

AMENDMENT TO THE:
PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS
AND
MASTER FARM LEASE

DATED: To be effective as of _____, 2017 (the “Effective Date”).

PARTIES: The Parties to this Third Amendment to Purchase Agreement and Escrow Instructions and Second Amendment to the Master Farm Lease (this “Amendment”) are:

(a) THE CITY OF MESA, an Arizona municipal corporation as “Seller” and “Lessor”; and

(b) PINAL LAND HOLDINGS, LLC, a Delaware limited liability company, as “Buyer” and “Lessee.”

ESCROW AGENT: Security Title Agency, an Arizona corporation, Attn: Vicki S. Bartlett

ESCROW NO.: 48120604-048

RECITALS:

- A. Seller and Buyer entered into that certain Purchase Agreement and Escrow Instructions dated to be effective as of May 17, 2012, to purchase certain real property described therein (the “Property”), and the agreement was supplemented and amended by the Supplemental Escrow Instructions and/or Amendments to Purchase Contract dated September 11, 2012, December 13, 2012, July 9, 2013, October 1, 2013, October 8, 2013, and August 11, 2014 (collectively, the “Purchase Agreement”).
- B. Seller (as Lessor) and Buyer (as Lessee) are also parties to that certain Master Farm Lease dated December 30, 2013, as amended in the certain First Amendment to the Master Farm Lease dated June 30, 2017, for the lease of certain property described therein (collectively, the “Lease”), which is the property to be acquired in the future phases under the Purchase Agreement.
- C. Buyer has closed on the Initial Property and the First Option Property; and Buyer desires to have flexibility in closing on the Second Option Property either in whole (as currently required by the Purchase Agreement) or in additional phases.
- D. Tucson Electric Power (“TEP”) commenced an action to condemn an easement within certain parcels (“TEP Litigation”) that are part of the Second Option Property; the TEP Litigation was settled by TEP paying the sum of \$495,000, which is held in a trust accounts per the agreement of the Parties—this sum plus all accrued interest thereon to the date paid out is referred to as the “TEP Settlement Funds.”

E. The Purchase Agreement and Lease have provisions related to condemnation and condemnation proceeds that may in part be inconsistent—including Sections 3.1.9 and 20 of the Purchase Agreement and Section 9.3 of the Lease. Additionally, in the Second Amendment to the Purchase Agreement and Escrow Instructions, the Parties agreed that they intended to enter into a future amendment as to how to handle settlement sums received from TEP. The Parties intend for this Amendment to resolve entitlement to the TEP Settlement Funds and any credits toward the Purchase Price under the Purchase Agreement and Lease.

F. Seller is willing to allow the phased acquisition of the Second Option Property subject to certain conditions and restrictions as provided in this Amendment including the requirements that each phased acquisition: is not less than 500 contiguous acres and does not split parcels or legal descriptions; and does not adversely affect the ability to farm or access the remaining Second Option Property.

G. Further, in consideration of Seller agreeing to Buyer being able to acquire the Second Option Property through phases, Buyer will be entitled to a credit (in the amount of the TEP Settlement Funds) towards the Purchase Price when Buyer acquires all of the Second Option Property within the Option Period; and the TEP Settlement Funds shall be paid out to Seller upon the execution of this Amendment by both Parties.

AGREEMENTS:

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Incorporation of Recitals. All of the forgoing Recitals are hereby incorporated as agreements of the Parties.

2. Definitions. All capitalized Terms in this Amendment which are not defined in this Amendment shall have the definitions ascribed to them in the Purchase Agreement and/or Lease.

3. Amendments to the Purchase Agreement. Seller and Buyer hereby agree to amend and replace Section 3.3.4, add a new Section 3.3.5, and add new subsections, to the Purchase Agreement, which shall read as follows:

3.3.4 The Option granted with respect to the First Option Property must be exercised for the entirety of the First Option Property, and Buyer may not purchase less than the entirety of the First Option Property. The Option granted with respect to the Second Option Property must be exercised for the entirety of the Second Option Property, and Buyer may not purchase less than the entirety of the Second Option Property; provided, however, Buyer may purchase the Second Option Property in phases provided that all of the following conditions and requirements are fully satisfied as to each and every such phase (referred to a “Second Option Phase”):

3.3.4.1 The Parties agree the property to be considered in a Second Option Phase must satisfy all of the following requirements: (i) be for not less than 500 net acres

of the Second Option Property, (ii) be contiguous Second Option Property or reasonably contiguous as determined and approved by the Parties in good faith, (iii) not result in the creation of a new parcel or new legal description for the Second Option Property, (iv) not adversely affect the ability to farm the remaining Second Option Property including but not limited to it must not limit existing water delivery by canal, ditch or otherwise, and (v) not result in reducing or limiting access to the remaining Second Option Property. Notwithstanding the foregoing, in the event the Buyer wishes to purchase property in a Second Option Phase that creates a non-contiguous gap in the remaining Second Option Property, Buyer shall seek Seller's waiver of any of the above requirements for such purchase. Seller's City Manager, or designee, may waive any of the foregoing requirements in order to facilitate the sale of the Second Option Property. If Buyer desires to acquire property through a Second Option Phase, Buyer shall propose the property to be included in the phase to Seller, and Buyer and Seller shall promptly meet to determine, in good faith, whether the proposed property satisfies the requirements of this subsection 3.3.4.1 for a Second Option Phase acquisition or a waiver of any of the requirements should be granted. If the Parties agree the proposed property satisfies the requirements or if any of the requirements have been waived (and such determination must be made in good faith and not unreasonably delayed or withheld), the Parties shall notify Escrow Agent of the agreed upon Second Option Phase property and the agreed upon Closing for such property in accordance with Sections 12.1 through 12.4 hereof.

3.3.4.2 The Option Period (defined in Section 3.2.2) shall remain unchanged; and Buyer's right to acquire the Second Option Property either in one purchase or through a series of Second Option Phase purchases shall be during the Option Period.

3.3.4.3 The Purchase Price for a Second Option Phase purchase shall be based on the per net acre price agreed to for the Second Option Property in the First Amendment to the Purchase Agreement and Escrow Instruction (i.e., \$8,906.5831 per net acre).

3.3.5 Notwithstanding Sections 3.1.9, 20, or any other provision in the Purchase Agreement to the contrary, the Parties agree that all issues as to the TEP Settlement Funds are resolved as follows:

3.3.5.1 Buyer shall receive a credit towards the Purchase Price in the full amount of the TEP Settlement Funds only under the following conditions: Buyer acquires all of the Second Option Property (i.e., closes on all 7,376.7554 net acres) within the Option Period. Seller agrees that the acquisition of all of the Second Option Property may be accomplished either through one closing or through multiple Second Option Phased closings. If Buyer chooses not to close on all of the Second Option Property before the end of the Option Period, Buyer shall not be entitled to any credit of the TEP Settlement Funds.

3.3.5.2 The TEP Settlement Funds shall be dispersed to Seller (City of Mesa) upon the execution of this Amendment and legal counsel holding the TEP Settlement Funds is hereby directed to make such disbursement. Further, Buyer hereby waives

and releases Seller and legal counsel holding the TEP Settlement Funds from any and all claims or rights to the TEP Settlement Funds; provided however this waiver and release does not affect that Buyer shall be entitled to a full credit towards the Purchase Price as described in subsection 3.3.5.1, upon Closing all the Second Option Property on or before the expiration of the Option Period.

4. Amendments to the Lease. In order to make the Purchase Agreement and Lease consistent as to the TEP Settlement Funds, Seller and Buyer hereby agree to amend Section 9.3 of the Lease by adding the following to the end of the existing language: Notwithstanding the foregoing or any other provision in the Lease to the contrary, the payment, credit, and all aspects of the TEP Settlement Funds shall be handled as described in 3.3.5 of the Purchase Agreement.

5. No Other Amendments. Except as provided in this Amendment, the terms and provisions of the Purchase Agreement and Lease shall remain in full force and effect.

6. Counterparts and Facsimile Signature. This Amendment may be executed in counterpart and by facsimile signature.

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the Effective Date.

SELLER/LESSOR:

BUYER/LESSEE:

THE CITY OF MESA,
an Arizona municipal corporation

PINAL LAND HOLDINGS, LLC,
a Delaware limited liability company

Christopher J. Brady
City Manager

Jackob H. Andersen
Managing Member

APPROVED AS TO FORM:

City Attorney