

RESOLUTION NO. 2018-03- 783R

CITY OF TONTITOWN, WASHINGTON COUNTY, ARKANSAS

A RESOLUTION AUTHORIZING THE MAYOR AND RECORDER-TREASURER TO EXECUTE A PURCHASE CONTRACT BY AND BETWEEN THE PIAZZA FAMILY IRREVOCABLE TRUST AND THE CITY OF TONTITOWN, ARKANSAS

WHEREAS, the City of Tontitown, Arkansas desires to enter into a Purchase Contract with The Piazza Family Irrevocable Trust to provide for the extension of Fletcher Avenue; and

WHEREAS, The Piazza Family Irrevocable Trust desires to sell and the City of Tontitown desires to purchase the property for the Fletcher Avenue extension project; and

WHEREAS, the Mayor and the City Council have reviewed the Purchase Contract and believe the proposed Contract should approved.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the city of Tontitown, Arkansas:

Section 1: That the City Council of the City of Tontitown, Arkansas authorizing the Mayor and Recorder-Treasurer to execute a Purchase Contract attached hereto as Exhibit "A" by and between The Piazza Family Irrevocable Trust and the City of Tontitown.

PASSED AND APPROVED this 6th day of March, 2018


Paul Colvin, Jr., Mayor

ATTEST:


Rhonda Ardemagni, City Recorder-Treasurer
(SEAL)

CONTRACT FOR SALE AND PURCHASE OF REAL ESTATE

This Contract for Sale and Purchase of Real Estate (the "Contract") is made and entered into by and between The Piazza Family Irrevocable Trust, herein referred to as the "Seller," and the City of Tontitown, Arkansas, herein referred to as the "Buyer."

WHEREAS, the Buyer desires to purchase and the Seller desires to sell that certain real estate described hereinbelow on the following terms and conditions.

WITNESSETH:

In exchange for valuable consideration and the mutual covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows, to-wit:

**SECTION ONE
PROPERTY DESCRIPTION AND ADDRESS**

The Seller agrees to sell, and the Buyer agrees to purchase, all of the Seller's right, title and interest in the property located in Tontitown, Washington County, Arkansas, more particularly described Exhibit "A" attached hereto and incorporated herein by reference (the "Property") subject to any restrictions referred to in this Contract.

**SECTION TWO
PURCHASE PRICE**

The Buyer agreed to pay for the Property, and the Seller agreed to accept therefor, the purchase price of Seventy Eight Thousand Two Hundred and No/100 Dollars (\$78,200), (herein referred to as the "Purchase Price"), to be paid for the Property in the form of cash at the Closing (hereinafter defined).

**SECTION THREE
CONVEYANCE**

Unless otherwise specified, conveyance shall be made to Buyer, or as directed by Buyer, by general warranty deed, in fee simple absolute, except it shall be subject to recorded restrictions and easements, if any, which do not materially affect the value of the Property. Unless expressly reserved herein, such conveyance shall include all mineral rights owned by Seller, if any. It is the responsibility of the Buyer to independently verify and investigate the existence or nonexistence of mineral rights and any legal ramifications thereof. Seller warrants and represents that only the signatures set forth below to this Contract are required to transfer legal title to the Property. Seller further represents and warrants that Seller has peaceable possession of the Property, including all improvements and fixtures thereon, and the legal authority and capacity to convey the Property by a good and sufficient general warranty deed, free from any liens, leaseholds or other interests.

SECTION FOUR TITLE REQUIREMENTS

Seller shall furnish to Buyer, at Buyer's sole expense, a Commitment for a Title Insurance Policy (herein referred to as the "Commitment") issued by and through Lenders title Company (herein referred to as the "Title Company"), describing the Property, reflecting the Buyer as the proposed insured and showing as the policy amount thereon the Purchase Price for the Property. The Commitment shall assure to Buyer that the issuing title insurance company will issue to Buyer a policy of Owner's Title Insurance, reflecting fee simple absolute title in Buyer subject only to any exceptions approved and accepted by Buyer (herein referred to as the "Permitted Exceptions"). In the event that the Title Commitment provided for herein discloses any claim, lien, encumbrance, encroachment, matter, requirement or exception to title which Buyer objects to or which must be addressed in order for the issuance of the Owner's Title Insurance Policy, Seller shall have a reasonable time to cure the objections, which time shall not exceed thirty (30) days. If Buyer elects to obtain enhanced title insurance coverage, Buyer shall pay for the increase in title insurance cost in excess of the cost of a standard owner's title policy.

SECTION FIVE SURVEY

Buyer, at Buyer's expense, shall obtain a current survey of the land and Easement prepared by a registered land surveyor (the "survey"). The survey shall be in a form suitable to Seller and shall (a) locate all other present and future easements, rights-of-way, 100-year flood plain, building lines, roadways, and encroachments on or abutting the land; (b) contain the accurate metes and bounds description of the land, and (c) contain a certification of the surveyor as to the number of net square feet contained in the land. Seller shall have ten (10) days from the receipt of the survey to approve same or to notify Buyer of any problems to be corrected.

SECTION SIX PRORATIONS

Taxes and special assessments due on or before Closing shall be paid by Buyer. Buyer and Seller agree to prorate general ad valorem taxes based on the best information available at Closing. Buyer shall be responsible for paying all real estate taxes and assessments which are past due as of the date of Closing, with such payment to include all penalties, interest and legal or other fees.

SECTION SEVEN CLOSING

Closing is the date and time at which the Seller shall deliver the executed and acknowledged Deed (hereinafter "Closing Date" or "Closing"). The Closing Date is designated to be within ten (10) calendar days of _____, 2018. The Closing Date may be extended only by agreement of Buyer and Seller. Buyer and Seller agree that time is of the essence. If the sale is not consummated within ten (10) calendar days of the deadline stated in this section, the parties shall have the remedies available to them in equity or at law.

SECTION EIGHT CLOSING COSTS

The parties agree that all of the costs of closing shall be paid by the Buyer. In addition, the Buyer shall bear its statutory amount of the revenue stamps for the transfer tax on the Property as required by the State of Arkansas. However, each of the parties shall bear their own attorney and professional fees incurred in connection with this Contract. Buyer and Seller shall each have the right to request that the title insurer(s), if any, issue closing protection to indemnify against loss of closing funds because of acts of a Closing agent, title insurer's named employee, or title insurance agent. Any cost for closing protection will be paid by the requesting party(ies).

SECTION NINE POSSESSION

Possession of the Property shall be delivered to Buyer upon the Closing Date (Seller's delivery of executed and acknowledged Deed). Seller will be responsible for all damages caused to the Property during the period between the Closing Date and the date possession is delivered to Buyer.

SECTION TEN FIRPTA COMPLIANCE AND TAX REPORTING

Buyer and Seller agree to disclose on or before Closing, to the person or company acting as Closing agent for this transaction, their United States citizenship status, solely for the purpose of compliance with the Foreign Investment in Real Property Taxation Act (FIRPTA) and, in addition, Buyer and Seller shall execute all documents required by such Closing agent to document compliance with FIRPTA and all other applicable laws. Buyer and Seller agree that this Contract shall serve as a "Designation Agreement" pursuant to United States Treasury Regulation 1.6045-4, and they designate the person or company that handles the Closing of this transaction as the "reporting person" under state and federal tax laws (including without limitation 26 USC Section 6045(e)) having responsibility to file all necessary forms regarding the Closing, including without limitation form 1099, 8288 or 8288A. Seller will execute an affidavit confirming compliance with FIRPTA, as prepared by the Closing person or company.

SECTION ELEVEN RISK OF LOSS

The Seller expressly assumes the risk of loss or damage to the Property by fire or other casualty occurring up to the Closing Date.

SECTION TWELVE WAIVER

Failure of either party hereto to exercise any options herein contained upon breach by the other shall not constitute a waiver of that party's right to exercise such options upon future breach.

**SECTION THIRTEEN
ENTIRE AGREEMENT**

This Contract, when executed by both Buyer and Seller, shall contain the entire understanding and agreement between the Buyer and Seller with respect to the matters referred to herein and shall supersede all prior contemporaneous agreements, representations, discussions, and understandings with respect to such matters, and no oral representation or statement shall be considered a part thereof.

**SECTION FOURTEEN
REAL ESTATE COMMISSIONS**

Both of the parties warrant and represent that neither has any obligations owing to any real estate agent or broker with regard to this transaction.

**SECTION FIFTEEN
SURVIVAL AND BINDING EFFECT**

The terms and provisions of this Contract shall not be deemed merged in the deed transferring the Property to the Buyer and any representations, warranties, covenants and obligations set forth shall survive the closing of this transaction. This Contract shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, personal representatives, successors and assigns.

**SECTION SIXTEEN
COUNTERPARTS**

This Contract may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

**SECTION SEVENTEEN
OTHER CONDITIONS**

Prior to the Closing Date, Seller covenants and agrees to prevent any material adverse change in the title or condition of the Property.

**SECTION EIGHTEEN
NONASSIGNABILITY**

Unless otherwise agreed to in writing by the parties, the benefits of this Agreement may not be assigned nor may the duties hereunder be delegated.

**SECTION NINETEEN
GOVERNING LAW**

This Contract, or any extension or renewal hereof, shall be construed in accordance with and governed by the laws of the State of Arkansas, without regards to the conflicts of laws provisions thereof.

**SECTION TWENTY
CHOICE OF FORUM, VENUE, AND CONSENT TO JURISDICTION**

Any and all claims or causes of action shall and must be filed only in the courts of the State of Arkansas for Washington County or the United States District Court for the Western District of Arkansas, which shall have exclusive jurisdiction over any and all disputes which arise between the parties under this Contract, whether in law or in equity. The parties expressly agree, consent, and stipulate that venue shall be exclusively within said courts. Further, the parties expressly agree, consent and stipulate to the exercise of personal jurisdiction over it and subject matter jurisdiction over any such controversy arising between the parties being only in the courts listed herein.

**SECTION TWENTY-ONE
PARTIES LEGALLY BOUND**

The undersigned parties hereby state that they understand that this is a legally binding contract and that each has carefully read and understands the effects of all parts of the Contract, and that they have had an opportunity to consult with an attorney prior to signing this Contract.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this _____ day of _____, 2018.

SELLER:
The Piazza Family Irrevocable Trust

BUYER:
City of Tontitown, Arkansas

BY:

BY:

Taxpayer I.D. Number

Taxpayer I.D. Number

LEGAL DESCRIPTION

The legal description for subject is below.

PROPERTY DESCRIPTION: (Quitclaim Deed: 1999-5820)

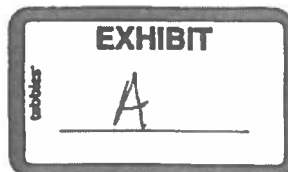
An undivided 90% interest in and to:
Part of the North Half (N½) of the Northwest Quarter (NW¼) of Section Seven (7), Township Seventeen (17) North, Range Thirty (30) West, described as beginning at a point 16.5 feet East of the Northwest Corner; for a beginning point, thence South 879.32 feet, thence East 1968.78 feet, thence North 879.32 feet, thence West 1968.78 feet to the point of beginning, containing Forty (40) acres, more or less. LESS AND EXCEPT:

A part of the North Half (N½) of the Fractional Northwest Quarter (NW¼) of Section Seven (7), Township Seventeen (17) North, Range Thirty (30) West, being more particularly described as follows: Commencing at the Northwest Corner of said Section, said point being an existing Railroad spike; thence South 00°04'01" West 670.61 feet along the West line of said Section; thence North 89°33'02" East 16.5 feet to the true point of beginning; thence N89°33'02" East 208.71 feet to a set iron; thence South 00°04'01" West 208.71 feet to a set iron; thence South 89°33'02" West 208.71 feet; thence North 00°04'01" East 208.71 feet to the point of beginning, containing 1.00 acres, more or less, Washington County, Arkansas. AND LESS AND EXCEPT:

A part of the North Half (N½) of the Fractional Northwest Quarter (Fr. NW¼) of Section Seven (7), Township Seventeen (17) North, Range Thirty (30) West, being more particularly described as follows: Commencing at the Northwest Corner of said Section, said point being an existing railroad spike; thence S00°04'01"W 253.19 feet along the West line of said Section; thence N89°33'02"E 16.5 feet to the true point of beginning; thence N89°33'02"E 208.71 feet to a set iron; thence S00°04'01"W 208.71 feet to a set iron; thence S89°33'02"W 208.71 feet; thence N00°04'01"E 208.71 feet to the point of beginning, containing 1.00 acres, more or less, Washington County, Arkansas. AND LESS AND EXCEPT:

A part of the North Half (N½) of the Fractional Northwest Quarter (Fr. NW¼) of Section Seven (7), Township Seventeen (17) North, Range Thirty (30) West, being more particularly described as follows: Commencing at the Northwest Corner of said Section, said point being an existing railroad spike; thence S0°04'01"W 461.90 feet along the West line of said Section; thence N89°33'02"E 16.5 feet to the true point of beginning; thence N89°33'02"E 208.71 feet to an existing iron; thence S00°04'01"W 208.71 feet to an existing iron; thence S89°33'02"W 208.71 feet; thence N00°04'01"E 208.71 feet to the point of beginning, containing 1.00 acres, more or less, Washington County, Arkansas. AND LESS AND EXCEPT:

A part of the North Half (N½) of the Fractional Northwest Quarter (Fr. NW¼) of Section Seven (7), Township Seventeen (17) North, Range Thirty (30) West, being more particularly described as follows: Commencing at the Northwest corner of said Section 7, said point being an existing railroad spike; thence N89°33'02"E 225.21 feet along the North line of said Section 7; thence S00°04'01"W 44.47 feet to the true point of beginning; thence S00°04'01"W 208.71 feet; thence



N89°33'02"E 208.71 feet; thence N00°04'01"E 208.71 feet; thence S89°33'02"W 208.71 feet to the point of beginning, containing 1.00 acre, more or less, Washington County, Arkansas. The above described tract also having rights of easement for the purpose of ingress, egress, and utilities over and across the following described lands: A part of the North Half (N½) of the Fractional Northwest Quarter (Fr. 1. NW¼) of Section Seven (7), Township Seventeen (17) North, Range Thirty (30) West, being more particularly described as follows: Commencing at the Northwest corner of said Section 7, said point being an existing railroad spike; thence N89°33'02"E 16.5 feet to the true point of beginning; thence S00°04'01"W 25.0 feet; thence N89°33'02"E 208.71 feet; thence S00°04'01"W 19.47 feet to the Northwest corner of the above described one (1) acre tract; thence N89°33'02"E 25.0 feet along the North line of said one (1) acre tract; thence N00°04'01"E 44.47 feet to the North line of said Section 7; thence S89°33'02"W 233.71 feet to the point of beginning.

PROPERTY DESCRIPTION: (Trustees Deed: 2008-27023)

Part of the North Half of the Fractional Northwest Quarter of Section 7, Township 17 North, Range 30 West of the Fifth Principal Meridian, Washington County, Arkansas, being more particularly described as follows:

Commencing at the Northwest corner of said Section 7;
thence along the North line of said Section 7
North 89 degrees 33 minutes 02 seconds East a distance of 225.21 feet;
thence leaving said North line, South 00 degrees 04 minutes 01 seconds West a distance of 44.47 feet to the point of beginning;
thence continue South 00 degrees 04 minutes 01 seconds West a distance of 208.71 feet;
thence South 89 degrees 33 minutes 02 seconds West a distance of 208.71 feet
thence North 00 degrees 04 minutes 01 seconds East a distance of 208.71 feet;
thence North 89 degrees 32 minutes 52 seconds East a distance of 208.71 feet to the point of beginning, containing 1.0 acres, and being subject to the right of way Piazza Road along the West boundary thereof.

