



ORDINANCE 2005-A297

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF CAMP VERDE, YAVAPAI COUNTY, ARIZONA APPROVING SUBMISSION OF ESCROW PAPERS TO THE TITLE COMPANY FOR THE PURCHASE OF THE REAL PROPERTY KNOWN AS THE RIO VERDE PLAZA IN CAMP VERDE, ARIZONA INCLUDING PARCELS 404-23-011A and 404-23-011B LOCATED AT 497 SOUTH MAIN STREET

WHEREAS, municipalities may under A.R.S §9-240, and

WHEREAS, the Town's intent is to acquire the property captioned above for public purposes and the Mayor and Common Council unanimously voted for staff to proceed in the negotiations for the purchase of the property, and

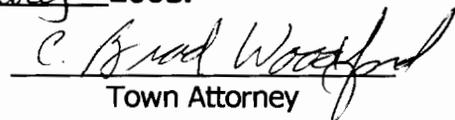
WHEREAS, Yavapai Title Agency requires a recorded certified copy of a Town of Camp Verde Ordinance authorizing execution and delivery of a purchase agreement and escrow instructions and such other instruments necessary to consummate this transaction.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF CAMP VERDE:

1. The Town of Camp Verde hereby approves the execution and delivery of the Purchase Agreement and Escrow Instructions attached hereto and authorizes the execution of such other instruments necessary to consummate the purchase.

PASSED AND APPROVED by a majority vote of the Town Council of Camp Verde, Arizona, this 2 day of February 2005.

Approved as to Form:


Town Attorney

Date: Feb. 3, 2005


Mitch Dickinson, Mayor

Attest:


Deborah Barber, Town Clerk

Seller and Buyer agree that these instructions are the only written agreement for the sale and purchase of the real property described herein, and shall constitute a binding and enforceable contract. Seller and Buyer shall each have the right of specific enforcement in the event of a default hereunder; however, nothing herein shall be construed to alter or adversely affect any of the rights of the Escrow Agent and/or Title Insurer hereunder.

Seller and Buyer acknowledge they are fully responsible for providing Escrow Agent with the terms and conditions of this transaction. Seller and Buyer are NOT relying on Yavapai Title Agency, Inc. in any way, and by signature of these Escrow Instructions, evidence that Escrow Agent has not advised them as to said terms and conditions. Should either Seller or Buyer require advice on the subject escrow, Yavapai Title Agency, Inc. recommends they contact their legal counsel and/or tax consultant.

The parties herein understand, represent and agree that the property which is the subject of this escrow is being sold by Seller and purchased by Buyer in the condition it is presently in. The Buyer has inspected the property and has agreed to purchase it in such condition.

Seller shall furnish Buyer through escrow the landlord's written consent to assign, transfer or sublet the demised premises. The Buyer, NOT as a condition of this closing and outside of escrow, shall initiate and execute any documents necessary for the lease assumption, transfer or execution of a new lease prior to the close of escrow.

Buyer shall furnish the landlord through escrow, as a condition of this escrow, a business insurance policy or assignment covering fire, liability and other coverages stated within the lease; and if necessary naming lessor, lender and/or Seller as additional insured.

Seller shall provide Escrow Agent with a rental statement for Buyer's approval reflecting rents paid to date, dates due, deposits, security and/or cleaning fees for proration purposes. Seller to be charged and Buyer to be credited with prorations, security deposits, cleaning fee and last month rent deposit, if any, at the close of escrow. Seller shall assign any existing leases to the Buyer outside of escrow.

Yavapai Title Agency, Inc. is not to be further concerned with, nor liable for the following items entered herein at the request of Seller and Buyer. These items are considered memorandums, and shall not be construed as instructions to Escrow Agent, nor shall Escrow Agent be required to verify any compliance. These items are not to be construed as conditions of closing this transaction.

Town will permit water store to remain in place for three months after close of escrow, through April 30th 2005, at no charge. Beginning May 1st 2005 rent will \$300.00 per month through December 31st 2005.

All parties acknowledge that Escrow Agent makes no representations either orally or through these written escrow instructions as to the legal effect of the described transaction contained herein under all applicable laws, including, but not limited to, tax law or contract law or principles of law affecting the rights and responsibilities of the parties hereto. By execution of these instructions, all parties acknowledge they are hereby advised to have these instructions reviewed by professional, legal and tax advisors of their choice and have satisfied themselves as to the legal and tax effects, consequences and risks that may be imposed, by this transaction.

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SELLER AND BUYER:

1. AGREE that they will deposit with Escrow Agent all documents, all funds, and do or cause to be done all other things necessary to enable it to comply with the terms of these instructions; authorize Escrow Agent to deliver or record said documents at the appropriate time; direct that all monies payable hereunder shall be paid in United States Dollars to the Escrow Agent, unless otherwise specified, and that upon receipt the Escrow Agent shall deposit such funds in a general (non interest bearing) escrow account in a financial institution (Funds Depository) doing business in the State of Arizona. As required by Arizona Revised Statutes, notice is hereby given that there is no State or Federal insurance against loss from fraud or theft for monies deposited in an escrow account, and Seller and Buyer have closing protection in the form provided in ARS 6-841.02 if this is a residential transaction. It is understood that Escrow Agent may make beneficial use of the funds deposited in this escrow for services rendered by the Funds Depository. Escrow Agent shall not be liable for any loss or impairment of funds so deposited in any such bank, savings bank or savings institution resulting from the failure, insolvency or suspension of such institution, and authorize Escrow Agent to pay from funds held the amounts necessary to procure the documents and to pay charges and obligations necessary to consummate this transaction and to pay the balance of the funds to the Seller; authorize Escrow Agent to execute, on their behalf, form assignments or otherwise order changes in any insurance called for herein, except title insurance, and to forward policies to insurer's agent with the request that insurer consent to such transfer, attach loss payable clause or make such other additions or corrections as may be specifically required herein and that such Agent thereafter return such policies to the Escrow Agent or to the parties entitled thereto; Agree that in every transaction in which underlying encumbrances of any kind are to remain the obligation of the Seller or are to be assumed by the Buyer, the Escrow Agent shall request relevant information from the holder or holders thereof, and the Escrow Agent is hereby authorized to act upon any statement furnished by a holder of said encumbrance, lien, charge or assessment in connection with the subject property, without liability or responsibility to the Escrow Agent for the accuracy thereof; relieve Escrow Agent of any liability as to any errors or omission by the Seller or the Buyer as to statements furnished hereunder, representations made and/or the condition of the property; grant to Escrow Agent the right to execute, on behalf of the Seller and/or Buyer herein, the Affidavit of Value, using the total consideration for the established value, unless instructed by the Seller and/or Buyer to the contrary; and agree that all prorations shall be made on a 365 day per year basis.
2. AGREE that no amendment to these Escrow Instructions shall be of any effect until made in writing, signed by all parties and delivered to and accepted by the Escrow Agent. No notice or demand shall be of any effect unless made in writing, signed by the party making the notice or demand and presented to Escrow Agent. These Escrow Instructions and any amendments hereto, as provided above shall constitute the entire agreement between the Escrow Agent and the parties hereto, notwithstanding the provisions of any purchase contract or other agreement between the parties, whether oral or written.
3. AGREE that disbursement of any funds may be made by check of Escrow Agent; that Escrow Agent shall be under no obligation to disburse any funds represented by check or draft, and no check or draft shall be payment to Escrow Agent in compliance with any of the requirements hereof, until it is advised by the Bank in which it is deposited that such check or draft has been honored; and agree to pay Escrow Agent upon demand, all charges payable by them respectively, as provided herein.
4. AGREE to pay to Escrow Agent, upon demand, all escrow fees and charges payable by them respectively, as set forth in these instructions and as contained in the Escrow Agent's latest published schedule of fees and charges, including any additional fees and charges for extraordinary services which fees and charges, unless otherwise provided in writing, shall be paid one-half by the Seller and one-half by the Buyer.
5. DIRECT that when these instructions have been complied with and a title insured approved to do business in the State of Arizona is willing to issue its Title Insurance Policy or Policies, as hereinafter provided, and when Escrow Agent's charges have been paid, it shall deliver, by filing for record, in the appropriate public office, all necessary documents required to be filed or recorded, the recording date of which will be the "Close of Escrow" date, and by the delivery, by regular United States Mail or otherwise of any other papers or documents, at which time Escrow Agent shall disburse all funds paid to it hereunder, as provided herein, unless otherwise instructed in writing, and shall issue the policy or policies of Title Insurance.
6. AGREE that the Escrow Agent may destroy its file or files, and the contents thereof, after three (3) years from Close of Escrow; that no action against Escrow Agent shall be commenced more than three (3) years from the date the cause of action accrues; and that the employment of Yavapai Title Agency, as Escrow Agent, shall not affect any rights to which it or the Title Insurer may be subrogated under the terms of any Title Insurance Policy issued pursuant to these Escrow Instructions.
7. AUTHORIZE Escrow Agent, in the event of any conflicting demands made upon it concerning these instruments, this escrow or any resulting collection account, at its election, to hold any money and any documents deposited hereunder until it receives mutual instructions by all parties or until a final judgment is entered in a Court of competent jurisdiction which determines the rights of all parties. In the alternative, Escrow Agent may, at its discretion, at any time, commence a civil action to interplead any conflicting demands in a Court of competent jurisdiction. Deposit with the Court by the Escrow Agent of all documents and funds (after deducting therefrom its charge and its expenses and attorneys fees incurred in connection with any such Court action concerning this escrow) shall relieve Escrow Agent of all further liability and responsibility.
8. AGREE that they will, jointly and severally, indemnify and save harmless Escrow Agent against all costs, damages, attorney's fees, expenses and liabilities, which it may incur or sustain in connection with these instructions, including, but not limited to, any interpleader action filed by the Escrow Agent.
9. GRANT to Escrow Agent a lien upon and authority to reimburse itself for all its charges hereunder and for all damages or expense which it may incur or sustain in connection with this escrow on and from all of the rights, title and interest of either the Seller, the Buyer, or both, in the documents and money held hereunder or otherwise held by the Escrow Agent.
10. AGREE that the day established within which compliance with any requirements must be met shall end at the close of then regularly established public business hours of Escrow Agent for that day, provided, however, that should the Escrow Agent be closed for all or any portion of that day, any such requirement may be met at any time during normal business hours on the next succeeding business day.
11. AGREE AND DIRECT that if Escrow Agent is unable or unwilling to comply with these instructions for any reason, other than cancellation as hereinafter provided, or if the Title Insurer is unwilling to issue any Title Insurance Policy or Policies provided for herein, all documents and all funds, less Escrow Agent's charges payable by the respective parties, shall be returned to the party or parties who deposited them, and thereafter the Escrow Agent shall have no further duty, responsibility or liability in connection with this escrow or these instructions. Mutually executed instruments shall be retained by the Escrow Agent, pending normal file destruction.

CANCELLATION

12. AGREE that any party who wishes to cancel this Escrow because of any material breach by the other party, and who is not in material breach except as occasioned by a material breach by the other party, may cancel this Escrow by delivering written notice of cancellation to either the breaching party or to Escrow Agent stating the nature of the breach. Cancellation shall become effective immediately upon delivery of the written notice of cancellation to either the breaching party or Escrow Agent.
13. AUTHORIZE Escrow agent in the event of a dispute between Seller and Purchaser regarding earnest money deposited with Escrow Agent to release earnest money pursuant to the terms and conditions of these Escrow Instructions. Seller and Purchaser specifically authorize Escrow Agent to act in sole and absolute discretion in the release of earnest money. Seller and Purchaser agree to hold harmless and indemnify Escrow Agent against any claim, action or lawsuit of any kind, and from any loss, judgment or expense, including costs and attorney's fees, arising from or relating in any way to the release of earnest money.
14. AFTER ESCROW CLOSES: If for any reason funds are retained or remain in escrow after closing date, and are in dispute and Yavapai Title Agency have given both parties (Seller and Buyer) at least thirty days notice that said charge will accrue, Yavapai Title Agency will deduct therefrom a monthly charge as custodian thereof of \$25.00 per month for maintaining funds in our escrow account until the entire sum in the escrow has been exhausted or the dispute has been resolved by mutual agreement or by court order, any applicable appeal period having lapsed, and the remainder is distributed accordingly. If for any reason a check from Yavapai Title Agency is not cashed after six months have elapsed from the date of issuance, a \$25.00 charge shall be assessed by Yavapai Title Agency for the re-issuance of said check. Yavapai Title Agency shall charge \$25.00 per month to maintain the funds in our account after one year has elapsed with a check remaining uncashed and unclaimed, until the entire sum of said uncashed check as been exhausted or claim has been made for the remainder, or in the event five years elapses, any unclaimed remainder will be sent to the State escheat fund.

COLLECTION SERVICES:

15. If there is a deferred balance created hereunder from Buyer to Seller then, unless otherwise provided, the Seller and Buyer hereby appoint Yavapai Title Agency, as the Collection or Account Servicing Agent, and hereby agree to the terms and conditions of and to pay the fees provided in the Account Servicing Agreement to be executed by the parties hereto.
16. The Payee under such collection account hereby agrees to refund to the Account Servicing Agent any remittance made to the Payee in reliance on a check or draft which is subsequently dishonored by the financial institution upon which it is drawn.

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TITLE INSURANCE - CONDITIONS AND LIMITATIONS:

17. The Title Insurance provided for herein shall be subject to the conditions of and evidenced by the Commitment For Title Insurance to be issued by a title insurer approved to do business in the State of Arizona, with a limit of liability not to exceed actual amounts to be paid by the Buyer or actual loan amounts. The policies, upon issuance, shall insure against loss by reason of defects in the title to the property, as set forth in said Commitment, on the date of the filing or recording for record of the documents as provided for therein. The title insurance provided for herein, unless otherwise specified in writing, shall be evidenced by the ALTA Homeowner's Title Policy, or, if not available, the ALTA Residential Title Insurance Policy, or, if not available, the Standard Coverage form of Title Insurance Policy issued by a title insurer approved to do business in the State of Arizona. The parties hereto should make their own investigation of the following matters, as neither nor the Escrow Agent nor the title insurer attempts to investigate them and assumes no liability therefor, except as may be provided in specific types of title insurance coverage (examine carefully your Commitment For Title Insurance), to wit:

- (a) Personal Property Taxes;
- (b) Utility charges, such as electric, gas, water and sewer;
- (c) Boundary Lines, location of improvements and possession;
- (d) Unrecorded Mechanic's and Materialmen's liens;
- (e) Compliance with limitations on the use of the property, such as zoning and building ordinances and building and other restrictions;
- (f) Premiums and assignability or effectiveness of fire insurance policies provided for herein (it is your obligation to determine that such premiums are paid and that such policies are in effect);
- (g) Reservations and exceptions in Patents, such, for example, as oil or mineral reservations;
- (h) Proposed improvement district or assessments, not yet liens;
- (i) Assessments of Councils of Co-owners or Homeowners' Association;
- (j) Transfer of Personal Property;
- (k) Title Risks: *That are created, allowed or agreed to by you; or *That are known to you, but not to us on the policy date unless they appear in the public record; or *That result in no loss to you;
- (l) Water Rights or claims or title to water.

SELLER AND BUYER ALSO AGREE:

- A. That these instructions can be executed in any number of counterparts and that together such counterparts shall be considered as a complete, executed document.
- B. That escrow agent may accept these, or other instructions, with facsimile signatures from either party and such facsimile instructions shall be considered contractually binding between the parties whether or not the originals are received by escrow agent.
- C. To indemnify and hold harmless escrow agent from any action arising from the acceptance by escrow agent of the counterpart or facsimile instructions.

NOTICE OF RIGHT TO EARN INTEREST ON DEPOSITED FUNDS

INTEREST MAY BE EARNED ON ALL DEPOSITED FUNDS BY REQUESTING THE ESCROW OFFICER WHO IS HANDLING YOUR TRANSACTION TO PLACE THE ESCROWED FUNDS INTO AN INTEREST-BEARING ACCOUNT, THE ESCROW AGENT'S CHARGE TO SET UP SUCH AN ACCOUNT IS \$25.00. YOUR FUNDS WILL EARN INTEREST AT THE PREVAILING RATE OF INTEREST PAID BY THE FEDERALLY INSURED FINANCIAL INSTITUTION WHERE YOUR FUNDS WOULD BE DEPOSITED FOR EXAMPLE, IN A TYPICAL TRANSACTION, A \$1,000.00 DEPOSIT FOR A THIRTY (30) DAY PERIOD WITH PREVAILING INTEREST RATE OF 6% PER ANNUM WOULD EARN \$4.93. FOR MORE INFORMATION ON DEPOSITING FUNDS IN AN INTEREST-BEARING ACCOUNT CONTACT YOUR ESCROW OFFICER OR IF YOU ARE UNABLE TO REACH YOUR ESCROW OFFICER, YOU MAY CONTACT THE ESCROW DEPARTMENT OF YAVAPAI TITLE AGENCY AT THE APPROPRIATE OFFICE, AS FOLLOWS:

P.O. Box 2019
123 N. Montezuma
Prescott, AZ 86302
(520) 445-2528

Seller:

Claudia A. Ward
CLAUDIA A. WARD

Buyer:

William E. Dee, Town Manager
TOWN OF CAMP VERDE

