

ORDINANCE NO. 2434

AN ORDINANCE DIRECTING THE SALE OF LOT TEN (10), IN BLOCK EIGHTEEN (18), MACCOLL & LEFLANG'S THIRD ADDITION TO THE CITY OF LEXINGTON, DAWSON COUNTY NEBRASKA; TO PROVIDE FOR PUBLICATION AND THE RIGHT OF REMONSTRANCE.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF LEXINGTON, NEBRASKA, AS FOLLOWS:

Section 1. That for \$1,100.00 and other good and valuable consideration, including the promise to redevelop said real estate, the following described real estate shall be conveyed to MARTIN LOPEZ, to wit:

LOT TEN (10), IN BLOCK EIGHTEEN (18), MACCOLL & LEFLANG'S THIRD ADDITION TO THE CITY OF LEXINGTON, DAWSON COUNTY NEBRASKA

Section 2. That immediately upon adoption, notice of this Ordinance shall be published in a legal newspaper for three (3) consecutive weeks; that if remonstrance against such sale signed by legal electors equal in number to thirty percent (30%) of the electors of the City voting at the last regular municipal election shall be filed with the Lexington City Clerk within thirty (30) days of such publication, such property shall not then, nor within one (1) year thereafter be sold.

PASSED AND APPROVED MARCH ____, 2021

CITY OF LEXINGTON, NEBRASKA,

BY: _____
Mayor

ATTEST:

City Clerk

NOTICE OF SALE

NOTICE IS HEREBY GIVEN, that the City Council of the City of Lexington, Nebraska has, by Ordinance _____ adopted on March 23, 2021, authorized the sale of the following described real estate owned by the City:

LOT TEN (10), IN BLOCK EIGHTEEN (18), MACCOLL & LEFLANG'S THIRD ADDITION TO THE CITY OF LEXINGTON, DAWSON COUNTY NEBRASKA

The terms of said sale are that said real estate is to be sold to MARTIN LOPEZ for \$1,100.00 and other good and valuable consideration. Such additional consideration being an agreement to redevelop said property. Said sale will close on or about April 16, 2021, unless remonstrance against said sale signed by legal electors equal in number to thirty percent (30%) of the electors of the City voting at the last regular municipal election shall be filed with the Lexington City Clerk within thirty (30) days of publication of this Notice.

PAMELA BARUTH
LEXINGTON CITY CLERK

RECEIVED BY: _____

Dated: _____, 2021

Publish 3 times once each week starting March 27, 2021. Thanks.

REAL ESTATE PURCHASE AGREEMENT

This Real Estate Purchase Agreement (this "**Agreement**") is made and entered into as of the date of the last signature below, by and between City of Lexington, referred to herein as "**Seller**", and Martin Lopez ("**Buyer**").

RECITALS

A. WHEREAS, Seller owns that certain real estate (as defined in Neb. Rev. Stat. § 76-201), legally described as: Lot Ten (10), in Block Eighteen (18), MacColl & Leflang's Third Addition to the City of Lexington, Dawson County, Nebraska, more commonly known as 507 E. 3rd St., Lexington, Nebraska, 68850, referred to herein as "Premises" or "Property".

B. WHEREAS, Seller has agreed to sell the Property to Buyer, together with all improvements located thereon, and Buyer has agreed to purchase the same from Seller, upon the terms and conditions hereafter set forth

AGREEMENT

1. **Property.** Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller, the Seller's interest in the Property, free and clear of all liens and encumbrances, subject, however, to easements of record, apparent easements, public highways and all governmental rules and regulations.

2. **Price and Payment.** Buyer agrees to pay Seller the sum of One Thousand One Hundred Dollars and 00/100ths (\$1,100.00) for Seller's interest in the Property (the "**Purchase Price**") on the Closing Date. Buyer shall pay the Purchase Price as follows:

a. **Closing Payment.** On the Closing Date, Buyer shall pay to Seller the sum of \$1,100.00, upon delivery of the Deed, in a simultaneous transaction. Such payment shall be made in cash, by wire transfer of immediately available funds, by certified funds, or other "good funds" as defined in Neb. Rev. Stat. § 76-2,121.

3. **Inclusions.** This Agreement shall include all permanent improvements situated on the premises, and no personal property.

4. **Closing.** The Closing shall be held as soon as is reasonably practicable (the "**Closing Date**"), at a time and place mutually agreed upon by the parties, but in no case shall the Closing Date be later than April 16, 2021. Time is to be construed as the essence of this Agreement.

5. **Taxes.** Buyer shall pay the 2020 and all future real estate taxes.

6. **Construction of Garage and Driveway.** Buyer agrees to commence construction of a garage and associated driveway with an approximate tax assessed value of \$20,000.00 on the Property within twelve (12) months of the Closing Date and to complete said construction in a timely fashion. In the event Buyer shall fail to commence construction within

twelve (12) months of the Closing Date, Buyer, at Seller's option and request, shall convey the Property to Seller for no consideration. Buyer agrees to execute a Warranty Deed conveying the Property to Seller should Seller exercise this option. This covenant shall be incorporated in the Warranty Deed from Seller to Buyer set forth in Paragraph 8. herein.

7. **Administrative Replat and Survey.** Buyer acknowledges that pursuant to the Lexington City Code an Administrative Replat shall be necessary and Buyer agrees to pay any and all costs related to the preparation and completion of the Administrative Replat, including the costs of the survey associated therewith.

8. **Deed.** Seller shall execute a Warranty Deed to Buyer, free and clear of all encumbrances, subject, however, to easements of record, apparent easements and all governmental rules and regulations, and deliver the same to the Buyer on Closing Date upon payment of the Purchase Price.

9. **Possession.** Seller shall give Buyer quiet and peaceable possession of the real estate on Closing Date.

10. **Insurance and Risk of Loss.** Seller shall keep hazard insurance on the Property and Improvements in full force and effect until delivery of possession to Buyer. In the event the Property is materially damaged by fire, explosion or any other cause prior to Closing Date, ("material damage" to be damage in excess of 30% and not repairable in 30 days) Buyer shall have the right to rescind this Agreement.

11. **Title Insurance.** Buyer shall obtain a title insurance commitment on the Property from Heldt, McKeone & Copley. The title insurance commitment will show marketable title to the Property in Seller in accordance with the terms and conditions of this Agreement, and shall agree to insure title in Buyer and for the benefit of Buyer's lender, if any, in the amount of the Purchase Price following closing in conformity herewith. Title standards approved by the Nebraska State Bar Association as of the date of the title insurance commitment shall serve as a guide to marketability of title. Seller agrees to execute, upon request of the Title agent, a Nebraska Marketable Title Affidavit.

12. **Division of Expenses.** Seller and Buyer agree that the closing expenses in connection with the sale and purchase of the Property shall be divided as follows:

- a. **Attorney Fees:** Buyer, payable to Heldt, McKeone & Copley.
- b. **Closing Fees:** Buyer, payable to Heldt, McKeone & Copley.
- c. **Documentary Stamp Tax:** Buyer.
- d. **Deed:** Buyer.
- e. **Owner's Title Insurance premium and Closing Protection Letter:** Buyer, payable to Heldt, McKeone & Copley.

f. Administrative Replat and Survey: Buyer.

13. Condition of Property. Buyer acknowledges that Buyer has examined and inspected the premises, and that Buyer is purchasing the same in an "as is" condition, subject to Buyer's own inspection and not by reason of any representation or warranty of Seller, express or implied, other than those specifically set forth in this Agreement.

14. Utilities. All utility usage, including electricity, prior to closing shall be paid by Seller. All utility usage after closing shall be the responsibility of Buyer. All accounts for utility usage shall be transferred to Buyer at closing.

15. Real Estate Commissions. Buyer and Seller represent that neither party has executed any listing agreement or other document with a real estate broker or agent. In the event that any real estate broker or agent claims a commission, finder's fee, or other compensation as a result of this transaction, the party alleged to have entered into an agreement with such a broker or agent shall indemnify and hold the other party harmless from and against any such commission, finder's fee, or other compensation and all costs or expenses, including court costs and reasonable attorney's fees which may be associated therewith.

16. Representations of Seller. Seller hereby makes the following warranties and representations, which shall survive closing:

- a. Seller is not a party to any contract, written or oral, which will give rise to a lien (including but not limited to, construction lien, mechanic's lien, storage and repair lien, threshing, and agister's lien) or other encumbrance on the Property or improvements;
- b. Seller has no knowledge of any fence disputes, boundary disputes, water disputes, or drainage disputes, existing, actual or threatened, special assessments, taxes, or condemnation proceedings concerning the Property;
- c. No hazardous or toxic material, substance, pollutant, contaminant, waste, asbestos, or petroleum has been released into the environment, discharged, placed or disposed at, near, or on the Property. Seller has not been advised of any action by the Nebraska Department of Environmental Quality or the Environmental Protection Agency, or any other administrative agency;
- d. Seller has full legal authority to enter into this Agreement, and the consent or acquiescence of no other Party is required to bind Seller to the terms of this Agreement;

17. Representations of Buyer. Buyer hereby makes the following warranties and representations, which shall survive closing:

- a. Except as expressly set forth in this Agreement Buyer has not entered into this Agreement based on any representations of the Seller;

- b. Buyer has full legal authority to enter into this Agreement, and the consent or acquiescence of no other party is required to bind Buyer to the terms of this Agreement.

18. **Default.** In the event either Party should default under the terms and conditions to be performed by that Party pursuant to this Agreement, the other Party shall have such rights and remedies as are allowed by law, including specific performance. The election or forfeiture of any one remedy shall not bar the election or cause the forfeiture of any other remedy.

19. **Assignment.** This Agreement may not be transferred or assigned by either party without the written consent of the other party. Such consent shall not be unreasonably withheld and shall not release the assignor from performance hereunder.

20. **Severability.** Except to the extent the same would operate to deprive either party of the economic benefit of its bargain hereunder, if any term or provision of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

21. **Further Assurances.** Each undersigned party will, whenever it shall be reasonably requested to do so by the other, promptly execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, any and all such further conveyances, confirmations, instruments, or further assurances and consents as may be necessary or proper, in order to effectuate the covenants and agreements herein provided. Each of the undersigned parties shall cooperate in good faith with the other and shall do any and all other acts and execute, acknowledge and deliver any and all documents so requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of this Agreement.

22. **Interpretations.** Any uncertainty or ambiguity existing herein shall not be interpreted against either party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally.

23. **Entire Agreement.** This Agreement contains the entire agreement of the parties relating to this matter. It supersedes any prior agreements or understandings among them and shall not be modified or altered or amended in any manner except in writing and signed by both parties.

24. **Governing Law.** All aspects of this Agreement shall be governed by the laws of the State of Nebraska.

25. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legatees, devisees, personal representatives, successors and permitted assigns.

26. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument. This Agreement may be executed by facsimile signature which shall be valid for all purposes.

27. **Waiver.** One or more waivers of any covenants, conditions, rules or regulations by Buyer or Seller shall not be construed as a waiver of a further breach of the same or different kind at any other time.

SELLER:

CITY OF LEXINGTON

Date: _____

By _____
Joe Peplitsch, City Manager

BUYER:

Date: _____

Martin Lopez