#2

MAR 27 2014

ORDINANCE NO. 4527

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AUTHORIZING AND APPROVING THE SALE OF APPROXIMATELY 31.22 ACRES OF VACANT, CITY-OWNED REAL PROPERTY GENERALLY LOCATED AT THE SOUTHWEST CORNER OF GILBERT AND OCOTILLO ROADS IN CHANDLER, ARIZONA, TO DERITO PARTNERS DEVELOPMENT, INC. FOR THE SUM OF $8,647,334.00; APPROVING A RECAPTURE AGREEMENT CONSISTENT WITH THE TERMS OF THE SALE; AND AUTHORIZING THE CITY MANAGER OR DESIGNEE TO EXECUTE THE RELEVANT DOCUMENTS FOR THIS TRANSACTION.

WHEREAS, the City of Chandler owns approximately 31.22 acres of vacant real property located at the southwest corner of Gilbert Road and Ocotillo Road, in Chandler, AZ, and legally described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and which previously had been acquired by the City for use as a future site for a wastewater treatment facility; and

WHEREAS, the Property was determined to be no longer necessary for such purpose, so that the Chandler City Council authorized the issuance of a request for proposals (RFP) to determine the feasibility of selling the Property for development as a mix of commercial and residential uses acceptable to the City; and

WHEREAS, it has been found, both by staff and as stated herein, that the proposal submitted by DeRito Partners Development, Inc. ("DeRito"), is the most favorable proposal submitted to the City because (a) the proposed purchase price is consistent with the value of the Property as it has been independently appraised, (b) the proposed development of the Property appears to meet City expectations, and (c) the proposer has a reputation for developing and managing quality retail projects and has the experience and financial capability to do so; and

WHEREAS, having completed negotiations for an agreement for the purchase and sale of the Property, the City and DeRito desire to enter into said agreement for the sale of the property to DeRito in consideration for a purchase price of $8,647,334.00, subject to the other material terms and conditions as set out in the draft form of the agreement shown in Exhibit "B" (the "Draft Agreement"), attached hereto and incorporated herein by this reference;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Chandler, Maricopa County, Arizona, as follows:

Section 1. Council hereby authorizes and approves the City of Chandler entering into an agreement for the purchase and sale of the Property with DeRito in consideration for the purchase price of $8,647,334.00, subject to the other material terms and conditions as set out in the attached Draft Agreement, and no other material terms.

Section 2. Council further authorizes the City of Chandler to enter into a Recapture Agreement consistent with the repurchase or recapture provisions contained in the Draft

Agreement, which Recapture Agreement shall be executed and recorded as part of the Closing consummating the transaction for the purchase and sale of the Property, and which Recapture Agreement shall be in writing and in form approved by the Chandler City Attorney.

Section 3. The Chandler City Manager or a designee is authorized to execute and deliver, on behalf of the City of Chandler, the relevant documents necessary for this purchase and sale transaction with DeRito, including without limitation, the purchase and sale agreement with material terms and conditions consistent with the Draft Agreement, and the Recapture Agreement, subject to the form of each such document having been approved by the Chandler City Attorney.

INTRODUCED AND TENTATIVELY APPROVED by the City Council of the City of Chandler, Arizona, this _____ day of _____, 2014.

ATTEST:

_____ _____
CITY CLERK MAYOR

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona, this _____ day of _____, 2014.

ATTEST:

_____ _____
CITY CLERK MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Ordinance No. 4527 was duly passed and adopted by the City of Chandler, Arizona, at a regular meeting held on the ____ day of _____, 2014, and that a quorum was present thereat.

_____
CITY CLERK

PUBLISHED:

APPROVED AS TO FORM:

_____
CITY ATTORNEY GAB

EXHIBIT A

LEGAL DESCRIPTION

That portion of the Northeast quarter of Section 24, Township 2 South, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

Commencing at the Northeast corner of said Section 24, said corner being a found brass cap in a handhole and from which the East quarter corner of said Section 24 being a found PK nail bears S00°08'02"W a distance of 2647.88 feet;

Thence S89°34'00"W a distance of 1129.15 feet along the North line of said Section 24;

Thence, S00°26'00"E a distance of 33.00 feet to the South right of way line of Ocotillo Road and Point of Beginning;

Thence, N89°34'00"E a distance of 629.15 feet along said South right of way line to the Northwest corner of that parcel described in Quit Claim deed of dedication, Document 20120043778, M.C.R.;

Thence, S00°26'00"E a distance of 32.00 feet along the West line of said deed;

Thence, N89°34'00"E a distance of 404.35 feet along the South right of way line of Ocotillo Road as described in said deed;

Thence, S45°08'59"E a distance of 28.14 feet to the West right of way line of Gilbert Road as described in said deed;

Thence, S00°08'02"W a distance of 180.30 feet along said West right of way line;

Thence, S89°51'58"E a distance of 10.00 feet;

Thence, S00°08'02"W a distance of 906.66 feet along said Gilbert Road right of way;

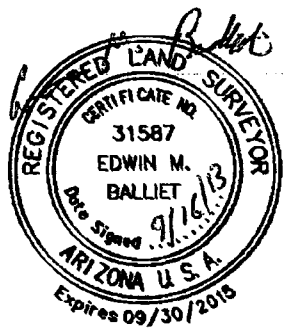
Thence, S89°34'00"W a distance of 1255.31 feet to the East line of the Final Plat "Fonte Al Sole" recorded in Book 574, Page 28, M.C.R.;

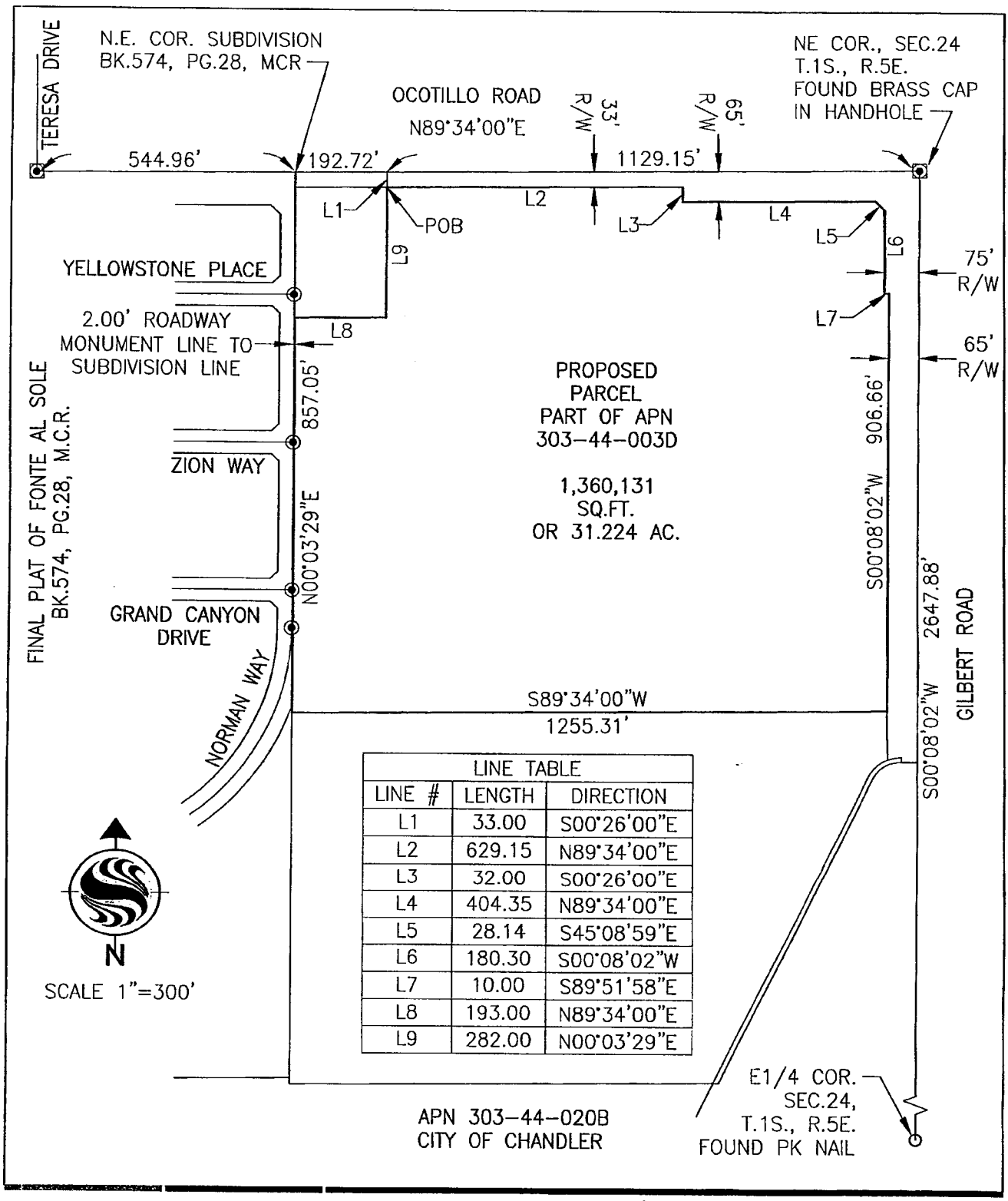
Thence, N00°03'29"E a distance of 857.05 feet along the East line of said Final Plat;

Thence, N89°34'00"E a distance of 193.00 feet;

Thence, N00°03'29"E a distance of 282.00 feet to the Point of Beginning.

Contains an area of 1,360,131 square feet or 31.224 acres more or less and being subject to any easements, restrictions or rights of way of record or otherwise.





LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	33.00	S00°26'00"E
L2	629.15	N89°34'00"E
L3	32.00	S00°26'00"E
L4	404.35	N89°34'00"E
L5	28.14	S45°08'59"E
L6	180.30	S00°08'02"W
L7	10.00	S89°51'58"E
L8	193.00	N89°34'00"E
L9	282.00	N00°03'29"E

Stantec

Stantec Consulting Services Inc.
8211 South 48th Street
Phoenix, AZ USA
85044-5355
602.438.2200
602.431.9562

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
31587
EDWIN M.
BALLIET
Date Signed 9/16/13
ARIZONA U.S.A.
Expires 09/30/2015

Client/Project
City of Chandler
Proposed Parcel
APN 303-44-003D

Figure No.
1.0

Title
Part of APN 303-44-020B

REAL PROPERTY PURCHASE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS

THIS REAL PROPERTY PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS ("**Agreement**") is hereby made and entered into as of the Effective Date (as defined below) by and between **CITY OF CHANDLER**, an Arizona municipal corporation ("**Seller**"), and **DE RITO PARTNERS DEVELOPMENT, INC.**, an Arizona corporation ("**Buyer**"), and who collectively are designated herein as the **"Parties"**, with reference to the following facts:

A. Seller is the owner of that certain real property consisting of approximately thirty-one and 22/100 (31.22) gross acres of land located at or near the southwest corner of the intersection of Gilbert and Ocotillo Roads in the City of Chandler ("**City**"), County of Maricopa ("**County**"), State of Arizona ("**State**"), the commercial component of such depicted on the site plan attached hereto as **Exhibit "A"** and overall acreage more particularly described on **Exhibit "B"** attached hereto ("**Land**"), together with (i) all rights, privileges, easements, tenements, hereditaments, rights of way and appurtenances that belong or appertain to the Land and are owned by Seller, including, without limitation, rights to all minerals, oil, gas and other hydrocarbon substances on and under the Land, as well as all development rights, air rights, water, water rights and water stock, if any, that pertain to the Land (collectively, "**Appurtenances**"), (ii) all buildings, structures and other improvements located on the Land (collectively, "**Improvements**"), (iii) all maps, surveys, reports, studies and plans owned or held by Seller that pertain to the Land or the use thereof (collectively, "**Tangible Property**") and (iv) all intangible property owned or held by Seller that pertains to the Land or to the use thereof, including, without limitation, all permits, authorizations, approvals, leases, licenses, rental contracts and agreements (collectively, "**Intangible Property**").

B. The Land, Appurtenances, Improvements, Tangible Property and Intangible Property are hereinafter collectively referred to as the "**Property**."

C. Buyer desires to purchase the Property from Seller, and Seller desires to sell the Property to Buyer, upon the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are all hereby acknowledged by each of the parties hereto, the parties hereto agree as follows:

1. Purchase Price. Subject to and pursuant to the following terms and conditions, Seller shall sell and transfer the Property to Buyer and Buyer shall purchase the Property from Seller and pay to Seller the sum of Eight Million Six Hundred Forty-Seven Thousand Three Hundred Thirty-Four and No/100 Dollars ($8,647,334.00) ("**Purchase Price**"), subject to adjustment as set forth in Paragraph 7(a)(ii) below.

2. Matters Pertaining to Earnest Money.

(a) Within five (5) Business Days (as defined below) after the Effective Date, Buyer shall deliver an earnest money deposit of One Hundred Thousand and No/100 Dollars ($100,000.00) ("**Earnest Money**") into escrow ("**Escrow**") with First American Title Insurance Company ("**Escrow Holder**"), and Buyer and Seller shall each deliver to Escrow Holder an original counterpart of this Agreement, which shall constitute the joint instructions of Buyer and Seller with respect to the transaction of purchase and sale contemplated in this Agreement. Escrow shall be deemed opened on the date that Escrow Holder holds said original counterparts of this Agreement, as well as the Earnest Money, and

Escrow Holder shall notify Buyer and Seller in writing of the date of opening of Escrow. In addition, Buyer and Seller agree to execute, deliver and be bound by any reasonable and customary supplemental escrow instructions of Escrow Holder or other instruments as may reasonably be required by Escrow Holder in order to consummate the transaction contemplated by this Agreement. Any such supplemental instructions shall not conflict with, amend or supersede any portions of this Agreement. If there is any inconsistency between such supplemental instructions and this Agreement, this Agreement shall control. "**Business Days**" shall mean each Monday through Friday, excluding United States, State and local City of Chandler holidays, and "**Business Day**" shall mean any one of the days otherwise comprising Business Days.

(b) Buyer may, at its option, direct Escrow Holder to invest the Earnest Money in an interest bearing account designated by Buyer. All interest accruing on the Earnest Money shall become and be a part of the Earnest Money for purposes of this Agreement. The Earnest Money shall be held in Escrow to be applied for Buyer's benefit against the Purchase Price at Closing (as defined below) or as otherwise provided in this Agreement.

(c) If this Agreement is terminated due to Buyer's failure to obtain the Final Approvals (as defined below), Escrow Holder, without requirement for any authorization or other notice from Seller, shall immediately disburse the Earnest Money to Buyer, less the sum of One Hundred and No/100 Dollars ($100.00) ("**Nonrefundable Portion**"), which Escrow Holder shall pay to Seller in consideration of entering into this Agreement, whereupon this Agreement shall terminate and no party hereto shall have any further rights, obligations or liabilities hereunder, except for matters that, by the terms of this Agreement, expressly survive termination of this Agreement. Except as otherwise provided in the immediately preceding sentence, upon Escrow Holder's receipt of written notice from either party hereto claiming the Earnest Money pursuant to the other provisions of this Agreement, Escrow Holder shall promptly forward a copy thereof to the other party hereto and, unless such party within ten (10) days of receipt thereof notifies Escrow Holder of any objection to such requested disbursement of the Earnest Money, Escrow Holder shall disburse the Earnest Money in accordance with the provisions of this Agreement based upon the demand of the party demanding same (it being understood that, where applicable, the Nonrefundable Portion of the Earnest Money shall be delivered to Seller, even if the balance of the Earnest Money is to be returned to Buyer), and thereupon Escrow Holder shall be released and discharged from any further duty or obligation hereunder.

(d) Escrow Holder is expressly stated and intended to be a third party beneficiary of the operative provisions of this Paragraph 2 and of Paragraph 20 below, which further address the liabilities, obligations, duties and protections of Escrow Holder. If, however, Escrow Holder requires same, Buyer and Seller further agree to enter into a separate escrow agreement respecting the Earnest Money, provided and so long as such escrow agreement is consistent with the provisions of this Agreement, generally, and, in particular, this Paragraph 2.

3. Closing.

(a) The consummation of the purchase and sale of the Property contemplated under this Agreement ("**Closing**") shall be defined as the date that the special warranty deed, the form of which is attached hereto as **Exhibit "C"** ("**Deed**"), conveying the Property to Buyer is delivered to Buyer and recorded in the Official Records of the County. The Closing shall occur on or before the date that is thirty (30) days following receipt of the Final Approvals ("**Closing Date**").

(b) Seller agrees to deliver vacant possession of the Property to Buyer at Closing in the same condition existing as of the Effective Date (except as may be expressly provided to the contrary

in this Agreement), free of any right of possession or claim to right of possession by any party other than Buyer.

4. Closing Costs.

(a) On or before Closing, Seller shall pay: (i) Seller's attorneys' fees; (ii) all transfer taxes, recording taxes, documentary stamp taxes and similar taxes; (iii) all recording fees on recordable documents incident to the conveyance of the Property to Buyer; (iv) all title insurance fees and premiums for the issuance of a standard owner's title insurance policy; and (v) one-half (1/2) of all escrow charges.

(b) On or before Closing, Buyer shall pay: (i) the cost of the preparation of the Survey (as defined below); (ii) Buyer's attorneys' fees; (iii) all title insurance fees and premiums for the issuance of an extended owner's title insurance policy (2006) (the "**Title Policy**"), including any endorsements thereto and any premiums for insurance in excess of the Purchase Price; (iv) one-half (1/2) of all escrow charges; and (v) all costs related to the Final Approvals.

(c) Any closing costs not otherwise provided for herein shall be paid by the party legally responsible therefor or, if no law applies, according to prevailing custom for commercial transactions in the County and State.

5. Prorations.

(a) Seller shall be responsible for and shall promptly pay all utility charges and similar charges with respect to the Property attributable to the period up to and including the Closing Date.

(b) All prorations, if and to the extent known and agreed upon as of the Closing, shall be paid by Buyer to Seller (if the prorations result in a net credit to Seller) or by Seller to Buyer (if the prorations result in a net credit to Buyer) by increasing or reducing the cash to be paid by Buyer at the Closing. Any such prorations not determined or not agreed upon as of the Closing shall be paid by Buyer to Seller, or by Seller to Buyer, as the case may be, in cash as soon as practicable following the Closing.

(c) If any errors or omissions are made regarding adjustments and prorations pursuant to this Paragraph 5, the parties shall make the appropriate corrections promptly upon the discovery thereof. If any estimates are made at the Closing regarding adjustments or prorations, the parties shall make the appropriate correction promptly when accurate information becomes available. Any corrected adjustment or proration shall be paid in cash to the party entitled thereto.

(d) The provisions of this Paragraph 5 shall survive the Closing and the recordation of the Deed.

6. Property Materials.

(a) Within five (5) business days after the Effective Date (the **"Document Delivery Date"**), Seller shall, at Seller's sole cost and expense, provide to Buyer copies of all topographical, engineering, environmental and other studies, surveys, engineering plans, development agreements, licenses, permits, maps, certificates of occupancy, plans, tax statements, and other like materials (the **"Property Materials"**) with regard to the Property.

(b) Buyer acknowledges and agrees that the Property Materials and any other documents and information provided to Buyer by or on behalf of Seller are and will be furnished under

the express condition that Buyer shall make its own independent verification of the accuracy of the information. Buyer agrees that it shall not attempt to assert any liability against Seller by reason of Seller's having furnished such information or for the reason of any such information becoming or proving to have been incomplete, incorrect, or inaccurate in any respect. To the extent that any of the Property Materials were obtained by Seller from third party consultants paid by Seller and are not otherwise addressed to Buyer, Seller agrees to reasonably cooperate with Buyer (at no additional cost or expense to Seller) in order to cause each such preparer of such items to provide Buyer with a reliance letter reasonably acceptable to Buyer confirming Buyer's right to rely upon and use such items.

(c) Seller shall promptly furnish to Buyer for its review any third party reports, contracts, agreements, and additional documents and information pertaining to the Property that may come into Seller's possession or control from and after the Document Delivery Date.

6A. Inspections Prior to Closing.

(a) At all reasonable times before the Closing (or earlier termination of this Agreement), Buyer and its representatives, consultants and contractors shall be entitled, at Buyer's sole cost and expense, to: (i) enter onto the Land and the Improvements to inspect and examine same and to perform boundary, topographic and like surveys and inspections of the same, as well as other tests and inspections of same (including, without limitation, geotechnical and environmental tests, studies and examinations, soil tests, borings, percolation tests and other tests needed to determine surface, subsurface and topographic conditions) that Buyer deems necessary; (ii) review all Property Materials; and (iii) investigate such other matters pertaining to the Property as Buyer may desire. Buyer's entry onto and inspection s of the Land and/or the Improvements in accordance with the terms of this Agreement shall not damage the Land and/or the Improvements in any material respect and Buyer shall not conduct or permit any physically invasive testing of, on, or under any of the Land and/or Improvements without first obtaining Seller's written consent (which shall be at Seller's reasonable discretion) as to the timing and scope of the work to be performed; provided, however, that Seller's consent shall not be required to perform Phase I environmental testing or customary geotechnical testing. Buyer agrees to cause each inspection report or study that is obtained by Buyer or at Buyer's direction from a third party to be addressed to and certified (if customarily certified) to Seller as well as to Buyer and to be delivered to Seller at the same time it is delivered to Buyer, all at Buyer's expense. Any entry by Buyer onto the Land and/or the Improvements shall be subject to, and conducted in accordance with, all applicable laws. Buyer shall promptly restore the Land and/or the Improvements to substantially its previous state in the event any testing is done by or on behalf of Buyer and no examinations, inspections or tests shall unreasonably interfere with, or damage, any current use of the Land and/or the Improvements. Seller shall have the right to be present or appoint a representative to accompany Buyer in connection with Buyer's entry on the Land and/or the Improvements, and Buyer shall give to Seller's representative, Erich Kuntze, phone (480) 782-3397, reasonable prior telephonic or written notice of any such proposed entry, specifying the purpose and duration thereof, in order to facilitate the same.

(b) Buyer shall indemnify, protect, defend, and hold Seller and Seller's officers, directors, council members, agents, employees, and representatives (each an **"Indemnified Party"** and collectively, the **"Indemnified Parties"**) harmless from and against any and all claims (including, without limitation, claims for mechanics' liens or materialmen's liens), causes of action, demands, obligations, losses, damages, liabilities, judgments, costs, and expenses (including, without limitation, reasonable attorneys' fees, charges, and disbursements) in connection with or arising out of any inspections of the Land and/or the Improvements carried on by or on behalf of Buyer pursuant to the terms hereof; provided, however, that Buyer shall have no responsibility or liability for (a) negligence or willful misconduct of any Indemnified Party; (b) any adverse condition or defect on or affecting the Land and/or the Improvements not caused by Buyer or its employees, agents, consultants, or contractors, but

discovered during their inspections including, without limitation, the pre-existing presence or discovery of any matter (such as, but not limited to, any "Hazardous Materials" (as hereinafter defined)); (c) the results or findings of any inspection; and/or (d) Buyer's election to terminate this Agreement as a result of any inspection pursuant to this Agreement.

(c) Buyer agrees to maintain and cause each of its consultants, contractors or representatives conducting any studies or investigations on the Property pursuant hereto to maintain and have in effect commercial general liability insurance with (i) limits of not less than One Million and No/100 Dollars ($1,000,000.00) for personal injury, including bodily injury and death, and property damage, and (ii) Seller named as an additional insured party. Upon Seller's request, Buyer shall deliver to Seller a copy of the certificate of insurance effectuating the insurance required hereunder prior to the commencement of such activities, which certificate shall provide that such insurance shall not be terminated or modified without at least ten (10) days' prior written notice to Seller.

(d) The provisions of this Paragraph 6A shall survive the Closing or the earlier termination of this Agreement.

6B. Anticipated Development of the Property.

(a) The Parties specifically understand the following:

(i) Buyer contemplates construction of both residential and commercial improvements (collectively, "**Project**"), on the Property in accordance with Buyer's response to the request for proposals solicited by Seller and the Site Plan attached hereto as **Exhibit "A"**;

(ii) Seller's request for proposals contemplated that development of the Property will include both a significant, anchored commercial component and a housing component;

(iii) Seller's request for proposals expected the selected proposal to include an aggressive timeline for receiving zoning and other necessary entitlements from the Chandler City Council and for construction of the development, and Buyer's proposal included such a timeline; and

(iv) Seller's request for proposals specifically advised that any agreement related to the sale of the Property would include provisions (*a*) to ensure that the Property would be developed as contemplated in the successful proposer's response; (*b*) to ensure that the commercial development component is completed within reasonable timeframes; and (*c*) to have the Property revert back to the Seller if the proposer failed to perform according to the terms approved by the Chandler City Council.

7. Conditions Precedent.

(a) Buyer's obligations hereunder are conditioned upon the satisfaction of each of the following conditions within the Approval Period, or by such later date as may be provided below (any of which conditions may be waived by Buyer upon giving written notice of such waiver to Seller). For purposes of this Agreement, the "**Approval Period**" shall mean the period of time between and including the Effective Date and the date the Final Approvals have been obtained. The conditions to Buyer's obligations under this Agreement are as follows:

(i) Buyer obtaining (A) a boundary and a topographic survey of the Property (collectively, "**Survey**"), prepared by an Arizona Registered Land Surveyor, (B) inspection reports and certifications respecting such Survey prepared by the surveyor as reasonably required

by Buyer and/or the Title Company, and (C) feasibility studies and any other appraisals, inspections, tests or studies desired by Buyer, showing that the Property is satisfactory to Buyer, as determined in its sole and absolute discretion. Seller and Buyer agree that the acreage of the Property and the boundary lines thereof shall be conclusively determined by the Survey.

(ii) Buyer platting or replatting and rezoning the Property as required for the construction and operation of the Project and procuring all necessary Approvals (as defined below), it being acknowledged and agreed by the parties that the foregoing condition shall not be considered satisfied until all Approvals have become Final Approvals. "**Approvals**" shall mean all zoning, rezoning and/or variances for residential and commercial uses, all preliminary development plan approvals for the Property and required as a condition of the zoning for the Property any amendments to existing general, specific or area plans of the City of Chandler affecting the Property that may be required in order to obtain necessary zoning, any preliminary plat approved for the development of the Property, engineering permits, traffic and department of transportation permits (including, without limitation and signs, driveway locations and movements (including ingress and egress to public thoroughfares). For purposes of this Paragraph 7, "Approvals" do not include: permits (including, without limitation, building permits), licenses and approvals, whether ministerial, discretionary or otherwise, from governmental and quasi-governmental authorities that are necessary for the construction and operation of the Project, sewer and storm water management permits, off-site permits, parking variances, any required comprehensive land plan amendments, any amendments to or approvals required under any applicable development of regional impact plan, vested development rights, satisfaction of all concurrency requirements and any other permits, licenses, variances and approvals otherwise pertaining to buildings, occupancy, wetlands, endangered species and environmental controls. When such Approvals have been received and are valid, irrevocable, unqualified and unconditioned (except for such qualifications and/or conditions that are acceptable to Buyer in its sole and absolute discretion and expressly made conditions of development associated with the zoning, preliminary development plan and replatting of the Property), and are no longer subject to appeal or litigation, such Approvals shall be referred to as "**Final Approvals.**" Buyer and Seller acknowledge that approximately twenty-four thousand (24,000) square feet of the Property (the "**Dedicated Parcel**") shall be dedicated to Seller in fee for public roadway and other public purposes as part of the Final Approvals. The Purchase Price shall be reduced by an amount equal to the square footage of the Dedicated Parcel multiplied by Six and 50/100 Dollars ($6.50).

(iii) Without limiting clause (i) above, Buyer's receipt, at Buyer's sole cost and expense, of (1) soil test studies with regard to the Property and (2) such tests and studies as Buyer may deem necessary or appropriate to determine the environmental condition of the Property, such tests and studies to include, without limitation, so-called "Phase I" environmental site assessments and such additional testing, including so-called "Phase II" environmental site assessments, as determined by Buyer to be necessary in Buyer's discretion, and all of which tests, studies, assessments, audits and reports confirm the absence of any and all forms of environmental surface, subsurface, groundwater and/or other contamination and are in all other respects acceptable to Buyer.

(iv) Buyer satisfying itself as to such other matters as Buyer, in its sole discretion, deems to be necessary or desirable for the construction and operation of the Project.

If the contingency set forth in clause (ii) above is not satisfied (or waived by Buyer or extended in writing by Buyer and Seller) on or before the later to occur of (A) eleven (11) months following the Effective Date, or (B) the date the Final Approvals (as that term is defined in Paragraph 7(a)(ii) above) are obtained

(the "**Approvals Deadline**"), then either party may, at its option, terminate this Agreement by giving written notice of termination to Seller, Buyer and Escrow Holder on or before the Approvals Deadline, whereupon Escrow Holder shall immediately refund to Buyer all Earnest Money, except the Nonrefundable Portion, which Escrow Holder shall pay to Seller in consideration of entering into this Agreement, and this Agreement shall be deemed null and void and of no further force or effect with Buyer and Seller having no further rights, obligations or liabilities hereunder, except for matters that by the terms hereof expressly survive termination. Termination by Buyer due to the non-satisfaction and non-waiver of the contingencies set forth in clauses (i), (iii) and (iv) shall result in the delivery of the Earnest Money to Seller.

(b) In addition, Buyer's obligation to close shall at all times be conditioned upon the following (unless Buyer waives such conditions):

(i) Seller's performance of all of its obligations under this Agreement in accordance with the provisions hereof;

(ii) The truth and accuracy of Seller's warranties and representations expressly made under this Agreement;

(iii) The absence of any material change in the status of the use, title, occupancy or physical condition of the Property (including, without limitation, any such change caused by casualty or condemnation), unless caused by Buyer or its consultants or contractors, between the Effective Date and the Closing (inclusive) that has not been approved in writing by Buyer; and

(iv) Termination of that certain agricultural lease with a current expiration date of December 31, 2014 (the "**Lease**"). Seller shall promptly provide notice to the tenant under the Lease so that the Property is transferred to Buyer free of any tenancies. Seller shall be solely responsible for payment of any termination fee in connection with the Lease, including, but not limited to, payment to the tenant for current crops.

Should any one or more of the contingencies set forth in clauses (i), (ii), (iii) and (iv) of this subparagraph (b) above not be satisfied or waived in writing by Buyer on or before the Closing Date, then Buyer may terminate this Agreement by giving written notice to Seller, whereupon Escrow Holder shall immediately refund to Buyer all Earnest Money, except for the Nonrefundable Portion, which Escrow Holder shall pay to Seller (except in cases of Seller's default) in consideration of entering into this Agreement, which termination shall be in addition to exercising any other remedy available to Buyer hereunder in the event of a failure of a contingency due to Seller's default hereunder. Notwithstanding the foregoing, solely with respect to clause (iv) of this subparagraph (b), Buyer may extend the Closing Date on a day for day basis to allow for tenant to vacate the Property in connection with a termination of the Lease.

8. Deposits by Seller. Prior to the Closing, Seller shall deposit or cause to be deposited with Escrow Holder the following documents and instruments:

(a) Deed. The Deed, duly executed by Seller, acknowledged and in recordable form.

(b) Seller's Certificates. If required, a non-foreign affidavit satisfying Federal requirements and State requirements (collectively, "**Seller's Certificates**"), duly executed by Seller.

(c) Affidavit of Property Value. An Affidavit of Property Value, duly executed by Seller, acknowledged and in recordable form, unless exempted from use under State law.

9. Deposits by Buyer. Prior to Closing, Buyer shall deposit or cause to be deposited with Escrow Holder funds that are to be applied towards the payment of the Purchase Price in the amounts and at the times designated in Paragraph 3 above (as reduced by the prorations and credits hereinafter provided).

10. Disbursements and Other Actions by Escrow Holder. Upon the Closing, Escrow Holder shall promptly undertake all of the following in the manner indicated:

(a) Prorations. Prorate all matters referenced in Paragraph 5 above based upon the settlement statement delivered into Escrow signed by the parties.

(b) Recording. Cause the Deed, the Affidavit of Property Value (if required) and any other documents that the parties hereto may mutually direct, to be recorded in the Official Records of the County.

(c) Funds. Disburse from funds deposited by Buyer with Escrow Holder towards payment the Purchase Price and all other items chargeable to the account of Buyer pursuant to this Agreement in payment of such obligations and disburse the balance of such funds, if any, to Buyer.

(d) Title Policy. Direct the Title Company to issue an original Title Policy to Buyer.

(e) Documents. Deliver (i) a conformed copy of the recorded Deed to Buyer, and (ii) the original Seller's Certificates to Buyer.

11. Conveyance of Title.

(a) The title to the Property to be conveyed by Seller to Buyer must be insurable by First American Title Insurance Company (the "**Title Company**") under the Title Policy at standard rates, free and clear of all liens, encumbrances, and other exceptions to title, except the Permitted Title Exceptions (as defined below). The legal description of the Property to be incorporated into the Deed shall be prepared pursuant to the Survey excluding therefrom the Dedicated Parcel. Seller covenants to deliver to Buyer at Closing an affidavit acceptable to Buyer and the Title Company stating that Seller has sole and exclusive possession of the Property, subject only to the Permitted Title Exceptions, and stating that either (i) there have been no improvements, additions, alterations, repairs or any changes of any kind whatsoever made to the Property during the twelve (12) months immediately preceding Closing (or such longer period as may give rise to liens under applicable law), or (ii) if there have been any such improvements or repairs, that all lienors or potential lienors in connection with such improvements or repairs have been paid in full. Seller shall also supply to Buyer at or prior to Closing such other documentation as may be reasonably required by Buyer, including, without limitation, evidence of authority to consummate the sale, all in form and substance acceptable to Buyer. Seller shall also execute and deliver in connection with the Closing documentation as reasonably required by Buyer or the Title Company to allow for issuance of the Title Policy without exception for any lien under any commercial real estate broker lien act (and as necessary to allow for issuance of an endorsement to such policy insuring against any liens under any such act filed after Closing for commissions earned prior to or simultaneously with Closing) and such other documentation as Buyer may reasonably require, including, without limitation, affidavits, certificates and other information sufficient to satisfy requirements of the Internal Revenue Code (including Sections 1445 and 6045 thereof) and the withholding requirements of any comparable laws of the State. Further, the parties shall each execute and deliver such tax forms and like documents as are usual, customary and/or necessary for commercial real estate closings in the City, County and/or State.

(b) Seller agrees that it will cause the Title Company to issue and deliver to Buyer, not later than thirty (30) days following the Effective Date and at Seller's sole cost and expense, a commitment for issuance of the Title Policy in the current form and in the amount of the Purchase Price ("**Commitment**"), along with copies of all documents and exceptions to title set forth or described in the Commitment. Seller, at its cost, will have the Commitment updated prior to Closing as necessary to allow for issuance of the Title Policy, and Seller shall cause copies of any such update, as well as of any new matters affecting title revealed thereby, to be promptly delivered to Buyer.

(c) Buyer shall have until the expiration of the Approval Period to examine the Commitment and Survey and otherwise to examine title to the Property, and Buyer may notify Seller of any objectionable matter or defect that affects the marketability or insurability of the title to the Property or that adversely affects the use of the Property for the Project. If Seller is notified of any such objectionable matters, Seller promptly agrees to employ its good faith best efforts to procure a cure for same. If, however, Seller is unable through the exercise of its good faith best efforts (which shall include the payment of money with respect to any existing mortgages, deeds of trust, deeds to secure debt, liens or other matters that can be removed by the payment of money) to cure any objectionable matter prior to Closing, then at Buyer's option, Buyer may either (i) take title to the Property despite the existence of such matter, (ii) remove such objectionable matter and reduce the Purchase Price in accordance with the amount of money expended, including but not limited to all attorneys' fees and costs, in pursuance of the cure of such matter, or (iii) terminate this Agreement, and neither Buyer nor Seller shall have any further liabilities, obligations or rights with regard to this Agreement, which shall then become null and void and of no further force or effect (except for matters that by the express terms hereof survive termination). Any title exceptions to the Property revealed by the Commitment or Survey to which Buyer does not object, or to which Buyer waives its objection prior to the expiration of the Approval Period, are referred to herein as "**Permitted Title Exceptions**". If any title exceptions or survey matters are disclosed by updates of the Commitment and/or Survey or other title "date-downs" that affect the marketability or insurability of the title to the Property or that adversely affect the use of the Property for the Project, Buyer may after the discovery thereof notify Seller, in which event Seller shall promptly employ its good faith best efforts to procure a cure for same, as required above, and upon the failure of Seller to effectuate a cure, then Buyer may elect any of the options set forth in subclauses (i), (ii) and (iii) above. Notwithstanding anything herein contained to the contrary, any existing mortgages, deeds of trust, deeds to secure debt, mechanics' or materialmen's liens, judgment liens or similar monetary liens and encumbrances, as well as any tenants or other parties in possession of all or any portion of the Property, shall be automatically deemed matters to which objection is made by Buyer, regardless of whether Buyer gives written notice of objection thereto to Seller, and Buyer under no circumstances shall be deemed to have waived any such matters, nor shall same be considered Permitted Title Exceptions hereunder, unless such waiver shall be an express waiver in writing executed by Buyer.

12. Casualty and Condemnation.

(a) If, at any time between the Effective Date and Closing (inclusive), all or any portion of the Property is damaged by casualty or condemned by any legally constituted authority for any public use or purpose, then Buyer may elect either: (i) to terminate this Agreement, in which event Escrow Holder shall immediately refund to Buyer all Earnest Money (except for the Nonrefundable Portion, which shall be paid to Seller as consideration for the rights afforded Buyer by this Agreement), and neither Buyer nor Seller shall have any further liabilities, obligations or rights with regard to this Agreement (except for matters that by the express terms hereof survive termination); or (ii) to collect at Closing (or at Closing receive a credit against the Purchase Price for) all proceeds from any condemnation or from any insurance policies insuring the Property from damage or destruction and have the terms of this Agreement remain in full force and effect and binding on the parties hereto (with Buyer receiving a credit against the Purchase Price for any deductibles and the amount of any uninsured casualty). In the

event of a condemnation in which Buyer does not elect to terminate this Agreement pursuant to the foregoing terms, then the term Property, as used herein, shall thereafter refer to the Property less and except any portion thereof taken by such condemnation.

(b) In addition (and without limiting subparagraph (a) above), Buyer shall have no obligation to purchase the Property if any casualty, such as (without limitation) earthquake, sinkhole, contamination by hazardous substances or act of God, affects or threatens to affect the Property so as to make construction or operation of the Project more expensive or so as materially to increase the time it would take to construct the Project, and upon any such occurrence, Buyer may terminate this Agreement by notice to Seller given at any time prior to Closing, whereupon Escrow Holder shall immediately refund to Buyer the Earnest Money (except for the Nonrefundable Portion thereof, which shall be paid to Seller as consideration for the rights afforded Buyer by this Agreement), and neither party shall have any further right, duty, liability or obligation hereunder, except for matters that by the express terms hereof survive termination.

13. Assignment. Seller shall not assign its interest hereunder without the prior written consent of Buyer. Buyer shall not assign its interest hereunder without the prior written consent of Seller, provided, however, Buyer shall be permitted to assign its rights under this Agreement to an "affiliate" (as defined hereinbelow) of Buyer, Martin W. De Rito and/or Jerald Friedman. An "affiliate" as used herein shall mean an entity that controls, is controlled by or is under common control with Buyer, Buyer's principals, Martin W. De Rito and/or Jerald Friedman or any combination of the foregoing. Buyer shall promptly deliver a copy of any such assignment to Seller and Escrow Holder.

14. Survival of Closing. All warranties, covenants and representations made herein by either Seller or Buyer shall survive Closing.

14A. "As-is" Condition.

Buyer acknowledges and agrees that Buyer is a sophisticated purchaser of real property and is familiar with this type of real property and, other than the representations, warranties, and covenants expressly stated in this Agreement or in the instruments or documents executed and delivered by Seller at Closing (the **"Express Representations"**), Seller has not made, does not make, and specifically negates and disclaims any representations, warranties, promises, covenants, agreements, or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present, or future, of, as to, concerning, and/or with respect the Property, the Property Materials, and/or the Title Policy, Title Commitment, or related title documents, including, without limiting the generality of the foregoing: (a) the value, nature, quality, or condition of the Property, including, without limitation, the water, soil, and geology; (b) the income to be derived from the Property; (c) the suitability of the Property for any and all activities and uses that Buyer may conduct thereon; (d) the compliance of or by the Property or its operations with any laws, rules, ordinances, or regulations of any applicable governmental authority or body; (e) the habitability, merchantability, marketability, profitability, or fitness for a particular purpose of the Property; (f) compliance with any environmental protection, pollution, land use, zoning, development, or regional impact laws, rules, regulations, orders, or requirements, including the existence in or on the Property of Hazardous Materials; (g) the content, suitability, and/or sufficiency of any plans, plats, drawings, specifications, reports, studies, agreements, and/or documents with respect to the Property (including, without limitation, any of the foregoing listed items delivered as part of the Property Materials and/or assigned at or in connection with the Closing); or (h) any other matter with respect to the Property Materials, and/or the Title Policy, Title Commitment, or related title documents. Buyer further acknowledges and agrees that, except for the Express Representations, Buyer is relying entirely on Buyer's own investigations and examinations as to the physical condition and every other aspect of the Property, the Property Materials, and/or the Title Policy, Title Commitment, or related title documents, including, without limitation, those

matters set forth in (a) through (h) above. Buyer acknowledges that, subject to the Express Representations, it has performed, or on or before the Closing will perform, any and all inspections Buyer deems necessary or appropriate for Buyer to be satisfied with the acceptability of the Property. Buyer further acknowledges that any information provided or made available or to be provided or made available to Buyer by Seller, or its officers, employees, agents, brokers, representatives, or others, including, without limitation, the Property Materials, was obtained from a variety of sources and that Seller has not made any independent investigation or verification of such information and, makes not representations as to accuracy or completeness of any such information, and such information was provided or made available or will be provided or made available solely as a courtesy. Buyer acknowledges that, except for the Express Representations, Buyer is purchasing the Property on an **"AS-IS", "WHERE-IS",** and **"WITH ALL FAULTS"** basis, without any implied warranties.

15. Seller's Representations, Warranties and Covenants.

(a) Seller represents, warrants and covenants to Buyer that:

(i) Seller (x) has complete and full authority to execute this Agreement and to convey to Buyer good and marketable fee simple title to the Property, in accordance with Paragraph 11 of this Agreement, which is free and clear of all liens, encumbrances and other exceptions to title except for the Permitted Title Exceptions, (y) will execute and deliver such other documents, instruments, agreements, including (but not limited to) affidavits and certificates, as are reasonably necessary to effectuate the transaction contemplated herein, and (z) will take all such additional action reasonably necessary or appropriate to effect and facilitate the consummation of the sale and purchase transaction contemplated herein. Each of the persons executing this Agreement on behalf of Seller further represents and warrants that the persons signing this Agreement on behalf of Seller are duly qualified and appointed representatives of Seller and have all requisite power and authority on behalf of Seller to enter into this Agreement as the valid, binding and enforceable obligation of Seller.

(ii) To the best of Seller's knowledge, all assessments that are liens against the Property are shown in the official records of the taxing authorities in whose jurisdiction the Property is located; no improvements (site or area) have been constructed or installed by any public authority, the cost of which may be assessed in whole or in part against any part of the Property in the future; and Seller has not been notified of any possible future improvements that might create an assessment against any part of the Property.

(iii) Except for the tenant under the Lease, the Property is free of any right of possession or claim of right of possession of any party other than Seller, and there are no leases or occupancy agreements currently affecting any portion of the Property. Seller will not further sell, encumber, convey, assign, pledge, lease or contract to sell, convey, assign, pledge, encumber or lease all or any part of the Property, nor restrict the use of all or any part of the Property, nor take or cause or allow to be taken any action in conflict with this Agreement at any time between the Effective Date and (x) Closing, or (y) the earlier termination of this Agreement pursuant to its terms. Seller additionally hereby represents and warrants that no rights of first refusal or similar agreements exist in connection with the Property that would in any way interfere with Buyer's ability to purchase the Property as provided herein, or that are in any way in contravention of the spirit and intent of this Agreement. Seller can and will cancel and terminate the Lease on or before the Closing Date at no liability, cost, expense or obligation to Buyer or the Property, and Seller can and will deliver sole and exclusive possession of the Property to Buyer at Closing, subject to the Permitted Title Exceptions.

(iv) Reserved.

(v) To the best of Seller's knowledge, neither the entering into of this Agreement nor the consummation of the transactions contemplated hereby will constitute or result in a violation or breach by Seller of any judgment, order, writ, injunction or decree issued against or imposed upon it, or will result in a violation of any applicable law, order, rule or regulation of any governmental authority. To the best of Seller's knowledge, there is no action, suit, proceeding or investigation pending or threatened that creates a lien or that would become a cloud on the title to the Property or any portion thereof or that questions the validity or enforceability of the transaction contemplated by this Agreement or any action taken pursuant hereto in any court or before or by any Federal, district, county, or municipal department, commission, board, bureau, agency or other governmental instrumentality.

(vi) Seller has no knowledge of, nor has Seller received any notice of, any actual or threatened action, litigation, or proceeding by any organization, person, individual or governmental agency (including governmental actions under condemnation authority or proceedings similar thereto) against the Property or Seller, nor has any such organization, person, individual or governmental agency communicated to Seller anything that Seller believes to be a threat of any such action, litigation or proceeding.

(vii) To the best of Seller's knowledge, and except as may have been disclosed to Buyer in the Property Materials, during Seller's ownership of the Property, (1) none of the Property has been excavated, (2) no landfill was deposited on, or taken from, the Property, (3) no construction debris or other debris (including, without limitation, rocks, stumps, or concrete) was buried upon any of the Property, (4) no Hazardous Materials (as defined below) have been deposited on or about the Property, and (5) no asbestos-containing materials have been placed or introduced in any buildings or other improvements on the Property. Seller represents and warrants that, to the best of its knowledge, none of the foregoing occurred with respect to the Property prior to the time Seller became the owner of the Property. "**Hazardous Materials** " or similar terms shall mean and include asbestos, asbestos-containing materials, petroleum and petroleum products, the group of organic compounds known as polychlorinated biphenyls, and any substances or materials that are regulated, controlled or prohibited under the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. § 690, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. Sections 9601-9657, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), or any similar State law or local ordinance or any other environmental law, the Federal Water Pollution Control Act, 33 U.S.C. §1251, the Clean Air Act, 42 U.S.C. § 7401, the Toxic Substances Control Act ("TCSA"), 15 U.S.C.§ 2601, or any similar State law or local ordinance, or any other Federal, State or local environmental statutes, regulations, ordinances or other environmental regulatory requirements.

(viii) Reserved.

(ix) Seller is not a "foreign person", "foreign corporation", "foreign trust" or "foreign estate" as those terms are defined in the I.R.C., Section 1445, nor is the sale of the Property subject to any withholding requirements imposed by the Internal Revenue Code (including, but not limited to, Section 1445 thereof) or any comparable laws of the State, and Buyer has no obligation under any such laws to withhold any monies from the Purchase Price in accordance with the provisions of such laws in connection with the transaction contemplated hereby (or, if same shall not be the case such that Buyer is obligated to withhold from the

Purchase Price under any such laws, Seller shall cooperate with Buyer in connection with Closing to allow for withholding and compliance with such laws, as necessary).

(x) Seller has received approval from its governing body, the City Council of the City of Chandler, to execute and enter into this Agreement.

The foregoing representations, warranties and covenants shall be true as of the Effective Date and as of the date of Closing, and shall survive the Closing and delivery of the Deed for a period of one (1) year 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 the best of Seller's knowledge shall mean the actual (and not imputed or constructive) knowledge of the Chandler City Manager, or any assistant city manager, any department director, or division supervisor of the City of Chandler, without having made, or being under any duty to make any further investigation or inquiry with respect to such knowledge. In no event shall any such city official have any personal liability or obligation hereunder and Buyer agrees not to attempt to assert any liability against any such official 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 change in the warranty or representation was not caused by the gross negligence or intentional act of Seller, (A) such party shall immediately give notice thereof to the other party, and (B) Seller's warranty or representation shall be deemed amended thereby.

(b) At all times prior to Closing, and without limiting the provisions of subparagraph (a) above or any other provision of this Agreement, Seller shall maintain the Property free from waste and neglect, shall maintain its existing insurance coverages thereon and shall keep and perform or cause to be performed all obligations of the owner of the Property under any recorded title documents, applicable laws and any mortgage affecting the Property. Seller shall tender possession of the Property to Buyer in the same condition the Property was in when last inspected by Buyer, to the end that Seller shall not in any way take any action, permit or acquiesce in any action or fail to take any action that will cause a material increase in Buyer's site development costs or otherwise delay or adversely affect any construction activities contemplated by Buyer in connection with the Project. Without limitation, from the Effective Date to the Closing Date or earlier termination of this Agreement, Seller shall not do, suffer or permit, or agree to do, any of the following: (i) enter into any transaction with respect to or affecting the Property that would in any way prevent Seller's full performance hereunder, or limit or adversely affect Buyer's rights hereunder or as an owner of the Property following Closing (including, without limitation, anything that may subject Buyer to any cost, liability or expense or otherwise interfere with, delay or increase the cost of Buyer's acquisition, development, construction and operation of the Project on the Property); (ii) sell, encumber or grant any interest in the Property or any part thereof in any form or manner whatsoever; (iii) enter into, amend, waive any rights under, terminate or extend any document or instrument affecting the Property without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed; or (iv) without limiting the foregoing, change the grade or other physical characteristics of the Property in any respect unless Buyer has given its prior written approval to any such change. Seller shall indemnify, defend (with counsel satisfactory to Buyer) and hold harmless Buyer, its employees, officers, shareholders, attorneys, directors, agents, contractors, assigns and successors-in-interest, from and against any loss, cost, damage, expense or liability (including reasonable attorneys' fees, including fees on appeal) suffered or incurred as a result of Seller's grossly negligent or intentional breach of the foregoing covenant (such covenant to survive Closing), and Buyer shall have the right, at its option, to terminate this Agreement as a result of any such breach by Seller (and upon any such termination of this Agreement, Escrow Holder shall immediately refund to Buyer the Earnest Money (except for the Nonrefundable Portion, which Escrow Holder shall pay to Seller in consideration of the rights afforded Buyer under this Agreement), without prejudice to Buyer's rights and

remedies hereunder for any default by Seller). For purposes of the foregoing provisions, it shall not be unreasonable for Buyer to refuse to consent to any matter that may subject Buyer to any cost, liability or expense or otherwise interfere with, delay or increase the cost of Buyer's acquisition, development, construction and operation of the Project on the Property.

15A. Buyer's Representations, Warranties and Covenants.

(a) Buyer represents, warrants and covenants to Seller that:

(i) Buyer is an Arizona corporation duly organized, validly existing, and in good standing under the laws of the State of Arizona.

(ii) Buyer has full right, power, and authority to purchase and acquire the Property from Seller as provided in this Agreement and to carry out its obligations hereunder. The individual(s) executing this Agreement and the instruments referenced herein on behalf of Buyer has/have the legal power, right, and actual authority to bind Buyer to the terms hereof and thereof. This Agreement is, and all instruments, documents, and agreements to be executed and delivered by Buyer shall be valid, binding, and enforceable obligations of Buyer and do not, and as of the date of Closing will not, violate any provisions of any law, statute, ordinance, rule, regulation, agreement or judicial order to which Buyer is a party or to which Buyer is subject.

(iii) All of the representations, warranties, and agreements of Buyer set forth in this Agreement shall be true upon the Effective Date, shall be deemed to be repeated at and as of the date of the Closing (except as otherwise set forth in writing to Seller), and shall survive the delivery of the Deed and the Closing for a period of one (1) year after the date of the Closing.

(iv) Buyer represents that it has conducted, or by the Closing will conduct, such inspections and investigations of the Property as Buyer deems or shall deem necessary, including, but not limited to, the physical and environmental conditions thereof, and shall rely upon same. Upon Closing, and except in connection with the Express Representations or fraud by Seller, Buyer shall assume any risk of existing adverse physical matters relating to the Property, including, but not limited to, adverse physical and environmental conditions, which may not have been revealed by Buyer's inspections and investigations. Buyer acknowledges and agrees that upon Closing, except in connection with the Express Representations or fraud by Seller, Seller shall sell and convey to Buyer and Buyer shall accept the Property "as is, where is," with all faults and defects (latent and apparent). The terms and conditions of this section shall expressly survive the Closing, not merge with the provisions of any closing documents, and shall be incorporated into the deed. Buyer acknowledges and agrees that the disclaimers and other agreements set forth in this section are an integral part of this Agreement and that Seller would not have agreed to sell the Property to Buyer for the Purchase Price without the disclaimers and other agreements set forth in this section.

(b) In light of the representations contained in Buyer's proposal in response to Seller's request for proposals concerning the sale and subsequent development of the Property, and since Seller, as the municipality in which the Property is located will have involvement in decisions related to the zoning, platting and other approvals related to Seller's development of the Property, Buyer further covenants, represents and agrees as follows:

(i) Buyer intends to apply for planned area development (PAD) zoning for the Project, which is a form of conditional zoning that also includes the approval of a preliminary development plan (PDP).

(ii) Buyer shall undertake to construct and develop the commercial component of the Property prior to or concurrent with the remaining residential portion of the Property.

(iii) Buyer shall commence vertical construction (defined as the start of building foundations; hereafter "**Vertical Construction**") of the commercial component of the Project within two (2) years of the date that the Final Approvals are obtained (the "**Outside Vertical Construction Commencement Date**"). In the event there has not been any Vertical Construction upon any portion of the commercial component of the Project by the Outside Vertical Construction Commencement Date, then for one hundred eighty (180) days thereafter (the "**Repurchase Election Period**"), Seller shall have the one-time right to reacquire the commercial component of the Project at the rate of $6.50 a square foot. Seller's failure to exercise its right to repurchase the commercial component of the Project prior to the end of the Repurchase Election Period shall be deemed a waiver of Seller's rights under this Paragraph 15A(b)(iii). This right to reacquire the commercial component of the Project shall be incorporated into a Recapture Agreement to be recorded at Closing.

16. Notices. All notices given pursuant to this Agreement shall be in writing and shall be given by (i) personal delivery, (ii) United States mail (certified, return receipt requested), (iii) United States express mail or other established express delivery service (such as Federal Express, DHL and United Parcel Service), or (iv) facsimile (all of the foregoing, a "**Delivery Service**"), with any postage or delivery charges prepaid, addressed to the person and address specified below:

If to Seller:
City of Chandler
Economic Development Division
175 South Arizona Avenue
5th Floor
Chandler, Arizona 85225
Attention: Christine Mackay
Facsimile: 480-782-3040

With a copy to:
Transportation & Development – Real Estate
Mail Stop 407
P.O. Box 4008
Chandler, Arizona 85224
Attention: Erich Kuntze
Facsimile: 480-782-3365

Chandler City Attorney's Office
Mail Stop 602
P.O. Box 4008
Chandler, Arizona 85244
Attention: Glenn A. Brockman
Facsimile: 480-782-4652

If to Buyer:
De Rito Partners Development, Inc.
3200 East Camelback Road, Suite 175
Phoenix, Arizona 85018
Attention: Martin W. De Rito
Facsimile: 602-381-1981

With a copy to: Friedman Developers, LLC
9903 Santa Monica Blvd, Suite 4300
Beverly Hills, California 90212
Attention: Jerald Friedman
Facsimile: 424-288-5589

Nagle Law Group, P.C.
4530 E. Shea Blvd., Suite 140
Phoenix, Arizona 85028
Attention: Robert Nagle
Facsimile: 602-445-9306

If to Escrow Holder: First American Title Insurance Company
2425 East Camelback Road, Suite 300
Phoenix, Arizona 85016
Attention: Sheila Hunter
Facsimile: 602-567-8101

Notices by a party may be given by legal counsel or by the authorized agent for such party. IN NO EVENT SHALL EMAIL TRANSMISSION BE CONSIDERED A VALID METHOD OF PROVIDING NOTICE. Each party may change the person and address to which notices are to be given, upon written notice to the other party. All notices given pursuant to this Agreement shall be deemed given upon deposit with a Delivery Service, but shall not be deemed to have been received until actual receipt. For the purpose of this Agreement, the term "receipt" shall mean the earliest of any of the following: (i) the date of delivery to the address specified pursuant to this paragraph as shown on the return receipt; (ii) the date of actual receipt by the person or entity specified pursuant to this paragraph; (iii) in the case of refusal to accept delivery or inability to deliver, the earlier of (A) the date of the first attempted delivery or refusal to accept delivery, (B) the date of the postmark on the returned envelope, or (C) the date of receipt of notice of refusal or notice of non-delivery by the sending party, or (iv) all notices sent by facsimile shall be deemed to have been received upon machine confirmation (by the receiving party's facsimile machine) of receipt, but if the party receives the notice after 5:00 p.m., then the date of receipt shall be the next business day after the date of receipt.

17. Brokers. Seller and Buyer each hereby indemnifies and agrees to defend and hold the other harmless from and against any and all claims, demands, causes of action, debts, liabilities, judgments and damages (including, without limitation, court costs and attorneys' fees, inclusive of fees incurred in connection with enforcement of this indemnity and fees on appeal) that may be asserted or recovered against the indemnified party on account of any brokerage fee, commission or other compensation arising by reason of the indemnitor's breach of these representations and warranties (the foregoing indemnities being herein referred to as the **"Brokerage Indemnities"**). The Brokerage Indemnities shall survive Closing or any sooner termination of this Agreement, notwithstanding any contrary provision of this Agreement.

18. Default.

(a) Seller's Default. If the purchase and sale contemplated by this Agreement is not consummated because of the inability, failure or refusal, for whatever reason whatsoever, by Seller to convey the Property in accordance with the terms and conditions provided herein, or because of other fault of Seller or reason provided herein for Buyer's not consummating this transaction, Escrow Holder shall immediately refund to Buyer all Earnest Money (except for the Nonrefundable Portion, which shall

be paid to Seller in consideration of rights afforded Buyer by this Agreement, except in the event of Seller's default, in which case Escrow Holder shall also refund the Nonrefundable Portion to Buyer), without prejudice to any other legal or equitable right or remedy of Buyer against Seller, including (but not limited to) specific performance.

(b) Buyer's Default. If Buyer commits a material default under this Agreement and such material default is not cured within ten (10) Business Days after Buyer's receipt of notice of such failure from Seller, then in any such event, the Escrow Holder may be instructed by Seller to cancel the Escrow. Buyer and Seller agree that based upon the circumstances now existing, known and unknown, it would be impractical or extremely difficult to establish Seller's damage by reason of Buyer's default. Accordingly, Buyer and Seller agree that it would be reasonable at such time to award Seller "liquidated damages" equal to the total of all Earnest Money placed into Escrow by Buyer pursuant to this agreement less any of Escrow Holder's charges.

For the purpose of the foregoing provisions of this Paragraph 18, Buyer shall be deemed to have committed a material default under this Agreement at the time Buyer is in fact in default and/or Buyer notifies Seller of Buyer's election to terminate this Agreement and the Escrow at a time when Buyer does not have the right under the terms of this Agreement to so terminate this Agreement or the Escrow. Seller and Buyer acknowledge and agree that the applicable foregoing amounts of liquidated damages are reasonable as liquidated damages and shall be Seller's sole and exclusive remedy in lieu of any other relief, right or remedy, at law or in equity, to which Seller might otherwise be entitled by reason of Buyer's default. Accordingly, if Buyer fails to complete the purchase of the Property and such failure constitutes a breach of this Agreement, Seller may instruct the Escrow Holder to cancel the Escrow whereupon Seller shall be relieved from all liability hereunder, and, promptly following Escrow Holder's receipt of such instruction, Escrow Holder shall (i) cancel the Escrow, (ii) pay all of Escrow Holder's charges from the total amount of the Earnest Money then held by Escrow Holder and (iii) disburse to Seller the remaining balance of the Earnest Money. If the Close of Escrow fails to occur for any reason other than Buyer's default under this Agreement, Escrow Holder shall disburse to Buyer all of the Earnest Money then held by Escrow Holder, plus the accrued interest thereon, less Buyer's share of Escrow cancellation charges, except that the foregoing shall not limit Seller's independent right of recourse against Buyer with respect to any indemnity made by Buyer to Seller in accordance with the provisions of this Agreement which, by the operative terms hereof, survives termination. Without limiting the foregoing provisions of this Paragraph, Seller waives any and all rights which Seller otherwise would have had under State statutes to specifically enforce this Agreement. Seller and Buyer acknowledge that they have read and understand the provisions of this Paragraph 18 and by their initials immediately below agree to be bound by its terms.

Seller's Initials _____ Buyer's Initials

19. Date of Agreement; Dates. If this Agreement is not signed simultaneously by both parties, it shall be considered to be an offer made by the party first executing it to the other party. In such event, said offer shall expire, unless sooner revoked, at midnight on the fourteenth (14th) day following execution by the offering party, unless by that time one copy executed by the party to whom the offer has been made shall have been placed in the mail or personally delivered to the party making the offer. The **"Effective Date"** of this Agreement shall be the date upon which it is accepted by the party to whom the offer is made. Whenever the last day for the exercise of any privilege or the discharge of any duty hereunder shall fall upon a Saturday, Sunday or any United States, State or local City of Chandler holiday, the party having such privilege or duty shall have until 11:59 p.m. Local Time on the next succeeding Business Day to exercise such privilege or to discharge such duty.

20. Indemnification of Escrow Holder.

(a) Release of Escrow Holder. If this Agreement or any matter relating hereto shall become the subject of any litigation or controversy, Buyer and Seller agree, jointly and severally, to release and hold Escrow Holder free and harmless from any loss or expense, including attorneys' fees, that may be suffered by it by reason thereof, except for losses or expenses as may arise from Escrow Holder's negligent or willful misconduct or breach of trust. If conflicting demands are made or notices served upon Escrow Holder with respect to this Agreement, the parties expressly agree that Escrow Holder shall be entitled to file a suit in interpleader and obtain an order from the court requiring the parties to interplead and litigate their several claims and rights among themselves. Upon the filing of such an action, Escrow Holder shall be fully released and discharged from any obligations imposed upon it by this Agreement. Any such legal action may be brought in such court as Escrow Holder shall determine to have jurisdiction thereof. All costs of such proceedings, together with all reasonable attorneys' fees and costs incurred by Escrow Holder and the successful party or parties in connection therewith, shall be paid by the unsuccessful party or parties to such proceeding.

(b) Escrow Holder's Duties. Escrow Holder shall not incur any liability (i) for the sufficiency or correctness as to form, manner, execution or validity of any instrument deposited with it, (ii) as to the identity, authority or rights of any person executing such instrument, (iii) for failure to comply with any of the provisions of any agreement, contract or other instrument filed with Escrow Holder or referred to herein, (iv) for any action taken or omitted in good faith upon advice of its counsel, or (v) for any action taken or omitted in reliance upon any instrument, including written notice or instruction provided for in this Agreement, not only as to its due execution and the validity and effectiveness of its provisions, but also as to the truth and accuracy of any information contained therein, which Escrow Holder shall in good faith believe to be genuine, to have been signed or presented by a proper person or persons, and to conform with the provisions of this Agreement. Escrow Holder's duties hereunder shall be limited to the safekeeping of all monies, instruments or other documents received by it as Escrow Holder, and for their disposition in accordance with the terms of this Agreement.

21. Miscellaneous.

(a) Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State.

(b) Waiver. Failure of either Buyer or Seller to exercise any right given hereunder or to insist upon strict compliance with regard to any term, condition or covenant specified herein, shall not constitute a waiver of Buyer's or Seller's right to exercise such right or to demand strict compliance with any term, condition or covenant under this Agreement.

(c) Counterparts. This Agreement may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same Agreement. For purposes of negotiating and finalizing this Agreement, any signed document transmitted by fax machine with automatic telephonic confirmation of receipt or by e-mail with confirmation of receipt shall be treated in all manners and respects as an original document. The signature of any party transmitted as aforesaid shall be considered for all purposes as an original signature and any such document shall be considered to have the same binding legal effect as an original document executed, delivered and exchanged between the parties. Seller and Buyer hereby agree that neither shall raise the use of a fax or e-mail transmission of signatures as a defense to this Agreement and each hereby waives such a defense.

(d) Captions. All captions, headings, paragraph and subparagraph numbers and letters are solely for reference purposes and shall not be deemed to be supplementing, limiting, or otherwise varying the text of this Agreement.

(e) Severability. The invalidity or unenforceability of a particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

(f) Time of the Essence. Time is of the essence of this Agreement.

(g) No Obligations to Third Parties. Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the parties hereto, to any person or entity other than the parties hereto.

(h) Exhibits and Schedules. The exhibits and schedules attached hereto are hereby incorporated herein by this reference.

(i) Amendment to this Agreement. Neither this Agreement nor any provision hereof may be changed, amended, modified, waived or discharged orally or by any course of dealing, but only by an instrument in writing signed by the party against which enforcement of the change, amendment, modification, waiver or discharge is sought.

(j) Fees and Other Expenses. Except as otherwise provided herein, each of the parties shall pay its own fees and expenses in connection with this Agreement.

(k) Entire Agreement. This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between Buyer and Seller as to the subject matter hereof. No subsequent agreement, representation, or promise made by either party hereto, or by or to an employee, officer, agent or representative of either party, shall be of any effect unless it is in writing and executed by the party to be bound thereby.

(l) Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the respective successors and assigns of the parties hereto (as permitted pursuant to the provisions of this Agreement).

(m) Attorneys' Fees. If either party brings or commences any legal action or proceeding to enforce any of the terms of this Agreement (or for damages by reason of an alleged breach of this Agreement), the prevailing party, if any, in such action shall be entitled to recover from the non-prevailing party all reasonable attorneys' fees that may have been incurred, including any and all costs and expenses incurred in enforcing, perfecting and executing such judgment, and including all costs of appeal.

(n) Reserved.

(o) Reciprocal Indemnity. Buyer shall indemnify, protect, defend and hold Seller harmless from all claims, costs, liabilities, judgments, losses or expenses (including, without limitation, reasonable attorneys' fees and costs) arising out of, resulting from or connected with any matters or conditions first occurring on or around the Property following the Closing during Buyer's ownership of the Property, and Seller shall indemnify, protect, defend and hold Buyer harmless from all claims, costs, liabilities, judgments, losses or expenses (including, without limitation, reasonable attorneys' fees and costs) arising out of, resulting from or connected with any matters or conditions first occurring on or around the Property prior to the Closing.

(p) Construction. The parties hereto hereby acknowledge and agree that (i) each party hereto is of equal bargaining strength, (ii) each such party has actively participated in the drafting, preparation and negotiation of this Agreement, (iii) each such party has consulted with its own independent counsel, and such other professional advisors as it has deemed appropriate, relating to any and all matters contemplated under this Agreement, (iv) each such party and its counsel and advisors have reviewed this Agreement, (v) each such party has agreed to enter into this Agreement following such review and the rendering of such advice and (vi) any rule of construction to the effect that ambiguities are to be resolved against the drafting parties shall not apply in the interpretation of this Agreement, or any portions hereof, or any amendments hereto.

22. **Marketing Signs**. Seller hereby agrees that Buyer may install marketing signs ("**Signs**") on the Property during the term of this Agreement. Further, in the event Seller removes the Signs during the term of this Agreement, the removal of such signs shall be deemed a default by Seller under this Agreement and Buyer may exercise its remedies under Paragraph 18 of this Agreement.

23. **Brokerage Disclosure**. Seller acknowledges that Buyer and/or certain of Buyer's employees, officers, affiliates and constituent partners or members are licensed real estate brokers or licensed real estate salespersons in the State of Arizona.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year written below.

SELLER:

CITY OF CHANDLER, an Arizona municipal corporation

By: _____
Name: _____
Title: _____

Date of Execution by Seller: _____

APPROVED AS TO FORM:

_____
Chandler City Attorney GAB

BUYER:

DE RITO PARTNERS DEVELOPMENT, INC., an Arizona corporation

By: _____
Name: HARRY DE RITO
Title: PARTNER

Date of Execution by Buyer: 2-18-14

Acceptance by Escrow Holder:

First American Title Insurance Company hereby acknowledges that it has received a fully executed counterpart of the foregoing Real Property Purchase Agreement and Joint Escrow Instructions and agrees to act as Escrow Holder hereunder and to be bound by and perform the terms thereof as such terms apply to Escrow Holder.

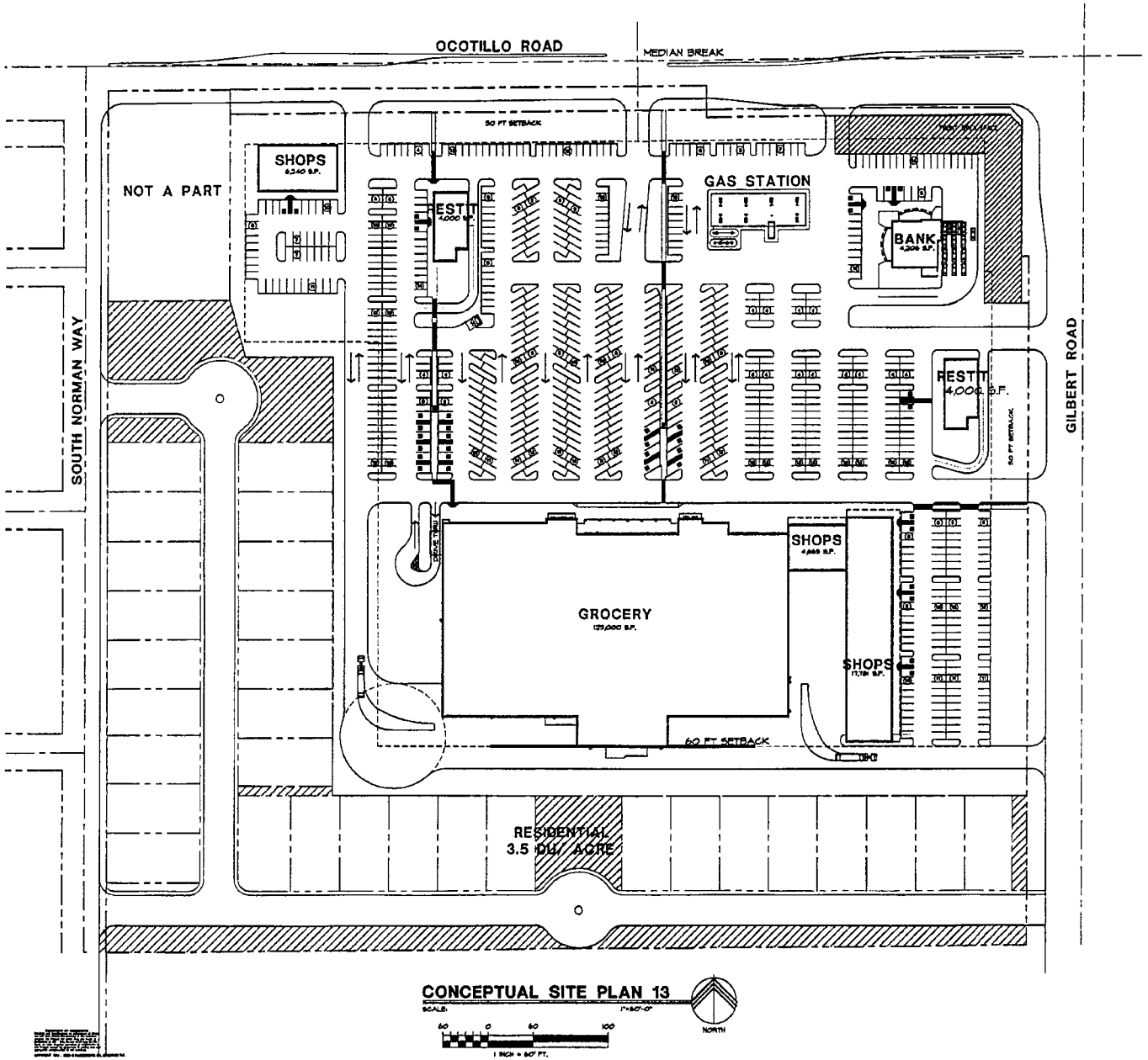
Dated:_____

First American Title Insurance Company

By: _____
Name: _____
Its: _____

EXHIBITS

EXHIBIT "A" – Site Plan
EXHIBIT "B" – Legal Description of Property
EXHIBIT "C" – Form of Deed



CONCEPTUAL SITE PLAN 13

SCALE: 1"=60'-0"

PROJECT DATA

SITE AREA

INITIAL SITE AREA	= 1,550,594.1128 S.F. (50.54 AC.)
NET SITE AREA	= 1,306,542.51 S.F. (29.99 AC.)
NET RETAIL AREA	= 874,280.30 S.F. (20.07 AC.)
NET RESIDENTIAL AREA	= 452,256.07 S.F. (9.92 AC.)

ZONING-CURRENT = AG-1 -AGRICULTURAL

PROPOSED ZONING = C-2, COMMERCIAL
SF-10 SINGLE FAMILY RESIDENTIAL

ALLOWABLE AREA = UNLIMITED AREA, 60' ALL SIDES

BUILDING AREA COMMERCIAL SITE ONLY

RETAIL

GROCERY	= 125,000 S.F.
BANK	= 4,206 S.F.
SHOPS	= 32,049 S.F.
RESTAURANTS	= 8,000 S.F.
TOTAL RETAIL	= 167,501 S.F.

TOTAL AREA = 167,501 S.F.

% COVERAGE = 19.14 %

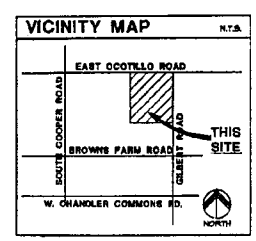
PARKING REQUIRED

SHOPPING CENTER AT 1/ 250 = 759 SPACES

GROCERY@ 1/250	= 492 SPACES
BANK @ 1/200	= 21 SPACES
SHOPS @1/200	= 161 SPACES
RESTAURANTS@ 1/250	= 32 SPACES
TOTAL REQUIRED	= 706 SPACES 4.22 SPACES PER 1000 S.F.

PARKING PROVIDED
823 SPACES
4.49 SPACES PER 1000 S.F.

PRELIMINARY NOT FOR CONSTRUCTION



SITEPLAN 13
215054
2-11-2014
DF

13

IRWIN G. PASTERNACK AIA, P.C.
ARCHITECTURE - PLANNING - LANDSCAPE - INTERIORS

LEGAL DESCRIPTION

That portion of the Northeast quarter of Section 24, Township 2 South, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

Commencing at the Northeast corner of said Section 24, said corner being a found brass cap in a handhole and from which the East quarter corner of said Section 24 being a found PK nail bears S00°08'02"W a distance of 2647.88 feet;

Thence S89°34'00"W a distance of 1129.15 feet along the North line of said Section 24;

Thence, S00°26'00"E a distance of 33.00 feet to the South right of way line of Ocotillo Road and Point of Beginning;

Thence, N89°34'00"E a distance of 629.15 feet along said South right of way line to the Northwest corner of that parcel described in Quit Claim deed of dedication, Document 20120043778, M.C.R.;

Thence, S00°26'00"E a distance of 32.00 feet along the West line of said deed;

Thence, N89°34'00"E a distance of 404.35 feet along the South right of way line of Ocotillo Road as described in said deed;

Thence, S45°08'59"E a distance of 28.14 feet to the West right of way line of Gilbert Road as described in said deed;

Thence, S00°08'02"W a distance of 180.30 feet along said West right of way line;

Thence, S89°51'58"E a distance of 10.00 feet;

Thence, S00°08'02"W a distance of 906.66 feet along said Gilbert Road right of way;

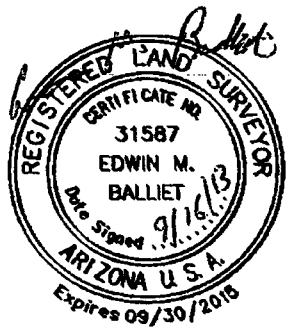
Thence, S89°34'00"W a distance of 1255.31 feet to the East line of the Final Plat "Fonte Al Sole" recorded in Book 574, Page 28, M.C.R.;

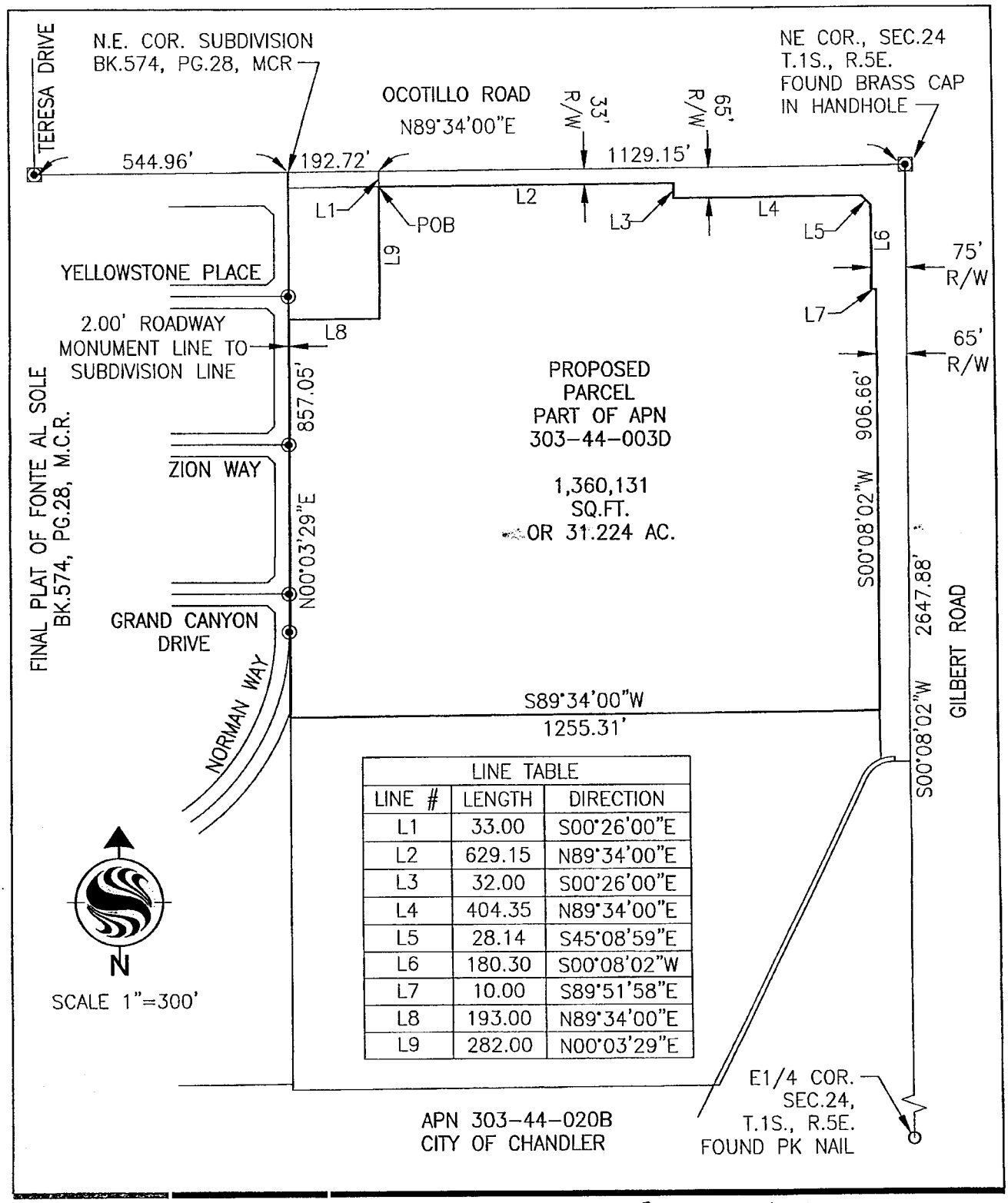
Thence, N00°03'29"E a distance of 857.05 feet along the East line of said Final Plat;

Thence, N89°34'00"E a distance of 193.00 feet;

Thence, N00°03'29"E a distance of 282.00 feet to the Point of Beginning.

Contains an area of 1,360,131 square feet or 31.224 acres more or less and being subject to any easements, restrictions or rights of way of record or otherwise.





LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	33.00	S00°26'00"E
L2	629.15	N89°34'00"E
L3	32.00	S00°26'00"E
L4	404.35	N89°34'00"E
L5	28.14	S45°08'59"E
L6	180.30	S00°08'02"W
L7	10.00	S89°51'58"E
L8	193.00	N89°34'00"E
L9	282.00	N00°03'29"E

Stantec

Stantec Consulting Services Inc.
8211 South 48th Street
Phoenix, AZ USA
85044-5355
602.438.2200
602.431.9562

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
31587
EDWIN M.
BALLIET
Date Signed 9/16/13
ARIZONA U.S.A.
Expires 09/30/2015

Client/Project
City of Chandler
Proposed Parcel
APN 303-44-003D

Figure No.
1.0

Title
Part of APN 303-44-020B

EXHIBIT "C"

DEED

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Robert H. Nagle, Esq./cas
4530 E. Shea Blvd., Ste 140
Phoenix, Arizona 85028

(Above space for Recorder's use only)

SPECIAL WARRANTY DEED

City of Chandler, a(n) Arizona municipal corporation ("Grantor"), for the consideration of TEN DOLLARS, and other valuable consideration, does hereby convey to _____ ("Grantee"), the real property situated in Maricopa County, Arizona which is more fully described on Exhibit "A" attached hereto and incorporated herein by reference.

SUBJECT TO: all existing taxes, assessments, reservations in patents, liens, encumbrances, covenants, conditions, restrictions, rights of way and easements of record.

Grantor binds itself and its successors to warrant the title against its acts and none other, subject to the matters above set forth.

DATED as of _____, 201__.

City of Chandler, a(n) Arizona municipal corporation

By: _____
Print Name: _____
Title: _____