

EXHIBIT B

POST-CLOSING POSSESSION AGREEMENT

THIS AGREEMENT made this 16th day of January, 2024, by and between City of Peoria, an Arizona municipal corporation, hereinafter referred to as "**Buyer**," and RSW Properties, LLC, hereinafter referred to as "**Seller**." Seller and Buyer are collectively referred to herein as the "**Parties**" or individually as a "**Party**".

RECITALS:

- A. Parties have heretofore executed a Real Estate Purchase Agreement (the "**PA**") dated January 16, 2024, for the purchase and sale of certain property located at 8795 North 83rd Ave. in the City of Peoria, Arizona Assessor Parcel Number: 142-21-002G, more particularly described on Exhibit "A", (herein "**Property**");
- B. Circumstances have arisen subsequent to said PA which require or make it desirable for the Parties to alter the dates therein specified for delivery of possession of the Real Property as defined in the PA, so that the date for delivery of possession will succeed the Closing Date; and
- C. Parties desire to enter this Post-Closing Possession Agreement (this "**Agreement**") by, and subject to the terms of the PA, upon execution, this Agreement shall constitute a binding contract between Seller and Buyer for the Seller's post-closing possession of the Property;

NOW THEREFORE, for valuable consideration, the receipt and legal sufficiency of which are acknowledged, Seller and Buyer agree:

- 1. Nature of Agreement. Except as specifically modified herein, all of the terms and conditions of the PA shall remain in full force and effect until Seller peacefully surrenders the Property to the Buyer. Unless otherwise defined herein, all capitalized terms in this agreement shall be defined as in the PA. In the event of a conflict between this Agreement and the PA, this Agreement shall control, except that in the case of such a conflict as to the description of the Property or the identity of the Buyer or Seller, the PA shall control. Seller's possession of the Property shall not be deemed to be a tenancy under the laws of Arizona, but merely an interim occupancy, and Seller waives all requirements of Arizona law regarding prior notice by a landlord to a tenant requiring the tenant to move from the Property, or any other notice required by such laws in connection with an unlawful detainer action.
- 2. Term of Possession. Seller may remain in possession of the Real Property until 5 p.m. Arizona Time on the day that is two hundred seventy calendar days after the Closing (the entire period is referred to as the "**Term**"). TIME IS OF THE ESSENCE with regard to the end of the Term. Before the end of the Term, Seller will deliver Property in substantially the same physical

condition as on Settlement Date and broom clean with all trash and debris removed and deliver to Buyer all remaining keys, key fobs, codes, and digital keys, if any.

3. Access. Seller will permit Buyer reasonable access to Property and, Prior to the Closing Date, Seller will deliver one (1) set of any keys, key fobs, codes, or digital keys, necessary for Buyer to access the Property to Buyer.

4. Seller Acknowledgment of Property Condition and Obligation to Maintain Property. Seller acknowledges that all of the Property, including without limitation, electrical, plumbing, existing appliances, HVAC, equipment and fixtures, landscaping, and parking areas, is in are in a clean and good working condition. Seller shall be responsible for the maintenance and repair of all aspects of the Property during the Term. Buyer shall not be obligated to maintain the Property in any way after the Closing Date until Seller has peacefully surrendered possession of the Property to Buyer. Seller shall maintain the Property in its same condition as at the Closing Date and shall make no changes to the Property, without the written consent of Buyer. In the event that the Property is altered, modified, damaged, or not maintained by Seller in its condition at the Closing Dare, Seller shall pay all costs Buyer incurs to correct any alterations, modifications, or damage in order to restore the Property back to its condition at Closing. In the event any damage has been caused as a result of Seller's possession and prior to Seller's peaceful surrender of the Property such damage has not been repaired to the same condition as at the Closing Date, Seller agrees to reimburse Buyers full cost to make said repairs.

5. Per Diem. Prior to or at the Close of Escrow, Seller shall credit Buyer the per diem rate of \$20 multiplied by the number of days of the Term as defined in Section 2. This is the consideration for this Agreement.

6. Termination of Possession. Seller must vacate the Property no later than 5 p.m. Arizona Time on the last day of the Term. If Seller has not vacated the Property by that time, Seller shall continue to be bound by all of the terms and conditions of this Agreement, and Seller shall in addition pay Buyer a hold-over fee of \$100 per day for each day Seller remains in possession of the Property from the end of the Term until Seller vacates the Property according and peacefully surrenders the Property to the Buyer pursuant to this agreement.

7. Utilities. Seller shall keep all utilities registered in Seller's name and shall pay the costs of all utilities (sewer, water, gas, electricity, etc.) during the Term or until Seller peacefully surrenders the Property to the Buyer pursuant to this agreement whichever is later.

8. Lawn Maintenance; Trash. Seller shall be responsible for lawn maintenance and trash removal during the Term or until Seller peacefully surrenders the Property to the Buyer pursuant to this agreement whichever is later.

9. Insurance on Seller's Property. Seller shall procure, maintain in effect (during the Term or until Seller peacefully surrenders the Property to the Buyer pursuant to this agreement whichever is later), and provide proof to the Buyer prior to the Closing Date of a policy or policies of insurance naming the Buyer as an additional insured party and adequately covering Seller's personal property and insuring against any public liability which may arise out of, or by

virtue of, the use and occupancy of the Property by Seller, Seller's family, invitees, guests, licensees, contractors, agents, and/or employees of Seller .

10. Seller's Indemnification. Seller shall indemnify and hold Buyer harmless from and against any and all liability, fines, suits, claims, demands, actions, costs, and expenses of any kind or nature whatsoever caused by, or arising out of, or in any manner connected with the Property, or any injury or death to a person or persons arising out of Seller's use and/or occupancy of the Property during the Term, including intentional or negligent acts by Seller, Seller's family, invitees, guests, licensees, contractors, agents, and/or employees of Seller.

11. Subletting; Assignment. Seller shall not sublet the Property or assign this Agreement.

12. Pets. No pets shall be allowed on the Property.

13. Use. Seller shall not change the use of the Property in any way.

14. Costs of Legal Proceedings. The losing party in any legal proceeding brought by Buyer or Seller against the other party for breach of any provision of this Agreement (including an action for summary ejectment) shall be liable for the costs and expenses of the prevailing party, including reasonable attorneys' fees (at all tribunal levels).

15. Relationship. It is agreed that the relationship between the Buyer and Seller during such period of deferred possession is not a lease and shall be terminated immediately upon the Seller's peaceful surrender of the Property to Buyer or with ten (10) days' Notice, upon a breach of this agreement by Seller.

16. Costs. Seller agrees that any and all costs or fees described in this agreement may be paid to Buyer from Seller's Deposit according to Section 5(d)(iv) of the PA.

17. Notices. Notices hereunder (each, a "Notice") shall be given in writing delivered to the other Party or other applicable person or entity, or mailed by registered or certified mail, return receipt requested, postage prepaid, or by FedEx or other reliable overnight courier service that confirms delivery. With respect to the Parties, a Notice shall be addressed to a Party as follows:

To Buyer:

Henry Darwin, City Manager
City of Peoria
8401 West Monroe Street
Peoria, Arizona 85345

With a copy to:

Emily Jurmu, City Attorney
8401 West Monroe Street
Peoria, Arizona 85345

To Seller:

Dennis Wahl
RSW Properties, LLC
8795 North 83rd Ave.,
Peoria, Arizona 85345
Phone: 602-616-5699

To Escrow Agent:

Jason Bryant
Security Title Agency, Inc.
2415 East Camelback Road
Phoenix, AZ 85016
Phone: 602-230-6257

Service of any Notice by mail in accordance with the foregoing shall be deemed to be complete three (3) days (excluding Friday, Saturday, Sunday, and legal holidays) after the Notice is deposited in the United States mail. Service of any Notice by overnight courier in accordance with the foregoing shall be deemed to be complete upon receipt or refusal to receive. The provisions of this Section 16(e) shall survive Close of Escrow, execution, delivery, and recordation of the Deed.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

[Signature page to follow]

BUYER:

CITY OF PEORIA, an Arizona municipal
corporation

Date: _____

By:

Henry Darwin, City Manager

ATTEST:

By:

Agnes Goodwine, City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

By:

Emily Jurmu, City Attorney

SELLER:

RSW Properties, LLC, an Arizona limited liability company

By:

Name: Dennis Wahl

Title: Manager

Date:

ACKNOWLEDGMENT

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this _____ day of _____, 2024, before me, a Notary Public, personally appeared Dennis Wahl, Manager of RSW Properties, LLC, an Arizona limited liability company, known to me or satisfactorily proven to be the person whose name is subscribed to this instrument and acknowledged that they have executed the same. If this person's name is subscribed in a representative capacity, it is for the seller named and in the capacity indicated.

Notary Public

[Seal]

