

City of Scottsbluff, Nebraska

Monday, July 3, 2023

Regular Meeting

Item Pub. Hear.2

Council to discuss and consider action on the Real Estate Purchase Agreement with Oswaldo R. Beraun and Lucia Beraun and authorize the Mayor to sign the Agreement.

Staff Contact: Kevin Spencer, City Manager

REAL ESTATE PURCHASE AGREEMENT

This Real Estate Purchase Agreement (the "Agreement") is made on _____, 2023 by and between Oswaldo R. Beraun and Lucia Beraun, husband and wife (the "Seller") and the City of Scottsbluff, Nebraska a municipal corporation (the "Buyer").

1. Recitals:

a. The Seller owns the following described real estate (the "Real Estate"):

The West 82 feet of Tax Lot 5C, situated in the NW1/4NE1/4 of Section 25, Township 22 North, Range 55 West of the 6th P.M., Scotts Bluff County, Nebraska, being more particularly described as follows: The South 126.36 feet of the North 382.22 feet of the S1/2 of the West 187 feet of the said NW1/4NE1/4, EXCEPT the West 10 feet thereof; AND EXCEPT the East 95 feet thereof.

More commonly known as 1301 East 10th Street, Scottsbluff, NE.

b. The Seller desires to sell and the Buyer desires to buy the Real Estate, under the terms and conditions set forth below.

2. Purchase Price: The "Purchase Price" shall be \$18,313.98, payable in cash or the equivalent at Closing.

3. Closing and Possession: Closing shall occur within Thirty (30) days after all conditions to Closing in paragraph 5 below have been met. Closing shall occur at a time and place mutually agreeable to the parties. At Closing, the Seller shall deliver to the Buyer a Warranty Deed to the Real Estate. The Buyer shall take possession of the Real Estate at Closing.

4. Performance at Closing:

a. The Buyer shall provide or execute at or before Closing:

i. The Purchase Price.

ii. Evidence that the person executing the documents on behalf of the Buyer, if applicable, is duly entitled and authorized to do so.

iii. A closing or settlement statement mutually agreeable to the parties.

b. The Seller shall provide or execute at or before Closing:

i. A Warranty Deed to the Real Estate.

ii. Evidence that the persons executing the documents on behalf of the Seller are duly entitled and authorized to do so.

iii. Satisfactory evidence of the release or full payment of any and all indebtedness secured by a mortgage or deed of trust on the Real Estate, if any.

iv. Satisfactory title commitment insurance binder showing marketable title in Seller.

v. A closing or settlement statement mutually agreeable to the parties.

5. Conditions to Closing:

a. Closing of this Agreement is conditional upon the City Council of the Buyer authorizing the purchase after a public hearing, and notice thereof, on the matter, as set forth in Neb. Rev. Stat. § 18-1755. The Buyer specifically reserves the right to terminate this Agreement with or without cause following the public hearing on the purchase.

b. Closing of this Agreement is conditional upon the Buyer receiving a title commitment insurance binder showing marketable title can be conveyed by Seller.

6. Evidence of Title:

The Buyer and Seller agree to divide the cost of a title commitment insurance binder for the Real Estate. If the title commitment insurance binder shows defects in title that make the Real Estate not marketable, the Seller may correct any defects in title before Closing, at Seller's expense. If the Seller elects not to correct any defects in title, the Buyer shall have the option to terminate this Agreement or waive the defect in title at Closing.

7. Taxes:

The Seller shall pay all real estate taxes and special assessments levied against the Real Estate for all years prior to the year of Closing along with all special assessments levied on the Real Estate in full. The real estate taxes for the year of Closing shall be prorated between the parties to the date of Closing based on the most recent tax statement available. The Seller has not received any notice of special assessments which affect the Real Estate and to the Seller's knowledge, no such assessments are pending or contemplated.

8. Risk of Loss:

Risk of loss for all improvements to the Real Estate shall remain with the Seller until Closing.

9. Inspection and Warranties:

Buyer has personally inspected the Real Estate and is entering into this Agreement based upon that inspection and not any representations or warranties, express or implied, made by the Seller, except as otherwise provided in this Agreement. The Seller agrees to deliver the Real Estate and the Buyer agrees to accept the Real Estate in its present condition "as is", "where is" and without any repair or correction, reasonable wear and tear excepted.

10. Expenses of Sale: Expenses of sale shall be paid as follows:

a. The Seller shall pay the Documentary Stamp Tax, if any.

b. The Buyer shall pay all document recording fees imposed by the Scotts Bluff County Register of Deeds.

c. The Buyer and Seller shall equally divide the cost of any title commitment insurance binder.

d. The Buyer and Seller shall equally divide all closing fees assessed by any closing agent or company.

e. Each party shall pay their own their own realtor fees, attorney's fees and accountant's fees.

11. Termination:

a. Unless otherwise set forth in this Agreement, this Agreement may be terminated before Closing by mutual agreement of the parties.

b. If this Agreement terminates according to any of its terms and conditions, it will have no further force or effect except for any provision intended to survive the termination of this Agreement. The parties' rights under this paragraph are cumulative and are in addition to the other rights and remedies available to them under any other agreement or applicable law.

12. Covenants:

a. Seller agrees and states that they have not entered into any other sales agreement for the Real Estate, and shall not enter into any other agreement after the execution of this Agreement until this Agreement is terminated.

b. Seller shall not sell, assign, or convey any right, title, or interest in or to the Real Estate, or create or permit to attach any new lien, security interest, easement, encumbrance, charge, or condition affecting the Real Estate.

c. There are no leasehold or tenancy interests on the Real Estate that shall survive the Closing, and the Seller shall not enter into any new leases, tenancies, or other occupancy arrangements affecting any portion of the Real Estate, unless otherwise authorized to do so by the Buyer.

d. To the best of Seller's knowledge, there is no actual or threatened suit or claim resulting from any controversy which may adversely affect the Real Estate or its ownership.

e. To the best of Seller's knowledge, there are no claims for construction liens or any unpaid amounts for labor or materials which would give rise to construction liens on the Real Estate.

f. The Seller has received no notices from any governmental authority indicating that the Real Estate is in violation of any zoning, building, environmental, fire or health codes or similar statutes, or that the Seller's operation of the Real Estate does not comply with all applicable governmental laws, rules and regulations.

g. To the best of Seller's knowledge, there are no latent defects in the Real Estate.

13. Notices: Any notices or other communications to the Seller or the Buyer which are required to be or may be given under this Agreement shall be in writing and shall be deemed to have been given if sent by regular U.S. first class mail, or by certified mail, return receipt requested, or by recognized overnight delivery service to the respective parties to the addresses set out below.

If to Seller

Oswaldo and Lucia Beraun

2906 Avenue F

Scottsbluff, NE 69361

Scottsbluff, NE 69361

If to Buyer

City of Scottsbluff
c/o Kimberly Wright
2525 Circle Drive
Scottsbluff, NE 69361

14. General Provisions:

a. This Agreement shall not be assignable by either party without the consent of the other party. This Agreement is binding upon and inures to the benefit of the parties and their respective successors and permitted assigns. No assignment of all or any portion of this Agreement shall relieve any party of its obligations under this Agreement.

b. The parties agree that time is of the essence with respect to this Agreement.

c. No waiver of any breach of any provision of this Agreement will be deemed a waiver of any other breach of this Agreement. No extension of time for performance of any act will be deemed an extension of the time for performance of any other act.

d. This Agreement may be executed in one or more counterparts, each of which may be considered as an original.

e. This Agreement contains the entire agreement of the parties and the terms and provisions of this Agreement supersede all other terms and provisions previously extended to either party. This Agreement may be subsequently amended only in writing signed by all parties.

f. This Agreement shall be construed according to the laws of Nebraska.

[SIGNATURE PAGE FOR REAL ESTATE AGREEMENT]

SELLER:

Oswaldo R. Beraun

Date: _____

Lucia Beraun

BUYER: The City of Scottsbluff, Nebraska

BY _____

Jeanne McKerrigan, Mayor

Date: _____