

**AGREEMENT TO PURCHASE REAL PROPERTY
AND ESCROW INSTRUCTIONS
(Yost Transaction)**

=====

DATE: January __, 2019

SELLER: ***City of Mesa, an Arizona municipal corporation***
Address: 20 East Main Street, Suite 500
Post Office Box 1466
Mesa, Arizona 85211
Attn: Kim Fallbeck
Real Estate Services
Telephone: 480-644-2521
Facsimile: 480-644-3392
Email: kim.fallbeck@mesaaz.gov

BUYER: ***MC Hotel-Riverview, LLC, an Arizona Limited Liability Company***
Address: P.O. Box 21137
Mesa, Arizona 85277
Attn: Bob Yost
Telephone: (480) 988-3550
Facsimile: (480) 988-9818
Email: byost@powerhotelgroup.com

ESCROW AGENT: ***Security Title Agency***
Address: 1630 S. Stapley Drive, Suite 125
Mesa, Arizona 85204
Telephone: 480-874-7420
Facsimile: 602-294-8413
Escrow Officer: _____
Email: _____
Escrow Number: _____

PROPERTY: The real property located in Maricopa County, Arizona, legally described on Exhibit A, consisting of approximately 11,999 sq. ft., including all improvements, located on and all rights and privileges appurtenant to the real property (the "Property").

ARTICLE 1
AGREEMENT OF THE PARTIES

1.1 Agreement. In consideration of the mutual promises and covenants set forth in this Agreement, Seller agrees to sell to Buyer and Buyer agrees to buy the Property on the terms and conditions set forth in this Agreement. Seller and Buyer may be referred to herein individually as a "Party" or collectively as the "Parties."

ARTICLE 2
SALES PRICE AND PAYMENT TERMS

2.1 Sales Price. The total sales price which Buyer agrees to pay for the Property is Three Hundred Thousand 00/100 Dollars (\$300,000.00), (the "Sales Price"). The Sales Price shall be payable as follows:

(a) Earnest Money. Fifty Thousand and 00/100 Dollars (\$50,000.00) as the earnest money (the "Earnest Money") which Buyer agrees to deposit in Escrow on the Opening Date;

(b) At the Closing, Buyer shall deposit with Escrow Agent the amount of Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) in cash or by wire transfer of immediately available funds (the "Closing Payment").

(c) Prior to Closing, Buyer shall have entered into the certain Development Agreement pertaining to the Property (the "Development Agreement"), attached hereto as Exhibit D, and which requires, *inter alia*, Buyer to be subject to the parking requirements of the Sheraton Hotel Development Agreement (as that term is defined in Section 1(ff) of the Development Agreement) as set forth in Section 4.4 of the Development Agreement.

2.2 Earnest Money Provisions. All Earnest Money required by this Agreement shall be deposited by wire transfer or other form of immediately available funds to the account of Escrow Agent in the amount of the required Earnest Money. Escrow Agent is hereby instructed to deposit all Earnest Money in a federally-insured money market or similar account, subject to immediate withdrawal, at a bank or savings and loan institution located in Maricopa County, Arizona (an "Approved Investment Account"). Upon Closing, the Earnest Money and interest earned thereon shall be credited to the Sales Price.

2.3 Disbursements. Escrow Agent shall disburse the Earnest Money and interest earned thereon, and the Closing Payment, to Seller on the Closing Date less any funds required to take into account the prorations and other adjustments required of Seller by this Agreement. If the Earnest Money and applicable interest and the Closing Payment are not disbursed to Seller on the Closing Date, such amounts shall be invested by Escrow Agent in an Approved Investment Account until the next business day following the Closing Date when they shall be disbursed to Seller together with all interest earned thereon following the Closing Date. Escrow Agent shall not charge any fee for such investment of the Earnest Money and earned interest. If the Earnest Money is forfeited to Seller as provided in this Agreement, such amounts, with any interest earned thereon, shall be paid immediately to Seller. If Buyer is entitled at any time to a refund of Earnest Money deposits held in Escrow, any interest earned thereon shall be paid to Buyer.

2.4 Non-Refundable Nature of Earnest Money. If Buyer cancels or terminates this Agreement, as permitted under the terms of this Agreement, prior to the end of the Feasibility Period, the Earnest Money shall be returned to Buyer. After the Feasibility Period, the Earnest Money shall be absolutely non-refundable to Buyer, except as otherwise expressly provided in Sections 5.1(a)(iv), 5.3, 9.1(b) and 11.2, in consideration for Seller giving and granting Buyer the right to purchase the Property as described in this Agreement and taking the Property off the market and not as a penalty.

ARTICLE 3 **ESCROW**

3.1 Establishment of the Escrow. An escrow for this transaction (the “Escrow”) is established with Escrow Agent, and Escrow Agent is engaged to administer the Escrow.

3.2 Opening Date. As soon as practically possible, but no later than three (3) business days after the execution of this Agreement by both Buyer and Seller, Seller will deliver a fully executed copy of this Agreement to Escrow Agent and Buyer will deliver the Earnest Money as specified in Section 2.1(a). The date that this Agreement together with the Earnest Money deposit is delivered to Escrow Agent is referred to in this Agreement as the “Opening Date.” Escrow Agent shall notify Buyer and Seller in writing of the Opening Date. If Buyer does not deposit the Earnest Money deposit within ten (10) calendar days of Seller’s delivery of a fully executed copy of this Agreement to Escrow Agent, this Agreement shall automatically terminate.

3.3 Acceptance of Escrow. By accepting the Escrow, Escrow Agent agrees to the terms of this Agreement as they relate to the duties of Escrow Agent.

3.4 Escrow Instructions. This Agreement constitutes escrow instructions to Escrow Agent. If Escrow Agent requires the execution of its standard form printed escrow instructions, Buyer and Seller agree to execute those instructions; however, those instructions will be construed as applying only to Escrow Agent’s engagement. If there are conflicts between the terms of this Agreement and the terms of the printed escrow instructions, the terms of this Agreement will control.

3.5 Escrow Cancellation Charges. If the Escrow fails to close because of Seller’s default, Seller will pay all customary Escrow cancellation charges. If the Escrow fails to close because of Buyer’s default or cancellation of this Agreement for any reason other than the default of Seller, Buyer will pay all customary Escrow cancellation charges. If the Escrow fails to close for any other reason, Seller and Buyer will each pay one-half of all customary Escrow cancellation charges.

3.6 Insured Closing Letter. If Escrow Agent does not issue its own title insurance policies, but acts as an agent for the Title Insurer (as defined in Section 6.3), Escrow Agent will cause the Title Insurer to issue to the Parties, a closing protection letter or insured closing service in written form satisfactory to Buyer and Seller, within five (5) calendar days following the Opening Date.

ARTICLE 4

INFORMATION TO BE PROVIDED

4.1 Information and Other Items to Be Provided.

(a) **Diligence Materials.** During the Feasibility Period (as defined in Section 5.1(b)), Seller shall allow Buyer access, upon reasonable notice and during business hours, for review and copying of Seller's Real Estate Department's public records that relate to the Property ("**Seller's Materials**"). Buyer shall be responsible, at Buyer's sole expense, to undertake any additional investigation desired by Buyer concerning the condition of the Property pursuant to the terms of the Access Agreement described in Section 5.1(b). Seller expressly does not warrant the truthfulness or accuracy of any fact, finding, conclusion, or opinion included in any of the Seller's Materials.

(b) **Preliminary Title Report.** Escrow Agent shall provide Buyer and Seller as soon as possible following the Opening Date with: (i) a commitment for an owner's title insurance policy (Form 2006) covering the Property to be issued by the Title Insurer to Buyer (the "**Report**"), which Report shall show the status of title to the Property as of the date of the Report and contain the express commitment of the Title Insurer to issue the Title Policy (described in Section 6.3), and (ii) legible copies of all documents referred to in the Report.

(c) **Survey.** Buyer shall have a current ALTA survey of the Property (the "**Survey**") prepared by a registered land surveyor, licensed in the State of Arizona, satisfactory to Seller and Buyer, prior to expiration of the Feasibility Period. The Survey will include a legal description and depiction and indicate the acreage of the Property. The Survey shall be certified to be accurate, complete and correct to Buyer, Seller, and Title Insurer. Buyer shall provide Seller with three (3) copies of the Survey and Escrow Agent with one (1) copy of the Survey.

(d) **Public Easements.** Seller shall retain rights, in the form of easements on, over, under and across the Property to provide for repair and maintenance of, continued use of, and access to, the existing ditches, pipes, conduits, utility lines and other facilities and infrastructures located either on the Property, or on adjacent property owned by Seller. The nature of the easements, the form of easement grant and the exact descriptions of all easement premises (collectively, the "**Easements**") shall be in Seller's standard forms for such easements and limited to the specific use then existing, or so specified, at the time of the Closing. Seller, at its sole election, may either reserve the Easements, or require Buyer to grant the Easements to Seller (and/or any other named Parties in the approved easement grants) at Closing, either by instrument or by map of dedication. Any reserved Easement shall be deemed an Approved Title Exception; and any Easement granted by Buyer to Seller at Closing shall be recorded immediately after the Deed, and prior to any lien, claim or encumbrance against the Property by or in favor of Buyer. Buyer acknowledges that, due to the City Wastewater Treatment Facility (the "**Treatment Facility**"), the Easements may include terms and conditions such as to allow installation, repair and maintenance, to all utilities and improvements related to the Treatment Facility. If the location, area, terms and conditions of the Easements are not resolved and mutually approved by Seller and Buyer (in Seller's and Buyer's sole and absolute discretion) prior to Closing, either Party may terminate this Agreement by delivery of written notice to the other Party, and the Parties shall have

no further obligations or liability to each other pursuant to this Agreement except to the extent this Agreement expressly states that an obligation herein shall survive such termination.

(e) Property. While the Property is legally described in Exhibit A, Seller and Buyer agree that this legal description may need to be modified or corrected. Within the Feasibility Period, Buyer shall provide Seller a current Survey of the Property. The Parties will act in good faith to agree upon a final legal description for the Property and the legal description in the final Survey shall reflect the agreement of the Parties. If the Parties are unable to agree upon a final legal description for the Property prior to the end of the Feasibility Period, this Agreement shall automatically terminate, and the Parties shall have no further obligations or liability to each other pursuant to this Agreement except to the extent this Agreement expressly states that an obligation herein shall survive such termination.

4.2 Zoning. Buyer is solely responsible for obtaining any necessary zoning for its intended development of the Property. Seller is a municipal entity and its agreement to sell the Property in this Agreement is separate from, and does not affect, the City of Mesa's separate powers and authority as a governmental entity including, but not limited to, zoning.

ARTICLE 5

CONDITIONS TO CLOSING

5.1 Conditions to Buyer's Obligation to Close. Buyer's obligations to close this transaction are subject to the satisfaction (or waiver by Buyer in writing), of the following conditions on and as of the expiration of the Feasibility Period unless a different date is specified:

(a) Title Review. Buyer shall be satisfied with the status of title to the Property as disclosed by the Report and the Survey. In that regard:

(i) Buyer shall have the earlier of ten (10) calendar days following the Opening Date or ten (10) calendar days following its receipt of the Survey and Report (the "Title Review Period") to approve or disapprove the status of title as shown by the Survey or the Report. If Buyer is dissatisfied with any exception to title as shown in the Report or the Survey that reflects a material flaw in Seller's title to the Property, then Buyer may, by giving notice to Seller and Escrow Agent within the Title Review Period, either:

(1) Cancel this Agreement; or

(2) Provisionally accept title subject to Seller's cure of the material flaw in Seller's title described in Buyer's notice either by removal of any disapproved matters, exceptions or objections; or Seller obtaining title insurance endorsements satisfactory to Buyer against such matters, exceptions and objections within two (2) calendar days following receipt of Buyer's notice ("Seller's Title Cure Period"). If Seller does not remove such matters, exceptions and objections before the expiration of the Seller's Title Cure Period, then Buyer's sole and exclusive remedies shall be either to waive such disapproved matters or to cancel this Agreement by giving written notice to Seller and Escrow Agent on or before the second (2nd) calendar day following expiration of the Seller's Title Cure Period. Seller shall have no obligation whatsoever to eliminate or obtain title insurance endorsements over any matters shown by the Report or Survey to which Buyer has made an objection.

(ii) If, prior to Closing, Escrow Agent issues a supplemental title report showing additional exceptions to title (a “Title Supplement”), Buyer shall have a period of time equal to two (2) calendar days from the date of receipt of the Title Supplement and a copy of each document referred to in the Title Supplement (a “Supplemental Title Review Period”) in which to give notice of dissatisfaction as to any material title defect reflected by any additional exceptions shown in the Title Supplement. If Buyer is dissatisfied with any additional exception in the Title Supplement that reflects a material flaw in Seller’s title to the Property, then Buyer may, by giving notice to Seller and Escrow Agent within the Supplemental Title Review Period, either:

(1) Cancel this Agreement; or

(2) Provisionally accept title subject to Seller’s cure of the material flaw in Seller’s title described in Buyer’s notice by removal of any disapproved matters, exceptions and objections, or Seller obtaining title insurance endorsements satisfactory to Buyer against such matters, exceptions and objections within two (2) calendar days following issuance of the applicable Title Supplement (the “2-Day Period”). If Seller does not remove such matters, exceptions and objections before the expiration of the 2-Day Period, then, Buyer’s sole and exclusive remedy shall be either to waive such disapproved matters or to cancel this Agreement by giving written notice to Seller and Escrow Agent on or before the second (2nd) calendar day following expiration of the 2-Day Period. Seller shall have no obligation whatsoever to eliminate or obtain title insurance endorsements over any matters shown by the Title Supplement to which Buyer has made an objection.

(iii) If Buyer does not object to an exception to title as disclosed by the Report or Title Supplement within the Title Review Period or Supplemental Title Review Period, as applicable, the matter will be deemed to have been approved by Buyer. The matters shown in the Report and any Title Supplement (other than standard printed exceptions and exclusions that will be included in the Title Policy) that are approved or deemed approved by Buyer in accordance with this Section 5.1(a), and any other matters approved by Buyer in writing, are referred to in this Agreement as the “Approved Title Exceptions.”

(iv) Upon a cancellation by Buyer that is in accordance with the provisions of this Section 5.1, all Earnest Money shall be returned to Buyer, together with all documents deposited in Escrow by Buyer. If Buyer’s cancellation occurs outside the timeframes in which Buyer is allowed to cancel the Agreement under the provisions of this Section 5.1 or otherwise does not comply with the terms of this Section 5.1, all Earnest Money required to be paid prior to such date shall be paid to and retained by Seller unless the cancellation arises out of a new title exception voluntarily placed on the Property by Seller without Buyer’s consent or deemed consent pursuant to Sections 5.1(a)(iii) or 4.1(d), in which case the Earnest Money shall be returned to Buyer upon such cancellation. Following any cancellation pursuant to this provision, all documents deposited in Escrow by Seller shall be returned to Seller and this Agreement shall terminate.

(b) Buyer’s Investigations. Buyer shall have until 5:00 P.M. (Local Arizona Time) on the tenth (10th) calendar day following the Opening Date (the “Feasibility Period”) to conduct an investigation and inspection of the Property (subject to the obligation, which Buyer confirms, to restore any damage caused by its activities and to indemnify Seller as provided in the

Access Agreement). Buyer's investigation may include, among other things: (1) the physical condition of the Property; (2) the environmental condition of the Property; and (3) the feasibility of Buyer's anticipated development of the Property and matters related thereto. Buyer shall execute the Access Agreement attached hereto as Exhibit B (the "Access Agreement") on the Opening Date, which shall govern the terms and conditions of Buyer's rights to access the Property prior to the Closing or earlier termination of this Agreement. If Buyer is not satisfied with its investigations and inspections with respect to the Property and this transaction, or if the Parties are unable to agree upon a final legal description for the Property, or for any reason or no reason whatsoever, then Buyer will have the right, exercisable in its sole discretion, to cancel this Agreement by delivering written notice of cancellation to Seller and Escrow Agent prior to the end of the Feasibility Period, in which case all Earnest Money deposited with Escrow Agent prior to cancellation shall be returned to Buyer.

(c) Development Agreement. Buyer and Seller shall have entered into the Development Agreement for the Property prior to Closing.

(d) Transfer of Ownership of Retail Parcel and Additional Hotel Property. As more fully set forth in Section 4.5 of the Development Agreement, Buyer must acquire all of the right, title and interest to the Retail Parcel and Additional Hotel Property (as those terms are defined in the Development Agreement) prior to Closing.

(e) Waiver of All Contingencies and Early Close. Notwithstanding anything to the contrary contained herein, Buyer may waive any and all conditions to close set forth in Section 5.1 and Close Escrow at any time after the Opening of Escrow by providing at least one (1) business day notice to Seller.

5.2 Conditions to Seller's Obligation to Close. Seller shall have no obligation to sell the Property to Buyer unless each of the following matters has been satisfied; provided, however, that Seller in its sole and unfettered discretion may elect to waive any such matter.

(a) Full Compliance. Seller's obligation to close this transaction is subject to Buyer fully performing all of its obligations to be performed by Buyer on or before the Closing Date (unless waived by Seller in writing). If Buyer has not fulfilled all such obligations on or before the Closing Date, then Seller may, at its sole discretion, choose to: (1) not close on the transaction as set forth in this Agreement and pursue available legal remedies, or (2) continue with the transaction and pursue Seller's remedies for Buyer's default if Buyer has not performed all such obligations within ten (10) calendar days after receipt of written notice from Seller, describing same and the action required for performance, as required by Section 11.3.

(b) Seller's Council Approval. The City of Mesa Council's approval of the sale of the Property and Development Agreement prior to Closing.

(c) Development Agreement. Buyer and Seller shall have entered into the Development Agreement for the Property prior to Closing.

(d) Easements. On or before the Close of Escrow, Buyer shall have executed and delivered to Escrow Agent, for recordation by Escrow Agent, the Easements in the form(s) and with the terms approved by Seller.

(e) RESERVED.

(f) Marriott Limited-Service Hotel. Before the Close of Escrow, Buyer shall have provided a letter from Marriott Hotels evidencing the intent to enter into a contractual relationship with Buyer for a half-service Marriott Hotel to be constructed on the Property.

(g) Approved Preliminary Site Plan and Elevations. Before the Close of Escrow, Buyer shall have obtained the approval for the preliminary site plan and building elevations (the “Approved Preliminary Site Plan and Elevations”) from the Mesa City Council for the project as contemplated in the Development Agreement, which approval may be granted or denied in the sole and absolute discretion of the Council. Buyer acknowledges and understands that the approval under this Section 5.2(g) is separate from, and does not affect, the site plan approval process required under the Mesa City Zoning Code; and Buyer will be required to go through and obtain all necessary approvals as required by the Mesa City Code.

(h) Financial and Contractual Ability to Perform. Prior to obtaining, and being able to obtain, building permits for vertical construction from the City of Mesa for the construction of any vertical part of the Hospitality Minimum Improvements (as defined in the Development Agreement), Buyer shall have provided clear and sufficient evidence to establish to the City of Mesa’s City Manager, as determined in his sole and absolute discretion, of the following: (i) the financial ability of Buyer to perform the obligations in the Development Agreement, including the financial ability to construct all the Improvements (as defined in the Development Agreement); and (ii) the contractual ability to build a half-service Marriott Hotel consisting of not less than 125 rooms, such evidence would include providing a written agreement with Marriott Hotels evidencing such a relationship. The obligations of this Section 5.2(h) shall not merge with the Deed with Reverter or any Closing documents and shall survive the Closing.

5.3 Return of Earnest Money. If Closing does not occur solely due to Section 5.2(f) or 5.2(g), above, the Earnest Money shall be returned to Buyer, and the Parties shall have no further obligations or liability to each other pursuant to this Agreement except to the extent this Agreement expressly states that an obligation herein shall survive such termination.

ARTICLE 6

CLOSING DOCUMENTS; TITLE POLICIES

6.1 Seller’s Closing Documents. On or before the Closing Date, Seller will deposit the following documents into the Escrow for delivery to Buyer at the Closing each of which will have been duly executed and, where appropriate, acknowledged:

(a) Deed with Reverter. A Special Warranty Deed with Property Restrictions, Right of Reverter and Right of Re-Entry in the form attached hereto as Exhibit C (the “Deed with Reverter”) for conveyance of the real property, including the property restrictions set forth in the Deed.

(b) Title Insurance Affidavit. An affidavit from Seller to the Escrow Agent and Title Insurer regarding parties in possession and mechanic’s and materialmen’s liens, in customary form, stating information accurate at the time of Closing to Seller’s actual knowledge and belief,

for Title Insurer to delete exceptions in the title insurance policy for Parties in possession (other than the tenant under the Tenant Lease, if applicable) and mechanic's and materialmen's liens.

(c) Development Agreement. The Development Agreement as described in Sections 2.1(c).

(d) Additional Documents. Such other documents as may be necessary or appropriate to transfer and convey the Property to Buyer and to otherwise consummate this transaction in accordance with the terms of this Agreement.

6.2 Buyer's Closing Documents. On or before the Closing and in addition to all funds required to be paid by Buyer, Buyer will deposit into the Escrow the following documents for delivery to Seller at the Closing, each of which will have been duly executed and, where appropriate, acknowledged:

(a) Deed with Reverter. The Deed with Reverter attached hereto as Exhibit C.

(b) Development Agreement. The Development Agreement as described in Sections 2.1(c).

(c) Easements. Forms of easement grants for the Easements pursuant to Section 4.1(d).

(d) Additional Documents. Such other documents as may be necessary or appropriate to acquire the Property and to otherwise consummate this transaction in accordance with the terms of this Agreement.

6.3 Title Policy. At the Closing, and subject to Buyer's compliance with the terms of this Agreement including, but not limited to, obtaining a Survey of the Property, Seller will provide Buyer with a standard coverage owner's policy of title insurance (the "Title Policy") issued by Fidelity National Title Insurance Company (the "Title Insurer"), in the amount of the Sales Price, effective as of the Closing, insuring Buyer that fee simple title to the Property is vested in Buyer, subject only to the usual printed exceptions and exclusions contained in such title insurance policies and the Approved Title Exceptions. Buyer, if it desires, may obtain an ALTA extended policy of title insurance, which cost shall be paid by Buyer. The Title Policy shall contain endorsements, if any, that Seller has agreed to obtain to cure title objections of Buyer made pursuant to Section 5.1(a) and shall also contain any endorsements requested by Buyer which Title Insurer has agreed to issue. Seller shall have no obligation to provide endorsements to the Title Policy which are not approved for issuance by Title Insurer. Seller will satisfy Escrow Agent's standard requirements for issuance of such policy, other than those, if any, within Buyer's control. Buyer must satisfy all of Escrow Agent's requirements for issuance of any title insurance endorsements requested by Buyer.

ARTICLE 7

CLOSING THE TRANSACTION

7.1 Closing. The closing of this transaction (the "Closing" or "Close of Escrow") shall occur, as set forth below in this Section 7.1, after the completion of all of the following events:

(i) Buyer has obtained an Approved Preliminary Site Plan and Elevation (as defined in Section 5.2(g)); (ii) Buyer and Seller have fully executed the Development Agreement (as described in Section 2.1(c)); and (iii) Buyer has satisfied the requirements of Section 5.2(f), as determined by the City Manager in his sole and absolute discretion. After the completion and satisfaction of the closing requirements set forth in (i), (ii), and (iii), above, Buyer and Seller shall promptly, in writing, inform Escrow Agent that these closing requirements have been satisfied. The Closing shall occur no later than five (5) business days after Buyer and Seller provide the written notice to Escrow Agent that the closing requirements described in (i), (ii), and (iii) have been satisfied (the “Closing Date”); provided, however, if the above requirements (i), (ii) and (iii) have not been satisfied by February 1, 2019, at 5:00 p.m. Arizona time then this Agreement shall automatically terminate and shall be of no further force or effect, and Buyer and Seller shall have no further obligations or liabilities hereunder, except for any obligations or liabilities which survive the termination of this Agreement. If the date of the Closing would otherwise occur prior to expiration of a Supplemental Review Period, at Buyer’s request, the Closing Date shall be extended to the calendar day following expiration of the Supplemental Review Period. The Closing shall occur in the offices of Escrow Agent.

7.2 Closing Costs and Prorations.

(a) Escrow Fees. Seller and Buyer will each pay one-half of the Escrow fees.

(b) Title Insurance Fees. Seller will pay the entire premium for a standard coverage owner’s policy of title insurance in the amount of the Sales Price and the premium for endorsements (if any) which Seller, in its sole discretion, has agreed to obtain under Section 5.1. Buyer will pay the additional premium necessary to obtain the Title Policy described in Section 6.3 and the cost of any additional endorsements to such Title Policy requested by Buyer.

(c) Recording Fees. Buyer will pay the cost of recording the Deed. Seller will pay the cost of removing liens, encumbrances or other title matters only if Seller, in its sole discretion, elects to undertake such matters under Section 5.1(a)(i)(2). Recording fees for any new loan(s) obtained by Buyer shall be paid by Buyer.

(d) Taxes and Assessments. Real estate taxes, irrigation district assessments, and improvement assessment fees, if any, will be prorated in the escrow as of the Closing based upon the most current information then available to Escrow Agent.

(e) Miscellaneous Closing Costs. Any other closing costs not provided for above will be paid by Buyer and Seller as they shall mutually agree.

7.3 Payments and Disbursements to be Handled through the Escrow. The various charges, credits and prorations contemplated by this Agreement will be handled by Escrow Agent through the Escrow by appropriate charges and credits to Buyer and Seller, and each Party shall pay its allocable closing costs and charges in cash. All amounts payable pursuant to this Agreement will be paid to Escrow Agent for disposition through the Escrow. Escrow Agent is authorized to make all disbursements to the Parties and to third parties contemplated by this Agreement from funds deposited for those purposes, as necessary or appropriate to close this transaction.

7.4 Final Disbursement to Seller. Upon the Closing, or prior to such date as expressly required by this Agreement, all amounts paid according to Sections 2.1 will be disbursed to Seller.

7.5 Buyer's Obligation to Deposit Additional Funds. On or before the Closing, Buyer will deposit with Escrow Agent cash in an amount sufficient to pay all closing costs and other amounts payable by or otherwise chargeable to Buyer.

7.6 IRS Reporting at Closing. Escrow Agent agrees to be the designated "reporting person" under Section 6045(e) of the U.S. Internal Revenue Code with respect to the real estate transaction described in this Agreement and to prepare, file and deliver such information, returns and statements as the U.S. Treasury Department may require by regulations or forms in connection therewith, including Form 1099-B.

7.7 Recording and Filing of Documents. At the Closing, the Deed with Reverter, the Development Agreement, and the Easements (if any) shall be recorded by Escrow Agent in the Maricopa County Recorder's Office in the order provided at the beginning of this sentence and without any delay whatsoever. The obligations of this Section 7.7 shall not merge with the Deed with Reverter or any Closing documents and shall survive the Closing.

ARTICLE 8

ADDITIONAL COVENANTS

8.1 Possession. Sole and exclusive possession of the Property will be delivered to Buyer upon the Closing, subject only to the Approved Title Exceptions, the lien created by the Deed of Trust, and the restrictions set forth in the Deed.

8.2 Risk of Loss. Except as provided in the Access Agreement, the risk of loss or damage to the Property and all liability to third persons until the Closing will be borne by Seller.

8.3 Right to Enter and Inspect the Property. Subject to the Access Agreement, from time to time prior to the Closing, Buyer may enter the Property with Buyer's representatives, contractors, and agents to examine the Property, conduct soil tests, environmental studies, engineering feasibility studies, and other tests and studies, and to plan the proposed development of the Property pursuant to the terms of the Access Agreement.

8.4 Brokerage. If any person asserts a claim to a finder's fee, brokerage commission or other compensation on account of alleged employment as a finder or broker or performance of services as a finder or broker in connection with this transaction, the Party under whom the finder or broker is claiming shall be fully responsible for all claims related thereto and, to the extent authorized by law, shall indemnify, pay, defend and hold the other Party harmless for, from, and against any claims related thereto. This indemnity will survive the Closing or the cancellation of this Agreement.

ARTICLE 9
REPRESENTATIONS AND WARRANTIES

9.1 Representations and Warranties of Seller.

(a) Seller represents that:

(i) As of the date hereof, to the best of Seller's actual knowledge, there are no pending, threatened or contemplated actions, suits, proceedings or investigations, at law or in equity, or otherwise in, for or by any court or governmental board, commission, agency, department or office arising from or relating to this transaction, the Property or the operations of Seller on the Property.

(ii) As of the date hereof, Seller has not received notice from any governmental or other agency, and to the best of Seller's actual knowledge, there are no proceedings with respect to or in connection with the condemnation of the Property.

(iii) There are not any current options or rights of first refusal to purchase all or any part of the Property that were granted by Seller.

(iv) Subject to Seller's City Council's approval of this transaction and the express terms and limitations in this Agreement, the person or persons executing this Agreement on behalf of Seller are duly authorized to do so and thereby bind Seller hereto without the signature of any other party.

(v) Subject to Seller's City Council's approval of this transaction, Seller has all requisite power and authority to enter into and perform this Agreement and to incur the obligations provided for herein and has taken all action necessary to authorize the execution, delivery and performance of this Agreement subject to the express terms and limitations in this Agreement.

(vi) Seller has not filed for protection or relief under any applicable bankruptcy or creditor protection statute nor has Seller been threatened by creditors with an involuntary application of any applicable bankruptcy or creditor protection statute. Seller is not entering into this Agreement with an intent to defraud any creditor or to prefer the rights of one creditor over any other.

(vii) Seller has received no written notice and has no actual knowledge, of any noncompliance with any federal, state or local laws, regulations and orders relating to environmental matters with respect to the Property. Seller has received no written notice and has no actual knowledge, that Seller is a potentially responsible party for a federal, state or local clean-up site or corrective action with respect to the Property under any environmental law, regulation or order.

(b) Inaccuracy of Representation. If a matter represented by Seller under this Agreement was true as of the date of this Agreement, but subsequently is rendered inaccurate because of the occurrence of events or because of a cause other than Seller's intentional breach of this Agreement, then such inaccuracy shall not constitute a default by Seller under this Agreement,

but will constitute a failure of a condition to Closing only if such inaccuracy materially increases the Buyer's good faith estimate of the cost or time to develop the Property. Failure of such a condition to Closing shall entitle Buyer to terminate this Agreement at Closing and receive a refund of the Earnest Money, whereupon both Parties shall be released from further liability under this Agreement, except as expressly provided in this Agreement to survive. If Buyer does not elect to so terminate, Buyer shall timely proceed to Closing and the failure of such condition to Closing shall be deemed waived.

(c) Actual Knowledge of Seller. When used in this Agreement, the term "actual knowledge of Seller" (or words of similar import) shall mean and be limited to the actual (and not imparted, implied or constructive) current knowledge of William Jabjiniak and Erinn Huber. Notwithstanding anything herein to the contrary, Mr. Jabjiniak and Ms. Huber are not a party to this Agreement and shall not have any personal liability or liability whatsoever with respect to any matters set forth in this Agreement or Seller's representations and/or warranties herein being or becoming untrue, inaccurate or incomplete in any respect.

9.2 Representations and Warranties of Buyer. Buyer represents that:

(a) The person or persons executing this Agreement on behalf of Buyer are duly authorized to do so and thereby bind Buyer hereto without the signature of any other party.

(b) Buyer has all requisite power and authority to enter into and perform this Agreement and to incur the obligations provided for herein and has taken all action necessary to authorize the execution, delivery and performance of this Agreement, subject to the express terms and limitations in this Agreement. Buyer is a duly formed Arizona limited liability company and has completed all necessary requirements in Arizona to be authorized to do business as a foreign corporation in Arizona.

(c) The execution, delivery and performance of this Agreement by Buyer does not result in any violation of, and does not conflict with or constitute a default under, any present agreement, mortgage, deed of trust, indenture, credit extension agreement; license, security agreement or other instrument to which Buyer is a party, or any judgment, decree, order; statute, rule or governmental regulation.

(d) No approvals or consents by third parties or governmental authorities are required in order for Buyer to consummate the transactions contemplated hereby.

9.3 Survival. Each of the representations and warranties contained in Sections 9.1 and 9.2, whether made by Seller or Buyer, shall be true and correct as of the Closing (subject to modification as expressly permitted by this Agreement) and shall survive the Closing and the delivery of the Deed to Buyer for a period of two (2) years.

ARTICLE 10 **RELEASE**

10.1 Release from Representations and Warranties. Except as is otherwise expressly provided in Section 9.1 of this Agreement, Seller hereby specifically disclaims any warranty (oral or written) concerning: (i) the nature and condition of the Property and its suitability for any and

all activities and uses that Buyer may elect to conduct on the Property; (ii) the manner, construction, condition and state of repair or lack of repair of any improvements located on the Property; (iii) the nature and extent of any right-of-way, lien, encumbrance, license, reservation, condition, or otherwise; (iv) the compliance of the Property or its operation with any laws, rules, ordinances or regulations of any government or other body, it being specifically understood that Buyer shall have full opportunity during the Feasibility Period, to determine for itself the condition of the Property; and (v) any other matter whatsoever except as expressly set forth in this Agreement. The sale of the Property as provided for in this Agreement is made on a strictly "AS IS" "WHERE IS" basis as of the Closing Date. Except as otherwise expressly provided in this Agreement, Buyer expressly acknowledges that, in consideration of the agreements of Seller in this Agreement, SELLER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF QUANTITY, QUALITY, CONDITION, HABITABILITY, MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, ANY IMPROVEMENTS LOCATED ON THE PROPERTY OR ANY SOIL CONDITIONS RELATED TO THE PROPERTY.

BUYER SPECIFICALLY ACKNOWLEDGES THAT BUYER IS NOT RELYING ON (AND SELLER HEREBY DISCLAIMS AND RENOUNCES) ANY REPRESENTATIONS OR WARRANTIES MADE BY OR ON BEHALF OF SELLER OF ANY KIND OR NATURE WHATSOEVER. FURTHER, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, BUYER, FOR BUYER AND BUYER'S SUCCESSORS AND ASSIGNS, HEREBY RELEASES SELLER FROM AND WAIVES ANY AND ALL CLAIMS AND LIABILITIES AGAINST SELLER FOR, RELATED TO, OR IN CONNECTION WITH, ANY ENVIRONMENTAL CONDITION AT THE PROPERTY (OR THE PRESENCE OF ANY MATTER OR SUBSTANCE RELATING TO THE ENVIRONMENTAL CONDITION OF THE PROPERTY) INCLUDING, BUT NOT LIMITED TO, CLAIMS AND/OR LIABILITIES RELATING TO (IN ANY MANNER WHATSOEVER) ANY HAZARDOUS, TOXIC OR DANGEROUS MATERIALS OR SUBSTANCES LOCATED IN, AT, ABOUT OR UNDER THE PROPERTY, OR FOR ANY AND ALL CLAIMS OR CAUSES OF ACTION (ACTUAL OR THREATENED) BASED UPON, IN CONNECTION WITH OR ARISING OUT OF: (1) THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, 42 U.S.C. § 9601, ET SEQ. ("CERCLA"); (2) THE RESOURCE CONSERVATION AND RECOVERY ACT, 42 U.S.C. § 6901, ET SEQ. ("RCRA"); (3) THE SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT, 42 U.S.C. § 9601, ET SEQ. ("SARA"); OR (4) ANY OTHER CLAIM OR CAUSE OF ACTION (INCLUDING ANY FEDERAL OR STATE BASED STATUTORY, REGULATORY OR COMMON LAW CAUSE OF ACTION) RELATED TO ENVIRONMENTAL MATTERS OR LIABILITY WITH RESPECT TO OR AFFECTING THE PROPERTY.

BUYER REPRESENTS TO SELLER THAT BUYER HAS CONDUCTED, OR WILL CONDUCT BEFORE CLOSING, SUCH INVESTIGATIONS OF THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AS BUYER DEEMS NECESSARY TO SATISFY ITSELF AS TO THE CONDITION OF THE PROPERTY AND THE EXISTENCE OR NONEXISTENCE OR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO ANY HAZARDOUS OR TOXIC SUBSTANCES ON OR DISCHARGED FROM THE PROPERTY AND WILL RELY SOLELY

ON SAME AND NOT ON ANY INFORMATION PROVIDED BY OR ON BEHALF OF SELLER OR ITS AGENTS OR EMPLOYEES WITH RESPECT THERETO, OTHER THAN SUCH REPRESENTATIONS, WARRANTIES, AND COVENANTS OF SELLER AS ARE EXPRESSLY SET FORTH IN THIS AGREEMENT.

UPON CLOSING, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, BUYER SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING, *BUT NOT* LIMITED TO, CONSTRUCTION DEFECTS AND ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY BUYER'S INVESTIGATIONS, AND BUYER, ON CLOSING, SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED, AND RELEASED SELLER FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING CAUSES OF ACTION IN TORT), LOSSES, DAMAGES, LIABILITIES, COSTS, AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COURT COSTS) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, THAT BUYER MIGHT HAVE ASSERTED OR ALLEGED AGAINST SELLER, AT ANY TIME BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT CONSTRUCTION DEFECTS OR PHYSICAL CONDITIONS, VIOLATIONS OF ANY APPLICABLE LAWS (INCLUDING, WITHOUT LIMITATION, ANY ENVIRONMENTAL LAWS) AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES, OR MATTERS REGARDING THE PROPERTY EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT.

BUYER AGREES THAT SHOULD ANY CLEANUP, REMEDIATION, OR REMOVAL OF HAZARDOUS SUBSTANCES OR OTHER ENVIRONMENTAL CONDITIONS ON THE PROPERTY BE REQUIRED AFTER THE DATE OF CLOSING, SUCH CLEANUP, REMOVAL, OR REMEDIATION SHALL BE THE RESPONSIBILITY OF AND SHALL BE PERFORMED AT THE SOLE COST AND EXPENSE OF BUYER.

Buyer acknowledges and agrees that the provisions contained in this Section 10.1 were a material factor in Seller's acceptance of the sales price and that Seller was unwilling to sell the property to Buyer unless Seller was released as expressly set forth above. BUYER, WITH BUYER'S COUNSEL, HAS FULLY REVIEWED THE DISCLAIMERS AND WAIVERS SET FORTH IN THIS AGREEMENT AND UNDERSTANDS THEIR SIGNIFICANCE AND EFFECT. BUYER ACKNOWLEDGES AND AGREES THAT THE DISCLAIMERS AND OTHER AGREEMENTS SET FORTH IN THIS AGREEMENT ARE AN INTEGRAL PART OF THIS AGREEMENT; AND THAT SELLER WOULD NOT HAVE AGREED TO SELL THE PROPERTY TO BUYER FOR THE SALES PRICE WITHOUT THE DISCLAIMERS AND OTHER AGREEMENTS SET FORTH IN THIS AGREEMENT. THE TERMS AND CONDITIONS OF THIS SECTION 10.1 WILL EXPRESSLY SURVIVE THE CLOSING, ARE NOT SUBJECT TO THE TIME LIMITATION SET FORTH IN SECTION 9.3, AND WILL NOT MERGE WITH THE PROVISIONS OF ANY CLOSING DOCUMENTS.

ARTICLE 11 **REMEDIES**

11.1 Seller's Remedies. If Buyer fails to deposit the Closing Payment (as defined in Section 2.1(b)) in the time and manner set forth in this Agreement or to perform when due any

other act required by this Agreement, then, provided that Seller has fully performed its obligations in accordance with this Agreement, Seller's sole and exclusive remedy shall be to: (i) cancel this Agreement and the Escrow, such cancellation to be effective immediately upon Seller giving written notice of cancellation to Buyer and Escrow Agent, and (ii) to receive the Earnest Money paid pursuant to Section 2.1(a) from Buyer as liquidated damages and not as a penalty, the Parties agreeing and hereby stipulating that the exact amount of damages would be extremely difficult to ascertain and that such amount constitutes a reasonable and fair approximation of such damages. Immediately following Seller's cancellation as described herein and without further instructions from Buyer, the Earnest Money shall be released by Escrow Agent to Seller in payment of the liquidated damages amount payable to Seller pursuant to this Section 11.1. Following such cancellation and payment of the liquidated damage amount, both Parties shall be relieved of and released from any further liability under this Agreement, except that in addition to payment of the liquidated damage amount, (i) the indemnification obligations of Buyer set forth in this Agreement and in the Access Agreement shall survive the cancellation and shall be performable and owing by Buyer to Seller; and (ii) Seller shall also have the right (if it is the prevailing party) to collect from Buyer all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by Seller if Buyer disputes Seller's right to cancel this transaction and receive liquidated damages as provided herein.

11.2 Buyer's Remedies. If Seller fails to perform when due any act required by this Agreement to be performed, then, provided Buyer has fully performed its obligations in accordance with this Agreement, Buyer's sole and exclusive remedy hereunder is to elect one of the following remedies: (i) cancel this Agreement and the Escrow and receive the return of all Earnest Money (and Escrow Agent is hereby instructed to deliver any such amounts in Escrow to Buyer), such cancellation to be effective immediately upon Buyer giving written notice of cancellation to Seller and Escrow Agent, or (ii) seek specific performance of this Agreement, provided that no such action for specific performance shall require Seller to do any of the following: (a) change the condition of the Property, remove or relocate anything on the Property, or restore or rebuild any improvement on the Property; or (b) expend money or post a bond to remove a title encumbrance or defect or to correct any matter shown on a survey or title report covering the Property. Buyer shall also have the right (if it is the prevailing party) to collect from Seller those costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by Buyer if: (1) Seller disputes Buyer's right to receive the return of the Earnest Money in the event of Seller's default as described herein and Buyer's election to cancel this Agreement and receive the Earnest Money, or (2) Buyer seeks and obtains specific performance of this Agreement. Except as expressly permitted in this Section 11.2, Buyer shall not be entitled to seek or recover monetary damages from Seller, and Buyer hereby waives any right to seek actual, consequential, exemplary, or punitive damages or any other type of damages or any other legal or equitable remedy against Seller.

11.3 Notice of Breach; Remedies. In the case of an alleged breach of this Agreement by either Party, the Party shall not be considered to be in breach and no remedies may be pursued for such breach until a written notice describing the alleged breach and the action required to cure the breach has been given to the allegedly defaulting Party and such Party has failed to cure the default within ten (10) calendar days thereafter. Notwithstanding any contrary provision of this Agreement, the provisions of Article 11 shall not limit the Parties' rights in connection with any

indemnity granted pursuant to this Agreement or the Access Agreement, or limit Seller's rights to collect any amounts payable by Buyer to Seller pursuant to Section 2.1.

ARTICLE 12

GENERAL PROVISIONS

12.1 Certain Definitions. As used in this Agreement, certain capitalized terms are defined as follows:

(a) "Affiliate" means, with respect to Buyer, any company, partnership, or corporation which: (i) directly or indirectly controls Buyer, (ii) is directly or indirectly controlled by Buyer, or (iii) is directly or indirectly controlled by a company or corporation which directly or indirectly controls Buyer, where "control" means the right to exercise votes attaching to more than fifty percent (50%) of the voting shares of the company, partnership or corporation in question.

(b) "Claims" means any and all obligations, debts, covenants, conditions, representations, costs, and liabilities and any and all demands, causes of action, and claims, of every type, kind, nature or character, direct or indirect, known or unknown, absolute or contingent, determined or speculative, at law, in equity or otherwise, including attorneys' fees and litigation and court costs.

(c) "Related Parties" means, with respect to any person or entity, the officers, directors, shareholders, partners, members, employees, agents, attorneys, successors, personal representatives, heirs, executors, or assigns of any such person or entity.

12.2 Assignment. Buyer may not assign or transfer its rights under this Agreement without the prior written consent of Seller, which may be given or withheld in Seller's sole discretion. In connection with any assignment approved by Seller: (a) the assignee shall assume the obligations of Buyer hereunder pursuant to an assignment agreement which inures to the benefit of and is enforceable by Seller, and (b) Seller shall be provided with an executed copy of the assignment agreement at least fifteen (15) calendar days prior to the Closing. Any assignment in violation of this Section 12.2 shall be void, and not voidable, and the purported assignee shall acquire no rights under this Agreement.

12.3 Binding Effect. Except as limited by Section 12.2, the provisions of this Agreement are binding upon and will inure to the benefit of the Parties and their respective heirs, personal representatives, successors and assigns.

12.4 Attorneys' Fees. In any suit, action, or proceeding: (a) to enforce and/or defend this Agreement or any modification hereof; (b) to interpret this Agreement or any modification hereof, and/or (c) arising out of or related to this Agreement or any modification hereof, the Prevailing Party shall be entitled to recover from the non-prevailing Party reasonable attorneys' fees, costs of suit, and any other relief granted by the court, whether or not any judgment is entered. The phrase "Prevailing Party" within the meaning of this Section includes, without limitation, a Party who agrees to dismiss an action or proceeding upon the other's payment of the sums allegedly due or performance of the covenants allegedly breached, or who obtains substantially the relief sought by it.

12.5 Waivers. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, whether or not similar, nor will any waiver be a continuing waiver. No waiver will be binding unless executed in writing by the Party making the waiver. Either Party may waive any provision of this Agreement intended for its benefit; provided, however, such waiver will in no way excuse the other Party from the performance of any of its other obligations under this Agreement.

12.6 Construction. The terms and provisions of this Agreement represent the results of negotiations among the Parties, each of which has been represented by counsel of its own choosing, and neither of which has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings, and the Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement that ambiguous or conflicting terms or provisions contained in this Agreement shall be interpreted or construed against the Party whose attorney prepared the executed Agreement or any earlier draft of the same.

12.7 Severability. If any provision of this Agreement is unenforceable, the remaining provisions shall nevertheless be kept in effect.

12.8 No Partnership. Any and all provisions, implications, or interpretations of or from this Agreement to the contrary notwithstanding, no partnership, joint venture or other relationship is created, implied or acknowledged between or among the Parties.

12.9 Time. Time is of the essence of this Agreement.

12.10 Notices.

(a) Notices will be in writing and will be given by personal delivery, by deposit in the United States mail, certified mail, return receipt requested, postage prepaid, or by express delivery service, freight prepaid. Notices will be delivered or addressed to Seller and Buyer at the addresses set forth on the first page of this Agreement or at such other address or number as a Party may designate in writing. The date notice is deemed to have been given, received and become effective will be: (a) the date on which the notice is delivered, if notice is given by personal delivery, or (b) the date of actual receipt, if the notice is sent through the United States mail or by express delivery service.

(b) Copies of all notices shall also be provided as follows:

Buyer's Attorney: Pew & Lake, PLC
 Attn: Reese L. Anderson
 1744 S. Val Vista Drive, Suite 217
 Mesa, Arizona 85204
 Telephone: 480-461-4670
 Facsimile: 480-461-4676
 Email: reese.anderson@pewandlake.com

Seller's Attorney: Jim N. Smith
City of Mesa
City Attorney
20 East Main Street, Suite 850
Mesa, Arizona 85211
Telephone: 480-644-2343
Facsimile: 480-644-2498
Email: jim.smith@mesaaz.gov

12.11 Further Documentation. Each Party agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

12.12 Time Periods. Except as expressly provided for in this Agreement, the time for performance of any obligation or taking any action under this Agreement will be deemed to expire at 5:00 o'clock p.m. (Mesa Local Time) on the last day of the applicable time period provided for in this Agreement. If the time for the performance of any obligation or taking any action under this Agreement expires on a Friday, Saturday, Sunday or legal holiday of the City of Mesa, the time for performance or taking such action will be extended to the next succeeding calendar day which is not a Friday, Saturday, Sunday or legal holiday of the City of Mesa.

12.13 Headings and Counterparts. The headings of this Agreement are for purposes of reference only and will not limit or define the meaning of any provision of this Agreement. This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which will constitute one and the same instrument.

12.14 Entire Agreement. This Agreement includes the following Exhibits:

<u>Exhibit A</u>	Legal Description of Real Property
<u>Exhibit B</u>	Access Agreement
<u>Exhibit C</u>	Special Warranty Deed and Property Restrictions with Right of Reverter
<u>Exhibit D</u>	Development Agreement

This Agreement and the above Exhibits constitutes the entire agreement between the Parties pertaining to the subject matter contained in this Agreement. All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, are superseded by and merged in this Agreement. No supplement, modification or amendment of this Agreement will be binding unless in writing and executed by Buyer and Seller.

12.15 Compliance with State Law Restrictions. The obligations of Seller, pursuant to the provisions of this Agreement which require the expenditure of funds do not constitute a general obligation or indebtedness of Seller within the meaning of any constitutional or statutory debt limitation or restriction, and do not obligate Seller to make any expenditure from proceeds from ad valorem taxes or obligations to which any general taxing authority is pledged or from its general

funds unless the expenditure has been duly budgeted if and to the extent required by law and is within all budget and expenditure limitations of, and is not in conflict with, the Constitution or laws of the State of Arizona.

12.16 Applicability of Certain Statutes. Notice is hereby given of the applicability of A.R.S. § 12-133, § 12-1518, and § 38-511.

12.17 Nondiscrimination. Buyer and Seller agree to comply with all applicable state and federal laws, rules, regulations and executive orders governing equal employment opportunity, immigration, nondiscrimination, including the Americans with Disabilities Act, and affirmative action.

12.18 Records. To the extent required by A.R.S. § 35-214, Buyer and Seller agree to retain all records relating to this Agreement and to make those records available at all reasonable times for inspection and audit by the other Party or the Auditor General of the State of Arizona during the term of this Agreement and for a period of five (5) years after the completion of this Agreement. The records shall be provided at a location designated by the requesting Party upon reasonable notice to the other.

12.19 Governing Law, Jurisdiction, Venue. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Agreement may only be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa (or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action); Seller and Buyer irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section.

12.20 Section 1031 Exchange. The Parties acknowledge that Buyer may elect to qualify this transaction as a like-kind exchange of property under Section 1031 of the Internal Revenue Code of 1986, as amended (the “IRC” and a “Section 1031 Exchange”). If Buyer so elects to qualify this transaction as an exchange of Property under IRC Section 1031, then Seller agrees to reasonably cooperate to effectuate such an exchange, provided that:

(a) such cooperation shall not affect or alter in any way the terms of this Agreement or require Seller to expedite any approval or review required under this Agreement;

(b) Seller shall not have any responsibility with respect to the tax consequences of such exchange or its qualification under IRC Section 1031, and Buyer shall be responsible for the payment of any and all additional title, Escrow or brokerage fees and costs which may be incurred in connection with such an exchange;

(c) any Escrow relative to the exchange property shall expressly provide that the Seller shall have no personal liability of any kind or nature in connection therewith;

(d) closing under this Agreement in the form of an exchange transaction shall not be a condition precedent to any Closing, cause a delay in any Closing, or cause any expense to Seller; and

(e) Seller shall incur no liability of any kind if the sale of the Property does not Close or does not Close in time so as to allow Buyer to qualify this transaction as an exchange of Property under IRC Section 1031.

The Parties each acknowledge that if the Buyer elects to structure this transaction as an exchange, the form of such exchange transaction may be, at the election of Buyer, either a simultaneous exchange of property or a non-simultaneous exchange of property in accordance with the provisions of the Treasury Regulation § 1.1031(d)-1, as amended, including without limitation, through the use of a “qualified trust” within the meaning of Treasury Regulation § 1.1031(k)-1(g)(3)(iii). Buyer hereby waives any right to seek actual, consequential, exemplary, or punitive damages or any other type of damages or any other legal or equitable remedy against Seller arising out or related to: (i) this Section 12.20, or (ii) the failure, for any reason including, but not limited to, a breach of this Agreement by Seller, to Close in time so as to allow Buyer to qualify this transaction as an exchange of Property under IRC § 1031.

12.21 NO BINDING CONTRACT UNTIL EXECUTION. NEITHER THE PREPARATION NOR THE DELIVERY OF THIS AGREEMENT TO BUYER FOR EXAMINATION SHALL BE DEEMED TO BE AN OFFER BY SELLER TO SELL THE PROPERTY, BUT SHALL BE MERELY A PART OF THE NEGOTIATIONS BETWEEN BUYER AND SELLER.

[All signatures appear on the following pages.]

Buyer and Seller have executed this Agreement as of the date first above written.

SELLER:

City of Mesa, an Arizona municipal corporation

Christopher J. Brady
City Manager

Pursuant to Resolution of the Mayor and Council
adopted _____.

Approved as to Form for Seller:

City Attorney's Office

BUYER:

MC HOTEL-RIVER VIEW, LLC,
an Arizona limited liability company

By: Power Hotel Group, LLC, an Arizona limited
liability company, Its Manager

By: _____
Gaylord Bob Yost, Manager

The undersigned Escrow Agent accepts the
engagement to handle the Escrow on the terms
and conditions described herein.

SECURITY TITLE AGENCY

By: _____

Name: _____

Title: _____

OPENING DATE: _____

EXHIBIT A
LEGAL DESCRIPTION

A portion of land located in the Northeast Quarter of Section 18, Township 1 North, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona described as follows:

Commencing for reference from the East Quarter corner of said section 18:

Thence S 89° 27' 10" W, 1035.04 feet along the east-west midsection line (basis of bearing)

Thence N 0° 16' 58" E, 554.01 feet:

Thence N 89° 43' 02" W, 62.00 feet:

Thence 89° 27' 12" W, 565.23 feet to the Point of Beginning;

Thence S 89° 27' 12" W, 121.46 feet:

Thence N 0° 16' 58" E, 99.39 feet:

Thence N 89° 27' 12" E, 120.02 feet:

Thence S 0° 32' 48" E, 99.38 feet back to the Point of Beginning.

Containing 12,000 Square Feet or 0.28 acres, more or less.

EXHIBIT B
ACCESS AGREEMENT

(See following pages)

EXHIBIT C
SPECIAL WARRANTY DEED
and Property Restrictions with Right of Reverter

(See following pages)

EXHIBIT D
DEVELOPMENT AGREEMENT

(See following pages)