

**PURCHASE OPTION AGREEMENT  
AND ESCROW INSTRUCTIONS**

**DRAFT**  
5.15.07

This Purchase Option Agreement and Escrow Instructions (this "**Option**") made effective as of \_\_\_\_\_, 200\_\_\_\_ (the "**Agreement Date**"), by and between \_\_\_\_\_, a(n) \_\_\_\_\_ ("**Seller**"), and THRESHOLD PROJECT, L.L.C., an Arizona limited liability company ("**Buyer**"). This Agreement constitutes both (a) an option agreement between Seller and Buyer, and (b) escrow instructions to the Escrow Agent named herein.

**RECITALS**

A. Seller is the owner of certain real property, more particularly described on the attached **Exhibit "A"** (the "**Property**"), which Buyer desires to develop into a master-planned development to be known as the "Threshold Project" (the "**Project**"), located in the City of Tempe (the "**City**"), in Maricopa County (the "**County**"), Arizona (the "**State**").

B. Seller has executed a Letter of Intent outlining the scope, nature and purpose of this Project and the relationship of this Option thereto, copy attached as **Exhibit "B."** It is intended that Seller will be one of eight fraternities for which an Option will be executed. The Option will be given in exchange for a membership interest in Threshold Project, L.L.C., an Arizona limited liability company that has been formed as of \_\_\_\_ day of \_\_\_\_\_, 2007. In addition, Two Thousand Dollars (\$2,000.00) in cash will be required from Seller.

C. Upon the terms, covenants, agreements and conditions of this Agreement, Seller desires to grant to Buyer this Option to purchase the Property, and Buyer desires to accept such Option from Seller.

**AGREEMENT**

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Buyer and Seller agree as follows:

1. **Incorporation of Recitals; Definitions.** The foregoing Recitals are incorporated into this Agreement by this reference.

2. **Grant of Option.**

2.1 Seller hereby grants to Buyer an exclusive Option to purchase the Property, subject to and upon the terms, covenants, agreements and conditions of this Agreement.

2.2 This Option is assignable by Buyer to the Developer of the Project ("**Assignee**") after the Development Agreement is executed with Developer. Thereafter all references herein to Buyer shall be deemed to be fully applicable to Assignee and Assignee shall assume all rights and obligations herein.

3. **Term of Option.** The term of this Option (the "**Option Term**") shall commence on the Agreement Date and shall continue for three (3) years with an option to be extended an additional two (2) years, if the Manager Committee of the Threshold Project L.L.C. has negotiated a Development Agreement with The Pierce Company, Inc., a California corporation ("**Developer**") and the Development Agreement has been approved by a majority of the Owners of the Property.

4. **Buyer's Payments.**

4.1 **Purchase Price.** In exchange for the transfer of the real property described in **Exhibit "A"** and Two Thousand Dollars (\$2,000.00) in cash, Buyer shall pay to Seller a sum to be determined by the following methodology.

4.2.1 Buyer and Seller shall each independently determine the fair market value of the Property subject to the further terms stated below:

(a) The determination of the fair market value of the Property shall consider the deed restrictions in existence as of the date of this agreement (i.e. the deed restrictions limiting use of the Property to student housing purposes as reasonably approved by Arizona State University). The Property shall be considered to have appropriate access rights to and from University property, including parking rights.

(b) The fair market value of the Property shall be determined as of the date of the letter from Buyer giving notice of its intent to exercise the option.

(c) The fair market value shall be based upon the zoning in existence as of the date of this agreement with any nonconforming use rights.

4.2.2 **Arbitrator.** Buyer and Seller shall mutually agree upon an Arbitrator to determine the purchase price.

4.2.2.1 The Arbitrator shall be a member of the Arizona Bar who has been licensed to practice law more than 15 years.

4.2.2.2 The Arbitrator must have specialized in the area of real property valuation or condemnation law for at least 50% of his or her time over the past 15 years.

4.2.2.3 The Arbitrator may employ other consultants or experts, including appraisers to assist in making a final decision.

4.2.2.4 The Arbitrator shall select the valuation of either Buyer or Seller he or she determines best reflects the fair market value of the Property, and that fair market value amount shall be the first component of the purchase price. The Arbitrator's decision shall be final. The Arbitrator's decision shall be confidential and may not be disclosed to any third party without the parties' mutual consent.

4.2 **Form of Payment.** All payments to be made by Buyer pursuant to paragraph 4.1 shall be made by cash, cashier's check drawn on a recognized bank acceptable to Seller, wire transfer of immediately available funds, or other mutually agreed upon consideration, including credit.

4.3 **Additional Consideration.** In addition to the consideration to be paid for the Option pursuant to paragraphs 4.1, Seller shall be paid for the value added to the Property resulting from the completion of the following:

(a) Removal of all existing deed restrictions regarding the use of the Property.

(b) Replatting of the Property with all other Sellers' Property and the property of ASU to conform with the finally approved development plans for the Project.

(c) Rezoning by the City of Tempe of all property described in development plans to permit development of the Project.

(d) completion and approval of development plans that describe the Project and its components.

4.3.1 This additional consideration shall be determined as follows:

(a) All Sellers granting an Option to Buyer shall mutually agree on an appraiser duly licensed in the State of Arizona with no less than 15 years experience in the appraisal of fully entitled, vacant land within an approved redevelopment project.

(b) The appraiser shall determine the fair market value of all of the property ("**Development Property**") subject to an Option by Buyer, as a unified part of the development plans.

(c) Each Seller shall be allocated a percentage of the fair market value of the Development Property, as follows:

(i) The total of all of the land area of all Seller's Property plus the total of the land area within the parking and cross-easements which are appurtenant to Seller's Property shall become a denominator.

(ii) The total of Seller's land area plus one-eighth (1/8) of the land area within the parking and cross-easement area shall constitute the numerator.

(iii) That resulting fraction shall be multiplied times (x) the fair market value of the Development Property as determined by the appraiser.

(iv) The resulting value shall be Additional Consideration under this paragraph 4.3.1.

4.4 **Promissory Note.** Buyer shall issue to Seller a Promissory Note for the fixed sum of the Purchase Price determined by the provisions of paragraph 4.3. That Promissory Note shall be paid as follows:

(a) It shall bear interest at Prime plus 100 basis points [DEFINE PRIME].

(b) Distributions shall be made only from positive cash flow from revenue generating operations of the Project, subject to loan covenants.

(c) An entity to be known as the Threshold Foundation is intended to be created to receive positive cash flow funds from the revenue generating operations of the Project. The Threshold Foundation Board of Directors shall determine when cash flow is available for distribution in accordance with the Foundation's Mission.

(d) Any payments on the Promissory Note or cash distributions in accordance with the Foundation's Mission shall be made annually.

(e) Buyer's Payments shall be based upon the percentage Buyer's Promissory Note bears to the cumulative total of all Promissory Notes.

(f) No transfers of cash flow from the revenue generating operations of the Project shall be made to the Threshold Foundation until all Promissory Notes have been fully paid.

(g) Upon payment of the Promissory Notes, the Threshold Foundation's Board of Directors may thereafter determine if cash flow is available for distribution in accordance with the Foundation's Mission.

(h) The Threshold Foundation shall be comprised of a Board of Directors and governed as provided for in the Bylaws of the Threshold Foundation.

## 5. **Buyer's Reviews.**

5.1 **Feasibility Period.** Buyer's "**Feasibility Period**" shall be the one hundred twenty (120) day period from and after the date the Arbitrator renders its decision ("**Arbitrator's Decision**") determining the Purchase Price. The Feasibility Period shall expire at 3:00 p.m., Phoenix time, on the one hundred-twentieth (120th) day following the Arbitrator's Decision. Buyer shall conduct all investigations it deems necessary to determine if the Property will be purchased.

5.2 **Title Review.** As soon as practicable after the Arbitrator's decision, Escrow Agent shall provide Buyer with a commitment for a standard optionee's policy of title insurance for the Property (the "**Title Report**") and readable copies of items referred to therein as exceptions. Buyer shall have until 3:00 p.m., Phoenix time, on the twentieth (20th) day following its receipt of the Title Report (the "**Title Review Period**"), to review and approve or disapprove the Title Report. If Buyer fails to give written notice of such approval or disapproval to Seller and Escrow Agent

within the Title Review Period, Buyer shall be deemed to have approved the status of title to the Property as reflected in the Title Report. If the Title Insurer subsequently issues any amendment to the Title Report that discloses any additional title matters or material modifications to the previously disclosed title matters which Buyer is entitled to approve or disapprove (an "**Amended Report**"), then, except for any Buyer-Related Matters, Buyer shall be entitled to object to any such item first disclosed on the Amended Report by delivering written notice of such objection to Seller and Escrow Agent on or before the earlier to occur of (a) the expiration of the Feasibility Period, or (b) ten (10) business days after Escrow Agent has delivered to Buyer the Amended Report together with copies of all recorded documents pertaining to such item(s) first disclosed in the Amended Report. If Buyer fails to give notice of objection to any matter (which Buyer is entitled to approve or disapprove) as set forth in the Title Report or first set forth in any Amended Report within the pertinent time period, then the Buyer-Related Matters and all other items disclosed in either such report shall be deemed to be "**Permitted Exceptions**". Notwithstanding any other provision contained in this Agreement, following the Agreement Date, Seller shall not cause any instruments, documents or agreements to be recorded which pertain to the Parcels without the prior consent of Buyer, which shall not be unreasonably withheld or delayed.

5.3 **Buyer's Objection; Seller's Cure.** If Buyer delivers a timely notice to Seller and Escrow Agent specifying in reasonable detail its objection to any matter(s) (other than the Permitted Exceptions) contained in the Title Report or any Amended Report, Seller may, but shall not be obligated to, attempt to cure the matter(s) objected to by Buyer. If Seller elects to attempt to cure Buyer's objections, Seller shall notify Buyer and Escrow Agent of such election within ten (10) days following Seller's receipt of Buyer's objections, otherwise Seller shall be deemed to have elected not to attempt to cure Buyer's objections. Subject to Buyer's approval, which shall not be unreasonably withheld or delayed, any title objection may be satisfied or cured, at Seller's election, by the Seller obtaining affirmative title insurance coverage. If Seller notifies Buyer and Escrow Agent of its unwillingness or inability to cure such objections or fails to notify Buyer of its election to cure such objections, then Buyer shall, within three (3) business days following receipt of such notice, or within three (3) business days after Seller's deemed election not to cure, as applicable, elect either to waive the matters previously objected to by delivering written notice to Seller and Escrow Agent and thereafter proceed in accordance with the terms of this Agreement, taking title to the Property subject to all such matters waived by Buyer, or to terminate this Agreement. If Buyer fails to timely notify Seller and Escrow Agent of Buyer's election either to waive its objections and proceed in accordance with the terms of this Agreement or to terminate this Agreement, Buyer shall be deemed to have elected to waive its objections.

#### 5.4 **Condition Precedent.**

5.4.1 This Option shall not become binding upon Seller until four (4) other fraternities listed on **Exhibit "C"** have also executed binding Options in the same form and substance as this Agreement.

5.4.2 This Purchase Option shall not become binding, even after its transfer to the Threshold Project, L.L.C., if five of the 8 fraternities listed on **Exhibit "C"** cannot agree upon terms for the formation and operation of an L.L.C. between the Developer of the Project and Threshold Project, L.L.C.

5.6 **Inspection.** Until this Agreement expires or terminates, Seller grants to Buyer, its engineers, consultants and agents, a non-exclusive license to go upon the Property for the purpose of making appropriate inspections and conducting, at Buyer's sole cost and expense, appropriate feasibility studies with respect to the Property. If Buyer, in its sole and absolute discretion, disapproves of the results of its inspections and feasibility studies on or before the end of the Feasibility Period, Buyer may terminate this Agreement. Prior to any entry on the Property, Buyer shall provide to Seller evidence of the insurance required to be maintained in accordance with **Section 7.2** below. Buyer shall indemnify, defend and hold harmless Seller (and its partners, and the owners, contractors, agents and employees of Seller and its partners) for, from and against all injuries, losses, liens, claims, demands, judgments, liabilities, damages, costs and expenses (including court costs, expert fees and reasonable attorneys' fees and expenses) sustained or threatened against Seller which result from or arise out of or in connection with any such entry, inspection, test and study conducted by Buyer, its engineers, consultants or agents (the "**Inspection Indemnity Obligation**"). Notwithstanding any provision of this Agreement to the contrary, the Inspection Indemnity Obligation shall survive each Parcel Closing and the expiration or any termination of this Agreement.

6. **Escrow and Closing Related Matters.**

6.1 **Escrow Instructions.** An escrow shall be established (the "**Escrow**") with \_\_\_\_\_ ("**Escrow Agent**") to facilitate the consummation of the transactions contemplated by this Agreement. The escrow instructions attached as **Exhibit "F"** (the "**Escrow Instructions**"), together with any provisions of this Agreement applicable to Escrow Agent, shall together constitute the instructions among Seller, Buyer and Escrow Agent and shall set forth the Escrow Agent's obligations with respect to the documents and funds deposited with Escrow Agent. In the event of any conflict or inconsistency between the provisions of the Escrow Instructions and this Agreement or any deed, instrument or document executed or delivered pursuant to this Agreement, the provisions of this Agreement or such deed, instrument or document shall control.

6.2 **Time and Place of Closings.** The Closing of Escrow shall take place in Escrow Agent's office on or before \_\_\_\_\_.

6.3 **Conveyance of Title.** Title shall be conveyed to Buyer by Special Warranty Deed in the form and content of attached **Exhibit "G"**.

6.4 **Closing Costs.** The escrow fee payable to Escrow Agent at Closing shall be shared equally by the parties. Except as otherwise herein expressly provided, all other fees, recording costs, charges or expenses incidental to the sale and transfer of the Property to Buyer shall be paid according to the then custom of real estate transactions consummated in the County, as determined by Escrow Agent; provided, however, that Seller shall pay only the portion of any optionee's title policy premiums attributable to the cost of purchasing a standard coverage optionee's policy, and Buyer shall be responsible for paying any excess premiums required to obtain any standard owner's coverage title policy or policies and/or any extended coverage owner's or optionee's policy or policies of title insurance and any endorsements thereto. The total coverage amount of the title insurance policies shall not exceed the sum of the total Purchase Prices for the eight (8) Parcels which are subject to this Agreement, and the coverage for any Parcel shall not exceed the Purchase Price for that Parcel.

6.5 **Proration of Real Estate Taxes.** Real estate taxes and assessments pertaining to the Property shall be prorated as of the "**Closing Date**".

7. **Additional Covenants of Buyer.**

7.1 **Responsibility for Improvements on Property.** Buyer acknowledges that any and all improvements within the boundaries of the Property acquired by Buyer, and all costs associated therewith, shall be the responsibility of the Buyer, including the following:

7.1.1 Payment of any and all deposits, fees or charges now or hereafter required to be paid to the City and all applicable utility providers (including water, gas, electric, etc.) to extend or obtain utility services to and within the boundaries of the Property.

7.1.2 Arranging for utility service during any period of construction activity by or on behalf of Buyer on the Property by Buyer, and bringing all water, sewer, telephone, electrical and other utility lines to the Property.

7.1.3 Payment of all fees and charges owing to any and all Governmental Authorities as the result of the ownership of the Property and the construction of Buyer's improvements, including impact fees, water development fees, sewer connection fees, tap fees, water meter costs, refuse removal costs and electrical, telephone or cable distribution costs.

7.1.4 Complying with all other requirements of any Governmental Authority imposed in connection with the ownership or the construction of any improvements on the Property.

7.2 **Insurance Coverage.** To protect Seller from any liability arising out of Buyer's activities on or near the Property, Buyer shall, prior to any entry on the Property and thereafter so long as this Agreement remains in effect or Buyer retains title to any portion of the Property, obtain and maintain in full force and effect: (i) comprehensive automobile liability insurance; (ii) workers' compensation insurance (including a master and servant endorsement); and (iii) comprehensive commercial general liability insurance for personal injury (including wrongful death) and/or damage to property covering any occurrence upon the Property or upon the roadways or common areas adjacent thereto and any act or omission by Buyer, its agents, employees, contractors, subcontractors and invitees. All such policies shall include a waiver of subrogation endorsement. The automobile liability insurance and commercial general liability insurance policies shall each be written with primary coverage having a combined single limit of liability for bodily injury and property damage of not less than One Million Dollars (\$1,000,000) per occurrence, with at least \$1,000,000 additional umbrella coverage. The workers' compensation insurance shall be issued in amounts approved by the Industrial Commission of the State of Arizona. Each liability policy shall contain an endorsement naming Seller as additional insured, and shall require at least fifteen (15) days prior written notice to Seller of any material change, non-renewal or cancellation of any such policy. All insurance policies required pursuant to this **Section 7.2** shall be written as primary policies, not contributing with or in excess of any coverage which Seller may carry. All insurers issuing such policies must be licensed to do business in the State of Arizona and listed in the most recent A.M. Best's rating guide with a rating of not less than \_\_\_\_\_. Buyer shall procure and

maintain all policies entirely at its own expense and shall, at least twenty (20) days prior to the expiration of any such policy, furnish Seller with renewal certificates thereof. Prior to any entry upon the Property during the Feasibility Period and again at the Closing, Buyer shall deliver to Seller evidence of insurance (ACORD Form 27 modified to apply to liability coverage or other evidence acceptable to Seller) evidencing that the required coverage is in full force and effect. If at any time during the Option Term, Buyer fails to maintain any of the insurance required to be maintained in accordance with the foregoing, Seller shall provide notice of such failure to Buyer, and if Buyer fails to cure such failure within five (5) business days after receipt of such notice, Seller may, but shall not be obligated to, obtain, at Buyer's expense, the required insurance coverage. Buyer shall reimburse Seller for all costs so incurred by Seller within five (5) business days after receipt of an invoice identifying all costs so incurred by Seller. If such sums are not paid within such five (5) business day period, Buyer shall pay interest on such sums at the statutory rate from the date of Buyer's receipt of the invoice from Seller until all such sums and all interest accrued thereon have been paid. If any sums are owing to Seller in accordance with the foregoing, then as a condition precedent to Buyer's right thereafter to acquire the Property, Buyer must pay to Seller at the Closing all sums (including interest thereon), if any, owing to Seller in accordance with the foregoing. Buyer and Seller hereby waive all rights against each other in connection with any damage, injury or loss suffered by the other to the extent such damage, injury or loss is actually covered by any insurance described above. Buyer's covenants and obligations contained herein shall survive Closing and shall be deemed a continuing obligation of Buyer and its successors and assigns.

8. **Buyer's Representations and Warranties.** Buyer represents and warrants to Seller that the following are true as of the Agreement Date and will be true as of the Closing, and Buyer understands that in entering into this Agreement Seller is relying upon, the following:

8.1 **Due Organization, Etc.** Buyer is validly existing and in good standing under the laws of the State of its organization. Buyer has taken all necessary action to authorize the transaction contemplated by this Agreement and Buyer's execution and delivery of this Agreement and all documents required herein, and its performance under this Agreement. Buyer's execution and delivery of this Agreement, and the consummation of the transactions contemplated and required hereby, will not result in any violation of, or default under, any term or provisions of any agreement, instrument, mortgage, loan agreement or similar document to which Buyer is a party or by which Buyer is bound. Buyer is not a partner or joint venturer with Seller in connection with the transactions contemplated by this Agreement, and Buyer is entering into this Agreement and any other contract, instrument and document contemplated hereby, voluntarily and solely for its own profit and benefit.

8.2 **No Litigation.** There is no complaint, litigation, investigation or proceeding pending or, to the best of Buyer's knowledge, contemplated or threatened against Buyer which would prevent Buyer from performing its obligations under this Agreement or any other instrument or document contemplated hereby or related hereto. Buyer shall promptly inform Seller of any litigation, or of any claim or controversy which might become the subject of litigation, against Buyer or affecting any of Buyer's property in the Development, if such litigation or potential litigation might, in the event of an unfavorable outcome, have a material adverse effect on Buyer's capability to perform its obligations under this Agreement or any other agreement between Buyer and Seller.

8.3 **No Bankruptcy.** There are no attachments, levies, executions, assignments for the benefit of creditors, receiverships, conservatorship or voluntary or involuntary proceedings in bankruptcy or any other debtor relief actions contemplated by Buyer or filed by Buyer, or to Buyer's knowledge, pending in any current judicial or administrative proceeding against Buyer.

8.4 **Licenses.** Buyer currently has and shall maintain all licenses, privileges, franchises, certificates and the like necessary for the operation of Buyer's business.

9. **Seller's Representations and Warranties.** Seller represents and warrants to Buyer that the following are true as of the Agreement Date, and Seller understands that in entering into this Agreement Buyer is relying upon, the following:

9.1 **Due Organization, Etc.** Seller is validly existing and in good standing under the laws of the State of Arizona. The transactions contemplated by this Agreement and the execution and delivery of this Agreement and all documents required herein, and its performance under this Agreement have been duly authorized by Seller. The execution and delivery of this Agreement and any other document required herein, and the consummation of the transactions contemplated hereby and thereby, will not result in any violation of, or default under, any term or provision of any agreement, instrument, mortgage, loan, or similar documents to which Seller is a party of or by which Seller is bound. Seller is not a partner or joint venturer with Buyer in connection with the transactions contemplated by this Agreement, and Seller is entering into this Agreement and any other contract, instrument and document contemplated hereby, voluntarily and solely for its own profit and benefit.

9.2 **No Bankruptcy.** There are no attachments, levies, executions, assignments for the benefit of creditors, receiverships, conservatorship or voluntary or involuntary proceedings in bankruptcy or any other debtor relief actions contemplated by Seller or filed by Seller, or to Seller's knowledge, pending in any current judicial or administrative proceeding against Seller.

9.3 **Foreign Person.** Seller is not a "Foreign Person" as such term is defined under the Internal Revenue Code § 1445.

9.4 **No Litigation or Claims.** To Seller's knowledge, there are, at the time of execution of this Agreement, no claims, actions, suits, or other proceedings pending or threatened by any governmental department or agency or any other party against Seller, the Development or the Property, nor any voluntary actions or proceedings contemplated by Seller, which would in Seller's reasonable judgment in any material manner detrimentally affect Seller's ability to perform Seller's obligations under this Agreement.

10. **Condition of Property; Waiver of Claims.** Prior to the Closing, Buyer shall have made its own examination, inspection and investigation of the condition of the Property (including, without limitation, all matters pertaining to environmental hazards and compliance with all laws, the subsurface thereof, and soil, engineering and all other conditions which may affect construction thereon) and all matters affecting the development thereof as it deems necessary or appropriate. Except as otherwise expressly set forth in this Agreement, Seller makes no guarantees, warranties or representations, expressed or implied, with respect to (a) the Property, (b) the condition of title, (c) suitability for any intended purpose, or habitability, (d) size, location, physical condition,

encroachments, access, availability of utilities, zoning, value, future value, income potential, productivity, rights to, adequacy of or quality of the water the supply or water rights, (e) presence or absence of any historical or archaeological artifacts or any endangered or threatened species, or (f) any other matter of this transaction. Seller shall not be responsible or liable to Buyer for any conditions affecting the Property because Buyer is purchasing the Property, except as otherwise expressly set forth in this Agreement, "**AS IS**", "**WHERE IS**" and "**WITH ALL FAULTS**", and not in reliance on any representations, warranties, statements or promises not expressly set forth in this Agreement. **WITHOUT LIMITING THE FOREGOING, SELLER MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND REGARDING THE ENVIRONMENTAL CONDITION OF THE PROPERTY, OR THE PRESENCE OR ABSENCE OF ASBESTOS, RADON GAS, FORMALDEHYDE, OIL, PCBs OR ANY OTHER HAZARDOUS OR TOXIC WASTE OR MATERIALS, OR ANY ARCHAEOLOGICAL OR HISTORICAL ARTIFACTS, OR ENDANGERED OR THREATENED SPECIES.** Buyer and anyone claiming by, through or under Buyer, hereby waives and fully releases Seller and its partners, and their respective owners, employees, representatives and agents, from any claims that it may now have or hereafter acquire against Seller or its partners, or their respective owners, employees, representatives and agents, for any cost, loss, liability, damage, expense, demand, action or cause of action arising from, related to or affecting the Property. Buyer further acknowledges and agrees that this release shall be given full force and effect according to each of its expressed terms and provisions, including those relating to unknown and unsuspected claims, damages and causes of action. This waiver and release of claims shall survive the Closing.

11. **No Subordination.** Nothing contained herein shall expressly or by necessary implication subordinate or require Seller to subordinate its interest in the Property (or any portion thereof) to, and Buyer shall not have the right to create or attempt to create against or upon any of the Property or any Parcel, fee simple title to which is not then vested in Buyer, any lien or other encumbrance superior to the rights of Seller.

12. **Possession of Property.** Buyer shall not be entitled to possession of the Property until after the Closing and Buyer shall not commence construction of improvements on the Property until fee simple title has been vested in Buyer. Buyer shall not permit any mechanics' or materialmen's lien to stand against the Property. Buyer shall cause any such lien to be discharged (by bonding or otherwise) within five (5) business days after demand by Seller.

13. **Events of Default.** Each of the following shall constitute an "**Event of Default**":

13.1 **Purchase Requirements.** The failure of Buyer to timely meet any Purchase Requirement and pay the applicable Purchase Price.

13.2 **Other Non-Monetary.** The failure of Buyer to observe or perform any of the covenants, conditions or agreements contained in this Agreement to be observed or performed by Buyer, other than those described above, where such failure shall continue for fifteen (15) business days after written notice of such failure from Seller; provided, however, that if such default is not reasonably capable of being cured within such fifteen (15) business day period (but is capable of being cured within a reasonable period of time), Buyer shall not be deemed to be in default under this Agreement so long as Buyer commences the cure within such fifteen (15) business day period

and thereafter diligently pursues such cure to completion within a reasonable period of time. Nothing in the immediately preceding sentence shall be interpreted to provide Buyer with any additional time to cure or additional right to notice if a different or shorter cure period is set forth elsewhere in this Agreement.

13.3 **Default Under Other Agreements.** Any breach or default by Buyer under any agreement executed in connection with this Agreement or pertaining to the Property unless such breach or default is cured within the earlier of (a) the applicable cure period, if any, provided under such other agreement, or (b) within thirty (30) days after written notice from Seller.

13.4 **Insolvency Events.** The making by Buyer of any general assignment or general arrangement for the benefit of creditors, the filing by or against Buyer of a petition to have Buyer adjudged bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Buyer, the same is dismissed within ninety (90) days); the appointment of a trustee or receiver to take possession of substantially all of Buyer's assets or of Buyer's interest in this Lease (where possession is not restored to Buyer within sixty (60) days); or the attachment, execution or judicial seizure of substantially all of Buyer's assets or of Buyer's interest in this Agreement (where such seizure is not discharged within thirty (30) days).

14. **Seller's Remedies.** Upon the occurrence of an Event of Default and at any time thereafter prior to such Event of Default being cured, with or without notice or demand and without limiting Seller in the exercise of any other right or remedy which Seller may have by reason of the occurrence, Seller may proceed with one or more of the following remedies:

14.1 Seller may terminate this Agreement and Buyer's rights hereunder. Buyer and Seller acknowledge that it would be impractical and extremely difficult to estimate the actual damages which Seller may suffer as a result of a default by Buyer. Therefore the sum of \$\_\_\_\_\_ is considered a reasonable estimate of the amount of monetary damages likely to be suffered by Seller as a result of Buyer's Event of Default.

14.2 In addition to all other rights and remedies, Seller may sue for damages caused by the breach of any of Buyer's covenants, representations or warranties contained herein, together with interest, and for such equitable relief as may be appropriate under the circumstances.

14.3 Notwithstanding the foregoing, Buyer is not obligated to purchase the Property, but rather has the right to purchase the Property upon compliance with the terms and conditions of this Agreement; therefore, Buyer's failure to exercise the Option shall not constitute an Event of Default for which Seller shall have the right to sue Buyer.

15. **Buyer's Remedies.** If Seller breaches any of the terms or provisions of this Agreement or otherwise defaults under this Agreement, and provided that Buyer is not in default of its covenants under this Agreement, Buyer may either: (a) terminate this Agreement by written notice to Seller and Escrow Agent, whereupon (except as otherwise provided herein) neither party shall have any further obligations or liabilities to the other under this Agreement; (b) waive such default and consummate the transaction contemplated hereby in accordance with the terms hereof; (c) institute all proceedings necessary to specifically enforce the terms of this Agreement and cause title to the Property to be conveyed to Buyer; or (d) seek recovery of Buyer's out-of-pocket costs and

expenses incurred as a result of Seller's breach. In no event, however, shall Buyer have any claim or any right to seek recovery of exemplary, punitive, special, indirect, "lost profits," consequential or any other monetary damages incurred by Buyer. Notwithstanding any other terms or conditions of this Agreement, Seller shall not be deemed to be in default under this Agreement unless the breach or default complained of by Buyer has not been cured within thirty (30) days after written notice thereof has been given to Seller.

16. **Limited Recourse.** Notwithstanding anything in this Agreement to the contrary, Buyer's recourse with respect to any obligations or liabilities of Seller under this Agreement or otherwise, shall be limited to Seller's interest in the Property. In no event shall Buyer have any claim or any right to seek recovery from or any judgment against any other or separate interests or assets of Seller, any partner of Seller, or any partner, member, officer, director, shareholder, spouse, employee or agent of any of the foregoing, or anyone else claiming by, through or under Seller.

17. **Memorandum of Agreement.** Within five (5) days of Agreement Date, Buyer shall record a Memorandum of Agreement in the form attached as **Exhibit "D"** in the official records of the County. Seller shall execute **Exhibit "D"** contemporaneous with the execution of this Option.

18. **Termination of Option Agreement.** If this Agreement is subsequently terminated, Escrow Agent is hereby irrevocably authorized, upon Seller's written request and without additional notice to Buyer, to complete **Exhibit "E"** attached titled "Termination of Agreement, Release and Quit Claim Deed" by inserting therein the pertinent dates and the legal description for the Property for which Buyer has not previously closed Escrow in accordance with this Agreement, and then to record the same in the official records of the County. Buyer and Seller agree to indemnify and hold Escrow Agent harmless for, from and against any and all claims, liabilities, costs, expenses and damages as a result of any wrongful recording of such instrument, including but not limited to any alleged negligence by Escrow Agent. In the event that the Termination of Agreement, Release and Quit Claim Deed is recorded, Buyer, without waiving its other rights under this Agreement, waives the right to recover statutory or treble damages pursuant to A.R.S. § 33-420 from Escrow Agent or Seller or any of their respective agents, managers, partners, members, owners, attorneys or other representatives.

19. **Indemnity.** To the fullest extent permitted by law, in addition to and not in limitation of all other covenants of Buyer under this Agreement, Buyer does and shall indemnify, defend and hold harmless Seller and its members, and their respective owners, employees, representatives and agents for, from and against all injuries, losses, liens, claims, demands, judgments, liabilities, damages, costs and expenses (including but not limited to court costs and reasonable attorneys' fees and expenses) sustained by or made or threatened against Seller, which result from or arise out of or in connection with (a) any work, occurrence, conduct, act, error or omission (whether or not negligent or in violation of any applicable law, rule, regulation or order), maintained, performed, permitted or suffered by Buyer or any contractor, subcontractor, supplier, agent or employee of Buyer, on or about or pertaining to the Development or any portion thereof, (b) any design defect or construction defect in any improvement, fixture or other property constructed, installed or otherwise provided by Buyer at or on the Property, (c) any alteration by Buyer or at its request of drainage within the Development; and (d) any covenant, representation or warranty made by Buyer to any third party pertaining to the Development or any portion thereof.

20. **Attorneys' Fees.** If either party hereto breaches any provisions of this Agreement, the breaching party shall pay to the non-breaching party all attorneys' fees and other costs and expenses incurred by the non-breaching party in enforcing this Agreement or preparing for legal or other proceedings regardless of whether suit is instituted, including a reasonable allocation of the non-breaching party's in-house attorneys and staff. If it becomes necessary for either party to employ legal counsel or to bring an action at law or other proceeding to enforce any of the terms, covenants or conditions of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its costs and expenses incurred in such action from the other party, including reasonable attorneys' fees set by the arbitrators or, in the event of any court proceedings, by the Court, but not by a jury, at both initial and appellate levels, and if any award or judgment is obtained by the prevailing party, all such costs, expenses and fees shall be included in the award or judgment. If both parties are awarded relief, then the award for attorneys' fees shall be apportioned in the discretion of the arbitrators or the Court.

21. **Mediation.** Before any action of law or other proceedings to enforce the Option terms, the parties must first submit to non-binding private mediation. The costs of the mediation shall be born equally.

22. **Notices.** All notices or other communications required or provided to be sent by either party or Escrow Agent shall be in writing and shall be sent by: (a) United States Postal Service, postage prepaid, certified, return receipt requested; (b) any nationally known overnight delivery service; (c) courier; (d) facsimile transmission; or (e) personal hand delivery. All notices shall be deemed to have been given upon delivery to the appropriate address, or upon receipt by completed facsimile transmission. All notices shall be addressed to the party at the address below:

If to Seller:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Fax No.: \_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Buyer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Escrow Agent:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Fax No.: \_\_\_\_\_

Any address or name specified above may be changed by notice given to the addressee by the other party. The inability to deliver because of a changed address of which no notice was given, or rejection or other refusal to accept any notice, shall be deemed to be the receipt of the notice as of the date of such inability to deliver or rejection or refusal to accept. Any notice to be given by any party hereto may be given by legal counsel of such party. Any notice to be given to Escrow Agent shall be sent to the address set forth above, and shall also be given to the other party. All notices to be given to either Buyer or Seller shall also be given to Escrow Agent and each party's legal counsel (if legal counsel's notice address has been set forth above).

23. **Condemnation.** If between the Agreement Date and the date of the Closing any portion of the Parcels shall be taken or appropriated for public or quasi-public use by right of eminent domain, or if proceedings in condemnation or eminent domain shall be instituted or threatened, Buyer may elect to terminate this Agreement by written notice to Seller within ten (10) business days following receipt of written notice of such event, whereupon (except as otherwise provided in this Agreement) neither party shall have any further obligations or liabilities under this Agreement, and Seller shall be entitled to all condemnation proceeds. If Buyer elects not to terminate this Agreement, Buyer shall be entitled to recover all condemnation proceeds with respect to any Parcels which Buyer acquires pursuant to this Agreement and this Agreement shall remain in full force and effect.

24. **IRS Real Estate Sales Reporting.** Buyer and Seller hereby appoint Escrow Agent as, and Escrow Agent agrees to act as, "the person responsible for closing" the transaction which is the subject of this Agreement pursuant to Internal Revenue Code Section 6045(e). Escrow Agent shall prepare and file all informational returns, including without limitation, IRS Form 1099-S and shall otherwise comply with the provisions of Internal Revenue Code Section 6045(e). Escrow Agent shall indemnify, protect, hold harmless and defend Seller, Buyer and their respective attorneys for, from and against any and all claims, actions, costs, loss, liability or expense arising out of or in connection with the failure of Escrow Agent to comply with the provisions of this Section.

25. **Other Important Agreements.**

25.1 **Survival of Covenants, Agreements, Representations and Warranties.** All covenants, agreements, indemnities, representations and warranties set forth in this Agreement shall survive Closing and Buyer's acquisition of the Property and shall not merge into any deed or other instrument executed or delivered in connection with the transaction contemplated hereby.

25.2 **Modification of Agreement.** No modification of this Agreement shall be deemed effective unless in writing and signed by the parties hereto, and any waiver granted shall not

be deemed effective except for the instance and in the circumstances particularly specified therein and unless in writing and executed by the party against whom enforcement of the waiver is sought.

25.3 **Further Instruments.** Each party, promptly upon the request of the other or upon the request of Escrow Agent, shall execute and have acknowledged and delivered to the other or to Escrow Agent, as may be appropriate, any and all further instruments reasonably requested or appropriate to evidence or give effect to the provisions of this Agreement and which are consistent with the provisions hereof.

25.4 **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

25.5 **Time of the Essence.** Time is of the essence of this Agreement.

25.6 **Time Periods.** If the time for performance of any obligation under this Agreement expires on Saturday, Sunday or legal holiday, the time for performance shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

25.7 **Contract for Conveyance of Real Property Not Intended.** Notwithstanding anything in the Agreement to the contrary, neither the Seller nor the Buyer has any intent that this Agreement shall at any time be construed as a contract for conveyance of real property, contract for deed, contract to convey, agreement for sale or any similar contract through which the Seller has conveyed to the Buyer any equitable title or interest in any of the Parcels. Under no circumstances shall the Buyer be entitled to any of the remedies or benefits set forth in A.R.S. § 33-741, *et seq.*

25.8 **Descriptive Headings.** The descriptive headings of the **Sections** of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any provisions hereof.

25.9 **Construction.** Each party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendments or exhibits hereto.

25.10 **Interpretation.** In this Agreement the neuter gender includes the feminine and masculine, and the singular number includes the plural, and the words "**person**" and "**party**" include corporation, partnership, individual, firm, trust, or association wherever the context so requires. The following words and phrases shall be construed as follows: "**at any time**" shall be construed as "at any time or from time to time;" "**any**" shall be construed as "any and all;" and "**including**" shall be construed as "including but not limited to." If there is more than one Buyer, the obligations of Buyer hereunder shall be joint and several.

25.11 **Exhibits.** All Exhibits attached hereto and referred to in this Agreement are incorporated herein by this reference and are made a part of this Agreement.

25.12 **Counterparts.** This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same Agreement.

25.13 **Entire Agreement.** This Agreement, including the attached Exhibits, constitutes the entire agreement between the parties with regards to the purchase, sale and development of the Property. All terms and conditions contained in any other writings previously executed by the parties and all other discussions, understandings or agreements regarding the Property and the subject matter hereof shall be deemed to be superseded hereby.

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement to be effective as of the Agreement Date set forth above.

SELLER:

\_\_\_\_\_,  
a(n) \_\_\_\_\_

By: \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

Date \_\_\_\_\_

BUYER:

\_\_\_\_\_,  
a(n) \_\_\_\_\_

By: \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

Date \_\_\_\_\_

ESCROW AGENT ACCEPTANCE:

The undersigned Escrow Agent accepts this Agreement as its escrow instructions and agrees to perform the acts applicable to Escrow Agent in accordance with the terms of this Agreement. Specifically, Escrow Agent understands, acknowledges and agrees to the provisions of the section labeled "IRS Real Estate Sales Reporting" above. Escrow Agent acknowledges it has received the Initial Option Deposit and a fully executed original of this Agreement and the Memorandum of Option as of the date set forth beneath its signature below.

\_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

Date \_\_\_\_\_

## **LIST OF EXHIBITS TO OPTION AGREEMENT**

- Exhibit A - Legal Description of the Property
- Exhibit B - Letter of Intent
- Exhibit C - Alpha Drive Fraternities
- Exhibit D - Memorandum of Option
- Exhibit E - Termination of Agreement, Release and Quit Claim Deed
- Exhibit F - Escrow Instructions
- Exhibit G - Special Warranty Deed

**EXHIBIT "A"**

LEGAL DESCRIPTION

**EXHIBIT "B"**

LETTER OF INTENT

**EXHIBIT "C"**

List of Alpha Drive Fraternities

1. Alpha 601, L.L.C., an Arizona limited liability company
2. Alpha Sigma Housing Corporation
3. Alumni Control Board, Beta Psi Chapter, Delta Sigma Phi, an Arizona non-profit corporation
4. Arizona Alpha House Corporation of Sigma Phi Epsilon Fraternity, a \_\_\_\_\_ corporation
5. Garnet and Gold House Corporation, an Arizona corporation
6. Phi Sigma Kappa Properties, Inc., a Delaware Corporation
7. The Sigma Chi House Corporation of Epsilon Upsilon, an Arizona non-profit corporation
8. Walter B. Palmer Foundation, Inc., an Ohio non-profit corporation (Phi Delta Theta)

**EXHIBIT "D"**

WHEN RECORDED RETURN TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

MEMORANDUM OF OPTION

\_\_\_\_\_, a(n) \_\_\_\_\_  
("Optionee") and \_\_\_\_\_, a(n)  
\_\_\_\_\_ ("Optionor") have executed that certain Option  
Agreement and Escrow Instructions (the "Agreement") dated \_\_\_\_\_, 200\_\_\_\_,  
relating to the property described on the attached **Exhibit "A"** (the "**Property**"). Optionor and  
Optionee have complete copies of the Agreement in their possession. The Agreement provides that  
Optionor grants to Optionee an exclusive option to purchase the Property upon the terms, covenant,  
agreements and conditions of the Agreement.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

and

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_\_,  
by \_\_\_\_\_, the \_\_\_\_\_ of  
\_\_\_\_\_, on behalf of said \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_,  
200\_\_\_\_, by \_\_\_\_\_, the \_\_\_\_\_  
of \_\_\_\_\_, on behalf of said company.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

**EXHIBIT "E"**

WHEN RECORDED, RETURN TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

TERMINATION OF AGREEMENT, RELEASE AND QUIT CLAIM DEED

THIS TERMINATION OF AGREEMENT, RELEASE AND QUIT CLAIM DEED is to be effective as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between \_\_\_\_\_, a(n) \_\_\_\_\_ ("Buyer"), and \_\_\_\_\_, a(n) \_\_\_\_\_ ("Seller").

A. Seller owns that certain real property located in Maricopa County, Arizona, and described on attached **Exhibit "A"** (the "**Property**").

B. Seller and Buyer entered into that certain Option Agreement and Escrow Instructions dated \_\_\_\_\_, 200\_\_\_\_ (the "Option Agreement") pursuant to which, among other things, Seller agreed to grant to Buyer the right to purchase the Property in accordance with the terms of the Option Agreement; and furthermore entered into and recorded that certain Memorandum of Agreement dated \_\_\_\_\_, 200\_\_\_\_, confirming as a matter of record the agreement of the parties.

C. The rights of Buyer in and under the Option Agreement have been fully released and terminated and the parties desire to evidence such termination by execution, delivery and recordation of this Termination of Agreement, Release and Quitclaim Deed.

NOW, THEREFORE, in consideration of the agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. The rights of Buyer in and under the Option Agreement (as to the Property or portions thereof described on **Exhibit "A"**) have been fully released and terminated and Buyer has no right, title or interest whatsoever thereunder, and the parties acknowledge the full and complete termination of Buyer's rights in the Property.

2. Buyer does hereby quitclaim the real property described on **Exhibit "A"** to Seller.

IN WITNESS WHEREOF, the undersigned have executed this Termination of Agreement, Release and Quitclaim Deed to be effective as of the date and year first above written.

SELLER:

By: \_\_\_\_\_  
Its: \_\_\_\_\_

BUYER:

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_, the \_\_\_\_\_, of \_\_\_\_\_, a(n) \_\_\_\_\_, for and on behalf thereof.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_, the \_\_\_\_\_, of \_\_\_\_\_, a(n) \_\_\_\_\_, for and on behalf thereof.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

## **EXHIBIT "F"**

### **ESCROW INSTRUCTIONS**

#### **SELLER AND BUYER**

1. Will deposit with Escrow Agent all documents necessary to complete the sale(s) as established by the terms of these instructions and authorize Escrow Agent to deliver or record said documents as required herein.
2. Direct that all money payable be paid to Escrow Agent unless otherwise specified.
3. Authorize Escrow Agent to act upon any statement furnished by a lien holder or his agent, without liability or responsibility for the accuracy of such statement.
4. Authorize Escrow Agent to pay from available funds held by it for said purpose amounts necessary to procure documents and to pay charges and obligations necessary to consummate the transaction(s).
5. Direct that the disbursement of any funds shall be made by check or wire transfer by Escrow Agent.
6. Direct that when these instructions and all title requirements have been complied with Escrow Agent shall deliver by recording in the appropriate public office all necessary documents, disburse all funds and issue the title insurance policy.
7. Shall indemnify and save harmless Escrow Agent against all costs, damages, attorney's fees, expenses and liabilities, which it may incur or sustain in connection with these instructions any interpleader action, or any servicing account arising here from (except for any wrongful acts or negligence on the part of Escrow Agent) and will pay the same on demand.

#### **SELLER AND BUYER AGREE:**

8. Escrow Agent has the right to resign upon written ten (10) day notice and, if such right is exercised, all funds (including all earned interest, if any) and documents shall be returned to the party who deposited them.
9. Escrow Agent shall not accept payments under a cancellation notice, unless directed to do so by the canceling party and then only if the payments are in cash, certified or cashier's check or money order.
10. Should Escrow Agent be closed on any day of compliance with these instructions the requirement may be met on the next succeeding day Escrow Agent is open for business.

11. Time is of the essence of any agreement to pay or perform hereunder which agreement shall remain unpaid or unperformed as of close of escrow. No payment of Buyer of such amounts shall be received or receipted for by Escrow Agent unless all amounts due as of the date of compliance are paid unless and until written authority therefor has been delivered to Escrow Agent by the payee of said amount.
12. Escrow Agent may at any time, at its discretion, commence a civil action to interplead any conflicting demands to a Court of competent jurisdiction.
13. It is fully understood that Escrow Agent serves as an escrow agent only in connection with these instructions and cannot give legal advice to any party hereto.

**EXHIBIT "G"**

When Recorded, Mail to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SPECIAL WARRANTY DEED**

For the consideration of the sum of Ten Dollars (\$10.00) and other valuable considerations received, \_\_\_\_\_, a(n) \_\_\_\_\_ ("Grantor"), does hereby convey to \_\_\_\_\_, a(n) \_\_\_\_\_ ("Grantee"), the following described real property (the "Property") situated in Maricopa County, Arizona:

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

**SUBJECT TO:** current taxes and other current assessments; patent reservations; all covenants, conditions, restrictions, reservations, easements and declarations, encumbrances, liens, obligations, liabilities or other matters of record or to which reference is made in the public record; any and all conditions, easements, encroachments, rights-of-way, or restrictions which a physical inspection or accurate ALTA survey of the Property would reveal; and the applicable zoning and use regulations of any municipality, county, state, or the United States affecting the Property.

AND GRANTOR hereby binds itself and its successors to warrant and defend the title against all of the acts of Grantor and no other, subject to the matters set forth above.

IN WITNESS WHEREOF, Grantor has caused this Special Warranty Deed to be executed this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

GRANTOR:

By:

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF ARIZONA            )  
  )     ss.  
County of Maricopa         )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_, the \_\_\_\_\_, of \_\_\_\_\_, a(n) \_\_\_\_\_, for and on behalf thereof.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_