

**FIRST AMENDMENT TO
PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS
AND DEVELOPMENT AGREEMENT**

This First Amendment to the Purchase and Sale Agreement and Escrow Instructions and Development Agreement ("First Amendment") is entered into effective as of August 27, 2020, by and between the City of Maricopa, an Arizona municipal corporation (referred to herein as the "City" or "Seller"), and Elpida LLC, an Arizona limited liability company, or assigns controlled by Joe L Cook (referred to herein as "Buyer").

RECITALS

- A. The Buyer & Seller entered into a Purchase and Sale Agreement and Escrow Instruction and Development Agreement on October 10, 2019 regarding the sale and development of a portion of the Estrella Gin Business Park (the "Agreement").
- B. The Buyer & Seller desire to close before the expiration of the Feasibility Period, as defined in Section 7.02(b) of the Agreement.
- C. The Buyer & Seller have agreed on the specific legal description of the Elpida Property, as mentioned in Recital B and as defined in Section 2 of the Agreement, now known to be approximately 16.509 acres as described in Exhibit X of this First Amendment.
- D. The Buyer & Seller have also agreed on the specific legal description of the road needed to complete the Road and Infrastructure Construction as defined in Section 4.04 of the Agreement, now known to be approximately 2.152 acres as described in Exhibit Y of this First Amendment ("Infrastructure").
- E. Although the exact timing of the issuance of the construction permits for the Infrastructure and various buildings referenced in the Agreement is still in question, the parties have agreed to an extension of time to construct such buildings and Infrastructure.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and representations and the mutual promises contained in this First Amendment, the Buyer and Seller agree as follows:

- 1. Defined Terms. All capitalized terms used herein, unless otherwise specified, shall have the same meaning ascribed to them in the Agreement.
- 2. Amendment. The Agreement shall be amended as follows:
 - (a) Section 2 of the Agreement, Sale and Purchase, shall be amended to revise the ELPIDA Property by replacing Parcel 1B on Exhibit A with Lot 2 of Exhibit X of this Amendment.
 - (b) Section 4.04 of the Agreement, Road and Infrastructure Construction, shall be amended to read as follows:

Exhibit A depicts the Entire Property, and the Entire Property in turn is divided into the JET Project and the Elpida Project including the associated public right of way and Infrastructure. The remainder of the Purchase Price for the purchase by Buyer of the Elpida Property shall be paid by Buyer constructing the public roadway(s) and infrastructure necessary to serve the portion of the Estrella Gin Business Park which abuts, is within and a part of the Elpida Project on the property designated as "TRACT A" and legally described on Exhibit Y of this First Amendment as public right of way and infrastructure. Such public roadway(s) and infrastructure shall be constructed in accordance with the plans and specifications agreed to between the parties hereto prior to Close of Escrow and shall be completed within fourteen months of the Close of Escrow. In no event shall Buyer allow or cause any encumbrances to be filed against TRACT A, but it is understood that encumbrances may be filed against Lot 2. Upon completion of the public roadway(s) and infrastructure, City shall accept the public roadway(s) and infrastructure consistent with the City's rules and regulations concerning the acceptance of roads. Buyer hereby agrees to secure a Construction Performance Bond as defined in paragraph 11(c), in a form and from a company acceptable to the City. Such Bond shall be released upon the City's acceptance of the roadway(s) and infrastructure.

(c) Section 5.02 of the Agreement, Closing, shall be amended to read that the closing of this transaction and escrow (the "Closing" or "Close of Escrow") shall occur on or before September 30, 2020 unless otherwise agreed to by both parties in writing. The Feasibility Period (as defined in Section 7.02(b) of the Agreement) shall be deemed completed.

(d) Section 15.03 of the Agreement, Construction and Approval, shall be amended to read as follows:

It is acknowledged that Buyer, at its sole cost, shall design, construct or cause to be constructed a single 10,000 square foot office or flex/manufacturing space including, but not limited to, any required public improvements on the ELPIDA Property. Buyer shall commence construction of such building within nine (9) months of the issuance of the construction permit(s) for the building. Notwithstanding anything to the contrary set forth herein, such building shall be constructed and open for business within forty two (42) months of Close of Escrow. Buyer acknowledges and agrees that its development and construction of the building and any improvements related thereto are subject to the City's or other appropriate governmental entity's normal plan submittal, review and approval processes, fees and day-to-day inspection services unless otherwise specifically provided herein. Buyer acknowledges and agrees that the City shall have the first right to lease the first available office space, which shall be approximately 3000 square feet. In the event the City is going to enter such lease, the lease shall be executed within thirty (30) days after Close of Escrow.

(e) Section 15.04 of the Agreement, Reversion Option, shall be amended to read as follows:

The failure of Buyer to timely complete the above described building within forty two (42) months or the roadway(s) and infrastructure associated with the ELPIDA Project within forty two (42) months of Closing, unless the parties mutually agree in writing to an extension of time, shall result in the City having the option of taking back title of the ELPIDA Property, and the City shall refund to the Buyer the fair market value of any usable improvements constructed on the ELPIDA Property by Buyer as determined based upon an independent appraisal thereof. If the City exercises its option to take back the ELPIDA Property as provided herein, the City shall notify Buyer of its intent to exercise the option in writing within thirty (30) days after the expiration of the forty two (42) month period referenced herein. In the

event the City exercises its option, the Buyer agrees to immediately sign any and all documents necessary to provide the City with clear and unencumbered title to the ELPIDA Property upon the receipt of any funds required from the City pursuant to the provisions of this Section 15.04. In the event Buyer meets the timelines outlined in this Section for completion of the infrastructure and roadways, then, in the event any reimbursements are due from the City as set forth in Section 4.05, above, such reimbursement shall be paid upon the City's acceptance of such roadways and infrastructure and the cost of the public roadway(s) and infrastructure being approved by the City.

3. Except as expressly changed by this First Amendment, all other terms & conditions of the Agreement shall remain the same.

IN WITNESS WHEREOF, Buyer and the City have executed this First Amendment effective as of the date first written above.

CITY:

CITY OF MARICOPA, an Arizona municipal corporation

By: _____
Christian Price, Mayor

Attest:

Approved as to form:

By: _____
Vanessa Bueras, CMC
City Clerk

By: _____
Denis M. Fitzgibbons
City Attorney

BUYER:

Elpida LLC, an Arizona limited liability company

By:  _____
Joe L. Cook
Manager