

**PURCHASE AND SALE AGREEMENT  
AND  
ESCROW INSTRUCTIONS**

This Purchase and Sale Agreement and Escrow Instructions and Development Agreement ("Agreement") is entered into effective as of Oct. 13th, 2020, by and between Santa Cruz Land Development, LLC, an Arizona limited liability company (collectively "Seller") and the City of Maricopa, an Arizona municipal corporation ("Buyer"), on the following terms and conditions:

1. Sale and Purchase. On the terms and conditions contained in this Agreement, Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller approximately 79 acres of the real property generally located south of State Route 238 between W. Edison Road and N. Green Road, Maricopa, Pinal County, Arizona, Assessor Parcel No. 510-17-003D, 510-17-004B and 510-17-004C, and legally described and depicted on Exhibit A, 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, 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"). The Property **does not** include any non-appurtenant water rights, including the following Type 2 Non-Irrigation Grandfathered Right (ADWR Certificate No. 58-102627.0001).

2. Escrow and Title Company. The Seller and Buyer 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 Seller and Buyer 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 Five Million One Hundred Sixty-One Thousand Eight Hundred Eighty and 70/100 DOLLARS (\$5,161,880.70), which represents \$1.50 per square foot multiplied by the square footage of the Property. In the event the Property is calculated at more or less than 79 acres in the Survey (defined in Section 5.03), the Purchase Price shall be adjusted accordingly based on the actual square footage of the Property. The Purchase Price shall be paid in cash or certified funds as follows:

(a) Payment of Fifty Thousand and 00/100 Dollars (\$50,000.00) Earnest Money as set forth in Section 3.02.

(b) Payment of One Million and 00/100 Dollars (\$1,000,000.00) at Closing ("Closing Payment").

(c) Payment of the remainder of the Purchase Price plus accrued interest from Closing to the date of such payment on the outstanding balance at a rate of 3% per annum shall be paid on or before July 1, 2021. The balance of the Purchase Price shall be evidenced by a Promissory Note from Buyer to Seller in the form attached hereto as Exhibit B and secured by a

Deed of Trust in the form attached hereto as Exhibit C. As set forth in the Promissory Note, the City has the right to pay the remainder of the Purchase Price prior to July 1, 2021 without penalty.

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 Fifty Thousand and No/100 Dollars (\$50,000.00) ("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 Closing Payment 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 and the Earnest Money. The Title Company shall provide a copy of the fully executed Agreement to the Seller and Buyer within five (5) days of the Opening of Escrow.

4.02 Closing. 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)), but in no event later than December 15, 2020, unless otherwise agreed to in writing by both parties.

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 Buyer and Seller 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. 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 remove (i) all financing encumbrances and monetary liens arising from any deeds of trust or mortgages executed or assumed by Seller; (ii) mechanics', materialmen's and supplier's liens arising out of work performed at the request of Seller or on behalf of Seller; (iii) judgment liens against Seller; and (iv) federal or state income or sales tax liens against Seller. Any title exceptions which have been not been objected to or waived by Buyer shall be called "Permitted Title Exceptions."

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 the Permitted Title Exceptions. 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.

At Closing, as a condition to Seller's obligation to accept the Promissory Note and the Deed of Trust, Title Company must be prepared and irrevocably committed to issue to Seller, an ALTA standard lender's policy of title insurance (the "Lender's Title Policy") in favor of Seller with respect to the Property, insuring the lien of the Deed of Trust as a first position lien, with liability coverage in an amount equal to the sum of the original principal balance of the Note. Buyer shall pay for the cost of the Lender's Title Policy.

5.03 Survey. As part of the Property Information, Seller shall provide Buyer with a copy of that certain ALTA survey of the Property dated March 10, 2006 ("Survey") and the Survey shall be used to calculate the square footage of the Property. However, if desired by Buyer, the Buyer may elect to obtain a new ALTA survey of the Property, in which event such survey shall constitute the Survey hereunder. If Buyer elects to obtain a new Survey, the Survey (i) will be prepared by a registered land surveyor or licensed civil engineer, (ii) will include a calculation of the square footage of the Property, and (iii) will be certified to Buyer, Seller and Escrow Agent. Buyer shall promptly provide a copy of the new Survey to Seller upon receipt. If Buyer elects not to obtain a new Survey, matters that would be revealed by a correct ALTA survey shall be a Permitted Title Exception on the Title Commitment.

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, Seller's Property Disclosure Statement, list of mechanical equipment or other ancillary assets that will stay with the Property, Seller's corporate information and other information Seller may have in its possession concerning the Property ("Preliminary Items of Due Diligence").

Neither 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 restore the affected portion of the Property to its condition prior to the performance of such studies or inspections, which obligation shall survive the termination of this Agreement. Buyer agrees to indemnify, defend and hold the Seller harmless for, from and against any liability and/or damages caused by Buyer in exercising the foregoing license (unless arising from 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.

(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 thirtieth (30<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"). If Buyer elects to terminate this Agreement pursuant to this Section 6.02(b), 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. Representations and Warranties

7.01 Seller's Representations and Warranties. The Seller makes the following representations and warranties, all of which shall be true and correct at the Closing and which shall survive Closing:

(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) The 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 as 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, except as disclosed in the Property Information, the Seller has not received any notices 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, except as disclosed in the Property information, there has been no production, storage, transport, release, spillage or disposal upon the Property of any hazardous substances, hazardous waste, hazardous materials, toxic substances, contaminants, or any other substances declared to be hazardous or toxic under any Environmental Laws in violation of any Environmental Laws.

(e) 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.

(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.

(g) Except as disclosed in the Title Commitment, there are no persons in possession or occupancy of the Property or any part thereof, nor are there any persons who have possessory rights in respect to the Property or any part thereof.

The foregoing representations, warranties and covenants shall be true as of the date hereof and as of Close of Escrow and shall survive the Close of Escrow and delivery of the Deed for a period of six (6) months and then terminate, except that any claim for which legal action is filed and served within such time period shall survive until resolution of such action. All references in this Section to Seller's knowledge shall mean the actual (and not imputed or constructive) knowledge of Mark R. Smith, who is the managing member for the Property for not less than the past five (5) years in the capacity as a member manager of Seller, without having made, or being under any duty to make any further investigation or inquiry with respect to such knowledge. In no event shall Mark R. Smith have any personal liability or obligation hereunder and Buyer agrees not to attempt to assert any liability against Mark R. Smith personally by reason of any of the foregoing representations or warranties proving to be incorrect. If Buyer or Seller learns prior to Closing any fact that would render any of the foregoing warranties or representations untrue as a result of knowledge first gained by Seller (or the occurrence of events first arising) after the date of this Agreement and not caused by the intentional misconduct of Seller, then (i) such party shall immediately give notice thereof to the other party, (ii) Seller's warranty or representation shall be deemed amended thereby, and (iii) if such amendment is material, Buyer shall have the right (as Buyer's sole remedy) to terminate this Agreement upon the earlier of the Closing date or within ten (10) days after the date that Buyer first learned of such inaccuracy. Upon a termination pursuant to the preceding sentence, the Earnest Money shall be refunded to Buyer. Notwithstanding the foregoing, if any of the foregoing warranties or representations are rendered untrue as a result of Seller's intentional misconduct, or if any of the foregoing warranties, representations or covenants fail as a result of default by Seller, Buyer shall have the right to exercise the remedies described below.

(h) Except as otherwise expressly set forth in this Agreement and the Deed, neither the Seller nor its officers, 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. Buyer acknowledges that it will have the opportunity to inspect the Property during the Feasibility Period, and during such period, observe its physical characteristics and existing conditions and the opportunity to conduct such investigation and study on and the Property and adjacent areas as Buyer deems necessary. Buyer hereby forever releases and discharges Seller from all responsibility and liability, including without limitation, liabilities and responsibilities for matters relating to the physical, environmental or legal compliance status of the Property, whether arising before or after the Effective Date, under the Comprehensive Environmental Response, Compensation and Liability Act Of 1980 (42 U.S.C. Sections 9601 et seq.), as amended ("CERCLA"), regarding the condition, valuation, salability, rentability or utility of the Property, or its suitability for any purpose whatsoever (including, but not limited to, with respect to the presence in the soil, air, structures and surface and subsurface waters, of Hazardous

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Materials or other materials or substances that have been or may in the future be determined to be toxic, hazardous, undesirable or subject to regulation and that may need to be specially treated, handled and/or removed from the Property under current or future federal, state and local laws, regulations or guidelines, and any structural and geologic conditions, subsurface soil and water conditions and solid and hazardous waste and Hazardous Materials on, under, adjacent to or otherwise affecting the Property). Buyer further hereby waives (and by Closing this transaction will be deemed to have waived) any and all objections and complaints (including, but not limited to, federal, state and local statutory and common law based actions, and any private right of action under any federal, state or local laws, regulations or guidelines to which the Property is or may be subject, including, but not limited to, CERCLA) concerning the physical characteristics and any existing conditions of the Property, including, without limitation, the landlord's obligations under any leases relating to the physical, environmental or legal compliance status of the Property, whether arising before or after the Effective Date. Buyer further hereby assumes the risk of changes in applicable laws and regulations relating to past, present and future environmental conditions on the Property and the risk that adverse physical characteristics and conditions, including, without limitation, the presence of Hazardous Materials or other contaminants, may not have been revealed by its investigation. For purposes hereof, "Hazardous Materials" means "Hazardous Material," "Hazardous Substance," "Pollutant or Contaminant," and "Petroleum" and "Natural Gas Liquids," as those terms are defined or used in Section 101 of CERCLA, and any other substances regulated because of their effect or potential effect on public health and the environment, including, without limitation, PCBs, lead paint, asbestos, urea formaldehyde, radioactive materials, putrescible materials, and infectious materials.

7.02 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**". The Buyer acknowledges and agrees that this disclaimer has been specifically negotiated and that the Property will be sold in its then-present condition.

## 8. Remedies.

8.01 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 (and such failure continues for a period of five (5) days following written notice to the Buyer), 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. The 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 8.03 below or limit or prevent Seller from enforcing Buyer's obligations and liabilities which survive a termination of this Agreement.

8.02 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 five (5) 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 actual damages as a result of the Seller's default hereunder. 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 8.03 below.

8.03 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.

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

9. Conditions Precedent to the 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, 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 Escrow Agent or the Seller in form and substance reasonably satisfactory to Seller.

10. 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, all or any of which may be waived in writing by Buyer:

(a) All representations and warranties made by the Seller in this Agreement (as may be amended by the terms of 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) The 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 Escrow Agent or Buyer in form and substance reasonably satisfactory to Buyer.

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

11. Closing.

11.01 Closing Matters.

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

(i) A special warranty deed ("Deed") conveying the Property to Buyer in accordance with the terms of this Agreement, on Title Company's standard form and subject to all matters of record or that an ALTA survey of the Property would reveal;

(ii) An affidavit, signed and acknowledged by the Seller under penalties of perjury, certifying that the Seller is not a nonresident alien, foreign corporation, foreign partnership, foreign trust, foreign estate, or other foreign person within the meaning of Section 1445 and Section 7701 of the Internal Revenue Code of 1986 and the associated Treasury Regulations;

(iii) An affidavit of property value as required by law; and

(iv) Such other documents as are reasonably necessary to close and consummate the purchase and sale transaction contemplated by this Agreement and as may be required by the lender for the Buyer.

(b) At Closing, Buyer shall:

(i) Execute and deliver the Promissory Note and the Deed of Trust to Title Company. Upon the Closing, Title Company shall (1) deliver the original Promissory Note to Seller, (2) record the Deed of Trust immediately following the recordation of the Deed and prior to the recordation of any intervening instruments.

(ii) Deliver the Closing Payment to Title Company;

(iii) Execute and deliver an affidavit of property value as required by law;

(iv) Execute and deliver such other documents as are reasonably necessary to close and consummate the purchase and sale transaction contemplated by this Agreement and as may be required by the lender for Buyer or the Title Company.

(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.

11.02 Taxes. At Closing, all taxes (real and personal), fees and assessments, if applicable, shall be prorated as of the date of the Closing in accordance with the prorations customarily used for commercial properties in the area of the Property.

11.03 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. Buyer shall pay for the costs of the standard Lender's Title Policy. The Seller shall pay the fee for recording the Deed. Except as otherwise provided in Section 8:03, 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.

11.04 Commissions. At the Closing, the Seller shall pay all real estate commissions owed to Nathan & Associates, which solely represents the Seller, pursuant to such separate written agreement as may be entered into between Nathan & Associates and the Seller. Neither Seller nor Buyer have retained or engaged any other 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 11.04 shall survive the Closing.

12. Condemnation and Risk of Loss

12.01 Condemnation. If, prior to Closing, any governmental authority, other than Buyer, 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 12:01, 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.

12.02 Risk of Loss. The risk of loss or damage to the Property and all liability to third persons until the Close of Escrow 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.

13. Miscellaneous

13.01 Notices. Any and all notices, demands or requests required or permitted hereunder shall be in writing and shall be effective upon personal delivery, or email, or facsimile transmission (facsimile transmission must include verification of transmission) or one (1) business day after being deposited with any commercial air courier or express service providing next day delivery, addressed as follows:

To the Seller: Santa Cruz Land Development, LLC  
Attn: Mark Smith  
6849 E County 9 1/2 St.  
Yuma, AZ 85365  
Email: msmith@smithfarmsyuma.com

And,

Santa Cruz Land Development, LLC  
5000 California Avenue, Suite 110  
Bakersfield, California 93309  
Attn: John C. Smith  
Email: [j.smith@valleyrepublic.bank](mailto:j.smith@valleyrepublic.bank)

With a copy to: Jeffrey P/ Hubbard  
Brier, Irish & Hubbard, P.L.C.  
6245 North 24<sup>th</sup> Parkway, Suite 100  
Phoenix, AZ 85016-2029  
Email: [jhubbard@bihlaw.com](mailto:jhubbard@bihlaw.com)

To Buyer: City of Maricopa  
Attn: Rick Horst, City Manager  
39700 West Civic Center Plaza  
Maricopa, Arizona 85138  
Email: [rick.horst@maricopa-az.gov](mailto:rick.horst@maricopa-az.gov)

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: [denis@fitzgibbonslaw.com](mailto:denis@fitzgibbonslaw.com)

Escrow Agent: LaTisha Sopha  
Title Security Agency of Arizona  
421 E. Cottonwood Lane  
Casa Grande, Arizona 85122  
Fax No.: 520.426.4699  
Email: [latisha.sopha@titlesecurity.com](mailto:latisha.sopha@titlesecurity.com)

Buyer, the Seller or Escrow Agent 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. Any telephone numbers provided in this Agreement are for aiding informal communications only, and notices shall not be effective if provided orally.

13.02 Time of the Essence; Date of Performance. Time is of the essence of this Agreement, and Buyer and the 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.

13.03 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.

13.04 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.

13.05 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.

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

13.07 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 necessary in order to complete the sale, conveyance and transfer herein provided and to do any and all things as may be requested in order to carry out the intent and purpose of this Agreement.

13.08 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. A party's signature on this Agreement or any amendment hereto may be provided by facsimile or electronically scanned and shall be effective upon transmission to the other party hereto.

13.09 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.

13.10 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.

13.11 Dispute Resolution. In the event a dispute arises under this Agreement prior to Closing, Buyer and Seller agree that there shall be a thirty (30) day moratorium on litigation during which time the Buyer and the 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 the Seller in writing, in which case all administrative fees shall be divided evenly between the Buyer and the Seller. The matter in dispute shall be submitted to a mediator mutually selected by Buyer and the 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 the 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 the Seller. The results of the mediation shall be nonbinding with either Buyer or the 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.

13.12 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.

13.13 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.

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

13.16 Assignment. Buyer shall not have the right to assign its rights under this Agreement without the consent of Seller in its sole and absolute discretion.

[Signature Page Follows]

IN WITNESS WHEREOF, Buyer and the 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, CMC  
City Clerk

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

SELLER:

Santa Cruz Land Development, LLC  
an Arizona limited liability company

By:  \_\_\_\_\_  
John C. Smith, Authorized Agent

IN WITNESS WHEREOF, Buyer and the 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, CMC  
City Clerk

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

SELLER:

Santa Cruz Land Development, LLC  
an Arizona limited liability company

By: \_\_\_\_\_  
John C. Smith, Authorized Agent

**ACKNOWLEDGEMENT AND AGREEMENT BY TITLE COMPANY**

The Title Company hereby acknowledges receipt of a fully executed copy of this Agreement on this 13th day of October, 2020, 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 Seller or Buyer. 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 D Sopha  
LaTisha Sopha  
Title Security Agency of Arizona  
421 E. Cottonwood Lane  
Casa Grande, Arizona 85122



## **EXHIBIT A**

### **Legal Description of the Property**

The legal description shall be determined by Escrow Agent from the legal description used in the previous conveyance to Seller. The Property consists of approximately 79 acres of real property located at the southeast corner of Highway 238 and Green Road in Maricopa, Arizona and comprising Pinal County, Arizona assessor parcel numbers 510-17-003D, 004B, and 004C.

**EXHIBIT B**  
**PROMISSORY NOTE**

\$ \_\_\_\_\_

Maricopa, Arizona  
\_\_\_\_\_ 2020

For value received, the undersigned ("**Borrower**") promises to pay to the order of \_\_\_\_\_ ("**Lender**") the principal sum of \_\_\_\_\_ and 00/100 Dollars (\$ \_\_\_\_\_), together with interest on the unpaid principal balance from the date hereof at a rate of three percent (3.0%) per annum compounded annually, due and payable as follows:

1. ~~Payment. Application of Payments. Prepayment.~~

The entire unpaid principal balance, all accrued and unpaid interest, and all other amounts payable hereunder shall be repaid on or before July 1, 2021 (the "**Maturity Date**").

All payments of principal and interest on this Note shall be paid in lawful money of the United States of America at \_\_\_\_\_, or at such other place as Lender may designate in writing.

All payments shall be credited first to the payment of Late Charges and other costs of collection due hereunder, second to accrued but unpaid interest and third to the reduction of the unpaid principal balance, and interest shall thereupon cease upon the principal so credited.

This Note may be prepaid in whole or in part at any time without penalty. All prepayments shall be applied to the indebtedness owing hereunder in the manner set forth in the preceding paragraph.

2. ~~Late Charge.~~ Any payment not made by Borrower when due shall have added to such payment a late charge of fifty dollars (\$50.00) ("**Late Charge**"). Such charge is designed to compensate Lender for the inconvenience and damages that late payment will cause Lender, and Borrower agrees that such Late Charge is a reasonable estimate of the damages that Lender will suffer by reason of a late payment and does not constitute a penalty. Such Late Charge is in addition to, and shall not diminish or adversely affect, the Lender's right to charge or collect interest at the Default Rate, as hereinafter provided, and/or Lender's right to exercise any other election or remedy provided hereunder.

3. ~~Security.~~ This Note is secured by that certain Deed of Trust of even date hereof, as the same may be amended, modified or supplemented from time to time and recorded against the real property located in Pinal County, Arizona and described therein (the "**Property**"), all of the terms and conditions of which are hereby incorporated herein and made a part of this Note.

4. ~~Default.~~ Borrower shall be in default ("**Default**") hereunder if any of the following occurs: (a) Borrower fails to make any payment when due under this Note and such default continues for a period of five (5) days after Borrower receives written notice thereof from Lender, or

(b) Borrower fails to perform any of its other obligations contained in this Note and such default continues for a period of ten (10) days after Borrower receives written notice thereof from Lender; or  
(c) Borrower fails, after the expiration of the applicable grace period, if any, to keep or promptly perform any covenant, promise or undertaking made by Borrower in the Deed of Trust.

5. Lender's Rights Upon Default. Upon a Default hereunder and for so long as such Default is continuing, Lender may (in addition to any other rights or remedies of Lender under this Note or the Deed of Trust at law or in equity) at Lender's election, declare the outstanding principal balance of this Note, together with all other sums due hereunder, immediately due and payable in full, without further notice of such election, and Borrower shall pay that amount. In addition, upon Default, the outstanding principal balance of this Note, together with all other sums due hereunder, shall bear interest at the rate of twelve percent (12%) per annum ("**Default Rate**") for so long as such Default remains uncured.

6. Waiver of Defenses. Borrower, to the extent not otherwise required by this Note, waives presentment, demand for payment, notice of nonpayment, protest, notice or protest, notice of dishonor, bringing of suit and diligence in taking any action to collect amounts called for hereunder. Borrower consents, without notice and without release of Borrower's liability, to extensions or accommodations given by Lender, without regard to the number or aggregate period of such extensions, and to the release, modification, or exchange of any security for this Note.

7. Governing Law. This Note shall be construed according to the laws of the State of Arizona without giving effect to conflict of law principles. Lender hereby irrevocably submits to the jurisdiction, process and venue of the Pinal County Superior Court in the event of any action or dispute arising out of or relating to this Note.

8. Waiver. Lender's failure to exercise any available right or remedy upon a Default by Borrower shall not constitute a waiver of the right to exercise the same or any other right or remedy at any subsequent time with respect to the default, and Lender's acceptance of a payment in an amount less than the amount then due and payable at the time of such payment shall not constitute a waiver of any applicable Late Charge or a waiver of the right to exercise any right or remedy available to Lender at that time or at any subsequent time or nullify any prior exercise of any right or remedy.

9. Time of Essence. Time is of the essence of Borrower's duties and obligations under this Note.

10. Lender. The term "Lender" shall include the Lender named on the first page of this Note and any other person or persons to whom an interest in this Note may be subsequently assigned.

11. Notices. All notices, consents, approvals and waivers made or given by Borrower or Lender in connection with this Note must be in writing to be effective. All notices required to be given hereunder or by operation of law in connection with the performance or enforcement hereof shall be deemed duly given and received (i) if personally delivered, on the date of delivery, (ii) if mailed, three (3) days after deposit in the United States mail, registered or certified, postage prepaid

and addressed as provided below, or (iii) if by a courier delivery service providing overnight or "next-day" delivery, on the next business day after deposit with such service, and addressed to the parties at their respective addresses set forth in the Deed of Trust.

In witness whereof, this Note has been executed by the Borrower.

BORROWER:

\_\_\_\_\_

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

EXHIBIT C

When recorded mail to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

DEED OF TRUST AND ASSIGNMENT OF RENTS  
**(FIRST LIEN POSITION)**

TRUSTOR: \_\_\_\_\_  
\_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

BENEFICIARY: \_\_\_\_\_  
\_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

TRUSTEE: \_\_\_\_\_  
\_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

PROPERTY in Pinal County, Arizona, described as (the "Real Property"):

See Exhibit A attached hereto and by this reference incorporated herein.

This Deed of Trust is made among Trustor, Beneficiary and Trustee who agree as follows:

1. Grant and Conveyance. For value received, Trustor irrevocably grants, conveys and assigns to Trustee in Trust, with power of sale, the Real Property, together with: (a) all buildings, structures, improvements, fixtures and built-in equipment and appliances now or hereafter placed thereon; (b) all present and future leases and all subleases executed with respect to the Real Property; (c) all rents, issues, profits, revenues and income thereof including all revenue, gross or net receipts, payments, and income derived from any business activity conducted by or on behalf of Trustor on the Real Property ("**Property Income**"); (d) all easements, licenses, rights, minerals, oil and gas, appurtenances, abandoned or vacated streets, alleys and rights-of-way, privileges and interests now or thereafter attached to or used in connection with the Real Property; (e) all policies of insurance on

the Real Property and/or personal property located on the Real Property (the "**Personal Property**") and proceeds thereof, and all awards and proceeds of any condemnation or like proceeding affecting the Real Property and/or the Personal Property; and (f) all water, drainage, irrigation and electrical or water user's rights appurtenant or related to the Real Property (collectively, the "**Property**"). All components of the Property are deemed encumbered hereby as an entity and are declared to be part of the real estate whether or not physically attached to the Real Property.

2. Obligations Secured. This Deed of Trust secures: (a) payment of all indebtedness evidenced by the Promissory Note of Trustor to Beneficiary, dated as of the Effective Date (as defined below), in the face amount of \$ \_\_\_\_\_ interest and charges thereon and all extensions, modifications and renewals thereof (the "**Note**"); (b) payment of all other sums advanced hereunder to protect the security of this Deed of Trust with interest thereon; (c) performance of all agreements and obligations of Trustor hereunder, in the Note or in any other instrument securing the same; and (d) all other or future loans and advances by Beneficiary to Trustor which are or shall be secured hereby (collectively, the "**Obligations Secured**").

3. Warranties. Trustor represents, warrants and covenants that: (a) Trustor shall defend the title to the Property against all claims and demands, subject to the approved exceptions; (b) any greater title to the Property hereafter acquired by Trustor shall be subject hereto; and (c) this Deed of Trust constitutes a **first** priority lien and encumbrance against the Property.

4. Payment of Obligations Secured. Trustor shall pay when due and before delinquency: (a) all Obligations Secured hereby; (b) all liens, taxes, assessments, fines, impositions and charges of every type or nature affecting the Property; (c) all premiums to maintain insurance required hereunder in force; (d) all rents or charges for water, water delivery, sewer, gas, electricity, telephone and other utilities and services, waste removal, bills for repairs, and assessments on water stock in any way related to the Property; (e) all costs, fees and expenses of this Trust including, without limitation, all fees of Trustee, reasonable attorneys' fees, title fees and all other costs and expenses incurred by Beneficiary or Trustee; and (f) all property owners association dues or assessments, if any.

5. Other Encumbrances. Trustor shall pay or perform before delinquency all obligations under any prior or subordinate mortgage, deed of trust, agreement of sale or any other lien (including mechanic's and materialmen's liens) or encumbrance (an "**Encumbrance**"). If any such Encumbrance shall be in default by reason of nonpayment of principal or interest, or any part thereof; or for any other reason, Beneficiary may cure such default without notice, and the cost of curing such default, with interest at the highest lawful rate then payable by Trustor under Arizona law, or if no such limit then exists, at the "**Default Interest Rate**" specified in the Note, from the time of the advance or advances therefor, shall be added to the Obligations Secured and may be collected from Trustor upon demand at any time after such advance or advances are made, and the holder of the Note and Deed of Trust shall be subrogated to the rights of any lienholder so paid. Immediately upon receiving any knowledge or notice of any default or claimed default under any Encumbrance, Trustor shall give written notice thereof to Beneficiary and shall give to Beneficiary immediately upon receipt thereof a true copy of each and every notice, summons, legal process, legal paper or other communication relating in any way to any Encumbrance or to the performance or enforcement thereof, or to any default thereunder. If payment of all or any part of principal or interest secured by any such Encumbrance shall not be made at the time specified therein, then regardless of any postponement, extension, indulgence or forgiveness thereof which may be agreed

to or acquiesced in by the holder of the Encumbrance, a sum equal to the amount of such principal or part thereof shall immediately become due and payable in reduction of the Obligations Secured; provided, however, that nothing herein contained shall be deemed or construed to entitle the owner or holder of this Deed of Trust to any payment in excess of the sum hereby secured and interest thereon. If the principal amount due secured by any Encumbrance which is superior in lien priority to this Deed of Trust is increased over the amount of its unpaid principal as it exists on the date hereof, then upon Beneficiary's demand a sum equal to the amount of such increase shall immediately become due and payable in reduction of the Obligations Secured.

6. Preservation of Property; Leaseholds; Entitlements. Trustor shall keep the Property in good condition and repair and shall not commit waste or permit impairment or deterioration of the Property, and shall not remove or demolish any improvements on the Property without Beneficiary's prior written consent. Trustor shall repair, restore or construct in a workmanlike manner any improvements on the Property that are damaged or are being altered or constructed and pay when due all claims for labor performed and materials furnished therefor. Trustor shall perfect and maintain all water, power and any other rights appurtenant to the Real Property. Trustor shall ensure compliance with all laws, regulations, ordinances, covenants, conditions and restrictions applicable to the use and occupancy of the Property and take all other actions concerning the Property that any prudent owner would take. Trustor agrees to comply with the provisions of any lease affecting the Property. Trustor shall obtain the written consent of Beneficiary, whose consent may be withheld in its reasonable discretion, for any proposed rezoning, platting or any other entitlements of any kind affecting all or any portion of the Property prior to Trustor's submission of such rezoning, platting or entitlement to the applicable governmental authority.

7. Protection by Trustor. Trustor shall defend, at Trustor's expense, any action or proceeding purporting to affect Trustor's interest in the Property or the liens, rights or powers of Beneficiary or Trustee, or the rights and powers of Beneficiary or Trustee, or seeking to impose any liability on Beneficiary or Trustee because of any act or omission of Trustor.

8. Protection by Beneficiary or Trustee; Reimbursement. Beneficiary or Trustee or both of them are authorized at their election to appear in and defend any action or proceeding purporting to affect the Property or the liens, rights or powers of Beneficiary or Trustee: to pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or inferior hereto: and, in exercising any such powers, to pay necessary expenses, employ counsel, and to pay counsel's reasonable fees and costs. Without obligation to do so, Beneficiary or Trustee may further pay any amount or perform any obligation that is required of Trustor hereunder or take any other action or incur any other expense to protect the Property and the security hereof. All amounts so paid or expenses so incurred shall bear interest at the highest lawful rate permitted under applicable law, or if no such limit then exists, at the "**Default Interest Rate**" specified in the Note, and shall be secured by this Deed of Trust as a lien on the Property. Unless otherwise agreed, such amounts or expenses with interest shall be payable upon notice to Trustor requesting such payment. Beneficiary shall be subrogated to the lien of any other encumbrance discharged hereunder, notwithstanding any release of record of the same. Neither Beneficiary nor Trustee shall be obligated to perform or discharge any obligation or duty to be performed or discharged by Trustor under any lease, declaration or covenant. Trustor shall and does hereby agree to indemnify and hold Beneficiary and Trustee harmless, including, without limitation, the duty to defend, from any and all liability arising from or under any lease declaration or covenant. Neither Beneficiary nor Trustee

shall have any responsibility for the Property or liability on account thereof to any lessee, invitee, association or any other person or entity.

9. Property and Casualty Insurance. Trustor shall keep such improvements and all improvements thereafter erected on the Real Property insured against loss by fire, hazards included within "special form insurance, f/k/a all-risk insurance" and such other hazards, in such amounts (including replacement cost coverage) and for such periods as Beneficiary may require. Trustor shall also insure all fixtures and Personal Property encumbered hereby against the same loss hazards in an amount acceptable to Beneficiary. In the event of loss, all property and casualty insurance proceeds shall be payable to Beneficiary and shall be applied by Beneficiary in such manner as Beneficiary chooses in its sole discretion. Any such application shall not cure any default hereunder or prevent Beneficiary from pursuing any of its remedies.

10. Liability Insurance. Trustor shall maintain in effect commercial general liability insurance coverage, including personal injury, bodily injury (including wrongful death), contractual liability and broad form property damage, with the following limits: (a) general aggregate, not less than \$1,000,000.00; and (b) per occurrence combined single limit not less than \$1,000,000.00 and with only such deductibles as Beneficiary may approve. Beneficiary shall have no obligation, duty or liability as to the adequacy of such amount of insurance. Such liability insurance policy shall provide that the insurance cannot be invalidated as to the interest of Beneficiary by any act or negligence of any person owning the Property, by foreclosure or other proceedings or notice of sale or by any change in the title or ownership of the Property or by occupation of any insured structures for purposes more hazardous than permitted by such policies.

11. Insurance Generally. All insurance policies required by this Deed of Trust shall be issued by companies acceptable to Beneficiary, shall be on an "occurrence" and not on a "claims made" basis, shall be on forms which are acceptable to Beneficiary and shall recite Beneficiary's interest as mortgagee in a standard non-contributory mortgage clause effective as of the closing date or shall name Beneficiary as an additional insured. All such insurance shall be maintained until the Note has been paid full without cost to Beneficiary and evidence thereof shall be provided to Beneficiary within five days following Beneficiary's request to Trustor. Such insurance shall also contain such other provisions as Beneficiary may deem necessary or desirable to protect Beneficiary's interest and which are customarily issued by insurance companies, including, without limitation, a provision for 30-day prior written notice to Beneficiary of cancellation or any change in the risk or coverages insured. In the event of loss, Trustor shall give prompt notice to the insurance carrier and to Beneficiary. Beneficiary may make proof of loss if not made promptly by Trustor. Any application or release of any insurance proceeds hereunder shall not cure or waive any Event of Default or notice of Trustee's sale hereunder or invalidate any act done pursuant to such notice.

12. Condemnation. Any award of damages in connection with any condemnation or taking of or for injury to any of the Property by reason of public use or for damages for private trespass or injury thereto is assigned in full and shall be paid to Beneficiary as further security for all Obligations Secured (reserving to Trustor, however, the right to seek recovery for any losses incurred, subject to this Deed of Trust). Upon receipt of such monies Beneficiary may either apply the same to the payment of the Obligations Secured or release all or a portion thereof to Trustor for the repairing or restoring the remainder of the Property.



13. Inspection. Beneficiary may make or cause to be made reasonable entries upon and inspections of the Property at any time with notice to Trustor, except in case of emergency when entry may be made without notice.

14. Other Documents. Trustor shall execute and deliver, in recordable form if requested, such further instruments and do such further acts as may be necessary or desirable or as may be reasonably requested by Trustee or Beneficiary to more effectively carry out the purposes of this Deed of Trust and to subject to the lien created hereby any properties, rights and interests covered or intended to be covered hereby.

15. Due on Sale, Transfer or Encumbrance. Trustor will not sell, transfer, lease, encumber, convey or in any manner dispose of the Property, or any part thereof or interest therein, without the prior written consent of Beneficiary, which may be given or withheld in Beneficiary's sole discretion. It shall be deemed a disposition if Trustor is dissolved or if Trustor is a corporation, partnership or limited liability company and the controlling interest of such corporation, partnership or company is sold or transferred, or if Trustor is a trust and there is a change of beneficial interest with respect to the Trust. In the event of a breach of this covenant (which shall constitute an Event of Default for purposes of this Deed of Trust), at its option, Beneficiary may declare all sums secured by this Deed of Trust to be immediately due and payable and avail itself of any and all remedies provided herein for an Event of Default. Beneficiary shall upon request be provided with adequate and complete information concerning the buyer, transferee, lessee, lender and the proposed transaction. Unless required by law, if Beneficiary consents to any such transaction or to assumption of the loan secured by this Deed of Trust, Trustor shall not be released from any obligations hereunder or under the Note. Consent to any such transaction shall not be deemed to be consent or waiver of the necessity of consent to any other, future or successive transactions.

16. Default. Any of the following shall be an "Event of Default" or a default under this Deed of Trust, to the extent permitted by law: (a) Trustor fails to pay on time any monies due and payable hereunder, under the Note or any other contract secured hereby; (b) Trustor breaches any warranty, covenant or provision hereof or of any other instrument or agreement executed as a part of this transaction; (c) Trustor becomes insolvent or ceases to do business as a going concern; (d) Trustor abandons all or any part of the Property; (e) Trustor voluntarily files any petition or case under any state insolvency law or any Federal Bankruptcy Code; (f) an involuntary petition or case is filed against Trustor under any state insolvency law or any Federal Bankruptcy Code and the petition remains pending for more than 60 days or the court in which such petition is pending approves it or Trustor is adjudicated a bankruptcy or becomes a debtor or debtor in possession in any such proceeding; (g) upon the institution of legal proceedings to enforce any Encumbrance upon the Property, or any portion thereof, or if the Property be attached or levied upon by any execution, attachment, tax levy or other writ which is not removed or bonded in a manner acceptable to Beneficiary within 30 days thereof; (h) a receiver, trustee, assignee, conservator, fiscal agent or liquidator be appointed for Trustor or for all or any part of the Property; (i) Trustor shall breach its covenants and agreements concerning sale, transfer or encumbrance of the Property; (j) Trustor shall make an assignment for the benefit of creditors generally; (k) Trustor fails timely to observe or perform any covenants or conditions in any lease of the Property to be performed by Trustor and such failure is not cured prior to the expiration of any applicable notice and cure periods; or (l) a default occurs under the Note or any other documents that now or in the future secure the Note.

17. Remedies. Upon the occurrence of an Event of Default, without further notice, Beneficiary may declare all sums secured hereby to be immediately due and payable in full and may accelerate all such indebtedness, and Beneficiary shall have the right to cause Trustee to sell the Property or any part thereof as set forth herein and as provided by applicable law. To invoke the power of sale hereunder, Beneficiary or its agent shall execute a Statement of Breach or Nonperformance and deliver the same to Trustee. Trustee shall thereafter record and give notice of Trustee's sale in the manner required by law and, after the lapse of such time as may then be required by law, Trustee shall sell the Property in the manner required by law at public auction at the time and place fixed by it in such notice to the highest bidder for cash in lawful money of the United States, payable at the time provided by applicable law or by a credit bid of Beneficiary. Trustee in its discretion may postpone or continue the sale from time to time and from place to place by giving notice of postponement or continuance by public declaration at the time and place last appointed for the sale. Trustee shall deliver to any purchaser its Deed conveying the Property so sold, but without any covenant or warranty, expressed or implied. Any person, including Trustor, Trustee or Beneficiary, may purchase the Property at such sale. The purchaser at the Trustee's sale shall be entitled to immediate possession of the Property as against Trustor, Trustee or other persons in possession and shall have a right to the summary proceedings to obtain possession provided in A.R.S. Section 12-1171, et seq., or otherwise, together with costs and reasonable attorneys' fees. Each provision of law relating to deeds of trust is and shall remain applicable to the respective rights and obligations of Trustor, Beneficiary and Trustee, and no term or provision hereof shall limit or restrict such rights or obligations. The omission of any express provision restating the applicable law herein shall not constitute or render the same inapplicable or waive the same. All provisions of the State of Arizona relating to deeds of trust are incorporated by reference herein. After deducting all costs, fees and expenses of Trustee and of this trust, including the cost of any environmental assessment or study and the cost of evidence of title in connection with any Trustee's sale and reasonable attorneys' fees of Beneficiary and Trustee, Trustee shall apply the proceeds of sale to payment of all sums then secured hereby and all other sums due under the terms hereof, with accrued interest; and the remainder, if any, to the person or persons legally entitled thereto, or as provided in A.R.S. Section 33-812 or otherwise. In lieu of sale pursuant to the power of sale conferred hereby, this Deed of Trust may be foreclosed in the same manner provided by law for the foreclosure of mortgages on real property. In any such judicial foreclosure, Beneficiary shall recover its reasonable attorneys' fees together with all costs and expenses, including without limitation, all court costs, experts' fees, cost of evidence of title and cost of any environmental survey or study. Beneficiary shall have all rights and remedies available to it hereunder and at law or in equity, and all remedies shall be cumulative and may be pursued concurrently or consecutively to the extent permitted by law.

18. Assignment of Rents. As additional security, Trustor hereby absolutely assigns, gives to and confers upon Beneficiary the right, power and authority, during the continuance of this Trust, to collect and retain the Property Income, reserving to Trustor the right, prior to the occurrence of an Event of Default by Trustor in payment of any Obligation Secured or in performance of any agreement hereunder, to collect and retain such Property Income as it becomes due and payable. Upon the occurrence of an Event of Default and for so long as such Event of Default is continuing Beneficiary may at any time, without notice, either by person, agent or a receiver to be appointed by a court, and without regard to the adequacy of any security for the Obligations Secured or the solvency of the Trustor, collect such Property Income, including that past due and unpaid, and apply the same to costs and expenses of operation and collection including receiver's fees and reasonable attorneys' fees of Beneficiary and Trustee and upon any Obligation Secured, in such order as

Beneficiary may determine. The collection of such Property Income, and the application thereof as aforesaid, shall not cure or waive any Event of Default or notice of Trustee's sale hereunder or invalidate any act done pursuant to such notice. Beneficiary expressly shall have all rights provided for in A.R.S. Sections 33-702B and 33-807 or such similar provisions as may be enacted hereafter.

19. Security Agreement.

20.1 Security Interest. This Deed of Trust shall be construed as a deed of trust on trust property as defined in A.R.S. Section 33-801. This Deed of Trust shall also constitute and serve as a Security Agreement on personal property within the meaning of, and shall constitute a first priority security interest under, the Arizona Uniform Commercial Code with respect to the Property to the extent the Property is held to be property that may be subject to a security interest under Article 9 of the Arizona Uniform Commercial Code (the "Collateral"). To this end, Trustor does hereby grant to Beneficiary, a first priority security interest in and to all of the Collateral, together with all replacements and additions thereto and all proceeds, products, substitutions, renewals and accessions thereof, to secure the Obligations Secured.

20.2 Financing Statements. Trustor hereby agrees to execute and deliver to Beneficiary, in form and substance satisfactory to Beneficiary, such "Financing Statements" and such further assurances as Beneficiary may, from time to time, consider reasonably necessary to create, perfect and preserve Beneficiary's security interest herein granted, and Beneficiary may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. This Deed of Trust shall constitute a financing statement and when recorded shall be a "fixture filing" in accordance with Section 20.4 below. Trustor shall give advance notice in writing to Beneficiary of any proposed change in Trustor's name, identity or structure and shall execute and deliver to Beneficiary all additional financing statements that Beneficiary may require in connection therewith.

20.3 Uniform Commercial Code Remedies. Beneficiary (or Trustee on Beneficiary's behalf) shall have all the rights, remedies and recourses with respect to the Collateral afforded a secured party by the Arizona Uniform Commercial Code in addition to, and not in limitation of, the other rights, remedies and recourses afforded Beneficiary and/or Trustee by this Deed of Trust and the other security documents. Beneficiary may at its option dispose of the Collateral in accordance with Beneficiary's and/or Trustee's rights and remedies in respect of real property pursuant to the provisions of this Deed of Trust, in lieu of proceeding under the Arizona Uniform Commercial Code.

20.4 Fixture Filing. To the extent any of the Collateral is or is to become fixtures attached to the Real Property, Trustor herein expressly covenants and agrees that the filing of this Deed of Trust in the Records of Pinal County, Arizona, shall also operate from the time of filing therein as a financing statement filed as a "fixture filing" in accordance with the Arizona Uniform Commercial Code. Information concerning the security interest created by this instrument may be obtained from Beneficiary, as secured party, at the address set forth above. The mailing address of Trustor, as debtor, is also set forth above.

21. Appointment of Receiver. After the occurrence of any Event of Default, if any form of suit is commenced, Trustor agrees that a receiver may be appointed upon the application of Beneficiary to take charge of the Property and to do such things as shall be authorized by the court,

and that all costs and expenses of the receiver or of the receivership, less any Property Income collected by such receiver, together with such receiver's own compensation, shall be secured by this Deed of Trust. Beneficiary's right to a receiver shall be absolute and unconditional once an Event of Default occurs, and such receiver may be obtained in an action to appoint such receiver, in any judicial foreclosure, any suit for specific performance or in any other lawsuit to enforce this Deed of Trust in any manner.

22. ~~Modification. Forbearance. Nonwaiver. Waiver of Jury Trial.~~ At any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary, Trustee may reconvey without warranty any part of the Property, consent to the making of any map or plat thereof, join in granting any easement thereon or in any extension agreement or agreement subordinating the lien or charge hereof. Such actions shall not affect the priority of this Deed of Trust over any other Encumbrance unless expressly so intended and stated in writing. Time is of the essence hereof. Acceptance of payment of money after its due date shall not constitute any waiver under this Deed of Trust, the Note or Beneficiary's right to require prompt payment of all other sums when due. No extension of time for payment or renewal of Obligations Secured shall affect the lien or priority of this Deed of Trust. The taking by Beneficiary of any other collateral for the Obligations Secured hereby shall in no way affect or impair the lien or priority of this Deed of Trust, and Beneficiary may resort for the payment of the Obligations Secured to its several securities in such order and manner as Beneficiary may determine. Any forbearance by Beneficiary in exercising any remedy or right hereunder shall not be a waiver of or preclude the subsequent exercise of any such remedy or right. Trustor hereby waives trial by jury in any litigation arising out of or in any way related to or connected with the loan secured hereby or this Deed of Trust to the fullest extent permitted by applicable law.

23. Notice. Except for any notice required under applicable law to be given in another manner, (a) any notice to Trustor provided for in this Deed of Trust shall be given by mailing such notice by certified mail, return receipt requested, addressed to Trustor at the above address or at such other address as Trustor may designate by Request for Notice delivered to Beneficiary as provided herein, and (b) any notice to Beneficiary shall be given by certified mail, return receipt requested, to Beneficiary's address stated herein or to such other address as Beneficiary may designate by notice to Trustor as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to Trustor or Beneficiary when given in the manner designated herein. Unless a Request for Notice is recorded as provided by law, notice of any Trustee's sale shall be sent solely to Trustor's address set forth herein.

24. Parties Bound. This Deed of Trust applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, personal representatives, administrators, executors, successors and assigns. The term "**Beneficiary**" shall mean the owner and holder of the Note secured hereby whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and neuter and conversely and the singular number includes the plural and conversely. The term "**Trustor**" shall mean all persons named as Trustor herein, whether one or more, and Trustor's obligations shall be joint and several. "**Trustee**" shall include all successor trustees. Any Trustor that has signed this Deed of Trust as a surety or accommodation party or that has subjected its property to this Deed of Trust to secure the debt of another expressly waives the benefits of A.R.S. Sections 12-1641, 12-1642 and 44-142 and Ariz. R. Civ. P. 17(f) or such similar provisions as may be enacted or adopted hereafter.

25. Trustee. Trustee accepts this Deed of Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee may, but is not obligated to, notify any party hereto of any pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party, unless brought by Trustee. Beneficiary may appoint a successor Trustee in the manner prescribed by law. Trustor and Beneficiary authorize Trustee, in the event any demand or notice is made or tendered to it concerning this Trust or the Property, to hold any money and documents and to withhold action or performance until an action shall be brought in a court of competent jurisdiction to determine the rights asserted or the propriety of the demand, notice or action requested and Trustee shall be without liability or responsibility for awaiting such court action. A successor Trustee herein shall, without conveyance from the predecessor Trustee, succeed to all its predecessor's title, estate, rights, powers and duties. Trustee may resign at any time by mailing or delivering notice thereof to Beneficiary and Trustor and, having so resigned, shall be relieved of all further liability and responsibility to Trustor, Beneficiary or otherwise hereunder. Trustee shall not be liable for any action taken in its discretion and in good faith or upon advice of counsel or upon any information supplied or direction given by Beneficiary.

26. Reconveyance. Upon payment of the Obligations Secured, Beneficiary shall request Trustee to reconvey the Property and shall deliver proof of payment or satisfaction of the Note and Obligations Secured hereby to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation and the release fees of Trustee, if any.

27. Governing Law: Severability. This Deed of Trust shall be governed by and construed in accordance with the internal substantive laws of the State of Arizona (without regard to choice of law principles). The foregoing sentence shall not limit the applicability of federal law to this Deed of Trust. If any provision or clause of this Deed of Trust or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust or the Note that can be given effect without the conflicting provision, and to this end the provisions of this Deed of Trust and the Note are declared to be severable.

28. Integration: Sole Discretion. This instrument, together with the Note and any other contract, instrument or agreement executed by Trustor and/or Beneficiary which now or at any time secures the Note, constitutes the entire understanding of the parties, each of whom has been, or has had the opportunity to be, represented by counsel of each party's choosing, and have been bargained for and are negotiated agreements that set forth the entire agreement with respect to the terms thereof, and there are no oral or written statements, representations, agreements or understandings which modify, amend or vary, or purport to modify, amend or vary any of the terms of such documents.

29. Deed of Trust Intended. Notwithstanding any provision hereof to the contrary, the parties intend that this document constitute security for the payment and performance of the Obligations Secured as provided elsewhere herein, and shall be a "deed of trust" as defined in A.R.S. Section 33-801. If despite that intention a court of competent jurisdiction shall determine that this document does not qualify as a "trust deed" or "deed of trust" within the meaning and purview of Chapter 6.1, Title 33, Arizona Revised Statutes, then, *ab initio*, this instrument shall be deemed a realty mortgage under A.R.S. Section 33-702, and shall be enforceable as such, the Trustor shall be deemed a "mortgagor," the Beneficiary shall be deemed a "mortgagee," the Trustee shall have no

capacity but shall be disregarded and all references to the "Trustee" herein shall be deemed to refer to the "mortgagee" to the extent not inconsistent with interpreting this instrument as though it were a realty mortgage. As a realty mortgage, Trustor as mortgagor shall be deemed to have conveyed the Property *ab initio* to the Beneficiary as mortgagee, such conveyance as a security to be void upon condition that Trustor pay and perform all its Obligations Secured hereby.

30. ~~Authority~~. The undersigned person or entity signing on behalf of Trustor hereby represents and warrants to Beneficiary that such person/entity has full power and authority to act on behalf of and bind Trustor.

31. ~~No Other Agreements~~. Trustor shall not record or allow to be recorded against the Property any agreements, options or other matters without Beneficiary's prior written consent, which may be given or withheld in Beneficiary's sole discretion. As a condition to any such consent, Beneficiary may require that the parties to any such agreement, option or matter execute and record a subordination agreement in a form acceptable to Beneficiary in its sole and absolute judgment and discretion.

[Balance of the Page Intentionally Left Blank; Signature Page Follows]

Dated to be effective as of the date recorded in the official records of Pinal County, Arizona  
(the "Effective Date")

TRUSTOR:

\_\_\_\_\_

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

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

Acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 202\_\_, by \_\_\_\_\_ the  
\_\_\_\_ of \_\_\_\_\_ an \_\_\_\_\_ for and on behalf thereof.

\_\_\_\_\_  
Notary Seal/Stamp

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