

REAL ESTATE PURCHASE AGREEMENT

Contract Date: See Section 31 below

SELLER: Sunrise Mountain Development Partners, LLC

BUYER: CITY OF PEORIA, an Arizona municipal corporation

ESCROW AGENT: Sharon Dyke

LOCATION: Empire West Title Agency
4808 North 22nd Street, Suite 100
Phoenix, Arizona 85304

ESCROW NUMBER/ESCROW:

RECITALS

- A. Seller is the owner of certain real property commonly known as a portion of Sunrise Mountain located near the corner of Happy Valley Road and the alignment of 91st Ave., in Peoria, Arizona (the "Property") and more particularly described on Exhibit "A" hereto.
- B. Buyer desires to purchase the Property from Seller for the amount of Seven Million Twenty Thousand Dollars (\$7,020,000) (the "Purchase Price").
- C. Seller and Buyer previously entered into that certain Option Agreement dated May 9, 2016, which contained as Exhibit "B" a Real Estate Purchase Agreement negotiated by the Parties if the Buyer chose to purchase the Property. The Buyer has chosen to exercise its purchase option, and the Parties have agreed to modify the Exhibit "B" Agreement concerning the payment of the Purchase Price in Paragraph 5 below, as well as other related amendments necessary to complete the transaction.
- D. Soon after the date of this Agreement, the parties desire to record certain documents affecting the Property (the "Closing").
- E. Buyer's City Council has considered the City expenditure authorized by this Agreement and the direct consideration the City will receive and finds that there is a clearly identified public purpose for the City's expenditure and that the City will receive direct consideration substantially equal to its expenditure.

NOW THEREFORE, in consideration of the foregoing and the mutual promises and representations contained herein, Seller and Buyer agree as follows:

TERMS OF AGREEMENT

1. Agreement. This Real Estate Purchase Agreement ("Agreement") may be supplemented by the printed form Escrow Instructions ("Escrow Instructions") to which it is

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attached and shall be construed together with the Escrow Instructions as a single document (collectively referred to as the "Agreement"); in the event of any inconsistency between any provision in this Agreement and any provision in the Escrow Instructions, the provision in this Agreement shall prevail. Upon the execution of the Escrow Instructions and this Agreement by Seller and Buyer, same shall constitute a binding contract between Seller and Buyer for the purchase and sale of the Property.

2. Opening of Escrow and Close of Escrow. Escrow shall be opened when (i) one fully executed or counterparts of this Agreement executed by Seller and Buyer, respectively, have been delivered to Escrow Agent on or before the acceptance date referred to in Section 36 and (ii) Buyer shall have deposited the Earnest Money with Escrow Agent on or before the acceptance date hereinabove set forth ("Opening of Escrow"). Escrow Agent shall advise Seller and Buyer, in writing, of the Opening of Escrow and the date thereof. Consummation of the purchase of the Property contemplated hereby (the "Close of Escrow" or "Closing Date") shall take place as quickly as possible, but not later than April 17, 2017, and this Agreement and the Escrow shall automatically terminate without any further notices, three business days later unless otherwise extended by mutual agreement of the parties. At or before Close of Escrow, each party shall execute and deliver such documents and perform such acts as are provided for herein. All monies and documents required to be delivered under this Agreement shall be deposited in Escrow on or before 5:00 p.m. Mountain Standard Time on the Closing Date.

3. Title Insurance; Conveyance of Title. The Property, including all rights and privileges appurtenant to or arising from the Property, shall be conveyed by Seller to Buyer upon Close of Escrow by Seller's special warranty deed ("Deed"), warranting title to the Property to be conveyed thereby to be a fee simple absolute estate free and clear of all matters, claims, liens, and encumbrances except: (i) taxes not yet due and payable at Close of Escrow (subject to proration as hereinafter provided); (ii) reservations in patents from the United States or the State of Arizona; and (iii) any other matters disclosed by the preliminary title report (or any amended report) which are deemed waived or approved by Buyer in accordance with subsection 8(a). Escrow Agent shall issue or cause to be issued a standard coverage owner's policy of title insurance in the amount of the Purchase Price, for which Seller shall bear the cost.

4. Possession. Upon Close of Escrow, Seller shall vacate the Property and deliver possession to Buyer, and all risk of loss of, or damage to, the Property from any source shall, at that time, pass to and become the sole responsibility of Buyer.

5. Payment of Purchase Price. The Purchase Price for the Property shall be Seven Million Twenty Thousand Dollars (\$7,020,000) payable as follows:

(a) Five Thousand Dollars (\$5,000) of the above amount (in the form of cash or other good funds or cashier's or certified check) to be deposited with Escrow Agent upon Opening of Escrow; and

(b) On the Closing Date, Buyer shall pay to Seller the remaining balance of the Purchase Price as follows:

(i) the amount of \$3,510,000 in cash or immediately available funds shall be delivered by Purchaser;

(ii) the balance of the Purchase Price shall be evidenced by a secured promissory note executed by Purchaser in favor of Seller in the form attached hereto as Exhibit "B" ("Note"). The Note shall be payable in three equal principal payments of \$1,170,000 plus accrued and unpaid interest (4.0% per annum) such payments due on December 29, 2017; July 31, 2018 and December 21, 2018; and

(iii) As security for repayment of the Note, at Close of Escrow, Buyer shall execute and cause to be recorded in the Official Records of Maricopa County, Arizona, a first position deed of trust and security agreement, granting to Seller a security interest in the Property, in the form attached hereto as Exhibit "C" ("Deed of Trust").

6. Earnest Money. Escrow Agent shall deposit the Earnest Money referred to in subsection 5(a) in an interest-bearing account of a federally-insured depository selected by Buyer. Subject to any provision of this Agreement requiring a different use, in the event the sale provided for in this Agreement is consummated, the Earnest Money (and all interest accrued thereon) shall be applied by Escrow Agent toward the payment of the Purchase Price; in the event the sale is not consummated for failure of Seller to meet all of their obligations under this Agreement, the Earnest Money (and all interest accrued thereon) shall be returned to Buyer. In the event the sale is not consummated as a result of the failure of Buyer to meet all of its obligations under this Agreement, the Earnest Money (and all interest accrued thereon) shall be paid to Seller as liquidated damages as Seller's only remedy, and both Buyer and Seller shall be relieved of all further liability to one another except for liabilities arising under Section 18 (Indemnity). Seller and Buyer agree that it would be impractical or extremely difficult to fix actual damages in case of a default by Buyer, and that the amount of the Earnest Money is a reasonable estimate of Seller's damages caused by Buyer's default.

7. Intentionally Deleted.

8. Closing; Fees, Taxes, and Assessments; Costs.

(a) At Close of Escrow, a Standard ALTA Owner's Policy of title insurance in the amount of the Purchase Price insuring Buyer's title to the Property shall be insured by Escrow Agent through its authorized underwriter(s) and the title insurance premium shall be paid out of the Purchase Price proceeds, subject to the usual printed exceptions contained in such title insurance policies, those matters which appear as exceptions in Schedule B of the Commitment (as defined in Section 9 below) and which are not objected to or are waived in the manner described in said Schedule B, and any other matters approved in writing by Buyer ("Title Policy"). In the event Buyer desires an ALTA Extended Policy the additional cost shall be borne by Buyer.

(b) At Close of Escrow, the recording fees with respect to the Deed, the Affidavit of Value and any escrow fees and charges shall be paid equally by Buyer and Seller.

(c) At Close of Escrow, Seller shall deliver the Deed, an Affidavit of Property Value, a Non-Foreign Person Affidavit, the Option, and each and every document, agreement, and/or instrument reasonably required by the Escrow Agent in connection with the Closing.

(d) At Close of Escrow, Buyer shall deliver the Purchase Price, the Option, and all other sums to be paid by Buyer hereunder, and each and every other document, agreement and/or instrument reasonably required by Escrow Agent in connection with the Closing.

9. Status of Title; Environmental Contamination and Assessment of Property. Buyer previously has received and approved a preliminary report of the title to the Property, which remains valid. Buyer also has had an opportunity to assess the environmental conditions on the Property and is satisfied with the known information. However, in no event shall an "as is" clause set forth within this Agreement affect the application of federal, state or local law regarding environmental contamination and Seller's responsibility for remediating same, including remediation that may be required after Close of Escrow.

10. No Warranties. Except as otherwise set forth herein, Buyer agrees that the Property shall be purchased in an "as-is" condition. Seller makes no warranty as to the sufficiency of the Property for Buyer's purposes or any purpose whatsoever, the physical condition of the Property or any work or improvements which might be required for any reason whatsoever, the square footage or acreage contained within the Property, except as expressly set forth elsewhere in this Agreement or within the separate escrow instructions included as a part of this Agreement. Nothing herein abrogates Seller's duty to disclose known material conditions affecting the Property and the consideration to be paid by Buyer.

11. Seller's Warranties. Seller warrants, represents, and covenants (with the understanding that Buyer is relying on said warranties, representations and covenants) that:

(a) Seller's Authority. Seller has full power and authority to enter into and perform under this Agreement in accordance with its terms. Upon execution of this Agreement this Agreement shall be binding and enforceable on Seller.

(b) Other Leases or Agreements. Seller warrants that there are no unrecorded leases or other agreements which may affect Buyer's ability to take title to or possession of the Property.

(c) Bankruptcy or Insolvency. Seller warrants that it is not the subject of a bankruptcy or insolvency proceeding.

(d) Labor, Materials and Mechanic's Liens. Seller warrants that payment in full will be made prior to Close of Escrow for all labor, professional services, materials, machinery, fixtures, or tools furnished within the 150 days immediately preceding the Close of Escrow in connection with any construction, alteration or repair of any improvement to or on the property.

12. Water Rights. At Close of Escrow, Seller shall, without further act, be deemed to have assigned, transferred, conveyed, and set over unto Buyer all of the grandfathered water rights, if any, with respect to the Property.

13. Buyer's Representations and Warranties. Buyer warrants, represents, and covenants (with the understanding that Seller is relying on said warranties, representations, and covenants) that:

(a) Buyer has full power and authority to enter into and perform this Agreement in accordance with its terms.

(b) Buyer acknowledges that consummation of this transaction shall constitute its acknowledgment that it has independently inspected and investigated the Property. Except as otherwise agreed herein, Buyer agrees to accept the Property in its present condition "as is," subject to the warranties, covenants and agreements set forth in this Agreement.

(c) Buyer acknowledges that the Property is vacant and unimproved land, and represents and warrants to Seller that Buyer has inspected the Property and has entered into this contract based upon Buyer's inspection and that Seller made no representations or warranties regarding the condition of the Property for Buyer's specific purposes.

14. Brokerage. Seller and Buyer agree as follows:

(a) Mutual Warranties. Buyer warrants and represents that it has not dealt with any party who is or may be legally entitled to a brokerage commission, finder's fee, or other like payment in connection with this Agreement. Seller warrants and represents that it has dealt only with Westland Properties Group – Grant Helgeson ("Broker") and Seller shall pay Broker a real estate commission equal to one percent (1%) of the Purchase Price, if and only if Close of Escrow occurs. Each party, on demand, agrees to indemnify and hold the other harmless for, from, and against any and all loss, cost, damage, claim, liability, and expense (including but not limited to court costs and reasonable attorneys' fees) that may result if the indemnifying party's warranty and representation set forth above proves to be untrue, incomplete, or misleading.

(b) Survival. The provisions of this Paragraph 14 shall survive Close of Escrow (but not the termination) of this Agreement.

15. Survival of Representations and Warranties. All representations and warranties contained in this Agreement are true on and as of the date so made, will be true in all material respects on and as of the Closing Date, and will survive Close of Escrow and execution, delivery, and recordation of the Deed. In the event that any representation or warranty by a party is untrue, the other party shall have all rights and remedies available at law, in equity, or as provided in this Agreement.

16. No Assumption of Seller's Liabilities. Buyer is acquiring only the Property from Seller and is not the successor of Seller. Buyer does not assume, agree to pay, or indemnify Seller or any other person against any liability, obligation, or expense of Seller, or relating in any way to the Property.

17. Condemnation; Risk of Loss. In the event of the condemnation (or sale in lieu of condemnation) of any part of the Property prior to Close of Escrow, Buyer shall have the right either: (i) to cancel this Agreement by written notice to Seller and Escrow Agent in which event there shall be returned to Buyer the Earnest Money and all interest thereon, all documents shall be returned to the party who deposited them and thereafter this Agreement shall be of no further force or effect whatsoever.

18. Indemnification and Liabilities. Subject to the limitations and other provisions contained in this Agreement, Seller shall, and it hereby does, indemnify and agree to pay, defend, and hold harmless Buyer from any liability, obligation, action, suit, judgment, fine, award, loss, claim, demand, or expense (including attorneys' fees) arising from any act or omission of Seller pertaining in any manner to the Property for the period of time prior to the Close of Escrow. Buyer does not agree to assume any liability, encumbrance, or obligation of any kind or character whatsoever relating in any manner to all or any part of the Property: (i) except as specifically provided herein; and (ii) except that Buyer agrees to pay, defend, indemnify, and hold harmless Seller from any liability, obligation, action, suit, judgment, fine, award, loss, claim, demand, or expense (including attorneys' fees) arising from any act or omission of Buyer, Buyer's agents and employees.

19. Remedies.

(a) In the event of default by Buyer, Seller's sole remedy shall be to cancel this Agreement and to retain the Earnest Money (together with all accrued interest) as liquidated damages; Seller and Buyer agree that it would be impractical or extremely difficult to fix actual damages in case of the Buyer's default; that the amount of the Earnest Money deposit paid by Buyer is a reasonable estimate of the Seller's damages in case of Buyer's default; and that Seller shall retain said Earnest Money as its damages and, thereafter, neither party shall have any further obligations to the other under this Agreement.

(b) In the event of default by Seller, Buyer may elect to cancel this Agreement by written notice to Seller and Escrow Agent, in which event Escrow Agent shall return to Buyer all Earnest Money (plus any accrued interest earned thereon), together with all other documents Buyer has deposited with Escrow Agent in connection with this Escrow, in which case Buyer and Seller shall have no other rights or obligations under this Agreement.

20. Notices. Notices required or permitted hereunder shall be given in writing and personally delivered or sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

To Seller:	Sunrise Mountain Development Partners, LLC
	c/o Keith Holben
	15010 N. 78th Way, Suite 109
	Scottsdale, Arizona 85260

With a copy to: Berry Riddell LLC
6750 E. Camelback Rd., Suite 100
Scottsdale, Arizona 85251
Attention: John A. Hink, Esq.

To Buyer: Carl Swenson, City Manager
City of Peoria
8401 West Monroe Street
Peoria, Arizona 85345

With a copy to: Steve Burg, City Attorney
City of Peoria
8401 West Monroe Street
Peoria, Arizona 85345

To Escrow Agent: Sharon Dyke, Escrow Officer
Empire West Title Agency
4808 North 22nd Street, Suite 100
Phoenix, Arizona 85304

or at any other address designated by Buyer, Seller, or Escrow Agent, in writing.

21. Attorneys' Fees. In the event suit is brought or to enforce the terms of this Agreement, the prevailing party shall be entitled to recover reimbursement for reasonable attorneys' fees and court costs.

22. Intended Agreement. This Agreement shall not be construed for or against either party as a result of its participation, or the participation of its counsel, in the preparation and/or drafting of this Agreement or any exhibits hereto.

23. Relationship. This Agreement shall not be construed as creating a joint venture, partnership, or any other joint arrangement between Buyer and Seller.

24. Further Instruments and Documents. Each party hereto shall, promptly upon the request of the other party or Escrow Agent, acknowledge and deliver to the other party or Escrow Agent any and all further instruments reasonably requested or appropriate to evidence or give effect to the provisions of this Agreement.

25. Integration Clause; No Oral Modification. This Agreement represents the entire agreement of the parties with respect to its subject matter, and all agreements, oral or written, entered into prior to this Agreement are revoked and superseded by this Agreement. This Agreement may not be changed, modified, or rescinded, except in a writing, signed by all parties hereto.

26. Governing Law; Choice of Forum. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the laws of the State of Arizona. Any action brought to interpret, enforce, or construe any provision of this Agreement

shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa or in the Federal District Court in and for the District of Arizona.

27. Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be deemed severed from this Agreement, and this Agreement shall otherwise remain in full force and effect.

28. Waiver. Failure of any party to exercise any right, remedy, or option arising out of a breach of this Agreement shall not be deemed a waiver of any right, remedy, or option with respect to any subsequent or different breach, or the continuance of any existing breach.

29. Counterparts. This Agreement may be executed in any number of counterparts, all the counterparts shall be deemed to constitute one instrument, and each counterpart shall be deemed an original.

30. Special Variations From Escrow Instructions. Notwithstanding anything in the Escrow Instructions to the contrary: (i) Seller shall pay, in full and at Closing, any existing improvement lien assessments on or relating to the Property unless otherwise agreed by the parties; and (ii) Escrow Agent shall pro-rate taxes on the basis of the latest available tax statement

31. Date of Agreement. The date of this Agreement shall for all purposes be the date of the signature of the last party to sign this Agreement.

32. Time is of the Essence. Time is hereby declared to be of the essence for the performance of all conditions and obligations under this Agreement.

33. Construction/Interpretation. The captions and section headings used in this Agreement are for convenience and reference only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement. The term "person" shall include an individual, corporation, partnership, trust, estate, or any other entity. If the last day of any time period stated herein shall fall on a Saturday, Sunday, or legal holiday in the State of Arizona, then the duration of such time period shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday, or legal holiday in the State of Arizona.

34. Foreign Tax Withholdings. Seller agrees to comply with IRS reporting requirements. Seller shall provide to Buyer and Escrow Agent at Closing appropriate affidavits stating that it is not a foreign person or a non-resident alien and that no withholding is required pursuant to Internal Revenue Code ("IRC") § 1445. In the event such affidavits are not forthcoming or in the event either Escrow Agent or Buyer knows or has reason to know that they are false, Escrow Agent is hereby irrevocably authorized and directed to withhold 10% of Seller's proceeds of the purchase price pursuant to IRC § 1445.

35. Conflict of Interest. This Agreement shall be subject to cancellation pursuant to the provisions of A.R.S. § 38-511 relating to conflicts of interest.

36. Offer. Upon execution by Buyer and delivery to Seller, this Agreement shall constitute the offer of Buyer to purchase the Property on the terms and conditions set forth

herein. This offer shall be open to acceptance by Seller (by Seller's executing and delivering a copy of this Agreement to Buyer and to Escrow Agent) on or before the close of business on March 31, 2017. In the event that this condition is not complied with on or before the close of business on the date specified, this offer shall terminate and shall be self-revoking without further action on behalf of Buyer. In addition, and without limiting the foregoing, Buyer reserves the right to revoke this offer, upon written notice to Seller, at any time before this offer is accepted by Seller.

37. Recitals. The Recitals set forth on page 1 of this Agreement are incorporated herein as though fully set forth herein.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

SELLER:

SUNRISE MOUNTAIN DEVELOPMENT
PARTNERS, LLC, an Arizona limited liability
company

By: MKC Holdings, LLC, an Arizona limited
liability company, manager by

M. Keith Holben, Trustee of the M.Keith
Holben Revocable Trust under agreement
dated June 25, 2008, manager

Date: _____

By: _____
M. Keith Holben, Trustee of the M.
Keith Holben Revocable Trust

BUYER:

CITY OF PEORIA, an Arizona municipal
corporation

Date: _____

By: _____
Carl Swenson, City Manager

ATTEST:

By: _____
Rhonda Geriminsky, City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

By: _____
Steve Burg, City Attorney

EXHIBIT “A”

(Property)

Lot 2, REPLAT OF PARCEL 1 SUNRISE MOUNTAIN, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 1267 of Maps, Page 45.

EXHIBIT "B"

(Note)

SECURED PROMISSORY NOTE

\$3,510,000.00

Phoenix, Arizona
_____, 2017

FOR VALUE RECEIVED, City of Peoria, an Arizona municipal corporation ("Maker"), whose address is 8401 M. Monroe St., Peoria, AZ 85345, agrees and promises to pay to the order of SUNRISE MOUNTAIN DEVELOPMENT PARTNERS, LLC, an Arizona limited liability company whose address is 15010 North 78th Way, Suite 109, Scottsdale, Arizona 85260 ("Holder"), the sum of Three Million Five Hundred Ten Thousand and NO/100ths Dollars (\$3,510,000.00) (the "Note Amount"), with interest on the unpaid principal balance from time to time outstanding from the date hereof at a rate equal to four percent (4%) per annum (the "Interest Rate"), interest to be calculated on a 360-day year, both principal and interest being payable to Holder at the address set forth above, or at such other place as Holder may designate.

1. Payments; Collateral. Maker shall make payments under this Secured Promissory Note (this "Note") as follows:

1.1 Payments.

(a) (i) One-third (1/3) of the Note Amount and all accrued and unpaid interest thereon shall be due and payable on December 29, 2017; (ii) one-third (1/3) of the Note Amount and all accrued and unpaid interest thereon shall be due and payable on July 31, 2018; and (iii) all remaining principal and accrued interest owing on the Note shall be payable in full on the Maturity Date.

(b) Anything in this Note to the contrary notwithstanding, all outstanding principal and accrued and unpaid interest and all other amounts due under this Note shall be due and payable in full on December 21, 2018 (the "Maturity Date").

1.2 Collateral. Maker's obligations set forth in this Note are secured by a first position deed of trust and security agreement encumbering certain real property located in Maricopa County, Arizona (the "Deed of Trust").

2. Prepayment. Maker may prepay all or any portion of this Note at any time without penalty.

3. Default.

3.1 Events of Default. The existence or occurrence of any one or more of the following shall constitute an "Event of Default" under this Note:

3.2 Non-Performance under Note or Deed of Trust. Maker's failure to comply timely and fully with any of the terms or provisions of this Note or the Deed of Trust, including, without

limitation, the failure to pay all amounts due when due, including, without limitation, the final payment due on the Maturity Date; or

3.3 Bankruptcy; Insolvency. Maker being insolvent by being unable to pay debts when due or by having liabilities in excess of assets; or Maker committing an act of bankruptcy, making a general assignment for the benefit of creditors, or the filing by or against Maker of a voluntary or involuntary petition in bankruptcy or for the appointment of a receiver (and any involuntary petition is not dismissed within thirty (30) days from the filing thereof); or if there commences under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, proceedings affecting the any significant part of Maker's property or for the composition, extension, arrangement or adjustment of any of their respective obligations; or if a writ of attachment, execution, or any similar process is issued or levied against any significant part of Maker's property that is not released, stayed, bonded or vacated within a reasonable time after its issue or levy.

3.5. Acceleration. In addition to all other rights and remedies at law and/or equity, Holder may have if an Event of Default shall occur, Holder, at its option without further notice to Maker, may declare immediately due and payable the unpaid principal balance of this Note and interest accrued thereon together with all other sums owed by Maker under this Note.

4. Remedies Cumulative. The remedies of Holder, as provided in this Note shall be cumulative and concurrent and may be pursued singly, successively or together, at the sole discretion of Holder, and may be exercised as often as occasion therefor shall occur; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

5. Notices. All notices that Holder or Maker are required or permitted to give under this Note shall be delivered to the addresses of the Maker and Holder first set forth herein.

6. Severability. If any term or provision of this Note shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Note shall not be affected thereby, but such term or provision shall be reduced or otherwise modified by such court or authority only to the minimum extent necessary to make it valid and enforceable, and each term and provision of this Note shall be valid and enforceable to the fullest extent permitted by law. If any term or provisions cannot be reduced or modified to make it reasonable and permit its enforcement, it shall be severed from this Note and the remaining terms shall be interpreted in such a way as to give maximum validity and enforceability to this Note. It is the intention of Maker that if any provision of this Note is capable of two constructions, one of which would render the provisions void and the other of which would render the provisions valid, then the provision shall have the meaning that renders it valid.

7. Headings and Captions. The headings and captions in this Note are for convenience of reference only and shall in no way alter or modify the terms of this Note.

8. Time of the Essence. Time is of the essence of this Note and all provisions, obligations and conditions thereof. Whenever notice must be given, payment made, document delivered or an act done under this Note on a day that is not a Business Day, the notice may be given, payment made, document delivered or act done on the next following day that is a Business Day. As used in this Note, "Business Day" shall mean a day other than a Saturday, Sunday or a day observed as a legal holiday by the United States government or the State of Arizona.

9. Governing Law. This Note shall be governed by, and construed and enforced in accordance with, the substantive laws of the State of Arizona (without reference to choice of law principles).

10. Construction. This Note is the result of negotiations between the parties, none of whom has acted under any duress or compulsion, whether legal, economic or otherwise. Accordingly, the terms and provisions hereof shall be construed in accordance with their usual and customary meanings. Maker hereby waives the application of any rule of law which otherwise might be applicable to the construction of this Note that ambiguous or conflicting terms or provisions should be construed against the party who (or whose attorney) prepared the executed Note or any earlier draft of the same. The undersigned waives all applicable exemption rights, whether under the state constitution, homestead laws or otherwise, and also waives valuation and appraisal, demand, presentment, protest and demand, notice of protest, demand and dishonor and non-payment of this Note and all other notice of any kind, and expressly agree that the maturity of this Note, or any payment hereunder, may be extended from time to time without in any way affecting the liability of the undersigned.

MAKER:

By: _____

Name _____

Its: _____

EXHIBIT "C"

(Deed of Trust)

When Recorded, Return to:
Berry Riddell LLC
6750 E. Camelback Rd., Suite 100
Scottsdale, AZ 85251
Attention: John A. Hink

**DEED OF TRUST
AND SECURITY AGREEMENT**

THIS DEED OF TRUST AND SECURITY AGREEMENT ("Deed of Trust") is effective as of this ____ day of _____, 2017 between the CITY OF PEORIA, an Arizona municipal corporation, whose address is 8401 M. Monroe St., Peoria, AZ 85345 ("Trustor"), JOHN A. HINK, ESQ., member of the State Bar of Arizona, whose address is 6301 North 75th Street, Scottsdale, Arizona, 85250 ("Trustee"), and SUNRISE DEVELOPMENT PARTNERS, LLC, an Arizona limited liability company, whose address is 15010 North 78th Way, Suite 109, Scottsdale, Arizona 85260 ("Beneficiary"), with respect to that certain real property located in Maricopa County, State of Arizona, described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE
MADE A PART HEREOF:

Together with all buildings, improvements, and fixtures thereon (collectively, the "Property").

WITNESSETH: That Trustor irrevocably grants, conveys, transfers and assigns to Trustee in Trust, with power of sale, all of Trustor's right, title and interest in the above described real property, SUBJECT TO existing taxes, assessments, liens encumbrances, covenants, conditions, restrictions, rights-of-way, and easements of record.

FOR THE PURPOSE OF SECURING:

A. Performance of each agreement of Trustor herein contained.

B. Payment of the indebtedness evidenced by that certain Secured Promissory Note dated of even date herewith in the principal amount of \$3,510,000.00 executed by Trustor in favor of Beneficiary ("Note").

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:

(1) Trustor shall keep the Property in good condition and repair, ordinary wear and tear excepted; shall not remove or demolish any building thereon, shall complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and shall pay when due all claims for labor performed and materials furnished therefor; shall comply with all laws affecting

said property or requiring any alterations or improvements to be made thereon; shall not commit or permit waste thereof; shall not commit, suffer or permit any act upon said property in violation of law; shall cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

(2) Trustor shall maintain commercial general liability insurance coverage on the Property in amounts of \$1,000,000.00 per occurrence, \$2,000,000.00 in the aggregate. In addition, Trustor shall keep all improvements now or hereafter erected on the Property continuously insured against loss by fire or other hazards in an amount not less than the total obligation secured hereby, and each such policy shall name Beneficiary as mortgagee and additional insured. All insurance required to be maintained by Trustor pursuant to this Deed of Trust shall be purchased from insurance companies licensed to do business in the State of Arizona. The amount collected under any insurance policy may be applied upon any indebtedness hereby secured and in such order as the Beneficiary may determine or at option of the Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default hereunder nor cause discontinuance of any action that may have been or may thereafter be taken by Beneficiary or Trustee because of such default.

(3) Trustor shall appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of the Beneficiary or Trustee; and shall pay all costs and expenses of Beneficiary and Trustee, including cost of evidence of title and reasonable attorney's fees in such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed of Trust.

(4) Trustor shall pay prior to delinquency all taxes and assessments affecting said property; when due, all encumbrances, charges and liens, with interest, on property or any part thereof, which appear to be prior or superior hereto; and when due, all costs, fees and expenses of this Deed of Trust, including, without limiting the generality of the foregoing, the fees of Trustee for issuance of Deed of Release and Full Reconveyance and all lawful charges, costs and expenses in the event of reinstatement of, following default in, this Deed of Trust or the obligations secured hereby.

(5) Should Trustor fail to make any payment or to do any act as provided in this Deed of Trust, then the Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgement of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay its reasonable counsel fees. Trustor shall pay immediately and without demand all sums so expended by Beneficiary or Trustee.

IT IS MUTUALLY AGREED:

(6) That any award of damages in connection with any condemnation or any such taking, or for injury to the Property by reason of public use, or for damages for private trespass or injury thereto, is assigned and shall be paid to Beneficiary as further security for all obligations secured hereby (reserving unto the Trustor, however, the right to sue therefor and the ownership thereof subject to this Deed of Trust) and upon receipt of such monies Beneficiary may hold the same as such further security, or apply or release the same in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

(7) That time is of the essence of this Deed of Trust, and that by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(8) Upon written request of Beneficiary stating that all sums secured hereby have been paid and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall by Deed of Release and Full Reconveyance release and reconvey, without covenants or warranty, express or implied, the property then held hereunder. The recital in such Deed of Release and Full Reconveyance may be described as "The Person or Persons Legally Entitled Thereto."

(9) That upon default by Trustor in the payment of any indebtedness secured hereby or in performance of any agreement hereunder, and after the expiration of any applicable cure and grace periods, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written notice thereof, setting forth the nature thereof, and of election to cause to be sold said property under this Deed of Trust.

Upon an event of default by Trustor, Trustee shall 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, in the manner required by law, the Property at public auction at the time and place fixed by it in said notice of Trustee's sale to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone or continue the sale by giving notice of postponement or continuance by public declaration at the time and place last appointed for the sale. Trustee shall deliver to such purchaser its Deed conveying the property so sold, but without any covenant or warranty, express or implied. Any persons, including Trustor, Trustee or Beneficiary, may purchase the Property at such sale.

After deducting all costs, fees, and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale and reasonable attorney's fees, 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. §33-812. To the extent permitted by law, an action may be maintained by Beneficiary to recover a deficiency judgement for any balance due hereunder. The purchaser at the Trustee's sale shall be entitled to immediate possession of the property

against the Trustor and shall have a right to summary proceedings to obtain a possession provided in Title 12, Chapter 8, Article 4, Arizona Revised Statutes, together with costs and reasonable attorney's fees.

In the alternative to foreclosure by Trustee's Sale, the Beneficiary may foreclose by judicial proceedings, and in such event, the election to declare the unpaid balance immediately due and payable may be made in the complaint. In such judicial proceedings Beneficiary shall be entitled to reasonable attorney's fees, costs of foreclosure report and all sums advanced with interest as provided under Sections (4) and (5) herein.

(10) That Beneficiary may appoint a successor Trustee in the manner prescribed by law. A successor Trustee herein shall, without conveyance from the predecessor Trustee, succeed to all the predecessor's title, estate, rights, powers and duties. Trustee may resign by mailing or delivering notice thereof to Beneficiary and Trustor.

(11) That this Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, 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 the singular number includes the plural.

(12) Trustee accepts this trust when this Deed of Trust is duly executed and acknowledged by Trustor. Trustee is not obligated to notify any party hereto of 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. In the event Trustee is made a party in any legal or court proceeding as a result of litigation between the Trustor and Beneficiary or between a third party and either or both of Trustor and/or Beneficiary, the attorney's fees and costs of Trustee shall be paid by either Trustor or Beneficiary, whichever being the non-prevailing party.

(13) Time is of the essence of this Deed of Trust and each and every provision.

(14) Trustor and Beneficiary agree that the trust relationship created by this instrument is strictly limited to the creation and enforcement of a security interest in real property. Thus, all Trustee's duties, fiduciary or otherwise, are strictly limited to those imposed by this document and A.R.S. §§33-801 through 33-821, inclusive and no additional duties, burdens or responsibilities shall be placed on the Trustee.

(15) The Trustor requests that a copy of any Notice of Trustee's Sale hereunder be mailed to him at his address hereinbefore set forth.

(16) If any portion of the Property is sold, transferred or conveyed, at the Beneficiary's option, the entire unpaid principal balance together with accrued interest shall become immediately due and payable.

(17) This Deed of Trust shall at all times constitute a first position Deed of Trust and lien encumbering the Property. Trustor shall not further encumber the Property with any other deeds of trust, mortgages, or other liens securing any debt of Trustor.

[Signatures appear on following page]

IT WITNESS WHEREOF, this Deed of Trust and Security Agreement is dated this _____,
day of _____, 2017.

CITY OF PEORIA, an Arizona municipal
corporation

By: _____
Its: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me on this ____ day of
_____, 2017, by _____, the _____ of the City of Peoria, an
Arizona municipal corporation.

Notary Public

My commission expires: _____

EXHIBIT "A"

Lot 2, REPLAT OF PARCEL 1 SUNRISE MOUNTAIN, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 1267 of Maps, Page 45.