Essence; Date of Performance. Time is of the essence of this Agreement, and Buyer and Seller hereby agree to perform each and every obligation hereunder in a prompt and timely manner; provided, however, that if the date for the performance of any action or the giving of any notice which is required hereunder, occurs on a Saturday, Sunday or legal holiday, the date for performance or giving of notice shall be the next succeeding business day.

13.03 Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be valid under applicable law, but if any provision of this Agreement shall be invalid or prohibited hereunder, such provision shall be ineffective to the extent of such prohibition or invalidation which shall not invalidate the remainder of such provision or the remaining provisions of this Agreement.

13.04 Waiver. The waiver by either party hereto of any right granted to it hereunder shall not be deemed to be a waiver of any other right granted herein, nor shall same be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived.

13.05 Entire Agreement. This Agreement, contains the entire agreement of the parties hereto with respect to the matters covered hereby, supersedes all prior agreements, arrangements and understandings between the parties and no other agreement, statement or promise made by either party hereto that is not contained herein shall be binding or valid. All exhibits to this Agreement are by this reference incorporated herein.

13.06 Amendments. This Agreement may be amended only by written document signed by each of the parties hereto.

13.07 Further Performance. Each party shall, whenever and as often as it shall be requested by the other party, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further instruments and documents, as may be reasonably necessary in order to complete the sale, conveyance and transfer herein provided and to do any and all things as may be requested in order to carry out the intent and purpose of this Agreement.

13.08 Counterparts. This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. A party's signature on this Agreement or any amendment hereto may be provided by facsimile or electronically scanned and shall be effective upon transmission to the other party hereto.

13.09 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, devisees, personal and legal representatives, successors and assigns.

13.10 Governing Law; Venue. This Agreement shall be construed and interpreted under, and governed and enforced according to the laws of the State of Arizona, without giving effect to the principles of conflicts of law. The parties agree that should any court action be commenced relating to this Agreement, that the Cochise County Superior Court shall be the appropriate and exclusive venue therefore. The parties expressly waive any and all provisions of law providing for a change of venue to any other state or federal court.

13.11 Dispute Resolution. In the event a dispute arises under this Agreement, Buyer and Seller agree that there shall be a thirty (30) day moratorium on litigation during which time the Buyer and the Seller agree to attempt to settle the dispute by non-binding mediation before commencement of litigation. The mediation shall be held under the Commercial Mediation Rules of the American Arbitration Association ("AAA") but shall not be under the administration of the AAA unless agreed to by the Buyer and the Seller in writing, in which case all administrative fees shall be divided evenly between the Buyer and the Seller. The matter in dispute shall be submitted to a mediator mutually selected by Buyer and the Seller. If the Parties cannot agree upon the selection of a mediator within ten (10) business days, then within five (5) business days thereafter, the Buyer and the Seller shall request that the Presiding Judge of the Superior Court in and for the County of Cochise, State of Arizona, appoint the mediator. The mediator selected shall have at least ten (10) years of experience in mediating or arbitrating disputes relating to commercial property. The cost of any such mediation shall be divided equally between the Buyer and the Seller. The results of the mediation shall be nonbinding with either Buyer or the Seller free to initiate litigation upon the conclusion of the latter of the mediation or of the thirty (30) day moratorium on litigation. The mediation shall be completed in one day (or less) and shall be confidential, private, and otherwise governed by the provisions of A.R.S. § 12-2238, to the extent allowed by the Arizona Open Meetings Law, § 38-431 et. seq.

13.12 Headings and Construction. The headings set forth in this Agreement are inserted only for convenience and are not in any way to be construed as part of this Agreement or a limitation on the scope of the particular paragraph to which it refers. Where the context requires herein, the singular shall be construed as the plural, and neutral pronouns shall be construed as masculine and feminine pronouns, and vice versa. This Agreement shall be constructed according to its fair meaning and neither for nor against either party hereto.

13.13 Tax Reporting. Each party shall be responsible for filing all necessary information, reports, returns and statements (collectively, the "Tax Reports") regarding this

transaction as required by the Code, including, without limitation, the Tax Reports required pursuant to Section 6045 of the Code.

13.14 Conflict of Interest. This Agreement is subject to the conflict of interest provisions set forth in A.R.S. Section 38-511.

13.15 Assignment. Buyer shall not have the right to assign its rights under this Agreement without the consent of Seller, which may be granted or withheld in Seller's sole and absolute discretion.

IN WITNESS WHEREOF, Buyer and the Seller have executed this Agreement effective as of the date first written above.

SELLER:
CITY OF DOUGLAS, a municipal corporation

By: _____
Ana Urquijo City Manager

Attest:

Approved as to form:

By: _____
Alma Andrade,
City Clerk

By: _____
Denis M. Fitzgibbons
City Attorney

BUYER:

Byrd's Sheet Metal and Construction, Inc.
an Arizona corporation

By: _____
Its: _____

EXHIBIT A

Legal Description of the Property
(Assessor's Parcel No. 410-32-121)

FOOTHILLS LOTS 22 THRU 26 INC BLK 30