

PURCHASE AND SALE AGREEMENT

between

as Seller

and

CITY OF FLAGSTAFF

as Buyer

Property located in Coconino County, Arizona

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (“**Agreement**”) is entered into as of _____, 2013, by and between the City of Flagstaff, an Arizona municipal corporation (“Buyer” or “City”), and _____ (“Seller”). Buyer and Seller may be referred to each individually as a “Party” and collectively as the “Parties.”

RECITALS

- A. An important goal of the City Council has been to obtain property for a Core Services Maintenance Facility.
- B. The City issued Request for Proposals No. 2013-44 (the “RFP”) for the purchase of property or purchase of property and exchange of City-owned property for a Core Services Maintenance Facility.
- C. Seller responded to the RFP with an offer to sell property to the City on certain terms and conditions.
- D. Seller desires to enter into this Agreement with the City in order to sell the property, and the City desires to purchase the property, on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

- 1. **Definitions.** The following terms used in this Agreement shall have the respective meanings set forth below:
 - 1.1. **Date of Agreement:** _____, 2013
 - 1.2. **Seller:**
 - 1.3. **Buyer:** City of Flagstaff, Arizona
 - 1.4. **Escrow Agent:**
 - 1.5. **Property:**
 - 1.5.1. The real property consisting of APNs _____ located in Coconino County, Arizona, described in the attached **Exhibit A**, together with all rights, easements, and privileges appurtenant thereto (“Real Property”);

1.5.2. All structures, buildings, improvements, facilities, and fixtures situated on the Real Property, including, without limitation, all equipment and appliances, or other improvements used in connection with the operation or occupancy thereof, such as, but not limited to, heating and air-conditioning systems and facilities used to provide any utility services, parking services, refrigeration, ventilation, trash disposal or other services owned by Seller and located on the Real Property (“Improvements”);

1.5.3. All intangible property owned by Seller and used in connection with the Real Property and Improvements, including warranties with respect to the Real Property and Improvements, and all written contracts in effect at Closing in any way relating to the Property (all such intangible property being sometimes collectively referred to herein as “Intangible Property”).

1.6. **Date of Opening of Escrow:**

1.6.1. Seller and Buyer shall establish an escrow (“Escrow”) with Escrow Agent to consummate the transaction that is the subject of this Agreement. The date on which a duplicate original of this Agreement, executed by both Buyer and Seller, is delivered to and accepted by Escrow Agent shall be the Date of Opening of Escrow, which date shall be inserted by Escrow Agent below its signature at the end of this Agreement. Escrow Agent shall give Buyer and Seller prompt written notice of the Date of Opening of Escrow.

1.7. **Feasibility Date:** The _____ (___th) calendar day after the Date of Opening of Escrow, unless that day falls on a weekend or holiday, in which case the feasibility date will be on the next business day after the _____ (___th) calendar day.

1.8. **Closing:**

1.8.1. The _____ (___th) calendar day after the Feasibility Date, unless that day falls on a weekend or holiday, in which case closing will be on the next business day after the _____ (___th) calendar day.

1.9. **Notice Addresses:** **For Seller:**

For Buyer:

City of Flagstaff
Assistant to the City Manager-Real Estate
211 W. Aspen Avenue
Flagstaff, AZ 86001
(928) 213-2072

For Escrow Agent:

2. Property. Seller agrees to sell and Buyer agrees to purchase the Property in accordance with and subject to the terms and conditions of this Agreement.
3. Conveyance of Property. Buyer shall purchase the Property consisting of parcels _____ for the amount of _____ (\$_____). The Property shall be conveyed to Buyer at Closing pursuant to a Warranty Deed (“**Deed**”) in the form attached hereto as **Exhibit B**. Seller shall execute the Deed with respect to the Property and, upon satisfaction of all conditions in this Agreement, shall cause Escrow Agent to record the Deed in the official records of Coconino County, State of Arizona, upon Closing. In addition, at Closing: (i) Seller shall execute and deliver to Escrow Agent a separate non-foreign affidavit (“**Affidavit**”) in the form attached hereto as **Exhibit C**; and (ii) Buyer and Seller shall execute and deliver to Escrow Agent a separate Affidavit of Property Value for the Property as required by applicable law.
4. Purchase Price.
 - 4.1. Purchase Price. The purchase price for the Property to be paid by Buyer shall be _____ (\$_____)
 (“**Purchase Price**”).
 - 4.2. Payment. The Purchase Price shall be payable as follows:
 - 4.2.1. On or before the Closing, Buyer shall deposit with Escrow Agent, in cash or immediately available funds, an amount equal to _____ (\$_____) for the purchase of the property, plus such additional funds as may be required to allow Buyer to fully satisfy its obligations under this Agreement, including Buyer's share of prorations and closing costs for the Property.
 (“**Cash Due at Closing**”).
 - 4.3. Exchange of Properties. Buyer is aware that Seller intends to perform a 1031 tax-deferred exchange. Seller requests Buyer’s cooperation in such an exchange and agrees to hold Buyer harmless from any and all claims, liabilities, costs or delays in time resulting from such an exchange. Upon Seller’s request, and provided such cooperation can be provided at no cost or risk to the Buyer, and without delaying each date of Closing, Buyer shall reasonably cooperate with Seller in structuring a “tax deferred” exchange pursuant to Section 1031 of the Internal Revenue Code in connection with the transaction contemplated in this Agreement. Buyer makes no representation or warranty concerning the availability or appropriateness of such an exchange, and Seller’s inability for any reason to arrange or achieve the exchange shall not relieve Seller of any obligation of this Agreement. Furthermore, Buyer makes no representation or warranty to Seller

that any such exchange shall be treated as “tax-deferred” by the Internal Revenue Service. Seller agrees to reimburse the Buyer for all fees, costs, and expenses (including reasonable attorney’s fees) incurred by the Buyer as a result of Seller’s election to participate in a Section 1031 exchange.

5. Inspection.

5.1. Inspection. Buyer shall have until 5:00 p.m. Arizona time on the Feasibility Date in which to perform a physical inspection of the Property and an inspection of all financial documents, for the purpose of conducting a feasibility study (“**Feasibility Condition**”). If Buyer disapproves the Feasibility Condition for any reason whatsoever, Buyer may send written notice to Seller and Escrow Agent on or before the Feasibility Date electing to terminate this Agreement and the Escrow. Failure of Buyer to provide written notice of approval of the Feasibility Condition shall be deemed Buyer’s disapproval of the Feasibility Condition and Buyer’s election to terminate this Agreement and the Escrow. Buyer’s inspection may include, but is not limited to:

5.1.1. Inspection of all physical aspects of the Property, including, but not limited to, all operating systems, roof, structural components, and related service contracts;

5.1.2. Environmental inspection and testing;

5.1.3. Investigation of all zoning, code, and governmental requirements;

5.1.4. Review preliminary title report;

5.1.5. Review copies of all leases and contracts, if applicable, together with any modifications or amendments thereto pertaining to the operation of the Property as well as interview existing tenants with regard to current occupancy; and

5.1.6. Review financial information from Seller’s records and review any other information and documents pertaining to Seller’s ownership and operation of the Property, including but not limited to rent rolls (collectively, the “**Records**”).

5.2. Termite Damage. Seller, at its cost, shall cure and repair prior to Closing any termite damage disclosed by Seller’s or Buyer’s termite inspection report or any structural evaluation of the buildings on the Property performed by Buyer’s consultant.

5.3. Termination. If Buyer terminates (or is deemed to terminate) this Agreement as may be permitted under this Agreement, then Buyer is responsible for all costs associated with the termination. If Seller terminates (or is deemed to terminate)

this Agreement as may be permitted under this Agreement, then Seller is responsible for all costs associated with the termination.

6. Information; Access to the Property.

6.1. Information. Within ten (10) days after the Date of Opening of Escrow, Seller shall provide access or copies to Buyer of those reports, studies, surveys, and other material documents listed on **Exhibit D** attached hereto (“**Information**”), to the extent such Information was not previously provided to Buyer.

6.2. Access to Property. Buyer and its employees, agents, architects, engineers, and independent contractors (hereafter “Designees”) shall have the right to enter upon the Property at any time after the Date of Opening of Escrow (provided that this Agreement has not been previously terminated as permitted herein) to inspect and test the Property and to determine the feasibility of acquiring the Property. Buyer shall have the right to perform any and all examinations, inspections, or tests Buyer deems necessary and appropriate, provided that Buyer provides written notice to Seller at least three (3) days before Buyer intends to enter the Property to conduct any intrusive examinations, inspections, or tests that require any drilling or other possible damage to any portion of the Property. Buyer acknowledges and agrees that Seller shall be entitled to have its representatives present during any time Buyer or its agents or independent contractors are on the Property. Buyer shall: (i) perform all such inspections in a safe and professional manner; (ii) not create any dangerous or hazardous condition on the Property; (iii) comply with all applicable laws with respect to Buyer's inspections; and (iv) obtain all permits required to be obtained with respect to Buyer's inspections.

Subject to the rights of tenants of the Property under their respective Leases, and with reasonable advance notice to Seller and to any applicable tenant, Buyer and its designees shall be entitled to inspect, during Seller’s regular business hours, the tenants’ premises on the Property and to interview tenants; provided, however, that, at Seller’s request, Seller and/or the involved tenant or its designees shall be entitled to accompany Buyer during any such inspection or contact with any tenant. In addition, Seller shall use reasonable efforts to facilitate such inspections and obtain any necessary consent to entry from the respective tenants.

6.3. Costs. Buyer shall bear all costs and expenses of any inspections, investigations, and tests of any kind or nature undertaken by Buyer with regard to the Property.

6.4. Survey. If Seller has not already provided an American Land Title Association (“ALTA”) survey of the Property as required by the Request for Proposal, such ALTA survey shall be provided within ten (10) days after Date of Opening of Escrow at Seller’s cost. If the results of the Survey indicate that the acreage of the property is less than _____ acres, the Purchase Price shall be reduced accordingly on a per square foot basis. The Survey shall be sufficient to enable _____ (“**Title Insurer**”) to delete the standard survey exception from the Title Policy (defined in 7.1) and issue the Title Policy.

To the extent that the Seller has not provided all environmental reports to the Buyer as required in the Request for Proposal, and in all events within ten (10) days after the Date of Opening of Escrow, Seller will provide all environmental reports required by the Request for Proposal for the Property to Buyer. Buyer may, at its cost, obtain additional environmental reports. If the reports indicate that remediation of the property is needed, Seller agrees to pay for the remediation.

7. Title Review.

- 7.1. Delivery of Title Report. As soon as possible, and in all events within ten (10) days after the Date of Opening of Escrow, Escrow Agent shall cause Title Insurer to deliver to the Parties a commitment for the issuance to Buyer of an ALTA extended coverage title insurance policy in the amount of the Purchase Price (“**Title Policy**”), together with legible copies of all matters indicated in Schedule B thereto (collectively, the “**Title Report**”).
- 7.2. Buyer's Review of Title Report. If Buyer is dissatisfied with any matter shown on the Title Report (“**Unpermitted Exceptions**”), Buyer may deliver written notice (“**Title Objection Notice**”) to Seller and Escrow Agent of its objection at least twenty (20) business days prior to the Feasibility Date. If any amendment, revision, or supplement to the Title Report is issued (except to remove matters previously objected to by Buyer), a copy thereof shall be promptly delivered by Escrow Agent to Buyer, together with a legible copy of any new matter referred to in any amendment or supplement to the Title Report. If any amendment, revision, or supplement to the Title Report is issued after the Feasibility Date, Buyer shall have five (5) business days after receipt of any amendment, revision, or supplement of the Title Report, or until Closing, whichever first occurs, to object to any new and material matters shown thereon by providing a Title Objection Notice to Seller and Escrow Agent. If Buyer fails to object to any matter set forth in the Title Report or in any amendment, revision, or supplement thereto within the time periods prescribed in this Section 7, Buyer shall be deemed to have accepted these matters.
- 7.3. Seller's Cure Period. If Buyer timely delivers a Title Objection Notice, then Seller shall notify Buyer within ten (10) business days following the date of receipt of the Title Objection Notice (“**Seller's Cure Period**”) that either: (i) one or more of the Unpermitted Exceptions has been, or will be at or prior to Closing, removed from the Title Report by Escrow Agent; or (ii) Seller is unable or unwilling to have one or more of the Unpermitted Exceptions removed. If Seller fails to respond to the Title Objection Notice within Seller's Cure Period, Seller shall be deemed to be unwilling to cause the removal of the Unpermitted Exceptions. If Seller fails to cure any objection of Buyer, or fails to respond to the Title Objection Notice within Seller's Cure Period, Buyer shall elect within ten (10) business days following Seller's Cure Period to either: (i) cancel this Agreement and the Escrow by written notice delivered to Seller and Escrow Agent; or (ii) waive the objection by written notice to Seller and Escrow Agent

and proceed to purchase the Property. If Buyer fails to timely make any of these elections, Buyer will be deemed to have elected option (ii) above. All matters to which Buyer has not objected, or to which Buyer has waived or is deemed to have waived its objections under this Section 7, are referred to in this Agreement as the "**Permitted Exceptions.**"

- 7.4. Unpermitted Liens. Notwithstanding any other provision in this Agreement, and regardless of whether Buyer has given notice of an objection under the terms of this Section 7, Seller shall satisfy or otherwise remove all monetary liens and encumbrances on the Property, on or before the Closing, with the exception of taxes or assessments not yet due and liens and encumbrances caused by Buyer.
- 7.5. Title Policy. Escrow Agent shall cause Title Insurer to issue at Closing to Buyer, as the insured, the Title Policy in the amount of the Purchase Price.

8. Miscellaneous.

- 8.1. Prorations and Adjustments. The following adjustments to the Purchase Price paid hereunder shall be made between Seller and Buyer and shall be prorated (as applicable) through the Escrow on a per diem basis as of 12:01 a.m. on the Closing date:

8.1.1. Seller is responsible for all real estate taxes and assessments for or relating to the Property until such time that the Property is removed from the tax rolls by the Coconino County Assessor's Office. The provisions of this Section 8.1 shall survive Closing.

8.1.2. If applicable, Seller shall retain all collected Tenant rents ("**Rents**") attributable to the period prior to the day of Closing. Seller shall pay all Rent Taxes on Rents collected by Seller, provide Buyer with evidence of payment thereof, and obtain State of Arizona and City of Flagstaff clearance letters therefor prior to Closing date.

8.1.3. Seller shall be entitled to retain and receive refund of all utility and similar deposits at Closing.

8.1.4. If applicable, to the extent not billed directly to tenants, or otherwise paid by tenants, utilities, including water, electricity, sewer, gas, telephone, and other utility charges, shall be prorated based, to the extent practicable, on the last meter readings prior to Closing. Seller will endeavor to obtain meter readings on the day before Closing, and if such readings are obtained, there shall be no such proration of such items. Seller shall pay at Closing the utility bills for the period up to and including the date of Closing, and Buyer shall pay the utility bills for the period subsequent to Closing. If the utility company will not issue separate bills, Buyer will receive a credit against the Purchase Price for Seller's portion and will pay the entire bill prior to delinquency after Closing. If Seller has paid any

utilities no more than thirty (30) calendar days in advance in the ordinary course of business, then Buyer shall be charged its portion of such payment at Closing. Buyer shall be responsible for any utility deposits necessary to establish service in Buyer's name.

- 8.2 Estoppel Certificates. If applicable, Seller shall request that all tenants on the Property (“**Tenant(s)**”) execute statements in the form attached hereto as **Exhibit E** (“**Tenant Estoppel Certificate**”). Seller shall deliver the Tenant Estoppel Certificates to be executed to the Tenants by no later than ten (10) business days after the opening of Escrow. Receipt of Tenant Estoppel Certificates without material modifications having been made thereto by the Tenants, which, in the aggregate, represent a minimum of one hundred percent (100%) of the rent reflected on the list of current leases certified by the Seller (“**Rent Roll**”) for the Property, shall be a condition to Purchaser's obligation to close Escrow.
- 8.3. Condition of Property. Improvements shall include all structures, buildings, and fixtures situated on the Property. Infrastructure shall include all facilities used to provide utility service and private roads. The Seller will disclose all defects in the improvements and infrastructure to the Buyer in writing within ten (10) days after Opening of Escrow. The Buyer has the right to make any and all inspections of the improvements and infrastructure as detailed in Section 5.1 of this Agreement.
- 8.4. Seller's Covenants. Except as otherwise provided in this Section between the date of the execution of this Agreement and the Closing date, Seller shall:
- 8.4.1. Maintain the Property in its current condition and perform, or cause tenants to perform, required and routine maintenance and make minor replacements of the Property that are tangible property (whether real or personal) and perform repairs or make minor replacements to any broken, defective, or disfunctioning portions of the Property that are tangible property (whether real or personal) as the relevant conditions require.
- 8.4.2. Pay, in the normal course of business, and, in any event, prior to Closing, all sums due for work, materials, or services furnished or otherwise incurred in the ownership, use, maintenance, repair, or operation of the Property, up to Closing.
- 8.4.3. Seller will not make any material alterations or improvements to the Property, or remove any of the Property therefrom, except with the ordinary course of Seller's business practices, without the consent of Buyer, which consent shall not be unreasonably withheld, conditioned, or delayed.
- 8.4.4. Maintain its current or comparable insurance covering the Property;

8.4.5. Operate, manage, and enter into contracts with respect to the Property, in the same manner done by Seller prior to the date hereof; provided, however, that Seller shall not enter into any new service contract after the date hereof that cannot be terminated within thirty (30) days without the payment of any fee or penalty. Seller shall not enter into any new Leases, or amend, modify, or extend any existing Leases after the Feasibility Date. Seller shall terminate all leases prior to close of escrow and resolve all claims by tenants including but not limited to claims for relocation expenses.

8.4.6. Execute reasonable documents required by, and otherwise cooperate in good faith with, Escrow Agent in order to issue the Title Policy in accordance with the Title Report showing only the Permitted Exceptions.

9. Seller's Representations and Warranties. Seller covenants, represents, and warrants that the following will be true as of the time of the execution of this Agreement and as of Closing:

9.1. The person(s) signing this Agreement and any documents and instructions in connection herewith, on behalf of Seller, have full power and authority to do so. This Agreement has been duly authorized and executed by Seller, and, upon execution by Buyer and delivery to Escrow Agent, shall be a valid and binding agreement of Seller, enforceable in accordance with its fees.

9.2. This Agreement is, and all other documents executed by Seller pursuant hereto will be, duly authorized, executed, and delivered by Seller, and will be the legal, valid, and binding obligations of Seller, and enforceable against Seller, in accordance with their respective terms. This Agreement and such documents do not and will not violate any provisions of any agreement, order, or judgment to which Seller is a party or to which it is subject. All persons signing this Agreement and/or any documents and instruments in connection herewith on behalf of Seller have full power and authority to do so.

9.3. Seller's execution of this Agreement, consummation of the transactions herein contemplated, and performance and observance of the obligations of Seller hereunder and under all other agreements and instruments herein mentioned to which Seller is a party, will not conflict with or result in the breach of any law, regulation, order, writ, injunction, or decree of any court or governmental authority or of any agreement or instrument to which Seller is now a party or to which it is subject, or constitute a default thereunder, and no consent, waiver, or approval by any third party is required in connection with the execution and delivery by Seller of this Agreement.

9.4. The Property meets all current building and zoning codes and there are no life safety issues outstanding.

9.5. There are no attachments, levies, executions, assignments for the benefit of creditors, receiverships, conservatorships, or voluntary or involuntary proceedings

in bankruptcy or any other debtor relief actions contemplated by Seller or filed by Seller, or to Seller's actual knowledge, pending in any current judicial or administrative proceeding against Seller.

- 9.6. Except as disclosed in the Title Report or the Information, Seller has not received written notice of any existing, proposed, planned, or threatened eminent domain or condemnation actions, assessments, or assessment district proceedings related to the Property, and has no actual knowledge of any planned.
- 9.7. Seller is not a "foreign person" as that term is defined in Section 1445 of the Internal Revenue Code, as amended, and any applicable regulations promulgated thereunder.
- 9.8. There are no liens, encumbrances, claims of lien or encumbrances, or any possible defects, or claims of defects to the title to the Property which do not appear in the Title Report or the Information.
- 9.9. Except for debts, liabilities, and obligations for which provision is made herein for proration or other adjustment at Closing, all liabilities and obligations arising from the ownership of the Property will be paid on or before Closing.
- 9.10. As of Closing, there shall be no parties in possession of any portion of the Property as lessees, tenants, tenants at sufferance, or trespassers, or no person, firm, corporation, or other entity has, or at Closing shall have, any right to relocation or reimbursement for relocation or option to acquire all or any portion of the Property.
- 9.11. Except as disclosed in the Information, there are no Hazardous Substances located on the Property, and the Property is in compliance with all applicable Environmental Laws. As used in this Agreement, "**Hazardous Substance**" shall mean and include all hazardous or toxic substances, wastes, or materials, any pollutants or contaminants (including, without limitation, asbestos and materials which include hazardous constituents), or any other similar substances or materials which are included under or regulated by any Environmental Law. "**Environmental Law**" shall mean and include all local, state, or federal laws, rules, orders, and regulations pertaining to environmental regulation, or the use, processing, storage, disposal, generation, or transportation of Hazardous Substances, or any contamination, clean up, or disclosure related thereto, including without limitation the Environmental Response Compensation and Liability Act of 1980, the Super Fund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act, the Hazardous and Solid Waste Amendments of 1984, the Toxic Substances Control Act, the Federal Insecticide, Fungicide and Rodenticide Act, the Federal Water Pollution Control Act, the Federal Safe Drinking Water Act, the Federal Clean Air Act, the Federal Clean Water Act, the National Environmental Protection Act, and Title 49 of the Arizona Revised Statutes, as any of the foregoing has heretofore been amended, and any regulations promulgated with respect to any such statutes. There are no

orders, judgments, claims, suits, actions, or proceedings concerning or affecting the Property with respect to any Environmental Law. Seller has not received any notice of any threatened or pending suit, action, or proceeding concerning the Property relating to any Environmental Law.

- 9.12. Seller has received no written notice from any city, county, state, or other governmental authority of any violation of any law, statute, ordinance, regulation, or administrative or judicial order or holding, whether or not appearing in public records, with respect to the Property, which violation has not been corrected.
- 9.13. There are not any existing, pending, or anticipated litigation against or involving the Property or Seller's interest therein, including without limitation any water, sewer, building, or other construction moratoria on the Property.
- 9.14. There are no agreements or documents which constitute Leases or have a material adverse effect on the Property or the operation thereof. Other than this Agreement, there are no outstanding contracts or agreements executed by Seller related to the sale, exchange, or transfer of the Property or any part thereof. There are no unpaid costs or expenses related to tenant improvements or leasing commissions or leasing fees with respect to the Property which are the obligation of Seller and which will not be paid at or before Closing by Seller. There are no leasing commissions or leasing fees due and payable prior to Closing (or which will become due and payable after Closing) with respect to any of the Leases which are the obligation of Seller and which will not be paid at or before Closing by Seller. There are no written leases, subleases, licenses, or other rental agreements or occupancy agreements executed by Seller which grant any possessory interest in and to any space situated on or in the Property or otherwise give rights with regard to use of the Property. There are no service contracts, maintenance agreements, leasing commission or brokerage agreements, repair contracts, property management contracts, contracts for the purchase or delivery of labor, services, materials, or goods, supplies, or equipment or similar agreements entered into by Seller which will be obligations of Buyer or the Property after Closing, other than any of such contracts or agreements which are cancelable on not more than thirty (30) days' notice without the payment of any termination fee or cancellation penalty.
- 9.15. In the Title Policy or as otherwise disclosed in writing by Seller to Buyer prior to the Feasibility Date, Seller has received no written notice from any city, county, state, or other government authority: (i) of any order or directive requiring any work of repair, maintenance, or improvement to be performed on the Property that has not been corrected; (ii) relating to defects in the Improvements or relating to noncompliance with any applicable building code, restriction, license, or permit that has not been corrected; (iii) relating to any threat of impending condemnation of the Property; or (iv) of any unpaid assessments for public improvements that have been made against the Property or of any presently planned public improvements which would result in the creation of a special assessment or similar lien upon the Property.

- 9.16. Other than those service contracts, maintenance agreements, leasing commission, or brokerage agreements, repair contracts, property management contracts, contracts for the purchase or delivery of labor, services, materials, or goods, supplies, or equipment or similar agreements entered into by or on behalf of Seller: (i) which are listed on Schedule B to **Exhibit F**; (ii) which will be terminated prior to Closing; or (iii) which are cancelable on no more than thirty (30) days' notice without the payment of any termination fee or cancellation penalty (all of the foregoing contracts or agreements referenced in clauses (i) or (ii) hereof are collectively referred to as the "**Contracts**"), Seller does not have any other liabilities or obligations under other agreements relating to the Property and other than normal expenses incurred in the ordinary course of business.
- 9.17. There are no structural or other defects, including, but not limited to, defects in the roof, plumbing, heating, air conditioning, foundation, or electrical wiring in the buildings and other improvements.
- 9.18. Notwithstanding the foregoing provisions of this Section 9, if Buyer learns of any actual or alleged inaccuracy in Seller's representations or warranties contained in this Section 9 after the date hereof and prior to Closing date, Buyer shall promptly notify Seller thereof, and if Seller learns of any actual or alleged inaccuracy in such representations or warranties, Seller shall advise Buyer thereof. Seller shall, within five (5) days of receiving such written notice from Buyer or of learning of such actual or alleged inaccuracy, make reasonable efforts to cure such inaccuracy and, failing such cure, Seller shall, within such five (5) day period, notify Buyer in writing of such failure to cure, and Buyer's sole and exclusive remedy therefor shall be to elect, within five (5) days of receiving such written notice from Seller, to either (a) proceed to Closing and waive such inaccuracy or (b) cancel this Agreement and the Escrow, and neither Party shall have any further rights or obligations regarding this Agreement (except as may be expressly provided otherwise in this Agreement). Notwithstanding the foregoing, it is understood that Seller's representations and warranties contained in Section 9 shall be and remain true as of the Closing date, and that Seller remains liable to Buyer for all damages resulting from a breach thereof.
- 9.19. It is understood and agreed that the Purchase Price has been adjusted by prior negotiation to reflect that all of the Property is sold by Seller and purchased by Buyer subject to this Section 9.
10. **Buyer's Representations and Warranties.** Buyer covenants, represents, and warrants that:
- 10.1. The person(s) signing this Agreement and any documents and instructions in connection herewith on behalf of Buyer have full power and authority to do so.
- 10.2. This Agreement has been duly authorized and executed by Buyer, and upon delivery to and execution by Seller shall be a valid and binding agreement of Buyer.

10.3. There are no attachments, levies, executions, assignments for the benefit of creditors, receiverships, conservatorships, or voluntary or involuntary proceedings in bankruptcy or any other debtor relief actions contemplated by Buyer or filed by Buyer, or pending in any current judicial or administrative proceeding against Buyer.

11. Changes in Representations and Warranties.

11.1. If the Party making the representation, warranty, or covenant obtains knowledge of any change in any of its statements after the date hereof (whether arising before or after the date hereof), the Party shall give prompt notice to the other Party.

11.2. If a change in any of the representations, warranties, and covenants by a Party is intentionally caused by the Party, the change shall constitute a default and the other Party's remedies shall be as provided in Section 12 below.

11.3. If, however, a change in the representations, warranties, and covenants by a Party is not intentionally caused by the Party making the statement, then the change shall constitute only the failure of a condition (if the change materially and adversely affects the other Party), but shall not constitute a default. In such event, the other Party's sole remedy shall be to terminate this Agreement and the Escrow and neither Party shall have any further rights or obligations under this Agreement, except those that survive the termination.

11.4. It shall be a condition precedent to a Party's obligation to proceed with Closing that the representations, warranties, and covenants by the other Party set forth above with respect to the Property shall be materially true and correct as of Closing.

12. Default.

12.1. Default by Seller. If any warranty or representation of Seller made in this Agreement shall prove to be materially untrue, or if Seller shall fail to perform any of its obligations under this Agreement on or prior to the date for performance provided in this Agreement, and Buyer is not in default under this Agreement, then, unless otherwise specifically provided for in this Agreement, Buyer shall give Seller five (5) business days' written notice of the failure and opportunity to cure. If Seller does not cure within the five (5) business-day period, then Buyer may, as its exclusive remedy either: (i) cancel this Agreement and the Escrow by written notice to Seller and Escrow Agent; or (ii) pursue specific performance of this Agreement; provided that such specific performance action is initiated and filed within ninety (90) days after Seller's alleged default. Notwithstanding the foregoing, if the remedy of specific performance is not available to Buyer because Seller has sold the Property or because Seller, by its acts has (i) voluntarily disabled its ability to deliver title as required by this Agreement, or (ii) caused an error in the representations and warranties of Seller herein, Buyer may maintain an action for damages against Seller. If Buyer elects to terminate this Agreement

as permitted under this Section 12.1, then: (i) the Escrow shall be terminated for all purposes; (ii) Escrow Agent shall return all other funds, documents, and other items held by Escrow Agent to the Party that deposited same with respect to the Property; (iii) Seller shall reimburse Buyer for Buyer's actual out-of-pocket expenses not to exceed _____ Dollars (\$_____) as liquidated damages; and (iv) the Parties shall have no further rights or obligations under this Agreement except for those rights and obligations that are specified in this Agreement to survive the termination of this Agreement.

12.2. Default by Buyer. If any material warranty or representation of Buyer made in this Agreement shall prove to be materially untrue, or if Buyer shall fail to perform any of Buyer's obligations under this Agreement on or prior to the date for performance provided in this Agreement, then Seller shall give Buyer five (5) business days' written notice of the failure and opportunity to cure. Notwithstanding the foregoing sentence, Buyer shall have no cure period with respect to Buyer's failure to pay money as required under this Agreement or Buyer's failure to acquire the Property on Closing. If Buyer does not cure within the applicable cure period, if any, then Buyer shall be in default. In the event of default by Buyer, Seller as its sole right and exclusive remedy may terminate this Agreement and the Escrow.

13. Risk of Loss. Except as provided in any indemnity provisions of this Agreement, and as otherwise provided in this Section 13, Seller shall bear all risk of loss with respect to the Property prior to Closing and thereafter all risk of loss shall be Buyer's.

If, prior to Closing, any portion of the Real Property and Improvements, or any part thereof, are damaged or destroyed, Buyer shall have the right, exercisable by giving notice to Seller and Escrow Agent within fifteen (15) days after receiving written notice of such damage or destruction (but in any event prior to Closing), to either: (i) terminate this Agreement and the Escrow, in which case neither Party shall have any further rights or obligations under this Agreement (except as may be expressly provided otherwise in this Agreement), and neither Seller nor Buyer shall be subject to any claim by the other for damages of any kind except for the breach of the indemnity, hold harmless, and other agreements provided in this Agreement; or (ii) accept the Property in its then condition and proceed with Closing without any abatement or reduction in the Purchase Price, in which event Buyer shall be entitled to (a) an assignment of all of Seller's rights to any insurance proceeds payable by reason of such damage or destruction and (b) a credit against the Purchase Price in the amount of Seller's insurance deductible. If Buyer elects to proceed under clause (ii) above, Seller shall not compromise, settle, or adjust any claims to such proceeds without Buyer's prior written consent.

If, prior to Closing, all or any portion of the Real Property and Improvements is subject to a taking by public authority, Buyer shall have the right, exercisable by giving notice to Seller within five (5) days after receiving written notice of such taking (but in any event prior to Closing), to either: (i) terminate this Agreement and the Escrow, in which case neither Party shall have any further rights or obligations under this Agreement (except as may be expressly provided otherwise in this Agreement), and neither Seller nor Buyer

shall be subject to any claim by the other for damages of any kind except for the breach of the indemnity, hold harmless, and other agreements provided in this Agreement; or (ii) accept the Property in its then condition and proceed with Closing without any abatement or reduction in the Purchase Price, in which event Buyer shall be entitled to an assignment of all of Seller's rights to any condemnation award payable by reason of such taking. If Buyer elects to proceed under clause (ii) above, Seller shall not compromise, settle, or adjust any claims to such award without Buyer's prior written consent, and Buyer shall receive all awards. As used in this Section 13, "taking" shall mean any transfer of the Property or any material portion thereof to a governmental entity or other party with appropriate authority, by exercise of the power of eminent domain. Seller agrees to give Buyer notice of any damage, destruction, or taking of the Real Estate and Improvements promptly after Seller obtains knowledge thereof.

14. Closing.

14.1. Deliveries by Seller for the Closing. Seller shall deliver to Escrow Agent for filing, recordation, or delivery to Buyer, as appropriate, upon Closing, the following:

14.1.1. The Deed for the Property, duly executed and appropriately acknowledged by Seller;

14.1.2. An Affidavit of Property Value for the Property, duly executed and appropriately acknowledged by Seller as contemplated by Section 3;

14.1.3. [If Applicable] Tenant Estoppel Certificates in the form of **Exhibit E** from each current Tenant of premises at the Property or in a form as provided for in Section 8.2;

14.1.4 [If Applicable] An Assignment and Assumption of Contracts executed by Seller in the form of **Exhibit F** attached hereto ("Assignment and Assumption of Contracts");

14.1.5. A Bill of Sale and Assignment executed by Buyer in the form of **Exhibit G**; and

14.1.6. Any additional instruments, duly executed and appropriately acknowledged by Seller, as may be necessary for Seller to have complied with the terms of this Agreement.

14.2. Deliveries by Buyer for the Closing. On or before Closing, Buyer shall deliver to Escrow Agent for filing, recordation, or delivery to Seller, as appropriate, upon Closing, the following:

14.2.1. The cash due at Closing as described in Section 4.2;

14.2.2. An Affidavit of Property Value for the Property, duly executed and acknowledged by Buyer as contemplated by Section 3; and

- 14.2.3. Any additional instruments, duly executed and appropriately acknowledged by Buyer, as may be necessary for Buyer to have complied with the terms of this Agreement.
- 14.3. Closing Costs. Buyer and Seller shall share evenly all closing costs in connection with the Escrow for the Property. Seller shall pay the cost of the standard coverage owner's title policy described in Section 7 for the Property and all recording fees. Buyer shall pay the additional cost for extended coverage owner's title policy, any endorsements requested by Buyer, and any costs in connection with any lender's policy that Buyer may be obligated to purchase for Buyer's lender (if required). All other fees, charges, or expenses incidental to the sale of the Property to Buyer shall, except as otherwise expressly provided in this Agreement, be shared evenly between Buyer and Seller. In addition to the amounts Buyer is required to deposit with Escrow Agent under Section 4 above, Buyer and Seller shall deposit with Escrow Agent, on or before Closing, sufficient amounts to cover its share of closing costs (and all other items prorated in accordance with this Agreement to the extent applicable). All other items prorated in accordance with this Agreement, to the extent applicable, shall be paid from the proceeds otherwise payable to Seller.
15. Notices. Any and all notices required or permitted by this Agreement shall be given in writing and personally delivered, sent by registered or certified mail, return receipt requested, postage prepaid, or sent by reputable overnight courier, addressed as listed in Section 1.9 of this Agreement. Any notice or communication shall be deemed to have been given and received on the earliest of: (i) the date of delivery or refusal, if hand delivered or sent by overnight courier; (ii) three (3) days after the date of mailing, if mailed within the continental United States; or (iii) seven (7) days after mailing, if mailed outside the continental United States. Copies of all notices or communications to Buyer or Seller shall be hand delivered, mailed, or sent by overnight courier, in the manner set forth above, to Escrow Agent, and copies of all notices by Buyer or Seller to Escrow Agent shall be hand delivered, mailed, or sent by overnight courier, in the manner set forth above, to the other Party hereto. Notwithstanding the foregoing, notices from Escrow Agent or Title Insurer to Seller and Buyer may be given by United States first class mail and shall be deemed given and received three (3) days after deposit in the United States mail.
16. Good Funds. Except as otherwise provided in this Agreement, all deposits and payments that are to be made by Buyer with respect to this Agreement shall be made when due in lawful money of the United States. Under no circumstances will Escrow Agent accept any deposit or payment not made in strict accordance with this Agreement.
17. Time of Essence. Time is and shall be of the essence of this Agreement and all its provisions. Any extension of the time for performance under this Agreement by either Party must be in writing and signed on behalf of Seller and Buyer. An extension may be granted on behalf of the Buyer by the City Manager. No extension will be deemed a

waiver of this Section 17 with respect to other performance by either Party.

18. Waiver. The waiver by any Party of any right granted to it in this Agreement shall not be deemed to be a waiver of any other right granted in this Agreement, nor shall same be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived.
19. Attorneys' Fees. The prevailing Party in any litigation arising out of this Agreement shall be entitled to the recovery of its reasonable attorneys' fees, expert witness fees, litigation related expenses, and court costs in such litigation or proceeding from the other Party.
20. Entire Agreement. This Agreement, together with any exhibits attached hereto and incorporated herein by reference, is intended to be and constitutes the entire agreement between the parties with respect to the Property as of the date of execution, and may be amended only by an instrument in writing signed by Buyer and Seller. The joinder of Escrow Agent and any broker named in this Agreement shall not be required to amend this Agreement. Evidence of prior negotiations or understandings between the parties shall not vary or contradict the provisions of this Agreement.
21. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of Buyer and Seller and their respective successors and assigns.
22. Further Assurances. Promptly upon the request of the other Party or of Escrow Agent, Seller and Buyer each shall execute, acknowledge, and deliver to the other Party or Escrow Agent, or both, any and all further instruments, and shall take all such other action as may be reasonably requested or appropriate to evidence or give effect to the provisions of this Agreement, or to satisfy Escrow Agent's requirements in connection with this Agreement.
23. Severability. If any provision or any portion of a provision of this Agreement or of any other document to be executed in connection with this Agreement is deemed to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect the remaining portion of that provision or of any other provision of this Agreement or such other document, as each provision of this Agreement and all such other documents shall be deemed to be severable from all other provisions hereof and thereof.
24. Headings. The paragraph headings in this Agreement are inserted for the purpose of reference only and shall not limit, define, or expand the provisions of this Agreement or any one of them.
25. Governing Law; Venue. This Agreement and any documents executed in connection with or pursuant to this Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. Buyer and Seller agree that the proper venue for any legal proceedings arising out of this Agreement shall be Coconino County, Arizona.
26. Not Partners. Neither this Agreement, nor any other agreement referred to herein or

entered into in connection herewith, and no activity of Seller or Buyer in connection with this transaction, shall constitute Seller and Buyer as partners or joint venturers for any purposes whatsoever.

27. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall together constitute one and the same document.
28. Construction. This Agreement is the result of negotiations between the Parties and accordingly shall not be construed for or against either Party regardless of which Party drafted this Agreement.
29. Business Day. If the time for performance of any obligation under this Agreement expires on a Saturday, a Sunday, or a legal holiday observed by Escrow Agent, then the time for such performance shall be extended to the next succeeding day that is not a Saturday, a Sunday, or a legal holiday observed by Escrow Agent.
30. Assignment. Neither Party shall assign any of its rights and obligations under this Agreement without prior written consent of the other, which may not be unreasonably withheld, delayed, or conditioned.
31. Conflict of Interest. This Agreement is subject to the cancellation provisions of ARS §38-511.
32. Broker. Seller shall be responsible to pay a commission at Closing to _____ (“**Broker**”) pursuant to a separate written agreement. Except for the foregoing commissions to be paid to Broker, each Party hereto represents and warrants to the other that it has not employed any other broker or finder in connection with the transaction contemplated by this Agreement, and it is not obligated to pay any real estate brokerage or other commission or fee in connection with the sale of the Property to Buyer. Each Party shall defend and hold the other harmless from all liability and expense including, without limitation, reasonable attorneys' fees arising from any claim by any broker, agent, or finder for commissions, finder's fees, or similar charges, because of any act of such Party. The obligations of the parties pursuant to this Section 32 shall survive Closing and any termination of this Agreement. Buyer and Seller acknowledge that certain employees and/or principals of Buyer and Seller (or their respective affiliates) may be licensed Arizona real estate brokers and salespersons.

[SIGNATURE PAGE FOLLOWS SEPARATELY]

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement on the date set forth above.

SELLER:

By: _____

BUYER:

City of Flagstaff,
an Arizona municipal corporation

By: _____
Gerald W. Nabours, Mayor

Attest:

City Clerk

Approved as to form:

City Attorney

List of Exhibits

- Exhibit A - Legal Description of Property
- Exhibit B - Warranty Deed
- Exhibit C - Non-Foreign Affidavit
- Exhibit D - Information
- Exhibit E - Tenant Estoppel Certificate [If Applicable]
- Exhibit F - Assignment and Assumption of Contracts [If Applicable]
- Exhibit G - Bill of Sale and Assignment

ACCEPTANCE OF ESCROW AGENT

_____ accepts the foregoing Purchase and Sale Agreement and escrow instructions, agrees to act as Escrow Agent hereunder, and agrees to comply with the provisions of Section 6045 of the Internal Revenue Code with respect to the transactions contemplated hereby.

[Name of Escrow Agent]

By: _____

Name:

Title: _____

Date: _____

EXHIBIT A

LEGAL DESCRIPTION

EXHIBIT B

When recorded, mail to:
City Clerk
City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001

WARRANTY DEED

For good and valuable consideration, _____, hereafter called the Grantor, does hereby grant and convey to CITY OF FLAGSTAFF, an Arizona municipal corporation, hereafter called the Grantee, that certain real property situated in Coconino County, Arizona, more particularly described in Exhibit A, attached to and made a part hereof.

The Grantor hereby binds itself and its successors and assigns to warrant and defend the title to said real property against all persons claiming under it, subject to the matters above set forth.

This transaction is exempt under A.R.S. Section 11-1134(A)(3).

IN WITNESS WHEREOF, the Grantor has executed this Warranty Deed this _____ day of _____, 2013.

By: _____

State of Arizona)
) ss.
County of Coconino)

ACKNOWLEDGMENT. On this _____ day of _____, 2013, before me, a Notary Public, personally appeared _____, known to be or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same on behalf of _____ for the purposes therein contained.

My Commission Expires: _____

Notary Public

EXHIBIT C

NON-FOREIGN AFFIDAVIT

The undersigned, _____ ("**Transferor**"), after being duly sworn upon his oath deposes and says that:

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform _____ ("**Transferee**"), that withholding of tax is not required upon the disposition of Transferor's interest in the real property described on **Exhibit A** attached hereto and by this reference included herein, the undersigned hereby certifies the following:

1. The Transferor is not a non-resident alien, foreign corporation, foreign partnership, foreign trust, foreign estate, or other foreign person within the meaning of § 1445 and § 7701 of the Internal Revenue Code and the treasury regulations promulgated thereunder;

2. Transferor is not a disregarded entity as defined in § 1.1445-2(b)(2)(iii) of the Internal Revenue Code;

3. Transferor's U.S. taxpayer identification/social security number is: _____; and

4. Transferor's business address is: _____.

Transferor understands that this certification may be disclosed to the Internal Revenue Service by Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury, I declare that I have examined this certification and to the best of my knowledge and belief this certification is true, correct, and complete. The undersigned agent declares that he has the authority to sign this document on behalf of Transferor.

Dated this ____ day of _____, 2013.

TRANSFEROR:

BY _____

EXHIBIT D
INFORMATION

1. A current tenant roster and rent roll (“**Rent Roll**”), showing tenant names, rental rates, period of rental, date of last rental increase, security deposits, rents paid, delinquent rents, any agreements regarding relocation, and all correspondence regarding the termination of the leases.
2. Copies of all Leases.
3. Operating statements including income reports for the last year.
4. Copies of all contracts and provide a summary of any unwritten or verbal agreements the Property may have with any third party vendors.
5. Copies of the Permits and Certificates of Occupancies.
6. The most recent real and personal property tax statements for the Real Property, Improvements, and the Personal Property.
7. Copies of all casualty and liability insurance policies insuring the Property, with a schedule of the premiums for such policies.
8. Geological and soils engineering reports.
9. Environmental site assessments or other environmental reports.
10. All building permits, conditional use permits, variances, and related governmental authorizations obtained in connection with construction of the Improvements.
11. ALTA surveys.
12. Copies of any pending or past litigation against the Property.
13. Detailed list of all capital expenditures over the past thirty-six (36) months.
14. Any termite treatment documents for the Property.

EXHIBIT E
TENANT ESTOPPEL CERTIFICATE

To: _____

Re: Leased Premises identified as _____, located within the property located at _____ (the "Property")

Lease Date: _____, _____, between _____, as Landlord, and _____, as Tenant.

The undersigned is the Tenant under the above-referenced lease and certifies to _____ and to Landlord, the following:

1. The lease ("Lease") consists of the following documents: _____
_____. The Lease has not been canceled, modified, assigned, extended, or amended except as described in the preceding sentence.
2. Rent has been paid to the first day of the following month and all additional rent has been paid and collected in a current manner. There is no prepaid rent, except \$_____ and the amount of Tenant's security deposit held by Landlord is \$_____.
3. Base rent under the Lease is currently payable in the amount of \$_____.
4. The obligations of Tenant under the Lease are guaranteed by _____.
5. The Lease terminates on _____ and Tenant has no right to renew.
6. Tenant intends to vacate the Property on or before the following date: _____, 2013.
7. Landlord has paid in full all obligations owed to Tenant under the Lease.
8. Landlord has paid in full all obligations owed to the Tenant for relocation.
9. All work to be performed by Landlord for Tenant under the Lease has been performed as required and has been accepted by Tenant, except _____. All allowances or reimbursements currently due and payable to Tenant under the Lease have been paid in full.
10. The Lease is terminated, neither Landlord nor Tenant claims any default thereunder, and Tenant has no claims or defenses against the Landlord or offsets or credits against rent. Additionally, no free rent periods or rental concessions have been granted that remain outstanding, except _____.

11. Tenant has received no notice of prior sale, transfer, or assignment, hypothecation, or pledge of the Lease or of the rents received therein, except _____.

12. Tenant has not assigned or sublet the Lease nor does Tenant hold the Leased Premises under assignment or sublease, except _____.

13. Tenant has no other interest in any other part of the Property of which the Leased Premises forms a part or to any personal property appurtenant thereto or used in connection therewith, except _____.

14. Tenant has no right or option pursuant to the Lease or otherwise to purchase all or any part of the Leased Premises or the Property.

15. There are no other agreements, written or oral, between Tenant and Landlord with respect to the Lease, the Leased Premises and/or the Property.

16. The statements contained herein may be relied upon by Landlord under the Lease and by any prospective purchaser or assignee (including lenders) of the Landlord's interest under the Lease.

17. No actions, whether voluntary or involuntary, are pending against Tenant under the bankruptcy laws of the United States or any state thereof.

18. The Tenant, as of the date hereof, has no claim, charge, defense, or offset under the Lease against rents or other charges due or to become due thereunder. As of the date hereof, Tenant has not asserted any such offset or credit. To the Tenant's knowledge, there are no defaults under the Lease on the part of Tenant.

19. This Certificate shall inure to Buyer's benefit and to the benefit Buyer's successors and assigns and shall be binding upon Tenant and Tenant's successors and assigns.

Tenant makes this Certificate with the understanding that Landlord is contemplating selling the Property, and that Buyer is interested in purchasing the Property.

The person signing this Certificate is duly authorized by Tenant to sign this Certificate and if Tenant is a corporation or other entity, the undersigned is a duly appointed officer or principal of the corporation or other entity and is the incumbent in the office or other position indicated under his or her name.

Dated this _____ day of _____, 20____.

TENANT:

_____,
a(n) _____

By: _____

Its: _____

EXHIBIT F

ASSIGNMENT AND ASSUMPTION OF CONTRACTS

THIS ASSIGNMENT AND ASSUMPTION OF CONTRACTS (the "Assignment") is made this _____ day of _____, 2013 (the "Effective Date"), by and between _____ ("Assignor"), and the City of Flagstaff, an Arizona municipal corporation ("Assignee").

RECITALS

A. Assignor presently holds certain rights under contracts (except as expressly provided herein to the contrary), including, without limitation, those contracts more particularly described on Schedule B to this Assignment (the "Contracts"), affecting that real property more particularly described on Schedule A to this Assignment, such Schedules being by this reference incorporated herein.

B. Assignor desires to assign to Assignee, and Assignee desires to acquire Assignor's interest in and to, the Contracts.

FOR VALUABLE CONSIDERATION, it is agreed as follows:

1. Assignment. As of the Effective Date, Assignor conveys and assigns to Assignee, subject to the provisions of the contracts, all of Assignor's right, title, and interest in and to the Contracts. Assignor hereby covenants and agrees to indemnify, defend, and hold harmless Assignee of, from, for, and against any and all actions, suits, proceedings, claims, liabilities, losses, damages, costs, and expenses (including, without limitation, reasonable attorneys' fees) incurred in connection therewith, based upon or arising out of any breach or alleged breach of any of the Contracts occurring or accruing prior to the Effective Date.

2. Assumption. Assignee assumes and agrees to be bound by all of Assignor's liabilities and obligations arising under the Contracts from and after the Effective Date. Assignee further covenants and agrees to indemnify, defend, and hold harmless Assignor of, from, for, and against any and all actions, suits, proceedings, claims, liabilities, losses, damages, costs, and expenses (including, without limitation, reasonable attorneys' fees) incurred in connection therewith, based upon or arising out of any breach or alleged breach of any of the Contracts occurring or accruing from and after the Effective Date.

3. Binding Effect. This Assignment shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

4. Counterparts. This Assignment may be executed in counterparts, all of which together shall constitute one complete Assignment.

ASSIGNOR:

By: _____

ASSIGNEE:

CITY OF FLAGSTAFF

By: _____
Gerald W. Nabours, Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

EXHIBIT G
BILL OF SALE AND ASSIGNMENT

THIS BILL OF SALE AND ASSIGNMENT ("Bill of Sale") is made as of this ____ day of _____, 2013, by _____ ("Seller"), in favor of the City of Flagstaff ("Buyer").

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller does hereby absolutely and unconditionally give, grant, bargain, transfer, assign, sell, set over, convey, and deliver to Buyer all of its right, title, and interest in, to and under all tangible and intangible Personal Property ("Personal Property") relating to the use, management, operation, maintenance, or ownership of the real property described on **Exhibit A** attached hereto (the "Property"), including without limitation, the following:

1. All transferable licenses, permits, certificates of occupancy, and other approvals issued by any governmental or quasi-governmental authority pertaining to the use, management, operation, maintenance, or ownership of the Property;
2. All keys and combinations to all doors, cabinets, safes, enclosures, and other locking items or areas of the Property in Seller's possession;
3. All equipment, machinery, and construction materials located upon the Property;
4. All guaranties and warranties in effect with respect to the Property (including roof and equipment warranties) from contractors, subcontractors, suppliers, and manufacturers;
5. All awards or payments made or to be made for any taking by condemnation, eminent domain, or otherwise (including, without limitation, by agreement in lieu thereof) for all or any part of any of the Property, the aforesaid Personal Property, and in and to all proceeds paid or payable in connection with any damage, loss, or destruction to all or any part of the Property;
6. All easements, covenants, or other title appurtenances benefiting or burdening the Property, and all party wall, encroachment, sidewalk, indemnification, right-of-way, and other similar agreements appurtenant to or otherwise affecting the use and enjoyment of the Property;
7. Any and all other property (whether real or personal and whether tangible or intangible) of any type or nature whatsoever owned, held, or maintained by Seller relating to the planning, development, construction, ownership, operation, use, management, maintenance, repair, operation, or enjoyment of the Property;
8. All warranties and guaranties from contractors, subcontractors, suppliers, and manufacturers which are in effect as of the date of this Bill of Sale issued in connection with (i) the construction, improvement, alteration, service, or repair of the buildings and other improvements situated on the Property, and (ii) the mechanical equipment and appliances in the Property;

9. All development rights and other intangible rights, titles, interests, privileges, and appurtenances owned by Seller and in any way related to or used in connection with the Property;

10. All licenses, consents, easements, rights of way and approvals from private parties, if any, to make use of utilities and to insure vehicular and pedestrian ingress and egress to the Property; and

11. All plans, specifications, studies, surveys, engineering reports, environmental reports, tests, studies, and other technical descriptions relating to the Property.

12. All approvals have been obtained to allow the Buyer to provide water and wastewater services to the Property.

Seller hereby covenants that Seller will, at any time and from time to time upon written request therefor, execute and deliver to Buyer such documents as Buyer may reasonably request in order to fully assign and transfer to and vest in Buyer and protect Buyer's right, title, and interest in and to the Personal Property transferred and assigned hereby, or to enable Buyer to realize upon or otherwise enjoy such rights and property.

Seller hereby represents and warrants to Buyer that: (i) the Personal Property has been paid for and is not subject to any liens, encumbrances, security interests, or claims of any kind; (ii) all taxes of any nature whatsoever on the Personal Property accruing prior to Closing have been paid by Seller; (iii) the consideration paid to Seller herewith is the full and complete consideration for the Personal Property; (iv) any sales or other taxes which may be payable with respect to this transfer are the sole responsibility of Seller; and (v) the transfer of the Personal Property to Buyer does not require the consent of third parties.

Seller warrants, and hereby covenants, at Seller's sole cost and expense, to defend Buyer's title to the Personal Property against the acts of Seller, and none other. Seller hereby agrees to indemnify and hold Buyer free and harmless from all liabilities, obligations, damages, causes of action, judgments, costs, and expenses (including reasonable attorneys' fees) which Buyer may incur or suffer in connection with any breach by Seller of the preceding warranty and covenant.

This Bill of Sale is binding upon the successors and assigns of Seller.

If any party hereto brings any action or suit against the other party hereto by reason of any breach of any covenant, condition, agreement, or provision on the part of the other party set forth in this Bill of Sale, the prevailing party shall be entitled to recover from the other party all costs and expenses of the action or suit, including reasonable attorneys' fees, charges, and costs, in addition to any other relief to which it may be entitled.

This Bill of Sale will be governed by, interpreted under, and construed and enforceable in accordance with the laws of the State of Arizona.

IN WITNESS WHEREOF, Seller has executed and delivered this Bill of Sale as of the date first above written.

SELLER: [Seller Name]

By: _____

**PURCHASE AND SALE
AGREEMENT**

between

as Seller

and

CITY OF FLAGSTAFF

as Buyer

Property located in Coconino County, Arizona

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (“**Agreement**”) is entered into as of _____, 2013, by and between the City of Flagstaff, an Arizona municipal corporation (“Buyer” or “City”), and _____ (“Seller”). Buyer and Seller may be referred to each individually as a “Party” and collectively as the “Parties.”

RECITALS

- A. An important goal of the City Council has been to obtain property for a Core Services Maintenance Facility.
- B. The City issued Request for Proposals No. 2013-44 (the “RFP”) for the purchase of property or purchase of property and exchange of City-owned property for a Core Services Maintenance Facility.
- C. Seller responded to the RFP with an offer to sell property to the City on certain terms and conditions.
- D. Seller desires to enter into this Agreement with the City in order to sell the property, and the City desires to purchase the property, on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

- 1. **Definitions.** The following terms used in this Agreement shall have the respective meanings set forth below:
 - 1.1. **Date of Agreement:** _____, 2013
 - 1.2. **Seller:**
 - 1.3. **Buyer:** City of Flagstaff, Arizona
 - 1.4. **Escrow Agent:**
 - 1.5. **Property:**
 - 1.5.1. The real property consisting of APNs _____ located in Coconino County, Arizona, described in the attached **Exhibit A**, together with all rights, easements, and privileges appurtenant thereto (“Real Property”);

1.5.2. All structures, buildings, improvements, facilities, and fixtures situated on the Real Property, including, without limitation, all equipment and appliances, or other improvements used in connection with the operation or occupancy thereof, such as, but not limited to, heating and air-conditioning systems and facilities used to provide any utility services, parking services, refrigeration, ventilation, trash disposal or other services owned by Seller and located on the Real Property (“Improvements”);

1.5.3. All intangible property owned by Seller and used in connection with the Real Property and Improvements, including warranties with respect to the Real Property and Improvements, and all written contracts in effect at Closing in any way relating to the Property (all such intangible property being sometimes collectively referred to herein as “Intangible Property”).

1.6. **Date of Opening of Escrow:**

1.6.1. Seller and Buyer shall establish an escrow (“Escrow”) with Escrow Agent to consummate the transaction that is the subject of this Agreement. The date on which a duplicate original of this Agreement, executed by both Buyer and Seller, is delivered to and accepted by Escrow Agent shall be the Date of Opening of Escrow, which date shall be inserted by Escrow Agent below its signature at the end of this Agreement. Escrow Agent shall give Buyer and Seller prompt written notice of the Date of Opening of Escrow.

1.7. **Feasibility Date:** The _____ (___th) calendar day after the Date of Opening of Escrow, unless that day falls on a weekend or holiday, in which case the feasibility date will be on the next business day after the _____ (___th) calendar day.

1.8. **Closing:**

1.8.1. The _____ (___th) calendar day after the Feasibility Date, unless that day falls on a weekend or holiday, in which case closing will be on the next business day after the _____ (___th) calendar day.

1.9. **Notice Addresses:** **For Seller:**

For Buyer:

City of Flagstaff
Assistant to the City Manager-Real Estate
211 W. Aspen Avenue
Flagstaff, AZ 86001
(928) 213-2072

For Escrow Agent:

2. Property. Seller agrees to sell and Buyer agrees to purchase the Property in accordance with and subject to the terms and conditions of this Agreement.
3. Conveyance of Property. Buyer shall purchase the Property consisting of parcels _____ for the amount of _____ (\$_____). The Property shall be conveyed to Buyer at Closing pursuant to a Warranty Deed (“**Deed**”) in the form attached hereto as **Exhibit B**. Seller shall execute the Deed with respect to the Property and, upon satisfaction of all conditions in this Agreement, shall cause Escrow Agent to record the Deed in the official records of Coconino County, State of Arizona, upon Closing. In addition, at Closing: (i) Seller shall execute and deliver to Escrow Agent a separate non-foreign affidavit (“**Affidavit**”) in the form attached hereto as **Exhibit C**; and (ii) Buyer and Seller shall execute and deliver to Escrow Agent a separate Affidavit of Property Value for the Property as required by applicable law.
4. Purchase Price.
 - 4.1. Purchase Price. The purchase price for the Property to be paid by Buyer shall be _____ (\$_____)
 (“**Purchase Price**”).
 - 4.2. Payment. The Purchase Price shall be payable as follows:
 - 4.2.1. On or before the Closing, Buyer shall deposit with Escrow Agent, in cash or immediately available funds, an amount equal to _____ (\$_____) for the purchase of the property, plus such additional funds as may be required to allow Buyer to fully satisfy its obligations under this Agreement, including Buyer's share of prorations and closing costs for the Property.
 (“**Cash Due at Closing**”).
 - 4.3. Exchange of Properties. Buyer is aware that Seller intends to perform a 1031 tax-deferred exchange. Seller requests Buyer’s cooperation in such an exchange and agrees to hold Buyer harmless from any and all claims, liabilities, costs or delays in time resulting from such an exchange. Upon Seller’s request, and provided such cooperation can be provided at no cost or risk to the Buyer, and without delaying each date of Closing, Buyer shall reasonably cooperate with Seller in structuring a “tax deferred” exchange pursuant to Section 1031 of the Internal Revenue Code in connection with the transaction contemplated in this Agreement. Buyer makes no representation or warranty concerning the availability or appropriateness of such an exchange, and Seller’s inability for any reason to arrange or achieve the exchange shall not relieve Seller of any obligation of this Agreement. Furthermore, Buyer makes no representation or warranty to Seller

that any such exchange shall be treated as “tax-deferred” by the Internal Revenue Service. Seller agrees to reimburse the Buyer for all fees, costs, and expenses (including reasonable attorney’s fees) incurred by the Buyer as a result of Seller’s election to participate in a Section 1031 exchange.

5. Inspection.

5.1. Inspection. Buyer shall have until 5:00 p.m. Arizona time on the Feasibility Date in which to perform a physical inspection of the Property and an inspection of all financial documents, for the purpose of conducting a feasibility study (“**Feasibility Condition**”). If Buyer disapproves the Feasibility Condition for any reason whatsoever, Buyer may send written notice to Seller and Escrow Agent on or before the Feasibility Date electing to terminate this Agreement and the Escrow. Failure of Buyer to provide written notice of approval of the Feasibility Condition shall be deemed Buyer’s disapproval of the Feasibility Condition and Buyer’s election to terminate this Agreement and the Escrow. Buyer’s inspection may include, but is not limited to:

5.1.1. Inspection of all physical aspects of the Property, including, but not limited to, all operating systems, roof, structural components, and related service contracts;

5.1.2. Environmental inspection and testing;

5.1.3. Investigation of all zoning, code, and governmental requirements;

5.1.4. Review preliminary title report;

5.1.5. Review copies of all leases and contracts, if applicable, together with any modifications or amendments thereto pertaining to the operation of the Property as well as interview existing tenants with regard to current occupancy; and

5.1.6. Review financial information from Seller’s records and review any other information and documents pertaining to Seller’s ownership and operation of the Property, including but not limited to rent rolls (collectively, the “**Records**”).

5.2. Termite Damage. Seller, at its cost, shall cure and repair prior to Closing any termite damage disclosed by Seller’s or Buyer’s termite inspection report or any structural evaluation of the buildings on the Property performed by Buyer’s consultant.

5.3. Termination. If Buyer terminates (or is deemed to terminate) this Agreement as may be permitted under this Agreement, then Buyer is responsible for all costs associated with the termination. If Seller terminates (or is deemed to terminate)

this Agreement as may be permitted under this Agreement, then Seller is responsible for all costs associated with the termination.

6. Information; Access to the Property.

6.1. Information. Within ten (10) days after the Date of Opening of Escrow, Seller shall provide access or copies to Buyer of those reports, studies, surveys, and other material documents listed on **Exhibit D** attached hereto (“**Information**”), to the extent such Information was not previously provided to Buyer.

6.2. Access to Property. Buyer and its employees, agents, architects, engineers, and independent contractors (hereafter “Designees”) shall have the right to enter upon the Property at any time after the Date of Opening of Escrow (provided that this Agreement has not been previously terminated as permitted herein) to inspect and test the Property and to determine the feasibility of acquiring the Property. Buyer shall have the right to perform any and all examinations, inspections, or tests Buyer deems necessary and appropriate, provided that Buyer provides written notice to Seller at least three (3) days before Buyer intends to enter the Property to conduct any intrusive examinations, inspections, or tests that require any drilling or other possible damage to any portion of the Property. Buyer acknowledges and agrees that Seller shall be entitled to have its representatives present during any time Buyer or its agents or independent contractors are on the Property. Buyer shall: (i) perform all such inspections in a safe and professional manner; (ii) not create any dangerous or hazardous condition on the Property; (iii) comply with all applicable laws with respect to Buyer's inspections; and (iv) obtain all permits required to be obtained with respect to Buyer's inspections.

Subject to the rights of tenants of the Property under their respective Leases, and with reasonable advance notice to Seller and to any applicable tenant, Buyer and its designees shall be entitled to inspect, during Seller’s regular business hours, the tenants’ premises on the Property and to interview tenants; provided, however, that, at Seller’s request, Seller and/or the involved tenant or its designees shall be entitled to accompany Buyer during any such inspection or contact with any tenant. In addition, Seller shall use reasonable efforts to facilitate such inspections and obtain any necessary consent to entry from the respective tenants.

6.3. Costs. Buyer shall bear all costs and expenses of any inspections, investigations, and tests of any kind or nature undertaken by Buyer with regard to the Property.

6.4. Survey. If Seller has not already provided an American Land Title Association (“ALTA”) survey of the Property as required by the Request for Proposal, such ALTA survey shall be provided within ten (10) days after Date of Opening of Escrow at Seller’s cost. If the results of the Survey indicate that the acreage of the property is less than _____ acres, the Purchase Price shall be reduced accordingly on a per square foot basis. The Survey shall be sufficient to enable _____ (“**Title Insurer**”) to delete the standard survey exception from the Title Policy (defined in 7.1) and issue the Title Policy.

To the extent that the Seller has not provided all environmental reports to the Buyer as required in the Request for Proposal, and in all events within ten (10) days after the Date of Opening of Escrow, Seller will provide all environmental reports required by the Request for Proposal for the Property to Buyer. Buyer may, at its cost, obtain additional environmental reports. If the reports indicate that remediation of the property is needed, Seller agrees to pay for the remediation.

7. Title Review.

- 7.1. Delivery of Title Report. As soon as possible, and in all events within ten (10) days after the Date of Opening of Escrow, Escrow Agent shall cause Title Insurer to deliver to the Parties a commitment for the issuance to Buyer of an ALTA extended coverage title insurance policy in the amount of the Purchase Price (“**Title Policy**”), together with legible copies of all matters indicated in Schedule B thereto (collectively, the “**Title Report**”).
- 7.2. Buyer's Review of Title Report. If Buyer is dissatisfied with any matter shown on the Title Report (“**Unpermitted Exceptions**”), Buyer may deliver written notice (“**Title Objection Notice**”) to Seller and Escrow Agent of its objection at least twenty (20) business days prior to the Feasibility Date. If any amendment, revision, or supplement to the Title Report is issued (except to remove matters previously objected to by Buyer), a copy thereof shall be promptly delivered by Escrow Agent to Buyer, together with a legible copy of any new matter referred to in any amendment or supplement to the Title Report. If any amendment, revision, or supplement to the Title Report is issued after the Feasibility Date, Buyer shall have five (5) business days after receipt of any amendment, revision, or supplement of the Title Report, or until Closing, whichever first occurs, to object to any new and material matters shown thereon by providing a Title Objection Notice to Seller and Escrow Agent. If Buyer fails to object to any matter set forth in the Title Report or in any amendment, revision, or supplement thereto within the time periods prescribed in this Section 7, Buyer shall be deemed to have accepted these matters.
- 7.3. Seller's Cure Period. If Buyer timely delivers a Title Objection Notice, then Seller shall notify Buyer within ten (10) business days following the date of receipt of the Title Objection Notice (“**Seller's Cure Period**”) that either: (i) one or more of the Unpermitted Exceptions has been, or will be at or prior to Closing, removed from the Title Report by Escrow Agent; or (ii) Seller is unable or unwilling to have one or more of the Unpermitted Exceptions removed. If Seller fails to respond to the Title Objection Notice within Seller's Cure Period, Seller shall be deemed to be unwilling to cause the removal of the Unpermitted Exceptions. If Seller fails to cure any objection of Buyer, or fails to respond to the Title Objection Notice within Seller's Cure Period, Buyer shall elect within ten (10) business days following Seller's Cure Period to either: (i) cancel this Agreement and the Escrow by written notice delivered to Seller and Escrow Agent; or (ii) waive the objection by written notice to Seller and Escrow Agent

and proceed to purchase the Property. If Buyer fails to timely make any of these elections, Buyer will be deemed to have elected option (ii) above. All matters to which Buyer has not objected, or to which Buyer has waived or is deemed to have waived its objections under this Section 7, are referred to in this Agreement as the "**Permitted Exceptions.**"

7.4. Unpermitted Liens. Notwithstanding any other provision in this Agreement, and regardless of whether Buyer has given notice of an objection under the terms of this Section 7, Seller shall satisfy or otherwise remove all monetary liens and encumbrances on the Property, on or before the Closing, with the exception of taxes or assessments not yet due and liens and encumbrances caused by Buyer.

7.5. Title Policy. Escrow Agent shall cause Title Insurer to issue at Closing to Buyer, as the insured, the Title Policy in the amount of the Purchase Price.

8. Miscellaneous.

8.1. Prorations and Adjustments. The following adjustments to the Purchase Price paid hereunder shall be made between Seller and Buyer and shall be prorated (as applicable) through the Escrow on a per diem basis as of 12:01 a.m. on the Closing date:

8.1.1. Seller is responsible for all real estate taxes and assessments for or relating to the Property until such time that the Property is removed from the tax rolls by the Coconino County Assessor's Office. The provisions of this Section 8.1 shall survive Closing.

8.1.2. If applicable, Seller shall retain all collected Tenant rents ("**Rents**") attributable to the period prior to the day of Closing. Seller shall pay all Rent Taxes on Rents collected by Seller, provide Buyer with evidence of payment thereof, and obtain State of Arizona and City of Flagstaff clearance letters therefor prior to Closing date.

8.1.3. Seller shall be entitled to retain and receive refund of all utility and similar deposits at Closing.

8.1.4. If applicable, to the extent not billed directly to tenants, or otherwise paid by tenants, utilities, including water, electricity, sewer, gas, telephone, and other utility charges, shall be prorated based, to the extent practicable, on the last meter readings prior to Closing. Seller will endeavor to obtain meter readings on the day before Closing, and if such readings are obtained, there shall be no such proration of such items. Seller shall pay at Closing the utility bills for the period up to and including the date of Closing, and Buyer shall pay the utility bills for the period subsequent to Closing. If the utility company will not issue separate bills, Buyer will receive a credit against the Purchase Price for Seller's portion and will pay the entire bill prior to delinquency after Closing. If Seller has paid any

utilities no more than thirty (30) calendar days in advance in the ordinary course of business, then Buyer shall be charged its portion of such payment at Closing. Buyer shall be responsible for any utility deposits necessary to establish service in Buyer's name.

- 8.2 Estoppel Certificates. If applicable, Seller shall request that all tenants on the Property (“**Tenant(s)**”) execute statements in the form attached hereto as **Exhibit E** (“**Tenant Estoppel Certificate**”). Seller shall deliver the Tenant Estoppel Certificates to be executed to the Tenants by no later than ten (10) business days after the opening of Escrow. Receipt of Tenant Estoppel Certificates without material modifications having been made thereto by the Tenants, which, in the aggregate, represent a minimum of one hundred percent (100%) of the rent reflected on the list of current leases certified by the Seller (“**Rent Roll**”) for the Property, shall be a condition to Purchaser's obligation to close Escrow.
- 8.3. Condition of Property. Improvements shall include all structures, buildings, and fixtures situated on the Property. Infrastructure shall include all facilities used to provide utility service and private roads. The Seller will disclose all defects in the improvements and infrastructure to the Buyer in writing within ten (10) days after Opening of Escrow. The Buyer has the right to make any and all inspections of the improvements and infrastructure as detailed in Section 5.1 of this Agreement.
- 8.4. Seller's Covenants. Except as otherwise provided in this Section between the date of the execution of this Agreement and the Closing date, Seller shall:
- 8.4.1. Maintain the Property in its current condition and perform, or cause tenants to perform, required and routine maintenance and make minor replacements of the Property that are tangible property (whether real or personal) and perform repairs or make minor replacements to any broken, defective, or disfunctioning portions of the Property that are tangible property (whether real or personal) as the relevant conditions require.
- 8.4.2. Pay, in the normal course of business, and, in any event, prior to Closing, all sums due for work, materials, or services furnished or otherwise incurred in the ownership, use, maintenance, repair, or operation of the Property, up to Closing.
- 8.4.3. Seller will not make any material alterations or improvements to the Property, or remove any of the Property therefrom, except with the ordinary course of Seller's business practices, without the consent of Buyer, which consent shall not be unreasonably withheld, conditioned, or delayed.
- 8.4.4. Maintain its current or comparable insurance covering the Property;

8.4.5. Operate, manage, and enter into contracts with respect to the Property, in the same manner done by Seller prior to the date hereof; provided, however, that Seller shall not enter into any new service contract after the date hereof that cannot be terminated within thirty (30) days without the payment of any fee or penalty. Seller shall not enter into any new Leases, or amend, modify, or extend any existing Leases after the Feasibility Date. Seller shall terminate all leases prior to close of escrow and resolve all claims by tenants including but not limited to claims for relocation expenses.

8.4.6. Execute reasonable documents required by, and otherwise cooperate in good faith with, Escrow Agent in order to issue the Title Policy in accordance with the Title Report showing only the Permitted Exceptions.

9. Seller's Representations and Warranties. Seller covenants, represents, and warrants that the following will be true as of the time of the execution of this Agreement and as of Closing:

9.1. The person(s) signing this Agreement and any documents and instructions in connection herewith, on behalf of Seller, have full power and authority to do so. This Agreement has been duly authorized and executed by Seller, and, upon execution by Buyer and delivery to Escrow Agent, shall be a valid and binding agreement of Seller, enforceable in accordance with its fees.

9.2. This Agreement is, and all other documents executed by Seller pursuant hereto will be, duly authorized, executed, and delivered by Seller, and will be the legal, valid, and binding obligations of Seller, and enforceable against Seller, in accordance with their respective terms. This Agreement and such documents do not and will not violate any provisions of any agreement, order, or judgment to which Seller is a party or to which it is subject. All persons signing this Agreement and/or any documents and instruments in connection herewith on behalf of Seller have full power and authority to do so.

9.3. Seller's execution of this Agreement, consummation of the transactions herein contemplated, and performance and observance of the obligations of Seller hereunder and under all other agreements and instruments herein mentioned to which Seller is a party, will not conflict with or result in the breach of any law, regulation, order, writ, injunction, or decree of any court or governmental authority or of any agreement or instrument to which Seller is now a party or to which it is subject, or constitute a default thereunder, and no consent, waiver, or approval by any third party is required in connection with the execution and delivery by Seller of this Agreement.

9.4. The Property meets all current building and zoning codes and there are no life safety issues outstanding.

9.5. There are no attachments, levies, executions, assignments for the benefit of creditors, receiverships, conservatorships, or voluntary or involuntary proceedings

in bankruptcy or any other debtor relief actions contemplated by Seller or filed by Seller, or to Seller's actual knowledge, pending in any current judicial or administrative proceeding against Seller.

- 9.6. Except as disclosed in the Title Report or the Information, Seller has not received written notice of any existing, proposed, planned, or threatened eminent domain or condemnation actions, assessments, or assessment district proceedings related to the Property, and has no actual knowledge of any planned.
- 9.7. Seller is not a "foreign person" as that term is defined in Section 1445 of the Internal Revenue Code, as amended, and any applicable regulations promulgated thereunder.
- 9.8. There are no liens, encumbrances, claims of lien or encumbrances, or any possible defects, or claims of defects to the title to the Property which do not appear in the Title Report or the Information.
- 9.9. Except for debts, liabilities, and obligations for which provision is made herein for proration or other adjustment at Closing, all liabilities and obligations arising from the ownership of the Property will be paid on or before Closing.
- 9.10. As of Closing, there shall be no parties in possession of any portion of the Property as lessees, tenants, tenants at sufferance, or trespassers, or no person, firm, corporation, or other entity has, or at Closing shall have, any right to relocation or reimbursement for relocation or option to acquire all or any portion of the Property.
- 9.11. Except as disclosed in the Information, there are no Hazardous Substances located on the Property, and the Property is in compliance with all applicable Environmental Laws. As used in this Agreement, "**Hazardous Substance**" shall mean and include all hazardous or toxic substances, wastes, or materials, any pollutants or contaminants (including, without limitation, asbestos and materials which include hazardous constituents), or any other similar substances or materials which are included under or regulated by any Environmental Law. "**Environmental Law**" shall mean and include all local, state, or federal laws, rules, orders, and regulations pertaining to environmental regulation, or the use, processing, storage, disposal, generation, or transportation of Hazardous Substances, or any contamination, clean up, or disclosure related thereto, including without limitation the Environmental Response Compensation and Liability Act of 1980, the Super Fund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act, the Hazardous and Solid Waste Amendments of 1984, the Toxic Substances Control Act, the Federal Insecticide, Fungicide and Rodenticide Act, the Federal Water Pollution Control Act, the Federal Safe Drinking Water Act, the Federal Clean Air Act, the Federal Clean Water Act, the National Environmental Protection Act, and Title 49 of the Arizona Revised Statutes, as any of the foregoing has heretofore been amended, and any regulations promulgated with respect to any such statutes. There are no

orders, judgments, claims, suits, actions, or proceedings concerning or affecting the Property with respect to any Environmental Law. Seller has not received any notice of any threatened or pending suit, action, or proceeding concerning the Property relating to any Environmental Law.

- 9.12. Seller has received no written notice from any city, county, state, or other governmental authority of any violation of any law, statute, ordinance, regulation, or administrative or judicial order or holding, whether or not appearing in public records, with respect to the Property, which violation has not been corrected.
- 9.13. There are not any existing, pending, or anticipated litigation against or involving the Property or Seller's interest therein, including without limitation any water, sewer, building, or other construction moratoria on the Property.
- 9.14. There are no agreements or documents which constitute Leases or have a material adverse effect on the Property or the operation thereof. Other than this Agreement, there are no outstanding contracts or agreements executed by Seller related to the sale, exchange, or transfer of the Property or any part thereof. There are no unpaid costs or expenses related to tenant improvements or leasing commissions or leasing fees with respect to the Property which are the obligation of Seller and which will not be paid at or before Closing by Seller. There are no leasing commissions or leasing fees due and payable prior to Closing (or which will become due and payable after Closing) with respect to any of the Leases which are the obligation of Seller and which will not be paid at or before Closing by Seller. There are no written leases, subleases, licenses, or other rental agreements or occupancy agreements executed by Seller which grant any possessory interest in and to any space situated on or in the Property or otherwise give rights with regard to use of the Property. There are no service contracts, maintenance agreements, leasing commission or brokerage agreements, repair contracts, property management contracts, contracts for the purchase or delivery of labor, services, materials, or goods, supplies, or equipment or similar agreements entered into by Seller which will be obligations of Buyer or the Property after Closing, other than any of such contracts or agreements which are cancelable on not more than thirty (30) days' notice without the payment of any termination fee or cancellation penalty.
- 9.15. In the Title Policy or as otherwise disclosed in writing by Seller to Buyer prior to the Feasibility Date, Seller has received no written notice from any city, county, state, or other government authority: (i) of any order or directive requiring any work of repair, maintenance, or improvement to be performed on the Property that has not been corrected; (ii) relating to defects in the Improvements or relating to noncompliance with any applicable building code, restriction, license, or permit that has not been corrected; (iii) relating to any threat of impending condemnation of the Property; or (iv) of any unpaid assessments for public improvements that have been made against the Property or of any presently planned public improvements which would result in the creation of a special assessment or similar lien upon the Property.

- 9.16. Other than those service contracts, maintenance agreements, leasing commission, or brokerage agreements, repair contracts, property management contracts, contracts for the purchase or delivery of labor, services, materials, or goods, supplies, or equipment or similar agreements entered into by or on behalf of Seller: (i) which are listed on Schedule B to **Exhibit F**; (ii) which will be terminated prior to Closing; or (iii) which are cancelable on no more than thirty (30) days' notice without the payment of any termination fee or cancellation penalty (all of the foregoing contracts or agreements referenced in clauses (i) or (ii) hereof are collectively referred to as the "**Contracts**"), Seller does not have any other liabilities or obligations under other agreements relating to the Property and other than normal expenses incurred in the ordinary course of business.
- 9.17. There are no structural or other defects, including, but not limited to, defects in the roof, plumbing, heating, air conditioning, foundation, or electrical wiring in the buildings and other improvements.
- 9.18. Notwithstanding the foregoing provisions of this Section 9, if Buyer learns of any actual or alleged inaccuracy in Seller's representations or warranties contained in this Section 9 after the date hereof and prior to Closing date, Buyer shall promptly notify Seller thereof, and if Seller learns of any actual or alleged inaccuracy in such representations or warranties, Seller shall advise Buyer thereof. Seller shall, within five (5) days of receiving such written notice from Buyer or of learning of such actual or alleged inaccuracy, make reasonable efforts to cure such inaccuracy and, failing such cure, Seller shall, within such five (5) day period, notify Buyer in writing of such failure to cure, and Buyer's sole and exclusive remedy therefor shall be to elect, within five (5) days of receiving such written notice from Seller, to either (a) proceed to Closing and waive such inaccuracy or (b) cancel this Agreement and the Escrow, and neither Party shall have any further rights or obligations regarding this Agreement (except as may be expressly provided otherwise in this Agreement). Notwithstanding the foregoing, it is understood that Seller's representations and warranties contained in Section 9 shall be and remain true as of the Closing date, and that Seller remains liable to Buyer for all damages resulting from a breach thereof.
- 9.19. It is understood and agreed that the Purchase Price has been adjusted by prior negotiation to reflect that all of the Property is sold by Seller and purchased by Buyer subject to this Section 9.
10. **Buyer's Representations and Warranties.** Buyer covenants, represents, and warrants that:
- 10.1. The person(s) signing this Agreement and any documents and instructions in connection herewith on behalf of Buyer have full power and authority to do so.
- 10.2. This Agreement has been duly authorized and executed by Buyer, and upon delivery to and execution by Seller shall be a valid and binding agreement of Buyer.

10.3. There are no attachments, levies, executions, assignments for the benefit of creditors, receiverships, conservatorships, or voluntary or involuntary proceedings in bankruptcy or any other debtor relief actions contemplated by Buyer or filed by Buyer, or pending in any current judicial or administrative proceeding against Buyer.

11. Changes in Representations and Warranties.

11.1. If the Party making the representation, warranty, or covenant obtains knowledge of any change in any of its statements after the date hereof (whether arising before or after the date hereof), the Party shall give prompt notice to the other Party.

11.2. If a change in any of the representations, warranties, and covenants by a Party is intentionally caused by the Party, the change shall constitute a default and the other Party's remedies shall be as provided in Section 12 below.

11.3. If, however, a change in the representations, warranties, and covenants by a Party is not intentionally caused by the Party making the statement, then the change shall constitute only the failure of a condition (if the change materially and adversely affects the other Party), but shall not constitute a default. In such event, the other Party's sole remedy shall be to terminate this Agreement and the Escrow and neither Party shall have any further rights or obligations under this Agreement, except those that survive the termination.

11.4. It shall be a condition precedent to a Party's obligation to proceed with Closing that the representations, warranties, and covenants by the other Party set forth above with respect to the Property shall be materially true and correct as of Closing.

12. Default.

12.1. Default by Seller. If any warranty or representation of Seller made in this Agreement shall prove to be materially untrue, or if Seller shall fail to perform any of its obligations under this Agreement on or prior to the date for performance provided in this Agreement, and Buyer is not in default under this Agreement, then, unless otherwise specifically provided for in this Agreement, Buyer shall give Seller five (5) business days' written notice of the failure and opportunity to cure. If Seller does not cure within the five (5) business-day period, then Buyer may, as its exclusive remedy either: (i) cancel this Agreement and the Escrow by written notice to Seller and Escrow Agent; or (ii) pursue specific performance of this Agreement; provided that such specific performance action is initiated and filed within ninety (90) days after Seller's alleged default. Notwithstanding the foregoing, if the remedy of specific performance is not available to Buyer because Seller has sold the Property or because Seller, by its acts has (i) voluntarily disabled its ability to deliver title as required by this Agreement, or (ii) caused an error in the representations and warranties of Seller herein, Buyer may maintain an action for damages against Seller. If Buyer elects to terminate this Agreement

as permitted under this Section 12.1, then: (i) the Escrow shall be terminated for all purposes; (ii) Escrow Agent shall return all other funds, documents, and other items held by Escrow Agent to the Party that deposited same with respect to the Property; (iii) Seller shall reimburse Buyer for Buyer's actual out-of-pocket expenses not to exceed _____ Dollars (\$_____) as liquidated damages; and (iv) the Parties shall have no further rights or obligations under this Agreement except for those rights and obligations that are specified in this Agreement to survive the termination of this Agreement.

12.2. Default by Buyer. If any material warranty or representation of Buyer made in this Agreement shall prove to be materially untrue, or if Buyer shall fail to perform any of Buyer's obligations under this Agreement on or prior to the date for performance provided in this Agreement, then Seller shall give Buyer five (5) business days' written notice of the failure and opportunity to cure. Notwithstanding the foregoing sentence, Buyer shall have no cure period with respect to Buyer's failure to pay money as required under this Agreement or Buyer's failure to acquire the Property on Closing. If Buyer does not cure within the applicable cure period, if any, then Buyer shall be in default. In the event of default by Buyer, Seller as its sole right and exclusive remedy may terminate this Agreement and the Escrow.

13. Risk of Loss. Except as provided in any indemnity provisions of this Agreement, and as otherwise provided in this Section 13, Seller shall bear all risk of loss with respect to the Property prior to Closing and thereafter all risk of loss shall be Buyer's.

If, prior to Closing, any portion of the Real Property and Improvements, or any part thereof, are damaged or destroyed, Buyer shall have the right, exercisable by giving notice to Seller and Escrow Agent within fifteen (15) days after receiving written notice of such damage or destruction (but in any event prior to Closing), to either: (i) terminate this Agreement and the Escrow, in which case neither Party shall have any further rights or obligations under this Agreement (except as may be expressly provided otherwise in this Agreement), and neither Seller nor Buyer shall be subject to any claim by the other for damages of any kind except for the breach of the indemnity, hold harmless, and other agreements provided in this Agreement; or (ii) accept the Property in its then condition and proceed with Closing without any abatement or reduction in the Purchase Price, in which event Buyer shall be entitled to (a) an assignment of all of Seller's rights to any insurance proceeds payable by reason of such damage or destruction and (b) a credit against the Purchase Price in the amount of Seller's insurance deductible. If Buyer elects to proceed under clause (ii) above, Seller shall not compromise, settle, or adjust any claims to such proceeds without Buyer's prior written consent.

If, prior to Closing, all or any portion of the Real Property and Improvements is subject to a taking by public authority, Buyer shall have the right, exercisable by giving notice to Seller within five (5) days after receiving written notice of such taking (but in any event prior to Closing), to either: (i) terminate this Agreement and the Escrow, in which case neither Party shall have any further rights or obligations under this Agreement (except as may be expressly provided otherwise in this Agreement), and neither Seller nor Buyer

shall be subject to any claim by the other for damages of any kind except for the breach of the indemnity, hold harmless, and other agreements provided in this Agreement; or (ii) accept the Property in its then condition and proceed with Closing without any abatement or reduction in the Purchase Price, in which event Buyer shall be entitled to an assignment of all of Seller's rights to any condemnation award payable by reason of such taking. If Buyer elects to proceed under clause (ii) above, Seller shall not compromise, settle, or adjust any claims to such award without Buyer's prior written consent, and Buyer shall receive all awards. As used in this Section 13, "taking" shall mean any transfer of the Property or any material portion thereof to a governmental entity or other party with appropriate authority, by exercise of the power of eminent domain. Seller agrees to give Buyer notice of any damage, destruction, or taking of the Real Estate and Improvements promptly after Seller obtains knowledge thereof.

14. Closing.

14.1. Deliveries by Seller for the Closing. Seller shall deliver to Escrow Agent for filing, recordation, or delivery to Buyer, as appropriate, upon Closing, the following:

14.1.1. The Deed for the Property, duly executed and appropriately acknowledged by Seller;

14.1.2. An Affidavit of Property Value for the Property, duly executed and appropriately acknowledged by Seller as contemplated by Section 3;

14.1.3. [If Applicable] Tenant Estoppel Certificates in the form of **Exhibit E** from each current Tenant of premises at the Property or in a form as provided for in Section 8.2;

14.1.4 [If Applicable] An Assignment and Assumption of Contracts executed by Seller in the form of **Exhibit F** attached hereto ("Assignment and Assumption of Contracts");

14.1.5. A Bill of Sale and Assignment executed by Buyer in the form of **Exhibit G**; and

14.1.6. Any additional instruments, duly executed and appropriately acknowledged by Seller, as may be necessary for Seller to have complied with the terms of this Agreement.

14.2. Deliveries by Buyer for the Closing. On or before Closing, Buyer shall deliver to Escrow Agent for filing, recordation, or delivery to Seller, as appropriate, upon Closing, the following:

14.2.1. The cash due at Closing as described in Section 4.2;

14.2.2. An Affidavit of Property Value for the Property, duly executed and acknowledged by Buyer as contemplated by Section 3; and

14.2.3. Any additional instruments, duly executed and appropriately acknowledged by Buyer, as may be necessary for Buyer to have complied with the terms of this Agreement.

- 14.3. Closing Costs. Buyer and Seller shall share evenly all closing costs in connection with the Escrow for the Property. Seller shall pay the cost of the standard coverage owner's title policy described in Section 7 for the Property and all recording fees. Buyer shall pay the additional cost for extended coverage owner's title policy, any endorsements requested by Buyer, and any costs in connection with any lender's policy that Buyer may be obligated to purchase for Buyer's lender (if required). All other fees, charges, or expenses incidental to the sale of the Property to Buyer shall, except as otherwise expressly provided in this Agreement, be shared evenly between Buyer and Seller. In addition to the amounts Buyer is required to deposit with Escrow Agent under Section 4 above, Buyer and Seller shall deposit with Escrow Agent, on or before Closing, sufficient amounts to cover its share of closing costs (and all other items prorated in accordance with this Agreement to the extent applicable). All other items prorated in accordance with this Agreement, to the extent applicable, shall be paid from the proceeds otherwise payable to Seller.
15. Notices. Any and all notices required or permitted by this Agreement shall be given in writing and personally delivered, sent by registered or certified mail, return receipt requested, postage prepaid, or sent by reputable overnight courier, addressed as listed in Section 1.9 of this Agreement. Any notice or communication shall be deemed to have been given and received on the earliest of: (i) the date of delivery or refusal, if hand delivered or sent by overnight courier; (ii) three (3) days after the date of mailing, if mailed within the continental United States; or (iii) seven (7) days after mailing, if mailed outside the continental United States. Copies of all notices or communications to Buyer or Seller shall be hand delivered, mailed, or sent by overnight courier, in the manner set forth above, to Escrow Agent, and copies of all notices by Buyer or Seller to Escrow Agent shall be hand delivered, mailed, or sent by overnight courier, in the manner set forth above, to the other Party hereto. Notwithstanding the foregoing, notices from Escrow Agent or Title Insurer to Seller and Buyer may be given by United States first class mail and shall be deemed given and received three (3) days after deposit in the United States mail.
16. Good Funds. Except as otherwise provided in this Agreement, all deposits and payments that are to be made by Buyer with respect to this Agreement shall be made when due in lawful money of the United States. Under no circumstances will Escrow Agent accept any deposit or payment not made in strict accordance with this Agreement.
17. Time of Essence. Time is and shall be of the essence of this Agreement and all its provisions. Any extension of the time for performance under this Agreement by either Party must be in writing and signed on behalf of Seller and Buyer. An extension may be granted on behalf of the Buyer by the City Manager. No extension will be deemed a

waiver of this Section 17 with respect to other performance by either Party.

18. Waiver. The waiver by any Party of any right granted to it in this Agreement shall not be deemed to be a waiver of any other right granted in this Agreement, nor shall same be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived.
19. Attorneys' Fees. The prevailing Party in any litigation arising out of this Agreement shall be entitled to the recovery of its reasonable attorneys' fees, expert witness fees, litigation related expenses, and court costs in such litigation or proceeding from the other Party.
20. Entire Agreement. This Agreement, together with any exhibits attached hereto and incorporated herein by reference, is intended to be and constitutes the entire agreement between the parties with respect to the Property as of the date of execution, and may be amended only by an instrument in writing signed by Buyer and Seller. The joinder of Escrow Agent and any broker named in this Agreement shall not be required to amend this Agreement. Evidence of prior negotiations or understandings between the parties shall not vary or contradict the provisions of this Agreement.
21. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of Buyer and Seller and their respective successors and assigns.
22. Further Assurances. Promptly upon the request of the other Party or of Escrow Agent, Seller and Buyer each shall execute, acknowledge, and deliver to the other Party or Escrow Agent, or both, any and all further instruments, and shall take all such other action as may be reasonably requested or appropriate to evidence or give effect to the provisions of this Agreement, or to satisfy Escrow Agent's requirements in connection with this Agreement.
23. Severability. If any provision or any portion of a provision of this Agreement or of any other document to be executed in connection with this Agreement is deemed to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect the remaining portion of that provision or of any other provision of this Agreement or such other document, as each provision of this Agreement and all such other documents shall be deemed to be severable from all other provisions hereof and thereof.
24. Headings. The paragraph headings in this Agreement are inserted for the purpose of reference only and shall not limit, define, or expand the provisions of this Agreement or any one of them.
25. Governing Law; Venue. This Agreement and any documents executed in connection with or pursuant to this Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. Buyer and Seller agree that the proper venue for any legal proceedings arising out of this Agreement shall be Coconino County, Arizona.
26. Not Partners. Neither this Agreement, nor any other agreement referred to herein or

entered into in connection herewith, and no activity of Seller or Buyer in connection with this transaction, shall constitute Seller and Buyer as partners or joint venturers for any purposes whatsoever.

27. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall together constitute one and the same document.
28. Construction. This Agreement is the result of negotiations between the Parties and accordingly shall not be construed for or against either Party regardless of which Party drafted this Agreement.
29. Business Day. If the time for performance of any obligation under this Agreement expires on a Saturday, a Sunday, or a legal holiday observed by Escrow Agent, then the time for such performance shall be extended to the next succeeding day that is not a Saturday, a Sunday, or a legal holiday observed by Escrow Agent.
30. Assignment. Neither Party shall assign any of its rights and obligations under this Agreement without prior written consent of the other, which may not be unreasonably withheld, delayed, or conditioned.
31. Conflict of Interest. This Agreement is subject to the cancellation provisions of ARS §38-511.
32. Broker. Seller shall be responsible to pay a commission at Closing to _____ (“**Broker**”) pursuant to a separate written agreement. Except for the foregoing commissions to be paid to Broker, each Party hereto represents and warrants to the other that it has not employed any other broker or finder in connection with the transaction contemplated by this Agreement, and it is not obligated to pay any real estate brokerage or other commission or fee in connection with the sale of the Property to Buyer. Each Party shall defend and hold the other harmless from all liability and expense including, without limitation, reasonable attorneys' fees arising from any claim by any broker, agent, or finder for commissions, finder's fees, or similar charges, because of any act of such Party. The obligations of the parties pursuant to this Section 32 shall survive Closing and any termination of this Agreement. Buyer and Seller acknowledge that certain employees and/or principals of Buyer and Seller (or their respective affiliates) may be licensed Arizona real estate brokers and salespersons.

[SIGNATURE PAGE FOLLOWS SEPARATELY]

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement on the date set forth above.

SELLER:

By: _____

BUYER:

City of Flagstaff,
an Arizona municipal corporation

By: _____
Gerald W. Nabours, Mayor

Attest:

City Clerk

Approved as to form:

City Attorney

List of Exhibits

- Exhibit A - Legal Description of Property
- Exhibit B - Warranty Deed
- Exhibit C - Non-Foreign Affidavit
- Exhibit D - Information
- Exhibit E - Tenant Estoppel Certificate [If Applicable]
- Exhibit F - Assignment and Assumption of Contracts [If Applicable]
- Exhibit G - Bill of Sale and Assignment

ACCEPTANCE OF ESCROW AGENT

_____ accepts the foregoing Purchase and Sale Agreement and escrow instructions, agrees to act as Escrow Agent hereunder, and agrees to comply with the provisions of Section 6045 of the Internal Revenue Code with respect to the transactions contemplated hereby.

[Name of Escrow Agent]

By: _____
Name:

Title: _____

Date: _____

EXHIBIT A

LEGAL DESCRIPTION

EXHIBIT B

When recorded, mail to:
City Clerk
City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001

WARRANTY DEED

For good and valuable consideration, _____, hereafter called the Grantor, does hereby grant and convey to CITY OF FLAGSTAFF, an Arizona municipal corporation, hereafter called the Grantee, that certain real property situated in Coconino County, Arizona, more particularly described in Exhibit A, attached to and made a part hereof.

The Grantor hereby binds itself and its successors and assigns to warrant and defend the title to said real property against all persons claiming under it, subject to the matters above set forth.

This transaction is exempt under A.R.S. Section 11-1134(A)(3).

IN WITNESS WHEREOF, the Grantor has executed this Warranty Deed this _____ day of _____, 2013.

By: _____

State of Arizona)
) ss.
County of Coconino)

ACKNOWLEDGMENT. On this _____ day of _____, 2013, before me, a Notary Public, personally appeared _____, known to be or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same on behalf of _____ for the purposes therein contained.

My Commission Expires: _____

Notary Public

EXHIBIT C

NON-FOREIGN AFFIDAVIT

The undersigned, _____ ("**Transferor**"), after being duly sworn upon his oath deposes and says that:

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform _____ ("**Transferee**"), that withholding of tax is not required upon the disposition of Transferor's interest in the real property described on **Exhibit A** attached hereto and by this reference included herein, the undersigned hereby certifies the following:

1. The Transferor is not a non-resident alien, foreign corporation, foreign partnership, foreign trust, foreign estate, or other foreign person within the meaning of § 1445 and § 7701 of the Internal Revenue Code and the treasury regulations promulgated thereunder;

2. Transferor is not a disregarded entity as defined in § 1.1445-2(b)(2)(iii) of the Internal Revenue Code;

3. Transferor's U.S. taxpayer identification/social security number is: _____; and

4. Transferor's business address is: _____.

Transferor understands that this certification may be disclosed to the Internal Revenue Service by Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury, I declare that I have examined this certification and to the best of my knowledge and belief this certification is true, correct, and complete. The undersigned agent declares that he has the authority to sign this document on behalf of Transferor.

Dated this ____ day of _____, 2013.

TRANSFEROR:

BY _____

EXHIBIT D
INFORMATION

1. A current tenant roster and rent roll (“**Rent Roll**”), showing tenant names, rental rates, period of rental, date of last rental increase, security deposits, rents paid, delinquent rents, any agreements regarding relocation, and all correspondence regarding the termination of the leases.
2. Copies of all Leases.
3. Operating statements including income reports for the last year.
4. Copies of all contracts and provide a summary of any unwritten or verbal agreements the Property may have with any third party vendors.
5. Copies of the Permits and Certificates of Occupancies.
6. The most recent real and personal property tax statements for the Real Property, Improvements, and the Personal Property.
7. Copies of all casualty and liability insurance policies insuring the Property, with a schedule of the premiums for such policies.
8. Geological and soils engineering reports.
9. Environmental site assessments or other environmental reports.
10. All building permits, conditional use permits, variances, and related governmental authorizations obtained in connection with construction of the Improvements.
11. ALTA surveys.
12. Copies of any pending or past litigation against the Property.
13. Detailed list of all capital expenditures over the past thirty-six (36) months.
14. Any termite treatment documents for the Property.

EXHIBIT E
TENANT ESTOPPEL CERTIFICATE

To: _____

Re: Leased Premises identified as _____, located within the property located at _____ (the "Property")

Lease Date: _____, _____, between _____, as Landlord, and _____, as Tenant.

The undersigned is the Tenant under the above-referenced lease and certifies to _____ and to Landlord, the following:

1. The lease ("Lease") consists of the following documents: _____
_____. The Lease has not been canceled, modified, assigned, extended, or amended except as described in the preceding sentence.
2. Rent has been paid to the first day of the following month and all additional rent has been paid and collected in a current manner. There is no prepaid rent, except \$_____ and the amount of Tenant's security deposit held by Landlord is \$_____.
3. Base rent under the Lease is currently payable in the amount of \$_____.
4. The obligations of Tenant under the Lease are guaranteed by _____.
5. The Lease terminates on _____ and Tenant has no right to renew.
6. Tenant intends to vacate the Property on or before the following date: _____, 2013.
7. Landlord has paid in full all obligations owed to Tenant under the Lease.
8. Landlord has paid in full all obligations owed to the Tenant for relocation.
9. All work to be performed by Landlord for Tenant under the Lease has been performed as required and has been accepted by Tenant, except _____. All allowances or reimbursements currently due and payable to Tenant under the Lease have been paid in full.
10. The Lease is terminated, neither Landlord nor Tenant claims any default thereunder, and Tenant has no claims or defenses against the Landlord or offsets or credits against rent. Additionally, no free rent periods or rental concessions have been granted that remain outstanding, except _____.

11. Tenant has received no notice of prior sale, transfer, or assignment, hypothecation, or pledge of the Lease or of the rents received therein, except _____.

12. Tenant has not assigned or sublet the Lease nor does Tenant hold the Leased Premises under assignment or sublease, except _____.

13. Tenant has no other interest in any other part of the Property of which the Leased Premises forms a part or to any personal property appurtenant thereto or used in connection therewith, except _____.

14. Tenant has no right or option pursuant to the Lease or otherwise to purchase all or any part of the Leased Premises or the Property.

15. There are no other agreements, written or oral, between Tenant and Landlord with respect to the Lease, the Leased Premises and/or the Property.

16. The statements contained herein may be relied upon by Landlord under the Lease and by any prospective purchaser or assignee (including lenders) of the Landlord's interest under the Lease.

17. No actions, whether voluntary or involuntary, are pending against Tenant under the bankruptcy laws of the United States or any state thereof.

18. The Tenant, as of the date hereof, has no claim, charge, defense, or offset under the Lease against rents or other charges due or to become due thereunder. As of the date hereof, Tenant has not asserted any such offset or credit. To the Tenant's knowledge, there are no defaults under the Lease on the part of Tenant.

19. This Certificate shall inure to Buyer's benefit and to the benefit Buyer's successors and assigns and shall be binding upon Tenant and Tenant's successors and assigns.

Tenant makes this Certificate with the understanding that Landlord is contemplating selling the Property, and that Buyer is interested in purchasing the Property.

The person signing this Certificate is duly authorized by Tenant to sign this Certificate and if Tenant is a corporation or other entity, the undersigned is a duly appointed officer or principal of the corporation or other entity and is the incumbent in the office or other position indicated under his or her name.

Dated this _____ day of _____, 20____.

TENANT:

_____,
a(n) _____

By: _____

Its: _____

EXHIBIT F

ASSIGNMENT AND ASSUMPTION OF CONTRACTS

THIS ASSIGNMENT AND ASSUMPTION OF CONTRACTS (the "Assignment") is made this _____ day of _____, 2013 (the "Effective Date"), by and between _____ ("Assignor"), and the City of Flagstaff, an Arizona municipal corporation ("Assignee").

RECITALS

A. Assignor presently holds certain rights under contracts (except as expressly provided herein to the contrary), including, without limitation, those contracts more particularly described on Schedule B to this Assignment (the "Contracts"), affecting that real property more particularly described on Schedule A to this Assignment, such Schedules being by this reference incorporated herein.

B. Assignor desires to assign to Assignee, and Assignee desires to acquire Assignor's interest in and to, the Contracts.

FOR VALUABLE CONSIDERATION, it is agreed as follows:

1. **Assignment.** As of the Effective Date, Assignor conveys and assigns to Assignee, subject to the provisions of the contracts, all of Assignor's right, title, and interest in and to the Contracts. Assignor hereby covenants and agrees to indemnify, defend, and hold harmless Assignee of, from, for, and against any and all actions, suits, proceedings, claims, liabilities, losses, damages, costs, and expenses (including, without limitation, reasonable attorneys' fees) incurred in connection therewith, based upon or arising out of any breach or alleged breach of any of the Contracts occurring or accruing prior to the Effective Date.

2. **Assumption.** Assignee assumes and agrees to be bound by all of Assignor's liabilities and obligations arising under the Contracts from and after the Effective Date. Assignee further covenants and agrees to indemnify, defend, and hold harmless Assignor of, from, for, and against any and all actions, suits, proceedings, claims, liabilities, losses, damages, costs, and expenses (including, without limitation, reasonable attorneys' fees) incurred in connection therewith, based upon or arising out of any breach or alleged breach of any of the Contacts occurring or accruing from and after the Effective Date.

3. **Binding Effect.** This Assignment shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

4. **Counterparts.** This Assignment may be executed in counterparts, all of which together shall constitute one complete Assignment.

ASSIGNOR:

By: _____

ASSIGNEE:

CITY OF FLAGSTAFF

By: _____
Gerald W. Nabours, Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

EXHIBIT G
BILL OF SALE AND ASSIGNMENT

THIS BILL OF SALE AND ASSIGNMENT ("Bill of Sale") is made as of this ____ day of _____, 2013, by _____ ("Seller"), in favor of the City of Flagstaff ("Buyer").

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller does hereby absolutely and unconditionally give, grant, bargain, transfer, assign, sell, set over, convey, and deliver to Buyer all of its right, title, and interest in, to and under all tangible and intangible Personal Property ("Personal Property") relating to the use, management, operation, maintenance, or ownership of the real property described on **Exhibit A** attached hereto (the "Property"), including without limitation, the following:

1. All transferable licenses, permits, certificates of occupancy, and other approvals issued by any governmental or quasi-governmental authority pertaining to the use, management, operation, maintenance, or ownership of the Property;
2. All keys and combinations to all doors, cabinets, safes, enclosures, and other locking items or areas of the Property in Seller's possession;
3. All equipment, machinery, and construction materials located upon the Property;
4. All guaranties and warranties in effect with respect to the Property (including roof and equipment warranties) from contractors, subcontractors, suppliers, and manufacturers;
5. All awards or payments made or to be made for any taking by condemnation, eminent domain, or otherwise (including, without limitation, by agreement in lieu thereof) for all or any part of any of the Property, the aforesaid Personal Property, and in and to all proceeds paid or payable in connection with any damage, loss, or destruction to all or any part of the Property;
6. All easements, covenants, or other title appurtenances benefiting or burdening the Property, and all party wall, encroachment, sidewalk, indemnification, right-of-way, and other similar agreements appurtenant to or otherwise affecting the use and enjoyment of the Property;
7. Any and all other property (whether real or personal and whether tangible or intangible) of any type or nature whatsoever owned, held, or maintained by Seller relating to the planning, development, construction, ownership, operation, use, management, maintenance, repair, operation, or enjoyment of the Property;
8. All warranties and guaranties from contractors, subcontractors, suppliers, and manufacturers which are in effect as of the date of this Bill of Sale issued in connection with (i) the construction, improvement, alteration, service, or repair of the buildings and other improvements situated on the Property, and (ii) the mechanical equipment and appliances in the Property;

9. All development rights and other intangible rights, titles, interests, privileges, and appurtenances owned by Seller and in any way related to or used in connection with the Property;

10. All licenses, consents, easements, rights of way and approvals from private parties, if any, to make use of utilities and to insure vehicular and pedestrian ingress and egress to the Property; and

11. All plans, specifications, studies, surveys, engineering reports, environmental reports, tests, studies, and other technical descriptions relating to the Property.

12. All approvals have been obtained to allow the Buyer to provide water and wastewater services to the Property.

Seller hereby covenants that Seller will, at any time and from time to time upon written request therefor, execute and deliver to Buyer such documents as Buyer may reasonably request in order to fully assign and transfer to and vest in Buyer and protect Buyer's right, title, and interest in and to the Personal Property transferred and assigned hereby, or to enable Buyer to realize upon or otherwise enjoy such rights and property.

Seller hereby represents and warrants to Buyer that: (i) the Personal Property has been paid for and is not subject to any liens, encumbrances, security interests, or claims of any kind; (ii) all taxes of any nature whatsoever on the Personal Property accruing prior to Closing have been paid by Seller; (iii) the consideration paid to Seller herewith is the full and complete consideration for the Personal Property; (iv) any sales or other taxes which may be payable with respect to this transfer are the sole responsibility of Seller; and (v) the transfer of the Personal Property to Buyer does not require the consent of third parties.

Seller warrants, and hereby covenants, at Seller's sole cost and expense, to defend Buyer's title to the Personal Property against the acts of Seller, and none other. Seller hereby agrees to indemnify and hold Buyer free and harmless from all liabilities, obligations, damages, causes of action, judgments, costs, and expenses (including reasonable attorneys' fees) which Buyer may incur or suffer in connection with any breach by Seller of the preceding warranty and covenant.

This Bill of Sale is binding upon the successors and assigns of Seller.

If any party hereto brings any action or suit against the other party hereto by reason of any breach of any covenant, condition, agreement, or provision on the part of the other party set forth in this Bill of Sale, the prevailing party shall be entitled to recover from the other party all costs and expenses of the action or suit, including reasonable attorneys' fees, charges, and costs, in addition to any other relief to which it may be entitled.

This Bill of Sale will be governed by, interpreted under, and construed and enforceable in accordance with the laws of the State of Arizona.

IN WITNESS WHEREOF, Seller has executed and delivered this Bill of Sale as of the date first above written.

SELLER: [Seller Name]

By: _____

**PURCHASE AND SALE
AGREEMENT**

between

as Seller

and

CITY OF FLAGSTAFF

as Buyer

Property located in Coconino County, Arizona

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (“**Agreement**”) is entered into as of _____, 2013, by and between the City of Flagstaff, an Arizona municipal corporation (“Buyer” or “City”), and _____ (“Seller”). Buyer and Seller may be referred to each individually as a “Party” and collectively as the “Parties.”

RECITALS

- A. An important goal of the City Council has been to obtain property for a Core Services Maintenance Facility.
- B. The City issued Request for Proposals No. 2013-44 (the “RFP”) for the purchase of property or purchase of property and exchange of City-owned property for a Core Services Maintenance Facility.
- C. Seller responded to the RFP with an offer to sell property to the City on certain terms and conditions.
- D. Seller desires to enter into this Agreement with the City in order to sell the property, and the City desires to purchase the property, on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

- 1. **Definitions.** The following terms used in this Agreement shall have the respective meanings set forth below:
 - 1.1. **Date of Agreement:** _____, 2013
 - 1.2. **Seller:**
 - 1.3. **Buyer:** City of Flagstaff, Arizona
 - 1.4. **Escrow Agent:**
 - 1.5. **Property:**
 - 1.5.1. The real property consisting of APNs _____ located in Coconino County, Arizona, described in the attached **Exhibit A**, together with all rights, easements, and privileges appurtenant thereto (“Real Property”);

1.5.2. All structures, buildings, improvements, facilities, and fixtures situated on the Real Property, including, without limitation, all equipment and appliances, or other improvements used in connection with the operation or occupancy thereof, such as, but not limited to, heating and air-conditioning systems and facilities used to provide any utility services, parking services, refrigeration, ventilation, trash disposal or other services owned by Seller and located on the Real Property (“Improvements”);

1.5.3. All intangible property owned by Seller and used in connection with the Real Property and Improvements, including warranties with respect to the Real Property and Improvements, and all written contracts in effect at Closing in any way relating to the Property (all such intangible property being sometimes collectively referred to herein as “Intangible Property”).

1.6. **Date of Opening of Escrow:**

1.6.1. Seller and Buyer shall establish an escrow (“Escrow”) with Escrow Agent to consummate the transaction that is the subject of this Agreement. The date on which a duplicate original of this Agreement, executed by both Buyer and Seller, is delivered to and accepted by Escrow Agent shall be the Date of Opening of Escrow, which date shall be inserted by Escrow Agent below its signature at the end of this Agreement. Escrow Agent shall give Buyer and Seller prompt written notice of the Date of Opening of Escrow.

1.7. **Feasibility Date:** The _____ (___th) calendar day after the Date of Opening of Escrow, unless that day falls on a weekend or holiday, in which case the feasibility date will be on the next business day after the _____ (___th) calendar day.

1.8. **Closing:**

1.8.1. The _____ (___th) calendar day after the Feasibility Date, unless that day falls on a weekend or holiday, in which case closing will be on the next business day after the _____ (___th) calendar day.

1.9. **Notice Addresses:** **For Seller:**

For Buyer:

City of Flagstaff
Assistant to the City Manager-Real Estate
211 W. Aspen Avenue
Flagstaff, AZ 86001
(928) 213-2072

For Escrow Agent:

2. Property. Seller agrees to sell and Buyer agrees to purchase the Property in accordance with and subject to the terms and conditions of this Agreement.
3. Conveyance of Property. Buyer shall purchase the Property consisting of parcels _____ for the amount of _____ (\$_____). The Property shall be conveyed to Buyer at Closing pursuant to a Warranty Deed (“**Deed**”) in the form attached hereto as **Exhibit B**. Seller shall execute the Deed with respect to the Property and, upon satisfaction of all conditions in this Agreement, shall cause Escrow Agent to record the Deed in the official records of Coconino County, State of Arizona, upon Closing. In addition, at Closing: (i) Seller shall execute and deliver to Escrow Agent a separate non-foreign affidavit (“**Affidavit**”) in the form attached hereto as **Exhibit C**; and (ii) Buyer and Seller shall execute and deliver to Escrow Agent a separate Affidavit of Property Value for the Property as required by applicable law.
4. Purchase Price.
 - 4.1. Purchase Price. The purchase price for the Property to be paid by Buyer shall be _____ (\$_____)
 (“**Purchase Price**”).
 - 4.2. Payment. The Purchase Price shall be payable as follows:
 - 4.2.1. On or before the Closing, Buyer shall deposit with Escrow Agent, in cash or immediately available funds, an amount equal to _____ (\$_____) for the purchase of the property, plus such additional funds as may be required to allow Buyer to fully satisfy its obligations under this Agreement, including Buyer's share of prorations and closing costs for the Property.
 (“**Cash Due at Closing**”).
 - 4.3. Exchange of Properties. Buyer is aware that Seller intends to perform a 1031 tax-deferred exchange. Seller requests Buyer’s cooperation in such an exchange and agrees to hold Buyer harmless from any and all claims, liabilities, costs or delays in time resulting from such an exchange. Upon Seller’s request, and provided such cooperation can be provided at no cost or risk to the Buyer, and without delaying each date of Closing, Buyer shall reasonably cooperate with Seller in structuring a “tax deferred” exchange pursuant to Section 1031 of the Internal Revenue Code in connection with the transaction contemplated in this Agreement. Buyer makes no representation or warranty concerning the availability or appropriateness of such an exchange, and Seller’s inability for any reason to arrange or achieve the exchange shall not relieve Seller of any obligation of this Agreement. Furthermore, Buyer makes no representation or warranty to Seller

that any such exchange shall be treated as “tax-deferred” by the Internal Revenue Service. Seller agrees to reimburse the Buyer for all fees, costs, and expenses (including reasonable attorney’s fees) incurred by the Buyer as a result of Seller’s election to participate in a Section 1031 exchange.

5. Inspection.

5.1. Inspection. Buyer shall have until 5:00 p.m. Arizona time on the Feasibility Date in which to perform a physical inspection of the Property and an inspection of all financial documents, for the purpose of conducting a feasibility study (“**Feasibility Condition**”). If Buyer disapproves the Feasibility Condition for any reason whatsoever, Buyer may send written notice to Seller and Escrow Agent on or before the Feasibility Date electing to terminate this Agreement and the Escrow. Failure of Buyer to provide written notice of approval of the Feasibility Condition shall be deemed Buyer’s disapproval of the Feasibility Condition and Buyer’s election to terminate this Agreement and the Escrow. Buyer’s inspection may include, but is not limited to:

5.1.1. Inspection of all physical aspects of the Property, including, but not limited to, all operating systems, roof, structural components, and related service contracts;

5.1.2. Environmental inspection and testing;

5.1.3. Investigation of all zoning, code, and governmental requirements;

5.1.4. Review preliminary title report;

5.1.5. Review copies of all leases and contracts, if applicable, together with any modifications or amendments thereto pertaining to the operation of the Property as well as interview existing tenants with regard to current occupancy; and

5.1.6. Review financial information from Seller’s records and review any other information and documents pertaining to Seller’s ownership and operation of the Property, including but not limited to rent rolls (collectively, the “**Records**”).

5.2. Termite Damage. Seller, at its cost, shall cure and repair prior to Closing any termite damage disclosed by Seller’s or Buyer’s termite inspection report or any structural evaluation of the buildings on the Property performed by Buyer’s consultant.

5.3. Termination. If Buyer terminates (or is deemed to terminate) this Agreement as may be permitted under this Agreement, then Buyer is responsible for all costs associated with the termination. If Seller terminates (or is deemed to terminate)

this Agreement as may be permitted under this Agreement, then Seller is responsible for all costs associated with the termination.

6. Information; Access to the Property.

6.1. Information. Within ten (10) days after the Date of Opening of Escrow, Seller shall provide access or copies to Buyer of those reports, studies, surveys, and other material documents listed on **Exhibit D** attached hereto (“**Information**”), to the extent such Information was not previously provided to Buyer.

6.2. Access to Property. Buyer and its employees, agents, architects, engineers, and independent contractors (hereafter “Designees”) shall have the right to enter upon the Property at any time after the Date of Opening of Escrow (provided that this Agreement has not been previously terminated as permitted herein) to inspect and test the Property and to determine the feasibility of acquiring the Property. Buyer shall have the right to perform any and all examinations, inspections, or tests Buyer deems necessary and appropriate, provided that Buyer provides written notice to Seller at least three (3) days before Buyer intends to enter the Property to conduct any intrusive examinations, inspections, or tests that require any drilling or other possible damage to any portion of the Property. Buyer acknowledges and agrees that Seller shall be entitled to have its representatives present during any time Buyer or its agents or independent contractors are on the Property. Buyer shall: (i) perform all such inspections in a safe and professional manner; (ii) not create any dangerous or hazardous condition on the Property; (iii) comply with all applicable laws with respect to Buyer's inspections; and (iv) obtain all permits required to be obtained with respect to Buyer's inspections.

Subject to the rights of tenants of the Property under their respective Leases, and with reasonable advance notice to Seller and to any applicable tenant, Buyer and its designees shall be entitled to inspect, during Seller’s regular business hours, the tenants’ premises on the Property and to interview tenants; provided, however, that, at Seller’s request, Seller and/or the involved tenant or its designees shall be entitled to accompany Buyer during any such inspection or contact with any tenant. In addition, Seller shall use reasonable efforts to facilitate such inspections and obtain any necessary consent to entry from the respective tenants.

6.3. Costs. Buyer shall bear all costs and expenses of any inspections, investigations, and tests of any kind or nature undertaken by Buyer with regard to the Property.

6.4. Survey. If Seller has not already provided an American Land Title Association (“ALTA”) survey of the Property as required by the Request for Proposal, such ALTA survey shall be provided within ten (10) days after Date of Opening of Escrow at Seller’s cost. If the results of the Survey indicate that the acreage of the property is less than _____ acres, the Purchase Price shall be reduced accordingly on a per square foot basis. The Survey shall be sufficient to enable _____ (“**Title Insurer**”) to delete the standard survey exception from the Title Policy (defined in 7.1) and issue the Title Policy.

To the extent that the Seller has not provided all environmental reports to the Buyer as required in the Request for Proposal, and in all events within ten (10) days after the Date of Opening of Escrow, Seller will provide all environmental reports required by the Request for Proposal for the Property to Buyer. Buyer may, at its cost, obtain additional environmental reports. If the reports indicate that remediation of the property is needed, Seller agrees to pay for the remediation.

7. Title Review.

- 7.1. Delivery of Title Report. As soon as possible, and in all events within ten (10) days after the Date of Opening of Escrow, Escrow Agent shall cause Title Insurer to deliver to the Parties a commitment for the issuance to Buyer of an ALTA extended coverage title insurance policy in the amount of the Purchase Price (“**Title Policy**”), together with legible copies of all matters indicated in Schedule B thereto (collectively, the “**Title Report**”).
- 7.2. Buyer's Review of Title Report. If Buyer is dissatisfied with any matter shown on the Title Report (“**Unpermitted Exceptions**”), Buyer may deliver written notice (“**Title Objection Notice**”) to Seller and Escrow Agent of its objection at least twenty (20) business days prior to the Feasibility Date. If any amendment, revision, or supplement to the Title Report is issued (except to remove matters previously objected to by Buyer), a copy thereof shall be promptly delivered by Escrow Agent to Buyer, together with a legible copy of any new matter referred to in any amendment or supplement to the Title Report. If any amendment, revision, or supplement to the Title Report is issued after the Feasibility Date, Buyer shall have five (5) business days after receipt of any amendment, revision, or supplement of the Title Report, or until Closing, whichever first occurs, to object to any new and material matters shown thereon by providing a Title Objection Notice to Seller and Escrow Agent. If Buyer fails to object to any matter set forth in the Title Report or in any amendment, revision, or supplement thereto within the time periods prescribed in this Section 7, Buyer shall be deemed to have accepted these matters.
- 7.3. Seller's Cure Period. If Buyer timely delivers a Title Objection Notice, then Seller shall notify Buyer within ten (10) business days following the date of receipt of the Title Objection Notice (“**Seller's Cure Period**”) that either: (i) one or more of the Unpermitted Exceptions has been, or will be at or prior to Closing, removed from the Title Report by Escrow Agent; or (ii) Seller is unable or unwilling to have one or more of the Unpermitted Exceptions removed. If Seller fails to respond to the Title Objection Notice within Seller's Cure Period, Seller shall be deemed to be unwilling to cause the removal of the Unpermitted Exceptions. If Seller fails to cure any objection of Buyer, or fails to respond to the Title Objection Notice within Seller's Cure Period, Buyer shall elect within ten (10) business days following Seller's Cure Period to either: (i) cancel this Agreement and the Escrow by written notice delivered to Seller and Escrow Agent; or (ii) waive the objection by written notice to Seller and Escrow Agent

and proceed to purchase the Property. If Buyer fails to timely make any of these elections, Buyer will be deemed to have elected option (ii) above. All matters to which Buyer has not objected, or to which Buyer has waived or is deemed to have waived its objections under this Section 7, are referred to in this Agreement as the "**Permitted Exceptions.**"

- 7.4. Unpermitted Liens. Notwithstanding any other provision in this Agreement, and regardless of whether Buyer has given notice of an objection under the terms of this Section 7, Seller shall satisfy or otherwise remove all monetary liens and encumbrances on the Property, on or before the Closing, with the exception of taxes or assessments not yet due and liens and encumbrances caused by Buyer.
- 7.5. Title Policy. Escrow Agent shall cause Title Insurer to issue at Closing to Buyer, as the insured, the Title Policy in the amount of the Purchase Price.

8. Miscellaneous.

- 8.1. Prorations and Adjustments. The following adjustments to the Purchase Price paid hereunder shall be made between Seller and Buyer and shall be prorated (as applicable) through the Escrow on a per diem basis as of 12:01 a.m. on the Closing date:

8.1.1. Seller is responsible for all real estate taxes and assessments for or relating to the Property until such time that the Property is removed from the tax rolls by the Coconino County Assessor's Office. The provisions of this Section 8.1 shall survive Closing.

8.1.2. If applicable, Seller shall retain all collected Tenant rents ("**Rents**") attributable to the period prior to the day of Closing. Seller shall pay all Rent Taxes on Rents collected by Seller, provide Buyer with evidence of payment thereof, and obtain State of Arizona and City of Flagstaff clearance letters therefor prior to Closing date.

8.1.3. Seller shall be entitled to retain and receive refund of all utility and similar deposits at Closing.

8.1.4. If applicable, to the extent not billed directly to tenants, or otherwise paid by tenants, utilities, including water, electricity, sewer, gas, telephone, and other utility charges, shall be prorated based, to the extent practicable, on the last meter readings prior to Closing. Seller will endeavor to obtain meter readings on the day before Closing, and if such readings are obtained, there shall be no such proration of such items. Seller shall pay at Closing the utility bills for the period up to and including the date of Closing, and Buyer shall pay the utility bills for the period subsequent to Closing. If the utility company will not issue separate bills, Buyer will receive a credit against the Purchase Price for Seller's portion and will pay the entire bill prior to delinquency after Closing. If Seller has paid any

utilities no more than thirty (30) calendar days in advance in the ordinary course of business, then Buyer shall be charged its portion of such payment at Closing. Buyer shall be responsible for any utility deposits necessary to establish service in Buyer's name.

- 8.2 Estoppel Certificates. If applicable, Seller shall request that all tenants on the Property (“**Tenant(s)**”) execute statements in the form attached hereto as **Exhibit E** (“**Tenant Estoppel Certificate**”). Seller shall deliver the Tenant Estoppel Certificates to be executed to the Tenants by no later than ten (10) business days after the opening of Escrow. Receipt of Tenant Estoppel Certificates without material modifications having been made thereto by the Tenants, which, in the aggregate, represent a minimum of one hundred percent (100%) of the rent reflected on the list of current leases certified by the Seller (“**Rent Roll**”) for the Property, shall be a condition to Purchaser's obligation to close Escrow.
- 8.3. Condition of Property. Improvements shall include all structures, buildings, and fixtures situated on the Property. Infrastructure shall include all facilities used to provide utility service and private roads. The Seller will disclose all defects in the improvements and infrastructure to the Buyer in writing within ten (10) days after Opening of Escrow. The Buyer has the right to make any and all inspections of the improvements and infrastructure as detailed in Section 5.1 of this Agreement.
- 8.4. Seller's Covenants. Except as otherwise provided in this Section between the date of the execution of this Agreement and the Closing date, Seller shall:
- 8.4.1. Maintain the Property in its current condition and perform, or cause tenants to perform, required and routine maintenance and make minor replacements of the Property that are tangible property (whether real or personal) and perform repairs or make minor replacements to any broken, defective, or disfunctioning portions of the Property that are tangible property (whether real or personal) as the relevant conditions require.
- 8.4.2. Pay, in the normal course of business, and, in any event, prior to Closing, all sums due for work, materials, or services furnished or otherwise incurred in the ownership, use, maintenance, repair, or operation of the Property, up to Closing.
- 8.4.3. Seller will not make any material alterations or improvements to the Property, or remove any of the Property therefrom, except with the ordinary course of Seller's business practices, without the consent of Buyer, which consent shall not be unreasonably withheld, conditioned, or delayed.
- 8.4.4. Maintain its current or comparable insurance covering the Property;

8.4.5. Operate, manage, and enter into contracts with respect to the Property, in the same manner done by Seller prior to the date hereof; provided, however, that Seller shall not enter into any new service contract after the date hereof that cannot be terminated within thirty (30) days without the payment of any fee or penalty. Seller shall not enter into any new Leases, or amend, modify, or extend any existing Leases after the Feasibility Date. Seller shall terminate all leases prior to close of escrow and resolve all claims by tenants including but not limited to claims for relocation expenses.

8.4.6. Execute reasonable documents required by, and otherwise cooperate in good faith with, Escrow Agent in order to issue the Title Policy in accordance with the Title Report showing only the Permitted Exceptions.

9. Seller's Representations and Warranties. Seller covenants, represents, and warrants that the following will be true as of the time of the execution of this Agreement and as of Closing:

9.1. The person(s) signing this Agreement and any documents and instructions in connection herewith, on behalf of Seller, have full power and authority to do so. This Agreement has been duly authorized and executed by Seller, and, upon execution by Buyer and delivery to Escrow Agent, shall be a valid and binding agreement of Seller, enforceable in accordance with its fees.

9.2. This Agreement is, and all other documents executed by Seller pursuant hereto will be, duly authorized, executed, and delivered by Seller, and will be the legal, valid, and binding obligations of Seller, and enforceable against Seller, in accordance with their respective terms. This Agreement and such documents do not and will not violate any provisions of any agreement, order, or judgment to which Seller is a party or to which it is subject. All persons signing this Agreement and/or any documents and instruments in connection herewith on behalf of Seller have full power and authority to do so.

9.3. Seller's execution of this Agreement, consummation of the transactions herein contemplated, and performance and observance of the obligations of Seller hereunder and under all other agreements and instruments herein mentioned to which Seller is a party, will not conflict with or result in the breach of any law, regulation, order, writ, injunction, or decree of any court or governmental authority or of any agreement or instrument to which Seller is now a party or to which it is subject, or constitute a default thereunder, and no consent, waiver, or approval by any third party is required in connection with the execution and delivery by Seller of this Agreement.

9.4. The Property meets all current building and zoning codes and there are no life safety issues outstanding.

9.5. There are no attachments, levies, executions, assignments for the benefit of creditors, receiverships, conservatorships, or voluntary or involuntary proceedings

in bankruptcy or any other debtor relief actions contemplated by Seller or filed by Seller, or to Seller's actual knowledge, pending in any current judicial or administrative proceeding against Seller.

- 9.6. Except as disclosed in the Title Report or the Information, Seller has not received written notice of any existing, proposed, planned, or threatened eminent domain or condemnation actions, assessments, or assessment district proceedings related to the Property, and has no actual knowledge of any planned.
- 9.7. Seller is not a "foreign person" as that term is defined in Section 1445 of the Internal Revenue Code, as amended, and any applicable regulations promulgated thereunder.
- 9.8. There are no liens, encumbrances, claims of lien or encumbrances, or any possible defects, or claims of defects to the title to the Property which do not appear in the Title Report or the Information.
- 9.9. Except for debts, liabilities, and obligations for which provision is made herein for proration or other adjustment at Closing, all liabilities and obligations arising from the ownership of the Property will be paid on or before Closing.
- 9.10. As of Closing, there shall be no parties in possession of any portion of the Property as lessees, tenants, tenants at sufferance, or trespassers, or no person, firm, corporation, or other entity has, or at Closing shall have, any right to relocation or reimbursement for relocation or option to acquire all or any portion of the Property.
- 9.11. Except as disclosed in the Information, there are no Hazardous Substances located on the Property, and the Property is in compliance with all applicable Environmental Laws. As used in this Agreement, "**Hazardous Substance**" shall mean and include all hazardous or toxic substances, wastes, or materials, any pollutants or contaminants (including, without limitation, asbestos and materials which include hazardous constituents), or any other similar substances or materials which are included under or regulated by any Environmental Law. "**Environmental Law**" shall mean and include all local, state, or federal laws, rules, orders, and regulations pertaining to environmental regulation, or the use, processing, storage, disposal, generation, or transportation of Hazardous Substances, or any contamination, clean up, or disclosure related thereto, including without limitation the Environmental Response Compensation and Liability Act of 1980, the Super Fund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act, the Hazardous and Solid Waste Amendments of 1984, the Toxic Substances Control Act, the Federal Insecticide, Fungicide and Rodenticide Act, the Federal Water Pollution Control Act, the Federal Safe Drinking Water Act, the Federal Clean Air Act, the Federal Clean Water Act, the National Environmental Protection Act, and Title 49 of the Arizona Revised Statutes, as any of the foregoing has heretofore been amended, and any regulations promulgated with respect to any such statutes. There are no

orders, judgments, claims, suits, actions, or proceedings concerning or affecting the Property with respect to any Environmental Law. Seller has not received any notice of any threatened or pending suit, action, or proceeding concerning the Property relating to any Environmental Law.

- 9.12. Seller has received no written notice from any city, county, state, or other governmental authority of any violation of any law, statute, ordinance, regulation, or administrative or judicial order or holding, whether or not appearing in public records, with respect to the Property, which violation has not been corrected.
- 9.13. There are not any existing, pending, or anticipated litigation against or involving the Property or Seller's interest therein, including without limitation any water, sewer, building, or other construction moratoria on the Property.
- 9.14. There are no agreements or documents which constitute Leases or have a material adverse effect on the Property or the operation thereof. Other than this Agreement, there are no outstanding contracts or agreements executed by Seller related to the sale, exchange, or transfer of the Property or any part thereof. There are no unpaid costs or expenses related to tenant improvements or leasing commissions or leasing fees with respect to the Property which are the obligation of Seller and which will not be paid at or before Closing by Seller. There are no leasing commissions or leasing fees due and payable prior to Closing (or which will become due and payable after Closing) with respect to any of the Leases which are the obligation of Seller and which will not be paid at or before Closing by Seller. There are no written leases, subleases, licenses, or other rental agreements or occupancy agreements executed by Seller which grant any possessory interest in and to any space situated on or in the Property or otherwise give rights with regard to use of the Property. There are no service contracts, maintenance agreements, leasing commission or brokerage agreements, repair contracts, property management contracts, contracts for the purchase or delivery of labor, services, materials, or goods, supplies, or equipment or similar agreements entered into by Seller which will be obligations of Buyer or the Property after Closing, other than any of such contracts or agreements which are cancelable on not more than thirty (30) days' notice without the payment of any termination fee or cancellation penalty.
- 9.15. In the Title Policy or as otherwise disclosed in writing by Seller to Buyer prior to the Feasibility Date, Seller has received no written notice from any city, county, state, or other government authority: (i) of any order or directive requiring any work of repair, maintenance, or improvement to be performed on the Property that has not been corrected; (ii) relating to defects in the Improvements or relating to noncompliance with any applicable building code, restriction, license, or permit that has not been corrected; (iii) relating to any threat of impending condemnation of the Property; or (iv) of any unpaid assessments for public improvements that have been made against the Property or of any presently planned public improvements which would result in the creation of a special assessment or similar lien upon the Property.

- 9.16. Other than those service contracts, maintenance agreements, leasing commission, or brokerage agreements, repair contracts, property management contracts, contracts for the purchase or delivery of labor, services, materials, or goods, supplies, or equipment or similar agreements entered into by or on behalf of Seller: (i) which are listed on Schedule B to **Exhibit F**; (ii) which will be terminated prior to Closing; or (iii) which are cancelable on no more than thirty (30) days' notice without the payment of any termination fee or cancellation penalty (all of the foregoing contracts or agreements referenced in clauses (i) or (ii) hereof are collectively referred to as the "**Contracts**"), Seller does not have any other liabilities or obligations under other agreements relating to the Property and other than normal expenses incurred in the ordinary course of business.
- 9.17. There are no structural or other defects, including, but not limited to, defects in the roof, plumbing, heating, air conditioning, foundation, or electrical wiring in the buildings and other improvements.
- 9.18. Notwithstanding the foregoing provisions of this Section 9, if Buyer learns of any actual or alleged inaccuracy in Seller's representations or warranties contained in this Section 9 after the date hereof and prior to Closing date, Buyer shall promptly notify Seller thereof, and if Seller learns of any actual or alleged inaccuracy in such representations or warranties, Seller shall advise Buyer thereof. Seller shall, within five (5) days of receiving such written notice from Buyer or of learning of such actual or alleged inaccuracy, make reasonable efforts to cure such inaccuracy and, failing such cure, Seller shall, within such five (5) day period, notify Buyer in writing of such failure to cure, and Buyer's sole and exclusive remedy therefor shall be to elect, within five (5) days of receiving such written notice from Seller, to either (a) proceed to Closing and waive such inaccuracy or (b) cancel this Agreement and the Escrow, and neither Party shall have any further rights or obligations regarding this Agreement (except as may be expressly provided otherwise in this Agreement). Notwithstanding the foregoing, it is understood that Seller's representations and warranties contained in Section 9 shall be and remain true as of the Closing date, and that Seller remains liable to Buyer for all damages resulting from a breach thereof.
- 9.19. It is understood and agreed that the Purchase Price has been adjusted by prior negotiation to reflect that all of the Property is sold by Seller and purchased by Buyer subject to this Section 9.
10. **Buyer's Representations and Warranties.** Buyer covenants, represents, and warrants that:
- 10.1. The person(s) signing this Agreement and any documents and instructions in connection herewith on behalf of Buyer have full power and authority to do so.
- 10.2. This Agreement has been duly authorized and executed by Buyer, and upon delivery to and execution by Seller shall be a valid and binding agreement of Buyer.

10.3. There are no attachments, levies, executions, assignments for the benefit of creditors, receiverships, conservatorships, or voluntary or involuntary proceedings in bankruptcy or any other debtor relief actions contemplated by Buyer or filed by Buyer, or pending in any current judicial or administrative proceeding against Buyer.

11. Changes in Representations and Warranties.

11.1. If the Party making the representation, warranty, or covenant obtains knowledge of any change in any of its statements after the date hereof (whether arising before or after the date hereof), the Party shall give prompt notice to the other Party.

11.2. If a change in any of the representations, warranties, and covenants by a Party is intentionally caused by the Party, the change shall constitute a default and the other Party's remedies shall be as provided in Section 12 below.

11.3. If, however, a change in the representations, warranties, and covenants by a Party is not intentionally caused by the Party making the statement, then the change shall constitute only the failure of a condition (if the change materially and adversely affects the other Party), but shall not constitute a default. In such event, the other Party's sole remedy shall be to terminate this Agreement and the Escrow and neither Party shall have any further rights or obligations under this Agreement, except those that survive the termination.

11.4. It shall be a condition precedent to a Party's obligation to proceed with Closing that the representations, warranties, and covenants by the other Party set forth above with respect to the Property shall be materially true and correct as of Closing.

12. Default.

12.1. Default by Seller. If any warranty or representation of Seller made in this Agreement shall prove to be materially untrue, or if Seller shall fail to perform any of its obligations under this Agreement on or prior to the date for performance provided in this Agreement, and Buyer is not in default under this Agreement, then, unless otherwise specifically provided for in this Agreement, Buyer shall give Seller five (5) business days' written notice of the failure and opportunity to cure. If Seller does not cure within the five (5) business-day period, then Buyer may, as its exclusive remedy either: (i) cancel this Agreement and the Escrow by written notice to Seller and Escrow Agent; or (ii) pursue specific performance of this Agreement; provided that such specific performance action is initiated and filed within ninety (90) days after Seller's alleged default. Notwithstanding the foregoing, if the remedy of specific performance is not available to Buyer because Seller has sold the Property or because Seller, by its acts has (i) voluntarily disabled its ability to deliver title as required by this Agreement, or (ii) caused an error in the representations and warranties of Seller herein, Buyer may maintain an action for damages against Seller. If Buyer elects to terminate this Agreement

as permitted under this Section 12.1, then: (i) the Escrow shall be terminated for all purposes; (ii) Escrow Agent shall return all other funds, documents, and other items held by Escrow Agent to the Party that deposited same with respect to the Property; (iii) Seller shall reimburse Buyer for Buyer's actual out-of-pocket expenses not to exceed _____ Dollars (\$_____) as liquidated damages; and (iv) the Parties shall have no further rights or obligations under this Agreement except for those rights and obligations that are specified in this Agreement to survive the termination of this Agreement.

12.2. Default by Buyer. If any material warranty or representation of Buyer made in this Agreement shall prove to be materially untrue, or if Buyer shall fail to perform any of Buyer's obligations under this Agreement on or prior to the date for performance provided in this Agreement, then Seller shall give Buyer five (5) business days' written notice of the failure and opportunity to cure. Notwithstanding the foregoing sentence, Buyer shall have no cure period with respect to Buyer's failure to pay money as required under this Agreement or Buyer's failure to acquire the Property on Closing. If Buyer does not cure within the applicable cure period, if any, then Buyer shall be in default. In the event of default by Buyer, Seller as its sole right and exclusive remedy may terminate this Agreement and the Escrow.

13. Risk of Loss. Except as provided in any indemnity provisions of this Agreement, and as otherwise provided in this Section 13, Seller shall bear all risk of loss with respect to the Property prior to Closing and thereafter all risk of loss shall be Buyer's.

If, prior to Closing, any portion of the Real Property and Improvements, or any part thereof, are damaged or destroyed, Buyer shall have the right, exercisable by giving notice to Seller and Escrow Agent within fifteen (15) days after receiving written notice of such damage or destruction (but in any event prior to Closing), to either: (i) terminate this Agreement and the Escrow, in which case neither Party shall have any further rights or obligations under this Agreement (except as may be expressly provided otherwise in this Agreement), and neither Seller nor Buyer shall be subject to any claim by the other for damages of any kind except for the breach of the indemnity, hold harmless, and other agreements provided in this Agreement; or (ii) accept the Property in its then condition and proceed with Closing without any abatement or reduction in the Purchase Price, in which event Buyer shall be entitled to (a) an assignment of all of Seller's rights to any insurance proceeds payable by reason of such damage or destruction and (b) a credit against the Purchase Price in the amount of Seller's insurance deductible. If Buyer elects to proceed under clause (ii) above, Seller shall not compromise, settle, or adjust any claims to such proceeds without Buyer's prior written consent.

If, prior to Closing, all or any portion of the Real Property and Improvements is subject to a taking by public authority, Buyer shall have the right, exercisable by giving notice to Seller within five (5) days after receiving written notice of such taking (but in any event prior to Closing), to either: (i) terminate this Agreement and the Escrow, in which case neither Party shall have any further rights or obligations under this Agreement (except as may be expressly provided otherwise in this Agreement), and neither Seller nor Buyer

shall be subject to any claim by the other for damages of any kind except for the breach of the indemnity, hold harmless, and other agreements provided in this Agreement; or (ii) accept the Property in its then condition and proceed with Closing without any abatement or reduction in the Purchase Price, in which event Buyer shall be entitled to an assignment of all of Seller's rights to any condemnation award payable by reason of such taking. If Buyer elects to proceed under clause (ii) above, Seller shall not compromise, settle, or adjust any claims to such award without Buyer's prior written consent, and Buyer shall receive all awards. As used in this Section 13, "taking" shall mean any transfer of the Property or any material portion thereof to a governmental entity or other party with appropriate authority, by exercise of the power of eminent domain. Seller agrees to give Buyer notice of any damage, destruction, or taking of the Real Estate and Improvements promptly after Seller obtains knowledge thereof.

14. Closing.

14.1. Deliveries by Seller for the Closing. Seller shall deliver to Escrow Agent for filing, recordation, or delivery to Buyer, as appropriate, upon Closing, the following:

14.1.1. The Deed for the Property, duly executed and appropriately acknowledged by Seller;

14.1.2. An Affidavit of Property Value for the Property, duly executed and appropriately acknowledged by Seller as contemplated by Section 3;

14.1.3. [If Applicable] Tenant Estoppel Certificates in the form of **Exhibit E** from each current Tenant of premises at the Property or in a form as provided for in Section 8.2;

14.1.4 [If Applicable] An Assignment and Assumption of Contracts executed by Seller in the form of **Exhibit F** attached hereto ("Assignment and Assumption of Contracts");

14.1.5. A Bill of Sale and Assignment executed by Buyer in the form of **Exhibit G**; and

14.1.6. Any additional instruments, duly executed and appropriately acknowledged by Seller, as may be necessary for Seller to have complied with the terms of this Agreement.

14.2. Deliveries by Buyer for the Closing. On or before Closing, Buyer shall deliver to Escrow Agent for filing, recordation, or delivery to Seller, as appropriate, upon Closing, the following:

14.2.1. The cash due at Closing as described in Section 4.2;

14.2.2. An Affidavit of Property Value for the Property, duly executed and acknowledged by Buyer as contemplated by Section 3; and

- 14.2.3. Any additional instruments, duly executed and appropriately acknowledged by Buyer, as may be necessary for Buyer to have complied with the terms of this Agreement.
- 14.3. Closing Costs. Buyer and Seller shall share evenly all closing costs in connection with the Escrow for the Property. Seller shall pay the cost of the standard coverage owner's title policy described in Section 7 for the Property and all recording fees. Buyer shall pay the additional cost for extended coverage owner's title policy, any endorsements requested by Buyer, and any costs in connection with any lender's policy that Buyer may be obligated to purchase for Buyer's lender (if required). All other fees, charges, or expenses incidental to the sale of the Property to Buyer shall, except as otherwise expressly provided in this Agreement, be shared evenly between Buyer and Seller. In addition to the amounts Buyer is required to deposit with Escrow Agent under Section 4 above, Buyer and Seller shall deposit with Escrow Agent, on or before Closing, sufficient amounts to cover its share of closing costs (and all other items prorated in accordance with this Agreement to the extent applicable). All other items prorated in accordance with this Agreement, to the extent applicable, shall be paid from the proceeds otherwise payable to Seller.
15. Notices. Any and all notices required or permitted by this Agreement shall be given in writing and personally delivered, sent by registered or certified mail, return receipt requested, postage prepaid, or sent by reputable overnight courier, addressed as listed in Section 1.9 of this Agreement. Any notice or communication shall be deemed to have been given and received on the earliest of: (i) the date of delivery or refusal, if hand delivered or sent by overnight courier; (ii) three (3) days after the date of mailing, if mailed within the continental United States; or (iii) seven (7) days after mailing, if mailed outside the continental United States. Copies of all notices or communications to Buyer or Seller shall be hand delivered, mailed, or sent by overnight courier, in the manner set forth above, to Escrow Agent, and copies of all notices by Buyer or Seller to Escrow Agent shall be hand delivered, mailed, or sent by overnight courier, in the manner set forth above, to the other Party hereto. Notwithstanding the foregoing, notices from Escrow Agent or Title Insurer to Seller and Buyer may be given by United States first class mail and shall be deemed given and received three (3) days after deposit in the United States mail.
16. Good Funds. Except as otherwise provided in this Agreement, all deposits and payments that are to be made by Buyer with respect to this Agreement shall be made when due in lawful money of the United States. Under no circumstances will Escrow Agent accept any deposit or payment not made in strict accordance with this Agreement.
17. Time of Essence. Time is and shall be of the essence of this Agreement and all its provisions. Any extension of the time for performance under this Agreement by either Party must be in writing and signed on behalf of Seller and Buyer. An extension may be granted on behalf of the Buyer by the City Manager. No extension will be deemed a

waiver of this Section 17 with respect to other performance by either Party.

18. Waiver. The waiver by any Party of any right granted to it in this Agreement shall not be deemed to be a waiver of any other right granted in this Agreement, nor shall same be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived.
19. Attorneys' Fees. The prevailing Party in any litigation arising out of this Agreement shall be entitled to the recovery of its reasonable attorneys' fees, expert witness fees, litigation related expenses, and court costs in such litigation or proceeding from the other Party.
20. Entire Agreement. This Agreement, together with any exhibits attached hereto and incorporated herein by reference, is intended to be and constitutes the entire agreement between the parties with respect to the Property as of the date of execution, and may be amended only by an instrument in writing signed by Buyer and Seller. The joinder of Escrow Agent and any broker named in this Agreement shall not be required to amend this Agreement. Evidence of prior negotiations or understandings between the parties shall not vary or contradict the provisions of this Agreement.
21. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of Buyer and Seller and their respective successors and assigns.
22. Further Assurances. Promptly upon the request of the other Party or of Escrow Agent, Seller and Buyer each shall execute, acknowledge, and deliver to the other Party or Escrow Agent, or both, any and all further instruments, and shall take all such other action as may be reasonably requested or appropriate to evidence or give effect to the provisions of this Agreement, or to satisfy Escrow Agent's requirements in connection with this Agreement.
23. Severability. If any provision or any portion of a provision of this Agreement or of any other document to be executed in connection with this Agreement is deemed to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect the remaining portion of that provision or of any other provision of this Agreement or such other document, as each provision of this Agreement and all such other documents shall be deemed to be severable from all other provisions hereof and thereof.
24. Headings. The paragraph headings in this Agreement are inserted for the purpose of reference only and shall not limit, define, or expand the provisions of this Agreement or any one of them.
25. Governing Law; Venue. This Agreement and any documents executed in connection with or pursuant to this Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. Buyer and Seller agree that the proper venue for any legal proceedings arising out of this Agreement shall be Coconino County, Arizona.
26. Not Partners. Neither this Agreement, nor any other agreement referred to herein or

entered into in connection herewith, and no activity of Seller or Buyer in connection with this transaction, shall constitute Seller and Buyer as partners or joint venturers for any purposes whatsoever.

27. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall together constitute one and the same document.
28. Construction. This Agreement is the result of negotiations between the Parties and accordingly shall not be construed for or against either Party regardless of which Party drafted this Agreement.
29. Business Day. If the time for performance of any obligation under this Agreement expires on a Saturday, a Sunday, or a legal holiday observed by Escrow Agent, then the time for such performance shall be extended to the next succeeding day that is not a Saturday, a Sunday, or a legal holiday observed by Escrow Agent.
30. Assignment. Neither Party shall assign any of its rights and obligations under this Agreement without prior written consent of the other, which may not be unreasonably withheld, delayed, or conditioned.
31. Conflict of Interest. This Agreement is subject to the cancellation provisions of ARS §38-511.
32. Broker. Seller shall be responsible to pay a commission at Closing to _____ (“**Broker**”) pursuant to a separate written agreement. Except for the foregoing commissions to be paid to Broker, each Party hereto represents and warrants to the other that it has not employed any other broker or finder in connection with the transaction contemplated by this Agreement, and it is not obligated to pay any real estate brokerage or other commission or fee in connection with the sale of the Property to Buyer. Each Party shall defend and hold the other harmless from all liability and expense including, without limitation, reasonable attorneys' fees arising from any claim by any broker, agent, or finder for commissions, finder's fees, or similar charges, because of any act of such Party. The obligations of the parties pursuant to this Section 32 shall survive Closing and any termination of this Agreement. Buyer and Seller acknowledge that certain employees and/or principals of Buyer and Seller (or their respective affiliates) may be licensed Arizona real estate brokers and salespersons.

[SIGNATURE PAGE FOLLOWS SEPARATELY]

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement on the date set forth above.

SELLER:

By: _____

BUYER:

City of Flagstaff,
an Arizona municipal corporation

By: _____
Gerald W. Nabours, Mayor

Attest:

City Clerk

Approved as to form:

City Attorney

List of Exhibits

- Exhibit A - Legal Description of Property
- Exhibit B - Warranty Deed
- Exhibit C - Non-Foreign Affidavit
- Exhibit D - Information
- Exhibit E - Tenant Estoppel Certificate [If Applicable]
- Exhibit F - Assignment and Assumption of Contracts [If Applicable]
- Exhibit G - Bill of Sale and Assignment

ACCEPTANCE OF ESCROW AGENT

_____ accepts the foregoing Purchase and Sale Agreement and escrow instructions, agrees to act as Escrow Agent hereunder, and agrees to comply with the provisions of Section 6045 of the Internal Revenue Code with respect to the transactions contemplated hereby.

[Name of Escrow Agent]

By: _____
Name:

Title: _____

Date: _____

EXHIBIT A

LEGAL DESCRIPTION

EXHIBIT B

When recorded, mail to:
City Clerk
City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001

WARRANTY DEED

For good and valuable consideration, _____, hereafter called the Grantor, does hereby grant and convey to CITY OF FLAGSTAFF, an Arizona municipal corporation, hereafter called the Grantee, that certain real property situated in Coconino County, Arizona, more particularly described in Exhibit A, attached to and made a part hereof.

The Grantor hereby binds itself and its successors and assigns to warrant and defend the title to said real property against all persons claiming under it, subject to the matters above set forth.

This transaction is exempt under A.R.S. Section 11-1134(A)(3).

IN WITNESS WHEREOF, the Grantor has executed this Warranty Deed this _____ day of _____, 2013.

By: _____

State of Arizona)
) ss.
County of Coconino)

ACKNOWLEDGMENT. On this _____ day of _____, 2013, before me, a Notary Public, personally appeared _____, known to be or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same on behalf of _____ for the purposes therein contained.

My Commission Expires: _____

Notary Public

EXHIBIT C

NON-FOREIGN AFFIDAVIT

The undersigned, _____ ("**Transferor**"), after being duly sworn upon his oath deposes and says that:

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform _____ ("**Transferee**"), that withholding of tax is not required upon the disposition of Transferor's interest in the real property described on **Exhibit A** attached hereto and by this reference included herein, the undersigned hereby certifies the following:

1. The Transferor is not a non-resident alien, foreign corporation, foreign partnership, foreign trust, foreign estate, or other foreign person within the meaning of § 1445 and § 7701 of the Internal Revenue Code and the treasury regulations promulgated thereunder;

2. Transferor is not a disregarded entity as defined in § 1.1445-2(b)(2)(iii) of the Internal Revenue Code;

3. Transferor's U.S. taxpayer identification/social security number is: _____; and

4. Transferor's business address is: _____.

Transferor understands that this certification may be disclosed to the Internal Revenue Service by Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury, I declare that I have examined this certification and to the best of my knowledge and belief this certification is true, correct, and complete. The undersigned agent declares that he has the authority to sign this document on behalf of Transferor.

Dated this ____ day of _____, 2013.

TRANSFEROR:

BY _____

EXHIBIT D
INFORMATION

1. A current tenant roster and rent roll (“**Rent Roll**”), showing tenant names, rental rates, period of rental, date of last rental increase, security deposits, rents paid, delinquent rents, any agreements regarding relocation, and all correspondence regarding the termination of the leases.
2. Copies of all Leases.
3. Operating statements including income reports for the last year.
4. Copies of all contracts and provide a summary of any unwritten or verbal agreements the Property may have with any third party vendors.
5. Copies of the Permits and Certificates of Occupancies.
6. The most recent real and personal property tax statements for the Real Property, Improvements, and the Personal Property.
7. Copies of all casualty and liability insurance policies insuring the Property, with a schedule of the premiums for such policies.
8. Geological and soils engineering reports.
9. Environmental site assessments or other environmental reports.
10. All building permits, conditional use permits, variances, and related governmental authorizations obtained in connection with construction of the Improvements.
11. ALTA surveys.
12. Copies of any pending or past litigation against the Property.
13. Detailed list of all capital expenditures over the past thirty-six (36) months.
14. Any termite treatment documents for the Property.

EXHIBIT E
TENANT ESTOPPEL CERTIFICATE

To: _____

Re: Leased Premises identified as _____, located within the property located at _____ (the "Property")

Lease Date: _____, _____, between _____, as Landlord, and _____, as Tenant.

The undersigned is the Tenant under the above-referenced lease and certifies to _____ and to Landlord, the following:

1. The lease ("Lease") consists of the following documents: _____
_____. The Lease has not been canceled, modified, assigned, extended, or amended except as described in the preceding sentence.
2. Rent has been paid to the first day of the following month and all additional rent has been paid and collected in a current manner. There is no prepaid rent, except \$_____ and the amount of Tenant's security deposit held by Landlord is \$_____.
3. Base rent under the Lease is currently payable in the amount of \$_____.
4. The obligations of Tenant under the Lease are guaranteed by _____.
5. The Lease terminates on _____ and Tenant has no right to renew.
6. Tenant intends to vacate the Property on or before the following date: _____, 2013.
7. Landlord has paid in full all obligations owed to Tenant under the Lease.
8. Landlord has paid in full all obligations owed to the Tenant for relocation.
9. All work to be performed by Landlord for Tenant under the Lease has been performed as required and has been accepted by Tenant, except _____. All allowances or reimbursements currently due and payable to Tenant under the Lease have been paid in full.
10. The Lease is terminated, neither Landlord nor Tenant claims any default thereunder, and Tenant has no claims or defenses against the Landlord or offsets or credits against rent. Additionally, no free rent periods or rental concessions have been granted that remain outstanding, except _____.

11. Tenant has received no notice of prior sale, transfer, or assignment, hypothecation, or pledge of the Lease or of the rents received therein, except _____.

12. Tenant has not assigned or sublet the Lease nor does Tenant hold the Leased Premises under assignment or sublease, except _____.

13. Tenant has no other interest in any other part of the Property of which the Leased Premises forms a part or to any personal property appurtenant thereto or used in connection therewith, except _____.

14. Tenant has no right or option pursuant to the Lease or otherwise to purchase all or any part of the Leased Premises or the Property.

15. There are no other agreements, written or oral, between Tenant and Landlord with respect to the Lease, the Leased Premises and/or the Property.

16. The statements contained herein may be relied upon by Landlord under the Lease and by any prospective purchaser or assignee (including lenders) of the Landlord's interest under the Lease.

17. No actions, whether voluntary or involuntary, are pending against Tenant under the bankruptcy laws of the United States or any state thereof.

18. The Tenant, as of the date hereof, has no claim, charge, defense, or offset under the Lease against rents or other charges due or to become due thereunder. As of the date hereof, Tenant has not asserted any such offset or credit. To the Tenant's knowledge, there are no defaults under the Lease on the part of Tenant.

19. This Certificate shall inure to Buyer's benefit and to the benefit Buyer's successors and assigns and shall be binding upon Tenant and Tenant's successors and assigns.

Tenant makes this Certificate with the understanding that Landlord is contemplating selling the Property, and that Buyer is interested in purchasing the Property.

The person signing this Certificate is duly authorized by Tenant to sign this Certificate and if Tenant is a corporation or other entity, the undersigned is a duly appointed officer or principal of the corporation or other entity and is the incumbent in the office or other position indicated under his or her name.

Dated this _____ day of _____, 20____.

TENANT:

_____,
a(n) _____

By: _____

Its: _____

EXHIBIT F

ASSIGNMENT AND ASSUMPTION OF CONTRACTS

THIS ASSIGNMENT AND ASSUMPTION OF CONTRACTS (the "Assignment") is made this _____ day of _____, 2013 (the "Effective Date"), by and between _____ ("Assignor"), and the City of Flagstaff, an Arizona municipal corporation ("Assignee").

RECITALS

A. Assignor presently holds certain rights under contracts (except as expressly provided herein to the contrary), including, without limitation, those contracts more particularly described on Schedule B to this Assignment (the "Contracts"), affecting that real property more particularly described on Schedule A to this Assignment, such Schedules being by this reference incorporated herein.

B. Assignor desires to assign to Assignee, and Assignee desires to acquire Assignor's interest in and to, the Contracts.

FOR VALUABLE CONSIDERATION, it is agreed as follows:

1. **Assignment.** As of the Effective Date, Assignor conveys and assigns to Assignee, subject to the provisions of the contracts, all of Assignor's right, title, and interest in and to the Contracts. Assignor hereby covenants and agrees to indemnify, defend, and hold harmless Assignee of, from, for, and against any and all actions, suits, proceedings, claims, liabilities, losses, damages, costs, and expenses (including, without limitation, reasonable attorneys' fees) incurred in connection therewith, based upon or arising out of any breach or alleged breach of any of the Contracts occurring or accruing prior to the Effective Date.

2. **Assumption.** Assignee assumes and agrees to be bound by all of Assignor's liabilities and obligations arising under the Contracts from and after the Effective Date. Assignee further covenants and agrees to indemnify, defend, and hold harmless Assignor of, from, for, and against any and all actions, suits, proceedings, claims, liabilities, losses, damages, costs, and expenses (including, without limitation, reasonable attorneys' fees) incurred in connection therewith, based upon or arising out of any breach or alleged breach of any of the Contacts occurring or accruing from and after the Effective Date.

3. **Binding Effect.** This Assignment shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

4. **Counterparts.** This Assignment may be executed in counterparts, all of which together shall constitute one complete Assignment.

ASSIGNOR:

By: _____

ASSIGNEE:

CITY OF FLAGSTAFF

By: _____
Gerald W. Nabours, Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

EXHIBIT G
BILL OF SALE AND ASSIGNMENT

THIS BILL OF SALE AND ASSIGNMENT ("Bill of Sale") is made as of this ____ day of _____, 2013, by _____ ("Seller"), in favor of the City of Flagstaff ("Buyer").

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller does hereby absolutely and unconditionally give, grant, bargain, transfer, assign, sell, set over, convey, and deliver to Buyer all of its right, title, and interest in, to and under all tangible and intangible Personal Property ("Personal Property") relating to the use, management, operation, maintenance, or ownership of the real property described on **Exhibit A** attached hereto (the "Property"), including without limitation, the following:

1. All transferable licenses, permits, certificates of occupancy, and other approvals issued by any governmental or quasi-governmental authority pertaining to the use, management, operation, maintenance, or ownership of the Property;
2. All keys and combinations to all doors, cabinets, safes, enclosures, and other locking items or areas of the Property in Seller's possession;
3. All equipment, machinery, and construction materials located upon the Property;
4. All guaranties and warranties in effect with respect to the Property (including roof and equipment warranties) from contractors, subcontractors, suppliers, and manufacturers;
5. All awards or payments made or to be made for any taking by condemnation, eminent domain, or otherwise (including, without limitation, by agreement in lieu thereof) for all or any part of any of the Property, the aforesaid Personal Property, and in and to all proceeds paid or payable in connection with any damage, loss, or destruction to all or any part of the Property;
6. All easements, covenants, or other title appurtenances benefiting or burdening the Property, and all party wall, encroachment, sidewalk, indemnification, right-of-way, and other similar agreements appurtenant to or otherwise affecting the use and enjoyment of the Property;
7. Any and all other property (whether real or personal and whether tangible or intangible) of any type or nature whatsoever owned, held, or maintained by Seller relating to the planning, development, construction, ownership, operation, use, management, maintenance, repair, operation, or enjoyment of the Property;
8. All warranties and guaranties from contractors, subcontractors, suppliers, and manufacturers which are in effect as of the date of this Bill of Sale issued in connection with (i) the construction, improvement, alteration, service, or repair of the buildings and other improvements situated on the Property, and (ii) the mechanical equipment and appliances in the Property;

9. All development rights and other intangible rights, titles, interests, privileges, and appurtenances owned by Seller and in any way related to or used in connection with the Property;

10. All licenses, consents, easements, rights of way and approvals from private parties, if any, to make use of utilities and to insure vehicular and pedestrian ingress and egress to the Property; and

11. All plans, specifications, studies, surveys, engineering reports, environmental reports, tests, studies, and other technical descriptions relating to the Property.

12. All approvals have been obtained to allow the Buyer to provide water and wastewater services to the Property.

Seller hereby covenants that Seller will, at any time and from time to time upon written request therefor, execute and deliver to Buyer such documents as Buyer may reasonably request in order to fully assign and transfer to and vest in Buyer and protect Buyer's right, title, and interest in and to the Personal Property transferred and assigned hereby, or to enable Buyer to realize upon or otherwise enjoy such rights and property.

Seller hereby represents and warrants to Buyer that: (i) the Personal Property has been paid for and is not subject to any liens, encumbrances, security interests, or claims of any kind; (ii) all taxes of any nature whatsoever on the Personal Property accruing prior to Closing have been paid by Seller; (iii) the consideration paid to Seller herewith is the full and complete consideration for the Personal Property; (iv) any sales or other taxes which may be payable with respect to this transfer are the sole responsibility of Seller; and (v) the transfer of the Personal Property to Buyer does not require the consent of third parties.

Seller warrants, and hereby covenants, at Seller's sole cost and expense, to defend Buyer's title to the Personal Property against the acts of Seller, and none other. Seller hereby agrees to indemnify and hold Buyer free and harmless from all liabilities, obligations, damages, causes of action, judgments, costs, and expenses (including reasonable attorneys' fees) which Buyer may incur or suffer in connection with any breach by Seller of the preceding warranty and covenant.

This Bill of Sale is binding upon the successors and assigns of Seller.

If any party hereto brings any action or suit against the other party hereto by reason of any breach of any covenant, condition, agreement, or provision on the part of the other party set forth in this Bill of Sale, the prevailing party shall be entitled to recover from the other party all costs and expenses of the action or suit, including reasonable attorneys' fees, charges, and costs, in addition to any other relief to which it may be entitled.

This Bill of Sale will be governed by, interpreted under, and construed and enforceable in accordance with the laws of the State of Arizona.

IN WITNESS WHEREOF, Seller has executed and delivered this Bill of Sale as of the date first above written.

SELLER: [Seller Name]

By: _____

**PURCHASE AND SALE
AGREEMENT**

between

as Seller

and

CITY OF FLAGSTAFF

as Buyer

Property located in Coconino County, Arizona

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (“**Agreement**”) is entered into as of _____, 2013, by and between the City of Flagstaff, an Arizona municipal corporation (“Buyer” or “City”), and _____ (“Seller”). Buyer and Seller may be referred to each individually as a “Party” and collectively as the “Parties.”

RECITALS

- A. An important goal of the City Council has been to obtain property for a Core Services Maintenance Facility.
- B. The City issued Request for Proposals No. 2013-44 (the “RFP”) for the purchase of property or purchase of property and exchange of City-owned property for a Core Services Maintenance Facility.
- C. Seller responded to the RFP with an offer to sell property to the City on certain terms and conditions.
- D. Seller desires to enter into this Agreement with the City in order to sell the property, and the City desires to purchase the property, on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

- 1. **Definitions.** The following terms used in this Agreement shall have the respective meanings set forth below:
 - 1.1. **Date of Agreement:** _____, 2013
 - 1.2. **Seller:**
 - 1.3. **Buyer:** City of Flagstaff, Arizona
 - 1.4. **Escrow Agent:**
 - 1.5. **Property:**
 - 1.5.1. The real property consisting of APNs _____ located in Coconino County, Arizona, described in the attached **Exhibit A**, together with all rights, easements, and privileges appurtenant thereto (“Real Property”);

1.5.2. All structures, buildings, improvements, facilities, and fixtures situated on the Real Property, including, without limitation, all equipment and appliances, or other improvements used in connection with the operation or occupancy thereof, such as, but not limited to, heating and air-conditioning systems and facilities used to provide any utility services, parking services, refrigeration, ventilation, trash disposal or other services owned by Seller and located on the Real Property (“Improvements”);

1.5.3. All intangible property owned by Seller and used in connection with the Real Property and Improvements, including warranties with respect to the Real Property and Improvements, and all written contracts in effect at Closing in any way relating to the Property (all such intangible property being sometimes collectively referred to herein as “Intangible Property”).

1.6. **Date of Opening of Escrow:**

1.6.1. Seller and Buyer shall establish an escrow (“Escrow”) with Escrow Agent to consummate the transaction that is the subject of this Agreement. The date on which a duplicate original of this Agreement, executed by both Buyer and Seller, is delivered to and accepted by Escrow Agent shall be the Date of Opening of Escrow, which date shall be inserted by Escrow Agent below its signature at the end of this Agreement. Escrow Agent shall give Buyer and Seller prompt written notice of the Date of Opening of Escrow.

1.7. **Feasibility Date:** The _____ (___th) calendar day after the Date of Opening of Escrow, unless that day falls on a weekend or holiday, in which case the feasibility date will be on the next business day after the _____ (___th) calendar day.

1.8. **Closing:**

1.8.1. The _____ (___th) calendar day after the Feasibility Date, unless that day falls on a weekend or holiday, in which case closing will be on the next business day after the _____ (___th) calendar day.

1.9. **Notice Addresses:** **For Seller:**

For Buyer:

City of Flagstaff
Assistant to the City Manager-Real Estate
211 W. Aspen Avenue
Flagstaff, AZ 86001
(928) 213-2072

For Escrow Agent:

2. Property. Seller agrees to sell and Buyer agrees to purchase the Property in accordance with and subject to the terms and conditions of this Agreement.
3. Conveyance of Property. Buyer shall purchase the Property consisting of parcels _____ for the amount of _____ (\$_____). The Property shall be conveyed to Buyer at Closing pursuant to a Warranty Deed (“**Deed**”) in the form attached hereto as **Exhibit B**. Seller shall execute the Deed with respect to the Property and, upon satisfaction of all conditions in this Agreement, shall cause Escrow Agent to record the Deed in the official records of Coconino County, State of Arizona, upon Closing. In addition, at Closing: (i) Seller shall execute and deliver to Escrow Agent a separate non-foreign affidavit (“**Affidavit**”) in the form attached hereto as **Exhibit C**; and (ii) Buyer and Seller shall execute and deliver to Escrow Agent a separate Affidavit of Property Value for the Property as required by applicable law.
4. Purchase Price.
 - 4.1. Purchase Price. The purchase price for the Property to be paid by Buyer shall be _____ (\$_____)
 (“**Purchase Price**”).
 - 4.2. Payment. The Purchase Price shall be payable as follows:
 - 4.2.1. On or before the Closing, Buyer shall deposit with Escrow Agent, in cash or immediately available funds, an amount equal to _____ (\$_____) for the purchase of the property, plus such additional funds as may be required to allow Buyer to fully satisfy its obligations under this Agreement, including Buyer's share of prorations and closing costs for the Property.
 (“**Cash Due at Closing**”).
 - 4.3. Exchange of Properties. Buyer is aware that Seller intends to perform a 1031 tax-deferred exchange. Seller requests Buyer’s cooperation in such an exchange and agrees to hold Buyer harmless from any and all claims, liabilities, costs or delays in time resulting from such an exchange. Upon Seller’s request, and provided such cooperation can be provided at no cost or risk to the Buyer, and without delaying each date of Closing, Buyer shall reasonably cooperate with Seller in structuring a “tax deferred” exchange pursuant to Section 1031 of the Internal Revenue Code in connection with the transaction contemplated in this Agreement. Buyer makes no representation or warranty concerning the availability or appropriateness of such an exchange, and Seller’s inability for any reason to arrange or achieve the exchange shall not relieve Seller of any obligation of this Agreement. Furthermore, Buyer makes no representation or warranty to Seller

that any such exchange shall be treated as “tax-deferred” by the Internal Revenue Service. Seller agrees to reimburse the Buyer for all fees, costs, and expenses (including reasonable attorney’s fees) incurred by the Buyer as a result of Seller’s election to participate in a Section 1031 exchange.

5. Inspection.

5.1. Inspection. Buyer shall have until 5:00 p.m. Arizona time on the Feasibility Date in which to perform a physical inspection of the Property and an inspection of all financial documents, for the purpose of conducting a feasibility study (“**Feasibility Condition**”). If Buyer disapproves the Feasibility Condition for any reason whatsoever, Buyer may send written notice to Seller and Escrow Agent on or before the Feasibility Date electing to terminate this Agreement and the Escrow. Failure of Buyer to provide written notice of approval of the Feasibility Condition shall be deemed Buyer’s disapproval of the Feasibility Condition and Buyer’s election to terminate this Agreement and the Escrow. Buyer’s inspection may include, but is not limited to:

5.1.1. Inspection of all physical aspects of the Property, including, but not limited to, all operating systems, roof, structural components, and related service contracts;

5.1.2. Environmental inspection and testing;

5.1.3. Investigation of all zoning, code, and governmental requirements;

5.1.4. Review preliminary title report;

5.1.5. Review copies of all leases and contracts, if applicable, together with any modifications or amendments thereto pertaining to the operation of the Property as well as interview existing tenants with regard to current occupancy; and

5.1.6. Review financial information from Seller’s records and review any other information and documents pertaining to Seller’s ownership and operation of the Property, including but not limited to rent rolls (collectively, the “**Records**”).

5.2. Termite Damage. Seller, at its cost, shall cure and repair prior to Closing any termite damage disclosed by Seller’s or Buyer’s termite inspection report or any structural evaluation of the buildings on the Property performed by Buyer’s consultant.

5.3. Termination. If Buyer terminates (or is deemed to terminate) this Agreement as may be permitted under this Agreement, then Buyer is responsible for all costs associated with the termination. If Seller terminates (or is deemed to terminate)

this Agreement as may be permitted under this Agreement, then Seller is responsible for all costs associated with the termination.

6. Information; Access to the Property.

6.1. Information. Within ten (10) days after the Date of Opening of Escrow, Seller shall provide access or copies to Buyer of those reports, studies, surveys, and other material documents listed on **Exhibit D** attached hereto (“**Information**”), to the extent such Information was not previously provided to Buyer.

6.2. Access to Property. Buyer and its employees, agents, architects, engineers, and independent contractors (hereafter “Designees”) shall have the right to enter upon the Property at any time after the Date of Opening of Escrow (provided that this Agreement has not been previously terminated as permitted herein) to inspect and test the Property and to determine the feasibility of acquiring the Property. Buyer shall have the right to perform any and all examinations, inspections, or tests Buyer deems necessary and appropriate, provided that Buyer provides written notice to Seller at least three (3) days before Buyer intends to enter the Property to conduct any intrusive examinations, inspections, or tests that require any drilling or other possible damage to any portion of the Property. Buyer acknowledges and agrees that Seller shall be entitled to have its representatives present during any time Buyer or its agents or independent contractors are on the Property. Buyer shall: (i) perform all such inspections in a safe and professional manner; (ii) not create any dangerous or hazardous condition on the Property; (iii) comply with all applicable laws with respect to Buyer's inspections; and (iv) obtain all permits required to be obtained with respect to Buyer's inspections.

Subject to the rights of tenants of the Property under their respective Leases, and with reasonable advance notice to Seller and to any applicable tenant, Buyer and its designees shall be entitled to inspect, during Seller’s regular business hours, the tenants’ premises on the Property and to interview tenants; provided, however, that, at Seller’s request, Seller and/or the involved tenant or its designees shall be entitled to accompany Buyer during any such inspection or contact with any tenant. In addition, Seller shall use reasonable efforts to facilitate such inspections and obtain any necessary consent to entry from the respective tenants.

6.3. Costs. Buyer shall bear all costs and expenses of any inspections, investigations, and tests of any kind or nature undertaken by Buyer with regard to the Property.

6.4. Survey. If Seller has not already provided an American Land Title Association (“ALTA”) survey of the Property as required by the Request for Proposal, such ALTA survey shall be provided within ten (10) days after Date of Opening of Escrow at Seller’s cost. If the results of the Survey indicate that the acreage of the property is less than _____ acres, the Purchase Price shall be reduced accordingly on a per square foot basis. The Survey shall be sufficient to enable _____ (“**Title Insurer**”) to delete the standard survey exception from the Title Policy (defined in 7.1) and issue the Title Policy.

To the extent that the Seller has not provided all environmental reports to the Buyer as required in the Request for Proposal, and in all events within ten (10) days after the Date of Opening of Escrow, Seller will provide all environmental reports required by the Request for Proposal for the Property to Buyer. Buyer may, at its cost, obtain additional environmental reports. If the reports indicate that remediation of the property is needed, Seller agrees to pay for the remediation.

7. Title Review.

- 7.1. Delivery of Title Report. As soon as possible, and in all events within ten (10) days after the Date of Opening of Escrow, Escrow Agent shall cause Title Insurer to deliver to the Parties a commitment for the issuance to Buyer of an ALTA extended coverage title insurance policy in the amount of the Purchase Price (“**Title Policy**”), together with legible copies of all matters indicated in Schedule B thereto (collectively, the “**Title Report**”).
- 7.2. Buyer's Review of Title Report. If Buyer is dissatisfied with any matter shown on the Title Report (“**Unpermitted Exceptions**”), Buyer may deliver written notice (“**Title Objection Notice**”) to Seller and Escrow Agent of its objection at least twenty (20) business days prior to the Feasibility Date. If any amendment, revision, or supplement to the Title Report is issued (except to remove matters previously objected to by Buyer), a copy thereof shall be promptly delivered by Escrow Agent to Buyer, together with a legible copy of any new matter referred to in any amendment or supplement to the Title Report. If any amendment, revision, or supplement to the Title Report is issued after the Feasibility Date, Buyer shall have five (5) business days after receipt of any amendment, revision, or supplement of the Title Report, or until Closing, whichever first occurs, to object to any new and material matters shown thereon by providing a Title Objection Notice to Seller and Escrow Agent. If Buyer fails to object to any matter set forth in the Title Report or in any amendment, revision, or supplement thereto within the time periods prescribed in this Section 7, Buyer shall be deemed to have accepted these matters.
- 7.3. Seller's Cure Period. If Buyer timely delivers a Title Objection Notice, then Seller shall notify Buyer within ten (10) business days following the date of receipt of the Title Objection Notice (“**Seller's Cure Period**”) that either: (i) one or more of the Unpermitted Exceptions has been, or will be at or prior to Closing, removed from the Title Report by Escrow Agent; or (ii) Seller is unable or unwilling to have one or more of the Unpermitted Exceptions removed. If Seller fails to respond to the Title Objection Notice within Seller's Cure Period, Seller shall be deemed to be unwilling to cause the removal of the Unpermitted Exceptions. If Seller fails to cure any objection of Buyer, or fails to respond to the Title Objection Notice within Seller's Cure Period, Buyer shall elect within ten (10) business days following Seller's Cure Period to either: (i) cancel this Agreement and the Escrow by written notice delivered to Seller and Escrow Agent; or (ii) waive the objection by written notice to Seller and Escrow Agent

and proceed to purchase the Property. If Buyer fails to timely make any of these elections, Buyer will be deemed to have elected option (ii) above. All matters to which Buyer has not objected, or to which Buyer has waived or is deemed to have waived its objections under this Section 7, are referred to in this Agreement as the "**Permitted Exceptions.**"

- 7.4. Unpermitted Liens. Notwithstanding any other provision in this Agreement, and regardless of whether Buyer has given notice of an objection under the terms of this Section 7, Seller shall satisfy or otherwise remove all monetary liens and encumbrances on the Property, on or before the Closing, with the exception of taxes or assessments not yet due and liens and encumbrances caused by Buyer.
- 7.5. Title Policy. Escrow Agent shall cause Title Insurer to issue at Closing to Buyer, as the insured, the Title Policy in the amount of the Purchase Price.

8. Miscellaneous.

- 8.1. Prorations and Adjustments. The following adjustments to the Purchase Price paid hereunder shall be made between Seller and Buyer and shall be prorated (as applicable) through the Escrow on a per diem basis as of 12:01 a.m. on the Closing date:

8.1.1. Seller is responsible for all real estate taxes and assessments for or relating to the Property until such time that the Property is removed from the tax rolls by the Coconino County Assessor's Office. The provisions of this Section 8.1 shall survive Closing.

8.1.2. If applicable, Seller shall retain all collected Tenant rents ("**Rents**") attributable to the period prior to the day of Closing. Seller shall pay all Rent Taxes on Rents collected by Seller, provide Buyer with evidence of payment thereof, and obtain State of Arizona and City of Flagstaff clearance letters therefor prior to Closing date.

8.1.3. Seller shall be entitled to retain and receive refund of all utility and similar deposits at Closing.

8.1.4. If applicable, to the extent not billed directly to tenants, or otherwise paid by tenants, utilities, including water, electricity, sewer, gas, telephone, and other utility charges, shall be prorated based, to the extent practicable, on the last meter readings prior to Closing. Seller will endeavor to obtain meter readings on the day before Closing, and if such readings are obtained, there shall be no such proration of such items. Seller shall pay at Closing the utility bills for the period up to and including the date of Closing, and Buyer shall pay the utility bills for the period subsequent to Closing. If the utility company will not issue separate bills, Buyer will receive a credit against the Purchase Price for Seller's portion and will pay the entire bill prior to delinquency after Closing. If Seller has paid any

utilities no more than thirty (30) calendar days in advance in the ordinary course of business, then Buyer shall be charged its portion of such payment at Closing. Buyer shall be responsible for any utility deposits necessary to establish service in Buyer's name.

- 8.2 Estoppel Certificates. If applicable, Seller shall request that all tenants on the Property (“**Tenant(s)**”) execute statements in the form attached hereto as **Exhibit E** (“**Tenant Estoppel Certificate**”). Seller shall deliver the Tenant Estoppel Certificates to be executed to the Tenants by no later than ten (10) business days after the opening of Escrow. Receipt of Tenant Estoppel Certificates without material modifications having been made thereto by the Tenants, which, in the aggregate, represent a minimum of one hundred percent (100%) of the rent reflected on the list of current leases certified by the Seller (“**Rent Roll**”) for the Property, shall be a condition to Purchaser's obligation to close Escrow.
- 8.3. Condition of Property. Improvements shall include all structures, buildings, and fixtures situated on the Property. Infrastructure shall include all facilities used to provide utility service and private roads. The Seller will disclose all defects in the improvements and infrastructure to the Buyer in writing within ten (10) days after Opening of Escrow. The Buyer has the right to make any and all inspections of the improvements and infrastructure as detailed in Section 5.1 of this Agreement.
- 8.4. Seller's Covenants. Except as otherwise provided in this Section between the date of the execution of this Agreement and the Closing date, Seller shall:
- 8.4.1. Maintain the Property in its current condition and perform, or cause tenants to perform, required and routine maintenance and make minor replacements of the Property that are tangible property (whether real or personal) and perform repairs or make minor replacements to any broken, defective, or disfunctioning portions of the Property that are tangible property (whether real or personal) as the relevant conditions require.
- 8.4.2. Pay, in the normal course of business, and, in any event, prior to Closing, all sums due for work, materials, or services furnished or otherwise incurred in the ownership, use, maintenance, repair, or operation of the Property, up to Closing.
- 8.4.3. Seller will not make any material alterations or improvements to the Property, or remove any of the Property therefrom, except with the ordinary course of Seller's business practices, without the consent of Buyer, which consent shall not be unreasonably withheld, conditioned, or delayed.
- 8.4.4. Maintain its current or comparable insurance covering the Property;

8.4.5. Operate, manage, and enter into contracts with respect to the Property, in the same manner done by Seller prior to the date hereof; provided, however, that Seller shall not enter into any new service contract after the date hereof that cannot be terminated within thirty (30) days without the payment of any fee or penalty. Seller shall not enter into any new Leases, or amend, modify, or extend any existing Leases after the Feasibility Date. Seller shall terminate all leases prior to close of escrow and resolve all claims by tenants including but not limited to claims for relocation expenses.

8.4.6. Execute reasonable documents required by, and otherwise cooperate in good faith with, Escrow Agent in order to issue the Title Policy in accordance with the Title Report showing only the Permitted Exceptions.

9. Seller's Representations and Warranties. Seller covenants, represents, and warrants that the following will be true as of the time of the execution of this Agreement and as of Closing:

9.1. The person(s) signing this Agreement and any documents and instructions in connection herewith, on behalf of Seller, have full power and authority to do so. This Agreement has been duly authorized and executed by Seller, and, upon execution by Buyer and delivery to Escrow Agent, shall be a valid and binding agreement of Seller, enforceable in accordance with its fees.

9.2. This Agreement is, and all other documents executed by Seller pursuant hereto will be, duly authorized, executed, and delivered by Seller, and will be the legal, valid, and binding obligations of Seller, and enforceable against Seller, in accordance with their respective terms. This Agreement and such documents do not and will not violate any provisions of any agreement, order, or judgment to which Seller is a party or to which it is subject. All persons signing this Agreement and/or any documents and instruments in connection herewith on behalf of Seller have full power and authority to do so.

9.3. Seller's execution of this Agreement, consummation of the transactions herein contemplated, and performance and observance of the obligations of Seller hereunder and under all other agreements and instruments herein mentioned to which Seller is a party, will not conflict with or result in the breach of any law, regulation, order, writ, injunction, or decree of any court or governmental authority or of any agreement or instrument to which Seller is now a party or to which it is subject, or constitute a default thereunder, and no consent, waiver, or approval by any third party is required in connection with the execution and delivery by Seller of this Agreement.

9.4. The Property meets all current building and zoning codes and there are no life safety issues outstanding.

9.5. There are no attachments, levies, executions, assignments for the benefit of creditors, receiverships, conservatorships, or voluntary or involuntary proceedings

in bankruptcy or any other debtor relief actions contemplated by Seller or filed by Seller, or to Seller's actual knowledge, pending in any current judicial or administrative proceeding against Seller.

- 9.6. Except as disclosed in the Title Report or the Information, Seller has not received written notice of any existing, proposed, planned, or threatened eminent domain or condemnation actions, assessments, or assessment district proceedings related to the Property, and has no actual knowledge of any planned.
- 9.7. Seller is not a "foreign person" as that term is defined in Section 1445 of the Internal Revenue Code, as amended, and any applicable regulations promulgated thereunder.
- 9.8. There are no liens, encumbrances, claims of lien or encumbrances, or any possible defects, or claims of defects to the title to the Property which do not appear in the Title Report or the Information.
- 9.9. Except for debts, liabilities, and obligations for which provision is made herein for proration or other adjustment at Closing, all liabilities and obligations arising from the ownership of the Property will be paid on or before Closing.
- 9.10. As of Closing, there shall be no parties in possession of any portion of the Property as lessees, tenants, tenants at sufferance, or trespassers, or no person, firm, corporation, or other entity has, or at Closing shall have, any right to relocation or reimbursement for relocation or option to acquire all or any portion of the Property.
- 9.11. Except as disclosed in the Information, there are no Hazardous Substances located on the Property, and the Property is in compliance with all applicable Environmental Laws. As used in this Agreement, "**Hazardous Substance**" shall mean and include all hazardous or toxic substances, wastes, or materials, any pollutants or contaminants (including, without limitation, asbestos and materials which include hazardous constituents), or any other similar substances or materials which are included under or regulated by any Environmental Law. "**Environmental Law**" shall mean and include all local, state, or federal laws, rules, orders, and regulations pertaining to environmental regulation, or the use, processing, storage, disposal, generation, or transportation of Hazardous Substances, or any contamination, clean up, or disclosure related thereto, including without limitation the Environmental Response Compensation and Liability Act of 1980, the Super Fund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act, the Hazardous and Solid Waste Amendments of 1984, the Toxic Substances Control Act, the Federal Insecticide, Fungicide and Rodenticide Act, the Federal Water Pollution Control Act, the Federal Safe Drinking Water Act, the Federal Clean Air Act, the Federal Clean Water Act, the National Environmental Protection Act, and Title 49 of the Arizona Revised Statutes, as any of the foregoing has heretofore been amended, and any regulations promulgated with respect to any such statutes. There are no

orders, judgments, claims, suits, actions, or proceedings concerning or affecting the Property with respect to any Environmental Law. Seller has not received any notice of any threatened or pending suit, action, or proceeding concerning the Property relating to any Environmental Law.

- 9.12. Seller has received no written notice from any city, county, state, or other governmental authority of any violation of any law, statute, ordinance, regulation, or administrative or judicial order or holding, whether or not appearing in public records, with respect to the Property, which violation has not been corrected.
- 9.13. There are not any existing, pending, or anticipated litigation against or involving the Property or Seller's interest therein, including without limitation any water, sewer, building, or other construction moratoria on the Property.
- 9.14. There are no agreements or documents which constitute Leases or have a material adverse effect on the Property or the operation thereof. Other than this Agreement, there are no outstanding contracts or agreements executed by Seller related to the sale, exchange, or transfer of the Property or any part thereof. There are no unpaid costs or expenses related to tenant improvements or leasing commissions or leasing fees with respect to the Property which are the obligation of Seller and which will not be paid at or before Closing by Seller. There are no leasing commissions or leasing fees due and payable prior to Closing (or which will become due and payable after Closing) with respect to any of the Leases which are the obligation of Seller and which will not be paid at or before Closing by Seller. There are no written leases, subleases, licenses, or other rental agreements or occupancy agreements executed by Seller which grant any possessory interest in and to any space situated on or in the Property or otherwise give rights with regard to use of the Property. There are no service contracts, maintenance agreements, leasing commission or brokerage agreements, repair contracts, property management contracts, contracts for the purchase or delivery of labor, services, materials, or goods, supplies, or equipment or similar agreements entered into by Seller which will be obligations of Buyer or the Property after Closing, other than any of such contracts or agreements which are cancelable on not more than thirty (30) days' notice without the payment of any termination fee or cancellation penalty.
- 9.15. In the Title Policy or as otherwise disclosed in writing by Seller to Buyer prior to the Feasibility Date, Seller has received no written notice from any city, county, state, or other government authority: (i) of any order or directive requiring any work of repair, maintenance, or improvement to be performed on the Property that has not been corrected; (ii) relating to defects in the Improvements or relating to noncompliance with any applicable building code, restriction, license, or permit that has not been corrected; (iii) relating to any threat of impending condemnation of the Property; or (iv) of any unpaid assessments for public improvements that have been made against the Property or of any presently planned public improvements which would result in the creation of a special assessment or similar lien upon the Property.

- 9.16. Other than those service contracts, maintenance agreements, leasing commission, or brokerage agreements, repair contracts, property management contracts, contracts for the purchase or delivery of labor, services, materials, or goods, supplies, or equipment or similar agreements entered into by or on behalf of Seller: (i) which are listed on Schedule B to **Exhibit F**; (ii) which will be terminated prior to Closing; or (iii) which are cancelable on no more than thirty (30) days' notice without the payment of any termination fee or cancellation penalty (all of the foregoing contracts or agreements referenced in clauses (i) or (ii) hereof are collectively referred to as the "**Contracts**"), Seller does not have any other liabilities or obligations under other agreements relating to the Property and other than normal expenses incurred in the ordinary course of business.
- 9.17. There are no structural or other defects, including, but not limited to, defects in the roof, plumbing, heating, air conditioning, foundation, or electrical wiring in the buildings and other improvements.
- 9.18. Notwithstanding the foregoing provisions of this Section 9, if Buyer learns of any actual or alleged inaccuracy in Seller's representations or warranties contained in this Section 9 after the date hereof and prior to Closing date, Buyer shall promptly notify Seller thereof, and if Seller learns of any actual or alleged inaccuracy in such representations or warranties, Seller shall advise Buyer thereof. Seller shall, within five (5) days of receiving such written notice from Buyer or of learning of such actual or alleged inaccuracy, make reasonable efforts to cure such inaccuracy and, failing such cure, Seller shall, within such five (5) day period, notify Buyer in writing of such failure to cure, and Buyer's sole and exclusive remedy therefor shall be to elect, within five (5) days of receiving such written notice from Seller, to either (a) proceed to Closing and waive such inaccuracy or (b) cancel this Agreement and the Escrow, and neither Party shall have any further rights or obligations regarding this Agreement (except as may be expressly provided otherwise in this Agreement). Notwithstanding the foregoing, it is understood that Seller's representations and warranties contained in Section 9 shall be and remain true as of the Closing date, and that Seller remains liable to Buyer for all damages resulting from a breach thereof.
- 9.19. It is understood and agreed that the Purchase Price has been adjusted by prior negotiation to reflect that all of the Property is sold by Seller and purchased by Buyer subject to this Section 9.
10. **Buyer's Representations and Warranties.** Buyer covenants, represents, and warrants that:
- 10.1. The person(s) signing this Agreement and any documents and instructions in connection herewith on behalf of Buyer have full power and authority to do so.
- 10.2. This Agreement has been duly authorized and executed by Buyer, and upon delivery to and execution by Seller shall be a valid and binding agreement of Buyer.

10.3. There are no attachments, levies, executions, assignments for the benefit of creditors, receiverships, conservatorships, or voluntary or involuntary proceedings in bankruptcy or any other debtor relief actions contemplated by Buyer or filed by Buyer, or pending in any current judicial or administrative proceeding against Buyer.

11. Changes in Representations and Warranties.

11.1. If the Party making the representation, warranty, or covenant obtains knowledge of any change in any of its statements after the date hereof (whether arising before or after the date hereof), the Party shall give prompt notice to the other Party.

11.2. If a change in any of the representations, warranties, and covenants by a Party is intentionally caused by the Party, the change shall constitute a default and the other Party's remedies shall be as provided in Section 12 below.

11.3. If, however, a change in the representations, warranties, and covenants by a Party is not intentionally caused by the Party making the statement, then the change shall constitute only the failure of a condition (if the change materially and adversely affects the other Party), but shall not constitute a default. In such event, the other Party's sole remedy shall be to terminate this Agreement and the Escrow and neither Party shall have any further rights or obligations under this Agreement, except those that survive the termination.

11.4. It shall be a condition precedent to a Party's obligation to proceed with Closing that the representations, warranties, and covenants by the other Party set forth above with respect to the Property shall be materially true and correct as of Closing.

12. Default.

12.1. Default by Seller. If any warranty or representation of Seller made in this Agreement shall prove to be materially untrue, or if Seller shall fail to perform any of its obligations under this Agreement on or prior to the date for performance provided in this Agreement, and Buyer is not in default under this Agreement, then, unless otherwise specifically provided for in this Agreement, Buyer shall give Seller five (5) business days' written notice of the failure and opportunity to cure. If Seller does not cure within the five (5) business-day period, then Buyer may, as its exclusive remedy either: (i) cancel this Agreement and the Escrow by written notice to Seller and Escrow Agent; or (ii) pursue specific performance of this Agreement; provided that such specific performance action is initiated and filed within ninety (90) days after Seller's alleged default. Notwithstanding the foregoing, if the remedy of specific performance is not available to Buyer because Seller has sold the Property or because Seller, by its acts has (i) voluntarily disabled its ability to deliver title as required by this Agreement, or (ii) caused an error in the representations and warranties of Seller herein, Buyer may maintain an action for damages against Seller. If Buyer elects to terminate this Agreement

as permitted under this Section 12.1, then: (i) the Escrow shall be terminated for all purposes; (ii) Escrow Agent shall return all other funds, documents, and other items held by Escrow Agent to the Party that deposited same with respect to the Property; (iii) Seller shall reimburse Buyer for Buyer's actual out-of-pocket expenses not to exceed _____ Dollars (\$_____) as liquidated damages; and (iv) the Parties shall have no further rights or obligations under this Agreement except for those rights and obligations that are specified in this Agreement to survive the termination of this Agreement.

12.2. Default by Buyer. If any material warranty or representation of Buyer made in this Agreement shall prove to be materially untrue, or if Buyer shall fail to perform any of Buyer's obligations under this Agreement on or prior to the date for performance provided in this Agreement, then Seller shall give Buyer five (5) business days' written notice of the failure and opportunity to cure. Notwithstanding the foregoing sentence, Buyer shall have no cure period with respect to Buyer's failure to pay money as required under this Agreement or Buyer's failure to acquire the Property on Closing. If Buyer does not cure within the applicable cure period, if any, then Buyer shall be in default. In the event of default by Buyer, Seller as its sole right and exclusive remedy may terminate this Agreement and the Escrow.

13. Risk of Loss. Except as provided in any indemnity provisions of this Agreement, and as otherwise provided in this Section 13, Seller shall bear all risk of loss with respect to the Property prior to Closing and thereafter all risk of loss shall be Buyer's.

If, prior to Closing, any portion of the Real Property and Improvements, or any part thereof, are damaged or destroyed, Buyer shall have the right, exercisable by giving notice to Seller and Escrow Agent within fifteen (15) days after receiving written notice of such damage or destruction (but in any event prior to Closing), to either: (i) terminate this Agreement and the Escrow, in which case neither Party shall have any further rights or obligations under this Agreement (except as may be expressly provided otherwise in this Agreement), and neither Seller nor Buyer shall be subject to any claim by the other for damages of any kind except for the breach of the indemnity, hold harmless, and other agreements provided in this Agreement; or (ii) accept the Property in its then condition and proceed with Closing without any abatement or reduction in the Purchase Price, in which event Buyer shall be entitled to (a) an assignment of all of Seller's rights to any insurance proceeds payable by reason of such damage or destruction and (b) a credit against the Purchase Price in the amount of Seller's insurance deductible. If Buyer elects to proceed under clause (ii) above, Seller shall not compromise, settle, or adjust any claims to such proceeds without Buyer's prior written consent.

If, prior to Closing, all or any portion of the Real Property and Improvements is subject to a taking by public authority, Buyer shall have the right, exercisable by giving notice to Seller within five (5) days after receiving written notice of such taking (but in any event prior to Closing), to either: (i) terminate this Agreement and the Escrow, in which case neither Party shall have any further rights or obligations under this Agreement (except as may be expressly provided otherwise in this Agreement), and neither Seller nor Buyer

shall be subject to any claim by the other for damages of any kind except for the breach of the indemnity, hold harmless, and other agreements provided in this Agreement; or (ii) accept the Property in its then condition and proceed with Closing without any abatement or reduction in the Purchase Price, in which event Buyer shall be entitled to an assignment of all of Seller's rights to any condemnation award payable by reason of such taking. If Buyer elects to proceed under clause (ii) above, Seller shall not compromise, settle, or adjust any claims to such award without Buyer's prior written consent, and Buyer shall receive all awards. As used in this Section 13, "taking" shall mean any transfer of the Property or any material portion thereof to a governmental entity or other party with appropriate authority, by exercise of the power of eminent domain. Seller agrees to give Buyer notice of any damage, destruction, or taking of the Real Estate and Improvements promptly after Seller obtains knowledge thereof.

14. Closing.

14.1. Deliveries by Seller for the Closing. Seller shall deliver to Escrow Agent for filing, recordation, or delivery to Buyer, as appropriate, upon Closing, the following:

14.1.1. The Deed for the Property, duly executed and appropriately acknowledged by Seller;

14.1.2. An Affidavit of Property Value for the Property, duly executed and appropriately acknowledged by Seller as contemplated by Section 3;

14.1.3. [If Applicable] Tenant Estoppel Certificates in the form of **Exhibit E** from each current Tenant of premises at the Property or in a form as provided for in Section 8.2;

14.1.4 [If Applicable] An Assignment and Assumption of Contracts executed by Seller in the form of **Exhibit F** attached hereto ("Assignment and Assumption of Contracts");

14.1.5. A Bill of Sale and Assignment executed by Buyer in the form of **Exhibit G**; and

14.1.6. Any additional instruments, duly executed and appropriately acknowledged by Seller, as may be necessary for Seller to have complied with the terms of this Agreement.

14.2. Deliveries by Buyer for the Closing. On or before Closing, Buyer shall deliver to Escrow Agent for filing, recordation, or delivery to Seller, as appropriate, upon Closing, the following:

14.2.1. The cash due at Closing as described in Section 4.2;

14.2.2. An Affidavit of Property Value for the Property, duly executed and acknowledged by Buyer as contemplated by Section 3; and

- 14.2.3. Any additional instruments, duly executed and appropriately acknowledged by Buyer, as may be necessary for Buyer to have complied with the terms of this Agreement.
- 14.3. Closing Costs. Buyer and Seller shall share evenly all closing costs in connection with the Escrow for the Property. Seller shall pay the cost of the standard coverage owner's title policy described in Section 7 for the Property and all recording fees. Buyer shall pay the additional cost for extended coverage owner's title policy, any endorsements requested by Buyer, and any costs in connection with any lender's policy that Buyer may be obligated to purchase for Buyer's lender (if required). All other fees, charges, or expenses incidental to the sale of the Property to Buyer shall, except as otherwise expressly provided in this Agreement, be shared evenly between Buyer and Seller. In addition to the amounts Buyer is required to deposit with Escrow Agent under Section 4 above, Buyer and Seller shall deposit with Escrow Agent, on or before Closing, sufficient amounts to cover its share of closing costs (and all other items prorated in accordance with this Agreement to the extent applicable). All other items prorated in accordance with this Agreement, to the extent applicable, shall be paid from the proceeds otherwise payable to Seller.
15. Notices. Any and all notices required or permitted by this Agreement shall be given in writing and personally delivered, sent by registered or certified mail, return receipt requested, postage prepaid, or sent by reputable overnight courier, addressed as listed in Section 1.9 of this Agreement. Any notice or communication shall be deemed to have been given and received on the earliest of: (i) the date of delivery or refusal, if hand delivered or sent by overnight courier; (ii) three (3) days after the date of mailing, if mailed within the continental United States; or (iii) seven (7) days after mailing, if mailed outside the continental United States. Copies of all notices or communications to Buyer or Seller shall be hand delivered, mailed, or sent by overnight courier, in the manner set forth above, to Escrow Agent, and copies of all notices by Buyer or Seller to Escrow Agent shall be hand delivered, mailed, or sent by overnight courier, in the manner set forth above, to the other Party hereto. Notwithstanding the foregoing, notices from Escrow Agent or Title Insurer to Seller and Buyer may be given by United States first class mail and shall be deemed given and received three (3) days after deposit in the United States mail.
16. Good Funds. Except as otherwise provided in this Agreement, all deposits and payments that are to be made by Buyer with respect to this Agreement shall be made when due in lawful money of the United States. Under no circumstances will Escrow Agent accept any deposit or payment not made in strict accordance with this Agreement.
17. Time of Essence. Time is and shall be of the essence of this Agreement and all its provisions. Any extension of the time for performance under this Agreement by either Party must be in writing and signed on behalf of Seller and Buyer. An extension may be granted on behalf of the Buyer by the City Manager. No extension will be deemed a

waiver of this Section 17 with respect to other performance by either Party.

18. Waiver. The waiver by any Party of any right granted to it in this Agreement shall not be deemed to be a waiver of any other right granted in this Agreement, nor shall same be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived.
19. Attorneys' Fees. The prevailing Party in any litigation arising out of this Agreement shall be entitled to the recovery of its reasonable attorneys' fees, expert witness fees, litigation related expenses, and court costs in such litigation or proceeding from the other Party.
20. Entire Agreement. This Agreement, together with any exhibits attached hereto and incorporated herein by reference, is intended to be and constitutes the entire agreement between the parties with respect to the Property as of the date of execution, and may be amended only by an instrument in writing signed by Buyer and Seller. The joinder of Escrow Agent and any broker named in this Agreement shall not be required to amend this Agreement. Evidence of prior negotiations or understandings between the parties shall not vary or contradict the provisions of this Agreement.
21. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of Buyer and Seller and their respective successors and assigns.
22. Further Assurances. Promptly upon the request of the other Party or of Escrow Agent, Seller and Buyer each shall execute, acknowledge, and deliver to the other Party or Escrow Agent, or both, any and all further instruments, and shall take all such other action as may be reasonably requested or appropriate to evidence or give effect to the provisions of this Agreement, or to satisfy Escrow Agent's requirements in connection with this Agreement.
23. Severability. If any provision or any portion of a provision of this Agreement or of any other document to be executed in connection with this Agreement is deemed to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect the remaining portion of that provision or of any other provision of this Agreement or such other document, as each provision of this Agreement and all such other documents shall be deemed to be severable from all other provisions hereof and thereof.
24. Headings. The paragraph headings in this Agreement are inserted for the purpose of reference only and shall not limit, define, or expand the provisions of this Agreement or any one of them.
25. Governing Law; Venue. This Agreement and any documents executed in connection with or pursuant to this Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. Buyer and Seller agree that the proper venue for any legal proceedings arising out of this Agreement shall be Coconino County, Arizona.
26. Not Partners. Neither this Agreement, nor any other agreement referred to herein or

entered into in connection herewith, and no activity of Seller or Buyer in connection with this transaction, shall constitute Seller and Buyer as partners or joint venturers for any purposes whatsoever.

27. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall together constitute one and the same document.
28. Construction. This Agreement is the result of negotiations between the Parties and accordingly shall not be construed for or against either Party regardless of which Party drafted this Agreement.
29. Business Day. If the time for performance of any obligation under this Agreement expires on a Saturday, a Sunday, or a legal holiday observed by Escrow Agent, then the time for such performance shall be extended to the next succeeding day that is not a Saturday, a Sunday, or a legal holiday observed by Escrow Agent.
30. Assignment. Neither Party shall assign any of its rights and obligations under this Agreement without prior written consent of the other, which may not be unreasonably withheld, delayed, or conditioned.
31. Conflict of Interest. This Agreement is subject to the cancellation provisions of ARS §38-511.
32. Broker. Seller shall be responsible to pay a commission at Closing to _____ (“**Broker**”) pursuant to a separate written agreement. Except for the foregoing commissions to be paid to Broker, each Party hereto represents and warrants to the other that it has not employed any other broker or finder in connection with the transaction contemplated by this Agreement, and it is not obligated to pay any real estate brokerage or other commission or fee in connection with the sale of the Property to Buyer. Each Party shall defend and hold the other harmless from all liability and expense including, without limitation, reasonable attorneys' fees arising from any claim by any broker, agent, or finder for commissions, finder's fees, or similar charges, because of any act of such Party. The obligations of the parties pursuant to this Section 32 shall survive Closing and any termination of this Agreement. Buyer and Seller acknowledge that certain employees and/or principals of Buyer and Seller (or their respective affiliates) may be licensed Arizona real estate brokers and salespersons.

[SIGNATURE PAGE FOLLOWS SEPARATELY]

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement on the date set forth above.

SELLER:

By: _____

BUYER:

City of Flagstaff,
an Arizona municipal corporation

By: _____
Gerald W. Nabours, Mayor

Attest:

City Clerk

Approved as to form:

City Attorney

List of Exhibits

- Exhibit A - Legal Description of Property
- Exhibit B - Warranty Deed
- Exhibit C - Non-Foreign Affidavit
- Exhibit D - Information
- Exhibit E - Tenant Estoppel Certificate [If Applicable]
- Exhibit F - Assignment and Assumption of Contracts [If Applicable]
- Exhibit G - Bill of Sale and Assignment

ACCEPTANCE OF ESCROW AGENT

_____ accepts the foregoing Purchase and Sale Agreement and escrow instructions, agrees to act as Escrow Agent hereunder, and agrees to comply with the provisions of Section 6045 of the Internal Revenue Code with respect to the transactions contemplated hereby.

[Name of Escrow Agent]

By: _____
Name:

Title: _____

Date: _____

EXHIBIT A

LEGAL DESCRIPTION

EXHIBIT B

When recorded, mail to:
City Clerk
City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001

WARRANTY DEED

For good and valuable consideration, _____, hereafter called the Grantor, does hereby grant and convey to CITY OF FLAGSTAFF, an Arizona municipal corporation, hereafter called the Grantee, that certain real property situated in Coconino County, Arizona, more particularly described in Exhibit A, attached to and made a part hereof.

The Grantor hereby binds itself and its successors and assigns to warrant and defend the title to said real property against all persons claiming under it, subject to the matters above set forth.

This transaction is exempt under A.R.S. Section 11-1134(A)(3).

IN WITNESS WHEREOF, the Grantor has executed this Warranty Deed this _____ day of _____, 2013.

By: _____

State of Arizona)
) ss.
County of Coconino)

ACKNOWLEDGMENT. On this _____ day of _____, 2013, before me, a Notary Public, personally appeared _____, known to be or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same on behalf of _____ for the purposes therein contained.

My Commission Expires: _____

Notary Public

EXHIBIT C

NON-FOREIGN AFFIDAVIT

The undersigned, _____ ("**Transferor**"), after being duly sworn upon his oath deposes and says that:

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform _____ ("**Transferee**"), that withholding of tax is not required upon the disposition of Transferor's interest in the real property described on **Exhibit A** attached hereto and by this reference included herein, the undersigned hereby certifies the following:

1. The Transferor is not a non-resident alien, foreign corporation, foreign partnership, foreign trust, foreign estate, or other foreign person within the meaning of § 1445 and § 7701 of the Internal Revenue Code and the treasury regulations promulgated thereunder;

2. Transferor is not a disregarded entity as defined in § 1.1445-2(b)(2)(iii) of the Internal Revenue Code;

3. Transferor's U.S. taxpayer identification/social security number is: _____; and

4. Transferor's business address is: _____.

Transferor understands that this certification may be disclosed to the Internal Revenue Service by Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury, I declare that I have examined this certification and to the best of my knowledge and belief this certification is true, correct, and complete. The undersigned agent declares that he has the authority to sign this document on behalf of Transferor.

Dated this ____ day of _____, 2013.

TRANSFEROR:

BY _____

EXHIBIT D
INFORMATION

1. A current tenant roster and rent roll (“**Rent Roll**”), showing tenant names, rental rates, period of rental, date of last rental increase, security deposits, rents paid, delinquent rents, any agreements regarding relocation, and all correspondence regarding the termination of the leases.
2. Copies of all Leases.
3. Operating statements including income reports for the last year.
4. Copies of all contracts and provide a summary of any unwritten or verbal agreements the Property may have with any third party vendors.
5. Copies of the Permits and Certificates of Occupancies.
6. The most recent real and personal property tax statements for the Real Property, Improvements, and the Personal Property.
7. Copies of all casualty and liability insurance policies insuring the Property, with a schedule of the premiums for such policies.
8. Geological and soils engineering reports.
9. Environmental site assessments or other environmental reports.
10. All building permits, conditional use permits, variances, and related governmental authorizations obtained in connection with construction of the Improvements.
11. ALTA surveys.
12. Copies of any pending or past litigation against the Property.
13. Detailed list of all capital expenditures over the past thirty-six (36) months.
14. Any termite treatment documents for the Property.

EXHIBIT E
TENANT ESTOPPEL CERTIFICATE

To: _____

Re: Leased Premises identified as _____, located within the property located at _____ (the "Property")

Lease Date: _____, _____, between _____, as Landlord, and _____, as Tenant.

The undersigned is the Tenant under the above-referenced lease and certifies to _____ and to Landlord, the following:

1. The lease ("Lease") consists of the following documents: _____
_____. The Lease has not been canceled, modified, assigned, extended, or amended except as described in the preceding sentence.
2. Rent has been paid to the first day of the following month and all additional rent has been paid and collected in a current manner. There is no prepaid rent, except \$_____ and the amount of Tenant's security deposit held by Landlord is \$_____.
3. Base rent under the Lease is currently payable in the amount of \$_____.
4. The obligations of Tenant under the Lease are guaranteed by _____.
5. The Lease terminates on _____ and Tenant has no right to renew.
6. Tenant intends to vacate the Property on or before the following date: _____, 2013.
7. Landlord has paid in full all obligations owed to Tenant under the Lease.
8. Landlord has paid in full all obligations owed to the Tenant for relocation.
9. All work to be performed by Landlord for Tenant under the Lease has been performed as required and has been accepted by Tenant, except _____. All allowances or reimbursements currently due and payable to Tenant under the Lease have been paid in full.
10. The Lease is terminated, neither Landlord nor Tenant claims any default thereunder, and Tenant has no claims or defenses against the Landlord or offsets or credits against rent. Additionally, no free rent periods or rental concessions have been granted that remain outstanding, except _____.

11. Tenant has received no notice of prior sale, transfer, or assignment, hypothecation, or pledge of the Lease or of the rents received therein, except _____.

12. Tenant has not assigned or sublet the Lease nor does Tenant hold the Leased Premises under assignment or sublease, except _____.

13. Tenant has no other interest in any other part of the Property of which the Leased Premises forms a part or to any personal property appurtenant thereto or used in connection therewith, except _____.

14. Tenant has no right or option pursuant to the Lease or otherwise to purchase all or any part of the Leased Premises or the Property.

15. There are no other agreements, written or oral, between Tenant and Landlord with respect to the Lease, the Leased Premises and/or the Property.

16. The statements contained herein may be relied upon by Landlord under the Lease and by any prospective purchaser or assignee (including lenders) of the Landlord's interest under the Lease.

17. No actions, whether voluntary or involuntary, are pending against Tenant under the bankruptcy laws of the United States or any state thereof.

18. The Tenant, as of the date hereof, has no claim, charge, defense, or offset under the Lease against rents or other charges due or to become due thereunder. As of the date hereof, Tenant has not asserted any such offset or credit. To the Tenant's knowledge, there are no defaults under the Lease on the part of Tenant.

19. This Certificate shall inure to Buyer's benefit and to the benefit Buyer's successors and assigns and shall be binding upon Tenant and Tenant's successors and assigns.

Tenant makes this Certificate with the understanding that Landlord is contemplating selling the Property, and that Buyer is interested in purchasing the Property.

The person signing this Certificate is duly authorized by Tenant to sign this Certificate and if Tenant is a corporation or other entity, the undersigned is a duly appointed officer or principal of the corporation or other entity and is the incumbent in the office or other position indicated under his or her name.

Dated this _____ day of _____, 20____.

TENANT:

_____,
a(n) _____

By: _____

Its: _____

EXHIBIT F

ASSIGNMENT AND ASSUMPTION OF CONTRACTS

THIS ASSIGNMENT AND ASSUMPTION OF CONTRACTS (the "Assignment") is made this _____ day of _____, 2013 (the "Effective Date"), by and between _____ ("Assignor"), and the City of Flagstaff, an Arizona municipal corporation ("Assignee").

RECITALS

A. Assignor presently holds certain rights under contracts (except as expressly provided herein to the contrary), including, without limitation, those contracts more particularly described on Schedule B to this Assignment (the "Contracts"), affecting that real property more particularly described on Schedule A to this Assignment, such Schedules being by this reference incorporated herein.

B. Assignor desires to assign to Assignee, and Assignee desires to acquire Assignor's interest in and to, the Contracts.

FOR VALUABLE CONSIDERATION, it is agreed as follows:

1. **Assignment.** As of the Effective Date, Assignor conveys and assigns to Assignee, subject to the provisions of the contracts, all of Assignor's right, title, and interest in and to the Contracts. Assignor hereby covenants and agrees to indemnify, defend, and hold harmless Assignee of, from, for, and against any and all actions, suits, proceedings, claims, liabilities, losses, damages, costs, and expenses (including, without limitation, reasonable attorneys' fees) incurred in connection therewith, based upon or arising out of any breach or alleged breach of any of the Contracts occurring or accruing prior to the Effective Date.

2. **Assumption.** Assignee assumes and agrees to be bound by all of Assignor's liabilities and obligations arising under the Contracts from and after the Effective Date. Assignee further covenants and agrees to indemnify, defend, and hold harmless Assignor of, from, for, and against any and all actions, suits, proceedings, claims, liabilities, losses, damages, costs, and expenses (including, without limitation, reasonable attorneys' fees) incurred in connection therewith, based upon or arising out of any breach or alleged breach of any of the Contacts occurring or accruing from and after the Effective Date.

3. **Binding Effect.** This Assignment shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

4. **Counterparts.** This Assignment may be executed in counterparts, all of which together shall constitute one complete Assignment.

ASSIGNOR:

By: _____

ASSIGNEE:

CITY OF FLAGSTAFF

By: _____
Gerald W. Nabours, Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

EXHIBIT G
BILL OF SALE AND ASSIGNMENT

THIS BILL OF SALE AND ASSIGNMENT ("Bill of Sale") is made as of this ____ day of _____, 2013, by _____ ("Seller"), in favor of the City of Flagstaff ("Buyer").

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller does hereby absolutely and unconditionally give, grant, bargain, transfer, assign, sell, set over, convey, and deliver to Buyer all of its right, title, and interest in, to and under all tangible and intangible Personal Property ("Personal Property") relating to the use, management, operation, maintenance, or ownership of the real property described on **Exhibit A** attached hereto (the "Property"), including without limitation, the following:

1. All transferable licenses, permits, certificates of occupancy, and other approvals issued by any governmental or quasi-governmental authority pertaining to the use, management, operation, maintenance, or ownership of the Property;
2. All keys and combinations to all doors, cabinets, safes, enclosures, and other locking items or areas of the Property in Seller's possession;
3. All equipment, machinery, and construction materials located upon the Property;
4. All guaranties and warranties in effect with respect to the Property (including roof and equipment warranties) from contractors, subcontractors, suppliers, and manufacturers;
5. All awards or payments made or to be made for any taking by condemnation, eminent domain, or otherwise (including, without limitation, by agreement in lieu thereof) for all or any part of any of the Property, the aforesaid Personal Property, and in and to all proceeds paid or payable in connection with any damage, loss, or destruction to all or any part of the Property;
6. All easements, covenants, or other title appurtenances benefiting or burdening the Property, and all party wall, encroachment, sidewalk, indemnification, right-of-way, and other similar agreements appurtenant to or otherwise affecting the use and enjoyment of the Property;
7. Any and all other property (whether real or personal and whether tangible or intangible) of any type or nature whatsoever owned, held, or maintained by Seller relating to the planning, development, construction, ownership, operation, use, management, maintenance, repair, operation, or enjoyment of the Property;
8. All warranties and guaranties from contractors, subcontractors, suppliers, and manufacturers which are in effect as of the date of this Bill of Sale issued in connection with (i) the construction, improvement, alteration, service, or repair of the buildings and other improvements situated on the Property, and (ii) the mechanical equipment and appliances in the Property;

9. All development rights and other intangible rights, titles, interests, privileges, and appurtenances owned by Seller and in any way related to or used in connection with the Property;

10. All licenses, consents, easements, rights of way and approvals from private parties, if any, to make use of utilities and to insure vehicular and pedestrian ingress and egress to the Property; and

11. All plans, specifications, studies, surveys, engineering reports, environmental reports, tests, studies, and other technical descriptions relating to the Property.

12. All approvals have been obtained to allow the Buyer to provide water and wastewater services to the Property.

Seller hereby covenants that Seller will, at any time and from time to time upon written request therefor, execute and deliver to Buyer such documents as Buyer may reasonably request in order to fully assign and transfer to and vest in Buyer and protect Buyer's right, title, and interest in and to the Personal Property transferred and assigned hereby, or to enable Buyer to realize upon or otherwise enjoy such rights and property.

Seller hereby represents and warrants to Buyer that: (i) the Personal Property has been paid for and is not subject to any liens, encumbrances, security interests, or claims of any kind; (ii) all taxes of any nature whatsoever on the Personal Property accruing prior to Closing have been paid by Seller; (iii) the consideration paid to Seller herewith is the full and complete consideration for the Personal Property; (iv) any sales or other taxes which may be payable with respect to this transfer are the sole responsibility of Seller; and (v) the transfer of the Personal Property to Buyer does not require the consent of third parties.

Seller warrants, and hereby covenants, at Seller's sole cost and expense, to defend Buyer's title to the Personal Property against the acts of Seller, and none other. Seller hereby agrees to indemnify and hold Buyer free and harmless from all liabilities, obligations, damages, causes of action, judgments, costs, and expenses (including reasonable attorneys' fees) which Buyer may incur or suffer in connection with any breach by Seller of the preceding warranty and covenant.

This Bill of Sale is binding upon the successors and assigns of Seller.

If any party hereto brings any action or suit against the other party hereto by reason of any breach of any covenant, condition, agreement, or provision on the part of the other party set forth in this Bill of Sale, the prevailing party shall be entitled to recover from the other party all costs and expenses of the action or suit, including reasonable attorneys' fees, charges, and costs, in addition to any other relief to which it may be entitled.

This Bill of Sale will be governed by, interpreted under, and construed and enforceable in accordance with the laws of the State of Arizona.

IN WITNESS WHEREOF, Seller has executed and delivered this Bill of Sale as of the date first above written.

SELLER: [Seller Name]

By: _____

**PURCHASE AND SALE
AGREEMENT**

between

as Seller

and

CITY OF FLAGSTAFF

as Buyer

Property located in Coconino County, Arizona

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (“**Agreement**”) is entered into as of _____, 2013, by and between the City of Flagstaff, an Arizona municipal corporation (“Buyer” or “City”), and _____ (“Seller”). Buyer and Seller may be referred to each individually as a “Party” and collectively as the “Parties.”

RECITALS

- A. An important goal of the City Council has been to obtain property for a Core Services Maintenance Facility.
- B. The City issued Request for Proposals No. 2013-44 (the “RFP”) for the purchase of property or purchase of property and exchange of City-owned property for a Core Services Maintenance Facility.
- C. Seller responded to the RFP with an offer to sell property to the City on certain terms and conditions.
- D. Seller desires to enter into this Agreement with the City in order to sell the property, and the City desires to purchase the property, on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

- 1. **Definitions.** The following terms used in this Agreement shall have the respective meanings set forth below:
 - 1.1. **Date of Agreement:** _____, 2013
 - 1.2. **Seller:**
 - 1.3. **Buyer:** City of Flagstaff, Arizona
 - 1.4. **Escrow Agent:**
 - 1.5. **Property:**
 - 1.5.1. The real property consisting of APNs _____ located in Coconino County, Arizona, described in the attached **Exhibit A**, together with all rights, easements, and privileges appurtenant thereto (“Real Property”);

1.5.2. All structures, buildings, improvements, facilities, and fixtures situated on the Real Property, including, without limitation, all equipment and appliances, or other improvements used in connection with the operation or occupancy thereof, such as, but not limited to, heating and air-conditioning systems and facilities used to provide any utility services, parking services, refrigeration, ventilation, trash disposal or other services owned by Seller and located on the Real Property (“Improvements”);

1.5.3. All intangible property owned by Seller and used in connection with the Real Property and Improvements, including warranties with respect to the Real Property and Improvements, and all written contracts in effect at Closing in any way relating to the Property (all such intangible property being sometimes collectively referred to herein as “Intangible Property”).

1.6. **Date of Opening of Escrow:**

1.6.1. Seller and Buyer shall establish an escrow (“Escrow”) with Escrow Agent to consummate the transaction that is the subject of this Agreement. The date on which a duplicate original of this Agreement, executed by both Buyer and Seller, is delivered to and accepted by Escrow Agent shall be the Date of Opening of Escrow, which date shall be inserted by Escrow Agent below its signature at the end of this Agreement. Escrow Agent shall give Buyer and Seller prompt written notice of the Date of Opening of Escrow.

1.7. **Feasibility Date:** The _____ (___th) calendar day after the Date of Opening of Escrow, unless that day falls on a weekend or holiday, in which case the feasibility date will be on the next business day after the _____ (___th) calendar day.

1.8. **Closing:**

1.8.1. The _____ (___th) calendar day after the Feasibility Date, unless that day falls on a weekend or holiday, in which case closing will be on the next business day after the _____ (___th) calendar day.

1.9. **Notice Addresses:** **For Seller:**

For Buyer:

City of Flagstaff
Assistant to the City Manager-Real Estate
211 W. Aspen Avenue
Flagstaff, AZ 86001
(928) 213-2072

For Escrow Agent:

2. Property. Seller agrees to sell and Buyer agrees to purchase the Property in accordance with and subject to the terms and conditions of this Agreement.
3. Conveyance of Property. Buyer shall purchase the Property consisting of parcels _____ for the amount of _____ (\$_____). The Property shall be conveyed to Buyer at Closing pursuant to a Warranty Deed (“**Deed**”) in the form attached hereto as **Exhibit B**. Seller shall execute the Deed with respect to the Property and, upon satisfaction of all conditions in this Agreement, shall cause Escrow Agent to record the Deed in the official records of Coconino County, State of Arizona, upon Closing. In addition, at Closing: (i) Seller shall execute and deliver to Escrow Agent a separate non-foreign affidavit (“**Affidavit**”) in the form attached hereto as **Exhibit C**; and (ii) Buyer and Seller shall execute and deliver to Escrow Agent a separate Affidavit of Property Value for the Property as required by applicable law.
4. Purchase Price.
 - 4.1. Purchase Price. The purchase price for the Property to be paid by Buyer shall be _____ (\$_____)
 (“**Purchase Price**”).
 - 4.2. Payment. The Purchase Price shall be payable as follows:
 - 4.2.1. On or before the Closing, Buyer shall deposit with Escrow Agent, in cash or immediately available funds, an amount equal to _____ (\$_____) for the purchase of the property, plus such additional funds as may be required to allow Buyer to fully satisfy its obligations under this Agreement, including Buyer's share of prorations and closing costs for the Property.
 (“**Cash Due at Closing**”).
 - 4.3. Exchange of Properties. Buyer is aware that Seller intends to perform a 1031 tax-deferred exchange. Seller requests Buyer’s cooperation in such an exchange and agrees to hold Buyer harmless from any and all claims, liabilities, costs or delays in time resulting from such an exchange. Upon Seller’s request, and provided such cooperation can be provided at no cost or risk to the Buyer, and without delaying each date of Closing, Buyer shall reasonably cooperate with Seller in structuring a “tax deferred” exchange pursuant to Section 1031 of the Internal Revenue Code in connection with the transaction contemplated in this Agreement. Buyer makes no representation or warranty concerning the availability or appropriateness of such an exchange, and Seller’s inability for any reason to arrange or achieve the exchange shall not relieve Seller of any obligation of this Agreement. Furthermore, Buyer makes no representation or warranty to Seller

that any such exchange shall be treated as “tax-deferred” by the Internal Revenue Service. Seller agrees to reimburse the Buyer for all fees, costs, and expenses (including reasonable attorney’s fees) incurred by the Buyer as a result of Seller’s election to participate in a Section 1031 exchange.

5. Inspection.

5.1. Inspection. Buyer shall have until 5:00 p.m. Arizona time on the Feasibility Date in which to perform a physical inspection of the Property and an inspection of all financial documents, for the purpose of conducting a feasibility study (“**Feasibility Condition**”). If Buyer disapproves the Feasibility Condition for any reason whatsoever, Buyer may send written notice to Seller and Escrow Agent on or before the Feasibility Date electing to terminate this Agreement and the Escrow. Failure of Buyer to provide written notice of approval of the Feasibility Condition shall be deemed Buyer’s disapproval of the Feasibility Condition and Buyer’s election to terminate this Agreement and the Escrow. Buyer’s inspection may include, but is not limited to:

5.1.1. Inspection of all physical aspects of the Property, including, but not limited to, all operating systems, roof, structural components, and related service contracts;

5.1.2. Environmental inspection and testing;

5.1.3. Investigation of all zoning, code, and governmental requirements;

5.1.4. Review preliminary title report;

5.1.5. Review copies of all leases and contracts, if applicable, together with any modifications or amendments thereto pertaining to the operation of the Property as well as interview existing tenants with regard to current occupancy; and

5.1.6. Review financial information from Seller’s records and review any other information and documents pertaining to Seller’s ownership and operation of the Property, including but not limited to rent rolls (collectively, the “**Records**”).

5.2. Termite Damage. Seller, at its cost, shall cure and repair prior to Closing any termite damage disclosed by Seller’s or Buyer’s termite inspection report or any structural evaluation of the buildings on the Property performed by Buyer’s consultant.

5.3. Termination. If Buyer terminates (or is deemed to terminate) this Agreement as may be permitted under this Agreement, then Buyer is responsible for all costs associated with the termination. If Seller terminates (or is deemed to terminate)

this Agreement as may be permitted under this Agreement, then Seller is responsible for all costs associated with the termination.

6. Information; Access to the Property.

6.1. Information. Within ten (10) days after the Date of Opening of Escrow, Seller shall provide access or copies to Buyer of those reports, studies, surveys, and other material documents listed on **Exhibit D** attached hereto (“**Information**”), to the extent such Information was not previously provided to Buyer.

6.2. Access to Property. Buyer and its employees, agents, architects, engineers, and independent contractors (hereafter “Designees”) shall have the right to enter upon the Property at any time after the Date of Opening of Escrow (provided that this Agreement has not been previously terminated as permitted herein) to inspect and test the Property and to determine the feasibility of acquiring the Property. Buyer shall have the right to perform any and all examinations, inspections, or tests Buyer deems necessary and appropriate, provided that Buyer provides written notice to Seller at least three (3) days before Buyer intends to enter the Property to conduct any intrusive examinations, inspections, or tests that require any drilling or other possible damage to any portion of the Property. Buyer acknowledges and agrees that Seller shall be entitled to have its representatives present during any time Buyer or its agents or independent contractors are on the Property. Buyer shall: (i) perform all such inspections in a safe and professional manner; (ii) not create any dangerous or hazardous condition on the Property; (iii) comply with all applicable laws with respect to Buyer's inspections; and (iv) obtain all permits required to be obtained with respect to Buyer's inspections.

Subject to the rights of tenants of the Property under their respective Leases, and with reasonable advance notice to Seller and to any applicable tenant, Buyer and its designees shall be entitled to inspect, during Seller’s regular business hours, the tenants’ premises on the Property and to interview tenants; provided, however, that, at Seller’s request, Seller and/or the involved tenant or its designees shall be entitled to accompany Buyer during any such inspection or contact with any tenant. In addition, Seller shall use reasonable efforts to facilitate such inspections and obtain any necessary consent to entry from the respective tenants.

6.3. Costs. Buyer shall bear all costs and expenses of any inspections, investigations, and tests of any kind or nature undertaken by Buyer with regard to the Property.

6.4. Survey. If Seller has not already provided an American Land Title Association (“ALTA”) survey of the Property as required by the Request for Proposal, such ALTA survey shall be provided within ten (10) days after Date of Opening of Escrow at Seller’s cost. If the results of the Survey indicate that the acreage of the property is less than _____ acres, the Purchase Price shall be reduced accordingly on a per square foot basis. The Survey shall be sufficient to enable _____ (“**Title Insurer**”) to delete the standard survey exception from the Title Policy (defined in 7.1) and issue the Title Policy.

To the extent that the Seller has not provided all environmental reports to the Buyer as required in the Request for Proposal, and in all events within ten (10) days after the Date of Opening of Escrow, Seller will provide all environmental reports required by the Request for Proposal for the Property to Buyer. Buyer may, at its cost, obtain additional environmental reports. If the reports indicate that remediation of the property is needed, Seller agrees to pay for the remediation.

7. Title Review.

- 7.1. Delivery of Title Report. As soon as possible, and in all events within ten (10) days after the Date of Opening of Escrow, Escrow Agent shall cause Title Insurer to deliver to the Parties a commitment for the issuance to Buyer of an ALTA extended coverage title insurance policy in the amount of the Purchase Price (“**Title Policy**”), together with legible copies of all matters indicated in Schedule B thereto (collectively, the “**Title Report**”).
- 7.2. Buyer's Review of Title Report. If Buyer is dissatisfied with any matter shown on the Title Report (“**Unpermitted Exceptions**”), Buyer may deliver written notice (“**Title Objection Notice**”) to Seller and Escrow Agent of its objection at least twenty (20) business days prior to the Feasibility Date. If any amendment, revision, or supplement to the Title Report is issued (except to remove matters previously objected to by Buyer), a copy thereof shall be promptly delivered by Escrow Agent to Buyer, together with a legible copy of any new matter referred to in any amendment or supplement to the Title Report. If any amendment, revision, or supplement to the Title Report is issued after the Feasibility Date, Buyer shall have five (5) business days after receipt of any amendment, revision, or supplement of the Title Report, or until Closing, whichever first occurs, to object to any new and material matters shown thereon by providing a Title Objection Notice to Seller and Escrow Agent. If Buyer fails to object to any matter set forth in the Title Report or in any amendment, revision, or supplement thereto within the time periods prescribed in this Section 7, Buyer shall be deemed to have accepted these matters.
- 7.3. Seller's Cure Period. If Buyer timely delivers a Title Objection Notice, then Seller shall notify Buyer within ten (10) business days following the date of receipt of the Title Objection Notice (“**Seller's Cure Period**”) that either: (i) one or more of the Unpermitted Exceptions has been, or will be at or prior to Closing, removed from the Title Report by Escrow Agent; or (ii) Seller is unable or unwilling to have one or more of the Unpermitted Exceptions removed. If Seller fails to respond to the Title Objection Notice within Seller's Cure Period, Seller shall be deemed to be unwilling to cause the removal of the Unpermitted Exceptions. If Seller fails to cure any objection of Buyer, or fails to respond to the Title Objection Notice within Seller's Cure Period, Buyer shall elect within ten (10) business days following Seller's Cure Period to either: (i) cancel this Agreement and the Escrow by written notice delivered to Seller and Escrow Agent; or (ii) waive the objection by written notice to Seller and Escrow Agent

and proceed to purchase the Property. If Buyer fails to timely make any of these elections, Buyer will be deemed to have elected option (ii) above. All matters to which Buyer has not objected, or to which Buyer has waived or is deemed to have waived its objections under this Section 7, are referred to in this Agreement as the "**Permitted Exceptions.**"

- 7.4. Unpermitted Liens. Notwithstanding any other provision in this Agreement, and regardless of whether Buyer has given notice of an objection under the terms of this Section 7, Seller shall satisfy or otherwise remove all monetary liens and encumbrances on the Property, on or before the Closing, with the exception of taxes or assessments not yet due and liens and encumbrances caused by Buyer.
 - 7.5. Title Policy. Escrow Agent shall cause Title Insurer to issue at Closing to Buyer, as the insured, the Title Policy in the amount of the Purchase Price.
8. Miscellaneous.
- 8.1. Prorations and Adjustments. The following adjustments to the Purchase Price paid hereunder shall be made between Seller and Buyer and shall be prorated (as applicable) through the Escrow on a per diem basis as of 12:01 a.m. on the Closing date:
 - 8.1.1. Seller is responsible for all real estate taxes and assessments for or relating to the Property until such time that the Property is removed from the tax rolls by the Coconino County Assessor's Office. The provisions of this Section 8.1 shall survive Closing.
 - 8.1.2. If applicable, Seller shall retain all collected Tenant rents ("**Rents**") attributable to the period prior to the day of Closing. Seller shall pay all Rent Taxes on Rents collected by Seller, provide Buyer with evidence of payment thereof, and obtain State of Arizona and City of Flagstaff clearance letters therefor prior to Closing date.
 - 8.1.3. Seller shall be entitled to retain and receive refund of all utility and similar deposits at Closing.
 - 8.1.4. If applicable, to the extent not billed directly to tenants, or otherwise paid by tenants, utilities, including water, electricity, sewer, gas, telephone, and other utility charges, shall be prorated based, to the extent practicable, on the last meter readings prior to Closing. Seller will endeavor to obtain meter readings on the day before Closing, and if such readings are obtained, there shall be no such proration of such items. Seller shall pay at Closing the utility bills for the period up to and including the date of Closing, and Buyer shall pay the utility bills for the period subsequent to Closing. If the utility company will not issue separate bills, Buyer will receive a credit against the Purchase Price for Seller's portion and will pay the entire bill prior to delinquency after Closing. If Seller has paid any

utilities no more than thirty (30) calendar days in advance in the ordinary course of business, then Buyer shall be charged its portion of such payment at Closing. Buyer shall be responsible for any utility deposits necessary to establish service in Buyer's name.

- 8.2 Estoppel Certificates. If applicable, Seller shall request that all tenants on the Property (“**Tenant(s)**”) execute statements in the form attached hereto as **Exhibit E** (“**Tenant Estoppel Certificate**”). Seller shall deliver the Tenant Estoppel Certificates to be executed to the Tenants by no later than ten (10) business days after the opening of Escrow. Receipt of Tenant Estoppel Certificates without material modifications having been made thereto by the Tenants, which, in the aggregate, represent a minimum of one hundred percent (100%) of the rent reflected on the list of current leases certified by the Seller (“**Rent Roll**”) for the Property, shall be a condition to Purchaser's obligation to close Escrow.
- 8.3. Condition of Property. Improvements shall include all structures, buildings, and fixtures situated on the Property. Infrastructure shall include all facilities used to provide utility service and private roads. The Seller will disclose all defects in the improvements and infrastructure to the Buyer in writing within ten (10) days after Opening of Escrow. The Buyer has the right to make any and all inspections of the improvements and infrastructure as detailed in Section 5.1 of this Agreement.
- 8.4. Seller's Covenants. Except as otherwise provided in this Section between the date of the execution of this Agreement and the Closing date, Seller shall:
- 8.4.1. Maintain the Property in its current condition and perform, or cause tenants to perform, required and routine maintenance and make minor replacements of the Property that are tangible property (whether real or personal) and perform repairs or make minor replacements to any broken, defective, or disfunctioning portions of the Property that are tangible property (whether real or personal) as the relevant conditions require.
- 8.4.2. Pay, in the normal course of business, and, in any event, prior to Closing, all sums due for work, materials, or services furnished or otherwise incurred in the ownership, use, maintenance, repair, or operation of the Property, up to Closing.
- 8.4.3. Seller will not make any material alterations or improvements to the Property, or remove any of the Property therefrom, except with the ordinary course of Seller's business practices, without the consent of Buyer, which consent shall not be unreasonably withheld, conditioned, or delayed.
- 8.4.4. Maintain its current or comparable insurance covering the Property;

8.4.5. Operate, manage, and enter into contracts with respect to the Property, in the same manner done by Seller prior to the date hereof; provided, however, that Seller shall not enter into any new service contract after the date hereof that cannot be terminated within thirty (30) days without the payment of any fee or penalty. Seller shall not enter into any new Leases, or amend, modify, or extend any existing Leases after the Feasibility Date. Seller shall terminate all leases prior to close of escrow and resolve all claims by tenants including but not limited to claims for relocation expenses.

8.4.6. Execute reasonable documents required by, and otherwise cooperate in good faith with, Escrow Agent in order to issue the Title Policy in accordance with the Title Report showing only the Permitted Exceptions.

9. Seller's Representations and Warranties. Seller covenants, represents, and warrants that the following will be true as of the time of the execution of this Agreement and as of Closing:

9.1. The person(s) signing this Agreement and any documents and instructions in connection herewith, on behalf of Seller, have full power and authority to do so. This Agreement has been duly authorized and executed by Seller, and, upon execution by Buyer and delivery to Escrow Agent, shall be a valid and binding agreement of Seller, enforceable in accordance with its fees.

9.2. This Agreement is, and all other documents executed by Seller pursuant hereto will be, duly authorized, executed, and delivered by Seller, and will be the legal, valid, and binding obligations of Seller, and enforceable against Seller, in accordance with their respective terms. This Agreement and such documents do not and will not violate any provisions of any agreement, order, or judgment to which Seller is a party or to which it is subject. All persons signing this Agreement and/or any documents and instruments in connection herewith on behalf of Seller have full power and authority to do so.

9.3. Seller's execution of this Agreement, consummation of the transactions herein contemplated, and performance and observance of the obligations of Seller hereunder and under all other agreements and instruments herein mentioned to which Seller is a party, will not conflict with or result in the breach of any law, regulation, order, writ, injunction, or decree of any court or governmental authority or of any agreement or instrument to which Seller is now a party or to which it is subject, or constitute a default thereunder, and no consent, waiver, or approval by any third party is required in connection with the execution and delivery by Seller of this Agreement.

9.4. The Property meets all current building and zoning codes and there are no life safety issues outstanding.

9.5. There are no attachments, levies, executions, assignments for the benefit of creditors, receiverships, conservatorships, or voluntary or involuntary proceedings

in bankruptcy or any other debtor relief actions contemplated by Seller or filed by Seller, or to Seller's actual knowledge, pending in any current judicial or administrative proceeding against Seller.

- 9.6. Except as disclosed in the Title Report or the Information, Seller has not received written notice of any existing, proposed, planned, or threatened eminent domain or condemnation actions, assessments, or assessment district proceedings related to the Property, and has no actual knowledge of any planned.
- 9.7. Seller is not a "foreign person" as that term is defined in Section 1445 of the Internal Revenue Code, as amended, and any applicable regulations promulgated thereunder.
- 9.8. There are no liens, encumbrances, claims of lien or encumbrances, or any possible defects, or claims of defects to the title to the Property which do not appear in the Title Report or the Information.
- 9.9. Except for debts, liabilities, and obligations for which provision is made herein for proration or other adjustment at Closing, all liabilities and obligations arising from the ownership of the Property will be paid on or before Closing.
- 9.10. As of Closing, there shall be no parties in possession of any portion of the Property as lessees, tenants, tenants at sufferance, or trespassers, or no person, firm, corporation, or other entity has, or at Closing shall have, any right to relocation or reimbursement for relocation or option to acquire all or any portion of the Property.
- 9.11. Except as disclosed in the Information, there are no Hazardous Substances located on the Property, and the Property is in compliance with all applicable Environmental Laws. As used in this Agreement, "**Hazardous Substance**" shall mean and include all hazardous or toxic substances, wastes, or materials, any pollutants or contaminants (including, without limitation, asbestos and materials which include hazardous constituents), or any other similar substances or materials which are included under or regulated by any Environmental Law. "**Environmental Law**" shall mean and include all local, state, or federal laws, rules, orders, and regulations pertaining to environmental regulation, or the use, processing, storage, disposal, generation, or transportation of Hazardous Substances, or any contamination, clean up, or disclosure related thereto, including without limitation the Environmental Response Compensation and Liability Act of 1980, the Super Fund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act, the Hazardous and Solid Waste Amendments of 1984, the Toxic Substances Control Act, the Federal Insecticide, Fungicide and Rodenticide Act, the Federal Water Pollution Control Act, the Federal Safe Drinking Water Act, the Federal Clean Air Act, the Federal Clean Water Act, the National Environmental Protection Act, and Title 49 of the Arizona Revised Statutes, as any of the foregoing has heretofore been amended, and any regulations promulgated with respect to any such statutes. There are no

orders, judgments, claims, suits, actions, or proceedings concerning or affecting the Property with respect to any Environmental Law. Seller has not received any notice of any threatened or pending suit, action, or proceeding concerning the Property relating to any Environmental Law.

- 9.12. Seller has received no written notice from any city, county, state, or other governmental authority of any violation of any law, statute, ordinance, regulation, or administrative or judicial order or holding, whether or not appearing in public records, with respect to the Property, which violation has not been corrected.
- 9.13. There are not any existing, pending, or anticipated litigation against or involving the Property or Seller's interest therein, including without limitation any water, sewer, building, or other construction moratoria on the Property.
- 9.14. There are no agreements or documents which constitute Leases or have a material adverse effect on the Property or the operation thereof. Other than this Agreement, there are no outstanding contracts or agreements executed by Seller related to the sale, exchange, or transfer of the Property or any part thereof. There are no unpaid costs or expenses related to tenant improvements or leasing commissions or leasing fees with respect to the Property which are the obligation of Seller and which will not be paid at or before Closing by Seller. There are no leasing commissions or leasing fees due and payable prior to Closing (or which will become due and payable after Closing) with respect to any of the Leases which are the obligation of Seller and which will not be paid at or before Closing by Seller. There are no written leases, subleases, licenses, or other rental agreements or occupancy agreements executed by Seller which grant any possessory interest in and to any space situated on or in the Property or otherwise give rights with regard to use of the Property. There are no service contracts, maintenance agreements, leasing commission or brokerage agreements, repair contracts, property management contracts, contracts for the purchase or delivery of labor, services, materials, or goods, supplies, or equipment or similar agreements entered into by Seller which will be obligations of Buyer or the Property after Closing, other than any of such contracts or agreements which are cancelable on not more than thirty (30) days' notice without the payment of any termination fee or cancellation penalty.
- 9.15. In the Title Policy or as otherwise disclosed in writing by Seller to Buyer prior to the Feasibility Date, Seller has received no written notice from any city, county, state, or other government authority: (i) of any order or directive requiring any work of repair, maintenance, or improvement to be performed on the Property that has not been corrected; (ii) relating to defects in the Improvements or relating to noncompliance with any applicable building code, restriction, license, or permit that has not been corrected; (iii) relating to any threat of impending condemnation of the Property; or (iv) of any unpaid assessments for public improvements that have been made against the Property or of any presently planned public improvements which would result in the creation of a special assessment or similar lien upon the Property.

- 9.16. Other than those service contracts, maintenance agreements, leasing commission, or brokerage agreements, repair contracts, property management contracts, contracts for the purchase or delivery of labor, services, materials, or goods, supplies, or equipment or similar agreements entered into by or on behalf of Seller: (i) which are listed on Schedule B to **Exhibit F**; (ii) which will be terminated prior to Closing; or (iii) which are cancelable on no more than thirty (30) days' notice without the payment of any termination fee or cancellation penalty (all of the foregoing contracts or agreements referenced in clauses (i) or (ii) hereof are collectively referred to as the "**Contracts**"), Seller does not have any other liabilities or obligations under other agreements relating to the Property and other than normal expenses incurred in the ordinary course of business.
- 9.17. There are no structural or other defects, including, but not limited to, defects in the roof, plumbing, heating, air conditioning, foundation, or electrical wiring in the buildings and other improvements.
- 9.18. Notwithstanding the foregoing provisions of this Section 9, if Buyer learns of any actual or alleged inaccuracy in Seller's representations or warranties contained in this Section 9 after the date hereof and prior to Closing date, Buyer shall promptly notify Seller thereof, and if Seller learns of any actual or alleged inaccuracy in such representations or warranties, Seller shall advise Buyer thereof. Seller shall, within five (5) days of receiving such written notice from Buyer or of learning of such actual or alleged inaccuracy, make reasonable efforts to cure such inaccuracy and, failing such cure, Seller shall, within such five (5) day period, notify Buyer in writing of such failure to cure, and Buyer's sole and exclusive remedy therefor shall be to elect, within five (5) days of receiving such written notice from Seller, to either (a) proceed to Closing and waive such inaccuracy or (b) cancel this Agreement and the Escrow, and neither Party shall have any further rights or obligations regarding this Agreement (except as may be expressly provided otherwise in this Agreement). Notwithstanding the foregoing, it is understood that Seller's representations and warranties contained in Section 9 shall be and remain true as of the Closing date, and that Seller remains liable to Buyer for all damages resulting from a breach thereof.
- 9.19. It is understood and agreed that the Purchase Price has been adjusted by prior negotiation to reflect that all of the Property is sold by Seller and purchased by Buyer subject to this Section 9.
10. **Buyer's Representations and Warranties.** Buyer covenants, represents, and warrants that:
- 10.1. The person(s) signing this Agreement and any documents and instructions in connection herewith on behalf of Buyer have full power and authority to do so.
- 10.2. This Agreement has been duly authorized and executed by Buyer, and upon delivery to and execution by Seller shall be a valid and binding agreement of Buyer.

10.3. There are no attachments, levies, executions, assignments for the benefit of creditors, receiverships, conservatorships, or voluntary or involuntary proceedings in bankruptcy or any other debtor relief actions contemplated by Buyer or filed by Buyer, or pending in any current judicial or administrative proceeding against Buyer.

11. Changes in Representations and Warranties.

11.1. If the Party making the representation, warranty, or covenant obtains knowledge of any change in any of its statements after the date hereof (whether arising before or after the date hereof), the Party shall give prompt notice to the other Party.

11.2. If a change in any of the representations, warranties, and covenants by a Party is intentionally caused by the Party, the change shall constitute a default and the other Party's remedies shall be as provided in Section 12 below.

11.3. If, however, a change in the representations, warranties, and covenants by a Party is not intentionally caused by the Party making the statement, then the change shall constitute only the failure of a condition (if the change materially and adversely affects the other Party), but shall not constitute a default. In such event, the other Party's sole remedy shall be to terminate this Agreement and the Escrow and neither Party shall have any further rights or obligations under this Agreement, except those that survive the termination.

11.4. It shall be a condition precedent to a Party's obligation to proceed with Closing that the representations, warranties, and covenants by the other Party set forth above with respect to the Property shall be materially true and correct as of Closing.

12. Default.

12.1. Default by Seller. If any warranty or representation of Seller made in this Agreement shall prove to be materially untrue, or if Seller shall fail to perform any of its obligations under this Agreement on or prior to the date for performance provided in this Agreement, and Buyer is not in default under this Agreement, then, unless otherwise specifically provided for in this Agreement, Buyer shall give Seller five (5) business days' written notice of the failure and opportunity to cure. If Seller does not cure within the five (5) business-day period, then Buyer may, as its exclusive remedy either: (i) cancel this Agreement and the Escrow by written notice to Seller and Escrow Agent; or (ii) pursue specific performance of this Agreement; provided that such specific performance action is initiated and filed within ninety (90) days after Seller's alleged default. Notwithstanding the foregoing, if the remedy of specific performance is not available to Buyer because Seller has sold the Property or because Seller, by its acts has (i) voluntarily disabled its ability to deliver title as required by this Agreement, or (ii) caused an error in the representations and warranties of Seller herein, Buyer may maintain an action for damages against Seller. If Buyer elects to terminate this Agreement

as permitted under this Section 12.1, then: (i) the Escrow shall be terminated for all purposes; (ii) Escrow Agent shall return all other funds, documents, and other items held by Escrow Agent to the Party that deposited same with respect to the Property; (iii) Seller shall reimburse Buyer for Buyer's actual out-of-pocket expenses not to exceed _____ Dollars (\$_____) as liquidated damages; and (iv) the Parties shall have no further rights or obligations under this Agreement except for those rights and obligations that are specified in this Agreement to survive the termination of this Agreement.

12.2. Default by Buyer. If any material warranty or representation of Buyer made in this Agreement shall prove to be materially untrue, or if Buyer shall fail to perform any of Buyer's obligations under this Agreement on or prior to the date for performance provided in this Agreement, then Seller shall give Buyer five (5) business days' written notice of the failure and opportunity to cure. Notwithstanding the foregoing sentence, Buyer shall have no cure period with respect to Buyer's failure to pay money as required under this Agreement or Buyer's failure to acquire the Property on Closing. If Buyer does not cure within the applicable cure period, if any, then Buyer shall be in default. In the event of default by Buyer, Seller as its sole right and exclusive remedy may terminate this Agreement and the Escrow.

13. Risk of Loss. Except as provided in any indemnity provisions of this Agreement, and as otherwise provided in this Section 13, Seller shall bear all risk of loss with respect to the Property prior to Closing and thereafter all risk of loss shall be Buyer's.

If, prior to Closing, any portion of the Real Property and Improvements, or any part thereof, are damaged or destroyed, Buyer shall have the right, exercisable by giving notice to Seller and Escrow Agent within fifteen (15) days after receiving written notice of such damage or destruction (but in any event prior to Closing), to either: (i) terminate this Agreement and the Escrow, in which case neither Party shall have any further rights or obligations under this Agreement (except as may be expressly provided otherwise in this Agreement), and neither Seller nor Buyer shall be subject to any claim by the other for damages of any kind except for the breach of the indemnity, hold harmless, and other agreements provided in this Agreement; or (ii) accept the Property in its then condition and proceed with Closing without any abatement or reduction in the Purchase Price, in which event Buyer shall be entitled to (a) an assignment of all of Seller's rights to any insurance proceeds payable by reason of such damage or destruction and (b) a credit against the Purchase Price in the amount of Seller's insurance deductible. If Buyer elects to proceed under clause (ii) above, Seller shall not compromise, settle, or adjust any claims to such proceeds without Buyer's prior written consent.

If, prior to Closing, all or any portion of the Real Property and Improvements is subject to a taking by public authority, Buyer shall have the right, exercisable by giving notice to Seller within five (5) days after receiving written notice of such taking (but in any event prior to Closing), to either: (i) terminate this Agreement and the Escrow, in which case neither Party shall have any further rights or obligations under this Agreement (except as may be expressly provided otherwise in this Agreement), and neither Seller nor Buyer

shall be subject to any claim by the other for damages of any kind except for the breach of the indemnity, hold harmless, and other agreements provided in this Agreement; or (ii) accept the Property in its then condition and proceed with Closing without any abatement or reduction in the Purchase Price, in which event Buyer shall be entitled to an assignment of all of Seller's rights to any condemnation award payable by reason of such taking. If Buyer elects to proceed under clause (ii) above, Seller shall not compromise, settle, or adjust any claims to such award without Buyer's prior written consent, and Buyer shall receive all awards. As used in this Section 13, "taking" shall mean any transfer of the Property or any material portion thereof to a governmental entity or other party with appropriate authority, by exercise of the power of eminent domain. Seller agrees to give Buyer notice of any damage, destruction, or taking of the Real Estate and Improvements promptly after Seller obtains knowledge thereof.

14. Closing.

14.1. Deliveries by Seller for the Closing. Seller shall deliver to Escrow Agent for filing, recordation, or delivery to Buyer, as appropriate, upon Closing, the following:

14.1.1. The Deed for the Property, duly executed and appropriately acknowledged by Seller;

14.1.2. An Affidavit of Property Value for the Property, duly executed and appropriately acknowledged by Seller as contemplated by Section 3;

14.1.3. [If Applicable] Tenant Estoppel Certificates in the form of **Exhibit E** from each current Tenant of premises at the Property or in a form as provided for in Section 8.2;

14.1.4 [If Applicable] An Assignment and Assumption of Contracts executed by Seller in the form of **Exhibit F** attached hereto ("Assignment and Assumption of Contracts");

14.1.5. A Bill of Sale and Assignment executed by Buyer in the form of **Exhibit G**; and

14.1.6. Any additional instruments, duly executed and appropriately acknowledged by Seller, as may be necessary for Seller to have complied with the terms of this Agreement.

14.2. Deliveries by Buyer for the Closing. On or before Closing, Buyer shall deliver to Escrow Agent for filing, recordation, or delivery to Seller, as appropriate, upon Closing, the following:

14.2.1. The cash due at Closing as described in Section 4.2;

14.2.2. An Affidavit of Property Value for the Property, duly executed and acknowledged by Buyer as contemplated by Section 3; and

- 14.2.3. Any additional instruments, duly executed and appropriately acknowledged by Buyer, as may be necessary for Buyer to have complied with the terms of this Agreement.
- 14.3. Closing Costs. Buyer and Seller shall share evenly all closing costs in connection with the Escrow for the Property. Seller shall pay the cost of the standard coverage owner's title policy described in Section 7 for the Property and all recording fees. Buyer shall pay the additional cost for extended coverage owner's title policy, any endorsements requested by Buyer, and any costs in connection with any lender's policy that Buyer may be obligated to purchase for Buyer's lender (if required). All other fees, charges, or expenses incidental to the sale of the Property to Buyer shall, except as otherwise expressly provided in this Agreement, be shared evenly between Buyer and Seller. In addition to the amounts Buyer is required to deposit with Escrow Agent under Section 4 above, Buyer and Seller shall deposit with Escrow Agent, on or before Closing, sufficient amounts to cover its share of closing costs (and all other items prorated in accordance with this Agreement to the extent applicable). All other items prorated in accordance with this Agreement, to the extent applicable, shall be paid from the proceeds otherwise payable to Seller.
15. Notices. Any and all notices required or permitted by this Agreement shall be given in writing and personally delivered, sent by registered or certified mail, return receipt requested, postage prepaid, or sent by reputable overnight courier, addressed as listed in Section 1.9 of this Agreement. Any notice or communication shall be deemed to have been given and received on the earliest of: (i) the date of delivery or refusal, if hand delivered or sent by overnight courier; (ii) three (3) days after the date of mailing, if mailed within the continental United States; or (iii) seven (7) days after mailing, if mailed outside the continental United States. Copies of all notices or communications to Buyer or Seller shall be hand delivered, mailed, or sent by overnight courier, in the manner set forth above, to Escrow Agent, and copies of all notices by Buyer or Seller to Escrow Agent shall be hand delivered, mailed, or sent by overnight courier, in the manner set forth above, to the other Party hereto. Notwithstanding the foregoing, notices from Escrow Agent or Title Insurer to Seller and Buyer may be given by United States first class mail and shall be deemed given and received three (3) days after deposit in the United States mail.
16. Good Funds. Except as otherwise provided in this Agreement, all deposits and payments that are to be made by Buyer with respect to this Agreement shall be made when due in lawful money of the United States. Under no circumstances will Escrow Agent accept any deposit or payment not made in strict accordance with this Agreement.
17. Time of Essence. Time is and shall be of the essence of this Agreement and all its provisions. Any extension of the time for performance under this Agreement by either Party must be in writing and signed on behalf of Seller and Buyer. An extension may be granted on behalf of the Buyer by the City Manager. No extension will be deemed a

waiver of this Section 17 with respect to other performance by either Party.

18. Waiver. The waiver by any Party of any right granted to it in this Agreement shall not be deemed to be a waiver of any other right granted in this Agreement, nor shall same be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived.
19. Attorneys' Fees. The prevailing Party in any litigation arising out of this Agreement shall be entitled to the recovery of its reasonable attorneys' fees, expert witness fees, litigation related expenses, and court costs in such litigation or proceeding from the other Party.
20. Entire Agreement. This Agreement, together with any exhibits attached hereto and incorporated herein by reference, is intended to be and constitutes the entire agreement between the parties with respect to the Property as of the date of execution, and may be amended only by an instrument in writing signed by Buyer and Seller. The joinder of Escrow Agent and any broker named in this Agreement shall not be required to amend this Agreement. Evidence of prior negotiations or understandings between the parties shall not vary or contradict the provisions of this Agreement.
21. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of Buyer and Seller and their respective successors and assigns.
22. Further Assurances. Promptly upon the request of the other Party or of Escrow Agent, Seller and Buyer each shall execute, acknowledge, and deliver to the other Party or Escrow Agent, or both, any and all further instruments, and shall take all such other action as may be reasonably requested or appropriate to evidence or give effect to the provisions of this Agreement, or to satisfy Escrow Agent's requirements in connection with this Agreement.
23. Severability. If any provision or any portion of a provision of this Agreement or of any other document to be executed in connection with this Agreement is deemed to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect the remaining portion of that provision or of any other provision of this Agreement or such other document, as each provision of this Agreement and all such other documents shall be deemed to be severable from all other provisions hereof and thereof.
24. Headings. The paragraph headings in this Agreement are inserted for the purpose of reference only and shall not limit, define, or expand the provisions of this Agreement or any one of them.
25. Governing Law; Venue. This Agreement and any documents executed in connection with or pursuant to this Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. Buyer and Seller agree that the proper venue for any legal proceedings arising out of this Agreement shall be Coconino County, Arizona.
26. Not Partners. Neither this Agreement, nor any other agreement referred to herein or

entered into in connection herewith, and no activity of Seller or Buyer in connection with this transaction, shall constitute Seller and Buyer as partners or joint venturers for any purposes whatsoever.

27. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall together constitute one and the same document.
28. Construction. This Agreement is the result of negotiations between the Parties and accordingly shall not be construed for or against either Party regardless of which Party drafted this Agreement.
29. Business Day. If the time for performance of any obligation under this Agreement expires on a Saturday, a Sunday, or a legal holiday observed by Escrow Agent, then the time for such performance shall be extended to the next succeeding day that is not a Saturday, a Sunday, or a legal holiday observed by Escrow Agent.
30. Assignment. Neither Party shall assign any of its rights and obligations under this Agreement without prior written consent of the other, which may not be unreasonably withheld, delayed, or conditioned.
31. Conflict of Interest. This Agreement is subject to the cancellation provisions of ARS §38-511.
32. Broker. Seller shall be responsible to pay a commission at Closing to _____ (“**Broker**”) pursuant to a separate written agreement. Except for the foregoing commissions to be paid to Broker, each Party hereto represents and warrants to the other that it has not employed any other broker or finder in connection with the transaction contemplated by this Agreement, and it is not obligated to pay any real estate brokerage or other commission or fee in connection with the sale of the Property to Buyer. Each Party shall defend and hold the other harmless from all liability and expense including, without limitation, reasonable attorneys' fees arising from any claim by any broker, agent, or finder for commissions, finder's fees, or similar charges, because of any act of such Party. The obligations of the parties pursuant to this Section 32 shall survive Closing and any termination of this Agreement. Buyer and Seller acknowledge that certain employees and/or principals of Buyer and Seller (or their respective affiliates) may be licensed Arizona real estate brokers and salespersons.

[SIGNATURE PAGE FOLLOWS SEPARATELY]

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement on the date set forth above.

SELLER:

By: _____

BUYER:

City of Flagstaff,
an Arizona municipal corporation

By: _____
Gerald W. Nabours, Mayor

Attest:

City Clerk

Approved as to form:

City Attorney

List of Exhibits

- Exhibit A - Legal Description of Property
- Exhibit B - Warranty Deed
- Exhibit C - Non-Foreign Affidavit
- Exhibit D - Information
- Exhibit E - Tenant Estoppel Certificate [If Applicable]
- Exhibit F - Assignment and Assumption of Contracts [If Applicable]
- Exhibit G - Bill of Sale and Assignment

ACCEPTANCE OF ESCROW AGENT

_____ accepts the foregoing Purchase and Sale Agreement and escrow instructions, agrees to act as Escrow Agent hereunder, and agrees to comply with the provisions of Section 6045 of the Internal Revenue Code with respect to the transactions contemplated hereby.

[Name of Escrow Agent]

By: _____
Name:

Title: _____

Date: _____

EXHIBIT A

LEGAL DESCRIPTION

EXHIBIT B

When recorded, mail to:
City Clerk
City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001

WARRANTY DEED

For good and valuable consideration, _____, hereafter called the Grantor, does hereby grant and convey to CITY OF FLAGSTAFF, an Arizona municipal corporation, hereafter called the Grantee, that certain real property situated in Coconino County, Arizona, more particularly described in Exhibit A, attached to and made a part hereof.

The Grantor hereby binds itself and its successors and assigns to warrant and defend the title to said real property against all persons claiming under it, subject to the matters above set forth.

This transaction is exempt under A.R.S. Section 11-1134(A)(3).

IN WITNESS WHEREOF, the Grantor has executed this Warranty Deed this _____ day of _____, 2013.

By: _____

State of Arizona)
) ss.
County of Coconino)

ACKNOWLEDGMENT. On this _____ day of _____, 2013, before me, a Notary Public, personally appeared _____, known to be or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same on behalf of _____ for the purposes therein contained.

My Commission Expires: _____

Notary Public

EXHIBIT C

NON-FOREIGN AFFIDAVIT

The undersigned, _____ ("**Transferor**"), after being duly sworn upon his oath deposes and says that:

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform _____ ("**Transferee**"), that withholding of tax is not required upon the disposition of Transferor's interest in the real property described on **Exhibit A** attached hereto and by this reference included herein, the undersigned hereby certifies the following:

1. The Transferor is not a non-resident alien, foreign corporation, foreign partnership, foreign trust, foreign estate, or other foreign person within the meaning of § 1445 and § 7701 of the Internal Revenue Code and the treasury regulations promulgated thereunder;

2. Transferor is not a disregarded entity as defined in § 1.1445-2(b)(2)(iii) of the Internal Revenue Code;

3. Transferor's U.S. taxpayer identification/social security number is: _____; and

4. Transferor's business address is: _____.

Transferor understands that this certification may be disclosed to the Internal Revenue Service by Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury, I declare that I have examined this certification and to the best of my knowledge and belief this certification is true, correct, and complete. The undersigned agent declares that he has the authority to sign this document on behalf of Transferor.

Dated this ____ day of _____, 2013.

TRANSFEROR:

BY _____

EXHIBIT D
INFORMATION

1. A current tenant roster and rent roll (“**Rent Roll**”), showing tenant names, rental rates, period of rental, date of last rental increase, security deposits, rents paid, delinquent rents, any agreements regarding relocation, and all correspondence regarding the termination of the leases.
2. Copies of all Leases.
3. Operating statements including income reports for the last year.
4. Copies of all contracts and provide a summary of any unwritten or verbal agreements the Property may have with any third party vendors.
5. Copies of the Permits and Certificates of Occupancies.
6. The most recent real and personal property tax statements for the Real Property, Improvements, and the Personal Property.
7. Copies of all casualty and liability insurance policies insuring the Property, with a schedule of the premiums for such policies.
8. Geological and soils engineering reports.
9. Environmental site assessments or other environmental reports.
10. All building permits, conditional use permits, variances, and related governmental authorizations obtained in connection with construction of the Improvements.
11. ALTA surveys.
12. Copies of any pending or past litigation against the Property.
13. Detailed list of all capital expenditures over the past thirty-six (36) months.
14. Any termite treatment documents for the Property.

EXHIBIT E
TENANT ESTOPPEL CERTIFICATE

To: _____

Re: Leased Premises identified as _____, located within the property located at _____ (the "Property")

Lease Date: _____, _____, between _____, as Landlord, and _____, as Tenant.

The undersigned is the Tenant under the above-referenced lease and certifies to _____ and to Landlord, the following:

1. The lease ("Lease") consists of the following documents: _____
_____. The Lease has not been canceled, modified, assigned, extended, or amended except as described in the preceding sentence.
2. Rent has been paid to the first day of the following month and all additional rent has been paid and collected in a current manner. There is no prepaid rent, except \$_____ and the amount of Tenant's security deposit held by Landlord is \$_____.
3. Base rent under the Lease is currently payable in the amount of \$_____.
4. The obligations of Tenant under the Lease are guaranteed by _____.
5. The Lease terminates on _____ and Tenant has no right to renew.
6. Tenant intends to vacate the Property on or before the following date: _____, 2013.
7. Landlord has paid in full all obligations owed to Tenant under the Lease.
8. Landlord has paid in full all obligations owed to the Tenant for relocation.
9. All work to be performed by Landlord for Tenant under the Lease has been performed as required and has been accepted by Tenant, except _____. All allowances or reimbursements currently due and payable to Tenant under the Lease have been paid in full.
10. The Lease is terminated, neither Landlord nor Tenant claims any default thereunder, and Tenant has no claims or defenses against the Landlord or offsets or credits against rent. Additionally, no free rent periods or rental concessions have been granted that remain outstanding, except _____.

11. Tenant has received no notice of prior sale, transfer, or assignment, hypothecation, or pledge of the Lease or of the rents received therein, except _____.

12. Tenant has not assigned or sublet the Lease nor does Tenant hold the Leased Premises under assignment or sublease, except _____.

13. Tenant has no other interest in any other part of the Property of which the Leased Premises forms a part or to any personal property appurtenant thereto or used in connection therewith, except _____.

14. Tenant has no right or option pursuant to the Lease or otherwise to purchase all or any part of the Leased Premises or the Property.

15. There are no other agreements, written or oral, between Tenant and Landlord with respect to the Lease, the Leased Premises and/or the Property.

16. The statements contained herein may be relied upon by Landlord under the Lease and by any prospective purchaser or assignee (including lenders) of the Landlord's interest under the Lease.

17. No actions, whether voluntary or involuntary, are pending against Tenant under the bankruptcy laws of the United States or any state thereof.

18. The Tenant, as of the date hereof, has no claim, charge, defense, or offset under the Lease against rents or other charges due or to become due thereunder. As of the date hereof, Tenant has not asserted any such offset or credit. To the Tenant's knowledge, there are no defaults under the Lease on the part of Tenant.

19. This Certificate shall inure to Buyer's benefit and to the benefit Buyer's successors and assigns and shall be binding upon Tenant and Tenant's successors and assigns.

Tenant makes this Certificate with the understanding that Landlord is contemplating selling the Property, and that Buyer is interested in purchasing the Property.

The person signing this Certificate is duly authorized by Tenant to sign this Certificate and if Tenant is a corporation or other entity, the undersigned is a duly appointed officer or principal of the corporation or other entity and is the incumbent in the office or other position indicated under his or her name.

Dated this _____ day of _____, 20____.

TENANT:

_____,
a(n) _____

By: _____

Its: _____

EXHIBIT F

ASSIGNMENT AND ASSUMPTION OF CONTRACTS

THIS ASSIGNMENT AND ASSUMPTION OF CONTRACTS (the "Assignment") is made this _____ day of _____, 2013 (the "Effective Date"), by and between _____ ("Assignor"), and the City of Flagstaff, an Arizona municipal corporation ("Assignee").

RECITALS

A. Assignor presently holds certain rights under contracts (except as expressly provided herein to the contrary), including, without limitation, those contracts more particularly described on Schedule B to this Assignment (the "Contracts"), affecting that real property more particularly described on Schedule A to this Assignment, such Schedules being by this reference incorporated herein.

B. Assignor desires to assign to Assignee, and Assignee desires to acquire Assignor's interest in and to, the Contracts.

FOR VALUABLE CONSIDERATION, it is agreed as follows:

1. **Assignment.** As of the Effective Date, Assignor conveys and assigns to Assignee, subject to the provisions of the contracts, all of Assignor's right, title, and interest in and to the Contracts. Assignor hereby covenants and agrees to indemnify, defend, and hold harmless Assignee of, from, for, and against any and all actions, suits, proceedings, claims, liabilities, losses, damages, costs, and expenses (including, without limitation, reasonable attorneys' fees) incurred in connection therewith, based upon or arising out of any breach or alleged breach of any of the Contracts occurring or accruing prior to the Effective Date.

2. **Assumption.** Assignee assumes and agrees to be bound by all of Assignor's liabilities and obligations arising under the Contracts from and after the Effective Date. Assignee further covenants and agrees to indemnify, defend, and hold harmless Assignor of, from, for, and against any and all actions, suits, proceedings, claims, liabilities, losses, damages, costs, and expenses (including, without limitation, reasonable attorneys' fees) incurred in connection therewith, based upon or arising out of any breach or alleged breach of any of the Contacts occurring or accruing from and after the Effective Date.

3. **Binding Effect.** This Assignment shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

4. **Counterparts.** This Assignment may be executed in counterparts, all of which together shall constitute one complete Assignment.

ASSIGNOR:

By: _____

ASSIGNEE:

CITY OF FLAGSTAFF

By: _____
Gerald W. Nabours, Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

EXHIBIT G
BILL OF SALE AND ASSIGNMENT

THIS BILL OF SALE AND ASSIGNMENT ("Bill of Sale") is made as of this ____ day of _____, 2013, by _____ ("Seller"), in favor of the City of Flagstaff ("Buyer").

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller does hereby absolutely and unconditionally give, grant, bargain, transfer, assign, sell, set over, convey, and deliver to Buyer all of its right, title, and interest in, to and under all tangible and intangible Personal Property ("Personal Property") relating to the use, management, operation, maintenance, or ownership of the real property described on **Exhibit A** attached hereto (the "Property"), including without limitation, the following:

1. All transferable licenses, permits, certificates of occupancy, and other approvals issued by any governmental or quasi-governmental authority pertaining to the use, management, operation, maintenance, or ownership of the Property;
2. All keys and combinations to all doors, cabinets, safes, enclosures, and other locking items or areas of the Property in Seller's possession;
3. All equipment, machinery, and construction materials located upon the Property;
4. All guaranties and warranties in effect with respect to the Property (including roof and equipment warranties) from contractors, subcontractors, suppliers, and manufacturers;
5. All awards or payments made or to be made for any taking by condemnation, eminent domain, or otherwise (including, without limitation, by agreement in lieu thereof) for all or any part of any of the Property, the aforesaid Personal Property, and in and to all proceeds paid or payable in connection with any damage, loss, or destruction to all or any part of the Property;
6. All easements, covenants, or other title appurtenances benefiting or burdening the Property, and all party wall, encroachment, sidewalk, indemnification, right-of-way, and other similar agreements appurtenant to or otherwise affecting the use and enjoyment of the Property;
7. Any and all other property (whether real or personal and whether tangible or intangible) of any type or nature whatsoever owned, held, or maintained by Seller relating to the planning, development, construction, ownership, operation, use, management, maintenance, repair, operation, or enjoyment of the Property;
8. All warranties and guaranties from contractors, subcontractors, suppliers, and manufacturers which are in effect as of the date of this Bill of Sale issued in connection with (i) the construction, improvement, alteration, service, or repair of the buildings and other improvements situated on the Property, and (ii) the mechanical equipment and appliances in the Property;

9. All development rights and other intangible rights, titles, interests, privileges, and appurtenances owned by Seller and in any way related to or used in connection with the Property;

10. All licenses, consents, easements, rights of way and approvals from private parties, if any, to make use of utilities and to insure vehicular and pedestrian ingress and egress to the Property; and

11. All plans, specifications, studies, surveys, engineering reports, environmental reports, tests, studies, and other technical descriptions relating to the Property.

12. All approvals have been obtained to allow the Buyer to provide water and wastewater services to the Property.

Seller hereby covenants that Seller will, at any time and from time to time upon written request therefor, execute and deliver to Buyer such documents as Buyer may reasonably request in order to fully assign and transfer to and vest in Buyer and protect Buyer's right, title, and interest in and to the Personal Property transferred and assigned hereby, or to enable Buyer to realize upon or otherwise enjoy such rights and property.

Seller hereby represents and warrants to Buyer that: (i) the Personal Property has been paid for and is not subject to any liens, encumbrances, security interests, or claims of any kind; (ii) all taxes of any nature whatsoever on the Personal Property accruing prior to Closing have been paid by Seller; (iii) the consideration paid to Seller herewith is the full and complete consideration for the Personal Property; (iv) any sales or other taxes which may be payable with respect to this transfer are the sole responsibility of Seller; and (v) the transfer of the Personal Property to Buyer does not require the consent of third parties.

Seller warrants, and hereby covenants, at Seller's sole cost and expense, to defend Buyer's title to the Personal Property against the acts of Seller, and none other. Seller hereby agrees to indemnify and hold Buyer free and harmless from all liabilities, obligations, damages, causes of action, judgments, costs, and expenses (including reasonable attorneys' fees) which Buyer may incur or suffer in connection with any breach by Seller of the preceding warranty and covenant.

This Bill of Sale is binding upon the successors and assigns of Seller.

If any party hereto brings any action or suit against the other party hereto by reason of any breach of any covenant, condition, agreement, or provision on the part of the other party set forth in this Bill of Sale, the prevailing party shall be entitled to recover from the other party all costs and expenses of the action or suit, including reasonable attorneys' fees, charges, and costs, in addition to any other relief to which it may be entitled.

This Bill of Sale will be governed by, interpreted under, and construed and enforceable in accordance with the laws of the State of Arizona.

IN WITNESS WHEREOF, Seller has executed and delivered this Bill of Sale as of the date first above written.

SELLER: [Seller Name]

By: _____

**PURCHASE AND SALE
AGREEMENT**

between

as Seller

and

CITY OF FLAGSTAFF

as Buyer

Property located in Coconino County, Arizona

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (“**Agreement**”) is entered into as of _____, 2013, by and between the City of Flagstaff, an Arizona municipal corporation (“Buyer” or “City”), and _____ (“Seller”). Buyer and Seller may be referred to each individually as a “Party” and collectively as the “Parties.”

RECITALS

- A. An important goal of the City Council has been to obtain property for a Core Services Maintenance Facility.
- B. The City issued Request for Proposals No. 2013-44 (the “RFP”) for the purchase of property or purchase of property and exchange of City-owned property for a Core Services Maintenance Facility.
- C. Seller responded to the RFP with an offer to sell property to the City on certain terms and conditions.
- D. Seller desires to enter into this Agreement with the City in order to sell the property, and the City desires to purchase the property, on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

- 1. **Definitions.** The following terms used in this Agreement shall have the respective meanings set forth below:
 - 1.1. **Date of Agreement:** _____, 2013
 - 1.2. **Seller:**
 - 1.3. **Buyer:** City of Flagstaff, Arizona
 - 1.4. **Escrow Agent:**
 - 1.5. **Property:**
 - 1.5.1. The real property consisting of APNs _____ located in Coconino County, Arizona, described in the attached **Exhibit A**, together with all rights, easements, and privileges appurtenant thereto (“Real Property”);

1.5.2. All structures, buildings, improvements, facilities, and fixtures situated on the Real Property, including, without limitation, all equipment and appliances, or other improvements used in connection with the operation or occupancy thereof, such as, but not limited to, heating and air-conditioning systems and facilities used to provide any utility services, parking services, refrigeration, ventilation, trash disposal or other services owned by Seller and located on the Real Property (“Improvements”);

1.5.3. All intangible property owned by Seller and used in connection with the Real Property and Improvements, including warranties with respect to the Real Property and Improvements, and all written contracts in effect at Closing in any way relating to the Property (all such intangible property being sometimes collectively referred to herein as “Intangible Property”).

1.6. **Date of Opening of Escrow:**

1.6.1. Seller and Buyer shall establish an escrow (“Escrow”) with Escrow Agent to consummate the transaction that is the subject of this Agreement. The date on which a duplicate original of this Agreement, executed by both Buyer and Seller, is delivered to and accepted by Escrow Agent shall be the Date of Opening of Escrow, which date shall be inserted by Escrow Agent below its signature at the end of this Agreement. Escrow Agent shall give Buyer and Seller prompt written notice of the Date of Opening of Escrow.

1.7. **Feasibility Date:** The _____ (___th) calendar day after the Date of Opening of Escrow, unless that day falls on a weekend or holiday, in which case the feasibility date will be on the next business day after the _____ (___th) calendar day.

1.8. **Closing:**

1.8.1. The _____ (___th) calendar day after the Feasibility Date, unless that day falls on a weekend or holiday, in which case closing will be on the next business day after the _____ (___th) calendar day.

1.9. **Notice Addresses: For Seller:**

For Buyer:

City of Flagstaff
Assistant to the City Manager-Real Estate
211 W. Aspen Avenue
Flagstaff, AZ 86001
(928) 213-2072

For Escrow Agent:

2. Property. Seller agrees to sell and Buyer agrees to purchase the Property in accordance with and subject to the terms and conditions of this Agreement.
3. Conveyance of Property. Buyer shall purchase the Property consisting of parcels _____ for the amount of _____ (\$_____). The Property shall be conveyed to Buyer at Closing pursuant to a Warranty Deed (“**Deed**”) in the form attached hereto as **Exhibit B**. Seller shall execute the Deed with respect to the Property and, upon satisfaction of all conditions in this Agreement, shall cause Escrow Agent to record the Deed in the official records of Coconino County, State of Arizona, upon Closing. In addition, at Closing: (i) Seller shall execute and deliver to Escrow Agent a separate non-foreign affidavit (“**Affidavit**”) in the form attached hereto as **Exhibit C**; and (ii) Buyer and Seller shall execute and deliver to Escrow Agent a separate Affidavit of Property Value for the Property as required by applicable law.
4. Purchase Price.
 - 4.1. Purchase Price. The purchase price for the Property to be paid by Buyer shall be _____ (\$_____) (“**Purchase Price**”).
 - 4.2. Payment. The Purchase Price shall be payable as follows:
 - 4.2.1. On or before the Closing, Buyer shall deposit with Escrow Agent, in cash or immediately available funds, an amount equal to _____ (\$_____) for the purchase of the property, plus such additional funds as may be required to allow Buyer to fully satisfy its obligations under this Agreement, including Buyer's share of prorations and closing costs for the Property. (“**Cash Due at Closing**”).
 - 4.3. Exchange of Properties. Buyer is aware that Seller intends to perform a 1031 tax-deferred exchange. Seller requests Buyer’s cooperation in such an exchange and agrees to hold Buyer harmless from any and all claims, liabilities, costs or delays in time resulting from such an exchange. Upon Seller’s request, and provided such cooperation can be provided at no cost or risk to the Buyer, and without delaying each date of Closing, Buyer shall reasonably cooperate with Seller in structuring a “tax deferred” exchange pursuant to Section 1031 of the Internal Revenue Code in connection with the transaction contemplated in this Agreement. Buyer makes no representation or warranty concerning the availability or appropriateness of such an exchange, and Seller’s inability for any reason to arrange or achieve the exchange shall not relieve Seller of any obligation of this Agreement. Furthermore, Buyer makes no representation or warranty to Seller

that any such exchange shall be treated as “tax-deferred” by the Internal Revenue Service. Seller agrees to reimburse the Buyer for all fees, costs, and expenses (including reasonable attorney’s fees) incurred by the Buyer as a result of Seller’s election to participate in a Section 1031 exchange.

5. Inspection.

5.1. Inspection. Buyer shall have until 5:00 p.m. Arizona time on the Feasibility Date in which to perform a physical inspection of the Property and an inspection of all financial documents, for the purpose of conducting a feasibility study (“**Feasibility Condition**”). If Buyer disapproves the Feasibility Condition for any reason whatsoever, Buyer may send written notice to Seller and Escrow Agent on or before the Feasibility Date electing to terminate this Agreement and the Escrow. Failure of Buyer to provide written notice of approval of the Feasibility Condition shall be deemed Buyer’s disapproval of the Feasibility Condition and Buyer’s election to terminate this Agreement and the Escrow. Buyer’s inspection may include, but is not limited to:

5.1.1. Inspection of all physical aspects of the Property, including, but not limited to, all operating systems, roof, structural components, and related service contracts;

5.1.2. Environmental inspection and testing;

5.1.3. Investigation of all zoning, code, and governmental requirements;

5.1.4. Review preliminary title report;

5.1.5. Review copies of all leases and contracts, if applicable, together with any modifications or amendments thereto pertaining to the operation of the Property as well as interview existing tenants with regard to current occupancy; and

5.1.6. Review financial information from Seller’s records and review any other information and documents pertaining to Seller’s ownership and operation of the Property, including but not limited to rent rolls (collectively, the “**Records**”).

5.2. Termite Damage. Seller, at its cost, shall cure and repair prior to Closing any termite damage disclosed by Seller’s or Buyer’s termite inspection report or any structural evaluation of the buildings on the Property performed by Buyer’s consultant.

5.3. Termination. If Buyer terminates (or is deemed to terminate) this Agreement as may be permitted under this Agreement, then Buyer is responsible for all costs associated with the termination. If Seller terminates (or is deemed to terminate)

this Agreement as may be permitted under this Agreement, then Seller is responsible for all costs associated with the termination.

6. Information; Access to the Property.

6.1. Information. Within ten (10) days after the Date of Opening of Escrow, Seller shall provide access or copies to Buyer of those reports, studies, surveys, and other material documents listed on **Exhibit D** attached hereto (“**Information**”), to the extent such Information was not previously provided to Buyer.

6.2. Access to Property. Buyer and its employees, agents, architects, engineers, and independent contractors (hereafter “Designees”) shall have the right to enter upon the Property at any time after the Date of Opening of Escrow (provided that this Agreement has not been previously terminated as permitted herein) to inspect and test the Property and to determine the feasibility of acquiring the Property. Buyer shall have the right to perform any and all examinations, inspections, or tests Buyer deems necessary and appropriate, provided that Buyer provides written notice to Seller at least three (3) days before Buyer intends to enter the Property to conduct any intrusive examinations, inspections, or tests that require any drilling or other possible damage to any portion of the Property. Buyer acknowledges and agrees that Seller shall be entitled to have its representatives present during any time Buyer or its agents or independent contractors are on the Property. Buyer shall: (i) perform all such inspections in a safe and professional manner; (ii) not create any dangerous or hazardous condition on the Property; (iii) comply with all applicable laws with respect to Buyer's inspections; and (iv) obtain all permits required to be obtained with respect to Buyer's inspections.

Subject to the rights of tenants of the Property under their respective Leases, and with reasonable advance notice to Seller and to any applicable tenant, Buyer and its designees shall be entitled to inspect, during Seller’s regular business hours, the tenants’ premises on the Property and to interview tenants; provided, however, that, at Seller’s request, Seller and/or the involved tenant or its designees shall be entitled to accompany Buyer during any such inspection or contact with any tenant. In addition, Seller shall use reasonable efforts to facilitate such inspections and obtain any necessary consent to entry from the respective tenants.

6.3. Costs. Buyer shall bear all costs and expenses of any inspections, investigations, and tests of any kind or nature undertaken by Buyer with regard to the Property.

6.4. Survey. If Seller has not already provided an American Land Title Association (“ALTA”) survey of the Property as required by the Request for Proposal, such ALTA survey shall be provided within ten (10) days after Date of Opening of Escrow at Seller’s cost. If the results of the Survey indicate that the acreage of the property is less than _____ acres, the Purchase Price shall be reduced accordingly on a per square foot basis. The Survey shall be sufficient to enable _____ (“**Title Insurer**”) to delete the standard survey exception from the Title Policy (defined in 7.1) and issue the Title Policy.

To the extent that the Seller has not provided all environmental reports to the Buyer as required in the Request for Proposal, and in all events within ten (10) days after the Date of Opening of Escrow, Seller will provide all environmental reports required by the Request for Proposal for the Property to Buyer. Buyer may, at its cost, obtain additional environmental reports. If the reports indicate that remediation of the property is needed, Seller agrees to pay for the remediation.

7. Title Review.

- 7.1. Delivery of Title Report. As soon as possible, and in all events within ten (10) days after the Date of Opening of Escrow, Escrow Agent shall cause Title Insurer to deliver to the Parties a commitment for the issuance to Buyer of an ALTA extended coverage title insurance policy in the amount of the Purchase Price (“**Title Policy**”), together with legible copies of all matters indicated in Schedule B thereto (collectively, the “**Title Report**”).
- 7.2. Buyer's Review of Title Report. If Buyer is dissatisfied with any matter shown on the Title Report (“**Unpermitted Exceptions**”), Buyer may deliver written notice (“**Title Objection Notice**”) to Seller and Escrow Agent of its objection at least twenty (20) business days prior to the Feasibility Date. If any amendment, revision, or supplement to the Title Report is issued (except to remove matters previously objected to by Buyer), a copy thereof shall be promptly delivered by Escrow Agent to Buyer, together with a legible copy of any new matter referred to in any amendment or supplement to the Title Report. If any amendment, revision, or supplement to the Title Report is issued after the Feasibility Date, Buyer shall have five (5) business days after receipt of any amendment, revision, or supplement of the Title Report, or until Closing, whichever first occurs, to object to any new and material matters shown thereon by providing a Title Objection Notice to Seller and Escrow Agent. If Buyer fails to object to any matter set forth in the Title Report or in any amendment, revision, or supplement thereto within the time periods prescribed in this Section 7, Buyer shall be deemed to have accepted these matters.
- 7.3. Seller's Cure Period. If Buyer timely delivers a Title Objection Notice, then Seller shall notify Buyer within ten (10) business days following the date of receipt of the Title Objection Notice (“**Seller's Cure Period**”) that either: (i) one or more of the Unpermitted Exceptions has been, or will be at or prior to Closing, removed from the Title Report by Escrow Agent; or (ii) Seller is unable or unwilling to have one or more of the Unpermitted Exceptions removed. If Seller fails to respond to the Title Objection Notice within Seller's Cure Period, Seller shall be deemed to be unwilling to cause the removal of the Unpermitted Exceptions. If Seller fails to cure any objection of Buyer, or fails to respond to the Title Objection Notice within Seller's Cure Period, Buyer shall elect within ten (10) business days following Seller's Cure Period to either: (i) cancel this Agreement and the Escrow by written notice delivered to Seller and Escrow Agent; or (ii) waive the objection by written notice to Seller and Escrow Agent

and proceed to purchase the Property. If Buyer fails to timely make any of these elections, Buyer will be deemed to have elected option (ii) above. All matters to which Buyer has not objected, or to which Buyer has waived or is deemed to have waived its objections under this Section 7, are referred to in this Agreement as the "**Permitted Exceptions.**"

- 7.4. Unpermitted Liens. Notwithstanding any other provision in this Agreement, and regardless of whether Buyer has given notice of an objection under the terms of this Section 7, Seller shall satisfy or otherwise remove all monetary liens and encumbrances on the Property, on or before the Closing, with the exception of taxes or assessments not yet due and liens and encumbrances caused by Buyer.
 - 7.5. Title Policy. Escrow Agent shall cause Title Insurer to issue at Closing to Buyer, as the insured, the Title Policy in the amount of the Purchase Price.
8. Miscellaneous.
- 8.1. Prorations and Adjustments. The following adjustments to the Purchase Price paid hereunder shall be made between Seller and Buyer and shall be prorated (as applicable) through the Escrow on a per diem basis as of 12:01 a.m. on the Closing date:
 - 8.1.1. Seller is responsible for all real estate taxes and assessments for or relating to the Property until such time that the Property is removed from the tax rolls by the Coconino County Assessor's Office. The provisions of this Section 8.1 shall survive Closing.
 - 8.1.2. If applicable, Seller shall retain all collected Tenant rents ("**Rents**") attributable to the period prior to the day of Closing. Seller shall pay all Rent Taxes on Rents collected by Seller, provide Buyer with evidence of payment thereof, and obtain State of Arizona and City of Flagstaff clearance letters therefor prior to Closing date.
 - 8.1.3. Seller shall be entitled to retain and receive refund of all utility and similar deposits at Closing.
 - 8.1.4. If applicable, to the extent not billed directly to tenants, or otherwise paid by tenants, utilities, including water, electricity, sewer, gas, telephone, and other utility charges, shall be prorated based, to the extent practicable, on the last meter readings prior to Closing. Seller will endeavor to obtain meter readings on the day before Closing, and if such readings are obtained, there shall be no such proration of such items. Seller shall pay at Closing the utility bills for the period up to and including the date of Closing, and Buyer shall pay the utility bills for the period subsequent to Closing. If the utility company will not issue separate bills, Buyer will receive a credit against the Purchase Price for Seller's portion and will pay the entire bill prior to delinquency after Closing. If Seller has paid any

utilities no more than thirty (30) calendar days in advance in the ordinary course of business, then Buyer shall be charged its portion of such payment at Closing. Buyer shall be responsible for any utility deposits necessary to establish service in Buyer's name.

- 8.2 Estoppel Certificates. If applicable, Seller shall request that all tenants on the Property (“**Tenant(s)**”) execute statements in the form attached hereto as **Exhibit E** (“**Tenant Estoppel Certificate**”). Seller shall deliver the Tenant Estoppel Certificates to be executed to the Tenants by no later than ten (10) business days after the opening of Escrow. Receipt of Tenant Estoppel Certificates without material modifications having been made thereto by the Tenants, which, in the aggregate, represent a minimum of one hundred percent (100%) of the rent reflected on the list of current leases certified by the Seller (“**Rent Roll**”) for the Property, shall be a condition to Purchaser's obligation to close Escrow.
- 8.3. Condition of Property. Improvements shall include all structures, buildings, and fixtures situated on the Property. Infrastructure shall include all facilities used to provide utility service and private roads. The Seller will disclose all defects in the improvements and infrastructure to the Buyer in writing within ten (10) days after Opening of Escrow. The Buyer has the right to make any and all inspections of the improvements and infrastructure as detailed in Section 5.1 of this Agreement.
- 8.4. Seller's Covenants. Except as otherwise provided in this Section between the date of the execution of this Agreement and the Closing date, Seller shall:
- 8.4.1. Maintain the Property in its current condition and perform, or cause tenants to perform, required and routine maintenance and make minor replacements of the Property that are tangible property (whether real or personal) and perform repairs or make minor replacements to any broken, defective, or disfunctioning portions of the Property that are tangible property (whether real or personal) as the relevant conditions require.
- 8.4.2. Pay, in the normal course of business, and, in any event, prior to Closing, all sums due for work, materials, or services furnished or otherwise incurred in the ownership, use, maintenance, repair, or operation of the Property, up to Closing.
- 8.4.3. Seller will not make any material alterations or improvements to the Property, or remove any of the Property therefrom, except with the ordinary course of Seller's business practices, without the consent of Buyer, which consent shall not be unreasonably withheld, conditioned, or delayed.
- 8.4.4. Maintain its current or comparable insurance covering the Property;

8.4.5. Operate, manage, and enter into contracts with respect to the Property, in the same manner done by Seller prior to the date hereof; provided, however, that Seller shall not enter into any new service contract after the date hereof that cannot be terminated within thirty (30) days without the payment of any fee or penalty. Seller shall not enter into any new Leases, or amend, modify, or extend any existing Leases after the Feasibility Date. Seller shall terminate all leases prior to close of escrow and resolve all claims by tenants including but not limited to claims for relocation expenses.

8.4.6. Execute reasonable documents required by, and otherwise cooperate in good faith with, Escrow Agent in order to issue the Title Policy in accordance with the Title Report showing only the Permitted Exceptions.

9. Seller's Representations and Warranties. Seller covenants, represents, and warrants that the following will be true as of the time of the execution of this Agreement and as of Closing:

9.1. The person(s) signing this Agreement and any documents and instructions in connection herewith, on behalf of Seller, have full power and authority to do so. This Agreement has been duly authorized and executed by Seller, and, upon execution by Buyer and delivery to Escrow Agent, shall be a valid and binding agreement of Seller, enforceable in accordance with its fees.

9.2. This Agreement is, and all other documents executed by Seller pursuant hereto will be, duly authorized, executed, and delivered by Seller, and will be the legal, valid, and binding obligations of Seller, and enforceable against Seller, in accordance with their respective terms. This Agreement and such documents do not and will not violate any provisions of any agreement, order, or judgment to which Seller is a party or to which it is subject. All persons signing this Agreement and/or any documents and instruments in connection herewith on behalf of Seller have full power and authority to do so.

9.3. Seller's execution of this Agreement, consummation of the transactions herein contemplated, and performance and observance of the obligations of Seller hereunder and under all other agreements and instruments herein mentioned to which Seller is a party, will not conflict with or result in the breach of any law, regulation, order, writ, injunction, or decree of any court or governmental authority or of any agreement or instrument to which Seller is now a party or to which it is subject, or constitute a default thereunder, and no consent, waiver, or approval by any third party is required in connection with the execution and delivery by Seller of this Agreement.

9.4. The Property meets all current building and zoning codes and there are no life safety issues outstanding.

9.5. There are no attachments, levies, executions, assignments for the benefit of creditors, receiverships, conservatorships, or voluntary or involuntary proceedings

in bankruptcy or any other debtor relief actions contemplated by Seller or filed by Seller, or to Seller's actual knowledge, pending in any current judicial or administrative proceeding against Seller.

- 9.6. Except as disclosed in the Title Report or the Information, Seller has not received written notice of any existing, proposed, planned, or threatened eminent domain or condemnation actions, assessments, or assessment district proceedings related to the Property, and has no actual knowledge of any planned.
- 9.7. Seller is not a "foreign person" as that term is defined in Section 1445 of the Internal Revenue Code, as amended, and any applicable regulations promulgated thereunder.
- 9.8. There are no liens, encumbrances, claims of lien or encumbrances, or any possible defects, or claims of defects to the title to the Property which do not appear in the Title Report or the Information.
- 9.9. Except for debts, liabilities, and obligations for which provision is made herein for proration or other adjustment at Closing, all liabilities and obligations arising from the ownership of the Property will be paid on or before Closing.
- 9.10. As of Closing, there shall be no parties in possession of any portion of the Property as lessees, tenants, tenants at sufferance, or trespassers, or no person, firm, corporation, or other entity has, or at Closing shall have, any right to relocation or reimbursement for relocation or option to acquire all or any portion of the Property.
- 9.11. Except as disclosed in the Information, there are no Hazardous Substances located on the Property, and the Property is in compliance with all applicable Environmental Laws. As used in this Agreement, "**Hazardous Substance**" shall mean and include all hazardous or toxic substances, wastes, or materials, any pollutants or contaminants (including, without limitation, asbestos and materials which include hazardous constituents), or any other similar substances or materials which are included under or regulated by any Environmental Law. "**Environmental Law**" shall mean and include all local, state, or federal laws, rules, orders, and regulations pertaining to environmental regulation, or the use, processing, storage, disposal, generation, or transportation of Hazardous Substances, or any contamination, clean up, or disclosure related thereto, including without limitation the Environmental Response Compensation and Liability Act of 1980, the Super Fund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act, the Hazardous and Solid Waste Amendments of 1984, the Toxic Substances Control Act, the Federal Insecticide, Fungicide and Rodenticide Act, the Federal Water Pollution Control Act, the Federal Safe Drinking Water Act, the Federal Clean Air Act, the Federal Clean Water Act, the National Environmental Protection Act, and Title 49 of the Arizona Revised Statutes, as any of the foregoing has heretofore been amended, and any regulations promulgated with respect to any such statutes. There are no

orders, judgments, claims, suits, actions, or proceedings concerning or affecting the Property with respect to any Environmental Law. Seller has not received any notice of any threatened or pending suit, action, or proceeding concerning the Property relating to any Environmental Law.

- 9.12. Seller has received no written notice from any city, county, state, or other governmental authority of any violation of any law, statute, ordinance, regulation, or administrative or judicial order or holding, whether or not appearing in public records, with respect to the Property, which violation has not been corrected.
- 9.13. There are not any existing, pending, or anticipated litigation against or involving the Property or Seller's interest therein, including without limitation any water, sewer, building, or other construction moratoria on the Property.
- 9.14. There are no agreements or documents which constitute Leases or have a material adverse effect on the Property or the operation thereof. Other than this Agreement, there are no outstanding contracts or agreements executed by Seller related to the sale, exchange, or transfer of the Property or any part thereof. There are no unpaid costs or expenses related to tenant improvements or leasing commissions or leasing fees with respect to the Property which are the obligation of Seller and which will not be paid at or before Closing by Seller. There are no leasing commissions or leasing fees due and payable prior to Closing (or which will become due and payable after Closing) with respect to any of the Leases which are the obligation of Seller and which will not be paid at or before Closing by Seller. There are no written leases, subleases, licenses, or other rental agreements or occupancy agreements executed by Seller which grant any possessory interest in and to any space situated on or in the Property or otherwise give rights with regard to use of the Property. There are no service contracts, maintenance agreements, leasing commission or brokerage agreements, repair contracts, property management contracts, contracts for the purchase or delivery of labor, services, materials, or goods, supplies, or equipment or similar agreements entered into by Seller which will be obligations of Buyer or the Property after Closing, other than any of such contracts or agreements which are cancelable on not more than thirty (30) days' notice without the payment of any termination fee or cancellation penalty.
- 9.15. In the Title Policy or as otherwise disclosed in writing by Seller to Buyer prior to the Feasibility Date, Seller has received no written notice from any city, county, state, or other government authority: (i) of any order or directive requiring any work of repair, maintenance, or improvement to be performed on the Property that has not been corrected; (ii) relating to defects in the Improvements or relating to noncompliance with any applicable building code, restriction, license, or permit that has not been corrected; (iii) relating to any threat of impending condemnation of the Property; or (iv) of any unpaid assessments for public improvements that have been made against the Property or of any presently planned public improvements which would result in the creation of a special assessment or similar lien upon the Property.

- 9.16. Other than those service contracts, maintenance agreements, leasing commission, or brokerage agreements, repair contracts, property management contracts, contracts for the purchase or delivery of labor, services, materials, or goods, supplies, or equipment or similar agreements entered into by or on behalf of Seller: (i) which are listed on Schedule B to **Exhibit F**; (ii) which will be terminated prior to Closing; or (iii) which are cancelable on no more than thirty (30) days' notice without the payment of any termination fee or cancellation penalty (all of the foregoing contracts or agreements referenced in clauses (i) or (ii) hereof are collectively referred to as the "**Contracts**"), Seller does not have any other liabilities or obligations under other agreements relating to the Property and other than normal expenses incurred in the ordinary course of business.
- 9.17. There are no structural or other defects, including, but not limited to, defects in the roof, plumbing, heating, air conditioning, foundation, or electrical wiring in the buildings and other improvements.
- 9.18. Notwithstanding the foregoing provisions of this Section 9, if Buyer learns of any actual or alleged inaccuracy in Seller's representations or warranties contained in this Section 9 after the date hereof and prior to Closing date, Buyer shall promptly notify Seller thereof, and if Seller learns of any actual or alleged inaccuracy in such representations or warranties, Seller shall advise Buyer thereof. Seller shall, within five (5) days of receiving such written notice from Buyer or of learning of such actual or alleged inaccuracy, make reasonable efforts to cure such inaccuracy and, failing such cure, Seller shall, within such five (5) day period, notify Buyer in writing of such failure to cure, and Buyer's sole and exclusive remedy therefor shall be to elect, within five (5) days of receiving such written notice from Seller, to either (a) proceed to Closing and waive such inaccuracy or (b) cancel this Agreement and the Escrow, and neither Party shall have any further rights or obligations regarding this Agreement (except as may be expressly provided otherwise in this Agreement). Notwithstanding the foregoing, it is understood that Seller's representations and warranties contained in Section 9 shall be and remain true as of the Closing date, and that Seller remains liable to Buyer for all damages resulting from a breach thereof.
- 9.19. It is understood and agreed that the Purchase Price has been adjusted by prior negotiation to reflect that all of the Property is sold by Seller and purchased by Buyer subject to this Section 9.
10. **Buyer's Representations and Warranties.** Buyer covenants, represents, and warrants that:
- 10.1. The person(s) signing this Agreement and any documents and instructions in connection herewith on behalf of Buyer have full power and authority to do so.
- 10.2. This Agreement has been duly authorized and executed by Buyer, and upon delivery to and execution by Seller shall be a valid and binding agreement of Buyer.

10.3. There are no attachments, levies, executions, assignments for the benefit of creditors, receiverships, conservatorships, or voluntary or involuntary proceedings in bankruptcy or any other debtor relief actions contemplated by Buyer or filed by Buyer, or pending in any current judicial or administrative proceeding against Buyer.

11. Changes in Representations and Warranties.

11.1. If the Party making the representation, warranty, or covenant obtains knowledge of any change in any of its statements after the date hereof (whether arising before or after the date hereof), the Party shall give prompt notice to the other Party.

11.2. If a change in any of the representations, warranties, and covenants by a Party is intentionally caused by the Party, the change shall constitute a default and the other Party's remedies shall be as provided in Section 12 below.

11.3. If, however, a change in the representations, warranties, and covenants by a Party is not intentionally caused by the Party making the statement, then the change shall constitute only the failure of a condition (if the change materially and adversely affects the other Party), but shall not constitute a default. In such event, the other Party's sole remedy shall be to terminate this Agreement and the Escrow and neither Party shall have any further rights or obligations under this Agreement, except those that survive the termination.

11.4. It shall be a condition precedent to a Party's obligation to proceed with Closing that the representations, warranties, and covenants by the other Party set forth above with respect to the Property shall be materially true and correct as of Closing.

12. Default.

12.1. Default by Seller. If any warranty or representation of Seller made in this Agreement shall prove to be materially untrue, or if Seller shall fail to perform any of its obligations under this Agreement on or prior to the date for performance provided in this Agreement, and Buyer is not in default under this Agreement, then, unless otherwise specifically provided for in this Agreement, Buyer shall give Seller five (5) business days' written notice of the failure and opportunity to cure. If Seller does not cure within the five (5) business-day period, then Buyer may, as its exclusive remedy either: (i) cancel this Agreement and the Escrow by written notice to Seller and Escrow Agent; or (ii) pursue specific performance of this Agreement; provided that such specific performance action is initiated and filed within ninety (90) days after Seller's alleged default. Notwithstanding the foregoing, if the remedy of specific performance is not available to Buyer because Seller has sold the Property or because Seller, by its acts has (i) voluntarily disabled its ability to deliver title as required by this Agreement, or (ii) caused an error in the representations and warranties of Seller herein, Buyer may maintain an action for damages against Seller. If Buyer elects to terminate this Agreement

as permitted under this Section 12.1, then: (i) the Escrow shall be terminated for all purposes; (ii) Escrow Agent shall return all other funds, documents, and other items held by Escrow Agent to the Party that deposited same with respect to the Property; (iii) Seller shall reimburse Buyer for Buyer's actual out-of-pocket expenses not to exceed _____ Dollars (\$_____) as liquidated damages; and (iv) the Parties shall have no further rights or obligations under this Agreement except for those rights and obligations that are specified in this Agreement to survive the termination of this Agreement.

12.2. Default by Buyer. If any material warranty or representation of Buyer made in this Agreement shall prove to be materially untrue, or if Buyer shall fail to perform any of Buyer's obligations under this Agreement on or prior to the date for performance provided in this Agreement, then Seller shall give Buyer five (5) business days' written notice of the failure and opportunity to cure. Notwithstanding the foregoing sentence, Buyer shall have no cure period with respect to Buyer's failure to pay money as required under this Agreement or Buyer's failure to acquire the Property on Closing. If Buyer does not cure within the applicable cure period, if any, then Buyer shall be in default. In the event of default by Buyer, Seller as its sole right and exclusive remedy may terminate this Agreement and the Escrow.

13. Risk of Loss. Except as provided in any indemnity provisions of this Agreement, and as otherwise provided in this Section 13, Seller shall bear all risk of loss with respect to the Property prior to Closing and thereafter all risk of loss shall be Buyer's.

If, prior to Closing, any portion of the Real Property and Improvements, or any part thereof, are damaged or destroyed, Buyer shall have the right, exercisable by giving notice to Seller and Escrow Agent within fifteen (15) days after receiving written notice of such damage or destruction (but in any event prior to Closing), to either: (i) terminate this Agreement and the Escrow, in which case neither Party shall have any further rights or obligations under this Agreement (except as may be expressly provided otherwise in this Agreement), and neither Seller nor Buyer shall be subject to any claim by the other for damages of any kind except for the breach of the indemnity, hold harmless, and other agreements provided in this Agreement; or (ii) accept the Property in its then condition and proceed with Closing without any abatement or reduction in the Purchase Price, in which event Buyer shall be entitled to (a) an assignment of all of Seller's rights to any insurance proceeds payable by reason of such damage or destruction and (b) a credit against the Purchase Price in the amount of Seller's insurance deductible. If Buyer elects to proceed under clause (ii) above, Seller shall not compromise, settle, or adjust any claims to such proceeds without Buyer's prior written consent.

If, prior to Closing, all or any portion of the Real Property and Improvements is subject to a taking by public authority, Buyer shall have the right, exercisable by giving notice to Seller within five (5) days after receiving written notice of such taking (but in any event prior to Closing), to either: (i) terminate this Agreement and the Escrow, in which case neither Party shall have any further rights or obligations under this Agreement (except as may be expressly provided otherwise in this Agreement), and neither Seller nor Buyer

shall be subject to any claim by the other for damages of any kind except for the breach of the indemnity, hold harmless, and other agreements provided in this Agreement; or (ii) accept the Property in its then condition and proceed with Closing without any abatement or reduction in the Purchase Price, in which event Buyer shall be entitled to an assignment of all of Seller's rights to any condemnation award payable by reason of such taking. If Buyer elects to proceed under clause (ii) above, Seller shall not compromise, settle, or adjust any claims to such award without Buyer's prior written consent, and Buyer shall receive all awards. As used in this Section 13, "taking" shall mean any transfer of the Property or any material portion thereof to a governmental entity or other party with appropriate authority, by exercise of the power of eminent domain. Seller agrees to give Buyer notice of any damage, destruction, or taking of the Real Estate and Improvements promptly after Seller obtains knowledge thereof.

14. Closing.

14.1. Deliveries by Seller for the Closing. Seller shall deliver to Escrow Agent for filing, recordation, or delivery to Buyer, as appropriate, upon Closing, the following:

14.1.1. The Deed for the Property, duly executed and appropriately acknowledged by Seller;

14.1.2. An Affidavit of Property Value for the Property, duly executed and appropriately acknowledged by Seller as contemplated by Section 3;

14.1.3. [If Applicable] Tenant Estoppel Certificates in the form of **Exhibit E** from each current Tenant of premises at the Property or in a form as provided for in Section 8.2;

14.1.4 [If Applicable] An Assignment and Assumption of Contracts executed by Seller in the form of **Exhibit F** attached hereto ("Assignment and Assumption of Contracts");

14.1.5. A Bill of Sale and Assignment executed by Buyer in the form of **Exhibit G**; and

14.1.6. Any additional instruments, duly executed and appropriately acknowledged by Seller, as may be necessary for Seller to have complied with the terms of this Agreement.

14.2. Deliveries by Buyer for the Closing. On or before Closing, Buyer shall deliver to Escrow Agent for filing, recordation, or delivery to Seller, as appropriate, upon Closing, the following:

14.2.1. The cash due at Closing as described in Section 4.2;

14.2.2. An Affidavit of Property Value for the Property, duly executed and acknowledged by Buyer as contemplated by Section 3; and

- 14.2.3. Any additional instruments, duly executed and appropriately acknowledged by Buyer, as may be necessary for Buyer to have complied with the terms of this Agreement.
- 14.3. Closing Costs. Buyer and Seller shall share evenly all closing costs in connection with the Escrow for the Property. Seller shall pay the cost of the standard coverage owner's title policy described in Section 7 for the Property and all recording fees. Buyer shall pay the additional cost for extended coverage owner's title policy, any endorsements requested by Buyer, and any costs in connection with any lender's policy that Buyer may be obligated to purchase for Buyer's lender (if required). All other fees, charges, or expenses incidental to the sale of the Property to Buyer shall, except as otherwise expressly provided in this Agreement, be shared evenly between Buyer and Seller. In addition to the amounts Buyer is required to deposit with Escrow Agent under Section 4 above, Buyer and Seller shall deposit with Escrow Agent, on or before Closing, sufficient amounts to cover its share of closing costs (and all other items prorated in accordance with this Agreement to the extent applicable). All other items prorated in accordance with this Agreement, to the extent applicable, shall be paid from the proceeds otherwise payable to Seller.
15. Notices. Any and all notices required or permitted by this Agreement shall be given in writing and personally delivered, sent by registered or certified mail, return receipt requested, postage prepaid, or sent by reputable overnight courier, addressed as listed in Section 1.9 of this Agreement. Any notice or communication shall be deemed to have been given and received on the earliest of: (i) the date of delivery or refusal, if hand delivered or sent by overnight courier; (ii) three (3) days after the date of mailing, if mailed within the continental United States; or (iii) seven (7) days after mailing, if mailed outside the continental United States. Copies of all notices or communications to Buyer or Seller shall be hand delivered, mailed, or sent by overnight courier, in the manner set forth above, to Escrow Agent, and copies of all notices by Buyer or Seller to Escrow Agent shall be hand delivered, mailed, or sent by overnight courier, in the manner set forth above, to the other Party hereto. Notwithstanding the foregoing, notices from Escrow Agent or Title Insurer to Seller and Buyer may be given by United States first class mail and shall be deemed given and received three (3) days after deposit in the United States mail.
16. Good Funds. Except as otherwise provided in this Agreement, all deposits and payments that are to be made by Buyer with respect to this Agreement shall be made when due in lawful money of the United States. Under no circumstances will Escrow Agent accept any deposit or payment not made in strict accordance with this Agreement.
17. Time of Essence. Time is and shall be of the essence of this Agreement and all its provisions. Any extension of the time for performance under this Agreement by either Party must be in writing and signed on behalf of Seller and Buyer. An extension may be granted on behalf of the Buyer by the City Manager. No extension will be deemed a

waiver of this Section 17 with respect to other performance by either Party.

18. Waiver. The waiver by any Party of any right granted to it in this Agreement shall not be deemed to be a waiver of any other right granted in this Agreement, nor shall same be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived.
19. Attorneys' Fees. The prevailing Party in any litigation arising out of this Agreement shall be entitled to the recovery of its reasonable attorneys' fees, expert witness fees, litigation related expenses, and court costs in such litigation or proceeding from the other Party.
20. Entire Agreement. This Agreement, together with any exhibits attached hereto and incorporated herein by reference, is intended to be and constitutes the entire agreement between the parties with respect to the Property as of the date of execution, and may be amended only by an instrument in writing signed by Buyer and Seller. The joinder of Escrow Agent and any broker named in this Agreement shall not be required to amend this Agreement. Evidence of prior negotiations or understandings between the parties shall not vary or contradict the provisions of this Agreement.
21. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of Buyer and Seller and their respective successors and assigns.
22. Further Assurances. Promptly upon the request of the other Party or of Escrow Agent, Seller and Buyer each shall execute, acknowledge, and deliver to the other Party or Escrow Agent, or both, any and all further instruments, and shall take all such other action as may be reasonably requested or appropriate to evidence or give effect to the provisions of this Agreement, or to satisfy Escrow Agent's requirements in connection with this Agreement.
23. Severability. If any provision or any portion of a provision of this Agreement or of any other document to be executed in connection with this Agreement is deemed to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect the remaining portion of that provision or of any other provision of this Agreement or such other document, as each provision of this Agreement and all such other documents shall be deemed to be severable from all other provisions hereof and thereof.
24. Headings. The paragraph headings in this Agreement are inserted for the purpose of reference only and shall not limit, define, or expand the provisions of this Agreement or any one of them.
25. Governing Law; Venue. This Agreement and any documents executed in connection with or pursuant to this Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. Buyer and Seller agree that the proper venue for any legal proceedings arising out of this Agreement shall be Coconino County, Arizona.
26. Not Partners. Neither this Agreement, nor any other agreement referred to herein or

entered into in connection herewith, and no activity of Seller or Buyer in connection with this transaction, shall constitute Seller and Buyer as partners or joint venturers for any purposes whatsoever.

27. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall together constitute one and the same document.
28. Construction. This Agreement is the result of negotiations between the Parties and accordingly shall not be construed for or against either Party regardless of which Party drafted this Agreement.
29. Business Day. If the time for performance of any obligation under this Agreement expires on a Saturday, a Sunday, or a legal holiday observed by Escrow Agent, then the time for such performance shall be extended to the next succeeding day that is not a Saturday, a Sunday, or a legal holiday observed by Escrow Agent.
30. Assignment. Neither Party shall assign any of its rights and obligations under this Agreement without prior written consent of the other, which may not be unreasonably withheld, delayed, or conditioned.
31. Conflict of Interest. This Agreement is subject to the cancellation provisions of ARS §38-511.
32. Broker. Seller shall be responsible to pay a commission at Closing to _____ (“**Broker**”) pursuant to a separate written agreement. Except for the foregoing commissions to be paid to Broker, each Party hereto represents and warrants to the other that it has not employed any other broker or finder in connection with the transaction contemplated by this Agreement, and it is not obligated to pay any real estate brokerage or other commission or fee in connection with the sale of the Property to Buyer. Each Party shall defend and hold the other harmless from all liability and expense including, without limitation, reasonable attorneys' fees arising from any claim by any broker, agent, or finder for commissions, finder's fees, or similar charges, because of any act of such Party. The obligations of the parties pursuant to this Section 32 shall survive Closing and any termination of this Agreement. Buyer and Seller acknowledge that certain employees and/or principals of Buyer and Seller (or their respective affiliates) may be licensed Arizona real estate brokers and salespersons.

[SIGNATURE PAGE FOLLOWS SEPARATELY]

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement on the date set forth above.

SELLER:

By: _____

BUYER:

City of Flagstaff,
an Arizona municipal corporation

By: _____
Gerald W. Nabours, Mayor

Attest:

City Clerk

Approved as to form:

City Attorney

List of Exhibits

- Exhibit A - Legal Description of Property
- Exhibit B - Warranty Deed
- Exhibit C - Non-Foreign Affidavit
- Exhibit D - Information
- Exhibit E - Tenant Estoppel Certificate [If Applicable]
- Exhibit F - Assignment and Assumption of Contracts [If Applicable]
- Exhibit G - Bill of Sale and Assignment

ACCEPTANCE OF ESCROW AGENT

_____ accepts the foregoing Purchase and Sale Agreement and escrow instructions, agrees to act as Escrow Agent hereunder, and agrees to comply with the provisions of Section 6045 of the Internal Revenue Code with respect to the transactions contemplated hereby.

[Name of Escrow Agent]

By: _____
Name:

Title: _____

Date: _____

EXHIBIT A

LEGAL DESCRIPTION

EXHIBIT B

When recorded, mail to:
City Clerk
City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001

WARRANTY DEED

For good and valuable consideration, _____, hereafter called the Grantor, does hereby grant and convey to CITY OF FLAGSTAFF, an Arizona municipal corporation, hereafter called the Grantee, that certain real property situated in Coconino County, Arizona, more particularly described in Exhibit A, attached to and made a part hereof.

The Grantor hereby binds itself and its successors and assigns to warrant and defend the title to said real property against all persons claiming under it, subject to the matters above set forth.

This transaction is exempt under A.R.S. Section 11-1134(A)(3).

IN WITNESS WHEREOF, the Grantor has executed this Warranty Deed this _____ day of _____, 2013.

By: _____

State of Arizona)
) ss.
County of Coconino)

ACKNOWLEDGMENT. On this _____ day of _____, 2013, before me, a Notary Public, personally appeared _____, known to be or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same on behalf of _____ for the purposes therein contained.

My Commission Expires: _____

Notary Public

EXHIBIT C

NON-FOREIGN AFFIDAVIT

The undersigned, _____ ("**Transferor**"), after being duly sworn upon his oath deposes and says that:

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform _____ ("**Transferee**"), that withholding of tax is not required upon the disposition of Transferor's interest in the real property described on **Exhibit A** attached hereto and by this reference included herein, the undersigned hereby certifies the following:

1. The Transferor is not a non-resident alien, foreign corporation, foreign partnership, foreign trust, foreign estate, or other foreign person within the meaning of § 1445 and § 7701 of the Internal Revenue Code and the treasury regulations promulgated thereunder;

2. Transferor is not a disregarded entity as defined in § 1.1445-2(b)(2)(iii) of the Internal Revenue Code;

3. Transferor's U.S. taxpayer identification/social security number is: _____; and

4. Transferor's business address is: _____.

Transferor understands that this certification may be disclosed to the Internal Revenue Service by Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury, I declare that I have examined this certification and to the best of my knowledge and belief this certification is true, correct, and complete. The undersigned agent declares that he has the authority to sign this document on behalf of Transferor.

Dated this ____ day of _____, 2013.

TRANSFEROR:

BY _____

EXHIBIT D
INFORMATION

1. A current tenant roster and rent roll (“**Rent Roll**”), showing tenant names, rental rates, period of rental, date of last rental increase, security deposits, rents paid, delinquent rents, any agreements regarding relocation, and all correspondence regarding the termination of the leases.
2. Copies of all Leases.
3. Operating statements including income reports for the last year.
4. Copies of all contracts and provide a summary of any unwritten or verbal agreements the Property may have with any third party vendors.
5. Copies of the Permits and Certificates of Occupancies.
6. The most recent real and personal property tax statements for the Real Property, Improvements, and the Personal Property.
7. Copies of all casualty and liability insurance policies insuring the Property, with a schedule of the premiums for such policies.
8. Geological and soils engineering reports.
9. Environmental site assessments or other environmental reports.
10. All building permits, conditional use permits, variances, and related governmental authorizations obtained in connection with construction of the Improvements.
11. ALTA surveys.
12. Copies of any pending or past litigation against the Property.
13. Detailed list of all capital expenditures over the past thirty-six (36) months.
14. Any termite treatment documents for the Property.

EXHIBIT E
TENANT ESTOPPEL CERTIFICATE

To: _____

Re: Leased Premises identified as _____, located within the property located at _____ (the "Property")

Lease Date: _____, _____, between _____, as Landlord, and _____, as Tenant.

The undersigned is the Tenant under the above-referenced lease and certifies to _____ and to Landlord, the following:

1. The lease ("Lease") consists of the following documents: _____
_____. The Lease has not been canceled, modified, assigned, extended, or amended except as described in the preceding sentence.
2. Rent has been paid to the first day of the following month and all additional rent has been paid and collected in a current manner. There is no prepaid rent, except \$_____ and the amount of Tenant's security deposit held by Landlord is \$_____.
3. Base rent under the Lease is currently payable in the amount of \$_____.
4. The obligations of Tenant under the Lease are guaranteed by _____.
5. The Lease terminates on _____ and Tenant has no right to renew.
6. Tenant intends to vacate the Property on or before the following date: _____, 2013.
7. Landlord has paid in full all obligations owed to Tenant under the Lease.
8. Landlord has paid in full all obligations owed to the Tenant for relocation.
9. All work to be performed by Landlord for Tenant under the Lease has been performed as required and has been accepted by Tenant, except _____. All allowances or reimbursements currently due and payable to Tenant under the Lease have been paid in full.
10. The Lease is terminated, neither Landlord nor Tenant claims any default thereunder, and Tenant has no claims or defenses against the Landlord or offsets or credits against rent. Additionally, no free rent periods or rental concessions have been granted that remain outstanding, except _____.

11. Tenant has received no notice of prior sale, transfer, or assignment, hypothecation, or pledge of the Lease or of the rents received therein, except _____.

12. Tenant has not assigned or sublet the Lease nor does Tenant hold the Leased Premises under assignment or sublease, except _____.

13. Tenant has no other interest in any other part of the Property of which the Leased Premises forms a part or to any personal property appurtenant thereto or used in connection therewith, except _____.

14. Tenant has no right or option pursuant to the Lease or otherwise to purchase all or any part of the Leased Premises or the Property.

15. There are no other agreements, written or oral, between Tenant and Landlord with respect to the Lease, the Leased Premises and/or the Property.

16. The statements contained herein may be relied upon by Landlord under the Lease and by any prospective purchaser or assignee (including lenders) of the Landlord's interest under the Lease.

17. No actions, whether voluntary or involuntary, are pending against Tenant under the bankruptcy laws of the United States or any state thereof.

18. The Tenant, as of the date hereof, has no claim, charge, defense, or offset under the Lease against rents or other charges due or to become due thereunder. As of the date hereof, Tenant has not asserted any such offset or credit. To the Tenant's knowledge, there are no defaults under the Lease on the part of Tenant.

19. This Certificate shall inure to Buyer's benefit and to the benefit Buyer's successors and assigns and shall be binding upon Tenant and Tenant's successors and assigns.

Tenant makes this Certificate with the understanding that Landlord is contemplating selling the Property, and that Buyer is interested in purchasing the Property.

The person signing this Certificate is duly authorized by Tenant to sign this Certificate and if Tenant is a corporation or other entity, the undersigned is a duly appointed officer or principal of the corporation or other entity and is the incumbent in the office or other position indicated under his or her name.

Dated this _____ day of _____, 20____.

TENANT:

_____,
a(n) _____

By: _____

Its: _____

EXHIBIT F

ASSIGNMENT AND ASSUMPTION OF CONTRACTS

THIS ASSIGNMENT AND ASSUMPTION OF CONTRACTS (the "Assignment") is made this _____ day of _____, 2013 (the "Effective Date"), by and between _____ ("Assignor"), and the City of Flagstaff, an Arizona municipal corporation ("Assignee").

RECITALS

A. Assignor presently holds certain rights under contracts (except as expressly provided herein to the contrary), including, without limitation, those contracts more particularly described on Schedule B to this Assignment (the "Contracts"), affecting that real property more particularly described on Schedule A to this Assignment, such Schedules being by this reference incorporated herein.

B. Assignor desires to assign to Assignee, and Assignee desires to acquire Assignor's interest in and to, the Contracts.

FOR VALUABLE CONSIDERATION, it is agreed as follows:

1. **Assignment.** As of the Effective Date, Assignor conveys and assigns to Assignee, subject to the provisions of the contracts, all of Assignor's right, title, and interest in and to the Contracts. Assignor hereby covenants and agrees to indemnify, defend, and hold harmless Assignee of, from, for, and against any and all actions, suits, proceedings, claims, liabilities, losses, damages, costs, and expenses (including, without limitation, reasonable attorneys' fees) incurred in connection therewith, based upon or arising out of any breach or alleged breach of any of the Contracts occurring or accruing prior to the Effective Date.

2. **Assumption.** Assignee assumes and agrees to be bound by all of Assignor's liabilities and obligations arising under the Contracts from and after the Effective Date. Assignee further covenants and agrees to indemnify, defend, and hold harmless Assignor of, from, for, and against any and all actions, suits, proceedings, claims, liabilities, losses, damages, costs, and expenses (including, without limitation, reasonable attorneys' fees) incurred in connection therewith, based upon or arising out of any breach or alleged breach of any of the Contacts occurring or accruing from and after the Effective Date.

3. **Binding Effect.** This Assignment shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

4. **Counterparts.** This Assignment may be executed in counterparts, all of which together shall constitute one complete Assignment.

ASSIGNOR:

By: _____

ASSIGNEE:

CITY OF FLAGSTAFF

By: _____
Gerald W. Nabours, Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

EXHIBIT G
BILL OF SALE AND ASSIGNMENT

THIS BILL OF SALE AND ASSIGNMENT ("Bill of Sale") is made as of this ____ day of _____, 2013, by _____ ("Seller"), in favor of the City of Flagstaff ("Buyer").

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller does hereby absolutely and unconditionally give, grant, bargain, transfer, assign, sell, set over, convey, and deliver to Buyer all of its right, title, and interest in, to and under all tangible and intangible Personal Property ("Personal Property") relating to the use, management, operation, maintenance, or ownership of the real property described on **Exhibit A** attached hereto (the "Property"), including without limitation, the following:

1. All transferable licenses, permits, certificates of occupancy, and other approvals issued by any governmental or quasi-governmental authority pertaining to the use, management, operation, maintenance, or ownership of the Property;
2. All keys and combinations to all doors, cabinets, safes, enclosures, and other locking items or areas of the Property in Seller's possession;
3. All equipment, machinery, and construction materials located upon the Property;
4. All guaranties and warranties in effect with respect to the Property (including roof and equipment warranties) from contractors, subcontractors, suppliers, and manufacturers;
5. All awards or payments made or to be made for any taking by condemnation, eminent domain, or otherwise (including, without limitation, by agreement in lieu thereof) for all or any part of any of the Property, the aforesaid Personal Property, and in and to all proceeds paid or payable in connection with any damage, loss, or destruction to all or any part of the Property;
6. All easements, covenants, or other title appurtenances benefiting or burdening the Property, and all party wall, encroachment, sidewalk, indemnification, right-of-way, and other similar agreements appurtenant to or otherwise affecting the use and enjoyment of the Property;
7. Any and all other property (whether real or personal and whether tangible or intangible) of any type or nature whatsoever owned, held, or maintained by Seller relating to the planning, development, construction, ownership, operation, use, management, maintenance, repair, operation, or enjoyment of the Property;
8. All warranties and guaranties from contractors, subcontractors, suppliers, and manufacturers which are in effect as of the date of this Bill of Sale issued in connection with (i) the construction, improvement, alteration, service, or repair of the buildings and other improvements situated on the Property, and (ii) the mechanical equipment and appliances in the Property;

9. All development rights and other intangible rights, titles, interests, privileges, and appurtenances owned by Seller and in any way related to or used in connection with the Property;

10. All licenses, consents, easements, rights of way and approvals from private parties, if any, to make use of utilities and to insure vehicular and pedestrian ingress and egress to the Property; and

11. All plans, specifications, studies, surveys, engineering reports, environmental reports, tests, studies, and other technical descriptions relating to the Property.

12. All approvals have been obtained to allow the Buyer to provide water and wastewater services to the Property.

Seller hereby covenants that Seller will, at any time and from time to time upon written request therefor, execute and deliver to Buyer such documents as Buyer may reasonably request in order to fully assign and transfer to and vest in Buyer and protect Buyer's right, title, and interest in and to the Personal Property transferred and assigned hereby, or to enable Buyer to realize upon or otherwise enjoy such rights and property.

Seller hereby represents and warrants to Buyer that: (i) the Personal Property has been paid for and is not subject to any liens, encumbrances, security interests, or claims of any kind; (ii) all taxes of any nature whatsoever on the Personal Property accruing prior to Closing have been paid by Seller; (iii) the consideration paid to Seller herewith is the full and complete consideration for the Personal Property; (iv) any sales or other taxes which may be payable with respect to this transfer are the sole responsibility of Seller; and (v) the transfer of the Personal Property to Buyer does not require the consent of third parties.

Seller warrants, and hereby covenants, at Seller's sole cost and expense, to defend Buyer's title to the Personal Property against the acts of Seller, and none other. Seller hereby agrees to indemnify and hold Buyer free and harmless from all liabilities, obligations, damages, causes of action, judgments, costs, and expenses (including reasonable attorneys' fees) which Buyer may incur or suffer in connection with any breach by Seller of the preceding warranty and covenant.

This Bill of Sale is binding upon the successors and assigns of Seller.

If any party hereto brings any action or suit against the other party hereto by reason of any breach of any covenant, condition, agreement, or provision on the part of the other party set forth in this Bill of Sale, the prevailing party shall be entitled to recover from the other party all costs and expenses of the action or suit, including reasonable attorneys' fees, charges, and costs, in addition to any other relief to which it may be entitled.

This Bill of Sale will be governed by, interpreted under, and construed and enforceable in accordance with the laws of the State of Arizona.

IN WITNESS WHEREOF, Seller has executed and delivered this Bill of Sale as of the date first above written.

SELLER: [Seller Name]

By: _____