

**PURCHASE AND SALE AGREEMENT  
AND  
ESCROW INSTRUCTIONS**

This Purchase and Sale Agreement and Escrow Instructions ("Agreement") is entered into effective as of October\_\_\_\_, 2022 (the "Effective Date"), by and among Red River Cattle, LLP, an Arizona limited liability partnership ("Red River Cattle"), Pinal Feeding Co., an Arizona corporation (formerly known as Smith & Kelly Feed Co. Inc., an Arizona corporation) ("Pinal Feeding", and collectively with Red River Cattle, the "Seller"), and the City of Maricopa, an Arizona municipal corporation ("City" or "Buyer"), (individually a "Party" and collectively the "Parties"), on the terms and conditions contained herein.

1. Sale and Purchase.

1.01 Real Property. On the terms and conditions contained in this Agreement, Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller approximately 230 acres of the real property generally located east of N White and Parker Road between W. Maricopa-Casa Grande HWY and W Peters and Nall Road, Maricopa, Pinal County, Arizona, including all or portions of Assessor Parcel Nos. 502-06-009F, 502-43-001H, 502-43-001R, and 502-43-001Q, generally depicted on Exhibit A, and legally described and depicted on Exhibit A-1, together with all of Seller's rights, title and interest in and to any improvements located thereon; (a) all appurtenances, hereditaments, easements, rights-of-way, reversions, remainders, development rights, well rights, irrigation water rights, and air rights; (b) all oil, gas, and mineral rights not previously reserved; and (c) any other rights or privileges appurtenant to such real property (collectively, the "Property").

1.02 Buyer and Seller hereby specifically acknowledge and agree that there are fixtures and personal property, including but not limited to those described on Exhibit B, and livestock currently located on the Property, and that Seller may remove all of such fixtures, personal property and livestock from the Property. Seller shall be authorized to continue to use the Property and well located on the Property (registry ID #55-623828) in a manner consistent with current business operations for one (1) year after Closing in accordance with the Real Property Lease attached hereto as Exhibit C (the "Real Property Lease"). The Real Property Lease shall permit Seller to sublease a portion of the Property to Duncan Family Farms, LLC, an Arizona limited liability company, for the purpose of producing composted material from the manure provided by Seller (the "Duncan Sublease"). Seller will have one (1) year after Closing to remove all fixtures and personal property and livestock from the Property; provided, however, after the expiration of such one (1) year period after Closing, Seller shall also have an additional one (1) month period to remove fixtures and other personal property from the Property. Seller hereby agrees that the livestock will be relocated to a site outside the current City limits and will not, in any event, be located on parcels adjacent to the Property that are retained by Seller.

2. Escrow and Title Company. The City and Seller shall open an escrow ("Escrow") with Title Security Agency of Pinal County, LLC, 421 E. Cottonwood Lane, Casa Grande, Arizona 85122, Attn: LaTisha Sopha ("Title Company") to facilitate the consummation of the sale of the Property. This Agreement shall also serve as escrow instructions to Title Company. The City and Seller shall provide additional instructions reasonably requested by Title Company in connection with opening the Escrow or otherwise facilitating the consummation of the sale of the Property, not inconsistent with the terms of this Agreement. In the event of any conflict or inconsistency between any additional Escrow Instructions requested by Title Company and this Agreement, the provisions of this Agreement shall prevail.

3. Purchase Price; Earnest Money.

3.01 Purchase Price. The purchase price ("Purchase Price") to be paid by Buyer for the Property shall be Twelve Million and 00/100 Dollars (\$12,000,000.00). There shall be no adjustment of the Purchase Price if the Property is calculated at more or less than 230 acres in the Survey (defined in Section 5.03). The Purchase Price shall be paid in cash or certified funds as follows:

(a) Payment of Five Thousand and 00/100 Dollars (\$5,000.00) Earnest Money as set forth in Section 3.02.

(b) Payment of the remainder of the Purchase Price at Closing ("Closing Payment").

3.02 Earnest Money. On the Opening of Escrow (as fined in Section 4.01), Buyer shall deposit with the Title Company the amount of Five Thousand and No/100 Dollars (\$5,000.00) ("Earnest Money".) The Earnest Money shall become non-refundable to Buyer at the expiration of the Feasibility Period (as defined in Section 6.02(b)), except as otherwise provided in this Agreement.

If the transaction contemplated hereby is consummated in accordance with the terms and provisions hereof, the Earnest Money shall be credited toward the Purchase Price at Closing. If the transaction is not so consummated, the Earnest Money shall be held and delivered by the Title Company as hereinafter provided.

4. Escrow Opening and Closing.

4.01 Opening of Escrow. The Title Company shall sign and date this Agreement on the space provided at the end of this Agreement, indicating that Escrow has been opened as of such date ("Opening of Escrow"), which date shall be the date at which Title Company is in possession of a fully executed Agreement. Buyer shall deposit the Earnest Money with the Title Company no later than the date that is three (3) business days after the Opening of Escrow. The Title Company shall provide a copy of the fully executed Agreement to the City and Seller within five (5) days of the Opening of Escrow.

4.02 Closing. Subject to the Conditions Precedent set forth in Section 7, the closing of this transaction and escrow (the "Closing" or "Close of Escrow") shall occur thirty (30) days after the expiration of the Feasibility Period (as defined in Section 6.02(b)), unless otherwise agreed to in writing by both parties (the "Closing Date").

5. Title

5.01 Status of Title. Within five (5) days after Opening of Escrow, or as soon thereafter as possible, Title Company shall provide Seller and City with a current commitment for title insurance (the "Title Commitment") for the Property, disclosing all matters of record and other matters of which Title Company has knowledge which relate to the title to the Property, and a legible copy of each of the instruments and documents referred to in the Title Commitment. The Title Commitment shall include Title Company's requirements for Closing and issuing its title policy. Seller shall satisfy those requirements of Seller requiring a release of consensual monetary encumbrances on or before the Closing (excluding liens for current taxes or assessments not yet due and payable, improvement district liens, and any liens caused by

the acts or omissions of Buyer or its agents or employees). Buyer shall have ten (10) days after receipt of the Title Commitment and copies of all instruments and documents referred to in the Title Commitment, or five (5) days after the receipt of any amendment thereto and copies of all instruments and documents referred to therein, to object in writing to Seller to any matter shown thereon. If Buyer fails to object within said period, the condition of title to the Property shall be deemed approved. If Buyer timely objects to any matter disclosed by the Title Commitment or any amendment thereto, the Seller may, but is not obligated, to use reasonable efforts to cure such objection(s) (although in no event shall the Seller be required to expend funds) within fifteen (15) days thereafter. If, within such 15-day period, the Seller is unsuccessful or responds that it is unwilling to cure Buyer's objection(s), Buyer shall have five (5) days following notice from the Seller of its inability or unwillingness to cure in which Buyer shall elect by delivering written notice to the Seller and Title Company either to (a) waive its objection(s); or (b) terminate this Agreement. If Buyer elects to terminate this Agreement, Title Company shall deliver the Earnest Money to Buyer without further notice to or from the Seller and neither party shall thereafter have any further rights or obligations hereunder except for those obligations that survive the termination of this Agreement or the Close of Escrow as provided in this Agreement. Failure by Buyer to make a timely election shall constitute an election to terminate this Agreement. Failure by the Seller to give any notice shall constitute the Seller's election not to cure. Notwithstanding anything else stated herein, in all events, regardless of whether Buyer has given notice of objection as stated above, the Seller shall be obligated to satisfy and otherwise remove all consensual monetary and financial liens and encumbrances in existence at the time of execution of this Agreement or incurred by the Seller on or before Closing hereunder (excluding liens for current taxes or assessments not yet due and payable, improvement district liens, and any liens caused by the acts or omissions of Buyer or its agents or employees). Any title exceptions which have not been objected to or waived by Buyer shall be called "Permitted Title Exceptions." Notwithstanding anything in this Agreement to the contrary, Buyer hereby consents to and agrees that the following leases of the Property shall be deemed to be Permitted Title Exceptions and, with the exception of the Real Property Lease and Duncan Sublease which will terminate within one (1) year after Closing, all such Leases and rents related thereto will be assigned to Buyer: (a) Site Lease dated October 19, 1999, by and between Pinal Feeding, as lessor, and American Towers, Inc., a Delaware corporation (as successor in interest to VoiceStream PCS III Corporation, a Delaware corporation), as lessee (the "American Towers Lease"); (b) Lease Agreement dated August 14, 1990, by and between Pinal Feeding, as lessor, and East Valley Institute of Technology, School District #401, a political subdivision of the State of Arizona (as successor in interest to Casa Grande Communications, an Arizona limited partnership), as lessee, as amended by that certain Lease Assignment, Assumption and Amendment Agreement dated September 2, 1994, the First Amendment to Lease Agreement dated April 30, 2009, the Second Amendment to Lease Agreement dated September 6, 2012, the Third Amendment to Lease Agreement dated September 29, 2017, the Fourth Amendment to Lease Agreement dated March 10, 2020, and the Assignment and Assumption of Lease Agreement dated December 2, 2020 (collectively, the "East Valley Institute of Technology Lease" and collectively with the American Towers Lease, the "Leases"), (c) the Real Property Lease, and (d) the Duncan Sublease.

5.02 Title Policy. At Closing, Title Company shall furnish to Buyer an ALTA extended coverage owner's policy of title insurance in the amount of the Purchase Price for the Property insuring Buyer's title to the Property, subject only to the usual printed exceptions contained in such title insurance policies and those matters approved by Buyer pursuant to Section 5.01. The Seller shall pay the premium for a standard coverage owner's policy and

Buyer shall pay the difference in premium cost between an ALTA extended coverage and a standard owner's policy and the cost of any endorsements requested by Buyer.

5.03 Survey. As soon as reasonably possible after the Opening of Escrow, the Seller shall obtain an ALTA survey (the "Survey") to establish the legal description of the Property. On or before the expiration of the Feasibility Period, Buyer shall reimburse Seller for 50% of the cost of the Survey. Buyer shall have until the end of the Feasibility Period, but not less than ten (10) days to review and approve the Survey of the Property. The Seller shall furnish to Buyer a final Survey of the Property prior to the Close of Escrow. If the Survey describes the Property as less than 230 acres, Buyer shall have five (5) days following receipt of the survey in which Buyer shall elect by delivering written notice to the Seller and Title Company either to (a) proceed to Close of Escrow or (b) terminate this Agreement. If Buyer elects to terminate this Agreement, Title Company shall deliver the Earnest Money to Buyer without further notice to or from the Seller and neither party shall thereafter have any further rights or obligations hereunder except for those obligations that survive the termination of this Agreement or the Close of Escrow as provided in this Agreement. Failure by the Buyer to give any notice shall constitute the Buyer's election to proceed to Close of Escrow.

6. Preliminary Due Diligence; Examination of Property.

6.01 Preliminary Due Diligence. Within five (5) days after the Opening of Escrow, or as soon thereafter as possible, Seller shall provide to Buyer the following information (the "Property Information"), to the extent the Property Information is in the Seller's possession or control: an ALTA survey including existing cross-access easements, drainage easements, ditch easements and/or utility easements/agreements, title report, flood zone status/Elevation Certificate, proof of legal access, septic system reports and permits, well documentation and water rights, Phase 1 report or any other environmental studies or approvals related to current or past operations on the Property of which the Seller has knowledge, soil and archeological studies tax information, list of mechanical equipment or other ancillary assets that will stay with the Property ("Preliminary Items of Due Diligence").

The Seller makes no representation or warranty whatsoever regarding the Property Information, except that the Seller has no actual knowledge of any incorrect information contained therein (and such representation is made without investigation or review by the Seller or the Property Information). The Seller nor any of its respective officers, directors, employees, attorneys, engineers, agents or representatives shall be deemed to make or have made any representation or warranty as to the adequacy, validity, accuracy, fitness for a particular purpose or completeness of the Property Information, and neither Seller nor any of its officers, directors, employees, attorneys, engineers agents or representatives shall have any liability resulting from the use of or reliance on the Property Information. If this transaction does not close for any reason, Buyer shall not use any Property Information provided to Buyer and shall return the same and any copies thereof to the Seller.

Buyer acknowledges and agrees that upon Closing, Seller shall sell and convey the Property to Buyer and Buyer shall accept the Property "**AS IS, WHERE IS, WITH ALL FAULTS,**" except to the extent expressly provided otherwise in this Agreement or any document executed by Seller and delivered to Buyer at Closing. Except as expressly set forth in this Agreement or any document executed by Seller and delivered to Buyer at Closing, Buyer has not relied and will not rely on, and Seller has not made and is not liable for or bound by, any express or implied warranties, guarantees, statements, representations or information pertaining

to the Property or relating thereto (including specifically, without limitation, the Property information packages distributed with respect to the Property) made or furnished by Seller, or any property manager, real estate broker, agent or third party representing or purporting to represent Seller, to whomever made or given, directly or indirectly, orally or in writing. Buyer represents that it is a knowledgeable, experienced and sophisticated Buyer of real estate and that, except as expressly set forth in this Agreement, it is relying solely on its own expertise and that of Buyer's consultants in purchasing the Property and shall make an independent verification of the accuracy of any documents and information provided by Seller. Buyer will conduct such inspections and investigations of the Property as Buyer deems necessary, including, but not limited to, the physical and environmental conditions thereof, and shall rely upon same. By failing to terminate this Agreement prior to the expiration of the Feasibility Period, Buyer acknowledges that Seller has afforded Buyer a full opportunity to conduct such investigations of the Property as Buyer deemed necessary to satisfy itself as to the condition of the Property and the existence or non-existence or curative action to be taken with respect to any Hazardous Materials on or discharged from the Property, and will rely solely upon same and not upon any information provided by or on behalf of Seller or its agents or employees with respect thereto, other than such representations, warranties and covenants of Seller as are expressly set forth in this Agreement. Upon Closing, Buyer shall assume the risk that adverse matters, including, but not limited to, adverse physical or construction defects or adverse environmental, health or safety conditions, may not have been revealed by Buyer's inspections and investigations. Buyer hereby represents and warrants to Seller that Buyer is represented by legal counsel in connection with the transaction contemplated by this Agreement. Buyer waives any and all rights or remedies it may have or be entitled to, deriving from disparity in size or from any significant disparate bargaining position in relation to Seller.

#### 6.02 Examination of Property.

(a) Upon making prior arrangements with the Seller, Buyer, its agents or employees may enter upon the Property for the purposes of inspecting the Property, conducting environmental, soil, engineering, structural and other tests as Buyer may deem necessary. Buyer shall not perform any invasive testing upon the Property without Seller's prior written consent. Buyer shall restore the affected portion of the Property to its condition prior to the performance of such studies or inspections. Buyer hereby releases Seller from any and all claims and liability which may arise from Buyer's entry upon and activities upon the Property, and Buyer shall indemnify, defend and hold the Seller harmless for, from and against all claims, demands, actions, liabilities and obligations (including, but not limited to, mechanics' and materialmen's liens) arising from any exercise of the rights granted under this paragraph (except to the extent caused by Seller's gross negligence or willful misconduct), including, but not limited to any and all costs, expenses and attorneys' fees, through all mediation, arbitration, trial and appellate proceedings, and agrees that this obligation to indemnify shall survive any termination of this Agreement and the Close of Escrow. All expenses incurred in connection with the exercise of such license by Buyer shall be the responsibility of Buyer. Prior to any entry on the Property by Buyer or any of its agents, employees, representatives and/or designees, Buyer shall secure and maintain: (i) a comprehensive general liability and property damage policy in an amount of not less than One Million and 00/100 Dollars (\$1,000,000.00), with a deductible (or self-insured retention) in an amount reasonably acceptable to Seller, which will cover the activities of Buyer and its agents and consultants on the Property and shall name Seller as an additional insured thereunder, and (ii) workers' compensation and employer's liability insurance in accordance with the provisions of Arizona law. Prior to, and as a condition precedent to, any entry on the Property by Buyer or any of its agents, employees,

representatives and/or designees, Buyer shall provide to Seller a certificate of insurance evidencing the insurance required herein. Buyer's rights to inspect the Property are subject to the rights of the lessees under the Leases. Buyer shall not disturb or interfere with the rights of the lessees under the Leases in connection with Buyer's investigation of the Property.

(b) Notwithstanding any provisions herein to the contrary, Buyer may terminate this Agreement, for any reason, by delivering written notice of such termination to the Seller and Title Company on or before the ninetieth (90<sup>th</sup>) day following the Opening of Escrow. The period between the Opening of Escrow and the last date on which Buyer may terminate this Agreement in accordance with the provisions of this Section 6.02(b) is herein called feasibility period ("Feasibility Period"). As a condition precedent to Buyer's right to terminate this Agreement and receive a refund of the Earnest Money in accordance with the provisions of this Section 6.02(b), Buyer shall reimburse Seller for 50% of the cost of the Survey and the Replat (as defined in Section 7). If Buyer elects to terminate this Agreement pursuant to this Section 6.02(b), provided that Buyer has reimbursed Seller for 50% of the cost of the Survey and the Replat (as defined in Section 7), the Title Company shall deliver the Earnest Money to Buyer without further notice to or from the Seller and neither party shall thereafter have any further rights or obligations hereunder except for those rights and obligations that survive termination of this Agreement or the Close of Escrow as provided in this Agreement.

7. Re-Plat of Property. Prior to Closing, Seller shall use commercially reasonable efforts to re-plat the Property in order to divide the Property from the adjoining property that the Seller will retain after Closing (the "Replat"). Buyer agrees to provide reasonable cooperation to Seller in order for Seller to obtain expedited approval of the Replat by the City prior to Closing. In the event that Seller is unable to obtain the City's final approval of the Replat on or before the Closing Date, then (a) the Closing Date will be extended up to one hundred eighty (180) days for the purpose of completing the Replat, or (b) notwithstanding clause (a) above, Seller may terminate this Agreement upon written notice to the Buyer and the Title Company on or before the initial Closing Date or the Closing Date as extended in clause (a) above. In the event Seller terminates this Agreement because the City fails to approve the Replat despite Seller diligently pursuing such approval, Buyer shall reimburse Seller for 50% of the cost of the Replat and, upon Seller's receipt of such reimbursement, the Title Company shall deliver to the Buyer the Earnest Money and neither party shall thereafter have any further rights or obligations hereunder except for those obligations that survive the termination of this Agreement as provided in this Agreement. In the event Seller terminates this Agreement because the Replat is not approved by the City as a result of the Seller's failure to diligently pursue such approval, Buyer shall not be obligated to reimburse Seller for any portion of the Replat. Upon Closing, Buyer shall reimburse Seller for 50% of the cost of the Replat.

## 8. Representations and Warranties.

8.01 Seller's Representations and Warranties. Seller makes the following representations and warranties, all of which shall be true and correct at the Closing and which shall survive Closing for a period of six (6) months:

(a) To the Seller's actual knowledge, and except as reflected in the Title Documents, there are no claims, actions, suits, or other proceedings pending or threatened or any governmental department or agency or any other corporation, partnership, entity or person whomsoever, nor any voluntary actions or proceedings contemplated by the Seller, which in any manner or to any extent may detrimentally affect Buyer's right, title or interest in

and to the Property, or the Seller's ability to perform the Seller's obligations under this Agreement.

(b) Subject to the rights of the lessees under the Leases, Seller has the full power and authority to enter into and perform this Agreement according to the terms hereof and the individuals executing this Agreement and all documents delivered pursuant to this Agreement on behalf of the Seller are authorized to do so.

(c) To the Seller's actual knowledge, and except for the rights of the lessees under the Leases and as otherwise reflected in the Title Documents, there are no agreements, commitments or understandings by or between the Seller and any third party pursuant to which the Seller or its successors in interest are required to convey, dedicate, sell or transfer any part of the Property or to grant any easement, water right, right-of-way, road or license in respect to any part of the Property.

(d) To the Seller's actual knowledge, there is no pending or threatened condemnation or similar proceedings affecting the Property or any part thereof and the Seller has no knowledge that any such proceeding is presently contemplated.

(e) To the Seller's actual knowledge, the Seller has not received any notices from any governmental authority, and the Seller is not otherwise aware, that the Property was not or is not in compliance with all federal, state of Arizona and local laws, ordinances and regulations relating to environmental protection, occupational health and safety, public health and safety or public nuisance or menace (collectively "Environmental Laws"). To the Seller's actual knowledge there has been no production, storage, transport, release, spillage or disposal upon the Property of any hazardous substances, hazardous waste, hazardous materials, toxic substances, or contaminants in violation of any Environmental Laws.

(f) This Agreement and all documents required hereby to be executed by the Seller are and shall be valid, legally binding obligations of, and enforceable against the Seller, in accordance with their terms.

As used in this Agreement, "To the Seller's actual knowledge" shall mean the actual, present knowledge of Earl A. Petznick at the time of signing this Agreement without making any independent investigations or inquiries and without personal liability to Earl A. Petznick.

(f) Except as otherwise expressly set forth in this Agreement and the Deed, neither the Seller nor its members, employees, agents, representatives, attorneys or contractors (collectively "Seller's Parties") have made any representations, guaranties, promises, assurances or warranties, express or implied, to Buyer including, without limitation, any pertaining to the suitability of the Property for any purpose, the profitability of owning or operating the Property, the physical or environmental condition thereof, the suitability, habitability or merchantability or fitness of the Property for Buyer's intended use or for any use whatsoever, the rentals, income or expenses thereof, the net or gross acreage contained therein, the zoning thereof, the condition of title thereto, the existence or satisfaction of any local, state or federal approvals or permits for the development or use thereof, the availability or existence of water, sewer or other utilities, the existence or nonexistence of any hazardous substances or materials in, on or under the Property, or as to any past, present or future matter

whatsoever. The Seller acknowledges and agrees that this disclaimer has been specifically negotiated and that the Property will be sold in the condition described in Section 6.01.

8.02 Buyer's Representations and Warranties. Buyer represents and warrants to the Seller:

(a) Buyer has the full power and authority to enter into and perform this Agreement according to the terms hereof and the individual executing this Agreement on behalf of Buyer is authorized to do so.

(b) This Agreement and all documents required hereby to be executed by Buyer are and shall be valid, legally binding obligations of, and enforceable against Buyer, in accordance with their terms.

(c) Buyer acknowledges and agrees that with the aid of independent expert advice it will have had an opportunity to satisfy, prior to the expiration of the Feasibility Period, itself regarding the condition of the Property, and that the Property will be purchased **"AS IS AND WITH ALL FAULTS"**. Buyer shall assume the responsibility and risk of all defects to and conditions of the Property, including such defect and conditions, if any, which cannot be observed by inspection. The Buyer acknowledges and agrees that this disclaimer has been specifically negotiated and that the Property will be sold in its then-present condition.

## 9. Remedies.

9.01 Seller's Remedies. In the event Buyer fails to perform its obligations pursuant to this Agreement for any reason except due to the Seller's default or failure to perform its obligations hereunder, the Seller shall be entitled as its sole remedy to terminate this Agreement and Title Company shall deliver to the Seller the Earnest Money as liquidated damages and not as penalty, in full satisfaction of claims against Buyer hereunder. Seller and Buyer agree that the Seller's damages resulting from Buyer's default are difficult, if not impossible, to determine and the amount of the Earnest Money is a fair estimate of those damages which has been agreed to in an effort to cause the amount of said damages to be certain. Nothing in this Section shall limit the Seller's right to recover attorneys' fees under Section 9.03 below. In addition, all of Buyer's indemnity obligations contained in this Agreement shall survive the termination of this Agreement.

9.02 Buyer's Remedies. If the Seller (1) fails to perform any of its obligations under this Agreement prior to the Closing for any reason other than the default of Buyer or the termination of this Agreement (and such failure continues for a period of ten (10) days following written notice to the Seller), or (2) breaches a representation and warranty, then the Seller shall be in default under this Agreement and, as Buyer's sole and exclusive remedy, Buyer may elect to: (i) waive the default and proceed to close this transaction and the Escrow; or (ii) pursue specific performance of this Agreement; or (iii) terminate this Agreement and receive the Earnest Money from the Title Company; provided, however, if specific performance is unavailable because of the affirmative or intentional acts or omissions of the Seller, Buyer may bring suit for damages as a result of the Seller's default hereunder up to a maximum of \$5,000. As a condition precedent to Buyer's right to pursue specific performance under Section (ii) above, Buyer shall (a) not be in default under this Agreement; and (b) file suit therefore in the Superior Court of Arizona in Pinal County, Arizona on or before 5:00 pm MST on or before the



date that is sixty (60) days immediately following the scheduled Closing Date. Nothing in this Section shall limit Buyer's right to recover attorneys' fees under Section 9.03 below.

9.03 Attorneys' Fees. In the event either party hereto is required to employ an attorney because of the other party's default, then the defaulting party shall pay the non-defaulting party's reasonable attorneys' fees incurred in the enforcement of this Agreement.

9.04 Waiver. Seller and Buyer waive the right to pursue consequential or punitive damages against the other.

10. Conditions Precedent to Seller's Obligations. The obligations of the Seller under this Agreement are subject to the satisfaction, on or prior to the Closing, of the following conditions (the "Seller's Conditions to Closing"), all or any of which may be waived in writing by the Seller:

(a) All representations and warranties made by Buyer in this Agreement and in any written statements delivered to the Seller by Buyer under this Agreement shall be true and correct as of the Closing.

(b) Buyer shall have performed and complied with all obligations of Buyer required by this Agreement to be performed or complied with by Buyer on or prior to the Closing.

(c) All documents required to be delivered by Buyer on or prior to the Closing shall have been properly executed by Buyer and delivered to Title Company or the Seller in form and substance reasonably satisfactory to Seller.

If the Closing fails to occur on or prior to the Closing Date because a Seller's Condition to Closing is not satisfied, then Seller shall elect by written notice delivered to Buyer and Title Company on or before 5:00 p.m. (Phoenix, Arizona time), on the Closing Date to either (a) waive all unsatisfied Seller's Condition(s) to Closing and proceed with the Closing on that date which is three (3) business days after the Closing Date (provided that Buyer also agrees in writing to waive such condition if such condition also is a Buyer's Condition to Closing) or (b) terminate this Agreement. If Seller fails to deliver the written notice described in "clause (a)" of the immediately preceding sentence, then Seller shall be deemed to have elected to terminate pursuant to "clause (b)" of the immediately preceding sentence. Notwithstanding the foregoing, if the failure of a Seller's Condition to Closing is caused by a Buyer default, Seller shall have the right to exercise the remedies described in Section 9.01 above.

11. Conditions Precedent to Buyer's Obligations. The obligations of Buyer under this Agreement are subject to the satisfaction, on or prior to the Closing, of the following conditions (the "Buyer's Conditions to Closing"), all or any of which may be waived in writing by Buyer:

(a) All representations and warranties made by the Seller in this Agreement and in any written statement delivered to Buyer by the Seller under this Agreement shall be true and correct as of the Closing.

(b) Seller shall have performed and complied with all its respective obligations required by this Agreement to be performed or complied with by it on or prior to the Closing.

(c) All documents required to be delivered by the Seller on or prior to the Closing shall have been properly executed by the Seller and delivered to Title Company or Buyer in form and substance reasonably satisfactory to Buyer.

(d) Title Company shall have irrevocably committed to issue the Title Policy.

If the Closing fails to occur on or prior to the Closing Date because a Buyer's Condition to Closing is not satisfied, then Buyer shall elect by written notice delivered to Seller and Title Company on or before 5:00 p.m. (Phoenix, Arizona time) on the date that is five (5) business days after the Closing Date to either: (A) waive all unsatisfied Buyer's Conditions to Closing and proceed with the Closing; or (B) terminate this Agreement, subject to any notice and cure right of Seller set forth in Section 9.02, whereupon the Earnest Money shall be promptly returned to Buyer and neither party shall thereafter have any further rights or obligations hereunder except for those obligations that survive the termination of this Agreement or the Close of Escrow as provided in this Agreement. If Buyer fails to timely deliver the written notice described in the preceding sentence, then Buyer shall be deemed to have elected to terminate this Agreement pursuant to clause (B) above. Notwithstanding the foregoing, if the failure of a Buyer's Condition to Closing is caused by a default by Seller, Buyer shall, in addition to the rights set forth herein, have the right to exercise the remedies described in Section 9.02 above.

## 12. Closing.

### 12.01 Closing Matters.

(a) At Closing, the Seller shall execute, deliver and acknowledge the following documents:

(i) The Real Property Lease in the form of Exhibit C attached hereto and incorporated herein;

(ii) A special warranty deed ("Deed") in the form of Exhibit D attached hereto and incorporated herein;

(iii) A certificate of nonforeign status in the form of Exhibit E attached hereto and incorporated herein (the "Non-Foreign Affidavit");

(iv) An assignment and assumption of leases in the form of Exhibit F attached hereto and incorporated herein (the "Assignment of Lease"); and

(v) Such other documents as are reasonably necessary to close and consummate the purchase and sale transaction contemplated by this Agreement, each in form and substance reasonably acceptable to Buyer and Seller.

(b) At Closing, Buyer shall:

(i) Deliver the Closing Payment to Title Company;

(ii) Execute and deliver the Real Property Lease in the form of Exhibit C attached hereto and incorporated herein

(iii) Execute and deliver the Assignment of Lease in the form of Exhibit F attached hereto and incorporated herein; and

(iv) Execute and deliver such other documents as are reasonably necessary to close and consummate the purchase and sale transaction contemplated by this Agreement, each in form and substance reasonably acceptable to Buyer and Seller.

(c) Title Company shall transfer the Closing Payment to the Seller by wire transfer upon the Close of Escrow.

(d) Possession of the Property shall be delivered to Buyer at Closing.

12.02 Taxes. At Closing, all taxes (real and personal), fees and assessments, if applicable, shall be prorated as of the date of the Closing. All prepaid rent payable by the lessees under the Leases attributable to the period from and after the Closing Date shall be credited to Buyer as of the Closing Date.

12.03 Closing Costs. Escrow fees charged by Title Company shall be paid one-half (1/2) by the Seller and one-half (1/2) by Buyer. The Seller shall pay the premium chargeable for a Standard's Owners Policy of Title Insurance and if Buyer desires to have ALTA Extended Coverage, then Buyer shall pay the incremental portion of the premium applicable to the extended coverage. Seller shall pay the fee for recording the Deed. Except as otherwise provided in Section 9.03, each party shall be responsible for the payment of its own attorneys' fees incurred in connection with the transaction, which is the subject of this Agreement.

12.04 Commissions. Neither Seller nor Buyer have retained or engaged a real estate broker, commission agent or any other person who is or may be entitled to payment of a commission or finder's fee or other compensation in connection with the transaction contemplated by this Agreement. Seller and Buyer shall indemnify, hold harmless and defend the other, its successors and assigns for, from and against any and all claims, demands, actions, costs and expenses, including reasonable attorney and accounting fees and court costs arising out of any claim by any real estate broker or other person claiming through the indemnifying party that such person is entitled to any commission or fee in connection with this transaction. The provisions of this Section 12.04 shall survive the Closing.

### 13. Condemnation and Risk of Loss.

13.01 Condemnation. If, prior to Closing, any governmental authority or other entity having condemnation authority shall institute an eminent domain proceeding or take any steps preliminary thereto (including the giving of any direct or indirect notice of intent to institute such proceedings) with regard to the Property, and the same is not dismissed on or before ten (10) days prior to Closing, Buyer shall be entitled either to terminate this Agreement upon written notice to Seller or to waive such right of termination and receive all such condemnation proceeds. In the event Buyer elects to terminate this Agreement under this Section 13.01, the Title Company shall forthwith return to Buyer the Earnest Money and neither party to this Agreement shall thereafter have any further rights or obligations hereunder except for those rights and obligations that survive termination of this Agreement or the Close of Escrow as provided in this Agreement.

13.02 Risk of Loss. The risk of loss or damage to the Property and all liability to third persons until both the Close of Escrow and the removal of personal property and the livestock occurs shall be borne by the Seller. Buyer shall assume all risks of loss or damage to the Property and all liability to third persons upon the Close of Escrow unless such loss or damage is caused by the Seller's continued use of the Property.

14. Miscellaneous.

14.01 Notices. Any and all notices, demands or requests required or permitted hereunder shall be in writing and shall be effective upon personal delivery, one (1) business day after being deposited with any commercial air courier or express service providing next day delivery, or on the date on which transmission via electronic mail is received provided it is on a business day no later than 5:00 p.m. local time of the recipient, addressed as follows:

To Seller:	Pinal Feeding Co. Red River Cattle, LLP Attn: Earl A. Petznick, Owner 8950 S. 52 <sup>nd</sup> Street, Suite 310 Tempe, AZ 85284 Email: <a href="mailto:earl@redrivercattle.com">earl@redrivercattle.com</a>
With copy to:	Greenberg Traurig, LLP 2375 E. Camelback Road, Suite 800 Phoenix, AZ 85016 Attn: Karl Freeburg, Esq. Email: <a href="mailto:freeburgk@gtlaw.com">freeburgk@gtlaw.com</a>
To City:	City of Maricopa Attn: Rick Horst, City Manager 39700 West Civic Center Plaza Maricopa, Arizona 85138 Email: <a href="mailto:rick.horst@maricopa-az.gov">rick.horst@maricopa-az.gov</a>
With copy to:	Denis M. Fitzgibbons, City Attorney Fitzgibbons Law Offices, P.L.C. 1115 E. Cottonwood Lane, Suite 150 P.O. Box 11208 Casa Grande, Arizona 85130-0148 Email: <a href="mailto:denis@fitzgibbonslaw.com">denis@fitzgibbonslaw.com</a>
Title Company:	LaTisha Sopha Title Security Agency of Arizona 421 E. Cottonwood Lane Casa Grande, Arizona 85122 Fax No.: 520.426.4699 Email: <a href="mailto:latisha.sopha@titlesecurity.com">latisha.sopha@titlesecurity.com</a>

Any notice given after 5:00 p.m. local time of the recipient, or not on a business day, shall be deemed given and received on the immediately succeeding business day. Seller, the City or Title Company may change its address for notice by giving notice in the manner provided

above. The inability to deliver because of a changed address of which no notice was given, or rejection or other refusal to accept any notice, shall be deemed to be the receipt of the notice as of the date of such inability to deliver or rejection or refusal to accept.

14.02 Time of the Essence; Date of Performance. Time is of the essence of this Agreement, and Buyer and Seller hereby agree to perform each and every obligation hereunder in a prompt and timely manner; provided, however, that if the date for the performance of any action or the giving of any notice which is required hereunder, occurs on a Saturday, Sunday or legal holiday, the date for performance or giving of notice shall be the next succeeding business day.

14.03 Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be valid under applicable law, but if any provision of this Agreement shall be invalid or prohibited hereunder, such provision shall be ineffective to the extent of such prohibition or invalidation which shall not invalidate the remainder of such provision or the remaining provisions of this Agreement.

14.04 Waiver. The waiver by either party hereto of any right granted to it hereunder shall not be deemed to be a waiver of any other right granted herein, nor shall same be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived.

14.05 Entire Agreement. This Agreement, contains the entire agreement of the parties hereto with respect to the matters covered hereby, supersedes all prior agreements, arrangements and understandings between the parties and no other agreement, statement or promise made by either party hereto that is not contained herein shall be binding or valid. All exhibits to this Agreement are by this reference incorporated herein.

14.06 Amendments. This Agreement may be amended only by written document signed by each of the parties hereto.

14.07 Further Performance. Each party shall, whenever and as often as it shall be requested by the other party, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further instruments and documents, including supplemental escrow instructions, as may be reasonably acceptable to each party and as may be necessary in order to complete the sale, conveyance and transfer herein provided and to do any and all things as may be reasonably requested in order to carry out the intent and purpose of this Agreement.

14.08 Counterparts. This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. Facsimile or "**pdf**" signatures on this Agreement shall be valid the same as originals. The exchange of copies of this Agreement and of signature pages by facsimile transmission or electronic mail transmission (e.g., in .PDF format) will constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or electronic mail (e.g., in .PDF format) will be deemed to be their original signatures for any purpose whatsoever. Without limiting the foregoing, the words "execution," "execute," "signed," "signature," and words of like import in or related to this Agreement or any document to be signed in connection with this Agreement and the transactions contemplated hereby

(including any amendments, waivers and/or consents) shall be deemed to include electronic signatures (e.g., through DocuSign® or other similar electronic e-signature application), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, or any similar state laws based on the Uniform Electronic Transactions Act.

14.09 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, devisees, personal and legal representatives, successors and assigns.

14.10 Governing Law; Venue. This Agreement shall be construed and interpreted under, and governed and enforced according to the laws of the State of Arizona, without giving effect to the principles of conflicts of law. The parties agree that should any court action be commenced relating to this Agreement, that the Pinal County Superior Court shall be the appropriate and exclusive venue therefore. The parties expressly waive any and all provisions of law providing for a change of venue to any other state or federal court.

14.11 Dispute Resolution. In the event a dispute arises under this Agreement, Buyer and Seller agree that there shall be a thirty (30) day moratorium on litigation during which time the Buyer and Seller agree to attempt to settle the dispute by non-binding mediation before commencement of litigation. The mediation shall be held under the Commercial Mediation Rules of the American Arbitration Association ("AAA") but shall not be under the administration of the AAA unless agreed to by the Buyer and Seller in writing, in which case all administrative fees shall be divided evenly between the Buyer and Seller. The matter in dispute shall be submitted to a mediator mutually selected by Buyer and Seller. If the Parties cannot agree upon the selection of a mediator within ten (10) days, then within five (5) days thereafter, the Buyer and Seller shall request that the Presiding Judge of the Superior Court in and for the County of Pinal, State of Arizona, appoint the mediator. The mediator selected shall have at least ten (10) years of experience in mediating or arbitrating disputes relating to commercial property. The cost of any such mediation shall be divided equally between the Buyer and Seller. The results of the mediation shall be nonbinding with either Buyer or Seller free to initiate litigation upon the conclusion of the latter of the mediation or of the thirty (30) day moratorium on litigation. The mediation shall be completed in one day (or less) and shall be confidential, private, and otherwise governed by the provisions of A.R.S. § 12-2238, to the extent allowed by the Arizona Open Meetings Law, § 38-431 et. seq.

14.12 Headings and Construction. The headings set forth in this Agreement are inserted only for convenience and are not in any way to be construed as part of this Agreement or a limitation on the scope of the particular paragraph to which it refers. Where the context requires herein, the singular shall be construed as the plural, and neutral pronouns shall be construed as masculine and feminine pronouns, and vice versa. This Agreement shall be constructed according to its fair meaning and neither for nor against either party hereto.

14.13 Tax Reporting. Title Company, as the party responsible for Closing the transaction contemplated hereby within the meaning of Section 6045(e) of the Code, shall file all necessary information, reports, returns and statements (collectively, the "Tax Reports") regarding this transaction as required by the Code, including, without limitation, the Tax Reports required pursuant to Section 6045 of the Code. Title Company further agrees to indemnify and hold Buyer and Seller, and their respective attorneys and brokers, harmless from and against all

claims, costs, liabilities, penalties, or expenses resulting from Title Company's failure to file the Tax Reports which Title Company is required to file pursuant to this paragraph.

14.14 Conflict of Interest. This Agreement is subject to the conflict of interest provisions set forth in A.R.S. Section 38-511.

14.15 Assignment. Buyer may not assign or pledge any of its rights hereunder without the prior written consent of Seller, which consent may be withheld in Seller's sole and absolute discretion. No assignment shall relieve Buyer of its obligations hereunder and Buyer shall not have the ability to partially assign this Agreement. Any attempted assignment by Buyer to any person without Seller's consent shall be null and void and of no effect. Subject to the foregoing, this Agreement shall be binding upon the undersigned and each of their successors and assigns. Seller reserves the right to assign this Agreement to any related entity.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement effective as of the date first written above.

BUYER:

CITY OF MARICOPA, a municipal corporation

By: \_\_\_\_\_  
Its Ricky Horst, City Manager

Attest:

Approved as to form:

By: \_\_\_\_\_  
Vanessa Bueras, MMC  
City Clerk

By: \_\_\_\_\_  
Denis M. Fitzgibbons  
City Attorney

SELLER:

Pinal Feeding Co., an Arizona corporation

By: \_\_\_\_\_  
Earl A. Petznick, President

Red River Cattle, LLP, an Arizona limited liability partnership

By: Sacate Pellet Mills, Inc., an Arizona corporation  
Its: General Partner

By: \_\_\_\_\_  
Earl A. Petznick, Vice President



IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement effective as of the date first written above.

BUYER:

CITY OF MARICOPA, a municipal corporation

By: \_\_\_\_\_  
Its Ricky Horst, City Manager

Attest:

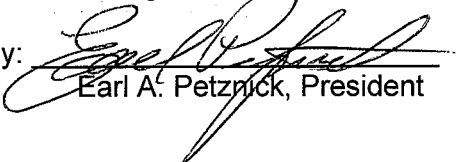
Approved as to form:

By: \_\_\_\_\_  
Vanessa Bueras, MMC  
City Clerk

By: \_\_\_\_\_  
Denis M. Fitzgibbons  
City Attorney

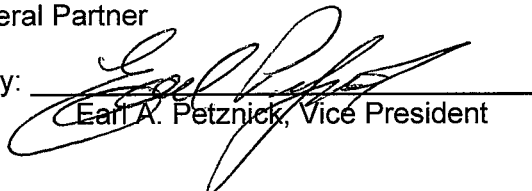
SELLER:

Pinal Feeding Co., an Arizona corporation

By: \_\_\_\_\_  
Earl A. Petznick, President

Red River Cattle, LLP, an Arizona limited liability partnership

By: Sacate Pellet Mills, Inc., an Arizona corporation  
Its: General Partner

By: \_\_\_\_\_  
Earl A. Petznick, Vice President

## ACKNOWLEDGEMENT AND AGREEMENT BY TITLE COMPANY

The Title Company hereby acknowledges receipt of a fully executed copy of this Agreement on this \_\_\_\_ day of October, 2022 and agrees to accept, hold, deliver and disburse the Earnest Money, together with all interest accrued thereon and received by the Title Company, strictly in accordance with the terms and provisions of this Agreement and without the necessity of further consent or instruction by City or Seller. The Title Company is hereby designated as, and agrees to undertake the obligations of, the Reporting Person pursuant to Section 6045 of the Internal Revenue Code and the regulations promulgated thereunder.

By: \_\_\_\_\_  
LaTisha Sopha  
Title Security Agency of Arizona  
421 E. Cottonwood Lane  
Casa Grande, Arizona 85122

## EXHIBIT A

### General Depiction of the Property



## **EXHIBIT A-1**

Legal Description of the Property

[To be Inserted Following Completion of Survey by Seller]

## **EXHIBIT B**

### Fixtures and Personal Property

- Gates
- Cattle chutes
- Cattle shade tin
- Water troughs
- Cattle scales
- Cattle scale shed
- Feed bunks
- Barns
- Steel shipping containers

## **EXHIBIT C**

Real Property Lease

## LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2022 ("Effective Date"), by and between City of Maricopa, an Arizona municipal corporation (the "Lessor"), and Pinal Feeding Co., an Arizona corporation (the "Lessee").

**WHEREAS**, Lessor and Lessee are also parties to a Purchase and Sale Agreement and Escrow Instructions dated \_\_\_\_\_, 2022; and

**WHEREAS**, as part of the consideration for Lessee selling the Leased Premises to Lessor, Lessor agreed to allow Lessee to continue to use the Leased Premises for one (1) year after closing and to have one (1) month thereafter to remove fixtures and other personal property from the Leased Premises in accordance with the terms and conditions of this Lease.

In consideration of the mutual covenants and promises set forth herein, the parties do hereby agree as follows:

1) Leased Premises. Lessor hereby leases and permits the use to Lessee, and Lessee hereby leases from Lessor, upon the covenants and conditions hereinafter set forth, that certain real property more particularly described in Exhibit "A", which is attached hereto and incorporated herein by reference, together with all improvements and appurtenances thereto (the "Leased Premises").

2) Term. The term of this Lease shall be for a period of one (1) year, commencing on the date set forth above and ending \_\_\_\_\_, 2023, with an additional one (1) month thereafter solely for Lessee to remove fixtures and other personal property from the Leased Premises, unless terminated earlier as hereafter provided (the "Term").

3) Rent. In lieu of rental payment, Lessee agrees to maintain, at Lessee's sole cost and expense the Leased Premises including, but not limited to, weed control, repairs due to Lessee's use of the Leased Premises and repairs due to minor washouts.

4) Lessee's and Lessor's Obligations. Lessee and Lessor each agree that the following items relating to the Leased Premises and to the activities contemplated by this Lease shall become or remain the sole responsibility of the designated party or parties, and that these obligations shall be satisfied in the manner and according to the procedures set forth below:

a) Lessee's Obligations:

- i) Lessee shall use the Leased Premises for the same agricultural and livestock operation as existed prior to this Lease and for no other purpose without the prior written consent of Lessor.
- ii) Lessee shall care for any livestock in accordance with the commercially reasonable standards of Pinal County, Arizona.
- iii) Lessee shall comply with and abide by all applicable laws, regulations and/or ordinances enacted or promulgated by the United States Government or by the State of Arizona or any municipality, or their agents, respecting or affecting the Leased Premises, including, without limitation, any such laws that are commonly known as environmental laws.
- iv) Lessee's use of fertilizers, pesticides and other chemical products on the Leased

Premises shall be in full compliance with all applicable governmental laws, rules, regulations and/or orders. Lessee shall file when due all reports, documents, forms or other information required under applicable law or regulation to be filed with any governmental agency (including without limitation the Arizona Department of Agriculture) regarding Lessee's use of chemicals, fertilizers, pesticides and other chemicals on the Leased Premises so as to avoid damage to, or discharge, leakage, spillage, emission or pollution on adjacent parcels of land owned or leased by third parties. Lessee shall capture, control and dispose of waste oil from equipment and used containers for fertilizers, pesticides, herbicides, fumigants and other chemical produces in accordance with applicable laws and, in no event, shall such items be disposed of on properties owned by Lessor.

- v) Lessee shall furnish at its own costs and expense, all capital, labor, tools, power, fuel, material, supplies, pesticides, machinery and equipment necessary or convenient for the use of the Leased Premises.
- vi) Lessee shall at all times during the Term, and at Lessee's own cost and expense, maintain the Leased Premises and all improvements thereon in as good condition as at the beginning of Lessee's tenancy, or as later improved, normal wear and tear and depreciation from causes beyond Lessee's control excepted. Lessee shall not allow the Leased Premises to be used for unlawful purposes.
- vii) Except to the extent caused by the negligence or willful misconduct of Lessor, Lessor shall not be liable for any liability or damage claims for injury to persons or property from any cause relating to Lessee's use of the Leased Premises or for those arising out of damages or losses occurring on other areas immediately adjacent to the Leased Premises that may be used by Lessee during the term of this Lease. Lessee, as a material part of the consideration for this Lease, shall indemnify, defend and hold Lessor and the Leased Premises entirely free and harmless from and against all liabilities, causes of action, claims, damages, demands, costs, penalties, expenses (including reasonable attorneys' fees and expenses incurred in the defense thereof) resulting from any injury to person or property, associated with Lessee's use of fertilizers, pesticides, or other such chemicals, or from loss of life sustained in or about the Leased Premises, except to the extent such damage or injury results from the willful misconduct or negligence of Lessor. In addition, Lessee hereby releases Lessor from any and all liability for any loss or damage caused by fire or any of the extended coverage casualties, unless such fire or other casualty shall be brought about by the willful misconduct or negligence of Lessor.
- viii) Lessee shall procure and maintain in force at its expense during the Term of this Lease, for the joint benefit of Lessee and Lessor, a broad form comprehensive coverage policy of public liability insurance of not less than Two Million Dollars (\$2,000,000.00), insuring against injury to persons or damages as the result of the use of the Leased Premises, and shall name the Lessor as additional insured. Lessee shall furnish Lessor with a copy of said policy and endorsement. The policy shall contain provisions that such insurance coverage may be cancelled by the insurance company only upon thirty (30) days' prior written notice to Lessor.
- ix) Lessee shall keep the improvements, equipment and personal property of any kind on the Leased Premises insured in amounts reasonably requested by the Lessor against physical loss by fire and such other coverages as are covered by the extended coverage endorsement, and name the Lessor as an additional insured, and furnish Lessor with a copy of said endorsement. Lessor shall have no liability whatsoever with respect to any loss or damage to Lessee's or its employee's trade fixtures, equipment, livestock and personal property upon the Leased Premises unless caused by Lessor's negligence or willful misconduct.



- x) Lessee shall carry workmen's compensation on all employees of Lessee who are involved in the Lessee's operation of the Leased Premises.
- xi) Lessee shall promptly pay when due all charges for water and all other utilities, materials, and services which may be furnished to or be used by Lessee on the Leased Premises and shall maintain the well located on the Leased Premises (registry ID #55-623828). In the event Lessee fails to promptly pay any such charges when billed, Lessor may terminate this Lease upon providing Lessee with thirty (30) days written notice and opportunity to cure. Lessee shall not allow any liens to attach to or be filed against the Leased Premises as a result of the Lessee's livestock, use or operation thereof.
- xii) Lessee shall pay prior to delinquency any and all taxes, assessments or other public charges levied, assessed or imposed by reason of Lessee's use of the Leased Premises including, but not limited to, sales tax, income tax, or privilege tax accruing during the Term hereof. Lessee shall also pay any and all taxes, assessments or other charges levied, assessed or imposed upon Lessee's equipment or personal property located or used on the Leased Premises. Lessee shall defend, indemnify and hold Lessor harmless for, from and against each and every claim associated with or arising out of Lessee's obligations in this Section.

b) Lessor's Obligations:

- i) Lessor shall warrant and defend the Lessee's possession against any and all persons so long as this Lease remains in effect.
- ii) Lessor shall pay all real property taxes assessed on the Leased Premises.
- iii) Except as expressly set forth in Section 4(b), Lessor makes not representation or warranty regarding the condition of the Leased Premises or its suitability for livestock or other activity and Lessee agrees to accept the Leased Premises in "AS IS" "WHERE IS" condition, subject to all existing faults and conditions.

5) Irrigation and Delivery of Water.

- a) Lessee, at Lessee's sole cost and expense, shall have the right to use any water available or allocated to the Leased Premises for the term of this Lease for use on the Leased Premises, whether by well, irrigation district, gravity or flood water. Lessor makes no agreements, promises, representations or warranties, express or implied, regarding the present, continued or future availability, quantity or quality of surface or ground water at the Leased Premises for irrigation or any other purpose.
- b) Lessee shall pay all costs associated with the purchase and delivery of water to the Leased Premises, including, but not limited to, all power and utility charges. Lessee shall also be solely responsible for any security deposits required by irrigation districts, electrical districts or utility companies. Lessee shall receive all interest earned by said deposits, and any refunds distributed by any electrical district, irrigation district, or utility company for usage during the Term of this Lease, even if the distribution of the refund occurs after the termination of the Lease. Lessee shall be entitled to the return of the security deposit and all accrued interest upon termination or expiration of the Lease. Lessee shall maintain and repair ditches, pipes, discharge ports, head gates, drip irrigation facilities and culverts in the condition received, ordinary wear and tear excepted.

6) Improvements/Alterations. Lessee shall not make, or permit to be made, any alterations or improvements to the Leased Premises during the Term of this Lease, including but not limited to, erecting any non-removable structure or building or adding electrical wiring, plumbing, or

heating to any existing building, without prior written consent of Lessor. Upon termination or expiration of this Lease pursuant to the terms hereof, all improvements and/or alterations made by Lessee, other than those constituting trade fixtures, shall revert to Lessor, without any right in Lessee for reimbursement. In the event some of or all of the improvements or fixtures are classified as trade fixtures and are not removed prior to the expiration of this Lease, all such trade fixtures not so removed shall revert to the Lessor thirty (30) days after Lessee vacates the Leased Premises, without any right to Lessee for any reimbursement. Notwithstanding the foregoing or anything in this Lease to the contrary, Lessor and Lessee hereby specifically acknowledge and agree that there are fixtures and personal property, including but not limited to those described on Exhibit "B", and livestock currently located on the Leased Premises, and that Lessee may remove all of such fixtures, personal property and livestock from the Leased Premises on or before the expiration of the Term.

7) Notices and Demands. Any and all notices, requests, or demands given to or made upon the parties hereto, pursuant or in connection with this Lease, shall be deemed to have been given when delivered in person, by electronic mail (e-mail) on the date sent, or two (2) days after deposit thereof in the United States Mail in a sealed envelope, postage prepaid, registered or certified mail, and addressed as follows:

LESSOR: City of Maricopa  
Attn: City Manager  
39700 W. Civic Center Plaza  
Maricopa, AZ 85138  
[Rick.Horst@maricopa-az.gov](mailto:Rick.Horst@maricopa-az.gov)

With a copy to: Denis M. Fitzgibbons, City Attorney  
Fitzgibbons Law Offices, P.L.C.  
1115 E. Cottonwood Lane, Suite 150  
P.O. Box 11208  
Casa Grande, Arizona 85130-0148  
Email: [denis@fitzgibbonslaw.com](mailto:denis@fitzgibbonslaw.com)

LESSEE: Pinal Feeding Co.  
Attn: Earl Petznick  
8950 S. 52<sup>nd</sup> Street, Suite 310  
Tempe, AZ 85284  
Email: [earl@redrivercattle.com](mailto:earl@redrivercattle.com)

It is agreed that either party may hereinafter designate other addresses to which notice may be sent, upon written notice sent to the other at the address above designated, or subsequently designated in accordance herewith.

8) Assignment and Subletting. Lessee may not assign this Lease or sublet any portion of the Leased Premises without the prior written consent of the Lessor, which consent may not be unreasonably withheld, conditioned or delayed. Any assignment or subletting shall not relieve the Lessee or its obligations hereunder unless Lessor expressly releases Lessee in writing. Lessor may freely assign Lessor's rights and obligations under this Lease without Lessee's consent. Notwithstanding the foregoing or anything in this Lease to the contrary, Lessee may sublease a portion of the Leased Premises to Duncan Family Farms, LLC, an Arizona limited liability company, for the purpose of producing composted material from the manure provided by

Lessee.

9) Legal Expenses. In the event Lessor or Lessee files an action to enforce any covenant, promise or provision contained in this Lease, or for breach of any covenant or condition hereof, the prevailing party shall be awarded its reasonable attorneys' fees for the services of the prevailing party's attorney in the action, in an amount to be fixed by the court or agreed upon by the parties.

10) No Partnership Intended. Nothing in this agreement is intended to, or shall be construed to create a partnership, joint venture, or other agency between the parties.

11) Default. The occurrence of any of the following shall constitute a material default and breach of this Lease by Lessee:

- a) Any failure by Lessee to pay, on or before the due date, any rent or other monetary sums required to be paid hereunder where such failure continues for five (5) days after written notice thereof by Lessor to Lessee.
- b) A failure by Lessee to observe and perform any other provision of this Lease where such failure continues for thirty (30) days after written notice thereof by Lessor to Lessee; provided however, that if the nature of such default is such that the same cannot reasonably be cured within such thirty (30) day period, Lessee shall not be deemed to be in default if Lessee shall within such period commence such cure and thereafter diligently prosecute the same to completion.
- c) The making by Lessee of any general assignment or general arrangement for the benefit of creditors; the filing by or against of a petition to have Lessee adjudged a bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Lessee, the same is dismissed within thirty (30) days); the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Leased Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Leased Premises or of Lessee's interest in this Lease, where such seizure is not discharged within thirty (30) days.

12) Remedies. In the event of any such material default or breach by Lessee, Lessor may at any time thereafter, with or without notice and demand and without limiting Lessor in the exercise of any right or remedy at law or in equity which Lessor may have by reason of such default or breach, terminate Lessee's right to possession by any lawful means, in which case this Lease shall terminate, and Lessee shall immediately surrender possession of the Leased Premises to Lessor. In such event Lessor shall be entitled to recover from Lessee all damages incurred by Lessor by reason of Lessee's default and seek all other remedies available at law or in equity.

13) Lessor's Right of Entry. Lessor shall have the right to enter upon the Leased Premises at all reasonable times to inspect the Leased Premises, conduct surveys, perform engineering work and development plans, and for any other lawful purpose, so long as such entry does not unreasonably interfere with Lessee's operations.

14) Subordination. Lessee agrees that this Lease shall be subordinate to any mortgages or deeds of trust that are now, or may hereafter be, placed upon the Leased Premises, and to any and all advances to be made thereunder, and to the interest thereon, and all renewals,

replacements and extensions thereof, provided that the mortgages or beneficiaries named in said mortgages or trust deeds shall agree to recognize the interest of Lessee under this Lease in the event of foreclosure, if Lessee is not then in default. Lessee also agrees that any mortgagee or beneficiary may elect to treat this Lease as a prior lien to its mortgage or deed of trust upon notification by such underlying Lessor or such mortgage or deed of trust, whether this Lease is dated prior to or subsequent to the date of said mortgage or deed of trust. Lessee agrees that upon the request of Lessor, or any mortgages or beneficiary, Lessee shall execute whatever instruments may be reasonably requested by Lessor or by any mortgagee or beneficiary to carry out the intent of this Section.

15) Estoppel Certificates. Lessee shall, within ten (10) days after written request of Lessor, execute, acknowledge and deliver to Lessor or to Lessor's mortgagee, or proposed purchaser of the Leased Premises or any part thereof, any estoppel certificates requested by Lessor, from time to time, which estoppel certificates shall state whether the Term of this Lease has commenced and full rental is accruing; whether there are any defaults by Lessor and, if so, the nature of such defaults; and whether Rent has been paid more than thirty (30) days in advance and there are no liens, charges or offsets against rental due or to become due and that the address shown on such estoppel certificate is accurate.

16) Brokers. Lessor and Lessee represent to each other that they have not engaged a broker or agent to assist or represent them regarding this Lease. Lessor shall indemnify Lessee from any leasing commission or finders' fees claimed by brokers or agents assisting or representing Lessor regarding this Lease. Lessee shall indemnify Lessor from any leasing commissions or finders' fees claimed by brokers or agents assisting or representing Lessee regarding this Lease.

17) Limitation of Lessors Liability. The term "Lessor" as used in this Lease, so far as covenants or obligations on the part of Lessor are concerned, shall be limited to mean and include only the owners at the time in question and only to the extent of the fee simple title to the Leased Premises, and in the event of transfer of said fee simple estate, then the party that conveyed said fee simple estate shall be automatically relieved, after the date of such transfer, of all personal liability as respects the performance of any obligations on the part of Lessor contained in this Lease arising out of acts thereafter occurring or covenants thereafter to be performed, it being intended hereby that all obligations contained in this Lease on the part of the Lessor shall be binding upon Lessor, its successors and assigns, only during and in respect of their respective periods of ownership and only to the extent of said fee simple estate in the leased Premises.

18) Waiver. The failure of Lessor or Lessee to insist in any one or more instances on performance of any of the terms or conditions of this lease or to exercise any right or privilege contained herein shall not be considered as thereafter waiving such terms, conditions, rights or privileges, and they shall remain in full force and effect.

19) Arbitration. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree to attempt to settle the dispute by nonbinding arbitration before commencement of litigation. The arbitration shall be held under the rules of the American Arbitration Association. The matter in dispute shall be submitted to an arbitrator mutually selected by Lessor and Lessee. In the event that the parties cannot agree upon the selection of an arbitrator within seven (7) days, then within three (3) days thereafter, the Lessor and Lessee shall request the presiding judge of the Superior Court in and for the County of Pinal, State of Arizona, to appoint an independent arbitrator. The cost of any such arbitration shall be divided

equally between the Lessor and Lessee. The results of the arbitration shall be nonbinding on the parties, and any party shall be free to initiate litigation subsequent to the final decision of the arbitrator.

20) Governing Law; Venue. This Lease is to be construed, interpreted and enforced pursuant to the laws of the State of Arizona. Any action at law or in equity brought by either party for the purpose of enforcing a right or rights provided for in this Lease shall be tried in a court of competent jurisdiction in Pinal County, State of Arizona. The parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county.

21) Right to Early Termination of Lease. Notwithstanding anything to be contrary herein, Lessee shall have the right to terminate this Lease, with or without cause and without prejudice to any other rights or remedies, by giving thirty (30) days written notice, as provided herein, to Lessor.

22) Surrender and Holding Over. Lessee shall surrender the Leased Premises and remove all Lessee's personal property and livestock from the Leased Premises on termination of this Lease. Any holding over by Lessee without the express written authorized of Lessor shall be treated as a tenancy from month-to-month, at a rental rate equal to Five Thousand and 00/100 Dollars (\$5,000.00) payable on the first day of each month, and Lessor shall retain all remedies under this Lease and rights under the law for removal of Lessee from the Leased Premises.

23) Entire Agreement. This Lease represents the entire agreement between Lessor and Lessee and supersede all prior negotiations, representations or agreements, either express or implied, written or oral. It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Lease shall be valid unless made in writing and signed by the parties hereto. Written and signed amendments shall automatically become part of this Lease, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

24) Severability. The provisions of this Lease shall be deemed severable and should any provision of this Lease be declared or be determined by a Court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provision shall be deemed not to be a part of this Lease, notwithstanding any other provision of this Lease Agreement.

25) Conflict of Interest. This Lease is subject to the provisions of A.R.S. § 38-511.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Lease Agreement as of the day and year first above written.

LESSOR:

CITY OF MARICOPA, a municipal corporation

By: \_\_\_\_\_  
Its \_\_\_\_\_, Mayor

Attest:

Approved as to form:

By: \_\_\_\_\_  
Vanessa Bueras, MMC  
City Clerk

By: \_\_\_\_\_  
City Attorney

LESSEE:

Pinal Feeding Co., an Arizona corporation

By: \_\_\_\_\_  
Earl Petznick, President

## **EXHIBIT A**

**[Legal Description of Leased Premises]**

## **EXHIBIT B**

### **Fixtures and Personal Property**

- Gates
- Cattle chutes
- Cattle shade tin
- Water troughs
- Cattle scales
- Cattle scale shed
- Feed bunks
- Barns
- Steel shipping containers



## EXHIBIT D

### Special Warranty Deed

When recorded mail to:

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### SPECIAL WARRANTY DEED

For the consideration of TEN AND NO/100 (\$10.00) DOLLARS, and other valuable consideration, each of Red River Cattle, LLP, an Arizona limited liability partnership ("Red River Cattle"), and Pinal Feeding Co., an Arizona corporation (formerly known as Smith & Kelly Feed Co. Inc., an Arizona corporation) ("Pinal Feeding", and collectively with Red River Cattle, the "Grantor"), does hereby convey to the City of Maricopa, an Arizona municipal corporation (the "Grantee"), the real property situated in Pinal County, Arizona, legally described on Exhibit "1", attached hereto and by reference incorporated herein; subject to all taxes and other assessments, reservations in patents and all easements, rights of way, encumbrances, liens, covenants, conditions, restrictions, obligations and liabilities as may appear of record, and all matters which an accurate survey or physical inspection of the property would disclose. The Grantor hereby binds itself to warrant and defend the title as against all acts of the Grantor herein, and no other, subject to the matters set forth above.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2022.

EXEMPT, pursuant to ARS § 11-1134(A)(3), from filing Affidavit of Property Value.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned have executed this Special Warranty Deed  
as of \_\_\_\_\_, 20\_\_.

GRANTOR:

Red River Cattle, LLP, an Arizona limited liability partnership

By: Sacate Pellet Mills, Inc., an Arizona corporation

Its: General Partner

By: \_\_\_\_\_  
Earl A. Petznick, Vice President

Pinal Feeding Co.,  
an Arizona corporation

By: \_\_\_\_\_  
Earl A. Petznick, President

STATE OF ARIZONA            )  
  ) ss.  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_, \_\_\_\_\_ of Sacate Pellet Mills, Inc., an Arizona corporation, the General Partner of Red River Cattle, LLP, an Arizona limited liability partnership, on behalf of said partnership.

[SEAL]

\_\_\_\_\_  
Notary Public

STATE OF ARIZONA            )  
  ) ss.  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_, \_\_\_\_\_ of Pinal Feeding Co., an Arizona corporation, on behalf of said corporation.

[SEAL]

\_\_\_\_\_  
Notary Public

**EXHIBIT “1”**

**Legal Description to Special Warranty Deed**

## EXHIBIT E

### Certificate of Non-Foreign Status

Section 1445 of the Internal Revenue Code provides that a transferee (buyer) of a U.S. real property interest must withhold tax if the transferor (seller) is a foreign person. To inform the transferee (buyer) that withholding of tax is not required upon the disposition of a U.S. Real property interest by each of Red River Cattle, LLP, an Arizona limited liability partnership ("Red River Cattle"), and Pinal Feeding Co., an Arizona corporation (formerly known as Smith & Kelly Feed Co. Inc., an Arizona corporation) ("Pinal Feeding", and collectively with Red River Cattle, the "Transferor"), each of the undersigned hereby certifies the following on behalf of the Transferor:

1. Neither Red River Cattle nor Pinal Feeding is a foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);

2. Red River Cattle's U.S. employer identification number is 86-0888573 and Pinal Feeding's U.S. employer identification number is 86-0147047;

3. The office address of Red River Cattle and Pinal Feeding is: 8950 S. 52<sup>nd</sup> Street, Suite 310, Tempe, AZ 85284

The Transferor understands that this Certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment or both.

Under penalties of perjury, I declare that I have examined this Certification and, to the best of my knowledge and belief, it is true, correct and complete, and I further declare that I have authority to sign this Certification on behalf of the Transferor.

Red River Cattle, LLP, an Arizona limited liability partnership

By: Sacate Pellet Mills, Inc., an Arizona corporation  
Its: General Partner

By: \_\_\_\_\_  
Earl A. Petznick, Vice President

Pinal Feeding Co.,  
an Arizona corporation

By: \_\_\_\_\_  
Earl A. Petznick, President

## EXHIBIT F

### Assignment and Assumption of Leases

THIS ASSIGNMENT AND ASSUMPTION OF LEASES (this "Assignment"), is made as of the \_\_\_\_ day of \_\_\_\_\_, 2022, by and between Pinal Feeding Co., an Arizona corporation (formerly known as Smith & Kelly Feed Co. Inc., an Arizona corporation) ("Assignor"), and the City of Maricopa, an Arizona municipal corporation ("Assignee").

#### WITNESSETH:

WHEREAS, Red River Cattle, LLP, an Arizona limited liability partnership, Assignor, and Assignee entered into that certain Purchase and Sale Agreement and Escrow Instructions, dated \_\_\_\_\_, 2022 ("Purchase Agreement"), covering the Property (as hereinafter defined); and

WHEREAS, Assignor has simultaneously herewith conveyed to the Assignee all of Assignor's right, title and interest in and to approximately 230 acres of the real property generally located east of N White and Parker Road between W. Maricopa-Casa Grande HWY and W Peters and Nall Road, Maricopa, Pinal County, Arizona (the "Property"), and in connection therewith, Assignor has agreed to assign to Assignee all of Assignor's right, title and interest in and to those leases described on the schedule attached as Exhibit A hereto (collectively, the "Leases").

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Assignor hereby assigns unto Assignee, all of the right, title and interest of Assignor in and to the Leases; TO HAVE AND TO HOLD the same unto Assignee, its successors and assigns from and after the date hereof, subject to the terms, covenants and conditions of the Leases.
2. This Assignment is made without representation or warranty by Assignor except as expressly provided herein or to the contrary in the Purchase Agreement.
3. Assignee assumes the performance of all of the obligations of Assignor under the Leases to be performed from and after the date hereof. Assignee agrees to indemnify, protect, defend and hold Assignor harmless from and against any and all claims, demands, liabilities, losses, costs, damages or expenses including, without limitation, reasonable attorneys' fees and costs (collectively, "Claims") arising out of or resulting from any breach or default by Assignee in its obligations under the terms of the Leases from and after the date hereof.
4. Assignor hereby agrees to indemnify, protect, defend and hold Assignee harmless from and against any and all Claims arising out of or resulting from any breach or default by Assignor in its obligations under the terms of the Leases prior to the date hereof.
5. This Assignment may be executed in separate counterparts, which, together, shall constitute one and the same fully executed Assignment.

IN WITNESS WHEREOF, this Assignment and Assumption of Leases has been duly executed as of the date first above written.

**“ASSIGNOR”**

Pinal Feeding Co., an Arizona corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**“ASSIGNEE”**

City of Maricopa, an Arizona municipal corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

## EXHIBIT A

### Leases

(a) Site Lease dated October 19, 1999, by and between Assignor, as lessor, and American Towers, Inc., a Delaware corporation (as successor in interest to VoiceStream PCS III Corporation, a Delaware corporation), as lessee; and

(b) Lease Agreement dated August 14, 1990, by and between Assignor, as lessor, and East Valley Institute of Technology, School District #401, a political subdivision of the State of Arizona (as successor in interest to Casa Grande Communications, an Arizona limited partnership), as lessee, as amended by that certain Lease Assignment, Assumption and Amendment Agreement dated September 2, 1994, the First Amendment to Lease Agreement dated April 30, 2009, the Second Amendment to Lease Agreement dated September 6, 2012, the Third Amendment to Lease Agreement dated September 29, 2017, the Fourth Amendment to Lease Agreement dated March 10, 2020, and the Assignment and Assumption of Lease Agreement dated December 2, 2020.