

DATE SUBMITTED 9/23/22 \_\_\_\_\_  
 SUBMITTED BY AB/mb \_\_\_\_\_  
 DATE ACTION REQUIRED 10/5/22 \_\_\_\_\_

COUNCIL ACTION (x)  
 PUBLIC HEARING REQUIRED ( )  
 RESOLUTION ( )  
 ORDINANCE 1<sup>ST</sup> READING ( )  
 ORDINANCE 2<sup>ND</sup> READING ( )  
 CITY CLERK'S INITIALS ( )

**IMPERIAL CITY COUNCIL  
 AGENDA ITEM**

SUBJECT:	DISCUSSION/ACTION:  <p align="center"><b>APPROVAL OF RESOLUTION AUTHORIZING CITY MANAGER TO ENTER INTO PURCHASE AND SALE AGREEMENT TO SELL PORTION OF CITY OF IMPERIAL RIGHT-OF-WAY ALONG IMPERIAL AVENUE TO 5<sup>TH</sup> STREET DEVELOPMENT, LLC</b></p>
DEPARTMENT INVOLVED: City Manager / Community Development	
BACKGROUND/SUMMARY:  The City of Imperial has worked successfully with 5 <sup>th</sup> Street Development, LLC on a new Post Office, McDonald's and Starbucks at the NW Corner of Highway 86 and 15 <sup>th</sup> Street. All three businesses are now open and are actively serving community needs.  The Developer has requested that the City of Imperial sell him a portion of City Right-of-Way that is located on the east side of Imperial Avenue just north of the Post Office and south of Belford Road. The Developer is working to make application with the City of Imperial on a project that would encompass said Right-of-Way along with the remaining portion of land already owned by the Developer north of the Post Office (and south of Belford Road).  The Developer would pay the City \$50,000 for the Right-of-Way. The Developer would not complete acquisition of the Right-of-Way unless/until the City of Imperial entitles the project he is contemplating. At time of entitlement, the City is likely to place conditions within the Conditions of Approval that will provide improved traffic circulation in that area including connecting Belford Road to Highway 86.  The authorization sought through the Resolution provides the City Manager and/or his designee the authority to execute appropriate agreement(s) between the City of Imperial and 5 <sup>th</sup> Street Development to consummate the proposed transaction.	
FISCAL IMPACT:  The City of Imperial will receive \$50,000 as consideration for the acquisition of about 20,000 square feet of Right-of-Way at such time the transaction is consummated.	ADMIN SERVICES SIGN INITIALS _____
STAFF RECOMMENDATION:  Staff recommends that the City Council approve the attached Resolution authorizing the City Manager (Dennis Morita) to enter into appropriate documents, including, but not limited to, a Purchase and Sale Agreement with 5 <sup>th</sup> Street Development to sell a portion of Right-of-Way on Imperial Avenue.  ATTACHMENT(S):  Resolution 22-ZZZ Purchase and Sale Agreement with Map showing subject Right-of-Way	DEPT. INITIALS _____

<p style="text-align: right;">CITY MANAGER'S INITIALS</p> <hr style="width: 100px; margin-left: auto;"/> <p style="text-align: right; color: blue;"><i>WFM</i></p>	<p style="text-align: right;">MANAGER'S RECOMMENDATION: City Manager concurs with staff recommendation.</p>
<p style="text-align: right;">APPROVED     ( ) DISAPPROVED     ( )</p> <p style="text-align: right;">REJECTED     ( ) DEFERRED     ( )</p>	<p style="text-align: right;">MOTION:</p> <p style="text-align: right;">SECONDED:     AYES: ABSENT:     NAYES:</p> <p style="text-align: right;">REFERRED TO:</p>

RESOLUTION NO 2022-65

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL APPROVING THE SALE OF APPROXIMATELY 20,000 SQUARE FEET OF RIGHT OF WAY ON IMPERIAL AVENUE AND THE AUTHORIZING CITY MANAGER AND/OR HIS DESIGNEE TO ENTER INTO A PURCHASE AND SALE AGREEMENT TO EFFECTUATE SAID SALE**

THE CITY COUNCIL OF THE CITY OF IMPERIAL DOES HEREBY RESOLVE AS FOLLOWS:

Whereas, The City of Imperial desires to expand its local economy by bringing new businesses that serve the needs of residents and visitors alike, and,

Whereas, 5<sup>th</sup> Street Development, LLC has completed construction of a new United States Post Office, McDonalds and Starbucks on land adjacent to the subject property, and,

Whereas, 5<sup>th</sup> Street Development, LLC owns land north of the United States Post Office and south of Belford Road that could host another retailer, and,

Whereas, Development of the site north of the United States Post Office and south of Belford Road would result in significant and substantial improvements to Imperial Avenue, Belford Road and link Belford Road to Highway 86.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF IMPERIAL HEREBY FIND, DETERMINE AND ORDER AS FOLLOWS:**

1. The sale of 20,000 of Right-of-Way along Imperial Avenue adjacent to land currently owned by 5<sup>th</sup> Street Development, LLC will produce \$50,000 in income to the City of Imperial.
2. The development of the site already owned by 5<sup>th</sup> Street Development incorporating the subject Right-of-Way will result in additional retail/services needed by residents and visitors.
3. The development of the site already owned by 5<sup>th</sup> Street Development incorporating the subject Right-of-Way will result in improved traffic circulation in the area.
4. The City Manager is hereby authorized to enter into a Purchase and Sale Agreement to sell subject Right-of-Way to 5<sup>th</sup> Street Development, LLC.
5. The City Manager is authorized and directed to take all actions necessary and convenient to implement the Purchase and Sale Agreement described in this Resolution. Further, the City Manager, in consultation with the City Attorney is hereby provided authority to make minor changes to the Purchase and Sale Agreement as to affect the overall objective of the transaction.

6. Certification. The City Clerk shall certify the adoption of this Resolution.

**PASSED, APPROVED AND ADOPTED by the City Council of the City of Imperial this 5th Day of October, 2022.**

\_\_\_\_\_  
Geoff Dale, Mayor

ATTEST:

\_\_\_\_\_  
Alexis Brown, Assistant City Manager and Deputy City Clerk

[SEAL]

STATE OF CALIFORNIA )

COUNTY OF IMPERIAL )ss

CITY OF IMPERIAL )

I, Alexis Brown, Deputy City Clerk of the City of Imperial, do hereby certify that the forgoing Resolution No. 22- was duly and regularly adopted by the City Council of the City of Imperial at a meeting thereof held on the 5th day of October, 2022, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
Alexis Brown, Deputy City Clerk

## **PURCHASE AND SALE AGREEMENT**

This Purchase and Sale Agreement (“Agreement”) is entered into as of the 26th day of August, 2022 (“Effective Date”) between **CITY OF IMPERIAL** (“Seller”) and **5th Street Development Imperial, LLC** a California limited liability company, or its assignee (“Buyer”). In consideration of the several promises and representations of the parties set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Property. Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, a to-be-created parcel pursuant to Paragraph 4.D. below containing approximately 4 acres of land located at the southeast quadrant of 15<sup>th</sup> Street and Belford Rd in the City of Imperial, County of Imperial, State of California (the “Property”) and more particularly described in Exhibit “A” attached hereto, upon the terms and conditions set forth in this Agreement.

2. Financial Terms.

A. Purchase Price. Purchase Price. The total “Purchase Price” shall be Fifty Thousand and No/100 Dollars (\$50,000.00).

B. Deposit. Within five (5) business days after the full execution and delivery of this Agreement, Buyer shall open an escrow account (“Opening of Escrow”) with the Riverside office of First American Title Company (“Escrow Holder”). Within five (5) business days of Opening of Escrow, Buyer shall deliver funds (the “Deposit”) in the amount of Five Thousand and No/100 Dollars (\$5,000.00) to Escrow Holder. Until 5:00 p.m. Pacific time on the last day of the Site Investigation Period, the Deposit shall remain refundable to Buyer if the transaction contemplated by this Agreement is not consummated for any reason whatsoever, provided that all expenses related to cancellation of the escrow are paid by Buyer. Thereafter, the Deposit and all interest that is earned by said funds shall be credited against the Purchase Price at Close of Escrow or otherwise disbursed in accordance with the terms of this Agreement.

C. Balance. The balance of the Purchase Price (after credit for the Deposit and interest accrued thereon) shall be paid by Buyer to Seller at the Close of Escrow, by cash, [title company or bank check, wire transfer or other customary means,] to an account designated by Seller.

3. Close of Escrow.

A. Date. The conveyance of the Property and the payment of the balance of the Purchase Price (“Close of Escrow”) shall take place at the office of Escrow Holder, during normal business hours, within thirty (30) days following satisfaction of all of the conditions set forth in paragraph 4 below.

- B. Conveyance. At Close of Escrow, upon the receipt of the Purchase Price, Seller shall deliver to Buyer a Grant Deed in recordable form, conveying fee simple title to the Property, subject only to current real property taxes and those title exceptions approved by Buyer, and free of all contracts, leases and like documents, except as approved by Buyer in writing, together with a Seller-paid ALTA policy insuring such title in Buyer. Seller shall also execute and deliver to Buyer a certification, acceptable to Buyer, setting forth Seller's address, federal tax identification number and other documents necessary for the purpose of the provisions of Sections 1445 and 7701 of the Internal Revenue and Code of 1986, as amended. In addition, Seller shall execute and deliver to Buyer evidence satisfactory to Buyer that Seller is exempt from the withholding provisions of the California Revenue and Taxation Code, as amended (or comparable regulations of other jurisdictions) and that neither Buyer nor Escrow Holder is required to withhold any amounts from the Purchase Price pursuant to such provisions.
- C. Costs and Prorations. Real estate taxes, outstanding assessments that are not liens on the Property, fire and extended coverage insurance premiums, rent, utilities and operating expenses (as applicable) shall be prorated as of the date of Close of Escrow. Seller shall pay any transfer taxes and recording fees. Seller and Buyer shall each pay one-half (1/2) of any escrow fees and each party shall pay its own attorneys' fees and costs.
- D. Simultaneous Delivery; Conditions Concurrent. All documents and other items to be delivered at the Closing shall be deemed to have been delivered simultaneously, and no delivery shall be effective until all such items have been delivered.
4. Approval Periods.
- A. Title Matters. Within twenty (20) days after the Opening of Escrow, Seller shall furnish to Buyer, at Seller's expense, a preliminary title report and binder on the Property, copies of all exceptions, conditions, covenants and restrictions affecting the Property, and a copy of all rental agreements and other evidence of the potential rights of anyone other than Seller to the Property ("Title Commitment"). The Title Commitment shall be issued by First American Title Company ("Title Company") and shall show good and marketable title in Seller.
- B. Site Investigation Period. Buyer shall have one hundred eighty (180) days following Opening of Escrow ("Site Investigation Period") to enter upon the Property and investigate whether, in Buyer's sole discretion, the Property is suitable for Buyer's intended purpose. The investigation may include, without limitation, soil and sub-soil conditions, wetland demarcations, environmental, engineering, surveys, land use and planning, utility and other studies. Any such entry shall be at Buyer's expense and risk (holding Seller harmless from any claims for injury to person or property arising from Buyer's activities on the Property), but shall not constitute a taking of possession, and Buyer shall return each test location to substantially its original condition. This investigation may

also include (i) obtaining final approval by a major tenant for the development of a store on the Property and (ii) dealing with governmental bodies with authority over the Property. Should Buyer determine that the Property is not suitable, Buyer shall provide written notice of same to Escrow Holder within five (5) days after the end of the Site Investigation Period and the Deposit shall then be promptly returned to Buyer and this Agreement shall be terminated with no further obligations to either party.

- C. Development Approvals. If the Property needs to be rezoned, replatted, its permitted use changed or similarly redesignated or have building permits issued ("Development Approvals"), Buyer shall have one hundred eighty (180) days from the end of the Site Investigation Period to use reasonable efforts to accomplish such Development Approvals ("Development Approval Period"). Buyer shall pay all costs of Development Approvals, and Seller will cooperate (at no cost) in that effort.
- D. Creation of Parcel. Prior to the Close of Escrow, Buyer and Seller shall cooperate with the creation of a legal parcel for the Property as defined in Paragraph 1 above. Buyer shall be responsible for drafting all documents required for the creation of such parcel and Seller shall cooperate with the processing of all required applications and approvals.
- E. Disposition and Development Agreement. This transaction is subject to a finding of Public Benefit and Disposition and Development Agreement by the City of Imperial City Council.

5. Seller's Warranties. Seller represents and warrants, to induce Buyer to enter into the Agreement, in addition to any other representations herein, as of the date hereof and the date of Close of Escrow (and all representations and warranties shall survive the Close of Escrow) that:

- A. Seller owns good and marketable fee simple title to the Property;
- B. Seller has the authority to execute this Agreement and transfer title as stated;
- C. At Close of Escrow, title to the Property will be free and clear of all leases, liens, easements, covenants, restrictions, parties in possession and/or special encumbrances, except title exceptions permitted by Buyer;
- D. To the best of Seller's actual knowledge after investigation, the Property, including soil, sub-soil, surface and ground water, improvements and anything else on or under the Property now is and at Close of Escrow will be free of all contamination including but not limited to asbestos, hazardous waste or hazardous substances, as defined by applicable federal and state laws, and by the Resource Conservation and Recovery Act of 1976, as amended and regulations thereunder, the Comprehensive Environmental Response, Compensation and Liability Act, the Clean Water Act, the California Hazardous Waste Control Act, the California Health and Safety Code, or similar and applicable laws and regulations. Seller

further has neither been advised of nor received any notice regarding any contamination affecting the Property;

- E. There are no violations of any laws or regulations of applicable governmental authorities affecting the Property, nor are there any governmental or other actions or legal proceedings pending or threatened against Seller or the Property;
- F. There are no special assessments or eminent domain proceedings pending or threatened against Seller or the Property;
- G. The Property has full, free and adjacent access to and from public highways and roads and there are no facts or conditions which would result in such access being altered; and
- H. From and after the date hereof and until Close of Escrow, Seller will maintain the Property in good order and condition and not permit or commit waste thereon.

For purposes of this Agreement, whenever the phrase “to Seller’s knowledge” or words of similar import are used, they shall be deemed to refer to the actual knowledge of (i) the City of Imperial, (ii) all employees or agents of Seller with supervisory responsibilities concerning the Property, and (iii) such other persons at a management or supervisory level who would, in the ordinary course of their responsibilities as employees or agents of Seller, receive notice from other agents or employees of Seller or from other persons or entities of any of the matters described in the representations and warranties in this Agreement which are limited by the knowledge of Seller.

6. Condemnation. If, prior to Close of Escrow, any part of the Property is taken pursuant to eminent domain proceedings (or private purchase in lieu thereof), or any such proceedings commence, then Buyer may elect by written notice to Seller either to terminate this Agreement or proceed to Close of Escrow with an adjustment in the Purchase Price equal to any condemnation award or payments received or to be received by Seller. Upon any such termination pursuant to this paragraph, this Agreement shall be terminated without any rights or obligations from or to either party and the Deposit shall be promptly returned to Buyer. Notwithstanding the foregoing, there is no litigation pending or, after due and diligent inquiry, to Seller’s knowledge, threatened, against Seller that arises out of the ownership of the Property or that might detrimentally affect the value, ownership, use or operation of the Property or the ability of Seller to perform its obligations under this Agreement. Seller shall notify Buyer promptly of any such litigation of which Seller becomes aware.

7. Default. If either party fails either to waive a condition or to terminate this Agreement, and because of such failure the other party wants to claim a default, the other party shall give written notice specifying the nature of the failure to the alleged defaulting party, who shall have thirty (30) days (or such time as is reasonable if the failure cannot be reasonably cured in thirty (30) days) to cure the failure. If the failure is on the part of the Seller, Buyer may terminate this Agreement, elect to cure the failure on behalf of Seller, or seek specific performance and/or damages. If the failure is on the part of Buyer, Seller’s exclusive remedy shall be to receive the Deposit as full liquidated damages.



IN THE EVENT THE SALE OF THE PROPERTY PURSUANT TO THIS AGREEMENT IS NOT CONSUMMATED SOLELY BECAUSE OF A DEFAULT UNDER THIS AGREEMENT ON THE PART OF BUYER, THE DEPOSIT (TO THE EXTENT DEPOSITED INTO ESCROW BY BUYER) SHALL BE PAID TO AND/OR RETAINED BY SELLER AS LIQUIDATED DAMAGES. THE PARTIES HAVE AGREED THAT SELLER'S ACTUAL DAMAGES, IN THE EVENT OF A DEFAULT BY BUYER, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, BY PLACING THEIR INITIALS BELOW, THE PARTIES ACKNOWLEDGE THAT THE DEPOSIT HAS BEEN AGREED UPON, AFTER NEGOTIATION, AS THE PARTIES' REASONABLE ESTIMATE OF SELLER'S DAMAGES AND AS SELLER'S SOLE AND EXCLUSIVE REMEDY AGAINST BUYER, AT LAW OR IN EQUITY, IN THE EVENT OF A DEFAULT UNDER THIS AGREEMENT ON THE PART OF BUYER. SELLER HEREBY WAIVES ANY AND ALL BENEFITS IT MAY HAVE UNDER CALIFORNIA CIVIL CODE SECTION 3389.

Seller's  
Initials \_\_\_\_\_

Buyer's  
Initials \_\_\_\_\_

8. Successors and Assigns. Buyer shall have the absolute and unconditional right at any time and from time to time to assign this Agreement to any person or entity controlled by, controlling, or under common control with, Buyer; provided, however, all other assignments shall require the consent of Seller, which consent shall not be unreasonably withheld, conditioned or delayed. Subject to the provisions of the immediately preceding sentence, this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective heirs, administrators, executors, assigns and successors in interest.

9. Assignment. Buyer shall provide Seller with a copy of any assignment within ten (10) days after the effective date of any such assignment. Thereafter, Seller shall look only to the assignee for the performance of all of Buyer's obligations under this agreement.

10. 1031 Exchange. At the sole option of Seller, Seller may elect to consummate the transaction as a simultaneous or non-simultaneous like-kind exchange pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended, and requiring Buyer to cooperate with Seller (by executing such documents and taking such actions as may be reasonably necessary) to effectuate the transaction as a like-kind exchange. Buyer is to be at no cost or expense in the exchange and shall not be required to take title to any other property, nor is the Close of Escrow to be delayed, due to Seller's exercise of this provision.

11. Brokers. The parties represent and warrant that neither party is represented in this transaction and no commissions are due.

12. Costs of Litigation. In the event that either party hereto brings any action or files any proceeding in connection with the enforcement of its respective rights under this Agreement or as a consequence of any breach by the other party hereto of its obligations hereunder, the prevailing party in such action or proceeding shall be entitled to have all of its attorneys' fees and out-of-pocket expenditures paid by the losing party. Such fees and costs shall include post-judgment fees, costs and expenses incurred on appeal or in collection of any judgment. This

provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

13. Additional Consideration. This transaction is subject to notice by the City of Imperial to applicable local, state and federal agencies of intent to dispose of property for public benefit purposes.

14. Time is of the Essence. Seller and Buyer hereby acknowledge and agree that time is strictly of the essence with respect to each and every term and provision of this Agreement.

15. Entire Agreement. This document is the full agreement between the parties regarding the subject matter hereof and may only be altered in a writing signed by both the parties. This Agreement shall not be strictly construed for or against any party. Each party acknowledges that its independent counsel has reviewed this Agreement and agrees that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

16. Acceptance. To evidence their agreement with the foregoing and their intent to be legally bound, the parties have executed this Agreement as of the Effective Date.

[Signatures on following page.]

**SELLER:**

**City of Imperial**

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Notice Address:

**BUYER:**

**5th Street Development Imperial, LLC  
a Delaware limited liability company**

By \_\_\_\_\_

Christopher Peto

Notice Address:

5th Street Development Imperial, LLC  
1011 Camino Del Mar #258

Del Mar, Ca 92014

EXHIBIT "A"  
(Description of Property)

